



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 141

**An Act mainly to improve the regulation
of the financial sector, the protection of
deposits of money and the operation of
financial institutions**

Introduction

**Introduced by
Mr. Carlos J. Leitão
Minister of Finance**

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EXPLANATORY NOTES

This bill proposes a reform of the laws governing the financial sector.

It enacts the Insurers Act to replace the Act respecting insurance. The Insurers Act contains provisions governing the supervision and control of insurance business and of the activities of authorized Québec insurers, including

(1) the conditions for granting the authorization required to carry on insurer activities in Québec;

(2) the commercial practices, prudential rules and governance rules applicable to authorized insurers;

(3) the roles of actuaries and auditors, respectively charged with analyzing the financial position and auditing the books and accounts of authorized insurers;

(4) the notices, annual statements, reports and other communications to be transmitted to the Autorité des marchés financiers (the Authority);

(5) the terms, in various circumstances, governing the review, revocation or suspension of an insurer's authorization or the attachment of conditions or restrictions to such an authorization;

(6) the maintenance of a register of authorized insurers and the confidentiality of information on the supervision of authorized insurers; and

(7) provisions specific to the supervision of the insurer activities of self-regulatory organizations and authorized reciprocal unions.

The Insurers Act also contains provisions governing the constitution, organization, operation, continuation, amalgamation and dissolution of authorized Québec insurers, including

(1) the procedure whereby a business corporation constituted under the Business Corporations Act becomes regulated by the Insurers Act;

(2) the terms governing the constitution of a mutual company and the suppletive application of the Business Corporations Act to such a company;

(3) the special powers of Québec insurers, the restrictions on their activities, loans, hypothecs and other securities, and their contributed capital;

(4) the composition and operation of their boards of directors and committees;

(5) the rights and obligations of their members and the rules governing their meetings; and

(6) the specific rules applicable to self-regulatory organizations.

In addition, the Insurers Act contains provisions governing the constitution, organization, operation, guarantee fund, segregated investment funds and dissolution of federations of mutual companies, and the federations' role in supervising and controlling their member companies. It also assigns responsibility for the supervision and control of insurance activities to the Authority. It determines the Authority's enforcement and other powers, in particular its powers to issue instructions, guidelines and orders, adopt conservatory measures, request injunctions, intervene in proceedings relating to the administration or enforcement of that Act, and to cancel contracts or suspend their performance. Lastly, the Insurers Act sets out prohibitions, monetary administrative penalties and penal provisions.

The bill also amends the Professional Code to, in particular, define the role, functions and powers of the board of directors of a professional order and its professional liability insurance decision-making committee with respect to the order's insurance business and, if applicable, insurer activities.

The bill also amends the Act respecting financial services cooperatives to, among other things,

(1) specify the rules for organizing a network of financial services cooperatives and a financial group, including the conditions governing control of legal persons or corporations, as well as the specific application of certain provisions of that Act to such a network or group;

(2) specify the common characteristic shared by members of a member credit union of a federation that the credit union may indicate in its articles and set out terms for distinguishing between credit unions based on that characteristic;

(3) as regards capital shares and investment shares of financial services cooperatives, specify the rules for issuing such shares, prescribe, in the event of the winding-up, insolvency or dissolution of a cooperative, the rank of those shares, based on whether the cooperative is a member of a federation, and the rules governing their repurchase, and amend how the interest to which the shares give entitlement is to be determined and paid;

(4) distinguish between the role of officer and that of manager of a financial services cooperative and determine how they are to carry out their functions;

(5) specify the standards applicable to credit unions with respect to sound commercial practices and a federation's role in that regard, if applicable;

(6) revise how certain powers of a federation are to be exercised, and revise the powers and the composition and operating rules of a credit union's or federation's board of directors and a federation's board of ethics and professional conduct;

(7) add the possibility for a financial services cooperative constituted under the laws of a jurisdiction other than Québec to be continued as a credit union governed by that Act;

(8) grant federations special powers, in certain circumstances, with regard to member credit unions' activities and, consequently, determine the Authority's role and powers in that regard;

(9) amend the rules concerning financial services cooperatives' capital, liquid assets and investments and prescribe penalties;

(10) add a chapter concerning the Groupe coopératif Desjardins, to replace the Act respecting the Mouvement Desjardins, which will be repealed; this new chapter includes special rules governing its by-laws, the issue of shares, and its officers, managers, board of supervision, board of ethics and professional conduct, federation and security fund; and

(11) add monetary administrative penalties.

The bill also renames the Deposit Insurance Act the “Deposit Institutions and Deposit Protection Act” and amends it to, in particular,

(1) add a scheme to supervise and control deposit institution business and authorized deposit institutions, including commercial practices standards, prudential and governance rules, the auditor’s role, the conditions for authorizing a deposit institution, the review of such an authorization in various circumstances and the revocation or suspension of, or the attachment of conditions or restrictions to, such an authorization;

(2) determine the Authority’s responsibilities and powers with regard to supervision and control;

(3) add the possibility for the Authority, as the insurer of deposits made with authorized deposit institutions, to take different measures to reduce the risk to the Authority or to avert or reduce a threatened loss to the Authority and to plan operations to resolve problems that could arise from the failure of financial institutions belonging to a cooperative group;

(4) prescribe miscellaneous prohibitions and monetary administrative penalties; and

(5) set the conditions under which the Minister of Finance may enter into agreements allowing a cooperative outside Québec having a mission similar to that of a financial services cooperative to obtain an authorization to carry on deposit institution activities in Québec.

The bill also enacts a new Trust Companies and Savings Companies Act to replace the Act respecting trust companies and savings companies which will be repealed. The new Act introduces a scheme regarding trust companies and savings companies that is equivalent to the one set out in the Insurers Act.

The bill amends the Real Estate Brokerage Act to, in particular, define real estate brokerage contracts, transfer supervision and control of real estate brokerage to the Authority, and modify the composition of, and the rules for appointing members to, the board of directors of the Organisme d’autoréglementation du courtage immobilier du Québec, and the term of office of the members of the discipline committee.

*The bill amends the Act respecting the distribution of financial products and services to, in particular, add provisions regarding real estate brokerage supervision and control, allow firms to offer financial products and services by technological means, abolish the *Chambre de la sécurité financière* and the *Chambre de l'assurance de dommages*, entrust the Authority with the responsibility of controlling representative activities, including ethics and training, and eliminate restricted certificates for distribution without a representative.*

*The bill renames the Act respecting the *Autorité des marchés financiers* the “Act respecting the regulation of the financial sector”. That Act is amended to, in particular, protect persons who disclose failures to comply to the Authority, establish within the Authority the “*Comité consultatif des consommateurs de produits et utilisateurs de services financiers*” and update the provisions concerning the establishment, jurisdiction, procedures, members and conduct of business of the Financial Markets Administrative Tribunal.*

The bill amends the Civil Code to allow funeral insurance contracts to be entered into. As a result, the Act respecting prearranged funeral services and sepultures is amended to, among other things, add rules regarding validity and terms governing the performance, annulment and cancellation of such contracts.

The bill amends the Automobile Insurance Act to specify how information concerning the automobile driving experience of insured persons is to be communicated to an authorized insurer when automobile insurance is obtained or renewed.

*The bill amends the Money-Services Businesses Act to, among other things, provide for checks to be conducted on money-services businesses, every three years after a money-services business licence is issued, by the *Sûreté du Québec* and by the police force in the local municipality in which the business offers its services, and provide that a freeze order, unless otherwise provided in the order, has effect for a renewable period of 12 months, except if revoked or amended by the Financial Markets Administrative Tribunal.*

The bill amends the Derivatives Act to add derivatives trading platforms between regulated entities, provide that a freeze order, unless otherwise provided in the order, has effect for a renewable period of 12 months, except if revoked or amended by the Financial Markets Administrative Tribunal, and provide that the Tribunal must, in certain circumstances, approve the terms of administration and

distribution, by the Authority, of amounts disgorged to it during execution of an order of the Tribunal because of a failure to comply with the Act which resulted in a loss for other persons.

The bill amends the Securities Act to replace the definition of “non-redeemable investment fund”, prescribe restrictions on sharing the commission received by a mutual fund dealer or a scholarship plan dealer, provide that a request for authorization of an action for damages, filed under that Act, suspends prescription against the plaintiff, provide that a freeze order, unless otherwise provided in the order, has effect for a renewable period of 12 months, except if revoked or amended by the Financial Markets Administrative Tribunal, and provide that the Tribunal must, under certain circumstances, approve the terms of administration and distribution, by the Authority, of amounts disgorged to it during execution of an order of the Tribunal because of a failure to comply with the Act which resulted in a loss for other persons.

Lastly, the bill makes consequential amendments to several Acts and includes transitional provisions.

LEGISLATION AMENDED BY THIS BILL:

- Civil Code of Québec;
- Act respecting prearranged funeral services and sepultures (chapter A-23.001);
- Automobile Insurance Act (chapter A-25);
- Deposit Insurance Act (chapter A-26);
- Hospital Insurance Act (chapter A-28);
- Health Insurance Act (chapter A-29);
- Act respecting prescription drug insurance (chapter A-29.01);
- Act respecting the Autorité des marchés financiers (chapter A-33.2);
- Building Act (chapter B-1.1);
- Unclaimed Property Act (chapter B-5.1);

- Act respecting the Caisse de dépôt et placement du Québec (chapter C-2);
- Act constituting Capital régional et coopératif Desjardins (chapter C-6.1);
- Charter of Ville de Montréal (chapter C-11.4);
- Charter of Ville de Québec, national capital of Québec (chapter C-11.5);
- Cities and Towns Act (chapter C-19);
- Code of Civil Procedure (chapter C-25.01);
- Professional Code (chapter C-26);
- Municipal Code of Québec (chapter C-27.1);
- Companies Act (chapter C-38);
- Act respecting the Conseil des arts et des lettres du Québec (chapter C-57.02);
- Act respecting the conservation and development of wildlife (chapter C-61.1);
- Act respecting the Conservatoire de musique et d’art dramatique du Québec (chapter C-62.1);
- Act respecting contracting by public bodies (chapter C-65.1);
- Cooperatives Act (chapter C-67.2);
- Act respecting financial services cooperatives (chapter C-67.3);
- Real Estate Brokerage Act (chapter C-73.2);
- Forestry Credit Act (chapter C-78);
- Act to promote forest credit by private institutions (chapter C-78.1);
- Act respecting the distribution of financial products and services (chapter D-9.2);
- Land Transfer Duties Act (chapter D-17);

- Act respecting elections and referendums in municipalities (chapter E-2.2);
- Act respecting school elections (chapter E-2.3);
- Election Act (chapter E-3.3);
- Money-Services Businesses Act (chapter E-12.000001);
- Act to secure handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration (chapter E-20.1);
- Act respecting fabriques (chapter F-1);
- Education Act for Cree, Inuit and Naskapi Native Persons (chapter I-14);
- Derivatives Act (chapter I-14.01);
- Act respecting administrative justice (chapter J-3);
- Act respecting transparency measures in the mining, oil and gas industries (chapter M-11.5);
- Act respecting labour standards (chapter N-1.1);
- Consumer Protection Act (chapter P-40.1);
- Act respecting the legal publicity of enterprises (chapter P-44.1);
- Act respecting the collection of certain debts (chapter R-2.2);
- Act respecting the Government and Public Employees Retirement Plan (chapter R-10);
- Supplemental Pension Plans Act (chapter R-15.1);
- Voluntary Retirement Savings Plans Act (chapter R-17.0.1);
- Private Security Act (chapter S-3.5);
- Act respecting the Société des loteries du Québec (chapter S-13.1);
- Business Corporations Act (chapter S-31.1);
- Professional Syndicates Act (chapter S-40);

- Act respecting the transfer of securities and the establishment of security entitlements (chapter T-11.002);
- Securities Act (chapter V-1.1);
- Act to amend the Act respecting the Autorité des marchés financiers and other legislative provisions (2008, chapter 7);
- Act to amend the Securities Act and other legislative provisions (2009, chapter 25);
- Act respecting the legal publicity of enterprises (2010, chapter 7);
- Act concerning the possibility for the municipal founder to stand surety for the Société d'économie mixte d'énergie renouvelable de la région de Rivière-du-Loup inc. (2013, chapter 38).

LEGISLATION REPEALED BY THIS BILL:

- Act respecting the Mouvement Desjardins (2000, chapter 77).

LEGISLATION REPLACED BY THIS BILL:

- Act respecting insurance (chapter A-32);
- Act respecting trust companies and savings companies (chapter S-29.01).

LEGISLATION ENACTED BY THIS BILL:

- Insurers Act (*insert the year and chapter number of this Act and the section number of this Act that enacts the Insurers Act*);
- Trust Companies and Savings Companies Act (*insert the year and chapter number of this Act and the section number of this Act that enacts the Trust Companies and Savings Companies Act*).

Bill 141

AN ACT MAINLY TO IMPROVE THE REGULATION OF THE FINANCIAL SECTOR, THE PROTECTION OF DEPOSITS OF MONEY AND THE OPERATION OF FINANCIAL INSTITUTIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

PART I

PURPOSE

1. The amendments provided for in this Act are aimed mainly at strengthening consumer protection while allowing financial institutions and market intermediaries to adapt their practices to ongoing developments in their sector and their clients' new needs.

2. The measures provided for in this Act are aimed more specifically at

(1) establishing new supervisory and regulatory regimes for insurers, financial services cooperatives and other financial institutions that are harmonized with each other and consistent with the laws that complement them, such as the Civil Code and the Business Corporations Act (chapter S-31.1);

(2) tightening the regulation of brokers and representatives governed by the Real Estate Brokerage Act (chapter C-73.2) and the Act respecting the distribution of financial products and services (chapter D-9.2), respectively, and adapting the regulatory framework to new practices relating to the online distribution of financial products and services;

(3) reinforcing the role and status of the Financial Markets Administrative Tribunal, in particular, by establishing rules governing its operation and the recruitment, remuneration and conduct of its members, and by increasing its jurisdiction in disciplinary matters; and

(4) ensuring the continued alignment of the regulation of derivatives, securities and other financial products with evolving industry practices.

PART II

FINANCIAL INSTITUTIONS

CHAPTER I

INSURERS

DIVISION I

ENACTMENT OF THE INSURERS ACT

3. The Insurers Act, the text of which appears in this division, is enacted.

“INSURERS ACT

“TITLE I

“PURPOSE, DEFINITIONS AND OTHER INTRODUCTORY PROVISIONS

“1. This Act applies to the supervision and control of insurance business and of the activities of authorized insurers, in particular, their insurer activities and their other financial institution activities.

In addition, it establishes or supplements, through appropriate specific rules, the constitution, operation, dissolution and liquidation regime applicable to Québec insurers regulated by its Title III and, if they have an insurance fund, to that fund, as well as that applicable to federations of mutual companies.

“2. Insurer activities consist in undertaking to make a payment under an insurance contract if a risk covered by the insurance occurs.

Insurer activities include acting as surety or, for the purposes of a life or fixed-term annuity contract, as debtor.

“3. For the purposes of this Act, financial institution activities are, in addition to insurer activities and credit, the activities that a legal person may not carry on without being an authorized financial institution or a bank within the meaning of the Bank Act (Statutes of Canada, 1991, chapter 46).

“4. The following are authorized financial institutions:

- (1) insurers authorized to carry on insurer activities under this Act;
- (2) deposit institutions authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26);
- (3) financial services cooperatives within the meaning of the Act respecting financial services cooperatives (chapter C-67.3);

(4) trust companies authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*); and

(5) legal persons registered as dealers or advisers under the Derivatives Act (chapter I-14.01) or the Securities Act (chapter V-1.1) or registered as investment fund managers under the latter Act.

“5. For the purposes of this Act, an insurance contract is said to be underwritten by an insurer if it is a party to the contract as insurer.

A suretyship contract is said to be underwritten by an insurer if it is a party to the contract as surety.

“6. The following are Québec insurers:

(1) insurance companies regulated by Title III and any legal person that the law considers to be such a company;

(2) if they establish an insurance fund, self-regulatory organizations governed by an Act of Québec, including the professional orders;

(3) legal persons constituted under a private Act of Québec that authorizes them to carry on insurer activities; and

(4) any reciprocal union, if the mandatary referred to in subparagraph 3 of the first paragraph of section 188 is domiciled in Québec.

“7. A group of persons reciprocally bound by insurance contracts is a reciprocal union.

“8. In the case of a legal person constituted under the laws of a jurisdiction other than Québec, the organ on which the powers usually conferred on a board of directors are conferred is considered such a board. In that context, “director” means a member of that organ.

A legal person constituted under the laws of a jurisdiction other than Québec that, in a manner similar to that of a business corporation, confers voting rights otherwise than on a one member, one vote basis is considered a business corporation. If such rights are conferred through securities that it issues, the securities are considered shares.

“9. For the purposes of this Act, “holder of control” of the following groups means,

(1) in the case of a business corporation, the holder of shares conferring more than 50% of the voting rights or whoever can otherwise choose the majority of its directors;

(2) in the case of a federation of mutual companies, its member mutual companies;

(3) in the case of a partnership that is a limited partnership, the general partner, and in the case of any other partnership, the partner who can determine the outcome of collective decisions, if applicable;

(4) in the case of a trust, the trustee; and

(5) in the case of co-owners in indivision, the manager or, in the absence of a manager, if one of the co-owners can determine the outcome of collective decisions made by majority vote, that co-owner.

No one is the holder of control of a financial services cooperative, of a mutual company or of any other group that confers voting rights on a one member, one vote basis.

“10. Each of the following is the holder of a significant interest in a business corporation:

(1) the holder of a significant interest in the decisions of the corporation, that is, whoever can exercise 10% or more of the voting rights attached to the shares issued by the corporation; and

(2) the holder of a significant interest in the corporation’s equity capital, that is, the holder of shares issued by the corporation representing 10% or more of its equity capital.

“11. Control, in cases which allow it, also results from participation in the concerted and ongoing exercise of rights within the group controlled or of powers over that group, even though none of the participants in the exercise of such rights or powers would alone be the holder of control; in such cases, each of the participants is deemed to be the holder of control.

The same is true for a significant interest in the decisions of a business corporation; each of the participants in the concerted and ongoing exercise of the voting rights attached to the shares issued by the corporation is deemed to be a holder of a significant interest.

“12. The following are deemed to participate in the concerted and ongoing exercise of their rights or powers and, consequently, to be the holders of control of a group:

(1) the participants that are controlled by a same holder of control as well as that holder, if the holder is a participant;

(2) the trustees of a same trust;

(3) the member mutual companies of a same federation; and

(4) the natural persons between whom family ties are considered to exist.

The participants described in the first paragraph are deemed to participate in the concerted and ongoing exercise of their voting rights or of their rights in shares with a view to being the holders of a significant interest in a business corporation.

The presumptions under the first and second paragraphs regarding member mutual companies of a same federation also apply to the other member mutual companies of that federation that neither have rights within or powers over the group.

“13. The holder of control of a group is also, if that group is the holder of control of another group, the holder of control of that other group.

“14. For the purposes of this Act, the holder of control of a group is deemed

(1) to hold any significant interest that is held by the group;

(2) to hold such rights to acquire shares or other securities as are held by the group itself; and

(3) to exercise the voting rights that the group may exercise.

“15. For the purposes of this Act, a security entitlement to a share or to another security is considered such a share or security, unless the holder of the security entitlement is a securities intermediary acting in that capacity.

“Securities intermediary” and “security entitlement” have the meaning assigned by the Act respecting the transfer of securities and the establishment of security entitlements (chapter T-11.002).

“16. Groups that have a common holder of control are affiliates, as is the holder of control, unless the latter is a natural person.

If one group among an aggregate of affiliated groups is an authorized insurer, the aggregate of affiliated groups is a financial group.

“17. Economic ties are considered to exist only between

(1) natural persons between whom family ties are considered to exist;

(2) the holder of a significant interest in a business corporation and the business corporation itself;

(3) a partner in a partnership and the partnership;

(4) each of the partners in a same partnership;

(5) a legal person and its directors and officers; and

(6) a person and a succession or trust in which the person has a substantial interest similar to that of a beneficiary or in respect of which the person serves as liquidator of the succession, trustee or other administrator of the property of others, mandatary or depositary.

Economic ties include any other ties between persons or groups that the Autorité des marchés financiers may determine by regulation.

“18. Family ties are considered to exist only between a person and

(1) his or her spouse;

(2) his or her children or spouse’s children; and

(3) his or her parents or spouse’s parents.

“19. The contributed capital of a legal person is composed of the consideration paid to the legal person for,

(1) in the case of a business corporation, the shares of its share capital;

(2) in the case of a joint-stock company, the shares of its capital stock; and

(3) in the case of a cooperative, a financial services cooperative or a mutual company, the shares of its capital stock or share capital.

The contributed capital of a partnership is composed,

(1) in the case of a general partnership, of the contribution made by each partner to obtain a share in the partnership; and

(2) in the case of a limited partnership, of the contribution made by the special partners to the partnership’s common stock.

“TITLE II

“SUPERVISION AND CONTROL OF INSURER ACTIVITIES AND OTHER INSURANCE BUSINESS

“CHAPTER I

“SUPERVISION AND CONTROL OF INSURANCE BUSINESS

“20. The Autorité des marchés financiers (the Authority) supervises and controls insurance business in Québec.

“CHAPTER II

“AUTHORIZATION OF THE AUTHORITY

“DIVISION I

“OBLIGATION TO BE AUTHORIZED

“21. Unless otherwise provided by this Act, the Authority’s authorization is required to carry on insurer activities in Québec if such activities constitute the operation of an enterprise, regardless of any other activities that may be carried on by the operator.

The carrying on of insurer activities by each of the persons in a reciprocal union is considered to constitute the operation of an enterprise.

“22. With regard to non-marine insurance, an insurer carries on its insurer activities in Québec if it underwrites a contract governed by an Act of Québec or if its offer or invitation is made with a view to underwriting such a contract, unless that Act applies only by reason of the parties’ consent.

With regard to marine insurance contracts or suretyship contracts, the insurer carries on its insurer activities in Québec if its offer or invitation is accepted in Québec by a person resident there, or if it signs or delivers a contract in Québec.

“23. Only Québec insurers and legal persons constituted under the laws of a jurisdiction other than Québec that have the capacity to carry on insurer activities may obtain the Authority’s authorization, if they have at least \$5,000,000 in capital.

The Authority may however grant its authorization to a self-regulatory organization even though it does not have such capital. The same is true for a reciprocal union even though it is not a legal person and does not have such capital.

“24. The authorization granted by the Authority is for the activities included in the classes established by regulation of the Authority that the Authority specifies.

“25. Lloyd’s may obtain the Authority’s authorization; for the purposes of this Act, it is considered a legal person constituted under the laws of a jurisdiction other than Québec.

The attorney designated by Lloyd’s under section 26 of the Act respecting the legal publicity of enterprises (chapter P-44.1) may, in that capacity and in his or her own name, despite any inconsistent provision of an Act of Québec, exercise before the courts, as plaintiff or defendant, the rights of Lloyd’s members that have underwritten an insurance contract.

“26. For the purposes of this Act,

“authorized insurer” means a legal person that is authorized by the Authority to carry on insurer activities;

“authorized Québec insurer” means an authorized insurer that is a Québec insurer;

“authorized reciprocal union” means a reciprocal union authorized by the Authority to carry on insurer activities.

“27. The following do not require the Authority’s authorization under this Act:

(1) a professional syndicate which, in order to carry on insurer activities, establishes and administers a special fund in accordance with subparagraph 1 of the second paragraph of section 9 of the Professional Syndicates Act (chapter S-40);

(2) a person who, in terms of insurance, enters only into contracts of additional warranty under which it gives an undertaking to another person to directly or indirectly assume any portion of the cost of repairing or replacing property or any part of the property in case of defect;

(3) an insurer that, in Québec, delivers only damage insurance contracts through a firm acting through a special broker governed by the Act respecting the distribution of financial products and services (chapter D-9.2), if the insurer has no establishment in Québec and does not publicize its business in Québec;

(4) an employer that establishes an uninsured employee benefit plan for the benefit of its employees; and

(5) each of the persons in a reciprocal union, if the Authority’s authorization has been granted to the union.

An uninsured employee benefit plan is a plan that is accessory to an employment contract and by which an employer undertakes to pay a benefit to an employee or a beneficiary designated by the employee if a risk of the nature of risks covered by insurance of persons occurs.

“28. The following persons are not required to obtain the Authority’s authorization to carry on insurer activities:

(1) a person constituted under the laws of a jurisdiction other than Québec who carries on only reinsurer activities in Québec; and

(2) a person who, without being a Québec insurer, carries on insurer activities in Québec only as surety or as debtor of an annuity.

Such an authorization may nevertheless be granted to a legal person that applies for it, as if it were required.

“29. The provisions of this Title, other than Chapter I and this chapter, apply to a self-regulatory organization and an authorized reciprocal union only to the extent provided for in Chapter XIII of this Title or Chapter XVI of Title III.

“DIVISION II

“APPLICATION FOR AUTHORIZATION

“30. A legal person or reciprocal union that intends to carry on insurer activities, when such activities require the Authority’s authorization, is responsible for filing an application with the Authority for its authorization.

An applicant must, in its application, show that it is able to comply with the applicable provisions of this Act.

The applicant must also include the following information:

(1) its name, the name it intends to use in Québec if different, the address of its head office and, if the latter is not in Québec, the proposed address of its principal establishment in Québec, if any;

(2) the classes of activities for which it is applying for the Authority’s authorization and, if applicable, the conditions and restrictions it wishes to have attached to the authorization;

(3) the name and address of the actuary and the auditor charged with the functions provided for in Chapter VII;

(4) except if the applicant is a self-regulatory organization or a reciprocal union,

(a) a description of its financial structure; and

(b) if applicable, the name and address of each holder of a significant interest in its decisions, as well as a description of that interest;

(5) if the applicant is not a Québec insurer, the name of the regulatory authority of its domicile (home regulator);

(6) if applicable, the name and address of the attorney designated under section 26 of the Act respecting the legal publicity of enterprises;

(7) if it belongs to a financial group, the name under which the group is known, if any, and, if applicable, the names of the other financial institutions that belong to the group; and

(8) the other information prescribed by regulation of the Authority.

“31. The home regulator of an insurer is the competent authority with respect to the insurer’s insurer activities, under the laws of the jurisdiction whose legislation governs the insurer’s constituting act.

However, in the case of a reciprocal union, the union’s home regulator is the Authority, unless the contract to which each person in the union is a party designates another competent authority as such and the latter authority has issued a licence to the union or granted it an authorization similar to that granted by the Authority under this Act.

“32. For the purpose of applying subparagraph 1 of the third paragraph of section 30 to a reciprocal union, the name of the mandatary referred to in subparagraph 3 of the first paragraph of section 188 must be specified in the application, in addition to that of the union; the address of the applicant’s head office is the mandatary’s address.

“33. If the applicant is already an authorized insurer or an authorized reciprocal union, only the following information is required:

(1) the information required under subparagraph 2 of the third paragraph of section 30;

(2) if applicable, the information required under subparagraph 6 of that paragraph; and

(3) the information required to update the other information contained in the register provided for in section 176.

“34. The following must be filed with the application for authorization:

(1) a list of the applicant’s directors and officers, including their names and domiciliary addresses;

(2) the résumé of each director and officer;

(3) a copy of the applicant’s constituting act and by-laws or of any other document established for the same purposes;

(4) if applicable, a copy of the applicant’s audited financial statements for its most recent fiscal year ended and the financial statements it is required to file with its home regulator, to the extent and in the manner that may be determined by regulation of the Authority;

(5) a three-year business plan that specifies, in particular, the means by which the applicant will deal with clients for the insurance contracts it intends to underwrite, the activities it will carry on and, if applicable, those it carries on or will carry on outside Québec;

- (6) the other documents prescribed by regulation of the Authority; and
- (7) the fees and charges prescribed by government regulation.

“35. If the applicant is a self-regulatory organization, the documents required under paragraphs 1, 2 and 3 of section 34 need not be filed with the application. However, the following documents must be filed with it:

- (1) the organization’s plan of operation in relation to its insurer activities;
- (2) the act that imposes on persons who are governed by the organization, certain classes of such persons and, if applicable, such persons who carry on their activities within a partnership or company the obligation to be a party to an insurance contract underwritten by the organization;
- (3) if applicable, the contract entered into with the manager to whom the organization has entrusted the day-to-day operation of its insurance fund; and
- (4) the résumé of each member of the professional liability insurance decision-making committee referred to in section 360.

If the applicant is a professional order, the act described in subparagraph 2 of the first paragraph may be a draft regulation pending approval under the Professional Code (chapter C-26) and the partnership or company referred to in that subparagraph is a partnership or company referred to in Chapter VI.3 of that Code.

“36. If the applicant is a reciprocal union, the constituting act referred to in paragraph 3 of section 34 is the contract described in section 188. A list of the persons in the reciprocal union must also be filed with the application.

The contract need not be in force provided its text is established.

“37. If the applicant is already an authorized insurer or an authorized reciprocal union, the only documents required are those referred to in paragraphs 4 and, if applicable, 5 and 6 of section 34. If the authorized insurer is a self-regulatory organization, the financial statements described in paragraph 4 of section 34 are those of its insurance fund, and the required documents must be filed together with the act described in subparagraph 2 of the first paragraph of section 35.

“38. If an insurer is constituted under the laws of a jurisdiction other than Québec and requests that the authorization it is applying for be restricted to reinsurer activities, the Authority may exempt the insurer from providing the information and documents required under sections 30 and 34 that the Authority determines.

“DIVISION III

“GRANTING OF AUTHORIZATION

“39. The Authority grants its authorization to an applicant that meets the following conditions:

(1) the applicant has provided the information and documents required under this Act and has paid the fees and charges payable; and

(2) in the Authority’s opinion,

(a) the applicant has shown that it is able to comply with the applicable provisions of this Act,

(b) there are no serious reasons to believe that a holder of a significant interest in the applicant’s decisions is likely to interfere with the applicant’s adherence to sound commercial practices or sound and prudent management practices, and

(c) the applicant’s name is not misleading.

“40. The Authority may, in granting its authorization, require any undertaking it considers necessary to ensure compliance with this Act.

The Authority may also, in granting its authorization, attach the conditions and restrictions it considers necessary for that purpose.

“41. The authorization granted by the Authority to a self-regulatory organization is limited to professional liability insurance covering persons governed by the organization at the time of the injurious act or omission, unless the Authority authorizes the organization, on its application, to provide the following services:

(1) insuring those persons against misappropriations of funds required to be deposited in a trust account, committed without complicity on the insured’s part, and for the legal costs arising out of such misappropriations; or

(2) insuring a partnership or a company against liability the partnership or company may incur as a result of professional misconduct by persons who are authorized to engage in their professional activities within the partnership or company and who are governed by the organization.

If the self-regulatory organization is a professional order, the partnership or company referred to in subparagraph 2 of the first paragraph is the one referred to in Chapter VI.3 of the Professional Code.

“42. The authorization granted by the Authority to a reciprocal union allows the persons in the union to carry on insurer activities among themselves only.

That authorization does not allow them to reinsure persons in another reciprocal union or to carry on activities in the field of the insurance of persons.

“43. The authorization granted by the Authority entails, for the authorized insurer or authorized reciprocal union, the obligation to maintain its existence until the full and final revocation of that authorization.

“44. The Authority notifies the applicant in writing of its decision.

Before refusing to grant its authorization or granting an authorization with conditions or restrictions attached, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the applicant in writing and grant the latter at least 10 days to submit observations, unless the conditions or restrictions are attached at the applicant’s request.

“CHAPTER III

“APPLICATION OF CERTAIN PROVISIONS TO FINANCIAL GROUPS AND LEGAL PERSONS ACTING ON BEHALF OF AN AUTHORIZED INSURER

“45. The obligations of an authorized insurer under the provisions of this Act remain unchanged by the mere fact that the insurer entrusts a third person to carry on any part of an activity governed by those provisions.

“46. An authorized insurer must ensure that any group in respect of which the insurer is the holder of control complies with the prohibitions imposed on the insurer by this Act.

A prohibition imposed on such an insurer applies to the groups in respect of which it is the holder of control not only when each of them is acting alone, but also when the acts or omissions of all or some of them would have contravened that prohibition had they been done or made by only one of them.

If an insurer is a mutual company that is a member of a federation, the second paragraph applies to all the groups that belong to its financial group and not only to those in respect of which the insurer is the holder of control.

This section does not prohibit a group in respect of which an authorized insurer is the holder of control from carrying on activities the group is permitted to carry on by the Act governing it even though the insurer is not permitted to carry on those activities, provided the group is a financial institution or a federation of mutual companies subject to the supervision of a regulatory authority.

“47. An authorized insurer is liable for failures to comply with this Act by a group in respect of which the insurer is the holder of control or by whoever is the holder of control of the group and performs an obligation of the insurer on the insurer’s behalf, as if those failures to comply were the insurer’s own.

“48. The Authority’s inspection functions and powers, provided for by the Act respecting the regulation of the financial sector (chapter A-33.2), that may be exercised in relation to an authorized insurer extend to any affiliated group if the person authorized to inspect the insurer considers it necessary to inspect the group in order to complete the verification of the insurer’s compliance with this Act, even though the group does not carry on activities governed by an Act referred to in section 7 of that Act.

“49. The Authority may prohibit that an authorized insurer’s obligations under this Act be performed by a third person on the insurer’s behalf if, in the Authority’s opinion, such performance would render the application of this Act difficult or ineffective.

Before rendering its decision, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice to the insurer in writing and grant the latter at least 15 days to submit observations.

“CHAPTER IV

“COMMERCIAL PRACTICES

“DIVISION I

“GENERAL PROVISIONS

“50. An authorized insurer must adhere to sound commercial practices.

In carrying on its financial institution activities, such practices include providing fair treatment to its clientele, in particular by

- (1) providing appropriate information;
- (2) adopting a policy for processing complaints filed by members of that clientele and resolving disputes with them; and
- (3) keeping a complaints register.

“51. An authorized insurer must be able to show to the Authority that it adheres to sound commercial practices.

“DIVISION II

“COMPLAINT PROCESSING AND DISPUTE RESOLUTION POLICY AND EXAMINATION OF COMPLAINT RECORDS BY THE AUTHORITY

“52. The complaint processing and dispute resolution policy adopted under subparagraph 2 of the second paragraph of section 50 must, in particular,

(1) set out the characteristics that make a communication to the insurer a complaint that must be registered in the complaints register kept under subparagraph 3 of the second paragraph of section 50; and

(2) provide for a record to be opened for each complaint and prescribe rules for keeping such records.

The insurer must make a summary of the policy, including the elements specified in subparagraphs 1 and 2 of the first paragraph, publicly available on its website and disseminate it by any appropriate means to reach the clientele concerned.

“53. Within 10 days after a complaint is registered in the complaints register, the authorized insurer must send the complainant a notice stating the complaint registration date and the complainant’s right, under section 54, to have the complaint record examined.

“54. A complainant whose complaint has been registered in the complaints register may, if dissatisfied with the insurer’s processing of the complaint or the outcome, request the insurer to have the complaint record examined by the Authority.

If the insurer is a mutual company that is a member of a federation, the record is examined by the federation rather than the Authority.

The authorized insurer is required to comply with the complainant’s request and send the record to the Authority or, in the case of a mutual company that is a member of a federation, to the federation.

“55. The Authority examines the complaint records that are sent to it.

It may, with the parties’ consent and on payment by each party of the fees determined by government regulation, act as conciliator or mediator or designate a person to act as such.

Conciliation or mediation may not, alone or in combination, continue for more than 60 days after the date of the first conciliation or mediation session, as the case may be, unless the parties consent to it.

In exercising the regulatory power under the second paragraph, the Government may determine different fees according to the classes of persons or groups it determines.

“56. Unless the parties agree otherwise, nothing that is said or written in the course of a conciliation or mediation session may be admitted into evidence before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

A conciliator or mediator may not be compelled to disclose anything revealed or learned in the exercise of conciliation or mediation functions or to produce a document prepared or obtained in the course of such functions before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no one has a right of access to a document contained in the conciliation or mediation record.

“57. Despite sections 9 and 83 of the Act respecting Access to documents held by public bodies and the Protection of personal information, the Authority may not communicate a complaint record without the authorization of the insurer that has sent it.

“58. On the date set by the Authority, an authorized insurer must send it a report on the complaint processing and dispute resolution policy adopted under subparagraph 2 of the second paragraph of section 50 stating the number of complaints that the insurer has registered in the complaints register and their nature.

The report must cover the period determined by the Authority.

“DIVISION III

“UNDERWRITING OF NON-MARINE INSURANCE CONTRACTS AND ENROLLMENT IN GROUP INSURANCE CONTRACTS

“§1. — *Underwriting of non-marine insurance contracts*

“59. To underwrite an insurance contract, an authorized insurer must deal with the client concerned either through a natural person, whether employed by the insurer or not, or without the intermediary of such a person. If the insurer deals with the client through a natural person, that person must be an insurance representative holding a certificate issued by the Authority in accordance with the Act respecting the distribution of financial products and services and must be authorized to act with respect to the contract.

However, the insurer may deal with the client for a damage insurance contract or an individual insurance of persons contract through a natural person who is not an insurance representative if

(1) the natural person is a distributor within the meaning of the second paragraph of section 408 of the Act respecting the distribution of financial products and services or has been assigned that task by such a distributor; and

(2) the insurance contract is an insurance product subject to Title VIII of that Act.

This section does not apply to the renewal of an insurance contract the only amendment to which is the premium.

“60. For the purposes of this division, a natural person is considered an insurance representative holding a certificate issued by the Authority under the Act respecting the distribution of financial products and services if any of the following provisions of that Act apply to him or her:

- (1) subparagraph 1 or 2 of the third paragraph of section 3;
- (2) the second paragraph of section 4; and
- (3) section 7.

“61. This division does not apply to maritime insurance contracts or suretyship contracts, even if, in the latter case, they are designated as surety insurance contracts.

“§2.—Obligations of authorized insurers with respect to certain clients or certain participants and rights of the latter

“I.—General provisions

“62. An authorized insurer must see that the client or the participant, as the case may be, is provided in sufficient time with the information necessary to make an enlightened decision and for contract performance purposes

(1) if, in the cases provided for in section 59, the insurer deals with the client otherwise than through an insurance representative or firm; or

(2) if the insurer has underwritten a group insurance of persons contract in which a person may enroll as a participant without dealing with an insurance representative.

Such information includes

- (1) the extent of the coverage considered and the exclusions;
- (2) the time limits, in accordance with the Civil Code, within which a loss must be reported and within which the insurer is required to pay the sums insured or the indemnity provided for; and
- (3) the information required to communicate to the insurer a complaint to be registered in the complaints register provided for in subparagraph 3 of the second paragraph of section 50, including the time limit within which a complaint must be communicated.

“63. If, in order to underwrite an individual insurance of persons contract, an authorized insurer deals with a client otherwise than through an insurance representative or firm, the insurer must see that the client can be temporarily insured until a final contract is made or until one of the parties is informed of the other party’s decision not to make a contract. The temporary insurance contract must provide the broadest coverage in return for which the policyholder agrees to pay the premium for that contract.

The client is required to reply within 30 days after receiving a request for information from the insurer for the purpose of making the final contract. If the client fails to reply within that time limit, the insurer may cancel the temporary contract.

“64. The client for an insurance contract underwritten by an insurer that has dealt with the client otherwise than through an insurance representative or firm may cancel the contract within 10 days after receiving the policy, unless the contract has already expired at that time.

A participant may also cancel his or her enrollment if the participant enrolled without dealing with an insurance representative, on the same condition and within the same time limit after receiving the insurance certificate.

In the case of an individual insurance of persons contract, the policy referred to in the first paragraph is the one that evidences the existence of the final contract.

If an insurance contract is made or a participant enrolls under that contract at the same time another contract is entered into, the other contract retains all its effects despite the cancellation of the insurance contract or of the enrollment, as the case may be.

“II. — *Liability of an insurer with respect to distributors*

“65. An authorized insurer is liable for the acts done by distributors, or natural persons to whom the latter have assigned the task of dealing with clients or participants, toward underwriting an insurance contract or enrolling a participant.

“66. An authorized insurer must, without delay, send the Authority a list of the contracts with respect to which a distributor will be dealing with clients or participants and a list of such distributors. The list of distributors must include the names and addresses of the distributors and the insurance contracts for which the insurer is doing business with them. The list of contracts must include a description of the insurance coverage provided by those contracts.

The insurer must, without delay, inform the Authority of any change to either list.

“III. —Absence of intermediation by a natural person or a firm

“67. If a means of formulating and submitting a proposal without the intermediary of a natural person or a firm and otherwise than by an application in writing referred to in article 2400 of the Civil Code is made available to a client, the insurer must deliver to the policyholder, together with the policy, a document describing any proposal submitted by such means. In such circumstances, the insurer must also see that the client, if the client so desires, can communicate with a natural person.

The document delivered by the insurer is equivalent to an application in writing referred to in article 2400 of the Civil Code.

“68. An authorized insurer does not contravene the Act respecting the distribution of financial products and services by the mere fact that, in accordance with this Act, no natural person deals with the clients or participants, as the case may be.

“DIVISION IV

“SPECIAL PROVISIONS RESPECTING ANNUITIES AND CERTAIN OTHER CONTRACTS

“69. In an annuity contract, the fact that an authorized insurer offers a choice of investments does not preclude the insurer from controlling the capital accumulated for the payment of the annuity.

The right to withdraw all or part of the capital accumulated for the payment of an annuity may be stipulated, but the exercise of that right reduces the insurer’s obligations correlatively.

In addition, the amount of the annuity to be paid periodically must, at the time the contract is entered into, be determinate, or at least determinable according to variables and a computation method specified in the contract.

“70. For the capital accumulated for the payment of an annuity to be exempt from seizure, a person must be designated, in accordance with article 2457 or 2458 of the Civil Code, as qualified to receive the capital or the related annuity following the death of the annuitant or of the person who furnishes the capital.

“71. The form and terms of insurance policies relating to the ownership or use of motor vehicles must be approved by the Authority. The same is true for any riders that may be attached to those policies.

An authorized insurer may attach a rider whose form and terms are not approved by the Authority to such a policy if the rider

- (1) provides for terms stipulated solely for the benefit of the insureds; and

(2) has been sent to the Authority.

“72. The conditions applicable to group insurance contracts underwritten by an authorized insurer are prescribed by government regulation.

“DIVISION V

“SPECIAL PROVISIONS RESPECTING ACTIVITIES BETWEEN FINANCIAL INSTITUTIONS

“73. Except for the first paragraph of section 50 and Division IV, this chapter does not apply if the authorized insurer’s client is a bank or another financial institution.

Nor does this chapter apply to reinsurer activities.

“CHAPTER V

“PRUDENTIAL RULES

“DIVISION I

“MANAGEMENT PRACTICES

“74. An authorized insurer must adhere to sound and prudent management practices ensuring, in particular, good governance and compliance with the laws governing its activities.

With respect to the insurer’s financial management, such practices must, in particular, provide that the insurer maintain

(1) adequate assets to meet its liabilities, as and when they become due; and

(2) adequate capital to ensure its sustainability.

“75. An authorized insurer must be able to show to the Authority that it adheres to sound and prudent management practices.

“76. No authorized insurer may contract liabilities that vary according to the market value of property that, through those liabilities, it binds itself to hold, unless

(1) it is an insurer authorized to carry on life insurance activities; and

(2) the property constitutes a segregated fund to be used to meet the liabilities for which the property is held before any of the insurer’s other liabilities.

Except for this division, the provisions of this chapter do not apply to segregated funds.

“77. The Authority may, if it considers that an authorized insurer’s capital is not adequate to ensure the insurer’s sustainability, order the insurer to adopt a compliance program within the time it prescribes and for the reasons it specifies.

Before exercising the power provided for in the first paragraph, the Authority must notify the insurer and give it at least 10 days to submit observations.

The Authority may not order an authorized insurer other than a Québec insurer to adopt such a program if it may hinder measures taken by the insurer’s home regulator.

“78. The compliance program describes the measures that must be implemented by the authorized insurer within the time limits specified in it.

“79. The compliance program adopted by the authorized insurer is submitted for approval to the Authority.

“80. The authorized insurer is required to implement the compliance program approved by the Authority.

“81. An authorized insurer that is required to implement a compliance program must provide the Authority with any report the Authority may require on the implementation of the program at such intervals, in such form and with such content as the Authority determines.

“DIVISION II

“INVESTMENTS

“§1.—*Provisions applicable to all authorized insurers*

“82. An authorized insurer must adopt an investment policy approved by its board of directors.

The investment policy must, in particular,

(1) provide for the matching of the respective maturities of the insurer’s investments with the insurer’s liabilities;

(2) provide for the appropriate diversification of those investments; and

(3) include a description of the types of investments and other financial transactions that it authorizes and the limits applicable to them.

The insurer must send its investment policy to the Authority at the Authority’s request.

“83. An authorized insurer must follow the investment policy approved by its board of directors.

“§2.—*Provisions applicable to authorized Québec insurers*

“I.—*Acquisition of participations and co-ownership*

“84. No authorized Québec insurer may acquire or hold contributed capital securities issued by a legal person or a partnership or participations in a trust in excess of

- (1) 30% of the value of those securities or participations; or
- (2) the number of those securities or participations allowing it to exercise more than 30% of the voting rights.

Nor may an authorized Québec insurer be the co-owner of property if its share of the right of ownership is greater than 30% without exceeding 50%, alone or together with the shares of groups affiliated with it.

“85. Despite section 84, an authorized Québec insurer may acquire up to all the contributed capital securities issued by a legal person or a partnership or all the participations in a trust if, following the acquisition, the insurer will be the holder of control of the person, partnership or trust.

Neither a mutual company that is a member of a federation nor a business corporation of which such a mutual company is the holder of control and which is authorized to carry on activities in the same class as that mutual company may make an acquisition under this section without the federation’s authorization.

“II.—*Accessory guarantees for certain investments*

“86. An authorized Québec insurer may become the owner of property in contravention of section 84 only if it does so to obtain or preserve an accessory guarantee for one of its investments or for any other financial transaction.

“III.—*Penalties*

“87. If an authorized Québec insurer holds or owns property, as the case may be, in contravention of section 84, it must dispose of that property as soon as market conditions permit.

“88. Directors of an authorized Québec insurer who agree to a contravention of section 84 are held solidarily liable for any resulting losses to the insurer.

A director cannot be held liable under the first paragraph if the director acted with a reasonable degree of prudence and diligence in the circumstances.

Furthermore, for the purposes of the first paragraph, the court may, after considering all the circumstances and on the terms the court considers appropriate, relieve a director, either wholly or partly, from the liability the director would otherwise incur if it appears to the court that the director has acted reasonably, honestly and loyally, and ought fairly to be excused.

“DIVISION III

“COMPENSATION BODIES

“89. An authorized insurer must be a member, for the classes for which it is authorized to carry on an activity, of a compensation body recognized by the Authority for that class.

The first paragraph does not apply to the activities carried on by a mutual company that is a member of a federation for which the federation stands surety. Neither does that paragraph apply to reinsurer activities.

For the purposes of this Act, a compensation body is a body whose members are insurers and whose purpose is to protect the holders of insurance contracts underwritten by one of those insurers from excessive financial loss in the event of that insurer’s insolvency.

“90. The Authority may recognize a compensation body if it considers that the body offers sufficient protection to the insureds and is able to assume its obligations.

The Authority may, by regulation, determine the conditions that a body must meet in order to be recognized.

“91. The Authority must post a list of the recognized compensation bodies on its website.

“CHAPTER VI

“GOVERNANCE

“DIVISION I

“GENERAL PROVISIONS

“92. An authorized insurer must have a board of directors composed of at least seven members.

“93. A director of an authorized insurer who resigns must declare his or her reasons to the insurer and to the Authority in writing.

“94. The board of directors must ensure that the authorized insurer adheres to sound commercial practices and sound and prudent management practices.

To that end, it must entrust certain directors it designates or a committee of such directors with the responsibility of seeing that such practices are adhered to and situations contrary to such practices are detected.

Within three months after the closing date of the insurer's fiscal year, the directors or the committee, as the case may be, report to the board of directors on the performance of the responsibility entrusted to them or it and, if applicable, on the other activities they or it carries on for the insurer.

“95. A director designated in accordance with section 94 or the committee provided for in that section, as the case may be, must, on becoming aware of a situation that adversely affects the authorized insurer's financial position, is otherwise contrary to sound and prudent management practices or is contrary to sound commercial practices, notify the board of directors in writing.

The board of directors must then see to it that the situation is promptly remedied.

“96. The director or committee that notified the board of directors in accordance with section 95 must, on finding that the situation mentioned in the notice has not been corrected, send the Authority a copy of the notice given under that section.

A description of any relevant events that have occurred since the notice was drafted and any other information the director or committee considers relevant must be sent with the notice.

“97. A director designated in accordance with section 94 or a director on the committee provided for in that section, as the case may be, who, in good faith, notifies the board of directors or the Authority in accordance with section 95 or 96 incurs no civil liability for doing so.

The same is true for any person who, in good faith, provides information or documents to one or more of those directors and for a director who makes a declaration under section 93.

“DIVISION II

“PROVISIONS SPECIFIC TO AUTHORIZED QUÉBEC INSURERS

“§1. — *Composition of the board of directors*

“98. More than half of the board of directors of an authorized Québec insurer must be composed of persons other than employees of that insurer or of a group of which it is the holder of control.

“99. An authorized Québec insurer must implement a policy aimed at fostering, in particular, the independence, competence and diversity of the members of its board of directors and of the members of the committees of the board.

“§2. — Establishment and composition of the audit committee and ethics committee

“100. The board of directors of an authorized Québec insurer must establish an audit committee and an ethics committee from among its members.

“101. The audit committee and the ethics committee of an authorized Québec insurer are each composed of at least three directors, a majority of whom are not

- (1) officers or employees of the insurer;
- (2) members of both the ethics committee and the audit committee;
- (3) directors, officers or other mandataries or employees of a group of which the insurer is the holder of control; or
- (4) holders of a significant interest in the insurer or in a business corporation affiliated with the insurer.

“102. The Authority may, if an authorized Québec insurer shows that the exercise of the committee’s functions will not be adversely affected, authorize

- (1) the establishment of a committee whose composition does not comply with section 101; or
- (2) the exercise by one of the committees mentioned in that section of the functions usually assigned to the other committee, in addition to its own functions.

The Authority may, in granting such an authorization, require any undertaking it considers necessary to ensure compliance with this Act.

“§3. — Functions of the audit committee

“103. The audit committee must examine all financial statements intended for the board of directors before they are submitted to the board.

The audit committee may be convened by one of its members or by the auditor. The auditor must be notified of every committee meeting and attend every meeting to which he or she is convened. The committee must give the auditor an opportunity to be heard.

The committee must cause any error or misstatement in financial statements to be corrected and, if the financial statements were sent to the shareholders or mutual members, as the case may be, inform the general meeting of shareholders or mutual members accordingly.

“§4. — *Functions of the ethics committee*

“104. An authorized Québec insurer must have rules of ethics; they must be adopted by its ethics committee and be sent to the Authority.

Those rules must pertain to such subjects as

- (1) the conduct of the insurer’s directors and officers;
- (2) the conduct of the insurer with natural persons or groups that are restricted parties with respect to it; and
- (3) the formalities and conditions governing contracts with such persons or groups.

“105. An authorized Québec insurer must follow the rules of ethics adopted by its ethics committee; they are binding on the board of directors.

“106. The ethics committee of an authorized Québec insurer must see that the rules of ethics are complied with and notify the board of directors, in writing and without delay, of any violation of those rules.

“107. Each year, the ethics committee of an authorized Québec insurer must send the Authority, within two months after the closing date of the insurer’s fiscal year, a report on the committee’s activities in that fiscal year.

The report must include or describe

- (1) the committee members’ names and addresses;
- (2) any change among the committee members;
- (3) the list of conflict of interest situations and contracts with natural persons or groups that are restricted parties with respect to the insurer which have come to the committee’s notice;
- (4) the measures taken to see that the rules of ethics are complied with; and
- (5) violations of the rules of ethics.

“108. An authorized Québec insurer must, when doing business with natural persons or groups that are restricted parties with respect to it, act in the same manner as it would when dealing at arm’s length.

Consequently, a contract entered into between the insurer and a natural person or group that is a restricted party with respect to it may not be less advantageous for the insurer than if it had been entered into at arm's length.

“109. Section 108 does not apply to the remuneration of directors or any other matter connected with a contract of employment.

“110. The following natural persons and groups are restricted parties with respect to an authorized Québec insurer:

- (1) the insurer's directors and officers;
- (2) the directors and officers of the group that is the holder of control of the insurer or, if the insurer is a mutual company that is a member of a federation, the federation's directors and officers;
- (3) the holder of a significant interest in the insurer;
- (4) natural persons and groups having economic ties with the persons described in subparagraphs 1 to 3, except a group of which the insurer is the holder of control;
- (5) a group whose board of directors is composed, in the majority, of members of the insurer's board of directors; and
- (6) any other person or group designated under section 112.

An authorized financial institution is not a group that is a restricted party with respect to an insurer if the financial institution is the holder of exclusive control of the insurer, or if it is the holder of control of the insurer and both the authorized financial institution and the insurer have the same holder of exclusive control.

“111. For the purposes of section 110, the holder of control of a business corporation has exclusive control of the corporation if that holder alone can choose all the directors and exercise the voting rights attached to all the shares issued by the corporation, provided that, if applicable, the holder holds all the securities that are convertible into such shares carrying voting rights and all the rights to acquire such shares.

Similarly, the member mutual companies of a federation are considered to have exclusive control of a business corporation if only member mutual companies of the federation can choose all the directors of the corporation and exercise the voting rights attached to all the shares issued by the corporation, provided that, if applicable, they hold all the securities that are convertible into such shares carrying voting rights and all the rights to acquire such shares.

“112. The Authority may designate a natural person or a group as a restricted party if, in its opinion, that person or group is likely to receive preferential treatment to the detriment of the authorized insurer.

The Authority may review a designation at the request of the person or group designated or the insurer concerned.

Before making or refusing to review a designation, the Authority must give the natural person or group and the insurer concerned an opportunity to submit observations.

The Authority notifies the person or group designated and the insurer concerned of its decision on the designation or the review request, as applicable.

“113. Unless the obligations of an authorized Québec insurer under the following contracts are minimal, such contracts must be submitted to its board of directors for approval:

(1) a contract for the acquisition, by the insurer, of securities issued by a natural person or group that is a restricted party with respect to the insurer or for the transfer of assets between them; and

(2) a service contract between the insurer and a natural person or group that is a restricted party with respect to the insurer.

Before approving such contracts, the board of directors must obtain the opinion of the ethics committee.

“114. Except to the extent authorized by its rules of ethics, no authorized Québec insurer may extend credit to its directors or officers, to natural persons or groups having economic ties with them or to the directors or officers of a legal person affiliated with the insurer.

“CHAPTER VII

“ACTUARY AND AUDITOR

“DIVISION I

“QUALIFICATIONS AND BEGINNING AND END OF TERM

“115. An actuary and an auditor must, for each authorized insurer, be charged with the functions provided for in this chapter.

A mutual company may not charge an actuary or auditor with such functions if the company is a member of a federation that provides it with the services of persons charged with those functions.

“116. An actuary charged with the functions provided for in this chapter must be a Fellow of the Canadian Institute of Actuaries.

An auditor charged with the functions provided for in this chapter must be a member of the Ordre professionnel des comptables professionnels agréés du Québec and hold a public accountancy permit.

However, in the case of an authorized insurer, other than a Québec insurer, that carries on its activities in Québec and elsewhere in Canada, the auditor is not required to be a member of that order or to hold that permit if he or she holds an authorization of the same nature issued elsewhere in Canada.

“117. The auditor charged with the functions provided for in this chapter is the auditor elected, appointed or otherwise determined by the authorized insurer in accordance with the Act under which it is constituted or, in the case of an authorized reciprocal union, in accordance with a contract referred to in section 188. If the auditor does not meet the conditions set out in section 116, another auditor must be charged with those functions.

“118. The term of an actuary or auditor ends on the appointment of his or her successor, unless it ends as a result of his or her death, resignation, removal from office or bankruptcy or the institution of protective supervision for him or her or if he or she no longer has the qualifications required under this division.

“119. The authorized insurer must, within 10 days after the actuary’s or auditor’s term has ended, notify the Authority of the fact.

“120. If an authorized insurer fails to charge an actuary or an auditor with the functions provided for in this chapter within the time specified by the Authority, the Authority may appoint one and determine the remuneration that the insurer must pay him or her.

“121. An authorized insurer must, before removing an actuary or auditor from office, give him or her at least 10 days’ prior notice in writing and send a copy of the notice to the Authority, unless the latter authorizes it to proceed earlier.

The prior notice must give the reasons for the removal.

“122. An actuary or auditor who resigns or who believes he or she was removed from office for reasons connected with his or her functions or with the conduct of the authorized insurer’s business or the business of a member of its financial group must declare those reasons to the Authority in writing.

The author of the declaration must send a copy of it to the authorized insurer’s secretary or, in the case of an authorized reciprocal union, its mandatary.

The author must send those documents within 10 days after tendering his or her letter of resignation or learning of his or her removal from office, as the case may be.

“123. Before accepting the office of actuary or auditor provided for by this chapter, a person must ask the authorized insurer’s secretary whether the former actuary or auditor made the declaration required under section 122. In the case of an authorized reciprocal union, the question is directed to its mandatary.

The secretary or mandatary, as the case may be, must provide the person with a copy of the declaration, if applicable.

“DIVISION II

“DUTIES, POWERS AND FUNCTIONS OF THE ACTUARY AND AUDITOR

“§1. — *Duties and powers*

“124. An authorized insurer is required to see that its directors, officers and employees send the actuary or auditor the information or documents regarding the insurer, the groups of which the insurer is the holder of control and any other group whose financial information is consolidated with its own that the actuary requests in the course of his or her functions.

The insurer is also required to see that persons having custody of such documents do so as well.

“125. An actuary or auditor who, in the course of his or her functions, becomes aware of a situation that in his or her opinion adversely affects the insurer’s financial position, is otherwise contrary to sound and prudent management practices or is contrary to sound commercial practices must draft a detailed report on that situation.

The same is true for an actuary or auditor who believes that a refusal or failure to provide information or a document requested by him or her is hindering the exercise of his or her functions.

The author of the report must send the report to the board of directors. If applicable, he or she must also send a copy of it to the attorney designated under section 26 of the Act respecting the legal publicity of enterprises. If the author of the report is the actuary, he or she must send a copy of it to the auditor, and vice versa. The board of directors must then see to it that the situation is remedied.

“126. If the author of the report submitted under section 125 finds that the situation that justified its being drafted has not been corrected, he or she must send a copy of it to the Authority.

A description of any relevant events that have occurred since the report was drafted and any other information the author considers relevant must be sent with the report.

“127. An actuary or auditor who, in good faith, makes a declaration under section 122, submits a report under section 125 or sends a copy of the latter to the Authority under section 126 incurs no civil liability for doing so.

The same is true for a person who, in good faith, provides information or documents under section 124.

“§2. — *Functions of the actuary*

“128. The actuary must prepare, on the dates determined by the Authority, a study concerning the authorized insurer’s financial position, a report on the state of the actuarial reserves and a certificate attesting that state.

The study must also include a forecast of the authorized insurer’s financial position and must describe the potential financial repercussions of the insurer’s activities. The report must also include any other information determined by the Authority.

The actuary must send a copy of the study and the report to the board of directors and the auditor.

The actuary must present the study and the report to the board of directors, unless the board asks him or her to present them to the audit committee.

“129. In exercising his or her functions, the actuary must apply generally accepted actuarial standards or any other standard established by the Authority.

“§3. — *Functions of the auditor*

“130. The auditor is to audit the authorized insurer’s books and accounts for the purposes of this Act.

If the authorized insurer is neither an authorized Québec insurer nor another insurer constituted under an Act of another jurisdiction in Canada, the scope of the audit is limited to the activities carried on in Québec. However, the audit may, at the insurer’s choice, examine the insurer’s activities across Canada.

“§4. — *Supervisory and control measures*

“131. If it considers it necessary, the Authority may

(1) order the preparation, in the manner and within the time it specifies, of an actuarial study regarding any matter, in particular, an assessment of an authorized insurer’s actuarial reserves and financial position; or

(2) order that the annual audit of an authorized insurer's books and accounts be continued, that its scope be broadened or that a special audit be conducted.

The Authority may designate an actuary or an auditor, other than the one appointed by the insurer, to be charged with the study or audit.

The expenses incurred in such a case are payable by the insurer after approval by the Authority.

“CHAPTER VIII

“ANNUAL STATEMENTS AND OTHER COMMUNICATIONS WITH THE AUTHORITY

“132. An authorized insurer must prepare an annual statement of the position of its affairs as at the date determined by the Authority and include financial statements audited under section 130.

The annual statement must be certified by two of the insurer's directors; its form and content and the date on which it must be sent to the Authority are determined by the Authority.

If the authorized insurer is neither an authorized Québec insurer nor an insurer constituted under an Act applicable in Canada, the additional financial statements referred to in the first paragraph may include only the information relating to the activities examined by the audit conducted under the second paragraph of section 130.

“133. Each year, on the dates determined by the Authority, an authorized insurer must send the Authority

(1) the financial statements prepared for the purposes of the Act under which the insurer is constituted;

(2) the auditors' reports;

(3) the study of the insurer's financial position, the report on the state of the actuarial reserves and the certificate attesting that state prepared under section 128; and

(4) the résumé of each director and officer if it has not already been sent to the Authority.

If the authorized insurer is a self-regulatory organization, the résumé of each member of the decision-making committee referred to in section 360 is substituted for the résumé referred to in subparagraph 4 of the first paragraph.

“134. If the Authority is of the opinion that an asset considered in the financial statements sent to it by an authorized insurer is overvalued, it may either require the insurer to cause an appraiser the choice of whom is approved by it to appraise that asset or appraise the asset itself. If the asset is a loan the repayment of which is guaranteed by property, the property is appraised.

If the results of the appraisal justify it, the Authority may require the insurer to modify its books and accounts as well as the financial statements referred to in the first paragraph to reflect the market value of the asset or, in the case of a loan, the value of the realization of the property guaranteeing the repayment. If a loan or another asset is that of a group of which the insurer is the holder of control, the Authority may, for those same purposes, require that the value of the insurer’s investment in the group be modified. The Authority notifies the auditor charged with the functions provided for in Chapter VII of the modification requested.

“135. Before exercising a power conferred on it by section 134, the Authority must give the authorized insurer concerned at least 10 days to submit observations.

“136. The cost of the appraisal of an overvalued asset further to a decision of the Authority under section 134 is to be borne by the authorized insurer concerned, unless the Authority decides otherwise.

“137. An authorized insurer must send the Authority, according to the content and form and at the time or intervals it determines, the documents it considers useful to determine whether the insurer is complying with this Act.

Lloyd’s must send the Authority a list of its underwriters in Québec and see that it is kept up-to-date. The same is true for an authorized reciprocal union with regard to the list of the persons in the union.

“138. The Authority may require an authorized insurer, the holder of control of the authorized insurer or a member of the authorized insurer’s financial group to provide the documents or information the Authority considers useful for the purposes of this Act or that it or he or she otherwise provide access to those documents and information. In the case of an authorized reciprocal union, the Authority may require the attorney, the mandatary and each person in the union to do the same.

The Authority may likewise require the actuary or auditor of an authorized insurer to provide the documents or information he or she holds regarding the insurer.

The person to whom such a request is made is required to reply by not later than the date determined by the Authority.

“139. An authorized insurer must notify the Authority of the name and address of whoever has become or intends to become the holder of its control within 10 days from the time it becomes aware of either situation.

If the authorized insurer is a business corporation, it must also, within the same time, send such a notice to the Authority regarding whoever has become or intends to become the holder of a significant interest in its decisions.

The insurer must, within the same time, notify the Authority whenever the holder of control or of a significant interest ceases to be so.

“CHAPTER IX

“REVIEW OF AN AUTHORIZATION

“DIVISION I

“GENERAL PROVISIONS

“140. The Authority, on its own initiative, on the authorized insurer’s application in the cases provided for in Division III or when it is informed of certain operations described in Division IV, reviews the authorization it has granted to an authorized insurer.

“141. After reviewing an authorization, the Authority may maintain it as is, attach certain conditions or restrictions to it, withdraw existing conditions or restrictions, or revoke or suspend it.

“DIVISION II

“REVIEW ON THE AUTHORITY’S INITIATIVE

“142. The Authority may, on its own initiative, review an authorization it has granted whenever it considers it necessary to do so in order to ensure compliance with this Act.

Unless the authorization is maintained as is, the Authority, in accordance with Chapter X, revokes or suspends it or attaches conditions or restrictions to it.

“DIVISION III

“REVIEW ON AN INSURER’S APPLICATION

“143. The Authority is required to review the authorization it has granted to an insurer if the latter applies for such a review to have an attached condition or restriction withdrawn.

“144. The application for review must specify the condition or restriction the insurer wishes to have withdrawn and the reasons for the withdrawal.

The application must also include any other information prescribed by regulation of the Authority. The costs and fees prescribed by government regulation must be filed with the application.

“145. On receipt of the application and the required information, costs and fees, the Authority reviews the authorization to determine whether or not it may grant the application.

The Authority may, in withdrawing a condition or restriction, require any undertaking it considers necessary to ensure compliance with this Act.

When the Authority rules on an application for review filed by an authorized insurer, it sends the insurer a document justifying its decision.

“DIVISION IV

“REVIEW IN LIGHT OF CERTAIN OPERATIONS

“146. The Authority is required to review an authorization on being notified of any of the following operations:

- (1) the amalgamation of the authorized insurer with another legal person;
- (2) a change as to the authorized insurer’s home regulator, in particular as a result of a continuance or another operation of the same nature;
- (3) an operation not referred to in subparagraph 1 or 2 where the authorized insurer changes its juridical form or transmits its patrimony or part of it due to its division;
- (4) a change of name of the authorized insurer; and
- (5) in the case of an authorized Québec insurer, its becoming the holder of control of a group or either of the following events having a significant effect on it:
 - (a) an acquisition of assets by the insurer or by a group of which it is the holder of control, or
 - (b) the transfer of any part of the insurer’s assets or of the assets of such a group; and
- (6) in the case of a mutual company that is a member of a federation, the mutual company’s withdrawal from the federation.

An authorized Québec insurer's ceasing to be the holder of control of a group is deemed to be a transfer, by the group, of all its assets.

“147. For the purposes of subparagraph 5 of the first paragraph of section 146, an acquisition or transfer is deemed to not have a significant effect on an insurer if the resulting variation in the value of its assets does not exceed 5%.

The variation in the value of the insurer's assets is established in relation to the value of those assets at the end of the fiscal year preceding the acquisition or transfer.

“148. An authorized insurer must inform the Authority of its intention to carry out one or more operations giving rise to a review not later than the 30th day before the operation or, in the case of more than one operation, before the first operation, by filing a notice with the Authority in the form determined by the Authority.

The costs and fees prescribed by government regulation must be filed with the notice.

“149. A notice of intention to amalgamate must include

- (1) the name and address of each of the legal persons proposing to amalgamate;
- (2) the proposed name of the legal person resulting from the amalgamation;
- (3) the juridical form of the legal person resulting from the amalgamation;
- (4) the classes of activities carried on by all the authorized insurers proposing to amalgamate;
- (5) a statement specifying that the legal person resulting from the amalgamation will carry on activities in the same classes as the authorized insurers proposing to amalgamate or specifying the classes of activities for which the legal person resulting from the amalgamation intends to apply for the Authority's authorization or those for which it intends to apply to have the authorization revoked;
- (6) the location of the proposed head office of the legal person resulting from the amalgamation; and
- (7) any other information required by the Authority.

A document including the same information as that required to be included in an initial application for authorization and the documents that must be filed with such an application must be filed with the notice of intention to amalgamate for the legal person resulting from the amalgamation.

In the case of an amalgamation involving more than one authorized insurer, a joint notice may be filed.

“150. A notice of intention to change the authorized insurer’s home regulator must include

- (1) a description of the operation from which the change results;
- (2) the insurer’s name and address;
- (3) the title of and exact reference to the Act of the jurisdiction of the home regulator that will govern the insurer’s insurance activities following the change and the title of and exact reference to the Act of the jurisdiction that will govern the insurer’s affairs, if different;
- (4) the location of the insurer’s proposed head office following the change, if different from that of its head office at the time the notice is sent; and
- (5) any other information required by the Authority.

“151. A notice of intention to carry out an operation described in subparagraph 3 of the first paragraph of section 146 must include

- (1) a description of the proposed operation;
- (2) if applicable, the authorized insurer’s new juridical form following the operation as well as the title of and exact reference to the Act that will govern its affairs;
- (3) if applicable, the names and addresses of all the groups, other than the authorized insurer, involved in the operation;
- (4) the location of the authorized insurer’s proposed head office following the operation, if different from that of its head office at the time the notice is sent; and
- (5) any other information required by the Authority.

A document including the same information as that required to be included in an initial application for authorization and, if required by the Authority, the documents that must be filed with such an application must be filed with the notice of intention for each legal person resulting from the operation that will carry on insurer activities in Québec.

“152. A notice of intention to change names must include the name and address of the authorized insurer, in addition to its proposed name.

“153. A notice of intention to carry out an acquisition or transfer of assets having a significant effect on an authorized Québec insurer must include

(1) a description of the proposed acquisition or transfer, in particular, a description of the assets to be acquired or transferred by the insurer or the group of which it is the holder of control;

(2) the names and addresses of the parties to the acquisition or transfer; and

(3) any other information required by the Authority.

“154. A notice of intention to withdraw from a federation must include, in addition to the name and address of the mutual company that wishes to withdraw from the federation, the name of the federation and the address of its head office as well as any other information required by the Authority.

“155. On receipt from an authorized insurer of a notice of intention to carry out one or more operations giving rise to a review mentioned in section 146 and, if applicable, the required documents, costs and fees, the Authority publishes the notice in its bulletin and reviews the authorization it has granted to the insurer to determine whether it can be maintained.

The Authority may, to maintain its authorization, require any undertaking it considers necessary to ensure compliance with this Act.

A notice of intention to carry out an acquisition or transfer of assets having a significant effect on an authorized Québec insurer is not published.

“156. Unless the Authority considers that it must revoke or suspend an insurer’s authorization, that authorization becomes the authorization of the insurer resulting from the operation, with any conditions and restrictions the Authority may attach to it.

“157. The sending of a notice by an authorized insurer in accordance with this chapter does not relieve the insurer of its obligation to file an application for revocation if the operation giving rise to a review involves the voluntary revocation of an authorization, nor does it relieve the insurer of its obligation to file an application for authorization, if the operation involves the carrying on of an activity requiring the Authority’s authorization, when the insurer does not have it.

“158. The granting of the Authority’s authorization is governed by Chapter II; the revocation or suspension of, and the attachment of conditions or restrictions to, the authorization are governed by Chapter X.

“CHAPTER X

“REVOCATION AND SUSPENSION OF, AND CONDITIONS OR RESTRICTIONS THAT MAY BE ATTACHED TO, AN AUTHORIZATION

“DIVISION I

“GENERAL PROVISIONS

“159. The authorization granted by the Authority to an insurer is revoked by operation of law, by the Authority acting on its own initiative or on an application by the authorized insurer.

Revocation is said to be voluntary if it is ordered by the Authority on an application by an insurer; it is said to be forced in all other cases.

The Authority may also, where provided for by law, suspend an authorization or attach the conditions and restrictions it considers necessary to ensure compliance with this Act.

“160. Revocation by operation of law is full, that is, it has effect with regard to all the classes authorized.

The same is true for a revocation ordered by the Authority, unless it is partial, that is, unless it applies to only some of the classes authorized.

“161. The revocation of an authorization, even a partial revocation, becomes final when the insurer concerned ceases to be bound by the contracts entered into in accordance with the authorization.

“162. An insurer continues to be an authorized insurer as long as a revocation is not final. However, it may not bind itself under a contract included in a class to which the revocation applies if the contract is entered into after the revocation date, or offer to enter into a contract or invite a proposal with a view to so binding itself, except to honour a right conferred on a policyholder or participant under a contract in force on that date.

Suspension produces the same effects for its duration.

“DIVISION II

“FORCED REVOCATION, SUSPENSION AND CONDITIONS OR RESTRICTIONS

“163. The authorization granted by the Authority to an insurer is revoked by operation of law if the insurer is dissolved or liquidated due to any external cause.

The insurer must notify the Authority, without delay, of its dissolution or liquidation.

“164. The Authority may, if it considers that it is in the public interest, revoke or suspend the authorization it has granted to an authorized insurer if,

(1) in its opinion,

(a) the insurer is failing or is about to fail to comply with its obligations under an Act administered by the Authority,

(b) the insurer often fails to perform, in full, properly and without delay, its obligations under an insurance contract, or

(c) there are serious reasons to believe that the holder of control of the insurer or of another significant interest in the insurer’s decisions is likely to interfere with the insurer’s adherence to sound commercial practices or sound and prudent management practices;

(2) the insurer has not carried on an authorized activity in Québec for at least three years, whether as an insurer or a reinsurer;

(3) the Authority is informed by a competent authority that the insurer has failed to comply with an Act that is not administered by the Authority and is of the opinion that the failure is contrary to sound and prudent management practices; or

(4) the insurer fails to adopt or implement a compliance program or to provide the Authority with any report the latter requires on the implementation of such a program.

“165. In the cases described in section 164, instead of revoking or suspending the authorization granted to the authorized insurer and in order to allow the insurer to remedy the situation, the Authority may attach such conditions or restrictions to the authorization as it considers necessary to ensure compliance with this Act.

“166. Before ordering the forced revocation or the suspension of an authorization or attaching a condition or restriction to it, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice to the authorized insurer in writing and grant the latter at least 10 days to submit observations.

“167. A decision under section 164 may, within 30 days of its notification, be contested before the Financial Markets Administrative Tribunal.

The Tribunal may only confirm or quash a contested decision.

“168. The Authority publishes in its bulletin a notice of any revocation of the authorization granted to an insurer on the expiry of the time within which the latter was entitled, under section 167, to contest the revocation. The Authority publishes the notice without delay in the case of a revocation by operation of law.

“DIVISION III

“VOLUNTARY REVOCATION

“169. The Authority may not revoke the authorization of an authorized insurer that applies for its revocation and that, at the time of the application, is bound by contracts underwritten in accordance with the authorization, unless the insurer

(1) continues to be bound by those contracts; or

(2) has made the necessary arrangements to have at least one other authorized financial institution or a bank succeed it in its financial institution activities as of the date on which it plans to cease to be bound by those contracts.

“170. The voluntary revocation of an authorization requires the filing of an application with the Authority for that purpose.

In addition, a written notice concerning the application, the documents prescribed by regulation of the Authority and the costs and fees prescribed by government regulation must be filed with the application.

“171. An application for revocation must specify whether the revocation is to be full or partial; if a partial revocation is being sought, the application must list the classes to which it would apply.

The application must also describe any arrangements made to have an authorized financial institution or a bank succeed the applicant.

The application must include any other information determined by regulation of the Authority.

“172. A notice concerning an application for revocation must state the authorized activities the insurer intends to cease, the date on which it intends to do so, and the names and addresses of the authorized financial institutions or banks that will succeed it, if applicable.

“173. The Authority publishes a notice concerning an application for revocation in its bulletin.

If an authorized financial institution or a bank is to succeed the applicant, the latter must send the published notice to each holder of an insurance contract and to each participant in a group insurance contract as well as to each holder of rights relating to an investment in a segregated fund for which there will be a successor insurer.

“174. The Authority grants an application for revocation only if the applicant shows that

(1) it is not bound by any contract underwritten in accordance with the authorization whose revocation it is applying for;

(2) it can continue to be bound, until the date of maturity, by the contracts entered into in accordance with the authorization whose revocation it is applying for, while complying with this Act; or

(3) the arrangements made to have an authorized financial institution or a bank succeed the applicant are adequate and ensure the protection of holders of contracts or rights, and that it has sent the latter the notice of application required under the second paragraph of section 173.

The Authority refuses to grant the application for revocation of a mutual company that is a member of a federation if, in its opinion, the federation would thereby become unable to meet its obligations, in particular, with respect to compliance with guarantee fund capital requirements. Sections 166 and 167 apply to that decision, whether the Authority grants or denies the application.

“175. The Authority must send the insurer a document attesting its decision and publish the document in its bulletin.

“CHAPTER XI

“REGISTER OF AUTHORIZED INSURERS

“176. The Authority must establish and keep up to date a register of authorized insurers that contains the following information for each of them:

(1) its name, the name it uses in Québec if different, the address of its head office and, if its head office is not in Québec, the address of its principal establishment in Québec, or, in the case of an authorized reciprocal union, its name and the name and address of the mandatary referred to in subparagraph 3 of the first paragraph of section 188;

(2) if applicable, the name and address of the attorney designated under section 26 of the Act respecting the legal publicity of enterprises;

(3) the classes of activities to which the authorization granted to it by the Authority pertains, as well as the restrictions attached, if any;

(4) the recognized compensation bodies, referred to in section 89, of which it is a member;

(5) the name and address of the actuary and the auditor charged with the functions provided for in Chapter VII;

(6) the name of the financial group it belongs to or, if the group does not have a name, the names of the financial institutions that are members of it; and

(7) any other information considered by the Authority to be useful to the public.

The information contained in the register of authorized insurers is public information; it may be set up against third persons as of the date it is entered and is proof of its contents for the benefit of third persons in good faith.

“177. An authorized insurer must declare to the Authority any change required to be made to the information concerning itself that is contained in the register, unless the Authority was otherwise informed by a notice or other document sent in accordance with this Act.

The declaration must be filed within 30 days of the date of the event giving rise to the change.

“CHAPTER XII

“CONFIDENTIALITY OF SUPERVISORY INFORMATION

“178. Such information as is determined by the Minister by regulation that is held by an authorized insurer in relation to the Authority’s supervision of the insurer is confidential. It may not be used as evidence in any civil or administrative proceedings and is privileged for that purpose.

No one may be compelled, in any civil or administrative proceedings, to testify or to produce a document relating to that information.

“179. Despite section 178,

(1) the Attorney General, the Minister, the Authority or, if the authorized insurer is a professional order, the Office des professions du Québec may use the information made confidential by that section as evidence;

(2) the authorized insurer concerned may, in accordance with the regulation made by the Minister, use that information as evidence in any proceedings concerning the administration or enforcement of this Act or the Business Corporations Act that are brought by the insurer, the Minister, the Authority or the Attorney General; and

(3) anyone who may be compelled to testify or to produce a document relating to that information in any proceedings regarding the application of this Act or any other Act administered by the Authority to an authorized insurer or of the Business Corporations Act to an insurance company may use that information provided the proceedings are brought by the insurer concerned, the Attorney General, the Minister or the Authority.

“180. The communication of information referred to in this chapter otherwise than in the cases provided for by its provisions does not entail a waiver of the confidentiality conferred by those provisions.

“181. This chapter does not apply to information that must be made public by law. In addition, the prohibition under the first paragraph of section 178 does not apply if the information or document concerned was sent in accordance with another Act.

“CHAPTER XIII

“PROVISIONS SPECIFIC TO THE SUPERVISION OF THE INSURER ACTIVITIES OF AUTHORIZED SELF-REGULATORY ORGANIZATIONS AND RECIPROCAL UNIONS

“DIVISION I

“SELF-REGULATORY ORGANIZATIONS

“182. A self-regulatory organization must, in the financial management of its insurance business, adhere to sound and prudent management practices to ensure that its insurance fund maintains

(1) adequate assets to meet the liabilities charged against the fund, as and when they become due; and

(2) adequate capital to guarantee the sustainability of the organization’s insurance business.

“183. A self-regulatory organization must be able to show to the Authority that it adheres to sound and prudent management practices in the financial management of its insurance business.

“184. If the Authority anticipates that the sums payable by holders of insurance contracts underwritten by a self-regulatory organization will no longer be sufficient to maintain adequate assets in its insurance fund to meet the liabilities charged against the fund, as and when they become due, or adequate capital to guarantee the sustainability of the organization’s insurance business, the Authority may order the organization, after giving it at least 10 days to submit observations, to increase, by the amount and for the period the Authority determines, the premiums and other sums collected in the course of its insurer activities.

“185. An order placing an authorized self-regulatory organization under receivership, issued under the Act respecting the regulation of the financial sector, may only apply to its insurance business.

Despite section 19.2 of that Act, the receivership order only empowers the receiver to take possession of the fund and of any other property held for the organization’s insurance business and to liquidate the fund.

“186. Chapter III, Division II of Chapter V, section 112, Chapters VII and VIII, Divisions I to III of Chapter IX and Chapters X to XII apply to the insurance business of authorized self-regulatory organizations.

“187. The only regulations and guidelines applicable to authorized self-regulatory organizations are those established to be applicable to those organizations only and pertaining only to the maintenance of sound and prudent management practices in the financial management of their insurance business.

“DIVISION II

“AUTHORIZED RECIPROCAL UNIONS

“188. An authorized reciprocal union must, by a contract to which each person in the union is a party, take the measures necessary for its operation, including

- (1) determining the union’s name;
- (2) constituting the union’s organs, such as a board of directors or a meeting of persons reciprocally bound by insurance contracts, and providing for their mode of operation;
- (3) providing for the designation of a mandatary, who will be the same for all the persons in the union, to represent them and perform the acts necessary for the union’s operation, among other things;
- (4) determining rules
 - (a) governing how persons may join or quit the union or be excluded from it, and
 - (b) governing the dissolution of the union and the liquidation of the assets held by the mandatary;
- (5) providing for the appointment of an auditor and an actuary;
- (6) providing for the pooling of the sums necessary for the persons in the union to carry on their insurer activities and establishing a procedure for determining and collecting the assessments and the additional assessments payable by those persons;

(7) prohibiting persons in the union from accepting, in any insurance contract to which they are a party, a risk which, if it occurred, would respectively oblige them to pay, after reinsurance, if applicable, an amount that exceeds 10% of the net value of their assets; and

(8) providing for any other measure determined by regulation of the Authority.

In addition, the parties to the contract may designate as the union's home regulator a competent authority other than the Authority if that other authority issues a licence to the union or grants it an authorization similar to that granted by the Authority under this Act.

“189. The pooled sums must enable the authorized reciprocal union to meet the liabilities contracted by the persons in the union as part of their insurer activities, as and when they become due.

“190. An amendment to the contract referred to in section 188 entails a review of the authorization granted by the Authority to the authorized reciprocal union.

The mandatory of the union must, without delay, send the amended contract to the Authority.

Sections 146 to 158 apply, with the necessary modifications, to the review of the authorization; the contract sent to the Authority is substituted for the notice of intention required under those sections, but is not published by the Authority in its bulletin.

“191. The mandatory or the attorney the mandatory designates under section 26 of the Act respecting the legal publicity of enterprises may, in that capacity and in the mandatory's or attorney's own name, despite any inconsistent provision of an Act of Québec, exercise before the courts, as plaintiff or defendant, the rights of the persons in the reciprocal union.

“192. If the Authority anticipates that the sums payable to the mandatory by persons in an authorized reciprocal union will not be sufficient to enable the mandatory to maintain, for the union, adequate assets to meet the liabilities contracted by those persons in their insurer activities, as and when they become due, the Authority may order the mandatory, after giving the latter at least 10 days to submit observations, to increase, by the amount and for the period the Authority determines, the sums collected from the persons in the union.

“193. An order placing an authorized reciprocal union under receivership, issued under the Act respecting the regulation of the financial sector, may only apply to the mandatory, the union's organs or the persons in the union. The order has effect only in relation to the insurer activities they carry on.

Despite section 19.2 of that Act, the receivership order only empowers the receiver to take possession of the property held for the union by the mandatary and to liquidate the assets held by the mandatary.

“194. Chapter III and Chapters VII to XII apply to authorized reciprocal unions.

“195. The only regulations and guidelines applicable to authorized reciprocal unions are those established to be applicable to those unions only and relating only to the maintenance by the mandatary of adequate assets to meet the liabilities contracted by those persons in their insurer activities, as and when they become due.

“TITLE III

“INSURANCE COMPANIES AND CERTAIN OTHER QUÉBEC INSURERS

“CHAPTER I

“CORPORATIONS AND COMPANIES CONCERNED

“196. Insurance companies are either business corporations constituted, continued or amalgamated under the Business Corporations Act (chapter S-31.1) or mutual companies.

The other Québec insurers to which this Title applies are self-regulatory organizations, to which only Chapter XVI applies, and authorized insurers constituted under a private Act of Québec, to which Chapter XIII applies for the purpose of entitling them to apply for continuance as an insurance company and to which the other provisions of this Title apply to the extent provided for in section 532.

“CHAPTER II

“APPLICATION OF THE BUSINESS CORPORATIONS ACT

“DIVISION I

“GENERAL PROVISIONS

“197. Subject to the other provisions of this Title that may limit or exclude its application in specific matters, the provisions of the Business Corporations Act apply, with the necessary modifications, to insurance companies, except sections 3 to 6, 8 to 10 and 126, Division III of Chapter VII, section 239 and Chapters X, XIV, XVI and XVII.

For the purpose of applying the provisions of that Act to insurance companies, the elements relating to a unanimous shareholder agreement are deemed not written.

“DIVISION II

“MODIFICATIONS SPECIFIC TO MUTUAL COMPANIES

“198. In addition to the provisions specified in section 197, the following provisions of the Business Corporations Act do not apply to mutual companies: sections 11 and 40 to 42, Chapter V, sections 106 and 111, the third paragraph of section 113, paragraphs 12 to 15 of section 118, sections 155 and 156, Division IV of Chapter VII, the second paragraph of section 224, the third paragraph of section 308, sections 309 to 311, subdivisions 3, 4 and 5 of Division I of Chapter XIII, sections 324 and 341 to 346, subdivision 6 of Division II of Chapter XIII, Division III of Chapter XIII and Chapter XV.

“199. For the purpose of applying the provisions of the Business Corporations Act to mutual companies, the following modifications must be made:

(1) the Authority is substituted for the enterprise registrar, except as regards maintaining an enterprise register; the Authority must send the enterprise registrar the documents relating to a corporation that must be filed with the enterprise register under the Business Corporations Act and this Act;

(2) “mutual member” must be substituted for “shareholder”, except in the first paragraph of section 224, where “mutual members and shareholders” must be substituted for “shareholders”;

(3) “part” in the French text must be substituted for “action” and “interest” must be substituted for “dividend”; and

(4) a reference to articles of constitution is a reference to articles of constitution under this Act.

“CHAPTER III

“REGULATION BY THIS TITLE AND CONSTITUTION OF MUTUAL COMPANIES

“DIVISION I

“GENERAL PROVISIONS

“200. Business corporations constituted, continued or amalgamated under the Business Corporations Act become regulated by this Title as a result of a decision to that effect by the Minister, following the filing of an application for that purpose with the Authority and the publication of a notice of intention to apply to become regulated by this Title. The same is true for the constitution of a mutual company.

“DIVISION II

“BECOMING REGULATED BY THIS TITLE

“§1.—*Provisions applicable to business corporations*

“201. A business corporation may apply to become regulated by this Title only if it is authorized to do so by its shareholders.

“202. Shareholder authorization is given by special resolution.

By that resolution, the shareholders also authorize a director or an officer of the business corporation to see to the preparation of the documents necessary for it to become regulated by this Title and of those necessary for its change of name, and to sign those documents.

“203. The adoption of the special resolution authorizing a business corporation to apply to become regulated by this Title and change its name confers on shareholders the right to demand the repurchase of their shares.

That right is exercised in accordance with Chapter XIV of the Business Corporations Act as if it were provided for in section 372 of that Act.

The adoption of such a resolution confers on shareholders who do not own shares with voting rights the right to demand, in the same manner, that the corporation repurchase all their shares.

“§2.—*Provisions applicable to mutual companies*

“204. The constitution of a mutual company and its becoming regulated by this Title are the outcome of a same decision by the Minister and cannot be dissociated.

A decision by the Minister to make a mutual company subject to regulation by this Title entails the order to constitute the company. Conversely, an order by the Minister to constitute a mutual company entails the company’s being subject to regulation by this Title. The same applies to the Minister’s refusal to make a mutual company subject to regulation by this Title or to order the constitution of a mutual company.

“205. An application for the constitution of a mutual company may be filed on the initiative of one or more promoters, if at least 200 persons have undertaken to enter, within the year after the Authority’s authorization is obtained, into an insurance contract or to enroll in a group insurance contract underwritten by the company.

The promoters must be qualified to serve as directors of the mutual company.

The Act respecting the distribution of financial products and services does not apply to the obtaining of an undertaking referred to in the first paragraph.

“206. The promoters must designate a provisional secretary, see to the preparation of the documents necessary for the constitution of the mutual company, in particular the articles of constitution, and sign the documents.

They must also see that an organization meeting is called within 60 days after the date on which the mutual company is constituted.

If the proposed mutual company will be a member of a federation, the promoters must obtain a resolution attesting the federation’s undertaking to admit the company as a member.

“207. The articles of constitution of a mutual company must state its name. They may set out any provision permitted by this Act to be set out in the by-laws of a mutual company. In case of conflict, the articles of constitution prevail over the by-laws.

“DIVISION III

“NOTICE OF INTENTION AND APPLICATION TO BECOME REGULATED BY THIS TITLE

“§1.—*Notice of intention*

“208. A notice of intention to apply to become regulated by this Title must state

(1) the proposed name of the insurance company and, in the case of a business corporation, its name at the time the notice is sent, if different;

(2) the juridical form of the insurance company, namely, whether it is a business corporation or a mutual company;

(3) in the case of a mutual company, the name and address of its promoters;

(4) the classes of activities for which the corporation or company is applying for the Authority’s authorization; and

(5) the location of the insurance company’s proposed head office and, in the case of a business corporation, the location of its head office at the time the notice is sent, if different.

The notice of intention must accompany the application to become regulated by this Title filed with the Authority.

“§2.—Application

“209. An application to become regulated by this Title must include the information prescribed by regulation of the Minister in addition to the information stated in the notice of intention.

It may also include the date and, if applicable, the time as of which the applicant wishes to become regulated by this Title, if later than the date and time of the Minister’s decision.

“210. An application to become regulated by this Title filed by a business corporation must, in addition, state the name and address of each holder of a significant interest in the corporation.

“211. An application to become regulated by this Title filed by a mutual company must, in addition, include

(1) the names and addresses of the persons who have undertaken to enter into or enroll in an insurance contract to be underwritten by the mutual company and the names and addresses of the promoters;

(2) the name and address of the person designated, if applicable, as provisional secretary of the mutual company; and

(3) a description of the manner in which the organization meeting will be called and the time limit for doing so.

“212. In addition to the notice of intention, the following must be filed with the application:

(1) the articles of the business corporation or the articles of constitution of the mutual company;

(2) a description of the projected capital structure of the corporation or company and its business plan and financial forecasts for a three-year period;

(3) in the case of a mutual company that intends to become a member of a federation, a certified copy of the resolution of the federation attesting that it has undertaken to admit the company as a member;

(4) in the case of a business corporation, a certified copy of the special resolution authorizing it to file an application to become regulated by this Title;

(5) the other documents prescribed by regulation of the Minister; and

(6) the fees prescribed by government regulation.

“213. An application to become regulated by this Title must be filed with the Authority together with the required documents and fees.

“214. On receipt of the application to become regulated by this Title and the required documents and fees, the Authority publishes the notice of intention in its bulletin.

“215. The Authority must prepare a report on the reasons for granting or denying the application to become regulated by this Title in which it assesses consumer interest and the impact of the decision on the insurance market in Québec.

The report must cover such matters as

(1) the nature and scope of the financial means gathered for the ongoing financial support of the insurance company;

(2) if applicable, the grounds for disqualification for office as director of an insurance company that exist

(a) if the applicant is a business corporation, with respect to a director of, or a holder of a significant interest in, the business corporation, and

(b) if the applicant is a mutual company, with respect to a promoter of the mutual company;

(3) the quality and feasibility of the business plan and the financial forecasts for the carrying on and development of the insurance company’s activities; and

(4) the compliance of the insurance company’s proposed name with this Act.

In the case of a business corporation, the report must also assess the competency and experience of its directors and officers.

“216. To the extent that the company’s proposed name is compliant with the requirements of this Act, the Authority sends its report to the Minister together with the application to become regulated by this Title and the accompanying documents.

“DIVISION IV

“MINISTER’S DECISION

“217. The Minister may, if the Minister considers it advisable, make a business corporation or mutual company that has filed an application to that end subject to regulation by this Title.

“218. When the Minister makes a business corporation or mutual company subject to regulation by this Title, the Minister sends a document attesting that decision to the corporation or company and to the Authority.

The document must include the date and time of the Minister's decision and, if different, the date and time specified in the application for becoming regulated by this Title.

“219. On receipt of a document attesting that a mutual company is regulated by this Title, the Authority processes the articles of constitution, issues the certificate of constitution in accordance with Chapter XVIII of the Business Corporations Act then sends a copy of the certificate and the articles to the enterprise registrar, who deposits them in the enterprise register.

The Authority enters on the certificate the date and, if applicable, time shown on the document as of which the mutual company is regulated by this Title.

“220. A mutual company is constituted as of the effective date and, if applicable, time shown on the certificate of constitution issued by the Authority. It is a legal person as of that time.

“CHAPTER IV

“ORGANIZATION OF AN INSURANCE COMPANY

“DIVISION I

“GENERAL PROVISIONS

“221. “Organization”, in relation to an insurance company, means the actions that must be taken, as of the time the company becomes regulated by this Title, in order to obtain the Authority's authorization.

According to the context, “organization” also means the period after the insurance company becomes regulated by this Title during which those actions must be taken.

“DIVISION II

“PROVISION SPECIFIC TO BUSINESS CORPORATIONS

“222. The consideration paid in money for which shares of a regulated business corporation are issued during its organization must be deposited with a bank or with a deposit institution authorized under the Deposit Institutions and Deposit Protection Act.

“DIVISION III

“PROVISIONS SPECIFIC TO MUTUAL COMPANIES

“223. The provisional secretary of a mutual company must call an organization meeting in the manner described in the application to become regulated by this Title and within the specified time limit.

The Minister may extend that time limit or, if it has expired, set a new one.

“224. The persons who, on the date the organization meeting is called, have undertaken to enter into an insurance contract or enroll in a group insurance contract underwritten by the mutual company must be called to the meeting.

“225. If the provisional secretary is absent or unable to act, the organization meeting may be called by a promoter or by two other persons among those who must be called to the meeting.

The mutual company must reimburse the expenses reasonably incurred to call and hold the meeting.

“226. The persons attending the organization meeting must adopt by-laws and elect the directors.

They may take any other measure relating to the affairs of the mutual company.

“227. The directors elected at the organization meeting must hold a subsequent organization meeting during which they must, in particular,

(1) issue the shares of the share capital of the mutual company that, if applicable, were subscribed and paid; and

(2) take any other measure toward organizing the company that is not reserved to the mutual members' meeting.

“DIVISION IV

“CONCLUSION OF THE ORGANIZATION OF AN INSURANCE COMPANY

“228. The organization of an insurance company concludes when the Authority grants or refuses to grant its authorization or when such authorization has not been obtained on the expiry of a one-year period after the corporation became regulated by this Title without there having been a refusal to grant it.

The Minister may, on the company's application, extend its organization for a period not exceeding one year.

“229. A business corporation whose organization ends without its having obtained the Authority's authorization must repurchase the shares it issued for consideration paid in money, unless the shareholder who holds them refuses.

The repurchase price of a share corresponds to that consideration, less, if applicable, an aliquot share corresponding to the proportion that the sums incurred for the corporation to become regulated by this Title and for its organization are of the total number of shares in circulation at the time the organization ended.

A corporation that is unable to pay the full repurchase price because there are reasonable grounds for believing that it is, or would after the payment be, unable to pay its liabilities as they become due is only required to pay the maximum amount it may legally pay. In that case, the shareholders remain creditors of the corporation for the unpaid balance of the repurchase price and are entitled to be paid as soon as the corporation is legally able to do so or, in the event of liquidation, are entitled to be collocated after the other creditors but by preference over the other shareholders.

“230. A business corporation ceases to be regulated by this Title, except the third paragraph of section 229, once it has repurchased all the shares for which a shareholder has not refused the repurchase.

“231. A mutual company whose organization ends without its having obtained the Authority’s authorization must liquidate and dissolve.

“CHAPTER V

“NAME

“232. For the purpose of applying Division I of Chapter IV of the Business Corporations Act, which pertains to a corporation’s name, to an insurance company, the Authority exercises the functions and powers conferred on the enterprise registrar.

Section 23 of that Act, and the provisions of section 27 of that Act allowing the enterprise registrar to replace a name by a designating number, do not apply to insurance companies. In addition, section 20 of that Act does not apply to a mutual company, nor does section 21 of the same Act if the mutual company is a member of a federation.

“233. The expression “mutual company” is reserved for mutual insurance companies.

“234. A change of name of an insurance company does not affect its rights and obligations and any proceedings to which it is a party may be continued under its new name without continuance of suit.

“235. This chapter applies despite the Act respecting the legal publicity of enterprises.

“CHAPTER VI

“SPECIAL POWERS OF AN INSURANCE COMPANY AND RESTRICTIONS ON ITS ACTIVITIES

“DIVISION I

“SPECIAL POWERS

“236. An insurance company authorized to carry on life insurance activities may, by resolution of its board of directors, establish segregated funds to comply with section 76.

Such funds are each a division of the insurance company’s patrimony. Each of them is to be used to meet the liabilities for which the corporation is required to hold the property constituting them, before any of the corporation’s other liabilities.

“DIVISION II

“RESTRICTION ON ACTIVITIES

“237. The Authority may require an insurance company to establish a legal person of which the company will be the holder of control in order to carry on an activity other than insurer activities,

(1) if it constitutes the operation of an enterprise, regardless of the insurance company’s other activities; and

(2) if, in the Authority’s opinion, it renders the application of this Act difficult or ineffective.

For the purposes of the first paragraph, an activity is deemed not to constitute the operation of an enterprise if it generates less than 2% of an insurance company’s gross income.

“238. Mutual companies may not establish a federation otherwise than under this Act.

“239. A mutual company may be the holder of control of a business corporation authorized to carry on activities in the same class only if the business corporation is regulated by this Title.

The Minister may however authorize, for a period the Minister determines, a mutual company to become the holder of control of a business corporation constituted under the laws of a jurisdiction other than Québec, provided the mutual company undertakes to continue that business corporation as an insurance company before the end of that period.

“240. No mutual company that is a member of a federation may, without the federation’s authorization, carry on financial institution activities other than those of an insurer.

“CHAPTER VII

“LOANS, HYPOTHECS AND OTHER SECURITIES

“241. Except in the case of a short-term loan to meet liquidity requirements, no insurance company may borrow by issuing debt obligations unless the loan is unsecured.

In addition, the total unsecured loans for which debt obligations were issued by an insurance company may not exceed the limits determined by regulation of the Authority. The regulation may prescribe the terms of the debt obligations.

Each issue of debt obligations must be the subject of a resolution by the board of directors which must set the terms of the issue. The Authority may, by regulation, determine the terms required to be set by that resolution.

However, a mutual company that is a member of a federation may only issue such debt obligations if it is authorized to do so by the federation.

“242. No insurance company may, without the Authority’s authorization, grant a hypothec or other security on its movable property, except

(1) to secure a short-term loan contracted to meet liquidity requirements;

(2) to obtain an advance under section 40.5 of the Deposit Institutions and Deposit Protection Act, or if it receives deposits outside Québec, to obtain an advance from a federal or provincial body that guarantees or insures deposits; or

(3) to become a member of a securities clearing house recognized by the Authority as a self-regulatory organization or of any association the object of which is to organize a clearing and settlement system for payment instruments or securities transactions, and to provide the necessary guarantees.

The Authority may, in granting its authorization, require any undertaking it considers necessary to ensure compliance with this Act.

“CHAPTER VIII

“CONTRIBUTED CAPITAL

“DIVISION I

“SHARE CAPITAL OF A REGULATED BUSINESS CORPORATION

“§1. — *Issue*

“243. Despite section 53 of the Business Corporations Act, the shares of a regulated business corporation are issued only when they are fully paid.

“§2. — *Maintenance of share capital*

“244. A regulated business corporation may not make a payment to purchase or redeem shares if, in addition to the grounds referred to in section 95 of the Business Corporations Act, there are reasonable grounds for believing that the corporation is, or would after the payment be, unable to maintain, in accordance with section 74, adequate assets to meet its liabilities, as and when they become due, and adequate capital to ensure its sustainability.

The reference to section 95 of the Business Corporations Act in sections 97 and 98 of that Act is replaced by a reference to the first paragraph when those sections apply to a regulated business corporation.

“245. A regulated business corporation may not reduce the amount of its issued share capital if, in addition to the grounds referred to in section 101 of the Business Corporations Act, there are reasonable grounds for believing that the corporation is, or would after the payment be, unable to maintain, in accordance with section 74, adequate assets to meet its liabilities, as and when they become due, and adequate capital to ensure its sustainability.

“246. A regulated business corporation may not declare or pay a dividend, except by issuing shares or options or rights to acquire shares, if, in addition to the grounds referred to in section 104 of the Business Corporations Act, there are reasonable grounds for believing that the corporation is, or would after the payment be, unable to maintain, in accordance with section 74, adequate assets to meet its liabilities, as and when they become due, and adequate capital to ensure its sustainability.

“§3. — *Disclosure of certain interests and restrictions concerning the exercise of the voting rights carried by the shares issued by a regulated business corporation*

“247. Anyone who intends to become the holder of a significant interest in a regulated business corporation’s decisions must send a notice of intention to the Authority not later than the 30th day before the day on which the person will become the holder of that interest.

The same is true for whoever is already the holder of such an interest but not the holder of control of the corporation and intends to become the holder of control.

“248. A notice of intention under section 247 must include

(1) the name and address of the person or group that intends to become the holder of the interest referred to in that section and, in the case of a natural person, his or her résumé, or, in the case of a group, its juridical form and, if applicable, the identity of the holder of control of the group; and

(2) a description of the shares issued by an insurance company the voting rights attached to which would make the person or group the holder of the interest referred to in section 247.

“249. On receipt of the notice of intention, the Authority must prepare a report on the effect of the transaction on the regulated business corporation and on its development as well as on the insurance industry in Québec.

The Authority must send the report to the Minister.

“250. The Minister may, if the Minister considers it advisable, approve the acquisition of control or the acquisition of another significant interest referred to in section 247.

“251. The Authority may order that the voting rights conferred by the shares issued by a regulated business corporation on the holder of an interest referred to in section 247 be exercised by an administrator of the property of others appointed by the Authority if the holder of that interest has not obtained the Minister’s approval.

“252. Instead of revoking or suspending the authorization granted to a regulated business corporation under subparagraph *c* of subparagraph 1 of the first paragraph of section 164, or attaching a condition or restriction to the authorization under section 165, the Authority may order that the voting rights conferred by the shares issued by the corporation on the holder of control of the corporation or the holder of a significant interest in the decisions of the corporation be exercised by an administrator of the property of others appointed by the Authority.

The order may not be effective for more than five years from the day it was made.

“253. An order under section 251 or 252 may, within 30 days of its notification, be contested before the Financial Markets Administrative Tribunal.

The Tribunal may only confirm or quash a contested order.

“§4. — Interest in the profits of certain business corporations

“254. A business corporation that is controlled by a mutual company and is authorized to carry on activities in the same class as the latter may declare and pay, for a particular year, a portion of its profits to its members, other than shareholders.

“DIVISION II

“SHARE CAPITAL OF A MUTUAL COMPANY

“§1. — General provisions

“255. A mutual company’s share capital is unlimited.

It may consist of one or more classes of shares.

“256. A share may be issued only if the contribution required for its issue is fully paid, unless it is issued in accordance with an amalgamation agreement.

The contribution must be paid in money.

“257. Shares must be in registered form. No share may entitle its holder to be called to, to attend or to vote at a meeting, or to be eligible for any office in the mutual company.

“258. Shares entitle their holder, in the event of liquidation or dissolution, to the reimbursement of the contribution paid for their issue, if the liquidator has performed the mutual company’s other obligations, obtained forgiveness of those obligations or otherwise made provision for them.

Unless otherwise provided in the by-laws,

(1) shares are not redeemable; or

(2) if shares are redeemable, the redemption price of a share is the amount of the contribution paid for its issue and the interest declared but not yet paid.

“259. The rights of holders of shares of the same class are equal in all respects.

“260. A mutual company attests the existence of shares by making an entry in its securities register.

“261. Shares may be transferred only in accordance with the conditions and in the manner prescribed in the mutual company’s by-laws.

They are however transmissible to their holder’s heirs or legatees by particular title, unless the by-laws provide for redemption on the holder’s death.

“262. A mutual company must, in its by-laws, determine, for each class of shares prescribed in the by-laws,

- (1) the contribution required per share for its issue;
- (2) the maximum interest that may be paid on the shares;
- (3) the conditions on which and manner in which shares may be transferred;
- (4) the redemption terms, if applicable;
- (5) the order in which shares are repaid in the event of liquidation or dissolution; and
- (6) other rights, privileges and restrictions attached to the shares.

The mutual company must send the Authority a copy of its by-laws.

“§2.—*Maintenance of share capital*

“263. A mutual company may not declare or pay any interest if there are reasonable grounds for believing that the company is, or would after the payment be, unable to maintain, in accordance with section 74, adequate assets to meet its liabilities, as and when they become due, and adequate capital to ensure its sustainability.

“264. Except for shares redeemed on their holder’s death or when the holder otherwise ceases to be a member of a mutual company, the company may not redeem shares if there are reasonable grounds for believing that the company is, or would after the payment be, unable to maintain, in accordance with section 74, adequate assets to meet its liabilities, as and when they become due, and adequate capital to ensure its sustainability.

A mutual company that redeems shares on their holder’s death or when the holder otherwise ceases to be a member of the mutual company may not pay the redemption price of the shares if the company would, after the payment, be unable to maintain such assets and such capital.

The former holder of those shares becomes a creditor of the company and is entitled to be paid as soon as the company may legally do so or, in the event of liquidation, is entitled to be collocated after the other creditors but ahead of the shareholders.

The company must provide an evidence of indebtedness to the former shareholder.

“265. Directors who authorize the payment of interest contrary to section 263, the redemption of a share contrary to the first paragraph of section 264 or the payment of a share contrary to the second paragraph of that section are solidarily liable to the mutual company for the sums so paid and not recovered.

“CHAPTER IX

“DIRECTORS AND OFFICERS

“DIVISION I

“BOARD OF DIRECTORS

“266. A majority of an insurance company’s directors must be resident in Canada.

“267. The fixed number of directors or the minimum and maximum number of directors of a Québec insurer constituted under a private Act may, despite any provision to the contrary, be prescribed by the insurer’s by-laws.

A decision concerning the number of directors must be made by special resolution.

“268. The board of directors of a business corporation that is both controlled by a mutual company and authorized to carry on activities in the same class as the latter must include at least one director elected exclusively by the holders of the insurance contracts underwritten by the mutual company who are present at the meeting during which the other directors are elected.

The number of directors that must be elected by those members is determined by the business corporation’s by-laws. It may not exceed one-third of the board of directors.

“DIVISION II

“DISQUALIFICATION

“§1. — *General provisions*

“269. In addition to persons disqualified for office as directors under the Civil Code, a person found guilty of an indictable or other offence involving fraud or dishonesty cannot be a director of an insurance company, unless the person has obtained a pardon.

“270. The Authority may dismiss a director holding office in an insurance company if the person is disqualified for office as such.

“271. Before dismissing a director of an insurance company, the Authority notifies the prior notice prescribed by section 5 of the Act respecting administrative justice to the director and the company in writing and grants them at least 10 days to submit observations.

“272. A decision under section 270 may, within 30 days of its notification, be contested before the Financial Markets Administrative Tribunal.

The Tribunal may only confirm or quash a contested decision.

“§2.—*Provision specific to business corporations*

“273. In addition to persons who cannot be directors of an insurance company, a person who, by reason of an order issued by the Authority under section 251 or 252, cannot exercise the voting rights conferred on the person by shares issued by such a company cannot be a director of a regulated business corporation.

“§3.—*Provisions specific to mutual companies*

“274. At least half of the board of directors of a mutual company must consist of mutual members.

“275. A mutual member’s eligibility and the nomination by a mutual member of another person as a candidate for office as director may be subject to the mutual member having had that status for the minimum period determined by the mutual company’s by-laws, which may not exceed 90 days.

“276. An employee of a mutual company that is a member of a federation may not be a director of that company, even if the employee is a mutual member.

The same is true for an employee of a group affiliated with the company.

“DIVISION III

“QUORUM

“277. Despite section 138 of the Business Corporations Act, the quorum at a meeting of the board of directors of an insurance company may not be less than the majority of the directors in office.

“DIVISION IV

“FUNCTIONS AND POWERS OF THE BOARD OF DIRECTORS

“278. Other than the powers of a board of directors which, in accordance with section 118 of the Business Corporations Act, may not be delegated, the board of directors of an insurance company may not delegate the power to appoint and dismiss the actuary charged with the functions provided for in Chapter VII of Title II, or the power to determine the actuary’s remuneration.

“279. The restriction set out in section 278 is applicable to a mutual company only to the extent that the federation of which it is a member does not provide it with the services of an actuary.

“DIVISION V

“PROHIBITED ACTS AND LIABILITY

“§1. — *Provisions specific to business corporations*

“280. For the purpose of applying section 156 of the Business Corporations Act to a regulated business corporation, the following modifications must be made:

(1) the reference to section 95 of that Act in paragraph 3 of that section 156 is replaced by a reference to section 244 of this Act; and

(2) the reference to section 104 of that Act in paragraph 4 of that section 156 is replaced by a reference to section 246 of this Act.

“§2. — *Provisions specific to mutual companies*

“281. Directors of a mutual company who vote for or consent to a resolution authorizing any of the following are solidarily liable to restore to the mutual company any amounts involved and not otherwise recovered by the company:

(1) the payment of an unreasonable commission to a person in consideration of the person’s purchasing or agreeing to purchase shares or other securities of the mutual company from the company, or agreeing to procure purchasers for any such shares or securities;

(2) the payment of interest contrary to section 263;

(3) the redemption of a share contrary to the first paragraph of section 264 or the payment of a share contrary to the second paragraph of that section; or

(4) the payment of an indemnity contrary to section 160 of the Business Corporations Act.

“282. For the purpose of applying the Business Corporations Act to a mutual company, a reference to section 155 is deemed not written, and a reference to section 156 is replaced by a reference to section 281 of this Act.

“CHAPTER X

“MEMBERS AND MEETINGS

“DIVISION I

“MEMBERS

“283. The members of an insurance company are

(1) in the case of a business corporation,

(a) its shareholders, and

(b) if the corporation is both controlled by a mutual company and authorized to carry on activities in the same class as the latter, the persons who, if the corporation were a mutual company, would be mutual members; and

(2) in the case of a mutual company, the mutual members, that is,

(a) each of the holders of an insurance contract underwritten by the company, except a subrogated holder, if any, and

(b) if applicable, the client for a group insurance contract underwritten by the company and each of the participants.

Until they become mutual members or terminate their undertaking, the persons referred to in section 205 who undertook to enter into an insurance contract underwritten by a mutual company or to enroll in such an insurance contract within the year after the Authority grants its authorization to that mutual company are deemed, for the year, to be mutual members.

“DIVISION II

“REGISTER

“284. A mutual company must keep in its books a register of mutual members containing their names and addresses.

A business corporation that is both controlled by a mutual company and authorized to carry on activities in the same class as the latter must keep in its books a register of its members, other than shareholders, containing the name and address of each member.

“DIVISION III

“MUTUAL MEMBERS’ MEETINGS

“285. Each mutual member is entitled to one vote at a meeting.

“286. Unless otherwise prescribed by the company’s by-laws, the mutual members present at a meeting constitute a quorum.

If the quorum prescribed by by-law is not reached, the meeting may be called a second time. If the quorum is still not reached, the meeting may be validly held and must deal with the same matters as those stated in the first notice of meeting.

“287. Mutual members may be represented at a meeting by a proxyholder, in accordance with the Business Corporations Act, to the extent that the mutual company’s by-laws allow it.

The proxyholder may not represent more than one person.

“288. For the purpose of applying the Business Corporations Act to a mutual company, the following modifications must be made:

(1) the first paragraph of section 163 of that Act is to be read without reference to “not later than 18 months after the corporation is constituted and, subsequently,”;

(2) if a mutual company is a member of a federation, section 165 of that Act applies subject to the mutual company’s by-laws.

“CHAPTER XI

“FINANCIAL STATEMENTS AND CALLS TO MEETINGS FOR ACTUARY OR AUDITOR

“289. A member may call an auditor or actuary to a meeting.

Section 166 of the Business Corporations Act applies to the calling of an actuary or an auditor to a meeting.

If a mutual company is a member of a federation that provides the company with an actuary’s or auditor’s services, and one of the two is called to a meeting, the federation must assume the costs.

“290. The members, other than shareholders, of a business corporation that is both controlled by a mutual company and authorized to carry on activities in the same class as the latter have the same rights as the shareholders in respect of financial statements of the business corporation.

“CHAPTER XII

“AMENDMENT, CONSOLIDATION, CORRECTION AND CANCELLATION OF ARTICLES

“DIVISION I

“GENERAL PROVISIONS

“291. The amendment of the articles of an insurance company requires the Authority’s permission. The same is true for the consolidation and correction of the articles, the only exception being the correction of an obvious error.

The amendment of the articles of an insurance company requires the Minister’s permission when it affects entrenched provisions, within the meaning of section 315, included in the articles following the continuance of an authorized insurer constituted under a private Act of Québec.

The cancellation of articles also requires the Authority’s permission, except the cancellation of articles of amalgamation or continuance, which requires the Minister’s permission.

“292. To obtain the Authority’s or the Minister’s permission, an insurance company must file an application for permission with the Authority.

“293. The information that an application for permission must include is determined by regulation of the Minister or of the Authority, depending on whose permission must be requested.

“294. The following must be filed with the application:

(1) the proposed articles of amendment, if the application is for permission to amend or correct the insurance company’s articles;

(2) the proposed consolidated articles, if the application is for permission to consolidate the company’s articles;

(3) the other documents prescribed by regulation of the Minister or the Authority, as the case may be; and

(4) the fees prescribed by government regulation.

“295. On receipt of an application for permission and the required documents and fees, the Authority,

(1) when the permission that must be requested is the Minister’s, prepares a report for the Minister on the reasons for granting or denying the application; or

(2) when the permission that must be requested is its own, grants the application if it considers it advisable.

“296. The Minister may, if the Minister considers it advisable, grant an insurance company permission to cancel its articles of amalgamation or continuance.

“297. The Authority may order an insurance company to consolidate its articles.

“DIVISION II

“PROVISIONS SPECIFIC TO BUSINESS CORPORATIONS

“298. When ruling on an application filed by a business corporation, the Minister or the Authority must send the corporation a document justifying the decision.

“299. A regulated business corporation may, from the receipt of the document granting the permission requested, send the enterprise registrar, as applicable,

(1) the articles of amendment that were filed with the application for permission to amend or correct the corporation’s articles;

(2) the consolidated articles that were filed with the application for permission to consolidate the corporation’s articles; or

(3) the application for cancellation of the articles.

In all cases, the document granting the permission requested must be filed with the application or the articles sent to the enterprise registrar.

“300. If a business corporation’s articles of amendment or consolidated articles are deposited in the enterprise register, the enterprise registrar must send a certified copy of them to the Authority.

“DIVISION III

“PROVISIONS SPECIFIC TO MUTUAL COMPANIES

“301. When ruling on an application filed by a mutual company, the Minister must send the Authority a document attesting the Minister’s decision. When the Authority receives the document or when it grants an application filed by a mutual company, the Authority processes the articles or the cancellation application received, issues the appropriate certificate in accordance with Chapter XVIII of the Business Corporations Act then sends a copy of the certificate and of the articles to the enterprise registrar, who deposits them in the enterprise register.

“CHAPTER XIII

“CONTINUANCE

“DIVISION I

“CONTINUANCE AS AN INSURANCE COMPANY

“§1. — *General provisions*

“302. The following legal persons may be continued as insurance companies:

(1) a legal person constituted under the laws of a jurisdiction other than Québec, if the Act governing the legal person confers on it the capacity to carry on insurer activities; and

(2) an authorized insurer constituted under a private Act of Québec.

An insurer is continued as a business corporation if it is of the nature of such a corporation; otherwise, it is continued as a mutual company.

“§2. — *Application for continuance*

“303. In addition to the articles of continuance required to be filed under section 289 of the Business Corporations Act, continuance as an insurance company requires a permission granted by the Minister following the filing of an application for continuance with the Authority.

An application for continuance by an authorized insurer that is of the nature of a business corporation must include the name and address of each of the holders of a significant interest in the insurer.

“304. The following must be filed with the application for continuance:

(1) the articles of continuance and other documents that, under section 292 of the Business Corporations Act, must be sent to the enterprise registrar;

(2) the other documents prescribed by regulation of the Minister; and

(3) the fees prescribed by government regulation for processing the application for continuance.

“305. A legal person constituted under the laws of a jurisdiction other than Québec that files an application for continuance but that is not an authorized insurer is required, when filing that application, to also file an application for authorization with the Authority.

“306. On receipt of the application for continuance and the required documents and fees, the Authority processes, if applicable, the application for authorization and prepares a report on the reasons for granting or denying the application for continuance.

The report must also include the information from the report it must prepare in accordance with section 215 when processing an application to become regulated by this Title.

“307. The Authority sends its report to the Minister, together with the application for continuance and the accompanying documents, unless the Authority denies the application for authorization made, if applicable, in accordance with section 305.

“§3.—*Minister’s decision*

“308. The Minister may, if the Minister considers it advisable, allow the continuance of the authorized insurer.

“309. When ruling on an application filed by an authorized insurer, the Minister must send the insurer and the Authority a document attesting the decision.

“§4.—*Provisions applicable to continuance as a business corporation*

“310. An authorized insurer that is continued as a regulated business corporation may, from receipt of the document attesting the Minister’s permission, send the enterprise registrar the articles of continuance that were filed with the application for continuance.

The document attesting the Minister’s permission must be filed with the articles sent to the enterprise registrar.

“311. An authorized insurer becomes, as of the date and, if applicable, the time shown on the certificate of continuance issued by the enterprise registrar, a regulated business corporation.

In addition, in the case of an authorized Québec insurer constituted under a private Act, the articles of continuance are, as of that time, substituted for that Act, which ceases to have effect.

“312. When the articles of continuance of an authorized insurer continued as a business corporation are deposited in the enterprise register, the enterprise registrar sends a certified copy of them to the Authority.

“§5.—Provisions applicable to continuance as a mutual company

“313. On receipt of a document attesting the permission granted by the Minister for the continuance of an authorized insurer as a mutual company, the Authority processes the articles of continuance received, issues the appropriate certificate in accordance with Chapter XVIII of the Business Corporations Act then sends a copy of the certificate and of the articles to the enterprise registrar, who deposits them in the enterprise register.

In addition, in the case of an authorized Québec insurer constituted under a private Act, the articles of continuance are, as of that time, substituted for that Act, which ceases to have effect.

“§6.—Provisions applicable to the continuance of authorized insurers constituted under a private Act of Québec

“314. Despite any provision to the contrary, an authorized insurer constituted under a private Act of Québec may apply for the Minister’s permission under section 308 provided the insurer has been authorized to do so by a special resolution of its members.

“315. The Minister may require that the articles of continuance of an authorized insurer constituted under a private Act of Québec include the conditions or restrictions prescribed by that Act if they are not prescribed by this Act.

Those conditions and restrictions are called “entrenched provisions”.

“DIVISION II

“CONTINUANCE UNDER THE LAWS OF A JURISDICTION OTHER THAN QUÉBEC

“§1.—General provisions

“316. An insurance company may not, without the Minister’s permission, apply for continuance under the laws of a jurisdiction other than Québec under section 297 of the Business Corporations Act.

A mutual company that is a member of a federation may not apply for the Minister’s permission without being authorized to do so by the federation.

“317. To obtain the Minister’s permission, an insurance company must file an application for permission with the Authority.

The company must, in the application, show that the holders of insurance contracts it has underwritten, its other creditors and its members will not suffer injury as a result of the continuance.

“318. The following must be filed with the application for permission:

(1) the notice of intention to change the corporation’s home regulator described in section 150;

(2) if applicable, a certified copy of the federation’s resolution authorizing the mutual company that is a member of the federation to apply for the Minister’s permission;

(3) the other documents prescribed by regulation of the Minister; and

(4) the fees prescribed by government regulation.

“§2.—*Application and Authority’s report*

“319. On receipt of the application and the required documents and fees, in addition to publishing the notice of intention and reviewing the authorization under section 155, the Authority must prepare a report on the reasons for granting or denying the application.

Among other things, the Authority indicates in the report whether, in its opinion, the holders of insurance contracts underwritten by the insurance company, its other creditors and its members will not suffer injury as a result of the continuance.

“320. The Authority sends its report to the Minister, together with the application for permission and the accompanying documents.

“§3.—*Minister’s decision*

“321. The Minister may, if the Minister considers it advisable, grant the insurance company the permission to apply for continuance under the laws of a jurisdiction other than Québec under section 297 of the Business Corporations Act.

The Minister does not grant permission if the continuance entails the demutualization of the mutual company or is likely to allow mutual members to appropriate the company’s surplus.

“322. When ruling on an application by an insurance company, the Minister must send the company and the Authority a document attesting the decision.

The company must include the document with the application it sends to the enterprise registrar in accordance with section 297 of the Business Corporations Act.

“323. An insurance company ceases to be regulated by this Title as of the date and, if applicable, the time shown on the certificate of discontinuance issued under section 302 of the Business Corporations Act.

The enterprise registrar sends the Authority a certified copy of the certificate of discontinuance that the registrar issued in respect of a regulated business corporation.

“CHAPTER XIV

“AMALGAMATION

“DIVISION I

“GENERAL PROVISIONS

“324. In addition to the articles of amalgamation and, as applicable, the amalgamation agreement required to be filed under the Business Corporations Act, an amalgamation involving an insurance company requires the Minister’s permission and the filing of an application for that purpose with the Authority, together with a notice of intention to amalgamate under section 149.

“325. The amalgamation of a regulated business corporation with one or more other business corporations, regardless of whether the latter are regulated business corporations, is allowed only if the amalgamated corporation is an authorized insurer.

“326. Only a mutual company may amalgamate with another mutual company.

Despite section 281 of the Business Corporations Act, the short-form amalgamation of mutual companies is not allowed.

“327. An amalgamation agreement entered into by mutual companies must contain, rather than the elements set out in section 277 of the Business Corporations Act, the following elements:

(1) in respect of the amalgamated mutual company, the provisions that are required to be included in such a company’s articles of constitution;

(2) the name and domicile of each director of the amalgamated mutual company;

(3) the members’ rights and obligations referred to in the certificates of participation issued to the members, if applicable;

(4) the number of shares issued by each of the amalgamating mutual companies, and the amount of the contribution required for their issue, the maximum interest that may be paid on such shares and, if applicable, the manner in which they may be converted;

(5) the by-laws proposed for the amalgamated mutual company, or a statement that the by-laws of the amalgamated mutual company are to be those of one of the amalgamating mutual companies;

(6) if applicable, the name of the federation of which the amalgamated mutual company will be a member; and

(7) details of any arrangements necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated mutual company.

“DIVISION II

“APPLICATION FOR PERMISSION TO AMALGAMATE

“328. An application for permission to amalgamate must include, in addition to the information required to be included in a notice of intention to amalgamate under section 149, the information prescribed by regulation of the Authority.

The application must also include the name and address of each holder of a significant interest in the amalgamated business corporation, if any.

In the case of an amalgamation involving more than one insurance company, the application must be a joint one.

“329. In addition to the notice of intention, the following must be filed with the application:

(1) the articles of amalgamation;

(2) the amalgamation agreement, except in the case of a short-form amalgamation, within the meaning of the Business Corporations Act, where one of the amalgamating business corporations is a regulated business corporation;

(3) the special resolutions of the shareholders or, as applicable, the mutual members authorizing the amalgamation of each amalgamating company;

(4) the resolution of the federation that has undertaken to admit the amalgamated mutual company, if applicable;

(5) the other documents prescribed by regulation of the Minister; and

(6) the fees prescribed by government regulation.

“330. On receipt of the application and the required documents and fees, in addition to publishing the notice of intention and reviewing the authorization under section 155, the Authority must prepare a report for the Minister on the reasons for granting or denying the application for permission to amalgamate.

The report must include, in particular, the information from the report the Authority must prepare in accordance with section 215 when processing an application to become regulated by this Title.

“331. The Authority sends the Minister its report, together with the application for permission to amalgamate and the documents filed with it, unless it determines that the amalgamated company would not be an authorized insurer.

“DIVISION III

“MINISTER’S DECISION

“§1.—*General provisions*

“332. The Minister may, if the Minister considers it advisable, allow the amalgamation of an insurance company.

“333. The Minister may require that the amalgamated insurance company’s articles of amalgamation include any entrenched provision, within the meaning of section 315, contained in the articles of any of the amalgamating companies.

“334. When ruling on an application for permission to amalgamate, the Minister must send the Authority and the amalgamating companies a document attesting the decision.

“§2.—*Provisions applicable to the amalgamation of business corporations*

“335. Amalgamating business corporations may, from receipt of the document by which the Minister grants permission, send the enterprise registrar the articles of amalgamation that were filed with the application for permission to amalgamate.

The document by which the Minister grants permission must be filed with the articles of amalgamation sent to the enterprise registrar.

“336. The amalgamated corporation is, as of the date and, if applicable, the time shown on the certificate of amalgamation issued by the enterprise registrar, a regulated business corporation.

“337. When the articles of amalgamation of a regulated business corporation are deposited in the enterprise register, the enterprise registrar sends a certified copy of them to the Authority.

“§3.—*Provisions applicable to the amalgamation of mutual companies*

“338. On receipt of a document attesting the permission granted by the Minister for the amalgamation of mutual companies, the Authority processes the articles of amalgamation, issues the certificate of amalgamation in accordance with Chapter XVIII of the Business Corporations Act then sends a copy of the certificate and of the articles to the enterprise registrar, who deposits them in the enterprise register.

“CHAPTER XV

“TERMINATION OF REGULATION BY THIS TITLE

“DIVISION I

“GENERAL PROVISION

“339. Unless it is continued under the laws of a jurisdiction other than Québec, an insurance company may cease to be regulated by this Title only if the revocation of the authorization granted to it by the Authority is full and final.

“DIVISION II

“PROVISIONS SPECIFIC TO REGULATED BUSINESS CORPORATIONS

“340. A business corporation ceases to be regulated by this Title when the full revocation of the authorization granted to it by the Authority becomes final.

“341. A regulated business corporation may apply for a full revocation of the authorization only if it is authorized to do so by its shareholders and the latter have authorized it to change its name for one that does not include a word or expression reserved under section 486.

“342. Shareholder authorization is given by special resolution.

By that resolution, the shareholders also authorize a director or an officer of the business corporation to see to the preparation of the documents necessary for the revocation and of those necessary for the corporation’s change of name, and to sign those documents.

“343. A consent, declaration or decision referred to in section 304 of the Business Corporations Act and whose object is the dissolution of a regulated business corporation has no effect other than granting the authorizations referred to in section 341, until the corporation ceases to be regulated by this Title.

“DIVISION III

“PROVISIONS SPECIFIC TO MUTUAL COMPANIES

“344. A mutual company the revocation of whose authorization is full and final may continue to carry on its activities only in order to liquidate and dissolve. Its dissolution terminates its being regulated by this Title.

As a result, a mutual company may apply for a full revocation of the authorization granted to it by the Authority only if the mutual members have consented to its dissolution and appointed a liquidator.

“345. Despite section 304 of the Business Corporations Act, a mutual company may not be dissolved otherwise than by the consent of the mutual members or the closure of the liquidation ordered within the scope of a receivership ordered under Chapter III.1 of Title I of the Act respecting the regulation of the financial sector.

“346. A mutual company must be liquidated before it is dissolved.

The liquidation of a mutual company may begin only once the full revocation of the authorization granted to it by the Authority becomes final.

“347. All proceedings against the property of a mutual company, in particular by seizure in the hands of a third person, seizure before judgment or seizure in execution, are to be suspended as soon as notice of the mutual company’s intention to apply for the full revocation of the authorization is published in accordance with section 173.

The costs incurred by a creditor after being informed of the liquidation must not be collocated out of the proceeds of the property of the mutual company that are distributed as a result of the liquidation.

A judge of the Superior Court of the district in which the mutual company’s head office is located may however, on the conditions the judge considers appropriate, authorize the institution of, or put an end to the stay of, a proceeding.

“348. The liquidation of a mutual company is carried out under the Authority’s supervision and control.

“349. Any application made to the court under the Business Corporations Act must be notified to the Authority.

“350. The liquidator must send the summary accounts rendered and the final account produced in accordance with sections 336 and 339 of the Business Corporations Act to the Authority at the time those accounts are sent to the mutual members.

“351. Despite section 323 of the Business Corporations Act, the remaining property of a mutual company may not be distributed among the mutual members; it must be remitted to the federation of which the mutual company is a member for the federation to pay into its guarantee fund or, if the mutual company is not a member of a federation, to a mutual company designated by the mutual members. In the absence of such a designation, the remaining property is remitted to the Minister of Finance.

“352. Section 305 of the Business Corporations Act and paragraphs 6, 7 and 8 of section 354 of that Act apply, with the necessary modifications, to the legal person that receives the remaining property of a mutual company.

“CHAPTER XVI

“SELF-REGULATORY ORGANIZATIONS

“DIVISION I

“GOVERNANCE

“§1. — *Board of directors*

“353. The board of directors of a self-regulatory organization exercises functions and powers relating to the organization’s insurance business; the board must establish a professional liability insurance decision-making committee.

Within the limits provided by law, the board may delegate the exercise of some of those functions and powers. However, it must delegate exclusively to the professional liability insurance decision-making committee all functions and powers relating to the processing of notices of loss likely to fall under the coverage of the insurance contracts underwritten by the organization.

“354. The board of directors of a self-regulatory organization may not delegate the exercise of the following functions and powers:

- (1) appointing the members of the decision-making committee;
- (2) approving an investment policy for the insurance fund established by the organization;
- (3) determining the extent of the coverage offered and the tariff of rates and amounts of premiums;
- (4) imposing a special assessment in order to maintain in the insurance fund adequate assets to meet the liabilities charged against it, as and when they become due, and adequate capital to guarantee that it can serve its purpose; and
- (5) appointing the auditor and the actuary of the insurance fund.

“355. A member of the decision-making committee of a self-regulatory organization who resigns must declare his or her reasons in writing to the organization and the Authority.

The same is true for a member of the board of directors who, while not a member of the decision-making committee, resigns for reasons relating to the organization’s insurance business.

“356. The asset investment activities of the insurance fund and its other financial transactions with natural persons or groups that are restricted parties with respect to the fund must be carried on in the same manner as they would when carried on at arm’s length.

Consequently, a contract affecting the insurance fund entered into with a natural person or group that is a restricted party with respect to the fund must be as advantageous for the fund than if it had been entered into at arm's length.

“357. For the purposes of section 356, the following natural persons and groups are restricted parties with respect to a self-regulatory organization:

(1) the self-regulatory organization, its directors and officers and the members of its decision-making committee;

(2) the manager of the fund's day-to-day operations referred to in section 358 and, if applicable, that manager's directors and officers;

(3) the natural persons and groups having economic ties with the persons described in paragraphs 1 and 2; and

(4) any other person or group designated under section 112.

“§2.—Manager of the insurance fund's day-to-day operations

“358. A self-regulatory organization may, in addition, entrust a manager with the day-to-day operations of its insurance fund, including the collection of premiums, the delivery of policies, the payment of indemnities, reinsurance transfers, fund asset investment activities and its other financial transactions.

“359. Sections 45 to 49 apply to a self-regulatory organization and the manager of the insurance fund's day-to-day operations as if the organization were the holder of control of the manager.

“§3.—Professional liability insurance decision-making committee

“360. The professional liability insurance decision-making committee to be established under section 353 must be composed of at least three members, only one of whom is also on the board of directors of the self-regulatory organization.

“361. A person need not be governed by the self-regulatory organization to be part of its decision-making committee, except for the committee member who is also on the organization's board of directors.

“362. In addition to persons disqualified for office under the Civil Code, the following cannot be members of the decision-making committee:

(1) insurance representatives and claims adjusters, within the meaning assigned to those expressions by the Act respecting the distribution of financial products and services, and directors or officers of another legal person dealing with the self-regulatory organization in a similar capacity; or

(2) a director, officer or employee of the manager that has been entrusted with the fund's day-to-day operations.

“363. If members of the decision-making committee of a self-regulatory organization are sued by a third person for an act done in the exercise of their functions, the self-regulatory organization assumes their defence and pays any damages awarded as compensation for the injury resulting from that act, unless they committed a gross fault or a personal fault separable from their functions.

In penal or criminal proceedings, however, the organization pays the defence costs of the committee members only if they had reasonable grounds for believing that their conduct was lawful or if they have been discharged or acquitted.

If the organization sues a committee member for an act done in the exercise of his or her functions and loses its case, it pays the committee member's defence costs if the court so decides.

If the organization wins its case only in part, the court may determine the amount of the defence costs the organization must pay.

“DIVISION II

“INSURANCE FUND

“§1. — *Composition and administration*

“364. The insurance fund of an authorized self-regulatory organization consists of premiums and other sums generated by the organization's insurer activities.

The organization's board of directors must approve the investment policy of the fund.

The organization must send the investment policy to the Authority at the Authority's request.

“365. The assets of the insurance fund constitute a division of the authorized self-regulatory organization's patrimony to be used exclusively for the organization's insurance business. The liabilities contracted by the organization as part of such business are charged against the fund.

The fund's assets must be reported as separate items in the organization's books, registers and accounts.

“366. No creditor of the self-regulatory organization has any right in the assets of the insurance fund except under a claim resulting from the organization's insurance business.

Conversely, no creditor of the insurance fund has any right in the organization's other assets.

“367. An authorized self-regulatory organization must maintain in the insurance fund adequate assets to meet the liabilities charged against the fund, as and when they become due, and adequate capital to guarantee that the fund can serve its purpose.

“368. All costs relating to the self-regulatory organization's insurance business are charged against the insurance fund.

“369. An authorized self-regulatory organization must send holders of an insurance contract underwritten by the organization an annual report that includes

(1) the names of the members of its decision-making committee and, if applicable, the name and address of the manager of the insurance fund's day-to-day operations;

(2) the number of persons governed by the organization that it insures;

(3) the fund's audited financial statements, accompanied by the auditor's report; and

(4) any other information required by regulation of the Authority.

The report appears in a document setting out the organization's activities and financial position that the organization is otherwise required to send annually to the persons governed by it.

The fund's fiscal year ends on the same date as the organization's fiscal year.

“§2.—*Liquidation*

“370. The insurance fund of a self-regulatory organization may not be liquidated before the full and final revocation of the authorization granted to the organization by the Authority.

“371. The liquidation of an insurance fund arises from a resolution of the board of directors of the self-regulatory organization that established the fund or from an order made within the scope of a receivership ordered under Chapter III.1 of the Act respecting the regulation of the financial sector.

“372. In order to liquidate the insurance fund, a liquidator must be appointed by the board of directors or the Superior Court, depending on whether the liquidation arises from a decision of the board or of the Court. On being appointed, the liquidator has the seisin of the insurance fund, and the decision-making committee ceases to exist.

“373. Sections 346 to 350 apply, with the necessary modifications, to the liquidation of the insurance fund, except any reference made to the Business Corporations Act.

“374. After performing or obtaining forgiveness of the self-regulatory organization’s obligations in relation to its insurance business or otherwise making provision for them, the liquidator sends a final account to the organization’s board of directors and to the Authority.

The remaining property of the insurance fund, if any, is remitted to the organization.

“CHAPTER XVII

“MINISTER’S POWERS

“375. The Minister may request the Authority to provide the documents and information the Minister considers useful in assessing the applications on which the Minister is to rule in accordance with this Title.

“TITLE IV

“FEDERATION OF MUTUAL COMPANIES

“CHAPTER I

“GENERAL PROVISIONS

“376. A federation of mutual companies is a legal person. The constitution, organization, operation, dissolution and liquidation regime applicable to a federation under this Title is supplemented by the one applicable to a mutual company, except Division IV of Chapter IV, Chapters VI to VIII, subdivision 3 of Division II and Divisions III and IV of Chapter IX and Chapters X, XI, XIII and XIV.

“377. A federation has no share capital.

“CHAPTER II

“CONSTITUTION, ORGANIZATION AND NAME

“378. A federation may be constituted if at least six mutual companies that are authorized insurers undertake to become members of the federation and the sums that the companies must pay into the guarantee fund are available.

The guarantee fund is a distinct autonomous patrimony.

The companies are the federation’s promoters. The constitution of a federation entails the creation of its guarantee fund.

“379. The mutual members of a promoting mutual company authorize, by special resolution, a director of the company to represent it for the purpose of constituting and organizing the federation.

“380. A mutual company that is a member of a federation may promote another federation. The company must notify the federation of which it is a member of the meeting to be held at which the special resolution referred to in section 379 is to be discussed.

A representative of the federation may attend the meeting and be heard.

“381. On receiving the application for the constitution of a federation, the Authority must, if applicable, send the federations of which the promoting mutual companies are members a notice specifying the time limit for submitting their observations to the Authority.

The federations’ observations are attached to the report the Authority must make to the Minister in accordance with section 215.

“382. The promoting mutual companies are, by operation of law, members of the federation as soon as it is constituted.

“383. The representatives authorized by the promoting mutual companies under section 379 must be called to the federation’s organization meeting.

“384. The name of a federation must include the words “federation of mutual companies” as well as an expression to be included in the name of every member mutual company.

“CHAPTER III

“MISSION

“385. A federation promotes the development of its member mutual companies and supports them in their insurer activities, thereby facilitating their compliance with their obligations.

For that purpose, the federation

- (1) defines the objectives of the financial group and coordinates its activities;
- (2) to the extent provided by this Act, supervises and controls the member companies and the partnerships and legal persons that are controlled by them;
- (3) administers a guarantee fund; and
- (4) provides services to the member companies and their mutual members as well as to the partnerships or legal persons belonging to the financial group.

In addition, a federation promotes mutuality.

“386. A federation is, by operation of law, surety for the member companies toward their insureds and toward the holders of insurance contracts that the member companies underwrite.

The suretyship is limited by the assets in the guarantee fund.

“387. A federation may be the holder of control of any group, unless the group carries on the same insurer activities as the mutual companies that are members of the federation.

However, a federation may be the holder of control of a reinsurer even if the reinsurer carries on such activities.

“CHAPTER IV

“EXAMINATION OF COMPLAINT RECORDS AND MANAGEMENT PRACTICES

“DIVISION I

“EXAMINATION OF COMPLAINT RECORDS

“388. A federation must adopt a policy on the examination of complaint records for complaints filed by complainants who are clients of its members.

“389. The federation must also keep a register of the complaint records submitted for its examination.

“390. Within 10 days after receiving a complaint record, the federation must send the complainant a notice stating the date of receipt and the complainant’s right under section 391 to have the record reviewed by the Authority.

“391. A complainant whose complaint record has been sent to the federation may, if dissatisfied with the examination carried out by the federation or its outcome, request the federation to have the record reviewed by the Authority.

The federation is required to comply with the request and send the record to the Authority.

“392. Sections 55 to 57 apply, with the necessary modifications, to the review of the record or to conciliation or mediation to which the federation is party.

“393. On the date set by the Authority, the federation must send it a report on the complaint record examination policy adopted in accordance with section 388 stating in particular the number of complaint records that the federation has registered in the register of complaint records submitted for its examination and their nature.

The report must cover the period determined by the Authority.

“DIVISION II

“MANAGEMENT PRACTICES

“394. A federation must adhere to sound and prudent management practices.

Such practices must, in particular, conduce to good governance and compliance with the laws governing the federation’s activities.

“395. The federation must be able to show to the Authority that it adheres to sound and prudent management practices.

“CHAPTER V

“DIRECTORS AND OFFICERS

“396. A majority of the directors of a federation must be elected from among the directors of its member mutual companies who are mutual members.

The federation’s by-laws prescribe the manner in which all members of the board of directors are to be elected. They may provide that the general managers of the member companies may be elected as federation directors. However, such managers may not make up more than one-third of the federation’s board of directors.

“397. The term of office of a federation director is not more than three years.

“398. A federation must establish, within its board of directors, an audit committee whose functions are the same as those, under section 103, of the audit committee of an authorized Québec insurer.

“399. The general manager of a federation or of a mutual company that is a member of the federation may not be the president or the vice-president of the federation or the chair or vice-chair of its board of directors.

“CHAPTER VI

“MEMBERS

“DIVISION I

“ADMISSION, WITHDRAWAL AND EXPULSION

“§1.—*Admission*

“400. Only mutual companies that are Québec insurers may be members of a federation.

Only mutual companies that all carry on insurer activities either only in insurance of persons or only in damage insurance may be members of a same federation.

“401. A federation’s by-laws establish the conditions on which mutual companies may be admitted as members and members may withdraw or be expelled as well as members’ rights and obligations.

Those conditions, rights and obligations are submitted to the Authority for approval.

“402. To be a member of a federation, a mutual company must apply for membership after being authorized to do so by a special resolution of its mutual members.

“403. A federation may give an undertaking to the promoters of a mutual company, before its constitution, to admit the mutual company as a member.

Despite section 402, the mutual company is, by operation of law, a member of the federation as soon as the latter is constituted.

“404. The federation must send its decision on the admission application of a mutual company to the company or, if applicable, the company’s promoters.

The federation must send a copy of the decision to the Authority.

“405. A mutual company may, within 15 days after receiving the federation’s decision on its admission application, apply to the Authority for a review of the decision.

The mutual company and the federation must have access to the record relating to the application for review. The Authority must give them an opportunity to submit observations.

The company’s application for review suspends the federation’s decision.

“406. The Authority’s decision must include reasons and be sent to the mutual company and the federation. The Authority’s decision is final.

“§2. — *Withdrawal*

“407. A mutual company that is a member of a federation may withdraw from the federation only if, in the Authority’s opinion, the federation does not as a result become unable to fulfill its obligations, in particular as regards maintaining the required capital in the guarantee fund.

The Authority rules on the mutual company’s withdrawal at the same time as it conducts a review, in accordance with subparagraph 6 of the first paragraph of section 146, of the authorization granted to the mutual company. Before ruling on the withdrawal, the Authority sends to the federation and the company the notice prescribed under section 166. Sections 167 and 168 apply to the contestation of the Authority’s decision, with the necessary modifications.

“§3. — *Expulsion*

“408. The federation must, at least 30 days before expelling a member company, send the company and the Authority a notice of the decision.

“409. Sections 405 and 406 apply to a federation’s decision to expel a member company, with the necessary modifications.

“DIVISION II

“MEETINGS

“410. The meeting of the member companies of a federation is composed of those of their directors that represent them. The federation’s by-laws prescribe the number of directors that the member companies may designate in order to represent them at the meeting.

Each representative is entitled to only one vote.

“411. A federation’s board of directors must call a special meeting to make any decision requiring the vote of at least two-thirds of the member company representatives present.

Any amendment to the by-laws requires confirmation by the vote of at least two-thirds of the representatives present.

“412. Quorum at a meeting may not be less than 20% of all the representatives who make up the meeting of the member companies of the federation.

“413. One-third of the member companies of the federation may, by means of a notice, requisition the board of directors to call a special meeting for the purposes stated in the requisition.

“DIVISION III

“ASSESSMENTS AND FEES

“414. A federation may require that its member companies pay the assessments it considers necessary for its operation.

A federation may also impose fees on a member company that avails itself of services that the federation offers.

“CHAPTER VII

“GUARANTEE FUND

“DIVISION I

“INTRODUCTORY PROVISIONS

“415. The guarantee fund of a federation is to be used to provide financial support to its member companies in order to protect the rights of their insureds and of the holders of insurance contracts that they underwrite.

The fund consists of capital made up of the contributions of the member companies and, if applicable, the remaining property from the liquidation of a member company.

“416. The federation determines the amount of capital that must be maintained in the guarantee fund.

It informs the Authority of the amount as well as the reasons that led to that amount being determined and, if applicable, the circumstances justifying its modification.

“417. The creditors of the federation have no right to the assets of the guarantee fund.

“DIVISION II

“CONTRIBUTION

“418. The federation must require its member companies to pay a contribution whenever this is necessary to maintain the capital of the guarantee fund.

“419. The federation must send each member company an annual statement showing

(1) the sum of the contributions the member company has paid into the capital of the guarantee fund since its admission; and

(2) the proportion that that sum is of the total contributions of the member companies.

“420. A member company resigning or expelled from the federation may, by sending a written notice at least 90 days before the end of the guarantee fund’s fiscal year, request the repayment of its contributions.

The repayment corresponds to the lesser of

(1) the total contributions the member company paid; and

(2) the amount obtained by multiplying the surplus of the assets of the guarantee fund over its liabilities by the proportion referred to in paragraph 2 of section 419.

The repayment may not be made before the following fiscal year.

“DIVISION III

“SUPPORT TO MEMBER COMPANIES

“421. A federation may pay rebates to its member companies out of the revenue generated by the guarantee fund, in the proportion referred to in paragraph 2 of section 419.

“422. In addition to using the guarantee fund for the purposes of the suretyship under section 386, a federation may use it to

(1) make loans and grants to its member companies;

(2) guarantee the repayment of an advance or loan granted to a member company;

(3) acquire all or some of a member company’s assets; and

(4) acquire shares of a member company.

“423. The federation may, when providing support to a member company, impose measures on it to correct its management practices.

“424. If the federation exercises the right to request the redemption of the shares that it has acquired in compliance with this division, the amount of the shares for which it requests redemption in a year must be limited to the lesser of

(1) the balance of the non-redeemed shares;

(2) 50% of the net profit realized by the member company in the fiscal year; and

(3) the sum whose payment would decrease a member company's capital below the amount necessary to ensure its sustainability.

“DIVISION IV

“INVESTMENTS

“425. An investment policy must be approved by the federation's board of directors for the guarantee fund.

The investment policy must, in particular,

(1) provide for the appropriate diversification of those investments; and

(2) include a description of the types of investments and other financial transactions that it authorizes and the limits applicable to those investments and transactions.

The federation must send its investment policy to the Authority at the Authority's request.

“426. The federation must follow the investment policy approved by its board of directors.

“CHAPTER VIII

“SEGREGATED INVESTMENT FUNDS

“427. A federation may, by resolution, establish and administer funds, segregated from its other assets, to grow the sums contributed to the funds by investing them for profit.

The federation may make a public offering of securities to establish or increase a segregated investment fund and may issue negotiable instruments.

“428. A contribution to a segregated investment fund confers the right, in proportion to the contribution and according to the conditions and at the intervals determined by the federation's by-laws, to participate in the sharing of the fund's net revenue and in its capital. That right is a claim against the federation.

Such funds are each a division of the federation's patrimony to be used for the performance of that claim, to the exclusion of any other obligation of the federation.

“429. The segregated investment funds are assessed annually.

The Authority determines, by regulation, standards for financial disclosure to participating members and, if applicable, to other holders of securities issued by the federation as consideration for a contribution to such a fund.

“CHAPTER IX

“SUPERVISION AND CONTROL OF MEMBER COMPANIES

“DIVISION I

“GENERAL POWERS

“430. A federation may, in particular,

(1) develop policies on the carrying on by member companies of their activities;

(2) examine the books and accounts of member companies;

(3) whenever it considers it necessary, require member companies to provide any information and file any document;

(4) enter into agreements with member companies for the supervision, administration or management of their affairs for a specified period;

(5) designate the insurers with which member companies may enter into contracts of reinsurance;

(6) negotiate reinsurance agreements for member companies;

(7) act as receiver in accordance with Chapter III.1 of Title I of the Act respecting the regulation of the financial sector; and

(8) act as the liquidator or sequestrator of a member company.

“431. A federation must see to it that the services of an auditor and an actuary are provided to its member companies.

“432. Only the board of directors may authorize, on the terms and conditions that it determines, one or more member companies of the federation

(1) to carry on, in accordance with the law, activities other than those of an insurer; or

(2) to be the holder of control of a business corporation that carries on insurer activities.

“433. A federation may register a member company as a firm for an insurance sector in accordance with the Act respecting the distribution of financial products and services.

“434. A federation’s by-laws may include

(1) the description of the territory in which each member company is to carry on its activities;

(2) the standards applicable to member companies as regards any financial or administrative matter; and

(3) the content and form of the report that each member company must prepare so that the federation can determine the amount of its assessments and the procedure for sending it.

The description of the territory in which each member company is to carry on its activities must be approved by a resolution passed by at least three-quarters of the votes cast by the member companies.

“435. The mutual members of a member company of a federation and third persons may presume that the member company is exercising its powers in accordance with the federation’s policies and by-laws and the resolutions of the federation’s board of directors.

“DIVISION II

“MEMBER COMPANIES’ COMMON BY-LAWS

“436. The meeting of member companies passes, by special resolution, the common by-laws that apply to all the member companies.

Each member company may, by special resolution, pass by-laws that apply to its own affairs and that diverge from the common by-laws to the extent that the common by-laws allow.

“437. The meeting may, by special resolution, delegate to the federation’s board of directors the power to adopt common by-laws.

“438. The federation sends the common by-laws to the Authority. Each member company that passes by-laws applicable to its own affairs must send them to the federation, which sends them to the Authority.

“DIVISION III

“INSPECTION OF MEMBER COMPANIES

“439. The affairs of the member companies of a federation are inspected by the federation at least once every other year or whenever it considers it necessary for the protection of the insureds and of the holders of insurance contracts that the member companies underwrite.

The inspection of the affairs of a member company must cover such matters as

- (1) its administrative structure;
- (2) whether it conducts its affairs in an orderly manner;
- (3) the effectiveness of its board of directors;
- (4) the availability of reliable financial information; and
- (5) whether the obligations imposed on member companies under this Act have been satisfied.

The federation produces a report of its inspection and sends it to the Authority and to the member company's board of directors. If the federation calls a meeting or at the request of the member company's board of directors, the report is presented to the member company's directors, and the federation is required to provide them with the explanations they request.

“440. A federation may, by agreement with the Authority, inspect the member companies registered as firms under the Act respecting the distribution of financial products and services.

An agreement may specify

- (1) the content and form of the report that the federation must submit to the Authority and the procedure for sending it; and
- (2) any other measure that the Authority considers appropriate.

Sections 107 and 113 of that Act apply, with the necessary modifications, to inspections performed under this section.

“441. The federation may, following an inspection, order that a special meeting of mutual members of the inspected company be called to communicate to them the information the federation considers relevant and propose measures for adoption.

“CHAPTER X

“BOOKS AND ACCOUNTS

“442. A federation must keep, in addition to its own books and accounts, separate books and accounts for its guarantee fund and, if applicable, for each of its segregated investment funds.

“443. A federation's books and accounts must be audited annually.

“444. The fiscal year of a federation’s guarantee fund and, if applicable, segregated investment funds, is that of the federation.

“445. Chapter VII of Title II applies, with the necessary modifications, to the federation’s auditor.

“CHAPTER XI

“ANNUAL REPORT AND STATEMENTS

“446. The annual report of a federation must include

- (1) the names and addresses of its directors;
- (2) its financial statements;
- (3) the financial statements of its guarantee fund and, if applicable, of its segregated investment funds;
- (4) a statement of each member company’s contribution to the capital of the guarantee fund; and
- (5) the auditors’ reports.

The federation must send a copy of its annual report to the member companies.

“447. A federation must prepare, in accordance with the content and form that the Authority determines, an annual statement as at the closing date of its most recent fiscal year.

The annual statement must separately show the financial positions of the federation and of the guarantee fund.

The annual statement must be certified by two of the federation’s directors.

The federation’s annual report and the résumé of each of the directors and officers must be filed with the annual statement, if they have not already been sent to the Authority.

“448. The annual statement and documents filed with it must be sent to the Authority on the date it determines.

“CHAPTER XII

“DISSOLUTION AND LIQUIDATION

“DIVISION I

“DISSOLUTION

“449. A federation may be liquidated then dissolved only by order of the Minister.

The order to dissolve a federation entails the liquidation of its guarantee fund and, if applicable, that of its segregated investment funds.

Unless the Authority is itself acting in that capacity, it must designate the liquidator of the federation and its funds.

“450. The Minister may, if the Minister considers it advisable, order the Authority to dissolve a federation that has not remedied one of the following failures within the specified time limit:

- (1) the organization meeting is not held within the time limit specified in its application for constitution;
- (2) fewer than six mutual companies are members of the federation; or
- (3) an annual meeting has not been held for two consecutive years.

“451. If the Authority finds that a federation is in default, the Authority must send it a notice stating

- (1) the default noted;
- (2) the possibility that the Minister may order the dissolution of the federation; and
- (3) the time granted to the federation to remedy the default or submit observations.

The Authority publishes the notice in its bulletin.

“452. If the default has not been remedied on the expiry of the time specified in the notice, the Authority prepares a report stating that fact and the reasons for dissolving or not dissolving the federation.

Any observations from the federation are filed with the report.

The report is sent to the Minister and the federation.

“453. Any interested person may, within three years of the dissolution ordered by the Minister, ask the Minister to revoke the decision.

The Minister may, if the Minister considers it advisable, order the Authority to revive the federation on the conditions the Minister determines. Sections 367 to 371 of the Business Corporations Act apply to the revival, with the necessary modifications.

“DIVISION II

“LIQUIDATION

“§1. — *General provisions*

“454. The notice of liquidation must include a statement that the liquidation of the federation entails that of its guarantee fund and, if applicable, that of its segregated investment funds.

The notice must also state the address to which claims may be sent by interested persons and, if applicable, the name and address of the liquidator designated by the Authority.

“455. The liquidator designated by the Authority must, within seven days after the end of every three-month period following the date of his or her appointment, make a summary report of his or her activities for that period to the Authority.

The report must show the receipts and expenses of the liquidation and include a statement of the federation’s assets and liabilities, guarantee fund and, if applicable, segregated investment funds as at the end of that three-month period.

“§2. — *Conduct of the liquidation*

“456. The following claims are the prior claims, by preference over other claims, and are collocated in the following order:

(1) the costs and fees of the liquidation; and

(2) the salaries and wages of paid federation staff members, up to three months of unpaid salary.

“457. The balance of the federation’s assets, guarantee fund and, if applicable, segregated investment funds is shared between the member companies in proportion to their contribution.

“TITLE V

“MEASURES AND OTHER POWERS OF THE AUTHORITY

“CHAPTER I

“INTRODUCTORY PROVISION

“458. For the purposes of this Title, “authorized insurer” includes an authorized reciprocal union.

“CHAPTER II

“INSTRUCTIONS, GUIDELINES AND ORDERS

“459. The Authority may establish instructions for an authorized insurer or a federation of which such an insurer is a member.

Instructions must be in writing and must be specific to the addressee, but need not be published.

The Authority must, before sending instructions, notify the addressee and give it an opportunity to submit observations.

“460. The Authority may establish guidelines for all authorized insurers, a single class of such insurers or a federation of which such insurers are members.

Guidelines must be general and impersonal; the Authority publishes them in its bulletin after sending a copy of them to the Minister.

“461. A guideline informs its addressees of measures that, in the Authority’s opinion, they may establish to satisfy their obligations under Titles II and IV.

Instructions inform their addressee of the obligations that, in the Authority’s opinion, are incumbent on it under those titles.

“462. The Authority may order an authorized insurer, or the federation of which it is a member, to cease a course of action or to implement specified measures if the Authority is of the opinion that the insurer or federation is failing to perform its obligations under this Act in full, properly and without delay.

The Authority may, for the same reasons, issue an order against a legal person that, on behalf of an authorized insurer, carries on the insurer’s activities or performs the insurer’s obligations.

At least 15 days before issuing an order, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice to the contravener in writing, stating the reasons which appear to justify the order, the date on which the order is to take effect and the contravener's right to submit observations.

“463. The Authority's order must state the reasons for which it is issued. The order must be served on all the groups or persons to whom it applies.

The order takes effect on the date it is served or on any later date specified in it.

“464. The Authority may, without prior notice, issue a provisional order valid for up to 15 days if, in its opinion, any period of time granted to the person concerned to submit observations may be detrimental.

The order must include reasons and takes effect on the date it is served on the person concerned. The latter may, within six days after receiving the order, submit observations to the Authority.

“465. The Authority may revoke or amend an order it has issued under this Act.

“CHAPTER III

“CONSERVATORY MEASURES

“466. The Authority, for the purposes or in the course of an investigation or when it is informed that an authorized insurer is voluntarily dissolving or liquidating in contravention of section 43 or intends to do so, may request the Financial Markets Administrative Tribunal

(1) to order a person or group not to dispose of funds, securities or other property in the person's or group's possession; or

(2) to order a person or group to refrain from withdrawing funds, securities or other property on deposit with or under the control or in the safekeeping of any other person or group.

Such an order takes effect from the time the person or group concerned is notified of it and, unless otherwise provided, remains binding for a 12-month period; the order may be revoked or otherwise amended during that period.

An order directed at an authorized self-regulatory organization may only apply to the organization's insurance business.

“467. The person or group concerned must be notified at least 15 days before any hearing during which the Financial Markets Administrative Tribunal is to consider an application for the renewal of an order.

The Tribunal may renew the order if the person or group concerned has not requested to be heard or has failed to establish that the reasons for the initial order have ceased to exist.

“468. A person or group named in an order issued under section 466 who has put a safety deposit box at the disposal of a third person or has allowed a third person to use a safety deposit box must immediately notify the Authority.

On the Authority’s request, the person or the group’s duly authorized representative must open the safety deposit box in the presence of an agent of the Authority, draw up an inventory of the contents in triplicate, and give one copy to the Authority and another to the person or group concerned.

“469. An order that names a bank or another financial institution applies only to the agencies or branches specified.

“470. A person or group directly affected by an order issued under section 466, if in doubt as to the application of the order to particular funds, securities or other property, may apply to the Financial Markets Administrative Tribunal for clarification; such a person or group may also apply for an amendment to or the revocation of the order.

A written notice setting out the reasons for the application for amendment or revocation must be filed with the Tribunal. The notice must be served on the Authority at least 15 days before the hearing set to hear the application.

“471. An order issued under section 466 is admissible for publication in the same register as that in which rights in the funds, securities or other property covered by the order are required to be published or admissible for publication.

Likewise, the order may be published in a register kept outside Québec if such orders are admissible for publication under the Act governing that register.

“472. In addition to any measure imposed in an order, the Financial Markets Administrative Tribunal may require a person or group named in the order to repay to the Authority the costs incurred in connection with the inspection or investigation that established non-compliance with the provision concerned, according to the tariff set by government regulation.

“473. The Financial Markets Administrative Tribunal may prohibit a person from acting as a director or officer of an authorized insurer on the grounds set out in article 329 of the Civil Code or when a sanction has been imposed on the person under this Act.

The prohibition imposed by the Tribunal may not exceed five years.

The Tribunal may, at the request of the person concerned, lift the prohibition on such conditions as it considers appropriate.

“CHAPTER IV

“INJUNCTION AND PARTICIPATION IN PROCEEDINGS

“474. The Authority may apply to a judge of the Superior Court for an injunction in respect of any matter relating to the carrying out of this Act.

The application for an injunction constitutes a proceeding in itself.

The procedure prescribed in the Code of Civil Procedure (chapter C-25.01) applies, except that the Authority cannot be required to give security.

“475. The Authority may, on its own initiative and without notice, intervene in any proceeding relating to a provision of this Act or the Business Corporations Act that is applicable to an insurance company.

“CHAPTER V

“CANCELLATION OF A CONTRACT OR SUSPENSION OF ITS PERFORMANCE

“476. The Authority may apply to a court to cancel or suspend the performance of a contract entered into by an insurer in contravention of this Act if the Authority shows that the cancellation or suspension is in the interest of the holders of insurance contracts underwritten by the insurer and that, under the circumstances, that interest must prevail over the legal security of parties to the contract and of other persons whose rights and obligations would be affected by the cancellation or suspension.

The cancellation or suspension may only be applied for after the end of the 10th year after the contract concerned came into effect.

The court may also order that directors who are party to such a contract, who have authorized it or who have facilitated its entering into, be solidarily required to pay the authorized insurer the amount of damages awarded as compensation for the injury suffered or the sum paid by the authorized insurer because of the contract.

“CHAPTER VI

“ADMINISTRATION OF THE ACT, REPORTS AND MISCELLANEOUS PROVISIONS

“477. The Authority may require an authorized insurer or anyone who files an application under this Act to provide any document or information that is useful in assessing the applications on which the Authority or the Minister is to rule in accordance with this Act.

“478. The costs that must be incurred by the Authority for the administration of this Act are to be borne by the authorized insurers; they are determined annually by the Government based on the forecasts provided to it by the Authority.

Such costs, for each insurer, correspond to the sum of the minimum contribution set by the Government and the proportion of those costs corresponding to the proportion that the insurer’s total direct premium income for the preceding year in Québec is of the aggregate of the similar income of all the insurers for the same period.

The difference noted between the forecast of the costs that must be incurred for the administration of this Act for a year and those actually incurred for the same year must be carried over to similar costs determined by the Government for the year after the difference is noted.

The certificate of the Authority must definitively establish the amount payable by each insurer under this section.

“479. For the purposes of section 478, “total direct premium income” means

(1) in insurance of persons, the total income from direct premiums paid by Québec residents, less policy dividends or rebates granted to them; and

(2) in damage insurance, the total income from direct premiums paid in respect of property situated in Québec, less policy dividends or related return premiums granted to the holders of insurance contracts relating to the property.

“480. The Authority must, before 30 June each year, report to the Minister, on the basis of the information obtained from the authorized insurers and following the investigations, inspections and evaluations made by the Authority, on the affairs of all insurers carrying on business in Québec for the year ending on the preceding 31 December.

“481. The Minister tables the Authority’s report in the National Assembly within 30 days of its receipt or, if the Assembly is not sitting, within 15 days of resumption.

“CHAPTER VII

“REGULATIONS

“482. In addition to other regulations that it may make under this Act, the Authority may, by regulation, determine the standards applicable

(1) to authorized insurers in relation to their commercial practices and their management practices; and

(2) to federations of mutual companies in relation to their management practices.

“483. A regulation made under this Act by the Authority is approved by the Minister with or without amendment.

The Minister may make such a regulation if the Authority fails to do so within the time specified by the Minister.

A draft of a regulation must be published in the Authority’s bulletin with the notice required under section 10 of the Regulations Act (chapter R-18.1).

The draft of the regulation may not be submitted for approval and the regulation may not be made before 30 days have elapsed since the publication of the draft.

A regulation under this section comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in it. It must also be published in the Authority’s bulletin. If the regulation published in the Authority’s bulletin differs from the one published in the *Gazette officielle du Québec*, the latter prevails.

Sections 4 to 8, 11 and 17 to 19 of the Regulations Act do not apply to a regulation of the Authority under this Act.

“484. The fees payable for the formalities prescribed by regulation of the Authority or the Minister are prescribed by government regulation.

“TITLE VI

“PROHIBITIONS, MONETARY ADMINISTRATIVE PENALTIES AND PENAL PROVISIONS

“CHAPTER I

“PROHIBITIONS

“485. No one may hold out a matter or contract that is not an insurance contract or a prestation that is not related to such a contract as being insurance, except an authorized insurer in respect of a suretyship contract that it underwrites.

“486. No one may, if not covered by the second paragraph, hold themselves out as an insurer or use a name that includes one of the following words or combinations of words:

(1) “insurer” or “reinsurer”; or

(2) “insurance” or “reinsurance” with “company”, “mutual company”, “corporation” or any other word or expression indicating a juridical form.

The following may hold themselves out as insurers or use a name that includes a word or combination of words listed in the first paragraph:

- (1) an authorized insurer;
- (2) a legal person constituted under the laws of a legislative authority other than Québec and carrying on only reinsurer activities in Québec;
- (3) an insurer that delivers only damage insurance policies in Québec through a firm acting through a special broker referred to in the Act respecting the distribution of financial products and services, if the insurer does not have an establishment in Québec and does not advertise in Québec;
- (4) a regulated company that is not an authorized insurer, during its organization; and
- (5) a legal person constituted under the laws of a legislative authority other than Québec that is authorized under those laws to carry on insurer activities and that exercises rights and performs obligations in Québec without such exercise and performance constituting insurer activities.

“487. A member of a financial group that administers or establishes an uninsured employee benefit plan, offers such a plan to employees or signs employees up as members of such a plan may not address a communication to employees and other persons benefitting from the plan unless it mentions that the sums intended for the payment of the benefits provided for by the plan are not under the Authority’s supervision and control. The same is true for an authorized insurer that is not a member of a financial group.

“CHAPTER II

“MONETARY ADMINISTRATIVE PENALTIES

“DIVISION I

“FAILURES TO COMPLY

“488. A monetary administrative penalty of \$250 in the case of a natural person and \$1,000 in any other case may be imposed on

- (1) an authorized insurer
 - (a) that, in contravention of section 58, fails to send the Authority a report on its complaint processing and dispute resolution policy,
 - (b) that, in contravention of section 66, fails to notify the Authority of the fact that it has started or ceased doing business with a distributor,

(c) that, in contravention of section 71, uses an insurance policy relating to the ownership of motor vehicles without having had its form and terms approved by the Authority,

(d) whose ethics committee, in contravention of section 107, fails to send the Authority a report on its activities,

(e) that, in contravention of section 119, fails to notify the Authority of the end of the actuary's or auditor's term,

(f) that, in contravention of section 132, fails to send the Authority an annual statement of the position of its affairs,

(g) that, in contravention of section 133, fails to send the Authority the financial statements, an auditor's or actuary's report, or the certificate referred to in that section, or

(h) that, being Lloyd's, fails to send the Authority the list of its underwriters in Québec or does not keep that list up to date in contravention of section 137;

(2) an insurance company that, in contravention of section 225 of the Business Corporations Act, fails to send its financial statements to a member who requests them;

(3) a self-regulatory organization that, in contravention of section 369, fails to send holders of an insurance contract underwritten by the organization the annual report of its insurance fund;

(4) a federation of mutual companies that

(a) in contravention of section 393, fails to report to the Authority on the number of complaint records it has registered in the register of complaint records submitted for its examination and their nature,

(b) in contravention of section 446, fails to send its annual report to its members, or

(c) in contravention of section 448, fails to send the Authority an annual statement under section 447; or

(5) an authorized insurer, the holder of control of the insurer, a member of its financial group, its actuary or its auditor if it or he or she refuses to communicate or provide access to a document or information required by the Authority for the purposes of this Act.

The penalties prescribed by the first paragraph also apply if the information or documents concerned are incomplete, or are not sent before the specified time limit.

“489. A monetary administrative penalty of \$2,500 may be imposed on

(1) an authorized insurer

(a) that fails to perform its obligations under an undertaking given to the Authority under section 40, 102 or 145,

(b) that, in contravention of section 50, fails to adopt a complaint processing policy or that, in contravention of section 82, fails to adopt an investment policy approved by its board of directors or whose ethics committee, in contravention of section 104, fails to adopt rules of ethics,

(c) that, in contravention of section 50, fails to keep the register of complaint records submitted for its examination prescribed by that section,

(d) if, in contravention of section 94, neither a director nor a committee has reported to the board of directors on the responsibility conferred on the director or committee of seeing that sound commercial practices and sound and prudent management practices are adhered to and situations contrary to such practices are detected, or

(e) that, without the Authority’s authorization under section 102, has not, in contravention of section 100, established an audit committee or an ethics committee or has established one whose composition contravenes section 101;

(2) an insurance company that

(a) fails to perform its obligations under an undertaking given to the Authority under section 242, or

(b) is bound by insurance contracts conferring rights to policy dividends on its beneficiaries without having established, in contravention of section 539, a policy approved by its board of directors for determining the dividend and the bonuses payable to the holders of such contracts;

(3) a self-regulatory organization that, in contravention of section 364, fails to establish an investment policy approved by its board of directors for its insurance fund; or

(4) a federation of mutual companies that

(a) in contravention of section 388, fails to establish a policy on the examination of complaint records,

(b) in contravention of section 389, fails to keep the register of complaint records submitted for its examination prescribed by that section,

(c) in contravention of section 398, fails to establish an audit committee within its board of directors,

(d) in contravention of section 399, has as its president or vice-president or as the chair or vice-chair of its board of directors its general manager or the general manager of one of its member companies, or

(e) in contravention of section 425, fails to establish an investment policy approved by its board of directors for its guarantee fund.

“490. A monetary administrative penalty of \$1,000 in the case of a natural person and \$5,000 in any other case may be imposed on

(1) an authorized insurer

(a) that holds contributed capital securities issued by a legal person or partnership, participations in a trust or a share in a co-ownership acquired in contravention of the limits prescribed by section 84 without becoming the holder of control of it in accordance with section 85,

(b) that, in contravention of section 89, is not a member, for the classes for which it is authorized to carry on an activity, of a compensation body recognized by the Authority for those classes,

(c) more than half of whose board of directors, in contravention of section 98, is not composed of persons other than its employees or employees of a group of which it is the holder of control,

(d) for which no actuary or auditor, in contravention of section 115, has been charged with the functions provided for in Chapter VII of Title II or for which an actuary or auditor has been charged with those functions but does not have the qualifications required under section 116,

(e) that, in contravention of any of sections 149 to 154, fails to notify the Authority of any of the operations described in section 146, sends the Authority an incomplete notice of intention or fails to comply with the time limit prescribed by section 148 for filing the notice of intention, or

(f) that, in contravention of section 21, carries on insurer activities in a class not covered by the authorization it has been granted by the Authority;

(2) the authorized mandatary of a reciprocal union that, in contravention of section 190, fails to send the Authority a contract referred to in section 188, when it is amended;

(3) an insurance company

(a) that has outstanding debt obligations issued in contravention of section 241 or whose movable property is charged with a hypothec or other security granted in contravention of section 242,

(b) that has outstanding shares that were issued without being fully paid, in contravention of section 243 or 256, as the case may be, or

(c) whose board of directors, in contravention of section 266, is not composed of a majority of directors who are resident in Canada;

(4) a self-regulatory organization whose board of directors has not, in contravention of section 353, established a professional liability insurance decision-making committee or has established one whose composition of contravenes section 360 or 362; or

(5) a federation of mutual companies

(a) more than one-third of whose board of directors, in contravention of section 396, is made up of general managers of member companies,

(b) for which no auditor, in contravention of sections 115 and 445, has been charged with the functions provided for in Chapter VII of Title II or for which an auditor has been charged with those functions but does not have the qualifications required under section 116,

(c) that, in contravention of section 416, has not determined the amount of the capital that must be maintained in its guarantee fund,

(d) that fails to inspect its member companies' affairs as required under section 439, or

(e) whose books and accounts are not audited annually in contravention of section 443.

“491. A monetary administrative penalty of \$2,000 in the case of a natural person and \$10,000 in any other case may be imposed on anyone who fails to comply with an order or other decision of the Authority.

“492. If a failure to comply for which a monetary administrative penalty may be imposed continues for more than one day, it constitutes a new failure for each day it continues.

“493. The Minister or the Authority may, in a regulation made under this Act, specify that a failure to comply with the regulation may give rise to a monetary administrative penalty.

The regulation may define the conditions for applying the penalty and set forth the amounts or the methods for determining them. The amounts may vary according to the seriousness of the failure to comply, without exceeding the maximum amounts provided for in section 491.

“DIVISION II

“NOTICE OF NON-COMPLIANCE AND IMPOSITION

“494. In the event of a failure to comply referred to in Division I, a notice of non-compliance may be notified to the party responsible for the failure urging that the necessary measures be taken immediately to remedy it.

Such a notice must mention that the failure may give rise to a monetary administrative penalty.

“495. The imposition of a monetary administrative penalty is prescribed by two years from the date of the failure to comply.

“496. The monetary administrative penalty for a failure to comply with a provision of this Act may not be imposed on the party responsible for the failure to comply if a statement of offence has already been served for a failure to comply with the same provision on the same day, based on the same facts.

For the purposes of this chapter, “party responsible for a failure to comply” means the person or group on whom or which a monetary administrative penalty is imposed or is likely to be imposed, as the case may be, for a failure to comply referred to in Division I.

“497. A monetary administrative penalty is imposed on the party responsible for a failure to comply by the notification of a notice of claim.

The notice must state

- (1) the amount of the claim;
- (2) the reasons for it;
- (3) the time from which it bears interest;
- (4) the right, under section 498, to obtain a review of the decision to impose the penalty and the time limit for exercising that right; and
- (5) the right to contest the review decision before the Financial Markets Administrative Tribunal and the time limit for bringing such a proceeding.

The notice must also include information on the procedure for recovery of the amount claimed. The party responsible for the failure to comply must also be informed that failure to pay the amount owing may give rise to the amendment, suspension or revocation of any authorization granted under this Act or to a refusal to grant such an authorization and, if applicable, that the facts on which the claim is founded may result in penal proceedings.

Unless otherwise provided, the amount owing bears interest at the rate determined under the first paragraph of section 28 of the Tax Administration Act (chapter A-6.002), from the 31st day after notification of the notice.

“DIVISION III

“REVIEW

“498. The party responsible for a failure to comply may apply in writing to the Authority for a review of the decision to impose a monetary administrative penalty within 30 days after notification of the notice of claim.

The persons responsible for the review are designated by the Authority; they must not come under the same administrative authority as the persons responsible for imposing such penalties.

“499. The application for review must be dealt with promptly. After giving the applicant an opportunity to submit observations and produce any documents to complete the record, the person responsible for the review renders a decision on the basis of the record, unless the person deems it necessary to proceed in some other manner.

“500. The review decision must be written in clear and concise terms, with reasons given, must be notified to the applicant and must state the applicant’s right to contest the decision before the Financial Markets Administrative Tribunal and the time limit for bringing such a proceeding.

If the review decision is not rendered within 30 days after receipt of the application or, if applicable, within the time granted to the applicant to submit observations or documents, the interest provided for in the fourth paragraph of section 497 on the amount owing ceases to accrue until the decision is rendered.

“501. A review decision that confirms the imposition of a monetary administrative penalty may be contested before the Financial Markets Administrative Tribunal by the party responsible for the failure to comply to which the decision pertains, within 60 days after notification of the review decision.

The Tribunal may only confirm or quash a contested decision.

When rendering its decision, the Tribunal may make a ruling with respect to interest accrued on the penalty while the matter was pending before it.

“DIVISION IV

“RECOVERY

“502. If the party responsible for a failure to comply has defaulted on payment of a monetary administrative penalty, its directors are solidarily liable with that party for the payment of the penalty, unless they establish that they exercised due care and diligence to prevent the failure.

“503. The payment of a monetary administrative penalty is secured by a legal hypothec on the debtor’s movable and immovable property.

For the purposes of this division, “debtor” means the party responsible for a failure to comply that is required to pay a monetary administrative penalty and, if applicable, each of its directors and officers who are solidarily liable with that party for payment of the penalty.

“504. The debtor and the Authority may enter into a payment agreement with regard to a monetary administrative penalty owing. Such an agreement, or the payment of the amount owing, does not constitute, for the purposes of any other administrative penalty under this Act, an acknowledgement of the facts giving rise to it.

“505. If the monetary administrative penalty owing is not paid in its entirety or the payment agreement is not adhered to, the Authority may issue a recovery certificate on the expiry of the time for applying for a review of the decision to impose the penalty, on the expiry of the time for contesting the review decision before the Financial Markets Administrative Tribunal or on the expiry of 30 days after the final decision of the Tribunal confirming all or part of the decision to impose the penalty or the review decision, as applicable.

However, a recovery certificate may be issued before the expiry of the time referred to in the first paragraph if the Authority is of the opinion that the debtor is attempting to evade payment.

A recovery certificate must state the debtor’s name and address and the amount of the debt.

“506. Once a recovery certificate has been issued, any refund owed to a debtor by the Minister of Revenue may, in accordance with section 31 of the Tax Administration Act, be withheld for payment of the amount due referred to in the certificate.

Such withholding interrupts the prescription provided for in the Civil Code with regard to the recovery of an amount owing.

“507. On the filing of the recovery certificate at the office of the competent court, together with a copy of the final decision stating the amount of the debt, the decision becomes enforceable as if it were a final judgment of that court not subject to appeal, and has all the effects of such a judgment.

“508. The debtor is required to pay a recovery charge in the cases, under the conditions and in the amount determined by regulation of the Minister.

“DIVISION V

“REGISTER

“509. The Authority keeps a register relating to monetary administrative penalties.

The register must contain at least the following information:

- (1) the date the penalty was imposed;
- (2) the date and nature of the failure, and the legislative provisions under which the penalty was imposed;
- (3) if the penalty was imposed on a legal person, its name and the address of its head office or that of one of its establishments or of the business establishment of one of its agents;
- (4) if the penalty was imposed on a natural person, the person’s name, the name of the municipality in whose territory the person resides and, if the failure occurred during the ordinary course of business of the person’s enterprise, the enterprise’s name and address;
- (5) the amount of the penalty imposed;
- (6) the date of receipt of an application for review and the date and conclusions of the decision;
- (7) the date a proceeding is brought before the Financial Markets Administrative Tribunal and the date and conclusions of the decision rendered by the Tribunal, as soon as the Authority is made aware of the information;
- (8) the date a proceeding is brought against the decision rendered by the Financial Markets Administrative Tribunal, the nature of the proceeding and the date and conclusions of the decision rendered by the court concerned, as soon as the Authority is made aware of the information; and
- (9) any other information the Authority considers of public interest.

The information contained in the register is public information as of the time the decision imposing the penalty becomes final.

“CHAPTER III

“PENAL PROVISIONS

“510. Anyone who contravenes section 485 or 487 commits an offence and is liable to a fine of \$1,000 to \$10,000 in the case of a natural person and \$3,000 to \$30,000 in any other case.

The secretary of an authorized insurer or the mandatary of an authorized reciprocal union who contravenes the second paragraph of section 123 by refusing or neglecting to provide the declaration sent to him or her by an actuary or auditor in accordance with section 122 or who destroys or falsifies the declaration commits an offence and is liable to the fine prescribed in the first paragraph.

“511. Anyone who

- (1) fails to comply with a request made under section 54,
- (2) deals with clients in contravention of section 59,
- (3) removes an actuary or auditor from office otherwise than in accordance with section 121, or
- (4) fails to notify the Authority in accordance with section 139 or to notify it of an operation described to in subparagraph 5 or 6 of the first paragraph of section 146, in accordance with section 153 or, as the case may be, section 154,

commits an offence and is liable to a fine of \$2,500 to \$25,000 in the case of a natural person and \$7,500 to \$75,000 in any other case.

“512. Anyone who

- (1) contravenes the capital maintenance rules prescribed by any of sections 244 to 246, 263 and 264,
- (2) holds themselves out as an insurer or uses a name that includes a word or combination of words listed in the first paragraph of section 486 without being permitted to do so by the second paragraph of that section,
- (3) carries on insurer activities without the Authority’s authorization although the authorization is required under this Act,
- (4) provides a document or information that they know is false or inaccurate, or access to such a document or information, to the Minister or the Authority, a member of the Minister’s or Authority’s staff or a person appointed by the Minister or Authority in the course of activities governed by this Act, or

(5) hinders or attempts to hinder, in any manner, the exercise of a function by a member of the Authority's staff or by a person appointed by the Authority for the purposes of this Act,

commits an offence and is liable to a fine of \$5,000 to \$50,000 in the case of a natural person and \$15,000 to \$150,000 in any other case.

“513. Anyone who

(1) contravenes an order, or

(2) carries on insurer activities although the authorization required under this Act has been refused or revoked, or carries on insurer activities beyond what this Act authorizes if the authorization is suspended,

commits an offence and is liable, in the case of a natural person, to a fine of \$5,000 to \$100,000 or, despite article 231 of the Code of Penal Procedure (chapter C-25.1), to a maximum term of imprisonment of 18 months, or to both the fine and imprisonment, and, in any other case, to a fine of \$30,000 to \$2,000,000.

An authorized insurer that, in contravention of section 43, decides to dissolve or liquidates voluntarily commits an offence and is liable to the fine prescribed in the first paragraph.

A director of such an insurer who gives his or her assent to the dissolution or liquidation in contravention of section 43 commits an offence and is liable to the fine and imprisonment prescribed in the first paragraph; the same is true of a liquidator who agrees to proceed with such a liquidation.

“514. Despite sections 510 to 513, the Minister may determine the regulatory provisions made under this Act whose contravention constitutes an offence and renders the offender liable to a fine the minimum and maximum amounts of which are set by the Minister. The Government may also provide that, despite article 231 of the Code of Penal Procedure, a contravention renders the offender liable to a term of imprisonment, or both the fine and imprisonment.

The maximum penalties under the first paragraph may vary according to the seriousness of the offence, without exceeding those prescribed in section 513.

“515. The fines prescribed by sections 510 to 513 or by the regulations are doubled for a second offence and tripled for a subsequent offence. The maximum term of imprisonment is five years less a day for a second or subsequent offence.

If an offender commits an offence under this Act after having previously been found guilty of any such offence and if, without regard to the amounts prescribed for a second or subsequent offence, the minimum fine to which the offender was liable for the first offence was equal to or greater than the minimum fine prescribed for the second offence, the minimum and maximum fines and, if applicable, the term of imprisonment prescribed for the second offence become, if the prosecutor so requests, those prescribed in the case of a second or subsequent offence.

This section applies to prior findings of guilty pronounced in the two-year period preceding the second offence or, if the minimum fine to which the offender was liable for the prior offence is that prescribed in section 513, in the five-year period preceding the second offence. Fines for a third or subsequent offence apply if the penalty imposed for the prior offence was the penalty for a second or subsequent offence.

“516. If an offence under this Act is committed by a director or officer of a legal person or of another group, regardless of its juridical form, the minimum and maximum fines that would apply in the case of a natural person are doubled.

“517. If an offence under this Act continues for more than one day, it constitutes a separate offence for each day it continues.

“518. Anyone who, by an act or an omission, helps or, by encouragement, advice, consent, authorization or order, induces another person to commit an offence under this Act commits an offence and is liable to the same penalty as that prescribed for the offence they helped or induced the person to commit.

“519. In any penal proceedings relating to an offence under this Act, proof that the offence was committed by an agent, mandatary or employee of any party is sufficient to establish that it was committed by that party, unless the party establishes that it exercised due diligence, taking all necessary precautions to prevent the offence.

“520. If a legal person or an agent, mandatary or employee of a legal person, of a partnership or of an association without legal personality commits an offence under this Act, the directors of the legal person, partnership or association are presumed to have committed the offence unless it is established that they exercised due diligence, taking all necessary precautions to prevent the offence.

For the purposes of this section, in the case of a partnership, all partners, except special partners, are presumed to be directors of the partnership unless there is evidence to the contrary appointing one or more of them, or a third person, to manage the affairs of the partnership.

“521. In determining the penalty, the judge may take into account aggravating factors such as

- (1) the intentional, negligent or reckless nature of the offence;
- (2) the foreseeable character of the offence or the failure to follow recommendations or warnings to prevent it;
- (3) the offender’s attempts to cover up the offence or failure to try to mitigate its consequences;
- (4) the increase in revenues or decrease in expenses that the offender intended to obtain by committing the offence or by omitting to take measures to prevent it; and
- (5) the offender’s failure to take reasonable measures to prevent the commission of the offence or mitigate its consequences despite the offender’s ability to do so.

A judge who, despite the presence of an aggravating factor, decides to impose the minimum fine must give reasons for the decision.

“522. On an application made by the prosecutor and submitted with the statement of offence, the judge may impose on the offender, in addition to any other penalty, a further fine not exceeding the financial benefit realized by the offender as a result of the offence, even if the maximum fine has also been imposed.

“523. When determining a fine higher than the minimum fine prescribed by this Act, or when determining the time within which an amount must be paid, the judge may take into account the offender’s inability to pay, provided the offender furnishes proof of assets and liabilities.

“524. Penal proceedings for offences under this Act are prescribed by three years from the date the investigation record relating to the offence was opened. However, no proceedings may be instituted if more than five years have elapsed since the date of the offence.

The certificate of the secretary of the Authority indicating the date on which the investigation record was opened constitutes conclusive proof of that date, in the absence of any evidence to the contrary.

“525. Penal proceedings for an offence under this Act may be instituted by the Authority.

“526. The fine imposed by the court is remitted to the Authority if it has taken charge of the prosecution.

“TITLE VII

“TRANSITIONAL PROVISIONS

“CHAPTER I

“GENERAL PROVISION

“527. Juridical acts which may be annulled when the new legislation comes into force may not be annulled after that time for any reason which is no longer recognized under the new legislation.

“CHAPTER II

“SUPERVISION AND CONTROL

“528. Insurers that, on (*insert the date preceding the date of coming into force of section 1*), hold a licence issued under the Act respecting insurance (chapter A-32) are, by operation of law, authorized insurers from (*insert the date of coming into force of section 1*).

The conditions and restrictions imposed by the Authority in relation to the operations of an insurer authorized under the first paragraph become the conditions and restrictions attached to the authorization.

However, if the sole purpose of the conditions or restrictions is to prevent the insurer from underwriting a new insurance contract or suretyship contract except, if applicable, to honour a right that a contract in force confers on a client or participant, the insurer holding a licence becomes an insurer whose authorization has been revoked without the revocation having become final.

“529. Despite any provision of Chapter VI of Title II, an insurance company that meets the following conditions is not required to establish an ethics committee:

- (1) its authorization is revoked under the third paragraph of section 528; and
- (2) on (*insert the date preceding the date of coming into force of section 1*), the company was a funeral insurance company.

“530. Section 89 does not apply to

- (1) the Sons of Scotland Benevolent Association, whose Québec business number is 1145106044;

- (2) the Order of United Commercial Travelers of America, whose Québec business number is 1145703782;

- (3) the Ukrainian National Association, Inc., whose Québec business number is 1144727709;

- (4) the Knights of Columbus, whose Québec business number is 1145122561;
- (5) the Supreme Council of the Royal Arcanum, whose Québec business number is 1148945158;
- (6) the Grand Orange Lodge of British America Benefit Fund, whose Québec business number is 1149026875;
- (7) the Independent Order of Foresters, whose Québec business number is 1145375250;
- (8) the Teachers' Life Insurance Society (Fraternal), whose Québec business number is 1168335322; and
- (9) the Croatian Fraternal Union of America, whose Québec business number is 1145293107.

Only insurers referred to in the first paragraph may use the words “mutual benefit association” in their names or in the course of their activities.

“531. A proceeding brought before the Administrative Tribunal of Québec under section 366 of the Act respecting insurance prior to (*insert the date of coming into force of section 1*) is continued before the Tribunal, unless the hearing has not commenced by then; in such a case, the proceeding is continued before the Financial Markets Administrative Tribunal.

“CHAPTER III

“INSURANCE COMPANIES AND OTHER QUÉBEC INSURERS

“DIVISION I

“CONTINUANCE

“532. An insurance company within the meaning of the Act respecting insurance, other than a mutual insurance company, becomes a business corporation regulated by Title III on (*insert the date of coming into force of section 1*).

A mutual insurance company within the meaning of the Act respecting insurance becomes a mutual company regulated by Title III on that date. The same is true of a mutual insurance association within the meaning of the Act respecting insurance.

For the purposes of Title III, except Chapters XII to XV, and of the other provisions of this Act that refer to Title III, the following Québec insurers are, from (*insert the date of coming into force of section 1*), deemed to be

(1) business corporations regulated by that Title:

(a) Québec insurers to which a continuance certificate has been issued under section 200.0.16 of the Insurers Act;

(b) L'Alpha compagnie d'assurance inc., whose Québec business number is 1145104445; and

(c) La Capitale Civil Service Insurer Inc., whose Québec business number is 1141715509; or

(2) mutual companies regulated by that Title:

(a) L'Assurance mutuelle des fabriques de Québec, whose Québec business number is 1142783258; and

(b) Promutuel Réassurance, whose Québec business number is 1143591221.

In case of conflict, the provisions of the Acts constituting the insurers referred to in the third paragraph prevail over the provisions of Title III and over the provisions of the Business Corporations Act applicable to those insurers under this Act. However, the provisions of those constituting Acts may not depart from the following provisions of that Title: Chapter VII, section 243, subdivision 3 of Division I of Chapter VIII and sections 266, 267, 269 to 273, 277 and 278.

“533. The first named insured in a contract designating several insureds underwritten before (*insert the date of coming into force of section 1*) by a mutual insurance company governed on that date by Division III of Chapter III of Title III of the Act respecting insurance remains, while the contract is in force, a member of the mutual company resulting from the continuance provided for in the second paragraph section 532.

“534. An insurer's ethics committee appointed in accordance with the Act respecting insurance becomes by operation of law the ethics committee that the insurer must appoint in accordance with this Act.

“DIVISION II

“INSURANCE COMPANIES BOUND BY INSURANCE CONTRACTS CONFERRING RIGHTS TO POLICY DIVIDENDS

“535. The provisions of this division apply to insurance companies that, before (*insert the date of coming into force of section 1*), were bound by insurance contracts conferring rights to policy dividends arising from those contracts entered into before that date.

Such contracts are also called “participating policies”.

“536. At least one-third of the members of the board of directors of an insurance company bound by insurance contracts conferring rights to policy dividends must be elected exclusively by the holders of such contracts as soon as there are at least 100 such holders.

Such holders are entitled to vote in the election, each of them having one vote; in addition, they are entitled to attend all meetings of the company members.

“537. Divisions I and II of Chapter VII of the Business Corporations Act, except sections 177, 179, 180, 182, 191, 192 and 194 to 206, apply to holders of such contracts and members of the insurance company.

The agenda set out in the notice of meeting under section 167 of that Act must, if the notice is sent to the holder of an insurance contract conferring rights to policy dividends, expressly mention the election of directors that must be exclusively elected by such holders.

A statement in prominent and conspicuous type on the premium notices and premium receipts, specifying the date, time and place of the meetings, may be substituted for the notice of meeting that must be sent to holders of insurance contracts conferring rights to policy dividends.

“538. Holders of insurance contracts conferring rights to policy dividends are entitled to share in that portion of the profits set apart that has been distinguished as having been derived from that class of contract in a proportion of at least

(1) 90% of such profits in any year in which the average of the participating fund does not exceed \$250,000,000;

(2) 92.5% of such profits in any year in which the average of the participating fund exceeds \$250,000,000 but does not exceed \$500,000,000;

(3) 95% of such profits in any year in which the average of the participating fund exceeds \$500,000,000 but does not exceed \$1,000,000,000; and

(4) 97.5% of such profits in any year in which the average of the participating fund exceeds \$1,000,000,000.

“539. An insurance company bound by insurance contracts conferring rights to policy dividends must establish a policy for determining the dividends and bonuses payable to the holders of such contracts.

The policy must be approved by the board of directors. The board of directors may distribute any form of benefit to such holders of insurance contracts, including dividends or bonuses, in compliance with the policy established in that regard.

In so doing, the board of directors must take into account the opinion given by the actuary charged with the functions provided for in Chapter VII of Title II in a report to the board of directors on the compliance of the distribution with the policy established in that regard.

“540. An insurance company bound by insurance contracts conferring rights to policy dividends may not make a transfer from its participating fund to a surplus account or a retained earnings account unless it has established a participating fund surplus management policy approved by the board of directors.

The policy must provide a method for calculating the surplus to be maintained in the participating fund, including for the purpose of guaranteeing the performance of the company’s obligations toward holders of insurance contracts conferring rights to policy dividends.

The policy must be presented at a members’ meeting.

“541. A copy of any policy established under section 539 or section 540 must be sent to the Authority.

“542. Before each and any transfer from the participating fund to a surplus account or a retained earnings account, the actuary charged with the functions provided for in Chapter VII of Title II must produce a report certifying that the transfer is in conformity with the participating fund surplus management policy.

The company must send the actuary’s report to the Authority at least 30 days before the date of the transfer.

“543. The Authority may forbid the transfer, or allow it subject to certain conditions, if the Authority considers it advisable in the interest of the holders of insurance contracts conferring rights to policy dividends.

“544. The Authority may require any relevant information or document for the purposes of this division.

“545. The Authority may, where it considers it advisable, give companies bound by insurance contracts conferring rights to policy dividends written instructions as to the management of participating fund surpluses.

Before exercising the power set out in the first paragraph, the Authority must notify the company and give it an opportunity to submit observations.

“TITLE VIII

“FINAL PROVISIONS

“546. The costs incurred by the Government for the administration of this Act, as determined each year by the Government, are borne by the Authority.

“547. The Minister must, at least once every five years, report to the National Assembly on the carrying out of this Act and make recommendations on the advisability of maintaining or amending its provisions.

“548. This Act replaces the Act respecting insurance.

“549. The Authority is responsible for the administration of this Act.

“550. The Minister of Finance is responsible for the carrying out of this Act.”

DIVISION II

PROFESSIONAL ORDERS

§1.—Amending provisions

PROFESSIONAL CODE

4. Section 80 of the Professional Code (chapter C-26) is amended by inserting “, or, if applicable, any person exercising a function or power relating to professional liability insurance business under section 86.1” after “inquiry” in the fourth paragraph.

5. The Code is amended by inserting the following section after section 85.1:

“85.1.1. In addition to imposing on the members of the order the obligation to furnish and maintain security to cover professional liability in accordance with paragraphs *d* and *g* of section 93, the board shall, pursuant to those provisions, approve either

(1) the standard insurance or suretyship contract or the other means determined by regulation;

(2) the member’s contract for joining the group plan contract entered into by the order; or

(3) the subscription contract for the professional liability insurance fund established under section 86.1.”

6. Section 86.1 of the Code is amended

(1) by replacing “set up” and “with the Act respecting insurance (chapter A-32)” in the first paragraph by “establish” and “with the provisions of the Insurers Act (*insert the year and chapter number of that Act*) that are applicable to self-regulatory organizations”, respectively;

(2) by replacing the second paragraph by the following paragraph:

“In addition to the exclusive functions and powers delegated to the professional liability insurance decision-making committee by the board of directors under the second paragraph of section 353 of the Insurers Act, the board may delegate other functions and powers to it within the limits provided for in sections 353 and 354 of that Act. The order must take the measures necessary to preserve at all times the autonomy of the decision-making committee in the exercise of its functions and powers relating to the processing of notices of loss likely to fall under the coverage of the insurance contracts underwritten by the order.”;

(3) in the third paragraph,

(a) by inserting “ or, if applicable, for a period of time determined in a regulation made under paragraph *d* or *g* of section 93” after “less”;

(b) by replacing “equity” by “assets”;

(4) by replacing the fourth paragraph by the following paragraph:

“Nothing in this Code prevents a professional order, if it is so authorized in accordance with the Insurers Act, from providing the services described in section 41 of that Act.”

7. The Code is amended by inserting the following sections after section 86.1:

“86.2. The board of directors shall ensure that the order’s functions and powers in connection with the order’s insurer activities and other insurance business are exercised by officers, managers or members of the decision-making committee who have the skills and experience required in such matters.

“86.3. The board of directors must determine by regulation

(1) the functions and powers it may delegate to the officers, managers or members of the decision-making committee within the limits provided for in the Insurers Act (*insert the year and chapter number of that Act*); and

(2) the standards of ethics and professional conduct applicable to the persons mentioned in paragraph 1 and to employees assigned to the order’s insurer activities and other insurance business.

“86.4. The decision-making committee shall, in accordance with a regulation made under paragraph *d* or *g* of section 93, apply the rules governing the conduct of its affairs and, if not stipulated in the insurance contract, the compensation procedure.

The decision-making committee may, with the authorization of the order’s board of directors, retain the services of an expert or of any other person to assist it in the exercise of its functions and powers.

The decision-making committee, a committee member or any person assisting the committee may conduct an inquiry regarding a notice of loss. Section 114 applies, with the necessary modifications, to such an inquiry.

The members of the decision-making committee and any person assisting the committee or one of its members shall take the oath set out in Schedule II; however, the oath shall not be construed as prohibiting the sharing within the order of information or documents required to protect the public.

“86.5. The order’s functions and powers with regard to professional liability insurance are to be exercised in its name in its capacity as an authorized insurer.

Any proceedings relating to the order’s insurer activities are to be brought by the order in its capacity as an authorized insurer or taken against the order acting in that capacity.

“86.6. The decision-making committee shall, on its own initiative or at the request of the board of directors, disclose to the board the following personal information obtained in the exercise of its functions or powers if the information is required to protect the public:

- (1) the name of any member or former member concerned by a notice of loss and, if applicable, his membership number;
- (2) the fact that a notice of loss against the member or former member has been sent to the committee or that the member or former member has filed a notice of loss regarding his professional liability;
- (3) the fact that the member or former member, his successors or the order are implicated in proceedings, to the extent that the order is clearly identified, as well as the originating application; and
- (4) the nature of the fault alleged against the member or former member in the exercise of his profession.

The information referred to in subparagraphs 1 to 4 of the first paragraph that concerns a partnership or other group of professionals must also be disclosed.

“86.7. The decision-making committee or one of its members shall inform the syndic if there are reasonable grounds to believe that a member has committed an offence referred to in section 116.

Likewise, the syndic may, on its own initiative or at the committee’s request, in cases where the syndic considers it relevant to do so, disclose to the committee any information required for the processing of a notice of loss filed regarding a member or former member.

“86.8. The board of directors is to have access, on request or at least once a year, to the information, other than personal information, obtained in connection with the order’s insurer activities or other insurance business and required to establish the amount referred to in section 85.2. Such information may include the types of permits granted, the professional activities concerned, the risk experience and loss experience, the frequency and amount of claims, the region in which the professional activities are engaged in, and whether they are engaged in alone, in a partnership or in a group of professionals.”

8. Section 93 of the Code is amended

(1) by replacing the last sentence of paragraph *d* by the following sentences: “The regulation must prescribe the minimum amount of coverage, the rules governing the conduct of the professional liability insurance decision-making committee’s affairs and, if not stipulated in the contract, the procedure for processing notices of loss. It may also prescribe special rules or exemptions based, in particular, on the professional activities engaged in by the members and the risk they represent.”;

(2) by inserting “. It must also prescribe the rules governing the conduct of the professional liability insurance decision-making committee’s affairs and, if not stipulated in the contract, the procedure for processing notices of loss” at the end of paragraph *g*.

9. Section 94 of the Code is amended by replacing “or of the secretary of the order” in paragraph *a* by “, the secretary of the order or a member of the professional liability insurance decision-making committee”.

10. Section 95.2 of the Code is amended by inserting “, 86.3” after “65” in the first paragraph.

II. Section 108.6 of the Code is amended

(1) by replacing “and the secretary of the disciplinary council and members of the personnel” in paragraph 1 by “, the secretary of the disciplinary council, the officers and managers exercising the functions and powers relating to the order’s insurance business, and the personnel members”;

(2) by inserting “, the professional liability insurance decision-making committee” after “executive committee” in paragraph 3.

12. Section 192 of the Code is amended by inserting the following subparagraph after subparagraph 2 of the first paragraph:

“(2.1) a professional liability insurance decision-making committee, one of its members, or an expert or other person assisting the committee;”.

13. Section 193 of the Code is amended by inserting the following paragraph after paragraph 2:

“(2.1) a professional liability insurance decision-making committee, one of its members, or an expert or other person assisting the committee in the exercise of its functions and powers relating to a notice of loss record concerning a member or former member;”.

14. Schedule II to the Code is amended by inserting “86.4,” after “62.1,” in the portion preceding “OATH OF DISCRETION”.

§2.—*Special transitional provision*

15. Until the coming into force of a regulation adopted by a professional order under paragraph 2 of section 86.3 of the Professional Code, enacted by section 7, the standards of ethics and professional conduct applicable to administrators of the order apply, with the necessary modifications, to the members of the professional liability insurance decision-making committee.

CHAPTER II

FINANCIAL SERVICES COOPERATIVES

DIVISION I

AMENDING PROVISIONS

ACT RESPECTING FINANCIAL SERVICES COOPERATIVES

16. The heading of Chapter I of the Act respecting financial services cooperatives (chapter C-67.3) is amended by inserting “, FINANCIAL SERVICES COOPERATIVES” after “INTERPRETATION”.

17. The Act is amended by inserting the following after the heading of Chapter I:

“DIVISION I

“FINANCIAL SERVICES COOPERATIVES AND MISSION”.

18. Sections 2 and 3 of the Act are repealed.

19. Section 5 of the Act is amended

(1) in the first paragraph,

(a) by striking out “from its members” in subparagraph 1;

(b) by replacing “financial products and services to its members and, as an ancillary activity, to any other person or partnership, for the benefit of its members” in subparagraph 2 by “products and services”;

(c) by inserting “, financial” after “economic” in subparagraph 4;

(2) by replacing “The mission of a cooperative that is a credit union” in the second paragraph by “A cooperative may carry on the activities referred to in subparagraphs 1 and 2 of the first paragraph not only with regard to its members, but also with regard to any user; if it is a credit union, its mission”.

20. Section 6 of the Act is amended

(1) by striking out paragraph 3;

(2) by replacing “whether the common characteristic is determined on the basis of such a criterion as territory, employment or occupation” in paragraph 4 by “if applicable”;

(3) by adding the following paragraph at the end:

“The provisions of this Act imposing a requirement to comply with a by-law or standard of a federation do not apply to a credit union that is not a member of a federation.”

21. The Act is amended by inserting the following after section 6:

“DIVISION II

“GROUPS AND GENERAL MATTERS RELATING TO GROUPS

“6.1. A federation and its member credit unions form a network of financial services cooperatives.

“6.2. All the financial services cooperatives forming a network, together with any security fund whose board of directors includes six members appointed by the federation belonging to that network, are a cooperative group.

The cooperative group to which the Fédération des caisses Desjardins du Québec belongs is called the “Groupe coopératif Desjardins”.

“6.3. All the financial services cooperatives belonging to a network, together with every group the holder of control of which is one of those cooperatives, are a financial group.

The financial group to which the Fédération des caisses Desjardins du Québec belongs is called the “Mouvement Desjardins”.

A credit union that is not a member of a federation, together with every group of which it is the holder of control, is also a financial group.

“6.4. Chapters II to XIII apply to the financial services cooperatives and the security fund included in the Groupe coopératif Desjardins only to the extent that Chapter XIII.1 does not depart from those chapters.

“6.5. For the purposes of this Act, “holder of control” of the following groups means,

(1) in the case of a business corporation, the holder of shares conferring more than 50% of the voting rights or whoever can otherwise choose the majority of its directors;

(2) in the case of a partnership that is a limited partnership, the general partner and, in the case of any other type of partnership, the partner who can determine the outcome of collective decisions, if applicable;

(3) in the case of a trust, the trustee;

(4) in the case of co-owners in indivision, the manager or, in the absence of a manager, if one of the co-owners can determine the outcome of collective decisions made by majority vote, that co-owner; and

(5) in the case of a security fund, the federation belonging to the same cooperative group.

No one is the holder of control of a financial services cooperative, of a mutual company or of any other group that confers voting rights on a one member, one vote basis.

“6.6. In the case of a legal person constituted under the laws of a jurisdiction other than Québec, the organ on which the powers usually conferred on a board of directors are conferred is considered such a board. In that context, “director” means a member of that organ.

A legal person constituted under the laws of a jurisdiction other than Québec that, in a manner similar to that of a business corporation, confers voting rights otherwise than on a one member, one vote basis is considered a business corporation. If those rights are conferred through securities that it issues, the securities are considered shares.

“6.7. Control, in cases which allow it, also results from participation in the concerted and ongoing exercise of rights within the group controlled or of powers over that group, even though none of the participants in the exercise of such rights or powers would alone be the holder of control; in such cases, each of the participants is deemed to be the holder of control.

“6.8. The following are deemed to participate in the concerted and ongoing exercise of their rights or powers and, consequently, to be the holders of control of a group:

- (1) the participants that are controlled by a same holder of control as well as that holder, if the holder is a participant;
- (2) the trustees of a same trust;
- (3) the member credit unions of a same federation; and
- (4) the natural persons between whom family ties are considered to exist.

“6.9. The holder of control of a group is also, if that group is the holder of control of another group, the holder of control of that other group.

“6.10. For the purposes of this Act, the holder of control of a group is deemed

- (1) to hold any rights to acquire shares and other securities that are held by the group; and
- (2) to exercise the voting rights that the group may exercise.

“6.11. For the purposes of this Act, a security entitlement to a share or to another security is considered such a share or security, unless the holder of the security entitlement is a securities intermediary acting in that capacity.

“Security entitlement” and “securities intermediary” have the meaning assigned by the Act respecting the transfer of securities and the establishment of security entitlements (chapter T-11.002).

“DIVISION III

“ECONOMIC AND FAMILY TIES

“6.12. Economic ties are considered to exist only between

- (1) natural persons between whom family ties are considered to exist;

- (2) a business corporation and
 - (a) the person who can exercise 10% or more of the voting rights attached to the shares issued by the corporation; and
 - (b) the holder of shares issued by the corporation representing more than 10% of its equity capital;
- (3) a partner in a partnership and the partnership;
- (4) each of the partners in a same partnership;
- (5) a legal person, other than a financial services cooperative, and its directors and officers;
- (6) a financial services cooperative and its officers and managers; and
- (7) a person and a succession or trust in which the person has a substantial interest similar to that of a beneficiary or in respect of which the person serves as liquidator of the succession, trustee or other administrator of the property of others, mandatary or depositary.

Economic ties include any other ties between persons or groups that the Autorité des marchés financiers may determine by regulation.

“6.13. Family ties are considered to exist only between a person and

- (1) his or her spouse;
- (2) his or her children or spouse’s children; and
- (3) his or her parents or spouse’s parents.

“DIVISION IV

“APPLICATION OF CERTAIN PROVISIONS TO FINANCIAL GROUPS AND LEGAL PERSONS ACTING ON BEHALF OF A FINANCIAL SERVICES COOPERATIVE

“6.14. The obligations of a financial services cooperative or security fund under the provisions of this Act remain unchanged by the mere fact that the cooperative or fund entrusts a third person to carry on any part of an activity governed by those provisions.

“6.15. A financial services cooperative or security fund shall ensure that any group in respect of which the cooperative or fund is the holder of control complies with the prohibitions imposed on the cooperative by this Act.

A prohibition imposed on such a cooperative or fund applies to the groups in its financial group not only when each of them is acting alone, but also when the acts or omissions of all or some of them would have contravened the prohibition had they been done or made by only one of them.

This section does not prohibit a group in respect of which a financial services cooperative or security fund is the holder of control from carrying on activities the group is permitted to carry on by the Act governing it even though the cooperative or fund is not permitted to carry on those activities, provided the group is a financial institution subject to the supervision of a regulatory authority.

“6.16. A financial services cooperative or security fund is liable for failures to comply with this Act by a group in respect of which the cooperative or fund is the holder of control, as if those failures to comply were the cooperative’s own.

“6.17. The inspection functions and powers of the Authority, provided for by the Act respecting the regulation of the financial sector (chapter A-33.2), that may be exercised in relation to a financial services cooperative or security fund extend to any group that is part of the cooperative’s or fund’s financial group if the person authorized to inspect the cooperative or fund considers it necessary to inspect the former group in order to complete the verification of the cooperative’s or fund’s compliance with this Act, even though that group does not carry on activities governed by an Act referred to in section 7 of that Act.

“6.18. The Authority may prohibit that the obligations of a financial services cooperative or security fund under this Act be performed by a third person on the cooperative’s behalf if, in the Authority’s opinion, such performance would render the application of this Act difficult or ineffective.

Before rendering its decision, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the cooperative or fund in writing and grant the cooperative or fund at least 15 days to present observations.”

22. Section 8 of the Act is amended by replacing “common characteristic” in paragraph 4 by “a common characteristic when such conditions are”.

23. Section 10 of the Act is amended

(1) by replacing subparagraph 4 of the first paragraph by the following subparagraph:

“(4) in the case of a credit union, the name of the federation of which it will be a member;”;

(2) by replacing the second and third paragraphs by the following paragraphs:

“The articles of a credit union that is a member of a federation may indicate the common characteristic that must be shared by members, other than auxiliary members, that the credit union may recruit. The common characteristic must be determined on the basis of occupation, on the basis of employment status with the same employer or with an employer belonging to a group of employers who are related to each other or who carry on their activities in the same economic sector, or on the basis of other criteria recognized by the federation. A credit union whose articles indicate such a common characteristic is called a “group credit union”. Any other credit union that is a member of a federation is called a “territory credit union”, and the common characteristic of its members is to be resident in Québec.

The articles of a credit union that is not a member of a federation may also contain any provision that the credit union, under this Act, may provide for in its by-laws.”

24. Section 12 of the Act is amended

(1) by replacing “et” in paragraph 7 in the French text by “ou”;

(2) by adding the following paragraph after paragraph 9:

“(10) the fees prescribed by regulation of the Government.”

25. Section 14 of the Act is replaced by the following sections:

“**14.** After receiving the articles, the documents and fees that must accompany them and any additional documents or information it requires, the Authority shall prepare a report on the reasons for granting or denying the application in which it assesses consumer interest and the impact of the decision on the relevant markets in Québec.

In its report, the Authority shall cover such matters as

(1) the nature and scope of the guarantees ensuring the protection of the members of the financial services cooperative;

(2) the quality and feasibility of the financial forecasts for the carrying on and development of the cooperative’s activities; and

(3) the compliance of the cooperative’s proposed name with this Act.

“**14.1.** To the extent that the proposed name of a financial services cooperative is compliant with the requirements of this Act, the Authority shall send its report to the Minister together with the application requesting the Minister to authorize the establishment of the cooperative.”

26. Section 15 of the Act is amended, in the first paragraph,

- (1) by striking out “and after obtaining the advice of the Authority”;
- (2) by replacing “cette dernière” in the French text by “l’Autorité”.

27. Section 16 of the Act is amended by adding the following paragraph at the end:

“The cooperative is a legal person as of that time.”

28. Section 18 of the Act is amended

- (1) by replacing “a financial services cooperative” in the first paragraph by “a credit union”;
- (2) by striking out the second paragraph;
- (3) by replacing “A credit union whose members share a common characteristic determined on the basis of territory cannot” in the third paragraph by “Only a group credit union may”.

29. Section 20 of the Act is repealed.

30. Section 25.1 of the Act is amended by striking out “20,”.

31. Section 28 of the Act is amended by adding the following paragraph at the end:

“In addition to the expression “financial services cooperative”, the other names by which a financial services cooperative identifies itself may contain the term “cooperative”, “cooperation” or “co-op”, despite section 16 of the Cooperatives Act (chapter C-67.2).”

32. Section 30 of the Act is repealed.

33. Section 36 of the Act is amended

- (1) in the first paragraph,
 - (a) by striking out “internal management” in subparagraph 1;
 - (b) by replacing “prescribed by by-law of the financial services cooperative or, in the absence of such a by-law,” in subparagraph 2 by “specified in those by-laws or, if such a number is not specified,”;
 - (c) by replacing “members of the board of directors and, where applicable, the members of the board of supervision or of the board of ethics and professional conduct” in subparagraph 3 by “officers”;

(d) by replacing “vérificateur” in subparagraph 4 in the French text by “auditeur”;

(e) by replacing subparagraph 5 by the following subparagraph:

“(5) in the case of a federation, adopt the standards required under the second paragraph of section 369.”;

(2) by striking out “adopt any other by-law or” in the second paragraph.

34. Section 37 of the Act is amended, in the first paragraph,

(1) by replacing “member of the board of directors and of the board of supervision or the board of ethics and professional conduct, as the case may be” in subparagraph 1 by “officer”;

(2) by replacing subparagraph 4 by the following subparagraph:

“(4) if applicable, a notice stating the name of the auditor appointed by the assembly.”

35. Section 38 of the Act is amended

(1) by replacing “a by-law of the cooperative” at the end of the first paragraph by “special resolution”;

(2) by replacing the second paragraph by the following paragraph:

“The resolution must designate the person authorized to sign the request. If the cooperative is a credit union that is a member of a federation, the resolution must be submitted for approval to the federation, unless the object of the resolution is the termination, by a credit union, of its membership in the federation.”

36. Section 40 of the Act is amended

(1) by replacing “the financial services cooperative’s by-law approving” in paragraph 2 by “the special resolution authorizing”;

(2) by replacing “a” and “amendment to or replacement of” in paragraph 3 by “where applicable, a” and “the resolution authorizing the amendment to or replacement of”, respectively.

37. Section 44 of the Act is amended by replacing “other classes of shares, where the by-laws of the cooperative so allow” by “capital shares and investment shares, if the by-laws of the cooperative so allow”.

38. Section 45 of the Act is amended by striking out “and may be issued only to members”.

39. Section 46 of the Act is repealed.

40. Section 47 of the Act is amended by replacing the second paragraph by the following paragraph:

“If the cooperative is a credit union that is a member of a federation, the resolution must be submitted for approval to the federation.”

41. Section 48 of the Act is amended by adding the following paragraph after paragraph 3:

“(4) on the conversion of debt obligations.”

42. Section 49 of the Act is amended by replacing “making an entry in a computerized register established by by-law” in the first paragraph by “by merely registering them in the securities register under section 133”.

43. Section 50 of the Act is amended

(1) by replacing “déterminé par règlement” and “, par règlement de la fédération” in the French text by “déterminé par le règlement intérieur” and “membre d’une fédération, par celui de cette dernière”, respectively;

(2) by adding the following paragraph at the end:

“Such shares may be issued only to members.”

44. Section 53 of the Act is amended by replacing “a credit union”, “credit unions” and “the credit union” by “a member”, “members” and “the member”, respectively.

45. Sections 54 and 55 of the Act are replaced by the following sections:

“54. In this Act, unless the context indicates otherwise,

“capital share” means a share on which interest and, if applicable, additional interest are payable at the discretion of a financial services cooperative or, in the case of shares issued by a credit union that is a member of a federation, at the discretion of the federation;

“investment share” means a share which, according to its terms, entails the obligation to pay such interest as is determined by the financial services cooperative.

The permanent shares issued by a credit union before 1 July 2001, converted into capital shares of a class carrying the same rights, privileges, conditions and restrictions as those attached to those permanent shares and deemed to be issued in accordance with this Act under section 66 of the Act respecting the Mouvement Desjardins (2000, chapter 77), as it read at the time of its repeal

on (*insert the date of coming into force of section 734*), may be designated by the name “permanent shares”.

“55. The by-laws of a financial services cooperative that authorize it to issue capital shares and investment shares must set out the rights, privileges, conditions and restrictions attaching to each class of shares provided for in the by-laws.

Unless otherwise provided by this Act, a cooperative may not issue capital shares or investment shares to an acquirer other than

- (1) one of its members;
- (2) a fund established by the by-laws of the cooperative for the purpose of holding shares for the benefit of the members;
- (3) the security fund of a cooperative group;
- (4) an issuing corporation referred to in section 475;
- (5) a member of a credit union that is a member of the federation issuing the shares; or
- (6) a federation of which the credit union issuing the shares is a member.

When a federation apportions all or part of the proceeds of an issue referred to in subparagraph 5 of the second paragraph among member credit unions, section 481 applies, with the necessary modifications.”

46. Section 58 of the Act is repealed.

47. Section 59 of the Act is amended by replacing “paragraph 1 of section 46” in the third paragraph by “subparagraph 2 of the second paragraph of section 55”.

48. Section 60 of the Act is amended

- (1) by striking out “capital share or investment” and “However, such shares have priority over qualifying shares.” in the first paragraph;
- (2) by replacing the second paragraph by the following paragraph:

“In the event of the winding-up, insolvency or dissolution of a financial services cooperative, the shares it has issued rank among themselves as follows:

- (1) in the case of a credit union that is not a member of a federation, investment shares and capital shares rank equally among themselves and have priority over qualifying shares; and

(2) in the case of other financial services cooperatives,

(a) investment shares have priority over capital shares and qualifying shares, and

(b) capital shares and qualifying shares rank equally among themselves.”

49. Section 61 of the Act is amended by replacing the second paragraph by the following paragraph:

“A federation may not repurchase or redeem a share without the authorization of the Authority. The Authority may not grant that authorization if there are reasonable grounds to believe that the network of the federation is, or would after the payment be, unable to maintain, in accordance with section 441, adequate capital to ensure its sustainability and, in accordance with section 461, adequate assets to meet the liabilities of the credit unions that belong to the network, as and when they become due.”

50. Section 62 of the Act is replaced by the following sections:

“**62.** The interest that may be paid on capital shares is determined by the board of directors of the cooperative that issued the shares unless the cooperative is a member of a federation; in that case, it is determined by the board of directors of the federation.

The additional interest that may be paid on capital shares issued by a credit union that is not a member of a federation is determined by the credit union’s general meeting, at its annual meeting.

“**62.1.** The interest paid on capital shares issued by a federation or a credit union that is a member of a federation may be taken out of surplus earnings, the stabilization reserve and, if those are insufficient, the general reserve.

In the case of a credit union that is not a member of a federation, the interest is taken out of the stabilization reserve, as is the additional interest, which may also be taken out of surplus earnings.”

51. Section 63 of the Act is replaced by the following section:

“**63.** The federation may pay interest on the shares issued by its member credit unions.”

52. Section 64 of the Act is repealed.

53. Section 66 of the Act is amended by inserting “ensuring, in particular, good governance and compliance with the laws governing its activities” after “practices”.

54. Section 66.1 of the Act is replaced by the following sections:

“66.1. A financial services cooperative must adhere to sound commercial practices.

Such practices include providing fair treatment to its clientele by, among other things,

- (1) providing appropriate information;
- (2) adopting a policy for processing complaints filed by members of that clientele and resolving disputes with them; and
- (3) keeping a complaints register.

“66.2. A financial services cooperative must be able to show to the Authority, and if applicable to the federation of which it is a member, that it adheres to sound and prudent management practices and sound commercial practices.”

55. Sections 67 and 68 of the Act are repealed.

56. Section 71 of the Act is amended

(1) by replacing “à ses règlements” in paragraph 1 in the French text by “à son règlement intérieur”;

(2) by inserting “and managers” after “officers” in paragraph 3;

(3) by replacing paragraph 4 by the following paragraph:

“(4) the documents of the cooperative issued by one of its officers or managers or other mandataries are valid.”

57. Section 73 of the Act is amended

(1) by striking out “and La Caisse centrale Desjardins du Québec, where the federation and the credit unions are members thereof,” in the first paragraph;

(2) by replacing “members of the group are not considered to be third persons in relation to each other” in the second paragraph by “groups within the financial group to which they belong are not considered to be third persons in relation to each other”.

58. Sections 74, 75 and 78 of the Act are repealed.

59. Section 81 of the Act is amended

(1) by replacing the introductory clause by the following:

“**81.** No federation may, without the Authority’s permission, grant a hypothec or other security on its movable property, except”;

(2) by inserting “or any loan contracted with the Bank of Canada” at the end of paragraph 1;

(3) by striking out paragraph 2;

(4) by replacing “40 of the Deposit Insurance Act (chapter A-26)” in paragraph 3 by “40.5 of the Deposit Institutions and Deposit Protection Act (chapter A-26) or, if it receives deposits from outside Québec, to obtain an advance from a federal or provincial body that guarantees or insures deposits”;

(5) by striking out paragraph 4;

(6) by striking out “recognized by the Authority as a self-regulatory organization” in paragraph 5;

(7) by replacing paragraph 6 by the following paragraph:

“(6) to act on behalf of its members or users for the clearing and settlement of instruments of payment or securities transactions;”;

(8) by striking out paragraphs 7 and 8;

(9) by adding the following paragraph at the end:

“The Authority may, in granting its permission, require any undertaking it considers necessary to ensure compliance with this Act.”

60. Section 82 of the Act is amended

(1) by striking out “for the purposes set out in section 81” in the first paragraph;

(2) by striking out the second paragraph;

(3) by striking out “the second paragraph or under” in the third paragraph.

61. Section 84 of the Act is amended

(1) by replacing subparagraph 3 of the first paragraph by the following subparagraphs:

“(3) in the case of a federation or a credit union that is a member of a federation, paying interest on capital shares;

“(3.1) in the case of a credit union that is not a member of a federation, paying additional interest on capital shares;”;

(2) by striking out “in the case of a credit union,” in subparagraph 4.1 of the first paragraph;

(3) by inserting “, including auxiliary members,” after “cooperative” in subparagraph 5 of the first paragraph;

(4) by replacing “The allocation” in the third paragraph by “However, in the case of a federation or a credit union that is a member of a federation, the allocation of surplus earnings to the payment of interest on capital shares is a matter under the jurisdiction of the federation’s board of directors. In addition, the allocation”.

62. Section 85 of the Act is amended by adding the following paragraph at the end:

“In the circumstances referred to in the first paragraph of section 62.1, the general reserve of a federation or a credit union that is a member of a federation may be drawn upon to pay interest on the capital shares it has issued.”

63. Section 86 of the Act is amended by replacing “Les règlements” in the French text by “Le règlement intérieur”.

64. Section 87 of the Act is amended by replacing “règlement” in the first paragraph and in the introductory clause of the second paragraph in the French text by “le règlement intérieur”.

65. Section 87.1 of the Act is amended by replacing “règlement” in the first paragraph in the French text by “son règlement intérieur”.

66. Section 88 of the Act is amended by replacing both occurrences of “capital base” by “capital” and “is sufficient to ensure sound and prudent management” by “is adequate to ensure its sustainability”.

67. Section 89 of the Act is amended by replacing “the capital base of the credit union is in conformity” by “its capital is in conformity”.

68. Section 90.1 of the Act is amended by adding the following paragraph at the end:

“The same is true for a transfer of sums from that reserve to the community development fund.”

69. Section 91 of the Act is amended by replacing “règlement de” in the first paragraph in the French text by “le règlement intérieur de”.

70. The heading of Chapter V of the Act is amended by inserting “, MANAGERS” after “OFFICERS”.

71. The heading of Division I of Chapter V of the Act is amended by inserting “AND MANAGERS” after “OFFICERS”.

72. Sections 92 to 96 of the Act are replaced by the following sections:

“92. The officers of a financial services cooperative are the members of its board of directors together with, in the case of a credit union, the members of the credit union’s board of supervision or, in the case of a federation, the members of the federation’s board of ethics and professional conduct.

In this Act, “officer”, when used with an expression referring to a legal person or to another group that is not a financial services cooperative, does not refer to a member of a board of directors.

“93. For the purposes of this Act, the managers of a financial services cooperative are

(1) the person chiefly responsible for the management of the cooperative (chief manager);

(2) any person appointed to a managerial position; and

(3) any person who, without being appointed to such a position, is designated as such by the cooperative’s board of directors.

“94. A financial services cooperative’s managerial positions are created by the cooperative’s board of directors; except as otherwise provided by this Act, the board may appoint any person to such a position and specify his or her functions.

“95. Despite section 94, the board of directors of a credit union that is a member of a federation may create managerial positions only to the extent provided for in the by-laws of the federation.

“96. The chief manager of a credit union may not be president or vice-president of the credit union’s board of directors.”

73. Section 97 of the Act is amended

(1) by replacing “director general” in the first paragraph by “chief manager”;

(2) by replacing “director general” in the second paragraph by “chief manager”.

74. Section 98 of the Act is amended

(1) by replacing “A director general”, “the director general” and “director general’s” in the first paragraph by “The chief manager of a cooperative”, “the chief manager” and “chief manager’s”, respectively;

(2) by replacing “The director general” in the second paragraph by “The chief manager of a cooperative” and by striking out “and from any meeting at which the conditions of employment of the director general are being discussed”.

75. Section 100 of the Act is amended

(1) by inserting “and managers” after “the officers” in the first paragraph;

(2) by inserting “and managers” after “such officers” in the second paragraph.

76. Section 101 of the Act is repealed.

77. Sections 102 and 103 of the Act are replaced by the following sections:

“102. Subject to this division, the officers of a financial services cooperative are bound by the same obligations as are imposed by the Civil Code on any director of a legal person.

Consequently, in the exercise of their functions, the officers are duty-bound toward the financial services cooperative to act with prudence and diligence, honesty and loyalty and in the interest of the cooperative.

In their capacity as mandataries of the financial services cooperative, the managers are bound, among other things, by the same obligations as are imposed on the directors under the first paragraph.

“103. An officer of a financial services cooperative is presumed to have fulfilled the obligation to act with prudence and diligence if the officer relied, in good faith and on reasonable grounds, on a report, information or an opinion provided by

(1) a manager of the financial services cooperative or, if applicable, of another cooperative that is a member of the same network as that cooperative, who the officer believes to be reliable and competent in the functions performed;

(2) legal counsel, professional accountants or other persons retained by the cooperative or a member of the network to which it belongs as to matters involving skills or expertise the officer believes are matters within the particular person’s professional or expert competence and as to which the particular person merits confidence;

(3) a committee of the board of directors of which the officer is not a member if the officer believes the committee merits confidence; or

(4) in the case of an officer of a credit union that is a member of a federation, the federation or a person it retains.”

78. Section 104 of the Act is amended by inserting “or manager” after “does not release any officer”.

79. Section 105 of the Act is amended by replacing “an officer of the cooperative or a” by “each of its officers and managers and any”.

80. Section 106 of the Act is amended by inserting “or manager” after “No officer”.

81. Section 107 of the Act is replaced by the following section:

“107. A financial services cooperative shall assume the defence of its officers and managers, and of persons who have acted in that capacity for the cooperative, who are prosecuted by a third person for an act done in the performance of their duties and shall pay any injury resulting from that act, unless they have committed a gross negligence or a personal fault separable from the performance of their duties.

In penal or criminal proceedings, however, the cooperative shall assume payment of the expenses of its officers and managers, and of persons who have acted in that capacity for the cooperative, only where they had reasonable grounds to believe that their conduct was in conformity with the law or where they have been discharged or acquitted, or where the proceedings have been withdrawn or dismissed.”

82. Section 108 of the Act is amended by replacing “of an officer or of a person who has acted in that capacity for the cooperative and whom” and “the officer’s or person’s” in the first paragraph by “of its officers or managers, or of persons who have acted for it in that capacity, whom” and “their”, respectively.

83. The Act is amended by inserting the following section after section 113:

“113.1. An officer cannot be held liable under section 110, 111 or 479.2 if the officer acted with a reasonable degree of prudence and diligence in the circumstances.

Furthermore, for the purposes of sections 110, 111 and 479.2, the court may, after considering all the circumstances and on the terms the court considers appropriate, relieve an officer, either wholly or partly, from the liability the officer would otherwise incur if it appears to the court that the officer has acted reasonably, honestly and loyally, and ought fairly to be excused.”

84. Section 114 of the Act is amended

(1) in the second paragraph,

(a) by replacing “The officer” by “An officer or manager who is suspended”;

(b) by inserting “or manager” after “capacity of officer” and by striking out “of officer”;

(c) by inserting “financial” after “the same”;

(2) by inserting “or manager” after “an officer” and “or manager’s” after “the officer’s” in the third paragraph.

85. Sections 115 to 117 of the Act are repealed.

86. Section 118 of the Act is replaced by the following sections:

“118. An officer or manager who is in a conflict of interest situation must, on pain of dismissal, disclose the situation.

The chief manager participating in deliberations and decisions relating to his or her conditions of employment is, in particular, a conflict of interest situation.

“118.1. Except in the case of a conflict of interest situation involving an officer who discloses the situation at a meeting of the board of directors of which he or she is a member, every conflict of interest situation involving an officer or manager must be disclosed by the officer or manager to the board of directors, in writing, as soon as he or she becomes aware of it.

A disclosure made during a board meeting must be entered in the minutes of the meeting.

“118.2. In addition to disclosing any conflict of interest situation involving him or her, an officer must, on pain of dismissal, abstain from voting on matters concerning the situation and avoid influencing the decision relating to it. The officer must also withdraw from any meeting while the situation is being discussed or voted on.”

87. Section 119 of the Act is amended by replacing “who is dismissed for having contravened section 118” by “or manager who is dismissed for having contravened section 118 or 118.2”.

88. Section 120 of the Act is amended by replacing “may give written instructions to the legal persons and partnerships it controls” in the first paragraph by “must give written instructions to the groups of which it is the holder of control”.

89. Sections 121 to 125 of the Act are replaced by the following sections:

“121. A financial services cooperative must, when doing business with natural persons or groups that are restricted parties with respect to it, act in the same manner as it would when dealing at arm’s length.

Consequently, a contract entered into between the cooperative and a natural person or group that is a restricted party with respect to it may not be less advantageous for the cooperative than if it had been entered into at arm’s length.

“122. Section 121 does not apply to the remuneration of officers or any other matter connected with a contract of employment.

“123. The following natural persons and groups are restricted parties with respect to a financial services cooperative:

- (1) the cooperative’s officers and managers;
- (2) if the cooperative is a credit union that is a member of a federation, the federation’s officers and managers;
- (3) a group whose board of directors is composed, in the majority, of officers of the cooperative;
- (4) natural persons and groups having economic ties with the officers or managers referred to in subparagraphs 1 to 3; and
- (5) any other person or group designated under section 124.

A group that belongs to the same financial group as a financial services cooperative is not a restricted party with respect to the cooperative.

“124. The Authority may designate a natural person or group as a restricted party if, in its opinion, that person or group is likely to receive preferential treatment to the detriment of the financial services cooperative.

The Authority may review a designation at the request of the person or group designated or the cooperative concerned.

Before making or refusing to review a designation, the Authority must give the natural person or group and the cooperative concerned an opportunity to present observations.

The Authority shall notify the person or group designated and the cooperative concerned of its decision on the designation or the review request, as applicable.

“125. Unless the obligations of a financial services cooperative under the following contracts are minimal, such contracts must be submitted to its board of directors for approval:

(1) a contract for the acquisition, by the cooperative, of securities issued by a natural person or group that is a restricted party with respect to the cooperative or for the transfer of assets between them; and

(2) a service contract between the cooperative and a natural person or group that is a restricted party with respect to it.

Before approving such contracts, the board of directors must obtain the opinion of the board of supervision or the board of ethics and professional conduct, as the case may be.”

90. Sections 126 to 129 of the Act are repealed.

91. Section 130 of the Act is amended

(1) by replacing “any of its officers or to any person who is an associate of its officers” in the first paragraph by “its officers or managers or to natural persons or groups having economic ties with them”;

(2) by replacing “its group” in the second paragraph by “the financial group to which the cooperative belongs”.

92. Section 131 of the Act is amended by replacing “or an associate of an officer where the officer” in paragraph 2 by “or manager or to a natural person or group having economic ties with the officer or manager, where he or she”.

93. Sections 131.1 to 131.7 of the Act are replaced by the following sections:

“131.1. The complaint processing and dispute resolution policy adopted under subparagraph 2 of the second paragraph of section 66.1 must, in particular,

(1) set out the characteristics that make a communication to the financial services cooperative a complaint that must be registered in the complaints register kept under subparagraph 3 of the second paragraph of section 66.1; and

(2) provide for a complaint record to be opened for each complaint and prescribe rules for keeping such records.

The financial services cooperative must make a summary of the policy, including the elements specified in subparagraphs 1 and 2 of the first paragraph, publicly available on its website and disseminate it by any appropriate means to reach the clientele concerned.

“131.2. Within 10 days after a complaint is registered in the complaints register, the financial services cooperative must send the complainant a notice stating the complaint registration date and the complainant’s right to have the complaint record examined under section 131.3.

“131.3. A person whose complaint has been registered in the complaints register may, if dissatisfied with the cooperative’s processing of the complaint or the outcome, request the cooperative to have the complaint record examined by the Authority.

If the cooperative is a credit union that is a member of a federation, the complaint record is examined by the federation rather than the Authority.

The cooperative is required to comply with the complainant’s request and send the record to the Authority or, in the case of a credit union that is a member of a federation, to the federation.

“131.4. The Authority shall examine the complaint records that are sent to it.

It may, with the parties’ consent and on payment by each party of the fees determined by regulation of the Government, act as conciliator or mediator or designate a person to act as such.

Conciliation or mediation may not, alone or in combination, continue for more than 60 days after the date of the first conciliation or mediation session, as the case may be, unless the parties consent to it.

In exercising the regulatory power under the second paragraph, the Government may determine different fees according to the classes of persons or groups it determines.

“131.5. Unless the parties agree otherwise, nothing that is said or written in the course of a conciliation or mediation session may be admitted into evidence before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

A conciliator or mediator may not be compelled to disclose anything revealed or learned in the exercise of conciliation or mediation functions or to produce a document prepared or obtained in the course of such functions before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person has a right of access to a document contained in the conciliation or mediation record.

“131.6. Despite sections 9 and 83 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Authority may not communicate a complaint record without the authorization of the financial services cooperative that has sent it.

“131.7. On the date set by the Authority, a financial services cooperative shall send it a report on the complaint processing and dispute resolution policy adopted under subparagraph 2 of the second paragraph of section 66.1 stating the number of complaints that the cooperative has registered in the complaints register and their nature.

The report must cover the period determined by the Authority.

On sending the report to the Authority, a credit union that is a member of a federation shall send a copy of it to the federation.”

94. Sections 132 to 135 of the Act are replaced by the following sections:

“132. A financial services cooperative shall prepare and maintain, at its head office, books containing

(1) its articles and the Authority’s certificates relating to them, its by-laws, and any notice concerning the address of its head office;

(2) the minutes and resolutions of its meetings;

(3) the names and domiciles of the members of its board of directors, and the dates of the beginning and end of their terms of office;

(4) a securities register; and

(5) a list of the fees required by the cooperative for the services it provides.

The members may examine the cooperative’s books mentioned in the first paragraph, except the securities register, during its regular office hours and obtain extracts from them without charge. They are also entitled, on request and without charge, to one copy of the articles and by-laws.

“133. In addition to the information referred to in the second paragraph of section 49, the securities register of a financial services cooperative must contain the following information with regard to the issued shares of its share capital:

(1) the names, in alphabetical order, and the addresses of the shareholders;

(2) the number of shares held by each such shareholder;

(3) the date and details of the issue and, if applicable, transfer of each share; and

(4) any amount due on any share.

The register must contain, if applicable, the same information with respect to the cooperative's debentures, bonds and notes, with the necessary modifications.

“134. A financial services cooperative must prepare and maintain, at its head office, accounting records and books containing

(1) the minutes of meetings and resolutions of the board of directors and its committees and, if applicable, of the board of supervision or the board of ethics and professional conduct;

(2) the compliance programs of the cooperative;

(3) the orders of the Authority and of the Minister;

(4) the written instructions issued under this Act; and

(5) if the cooperative is a credit union that is a member of a federation, the management agreements it has entered into with the federation or with the security fund established by the federation.

Unless otherwise provided by law, only the officers and the auditor may have access to the records and books referred to in the first paragraph.

“135. The accounting records that must be maintained by a financial services cooperative include

(1) the registers and accounting records required for preparing financial statements; and

(2) statements of account indicating, on a daily basis and for each depositor, the transactions between the cooperative and that depositor as well as the depositor's credit balance or debit balance.

However, if the cooperative is a credit union that is a member of a federation, it is required to maintain only those accounting records that are necessary for preparing its financial report and the combined financial statements.

The content of a credit union's financial report is prescribed by a standard of the federation; the combined financial statements present, in a combined form, the financial position of the credit unions that are members of the federation.”

95. Section 137 of the Act is replaced by the following sections:

“137. Unless otherwise provided by law, a financial services cooperative may keep all or any of the books it is required to keep under this Act at a place outside its head office, if

(1) it is a credit union that is a member of a federation and is authorized to do so under the federation’s standards, or it is a federation and is authorized to do so under its by-laws;

(2) the information contained in those books is available for inspection, in an appropriate medium, during regular office hours at the head office of the financial services cooperative or any other place in Québec designated by the board of directors; and

(3) the financial services cooperative provides technical assistance to facilitate the inspection of the information contained in the books.

If the books and registers are not kept at the head office, the cooperative shall send the Authority a notice specifying where they are kept.

“137.1. If accounting records of a financial services cooperative are kept outside Québec, books adequate to enable the officers to ascertain the financial position of the cooperative with reasonable accuracy on a quarterly basis must be kept at the head office of the cooperative or any other place in Québec designated by the board of directors.

“137.2. A financial services cooperative must be able to reproduce, in intelligible form and within a reasonable time, the information contained in the books it prepares and maintains under this Act.

A financial services cooperative must take reasonable precautions to prevent the loss or destruction of its books, to ensure their integrity and to facilitate detection and correction of inaccuracies they may contain.

“137.3. In any action or proceeding against a financial services cooperative or any of its members, the books of the cooperative are proof of their contents in the absence of evidence to the contrary.”

96. Section 138 of the Act is amended by replacing “paragraph 8” by “subparagraph 5 of the first paragraph”.

97. Section 139 of the Act is amended

(1) by replacing “vérifier” and “vérificateur” in the first paragraph in the French text by “auditer” and “auditeur”, respectively;

(2) by replacing “d’une vérification” and “vérifiés” in the second paragraph in the French text by “d’un audit” and “audités”, respectively.

98. Section 144 of the Act is replaced by the following section:

“144. In no case may the auditor be an officer, manager, other employee or member of the financial services cooperative that has appointed him or her, or a person having economic ties with an officer or manager.

Nor may the auditor responsible for auditing the combined financial statements be an officer, manager, other employee or person having economic ties with an officer or manager of a credit union that is a member of the federation that appointed him or her.”

99. Section 149 of the Act is amended

(1) by replacing “Le vérificateur” in the first paragraph in the French text by “L’auditeur”;

(2) by inserting “, managers” after “officers” in the second paragraph;

(3) in the third paragraph,

(a) by replacing “Le vérificateur chargé de la vérification” in the French text by “L’auditeur chargé de l’audit”;

(b) by inserting “, managers” after “officers”.

100. Section 151 of the Act is amended by replacing “Le vérificateur” in the introductory clause of the first paragraph and in the second paragraph in the French text by “L’auditeur”.

101. Section 156 of the Act is amended

(1) by replacing “If a director, the director general or the assistant-secretary becomes aware” by “If an officer or manager becomes aware”;

(2) by replacing “they must” by “the officer or manager must”.

102. Section 161 of the Act is amended by replacing “de ses règlements” in the French text by “de son règlement intérieur”.

103. Section 162 of the Act is amended, in the first paragraph,

(1) by inserting “and managers” after “officers” in subparagraph 2;

(2) by replacing “du vérificateur” in subparagraph 7 in the French text by “de l’auditeur”;

(3) by replacing “règlement de” in subparagraph 9 in the French text by “le règlement intérieur de”.

104. Section 165 of the Act is amended by replacing the first sentence by the following sentence: “Every member who requests a copy of the annual report is entitled to one, free of charge, as of the 10th day preceding the annual meeting at which the report will be presented.”

105. Section 170 of the Act is amended by replacing “belonging to the group” in the third paragraph by “that is a member of the federation”.

106. The Act is amended by inserting the following section after section 178:

“178.1. A debtor who would have been entitled to an acquittance from a credit union that, before its winding-up, was a member of a federation, but may not obtain it because of the winding-up, may obtain it from the federation.

The federation may also release the debtor from a hypothec and consent to cancelling its registration, if applicable, in the registers kept at the registry office.

A credit union that was wound up before 1 July 2001 and that, prior to its winding-up, was a member of a federation or amalgamating confederation under section 689, is considered to be a credit union that was a member of the Fédération des caisses Desjardins du Québec.”

107. The Act is amended by inserting the following after section 185:

“185.1. Section 178.1 applies, with the necessary modifications, to a credit union that is dissolved.

“DIVISION III

“FINANCIAL CONTRACTS

“185.2. Neither the winding-up nor the dissolution of a federation prevents performance of the financial contracts determined by the Authority under section 40.22 of the Deposit Institutions and Deposit Protection Act (chapter A-26) and entered into by the federation, or compensation against an amount payable under or in regard to such a contract, in accordance with the terms of the contract.”

108. Section 190 of the Act is amended, in the first paragraph,

(1) by striking out “and every application for withdrawal from the federation”;

(2) by replacing “by 2/3 of the votes cast” by “by a special resolution passed”.

109. Section 195 of the Act is amended

(1) by replacing paragraph 2 by the following paragraph:

“(2) subscribe and pay for one qualifying share or for any other number of qualifying shares that may be prescribed by by-law of the credit union;”;

(2) by replacing “les règlements” in paragraph 3 in the French text by “le règlement intérieur”.

110. Section 198 of the Act is amended by replacing “A credit union shall establish by by-law,” by “The by-laws of a credit union must provide for”.

111. Section 200 of the Act is repealed.

112. Section 203 of the Act is amended by inserting “, if the member owes no debts to the credit union,” after “A member may” in the first paragraph.

113. Section 204 of the Act is amended by replacing “les règlements” in paragraph 1 in the French text by “le règlement intérieur”.

114. Section 212 of the Act is amended

(1) by replacing “by by-law” in the first paragraph by “by by-law of the credit union”;

(2) by replacing “by-law” in the second paragraph by “special resolution”.

115. Section 214 of the Act is amended by replacing “in the by-laws” in the first paragraph by “by by-law”.

116. The Act is amended by inserting the following sections after section 216:

“216.1. Except when it is holding an election, the meeting shall make its decisions by a majority of the votes cast or, where this Act so provides, by a 2/3 majority of the votes cast.

Unless otherwise provided by the by-laws of the credit union, in the event of a tie vote, the person chairing the meeting shall have a casting vote.

“216.2. A decision that must be made by a majority of the votes cast at the general meeting is called a resolution or ordinary resolution; a decision that must be made by a 2/3 majority of the votes cast is called a special resolution.”

117. Section 217 of the Act is amended

(1) by replacing “Decisions are taken by a majority of the votes cast. In the event of a tie, the person chairing the meeting has a casting vote. However, at” by “In the case of”;

(2) by replacing “aux règlements” in the French text by “au règlement intérieur”.

118. Section 217.1 of the Act is amended by replacing “règlement” in the first and second paragraphs in the French text by “le règlement intérieur”.

119. Section 218 of the Act is replaced by the following section:

“218. The by-laws of the credit union are passed by special resolution of the general meeting.

The general meeting may, where applicable, delegate to the board of directors the power to pass by-laws on the subjects determined by the general meeting, in accordance with the standards of the federation.

Any amendments made by a credit union to its by-laws must be sent to the Authority and, if applicable, to the federation of which the credit union is a member.”

120. Section 221 of the Act is amended

(1) by replacing “determine” in paragraph 4 by “if the credit union is not a member of a federation, determine”;

(2) by inserting “and on the transfer of any sum from that reserve to the community development fund” at the end of paragraph 4.1;

(3) by inserting “, if applicable,” after “elect the members of the board of directors and” in paragraph 5;

(4) by replacing “vérificateur” in paragraph 6 in the French text by “auditeur”;

(5) by replacing “les règlements” in paragraphs 8 and 9 in the French text by “le règlement intérieur”.

121. Section 222 of the Act is amended by replacing “the president or the vice-president of the credit union or the board of directors of the federation” by “if applicable, the president or vice-president of the board of directors of the credit union, the board of directors of the federation, or any other person determined by the by-laws of the credit union”.

122. Section 223 of the Act is amended by striking out the second sentence of the first paragraph.

123. The Act is amended by inserting the following section after section 223:

“223.1. Business mentioned in a requisition to hold a meeting may not be presented at the meeting if

- (1) a meeting has already been called to discuss that business;
- (2) the business is not within the powers of the members;
- (3) the business is intended to enforce a personal claim or redress a personal grievance against the credit union or, if applicable, the federation or another member of the federation of which the credit union is a member, or their officers, managers or members;
- (4) the business does not relate in a significant way to the internal affairs or the activities of the credit union; or
- (5) the business has already been submitted to and rejected by the members within the year preceding the requisition.

The requisition is inadmissible if none of the business it mentions may be presented at the meeting.”

124. Section 224 of the Act is amended by replacing “a copy of the list referred to in paragraph 5 of section 132, notwithstanding the second paragraph of section 137” in the first paragraph by “, free of charge, an extract from the securities register under section 133 containing the names and addresses of the persons who, at that time, hold qualifying shares issued by the credit union”.

125. Section 227 of the Act is replaced by the following section:

“227. A natural person who is a member of the credit union may be a member of its board of directors and of its board of supervision, unless that person is disqualified for office as a member of such boards.

In addition to persons disqualified for office as directors under the Civil Code, and persons convicted of an offence or an indictable offence involving fraud or dishonesty who have not obtained a pardon, the following persons are disqualified for office as members of a board:

- (1) a member who has been a member for less than 90 days, unless he or she is a founder;
- (2) an auxiliary member;

(3) the chief manager of the credit union or another of its employees, or an employee of the federation, where applicable, or of another legal person or partnership belonging to the financial group;

(4) a member of another board of the credit union;

(5) an officer or employee of another credit union; and

(6) a person removed from office in the past five years under section 118, 118.2 or 335.”

126. Section 230 of the Act is amended by adding the following paragraph at the end:

“The notice must include the reasons for the resignation.”

127. Section 231 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

“A notice under section 230 must be given to the credit union and the Authority or, if the credit union is a member of a federation, to the federation.”;

(2) by replacing “makes such a declaration” in the second paragraph by “gives such notice”.

128. Section 232 of the Act is amended by replacing “A member” in the first paragraph by “In addition to the cases in which a member of a board may be dismissed by the federation, a member”.

129. Section 233 of the Act is amended by adding the following paragraph at the end:

“A credit union or any of its officers or managers who, in good faith, present facts at the meeting that justify a dismissal shall not thereby incur any civil liability.”

130. Section 234 of the Act is amended

(1) by replacing “A vacancy” by “Subject to the power of the board of directors of the federation under the second paragraph of section 335 to fill a vacancy”;

(2) by inserting “, such a vacancy” after “board”.

131. Section 236 of the Act is amended by inserting “financial” before “group” in the fourth paragraph.

132. Section 242 of the Act is replaced by the following sections:

“242. The board of directors shall exercise all the powers necessary to manage, or supervise the management of, the internal affairs and the activities of the credit union, and those powers may be delegated to an officer, a manager or one or more committees of the board.

Except to the extent provided by law, the powers of the board of directors relating to the reception of deposits and the provision of credit and other products and services may not be restricted or withdrawn.

The by-laws of the credit union may determine the powers relating to the internal affairs of the credit union that the board of directors may exercise only with the authorization of the general meeting.

“242.1. A credit union must implement a policy to foster, in particular, the independence, competence and diversity of the members of its board of directors and of the members of the committees of the board.”

133. Section 243 of the Act is amended

(1) by replacing paragraph 6 by the following paragraphs:

“(6) establish a charging policy for the products and services provided by the credit union and a policy for setting savings and credit interest rates;

“(6.1) determine the rate of interest on investment shares and, if the credit union is not a member of a federation, on capital shares;”;

(2) by replacing paragraph 8 by the following paragraph:

“(8) insure the credit union against the risks of fire, theft and embezzlement by its officers, managers and other employees, and provide the credit union with civil liability insurance and officers’ and managers’ liability insurance;”;

(3) by replacing “la vérification” in paragraph 11 in the French text by “l’audit”;

(4) by replacing “de vérification” in paragraph 13 in the French text by “d’audit”.

134. Section 245 of the Act is amended by replacing “The credit union may, by by-law,” in the first paragraph by “The by-laws of the credit union may”.

135. Section 248 of the Act is amended by inserting “intérieur” after “règlement” in the first paragraph in the French text.

136. Section 249 of the Act is amended by replacing “des règlements” in the French text by “du règlement intérieur”.

137. Section 250 of the Act is amended by replacing “règlement” in the first paragraph in the French text by “le règlement intérieur”.

138. Section 254 of the Act is amended by replacing “employees” in the third paragraph by “managers, other employees”.

139. Section 257 of the Act is amended, in the second paragraph,

(1) by replacing “credit union officers” in paragraph 2 by “officers and managers of the credit union”;

(2) by replacing “aux règlements” in paragraph 8 in the French text by “au règlement intérieur”.

140. Section 260 of the Act is replaced by the following section:

“**260.** The board of supervision of a credit union is composed of three members, or of a greater number that may be prescribed by by-law of the credit union.”

141. Section 260.1 of the Act is amended by replacing “The credit union may, by by-law,” in the first paragraph by “The by-laws of the credit union may”.

142. Section 263 of the Act is amended by replacing “the officers and” by “the officers, managers and other”.

143. Section 265 of the Act is amended

(1) by replacing “any employee or officer” in the first paragraph by “a manager, any other employee or an officer”;

(2) by inserting “or manager” after “officer” in the third paragraph.

144. The Act is amended by inserting the following after the heading of Division V of Chapter VIII before section 271:

“§1. — *General provision*

“**270.1.** The following may amalgamate with each other:

(1) credit unions that are not members of any federation;

(2) credit unions that are members of the same federation; or

(3) credit unions that are members of the same federation and credit unions that are not members of any federation.

The regular or long form of amalgamation may, in cases allowing it, be replaced by amalgamation by absorption.

“§2. — *Long-form amalgamation*”.

145. Section 271 of the Act is amended

(1) by striking out “Two or more credit unions may amalgamate.” in the introductory clause;

(2) by replacing “, the judicial district of its head office and, if applicable, the name of the federation of which it will be a member” in paragraph 1 by “and the judicial district in which its head office will be situated”;

(3) by striking out paragraphs 6 and 7.

146. Section 272 of the Act is replaced by the following section:

“**272.** The amalgamation of a credit union that is a member of a federation with another credit union requires the consent of that federation.”

147. Section 274 of the Act is amended by replacing “by by-law” and “The by-law” by “by special resolution” and “The resolution”, respectively.

148. Section 276 of the Act is amended

(1) by replacing “the amalgamation by-laws are adopted, the amalgamating credit unions” by “the amalgamation agreement is adopted by each of the amalgamating credit unions, the latter”;

(2) by replacing “, in addition to the provisions that may be included in constituting instruments pursuant to this Act, those set out in” by “the particulars that are required to be included in the credit union’s articles of constitution, except the particulars concerning the founders. In addition, they must contain the information required under”.

149. Section 277 of the Act is amended by replacing “of the first amalgamation by-law by one of the amalgamating credit unions” by “of the first of the special resolutions adopting the amalgamation agreement”.

150. Section 278 of the Act is amended

(1) by replacing “each by-law approving the amalgamation” in paragraph 3 by “each special resolution adopting the amalgamation agreement”;

(2) by replacing “du vérificateur” in paragraph 6 in the French text by “de l’auditeur”;

(3) by striking out paragraph 7;

(4) by replacing paragraph 8 by the following paragraph:

“(8) a copy of a document attesting the consent of the federation required under section 272; and”.

151. Section 281 of the Act is amended by adding the following paragraph at the end:

“If one of the amalgamating credit unions is a member of a federation, the amalgamated credit union is, by operation of law, a member of that federation.”

152. The Act is amended by inserting the following heading after section 281:

“§3. — *Amalgamation by absorption*”.

153. The Act is amended by inserting the following sections after section 282:

“282.1. In an amalgamation by absorption,

(1) the officers of the amalgamated credit union are those of the absorbing credit union;

(2) the mode of election of the officers to be elected after the amalgamation is the same as that prescribed for the election of the officers of the absorbing credit union;

(3) the composition of the share capital of the amalgamated credit union is that of the share capital of the absorbing credit union, and the shares of the amalgamating credit unions are converted into shares of the amalgamated credit union;

(4) the provisions of the articles of amalgamation concerning the head office, as well as the conditions and restrictions concerning the exercise of certain powers or the pursuit of certain activities, are identical to those set out in the articles of the absorbing credit union; and

(5) the by-laws of the amalgamated credit union are those of the absorbing credit union.

“282.2. In an amalgamation by absorption, the absorbing credit union may approve the amalgamation agreement provided for in section 271 by a simple resolution of its board of directors.

The absorbing credit union must send a certified copy of the resolution to the Authority and the federation.”

154. Section 283 of the Act is replaced by the following section:

“283. The provisions relating to a long-form amalgamation apply, in all other respects, to an amalgamation by absorption, with the necessary modifications.”

155. Section 284 of the Act is repealed.

156. The Act is amended by inserting the following division after section 284:

“DIVISION V.1

“CONTINUANCE UNDER THIS ACT

“284.1. If the Minister allows it, a cooperative that is established under an Act of a jurisdiction other than Québec and that has a mission similar to that of a credit union within the meaning of this Act, but whose principal establishment is located outside Québec, may continue as such a credit union if

(1) the Act governing it allows such continuance;

(2) either a federation agrees to admit it as a member once it is continued and undertakes to furnish, at the Authority’s request, guarantees that the Authority considers sufficient to ensure the protection of the credit union’s members, or the cooperative itself furnishes guarantees that the Authority considers sufficient to ensure such protection; and

(3) it will be able to retain its principal establishment outside Québec.

The guarantees required for the purposes of subparagraph 2 of the first paragraph may be furnished by a security fund rather than a federation.

“284.2. Continuance requires the filing of an application for the Minister’s permission, together with articles of continuance, with the Authority.

“284.3. The articles of continuance must contain the particulars required to be set out in the articles of constitution of a credit union, except the particulars concerning the founders and, if the credit union resulting from the continuance is a member of a federation, the particulars concerning the head office.

A cooperative that continues as a credit union governed by this Act may, by those articles, make any amendment to its constituting act that such a credit union may make to its articles under this Act.

The articles of continuance must also contain the title of and exact reference to the Act under which the cooperative was constituted and the date of constitution or, if applicable, the date of the most recent continuance or conversion.

“284.4. The application filed with the Authority must be accompanied with

- (1) the articles of continuance;
- (2) a notice containing the names and addresses of the directors;
- (3) a notice containing the address of the cooperative’s principal establishment;
- (4) if applicable, a copy of the document attesting the federation’s consent under subparagraph 2 of the first paragraph of section 284.1;
- (5) the documents attesting the guarantees provided for in subparagraph 2 of the first paragraph of section 284.1;
- (6) the budgeted statements of the assets and liabilities and of the results for the first year of the credit union’s activities following the continuance;
- (7) a report assessing the needs to be met by the continuance of the cooperative; and
- (8) the fees prescribed by regulation of the Government.

“284.5. The Authority may require any additional documents or information it specifies for the purpose of examining the application.

“284.6. After receiving the application for permission referred to in section 284.2, the required documents and fees and any additional documents or information it requires, the Authority shall prepare a report on the reasons for granting or denying the application.

The report must also include the information from the report the Authority must prepare under section 14 when processing an application requesting the Minister to authorize the constitution of a financial services cooperative.

“284.7. To the extent that the proposed name of the credit union is compliant with the requirements of this Act, the Authority shall send its report to the Minister together with the application.

“284.8. The Minister may, if the Minister considers it advisable, allow the continuance of the cooperative.

If the Minister allows the cooperative’s continuance, the Authority shall process the articles of continuance received and issue the certificate and the copies of it in accordance with the second paragraph of section 15.

“284.9. The continuance certificate issued by the Authority attests the continuance of the cooperative as a credit union governed by this Act as of the date and, if applicable, the time shown on the certificate.

As of that date and time, the articles of continuance are deemed to be the articles of constitution of the credit union; if the latter is a member of a federation, the head office of the credit union is deemed to be situated at the head office of the federation.

“284.10. The rights, obligations and acts of a cooperative continued as a credit union under this Act, and those of the members of the cooperative, are unaffected by the continuance.

The continued credit union shall remain a party to any judicial or administrative proceeding to which the cooperative was a party.

“284.11. The Authority shall send a copy of the certificate of continuance to the authority responsible for the administration of the Act that governed the cooperative before its continuance.”

157. Section 286 of the Act is amended, in the second paragraph,

(1) by replacing “Any other legal person” by “Any other user of its services”;

(2) by striking out “any partnership, any group of persons and any natural person recommended by a credit union”.

158. The Act is amended by replacing “A federation may, by by-law, establish” in section 287 and “The federation may identify by by-law” in section 287.1 by “The by-laws of a federation may determine” and by replacing “The by-law” in section 287.1 by “The by-laws”.

159. Section 288 of the Act is amended by replacing “of a by-law passed by the federation” by “of the by-laws of the federation made”.

160. Section 288.1 of the Act is amended

(1) by replacing “determined by by-law” by “determined by the by-laws”;

(2) by replacing “The regulation may not permit the participating auxiliary members” by “In no case may such members be permitted”.

161. Section 289 of the Act is amended

(1) by replacing “les règlements et les normes de la fédération” in paragraph 2 in the French text by “le règlement intérieur de la fédération et ses normes”;

(2) by replacing paragraphs 3 and 4 by the following paragraphs:

“(3) subscribe and pay for one qualifying share or any other number of qualifying shares that the by-laws of the federation may prescribe;

“(4) be admitted by the federation, except in the case of a founding credit union.”

162. Section 291 of the Act is amended by replacing “A federation shall, by by-law, prescribe” by “The by-laws of a federation shall determine”.

163. Section 293 of the Act is amended by replacing “in a by-law” in the first paragraph by “by the by-laws”.

164. Section 294 of the Act is amended by replacing the introductory clause by the following introductory clause:

“**294.** The by-laws of a federation shall determine”.

165. Section 294.1 of the Act is amended by replacing “règlement” in the first and second paragraphs in the French text by “le règlement intérieur”.

166. Section 295 of the Act is amended by replacing “The federation” by “The by-laws of the federation”.

167. Section 296 of the Act is amended by replacing “where a federation establishes” in the first paragraph by “where the by-laws of a federation establish”.

168. Section 297 of the Act is amended by replacing the introductory clause by the following introductory clause:

“**297.** The by-laws of the federation must, when establishing councils of representatives, prescribe”.

169. Section 300 of the Act is replaced by the following sections:

“**299.1.** Except when it is holding an election, the meeting shall make its decisions by a majority of the votes cast or, where this Act so provides, by a 2/3 majority of the votes cast.

Unless otherwise provided by the by-laws of the federation, in the event of a tie vote, the person chairing the meeting shall have a casting vote.

“**299.2.** A decision that must be made by a majority of the votes cast at the general meeting is called a resolution or ordinary resolution; a decision that must be made by a 2/3 majority of the votes cast is called a special resolution.

“**300.** The by-laws of the federation are adopted by special resolution of the general meeting.

The general meeting may delegate to the board of directors, to a council of representatives or to another organ of the federation the power to adopt by-laws specific to the federation on subjects determined by the general meeting.

Any amendments to the by-laws of the federation must be sent to the Authority.”

170. Section 303 of the Act is amended

- (1) by striking out paragraph 4;
- (2) by replacing “the by-laws of the federation referred to in section 309” in paragraph 5 by “the by-laws of the federation”;
- (3) by replacing “vérificateur” in paragraph 6 in the French text by “auditeur”;
- (4) by replacing “les règlements” in paragraph 8 in the French text by “le règlement intérieur”.

171. Section 304 of the Act is amended by replacing “and the president or the vice-president of the federation” by “the president or vice-president of the federation, or any person determined by by-law of the federation,”.

172. Section 305 of the Act is amended by replacing “the by-laws” in the first paragraph by “its by-laws”.

173. The Act is amended by inserting the following section after section 305:

“305.1. Business mentioned in a requisition to hold a meeting may not be presented at the meeting if

- (1) a meeting has already been called to discuss that business;
- (2) the business is not within the powers of the members;
- (3) the business is intended to enforce a personal claim or redress a personal grievance against the federation or a credit union, or their officers, managers or members;
- (4) the business does not relate in a significant way to the internal affairs or the activities of the federation; or
- (5) the business has already been submitted to and rejected by the members within the year preceding the requisition.

The requisition is inadmissible if none of the business it mentions may be presented at the meeting.”

174. Section 309 of the Act is replaced by the following section:

“309. The members of the board of directors, except the president of the federation, are elected or appointed from among the members of the general meeting, unless they are elected in accordance with the by-laws of the federation.”

175. Section 310 of the Act is amended by replacing “The federation must determine by by-law” in the second paragraph by “The by-laws of the federation must provide for”.

176. Section 312 of the Act is amended by replacing “In the event” in the first paragraph by “Unless otherwise provided in the by-laws of a federation, in the event”.

177. Section 313 of the Act is amended by adding the following paragraph at the end:

“The notice must include the reasons for the resignation.”

178. Section 314 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

“A notice under section 313 must be given to the federation and the Authority.”;

(2) by replacing “makes such a declaration” in the second paragraph by “gives such notice”.

179. Section 316 of the Act is amended by adding the following paragraph at the end:

“A federation or any of its officers or managers who, in good faith, present facts at the meeting that justify a dismissal shall not thereby incur any civil liability.”

180. Section 323 of the Act is amended by striking out the second sentence of the second paragraph.

181. Section 324 of the Act is replaced by the following sections:

“324. The board of directors shall exercise all the powers necessary to manage, or supervise the management of, the internal affairs and the activities of the federation, and those powers may be delegated to an officer, a manager or one or more of the board’s committees.

Except to the extent provided by law, the powers of the board of directors relating to the reception of deposits and the provision of credit and other products and services may not be restricted or withdrawn.

The by-laws of the federation may determine the powers relating to the internal affairs of the federation that the board of directors may exercise only with the authorization of the general meeting.

“324.1. A federation must implement a policy to foster, in particular, the independence, competence and diversity of the members of its board of directors and of the members of the committees of the board.”

182. Section 325 of the Act is amended

(1) by replacing “les règlements de la fédération” in paragraph 1 in the French text by “le règlement intérieur de la fédération”;

(2) by replacing “fixing interest rates on savings and credit” in paragraph 6 by “setting the federation’s savings and credit interest rates”;

(3) by inserting the following paragraph after paragraph 6:

“(6.1) determine the rate of interest on capital shares issued by credit unions that are members of the federation;”;

(4) by replacing paragraph 8 by the following paragraph:

“(8) insure the federation against the risks of fire, theft or embezzlement by its officers, managers and other employees, and provide the federation with civil liability insurance and officers’ and managers’ liability insurance;”;

(5) by replacing “la vérification” in paragraph 11 in the French text by “l’audit”.

183. Section 326 of the Act is amended

(1) by replacing “The federation shall determine, by by-law,” in the first paragraph by “The by-laws of the federation must prescribe”;

(2) in the second paragraph,

(a) by replacing “In no case may a majority of the members of the board of directors consist of director generals of the federation or of the credit unions, or” by “The board of directors must be composed of a majority of directors who do not hold office as chief manager of the federation or of a credit union and who are not”;

(b) by replacing “by by-law” by “by the by-laws”.

184. Section 328 of the Act is replaced by the following section:

“328. In addition to persons disqualified for office as directors under the Civil Code, and persons convicted of an offence or an indictable offence involving fraud or dishonesty who have not obtained a pardon, the following persons are disqualified for office as members of the board of directors:

- (1) an employee of the federation or of one of its member credit unions, except a chief manager;
- (2) a member of the board of ethics and professional conduct;
- (3) an officer, manager or other employee of another federation;
- (4) a person removed from office in the past five years under section 118, 118.2 or 335; and
- (5) a person otherwise disqualified under the by-laws of the federation.”

185. Section 330 of the Act is replaced by the following section:

“330. The by-laws of the federation must set out the number of times that a board member’s term of office may be renewed, whether consecutively or otherwise.”

186. Sections 331 and 332 of the Act are repealed.

187. Section 334 of the Act is amended by replacing “des règlements” in the French text by “du règlement intérieur”.

188. Section 335 of the Act is replaced by the following section:

“335. The board of directors of a federation may, at the request of the board of supervision of a credit union, suspend or dismiss any manager, other employee or officer of the credit union by following the procedure required prior to a decision to be rendered under section 265. It may, on its own initiative and in accordance with that procedure, suspend or dismiss an officer or manager who does not fulfil his or her obligations.

If the suspended or dismissed person is the chief manager or an officer of a credit union, the federation may designate a replacement for the duration of the suspension or for the interim period until the credit union replaces that person.”

189. Section 337 of the Act is replaced by the following section:

“337. If so authorized by the by-laws of the federation, the board of directors may establish any committee of the board.”

190. Sections 338 to 340 of the Act are repealed.

191. Section 341 of the Act is amended by inserting “special” before “committee” in the second paragraph.

192. Section 342 of the Act is amended by replacing “employees” by “managers, other employees”.

193. Section 346 of the Act is amended

(1) by inserting “financial” before “group” in the second paragraph;

(2) in the fourth paragraph,

(a) by replacing “and employees” by “, managers and other employees”;

(b) by inserting “financial” before “group”.

194. Section 349 of the Act is amended by inserting “intérieur” after “règlement” in the French text.

195. Section 351 of the Act is amended by replacing “and employees” by “, managers and other employees”.

196. Section 354 of the Act is amended by inserting “, a manager” after both occurrences of “an officer” in the second paragraph.

197. Section 355 of the Act is amended

(1) by inserting “manager, other” after “suspend any” in the first paragraph;

(2) by inserting “or manager” after “an officer” in the third paragraph.

198. Section 359 of the Act is amended by replacing “shall, by by-law, determine” by “must, in its by-laws, establish”.

199. Section 360 of the Act is amended by replacing “may, by by-law,” by “may, in its by-laws,”.

200. Section 361 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

“In addition to persons disqualified for office as directors under the Civil Code, and persons convicted of an offence or an indictable offence involving fraud or dishonesty who have not obtained a pardon, the following persons may not be members of the board of ethics and professional conduct:

(1) an employee of the federation or of one of its member credit unions;

- (2) a member of the board of directors of the federation;
 - (3) an officer, manager or other employee of another federation;
 - (4) a person removed from office in the past five years under section 118, 118.2 or 335; and
 - (5) a person otherwise disqualified under the by-laws of the federation.”;
- (2) by inserting “financial” before both occurrences of “group” in the second paragraph.

201. Section 364 of the Act is amended by replacing “controlled” in the second paragraph by “chosen”.

202. Section 366 of the Act is amended by replacing “controlled” by “chosen”.

203. Section 367 of the Act is amended by inserting “or their members” after “where the credit unions”.

204. Section 368 of the Act is amended by inserting “financial” before “group”.

205. Section 369 of the Act is replaced by the following section:

“369. The federation may adopt standards applicable to the activities and management practices of its member credit unions.

It must, however, adopt standards applicable to those credit unions as regards

- (1) their commercial practices;
- (2) the contents of the financial report provided for in the second paragraph of section 135;
- (3) the hiring of the chief manager, his or her conditions of employment and the termination of his or her contract of employment;
- (4) the management of their capital and assets;
- (5) the processing of complaints and resolution of disputes;
- (6) their investments; and
- (7) the reserves to be maintained for doubtful debts and contingent losses.

A standard adopted under subparagraph 2 of the second paragraph is subject to the Authority’s approval.”

206. Sections 370 to 374 of the Act are repealed.

207. Section 375 of the Act is amended

(1) by striking out “by-laws or” in the first paragraph;

(2) in the second paragraph,

(a) by striking out “by-laws or”;

(b) by replacing “qu’ils” in the French text by “qu’elles”.

208. Section 376 of the Act is amended by replacing “The by-laws and standards of the federation shall be transmitted” by “The federation shall transmit the by-laws and standards it has adopted”.

209. Sections 377 to 381 of the Act are repealed.

210. Section 382 of the Act is replaced by the following section:

“382. The federation may withdraw or restrict the power of any member credit union to allocate its surplus earning or its shareable reserves.”

211. Section 383 of the Act is amended

(1) by replacing “The federation may, by by-law,” in the first paragraph by “The by-laws of the federation may”;

(2) by replacing the second paragraph by the following paragraphs:

“The board of directors of a federation fixes, by resolution, the assessments it considers necessary for the pursuit of the federation’s missions.

A credit union that is a member of the federation is bound to pay those assessments.”

212. The Act is amended by inserting the following subdivision after section 385:

“§3.—*Examination of complaint records*

“385.1. A federation must adopt a policy on the examination of complaint records for complaints filed by complainants who are clients of its member credit unions.

“385.2. A federation must also keep a register of the complaint records submitted for its examination.

“385.3. Within 10 days after receiving a complaint record, the federation must send the complainant a notice stating the date of receipt and the complainant’s right under section 385.4 to have the record reviewed by the Authority.

“385.4. A complainant whose complaint record has been sent to the federation may, if dissatisfied with the examination carried out by the federation or its outcome, request the federation to have the record reviewed by the Authority.

The federation is bound to comply with the request and send the record to the Authority.

“385.5. Sections 131.4 to 131.6 apply, with the necessary modifications, to the review of the record and to conciliation or mediation to which the federation is a party.

“385.6. On the date set by the Authority, a federation shall send it a report on the complaint record examination policy adopted in accordance with section 385.1 stating in particular the number of complaint records that the federation has registered in the register of complaint records submitted for its examination and their nature.

The report must cover the period determined by the Authority.”

213. Section 387 of the Act is amended

(1) in the first paragraph,

(a) by replacing “president of the federation” in the first sentence by “board of directors of the federation”;

(b) by replacing “may only be removed from office by the president of the federation with the Authority’s approval” in the fourth sentence by “may not be removed from office without the Authority’s prior approval”;

(2) by replacing “president” in the second paragraph by “board”.

214. Section 388 of the Act is amended by replacing “de vérification” in the French text by “d’audit”.

215. Section 389 of the Act is amended

(1) by replacing “du vérificateur” in paragraph 2 in the French text by “de l’auditeur”;

(2) by replacing “règlement” in paragraph 3 in the French text by “le règlement intérieur”.

216. Section 391 of the Act is amended

- (1) by striking out “periodically”;
- (2) by inserting “, or the activities carried on on its behalf, at the intervals the federation considers appropriate” after “of a credit union”;
- (3) by replacing “18 months. However, the Authority may determine an interval of less than 18 months” by “three years”.

217. Section 396 of the Act is amended, in the first paragraph,

- (1) by inserting “or managers” at the end of subparagraph 2;
- (2) by replacing “or concerning partnerships or legal persons belonging to the group” in subparagraph 4 by “or managers or concerning the partnerships or legal persons belonging to the financial group to which the credit union belongs”.

218. Section 399 of the Act is amended by inserting “cooperative” before “group” in the fourth paragraph.

219. The heading of Division VI of Chapter IX before section 403 of the Act is replaced by the following heading:

“SPECIAL POWERS”.

220. The Act is amended by inserting the following after the heading of Division VI of Chapter IX:

“§1.—*Powers of the federation*

“**402.1.** If the federation considers that a credit union is not adhering to sound and prudent management practices or sound commercial practices, has contravened this Act or an instrument adopted under this Act, has failed to resolve a conflict of interest or has failed to maintain a satisfactory financial position, it may

- (1) give written instructions to the credit union respecting the measures it considers appropriate to remedy the situation, and specify the time within which the credit union is required to comply with those instructions;
- (2) order the credit union to adopt and implement a compliance program in accordance with its directives, within the time it prescribes and for the reasons it specifies.

In addition, the federation may give written instructions to a credit union at the request of the credit union’s board of supervision.

Before giving written instructions or issuing an order, the federation must notify the credit union and give it an opportunity to present observations.

“402.2. The written instructions given by a federation under this Act are binding on the persons to whom they are addressed.”

221. Section 403 of the Act is replaced by the following section:

“403. A federation may suspend the powers of the board of directors or board of supervision of a credit union for a maximum period of 30 days and appoint a provisional administrator to exercise the responsibilities of the board temporarily, as soon as the federation has reason to believe that

- (1) there has been misappropriation or embezzlement;
- (2) there has been a serious fault or substantial breach in the performance of obligations on the part of the board of directors or of an officer or manager of the credit union; or
- (3) control over the property of the credit union is insufficient to adequately protect its members’ rights.”

222. Section 404 of the Act is amended

(1) by replacing “Before granting authorization under section 403, the Authority shall” in the first paragraph by “Before ordering a suspension under section 403, the federation must”;

(2) by replacing “where warranted by the urgency of the situation, the Authority may grant authorization” in the second paragraph by “urgent action is required or to prevent irreparable injury, the federation may order such a suspension”.

223. The Act is amended by inserting the following after section 407:

“407.1. If a credit union fails to comply with written instructions or an order under section 402.1 or if, after expiry of the 30-day period provided for in the first paragraph of section 403, the findings or recommendations contained in the report of the provisional administrator under section 406 so warrant, the federation may take one or more of the following measures:

- (1) enter with the board of supervision of the credit union into an agreement entrusting the federation with the supervision, management or administration of the affairs of the credit union for a specified period;
- (2) designate a person to work, under the control of the federation, with the board of directors, an officer or a manager for the period determined by the federation; and

(3) suspend the powers of a board for the period determined by the federation or extend the 30-day suspension ordered under section 403, remove from office or replace an officer or manager of the credit union, or appoint a provisional administrator or extend his or her term, as the case may be.

Before exercising the powers under the first paragraph, the federation must notify the credit union and any officers or managers concerned of its intention and give them an opportunity to present observations.

“§2. — Powers of the Authority

“407.2. The federation must notify the Authority, within 10 days, of any instructions given or orders made under section 402.1, of any suspension ordered under section 403 or of any measure taken under section 407.1.

The federation must also notify the Authority of any failure on the part of a credit union to comply with written instructions given or an order issued under section 402.1.

“407.3. The Authority may, after giving the federation and the credit union an opportunity to present written observations within the time determined by the Authority, approve with or without amendment the written instructions given, or the order issued, by the federation.

Once approved, the written instructions or order of the federation are deemed to be, as the case may be, written instructions or order of the Authority.

“407.4. If the Authority believes that the federation is neglecting to exercise the powers granted to it under subparagraph 1 or 2 of the first paragraph of section 402.1 or under the first paragraph of section 407.1, the Authority may, after giving the federation an opportunity to present written observations within a specified time, give the credit union or the federation the written instructions it considers appropriate.”

224. Sections 408 and 409 of the Act are replaced by the following sections:

“408. The by-laws of the federation may establish any fund.

“409. The by-laws of the federation must contain provisions concerning the administration of the funds it establishes.

The federation may adopt an investment policy for each of the funds established by its by-laws.”

225. Section 412 of the Act is amended

(1) by replacing “the federation may, by by-law, establish a fund whose assets are separate from those of the federation” in the first paragraph by “the federation’s by-laws may establish a fund whose assets are separate from those of the federation”;

(2) by inserting “intérieur” after “règlement” in the second paragraph in the French text.

226. Section 414 of the Act is amended by replacing “as deposits or as capital shares in an investment fund,” by “as consideration for shares”.

227. Section 415 of the Act is amended

(1) by replacing “capital shares” by “shares”;

(2) by striking out “shall have no par value and” and the last sentence;

(3) by adding the following paragraphs at the end:

“Shares in relation to an investment fund are capital shares within the meaning of the first paragraph of section 54 even if they do not bear interest. They may be paid for in cash in accordance with section 48 but they may also, despite that section, be paid for by converting or exchanging all or some of the other shares issued by the federation.

Despite section 56, such shares have no par value.”

228. Section 416 of the Act is repealed.

229. Section 417 of the Act is amended

(1) by striking out “capital”;

(2) by replacing “aux règlements” in the French text by “au règlement intérieur”.

230. Section 418 of the Act is repealed.

231. Section 419 of the Act is amended by replacing “the by-laws” by “the by-laws of the federation”.

232. Section 420 of the Act is amended

(1) by replacing “A federation may, by by-law,” in the first paragraph by “The by-laws of a federation may”;

(2) by replacing “4 of the first paragraph of section 46” in the second paragraph by “5 of the second paragraph of section 55”;

(3) by replacing “paragraph 1 of section 46” in the fourth paragraph by “subparagraph 2 of the second paragraph of section 55”.

233. Section 422 of the Act is amended by inserting “authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)” after “trust company” in the first paragraph.

234. Section 424 of the Act is amended, in the first paragraph,

(1) by replacing “vérifiés” and “vérificateur” in subparagraph 5 in the French text by “audités” and “auditeur”, respectively;

(2) by replacing subparagraph 6 by the following subparagraph:

“(6) if the federation is not a reporting issuer within the meaning of the Securities Act (chapter V-1.1), a statement of the remuneration received by the five most highly compensated officers of the financial group to which the federation belongs setting out separately, for each of them, salaries, bonuses and any other form of remuneration.”

235. Section 425 of the Act is replaced by the following section:

“**425.** Every member who requests a copy of the annual report is entitled to one, free of charge, as of the 10th day preceding the annual meeting at which the report will be presented.”

236. Section 426 of the Act is amended

(1) by replacing “the adequacy of the capital base of its network, a report on the adequacy of its liquid assets” in the first paragraph by “the adequacy of its capital to ensure the sustainability of its network, a report on the adequacy of its assets to meet the liabilities of the financial services cooperatives belonging to the network”;

(2) by replacing “the adequacy of its capital base, a report on the adequacy of its liquid assets” in the second paragraph by “the adequacy of its capital to ensure its sustainability, a report on the adequacy of its assets to meet its liabilities”.

237. Section 432 of the Act is amended by replacing “, in addition to the provisions that may be included in articles of constitution pursuant to this Act, those set out” by “the particulars that must be included in the articles of constitution of a credit union, except particulars concerning the founders. They must also contain the particulars specified”.

238. Section 437 of the Act is replaced by the following section:

“437. On the effective date of the amalgamation, the amalgamating federations are continued as the amalgamated federation and their patrimonies are joined together to form the patrimony of the amalgamated federation. The rights and obligations of the amalgamating federations become those of the amalgamated federation and the latter becomes a party to any judicial or administrative proceeding to which the amalgamating federations were a party.”

239. Section 439 of the Act is amended by replacing “437” by “436”.

240. Section 440 of the Act is replaced by the following section:

“440. On the effective date of the amalgamation, the absorbed federation is continued as the absorbing federation and their patrimonies are joined together to form the patrimony of the absorbing federation. The rights and obligations of the absorbed federation become those of the absorbing federation and the latter becomes a party to any judicial or administrative proceeding to which the absorbed federation was a party.”

241. The heading of Chapter X before section 441 of the Act is replaced by the following heading:

“CAPITAL”.

242. The Act is amended by inserting the following section after the heading of Division I of Chapter X:

“440.1. The sound and prudent management practices that the financial services cooperatives belonging to a network must adhere to must, in particular and with regard to their financial management, provide for the maintenance of adequate capital to ensure the network’s sustainability.

The management practices that the federation is required to adhere to must, in addition, provide for the maintenance, by the federation, of adequate capital to ensure its own sustainability.”

243. Section 441 of the Act is amended

(1) by replacing “an adequate capital base consistent with sound and prudent management” in the first paragraph by “adequate capital to ensure its sustainability”;

(2) by replacing both occurrences of “capital base” in the second paragraph by “capital”.

244. Section 442 of the Act is repealed.

245. Section 443 of the Act is amended by replacing “the capital base of a network is inadequate” in the first paragraph by “the capital of a network is not adequate to ensure its sustainability”.

246. Section 444 of the Act is amended by striking out “appropriate” and “to ensure the adequacy of the capital base of the network,”.

247. Section 445 of the Act is amended by striking out “, who may approve it with or without amendment”.

248. Section 446 of the Act is amended by striking out the second and third paragraphs.

249. Section 448 of the Act is amended by replacing “377” by “402.1”.

250. The Act is amended by adding the following section after section 449:

“**449.1.** If the Authority considers that the federation’s capital is inadequate to ensure the federation’s sustainability, sections 443 to 449 apply to the federation, excluding the credit unions belonging to its network.”

251. Section 450 of the Act is amended by adding the following paragraph at the end:

“The principles of sound and prudent management that such a credit union must adhere to in its financial management must, in particular, provide that it maintain adequate capital to ensure its sustainability.”

252. Section 451 of the Act is amended by replacing “maintain, for its operations, an adequate capital base consistent with sound and prudent management” by “maintain adequate capital to ensure its sustainability”.

253. Section 452 of the Act is repealed.

254. Section 453 of the Act is amended by replacing “the capital base of the credit union is inadequate” in the first paragraph by “the capital of a credit union is inadequate to ensure its sustainability”.

255. Section 454 of the Act is amended by striking out “appropriate” and “to ensure the adequacy of its capital base,”.

256. Section 460 of the Act is repealed.

257. The heading of Chapter XI before section 461 of the Act in the French text is replaced by the following heading:

“ACTIFS LIQUIDES”.

258. The Act is amended by inserting the following section after the heading of Division I of Chapter XI:

“460.1. The principles of sound and prudent management that a credit union must adhere to with regard to its financial management must provide that it maintain adequate assets to meet its liabilities as and when they become due.

For the purpose of determining the assets to be maintained, demand deposits are considered payable when and to the extent considered usual in the economic conditions prevailing at the time.”

259. Section 461 of the Act is amended

(1) by replacing “at all times maintain such liquid assets as are adequate to ensure sound and prudent management” in the first paragraph by “maintain adequate liquid assets to meet its liabilities as and when they become due”;

(2) by replacing “liquid assets” in the second paragraph by “assets described in the first paragraph”.

260. Section 462 of the Act is amended

(1) by replacing “the liquid assets” by “the assets described in the first paragraph of section 461”;

(2) by replacing “by-law” by “by-laws”.

261. Section 463 of the Act is amended, in the first paragraph,

(1) by replacing the first sentence by the following sentence: “The assets described in the first paragraph of section 461 maintained by the credit unions and administered by the federation may be paid in whole or in part into any fund established by the federation.”;

(2) by replacing “any applicable by-law” by “the by-laws”.

262. Section 464 of the Act is amended by replacing “at all times maintain such liquid assets as are adequate to ensure sound and prudent management” by “maintain adequate assets to meet its liabilities as and when they become due”.

263. Sections 465 and 467 of the Act are repealed.

264. Sections 468 and 469 of the Act are replaced by the following:

“DIVISION I

“INVESTMENT POLICY

“468. A financial services cooperative must follow an investment policy.

The policy must, in particular,

(1) provide for the matching of the respective maturities of the cooperative’s investments with its liabilities;

(2) provide for the appropriate diversification of those investments; and

(3) include a description of the types of investments and other financial transactions it authorizes and the limits applicable to them.

The policy a federation must follow applies to the investments made out of the funds it establishes under section 408 unless it has not adopted specific policies for those funds under section 409.

“469. A federation must establish and adopt the investment policy to be followed by its member credit unions.”

265. Section 470 of the Act is amended by replacing “sound and prudent management policies in relation to its investments” by “and adopt its investment policy”.

266. Sections 471 and 472 of the Act are repealed.

267. Sections 473 to 477 of the Act are replaced by the following:

“DIVISION II

“ACQUISITION OF PARTICIPATIONS AND CO-OWNERSHIP

“473. No financial services cooperative may acquire or hold contributed capital securities issued by a legal person or a partnership or participations in a trust in excess of

(1) 30% of the value of those securities or participations; or

(2) the number of those securities or participations allowing it to exercise more than 30% of the voting rights.

Nor may a financial services cooperative be the co-owner of property if its share of the right of ownership is greater than 30% without exceeding 50%, alone or together with the shares of groups in the same financial group.

“474. Despite section 473, a financial services cooperative may acquire up to all the contributed capital securities issued by a legal person or a partnership or all the participations in a trust if, following the acquisition, the cooperative will be the holder of control of the person, partnership or trust.

A credit union that is a member of a federation may not make an acquisition under this section without the federation’s authorization.

“475. Sections 473 and 474 do not allow a credit union that is a member of a federation to acquire or hold contributed capital securities issued by an issuing corporation, nor do they allow a federation to acquire or hold such securities of such a corporation otherwise than in accordance with Division VI of this chapter.

“476. For the purposes of this Act, an issuing corporation means a business corporation constituted or continued under the Business Corporations Act (chapter S-31.1) whose articles limit its activities to making public issues of securities and acquiring, in consideration for them, securities issued either by the federation that holds all the shares carrying voting rights issued by that corporation, or by the member credit unions of that federation.

“DIVISION III

“ACCESSORY GUARANTEE FOR CERTAIN INVESTMENTS

“477. A financial services cooperative may become the owner of property in contravention of section 473 only if it does so to obtain or preserve an accessory guarantee for one of its investments or another financial transaction.

“DIVISION IV

“SUPERVISION OF CERTAIN INVESTMENTS”.

268. Section 478 of the Act is amended

(1) by striking out the first paragraph;

(2) in the second paragraph,

(a) by replacing “controls a financial institution through” by “is the holder of control of”;

(b) by inserting “and that company is itself the holder of control of a financial institution” after “Business Corporations Act (chapter S-31.1)”;

(c) by replacing “capital, liquid assets” by “capital, assets”;

(d) by inserting “the Deposit Institutions and Deposit Protection Act (chapter A-26),” after “(chapter S-29.01),”.

269. Section 479 of the Act is amended by inserting “financial” before “group”.

270. The Act is amended by inserting the following after section 479:

“DIVISION V

“PENALTIES

“479.1. If a financial services cooperative holds or owns property, as the case may be, in contravention of section 473, it must dispose of that property as soon as market conditions permit.

“479.2. Officers of a financial services cooperative who agree to a contravention of section 473 are held solidarily liable for any resulting losses to the cooperative.

“DIVISION VI

“ISSUING CORPORATION”.

271. Section 480 of the Act is amended

(1) by striking out the first paragraph;

(2) by replacing “legal person referred to in the first paragraph” in the second paragraph by “issuing corporation referred to in section 475”;

(3) by replacing “of a legal person referred to in the first paragraph” in the third paragraph by “of the issuing corporation”.

272. Section 481 of the Act is amended by replacing “a legal person referred to in the first paragraph of section 480” and “controlling the legal person” in the first paragraph by “an issuing corporation referred to in section 475” and “that is the holder of control of the issuing corporation”, respectively.

273. Section 482 of the Act is amended by replacing “a legal person referred to in the first paragraph of section 480” in the first paragraph by “an issuing corporation referred to in section 475”.

274. Section 483 of the Act is amended by replacing “A legal person referred to in the first paragraph of section 480” by “An issuing corporation referred to in section 475”.

275. Section 484 of the Act is amended by replacing “and officers of a legal person referred to in the first paragraph of section 480” by “of an issuing corporation referred to in section 475”.

276. Section 485 of the Act is amended, in the first paragraph,

(1) by replacing “legal person referred to in the first paragraph of section 480” in subparagraph 1 by “issuing corporation referred to in section 475”;

(2) by replacing all occurrences of “legal person” in subparagraphs 2 and 3 by “issuing corporation”.

277. Section 486 of the Act is amended by replacing “a legal person referred to in the first paragraph of section 480” by “an issuing corporation referred to in section 475”.

278. The Act is amended by inserting the following section after section 486:

“486.1. A director cannot be held liable under section 484 if the director acted with a reasonable degree of prudence and diligence in the circumstances.

Furthermore, for the purposes of section 484, the court may, after considering all the circumstances and on the terms the court considers appropriate, relieve a director, either wholly or partly, from the liability the director would otherwise incur if it appears to the court that the director has acted reasonably, honestly and loyally, and ought fairly to be excused.”

279. Section 497 of the Act is replaced by the following sections:

“497. The affairs of the fund are administered by a board of directors composed of six members designated by the board of directors of the federation and the person appointed to be in charge of inspections under section 387 who, by virtue of office, is a member for the duration of his or her term in that capacity.

“497.1. The board of directors shall adopt the by-laws of the fund.”

280. Section 498 of the Act is amended by replacing “provided for by by-law of the fund” by “provided for by the by-laws of the fund”.

281. Sections 499 and 500 of the Act are replaced by the following sections:

“499. The board of directors may establish any committee of the board and delegate the exercise of its powers to such a committee.

“500. The term of members of the board of directors, except that of the person in charge of inspections under section 387, is three years. Board members may be reappointed only twice to serve in that capacity only for a consecutive or non-consecutive term.”

282. Section 501 of the Act is amended by striking out “appointed under subparagraph 2 of the first paragraph of section 497”.

283. Section 502 of the Act is amended

(1) by striking out “appointed under subparagraph 2 of the first paragraph of section 497”;

(2) by inserting “, for the remainder of the term,” after “is filled”.

284. Section 505 of the Act is amended

(1) by replacing “by-law” in the first paragraph by “resolution”;

(2) in the second paragraph,

(a) by replacing “such by-law must be approved” in the first sentence by “such a resolution must be approved”;

(b) by replacing both remaining occurrences of “by-law” by “resolution”.

285. Section 514 of the Act is amended by replacing “by-law” in the first and second paragraphs by “resolution”.

286. Section 517 of the Act is replaced by the following section:

“517. The fund may not make investments other than those authorized under its investment policy.

The investment policy of the fund is established by its board of directors and approved by the Authority.”

287. Section 518 of the Act is amended by replacing “a legal person referred to in the first paragraph of section 480” by “an issuing corporation referred to in section 475”.

288. Section 520 of the Act is amended by replacing “the by-laws of the fund and the minutes of the sittings of the board of directors and of the executive committee” by “the by-laws and resolutions of the fund as well as the minutes of the sittings of the board of directors and its committees”.

289. Section 532 of the Act is amended by striking out “by by-law” in the second paragraph.

290. The Act is amended by inserting the following before Chapter XIV:

“CHAPTER XIII.1

“GROUPE COOPÉRATIF DESJARDINS

“DIVISION I

“BY-LAWS OF THE GROUPE COOPÉRATIF DESJARDINS

“547.1. The by-laws of the Groupe coopératif Desjardins (in this chapter referred to as “the Group”) must be submitted for approval to the general meeting of the Fédération des caisses Desjardins du Québec (in this chapter referred to as “the Federation”), which may, by special resolution, ratify, amend or reject them; the by-laws have effect from the time of their approval by the general meeting or from any later date of coming into force they may specify.

The rules of this section apply, with the necessary modifications and subject to the by-laws of the Group, to any amendment or repeal of by-laws.

“547.2. The by-laws of the Group, in addition to the provisions they may contain under this Act, must contain provisions to ensure the Group’s cohesion and operation, except rules governing relations between the financial services cooperatives and the Fonds de sécurité (in this chapter referred to as “the Fund”) that form the Group.

The by-laws of the Group may, as regards the financial services cooperatives that belong to it,

(1) in matters referred to in sections 98, 211 to 214, 216, 216.1, 217, 217.1, 220, 223 and 224, in subparagraphs 1 to 6 of the second paragraph of section 227, and in sections 229, 234 to 236, 237, 239, 244 to 247, 249 to 256, 294.1 to 299, 302, 304, 305, 306, 309 to 312, 317, 318, 320, 323, 329, 334, 337 and 341 to 344, contain any provision departing from those sections or provide that all or some of those sections do not apply and substitute other provisions for those sections;

(2) contain any useful provision to complement the provisions of this Act for the purpose of creating any organ within a cooperative and seeing to the exercise of its functions and powers; and

(3) restrict or withdraw the powers conferred on the general meeting of the Federation by this Act so that they may be exercised by another organ of the Federation.

The by-laws of the Group may also contain any provision aimed at allowing transfers of members between credit unions belonging to the Group, or at allowing any member of such a credit union to receive, in any establishment of any other credit union belonging to the Group, the services and other prestations offered at that establishment on the same conditions as if it were the establishment of the credit union of which that member is a member.

The by-laws of the Group may also contain any provision that, under this Act, may be contained in the by-laws of a financial services cooperative.

“547.3. The by-laws of the Group apply to all the financial services cooperatives belonging to it.

However, the by-laws may establish classes of financial services cooperatives, corporations and persons, and prescribe conditions, terms and restrictions applicable to each class.

“547.4. A financial services cooperative that belongs to the Group may make by-laws only to the extent and only with regard to matters expressly provided for in the by-laws of the Group.

The provisions of the by-laws of the Group prevail over any conflicting provisions in the by-laws of the cooperative.

In this Act, a reference to the by-laws of a financial services cooperative belonging to the Group is a reference to the by-laws of the Group and, if the by-laws of the Group allow the cooperative to make its own by-laws, a reference to the latter by-laws.

“DIVISION II

“WITHDRAWAL

“547.5. The financial services cooperatives that form the Group may not withdraw from the Group otherwise than by their dissolution.

Consequently, a credit union belonging to the Group may not, despite sections 189, 191, 291 and 292, be excluded from or apply for its withdrawal from the Federation.

“DIVISION III

“ISSUE OF SHARES

“547.6. A financial services cooperative that belongs to the Group may, if the by-laws of the Group so provide, issue capital shares and investment shares to third persons, which means that such shares may be issued not only to acquirers referred to in the second paragraph of section 55, but also to any other acquirer.

Despite section 59 and the second paragraph of section 420, shares that may be issued to third persons may also subsequently be transferred to third persons, unless the by-laws of the Group restrict their transfer. In addition, a separate fund established to purchase capital shares may be used to purchase any capital share issued by a financial services cooperative belonging to the Group, despite the second paragraph of section 420.

“547.7. Despite section 56, if the by-laws of the Group provide for the issue of capital shares or investment shares to third persons, they must also provide for the rights, privileges, conditions and restrictions attaching to such shares.

“547.8. Any amendment to the by-laws of the Group that adversely affects the rights, privileges, conditions or restrictions attaching to capital shares or investment shares can only have effect if it is approved by the meeting of the holders of the shares so affected.

The meeting approves the amendment by a resolution passed by a 2/3 majority of the votes cast; unless the by-laws of the Group provide otherwise, each holder of such shares has one vote only, regardless of the number of shares held.

“547.9. The meeting of the shareholders must be called and conducted in accordance with the rules applicable to special meetings.

A shareholder, including a natural person, may be represented at the meeting in accordance with the second paragraph of section 298.

“DIVISION IV

“OFFICERS, MANAGERS, BOARD OF SUPERVISION AND BOARD OF ETHICS AND PROFESSIONAL CONDUCT

“§1. — *Officers and managers*

“547.10. The officers of a financial services cooperative that belongs to the Group are bound by the obligations referred to in section 102 not only toward and in the interest of their own cooperative, but also toward the cooperatives and the Fund that form the Group and in the interest of the Group; consequently, in the exercise of their functions, the officers are duty-bound toward the cooperatives and the Fund to act with prudence and diligence, honesty and loyalty and in the interest of the Group. They must, if the cooperative’s interest does not correspond with the Group’s interest, favour the latter.

The managers of such a financial services cooperative, in their capacity as mandataries of the cooperative, are bound by, among other obligations, the same ones as are binding on officers under the first paragraph.

In determining whether something is in the interest of the Group, the latter must be considered as a single legal person comprising the cooperatives and Fund that form it, even though the Group is not a legal person.

“547.11. For the purpose of applying section 103 to a financial services cooperative belonging to the Group, a reference to a member of a network becomes a reference to a financial services cooperative or to the Fund belonging to the Group.

“§2.—Board of supervision and board of ethics and professional conduct

“547.12. The by-laws of the Group may, with regard to the board of supervision of a credit union or the board of ethics and professional conduct of the Federation, contain any provision departing from sections 260 to 262 or 359 to 363, as applicable, or provide that all or some of those sections do not apply and substitute other provisions for those sections.

In addition, the by-laws of the Group may, despite sections 226 and 308, provide that a credit union not establish a board of supervision or that the Federation not establish a board of ethics and professional conduct, as applicable, or, if such boards have been established, that the Federation may order their dissolution in accordance with the terms and conditions specified in those by-laws.

“547.13. If a credit union does not establish a board of supervision or its board has been dissolved, the functions and powers of that board are assumed by the board of directors of the credit union unless the by-laws of the Group provide that they are to be assumed by the Federation or by another organ of the credit union.

Likewise, if the Federation dissolves its board of ethics and professional conduct, the functions and powers of that board are assumed by the board of directors of the Federation, unless they are assumed by another organ of the Federation specified in those by-laws.

“547.14. The rules of ethics and professional conduct that must be adopted under section 346 relate to the protection of the interests of the Group, the financial services cooperatives belonging to it and the members of those cooperatives.

“DIVISION V

**“PROVISIONS SPECIFIC TO THE FÉDÉRATION DES CAISSES
DESJARDINS DU QUÉBEC**

“§1.—Mission

“547.15. The mission of the Federation, in addition to what is provided for in sections 5 and 6, is to

- (1) look after the risk management of the Mouvement Desjardins; and
- (2) see to the financial health of the Group and its sustainability.

“§2. — Forced exchange or transfer of shares

“547.16. The Federation may exchange capital shares and investment shares of a class or series issued by one or more credit unions belonging to the Group for shares issued by the same credit unions or by another cooperative belonging to the Group.

“547.17. Unless it proceeds on a consent basis with each holder of shares of the class or series concerned, the Federation may compel the holders to exchange the shares, provided such an exchange is approved by a meeting of the holders of those shares in the same manner as if it were an amendment to the by-laws of the Group that adversely affected the rights, privileges, conditions or restrictions attaching to the shares.

“547.18. The passing, by the meeting of the holders of the shares, of the resolution approving such an exchange confers on the Federation the right to proceed with the exchange with holders of shares who did not vote against the resolution, and the right to compel holders of shares who voted against the resolution to transfer their shares to the Federation.

The shares are purchased at par value.

“§3. — Special powers of the Federation

“547.19. The Federation may, if it considers that the financial position of the Group so warrants, exercise the powers conferred on it under section 402.1 against any financial services cooperative belonging to the Group, even in the absence of the facts referred to in that section and giving rise to its application.

“547.20. Each time the Federation may exercise the powers provided for in section 407.1, it may also ask the Fund to intervene under section 547.32.

“§4. — Recovery operations and plan of the Group

“547.21. The objective of the recovery operations of the Group is to ensure continuity of the activities of the cooperatives belonging to the Group in the event of a deterioration in its financial position.

The Federation shall establish the recovery plan of the Group in which it shall specify, among other things, the operations it intends to carry out to meet that objective.

“547.22. The recovery plan of the Group must be revised at the intervals determined by the Authority and each time the Authority requires it.

The plan, and any amendment to it, must be submitted to the Authority.

“547.23. If the Authority considers that the recovery plan of the Group does not ensure continuity of the activities of the financial services cooperatives belonging to the Group or that there are potential problems concerning the plan’s implementation, the Authority shall, after giving the Federation an opportunity to present its written observations within the time determined by the Authority, give the Federation the written instructions it considers appropriate.

“547.24. The Federation shall notify the Authority without delay of any deterioration in the financial position of the financial services cooperatives belonging to the Group.

“547.25. If the Authority considers it is in the public interest to do so, it shall order the Federation to implement the recovery operations.

Unless it makes such an order at the Federation’s request, the Authority may not order the Federation to implement those operations without first giving it an opportunity to present its observations with all dispatch considering the circumstances. The time granted to present such observations cannot be considered unreasonable for the sole reason that it is shorter than one day.

“547.26. The Authority’s order is final in all regards and may not be questioned or reviewed in any court. It is recorded in writing and the Authority publishes it in its bulletin.

“547.27. By the sole effect of the Authority’s order, and for the duration of recovery operations, the Federation is invested with all the powers that this Act confers on the Fund; it may exercise them without the consent, authorization or approval of any organ, member or officer of the legal persons belonging to the Group or of their managers or other employees. In addition, the Federation may, for the purposes of the recovery operations, dispose of the sums and other assets of the Fund.

During this period, the powers of the board of directors of the Fund are suspended.

“547.28. Recovery operations end when the Authority orders their closure after ascertaining that the financial position of the financial services cooperatives belonging to the Group has been rectified, or when the resolution board orders the implementation of resolution operations under section 40.12 of the Deposit Institutions and Deposit Protection Act (chapter A-26).

“DIVISION VI

“PROVISIONS APPLICABLE TO THE FUND

“§1.—*Mission and special powers*

“547.29. The Fund must ensure that the distribution of capital and other assets between the legal persons belonging to the Group allows each of those legal persons to perform its obligations to its depositors and other creditors in full, correctly and without delay; to that end, the Fund has the powers conferred on it under this subdivision, in addition to those conferred on it under Chapter XIII.

“547.30. The Fund shall mutualize, between the financial services cooperatives belonging to the Group, the cost of its interventions.

“547.31. The Fund shall intervene with regard to a financial services cooperative each time it appears necessary to do so in order to protect the cooperative’s creditors.

“547.32. In its interventions with regard to a credit union, the Fund may,

(1) order the assignment of any part of the enterprise of a credit union belonging to the Group or order the transfer of any such part between such credit unions;

(2) order the amalgamation or dissolution of credit unions; and

(3) establish a legal person to facilitate the liquidation of a credit union’s bad assets.

If it orders the transfer of part of the enterprise of a credit union to another credit union, the Fund must absorb any related deficit and pay the compensation it determines for the detriment caused to the credit union. This also applies in cases where it orders an amalgamation.

The Fund may not order the dissolution of a credit union without first transferring the deposits the credit union has received to another deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26).

“547.33. The Fund may, as regards the Federation, exercise the powers conferred on it by paragraphs 1 to 3 of section 510 and section 511, as if the Federation were a credit union.

“547.34. Despite section 499, the board of directors of the Fund may not delegate the powers conferred on the Fund by sections 547.32 and 547.33.

“547.35. In its interventions with regard to a financial services cooperative, the Fund may act on behalf of the credit union.

“547.36. The Fund must, before intervening with regard to the Federation, give at least 24 hours’ notice to the Authority.

“547.37. The financial resources of the Fund must be at least adequate for, but not disproportionate to, the pursuit of its mission.

If the Fund considers that its financial resources are inadequate for the purposes of the first paragraph, it may set and require from any financial services cooperative belonging to the Group a special assessment for each fiscal year the Fund determines.

“547.38. The amount of an assessment set by the Fund may vary and may be collected in accordance with the terms and conditions it determines.

A cooperative that belongs to the Group is required to send the Group any information it requests for the purpose of setting the amount of the assessment to be paid by the cooperative.

“§2.—Amalgamation ordered by the Fund

“547.39. An amalgamation of credit unions ordered by the Fund under subparagraph 2 of the first paragraph of section 547.32 does not require a resolution of the general meeting, a resolution of the board of directors of the amalgamating credit unions or an amalgamation agreement; the articles of amalgamation are prepared by the Federation.

Despite section 282, the amalgamation may be by absorption even if the absorbed credit union’s liabilities consisting of members’ deposits exceed 25% of the absorbing credit union’s liabilities consisting of members’ deposits.

“547.40. In addition to the articles of amalgamation, the Federation shall prepare the following documents with regard to an amalgamated credit union:

(1) a notice of the names and addresses of the first officers of the amalgamated credit union, unless, in the case of an amalgamation by absorption, those officers are the same as the ones of the absorbing credit union before the amalgamation; and

(2) a document stating the number of shares issued by each amalgamating credit union, or stating

(a) that all such shares will be converted into shares of the amalgamated credit union;

(b) the price of each share; and

(c) the manner in which such shares will be converted into shares of the amalgamated credit union.

The Federation must also provide the details of any arrangements necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated credit union.

“547.41. The articles of amalgamation, prepared in duplicate and signed by the person authorized for that purpose by the Federation, must be transmitted to the Authority.

The documents referred to in paragraphs 1, 4 to 6 and 9 of section 278, prepared by the Federation and signed by the person it authorizes for that purpose, must be attached to the articles.

“547.42. Sections 279 to 281 apply, with the necessary modifications, to an amalgamation of credit unions ordered by the Fund.

Despite the first paragraph of section 280, the Authority is bound to authorize the amalgamation.

“§3. — Dissolution ordered by the Fund

“547.43. In addition to being dissolvable following a decision by the Minister in accordance with Division II of Chapter VII, comprising sections 180 to 185, like any other financial services cooperative, a financial services cooperative belonging to the Group may, except if it is the Federation, be dissolved by order of the Fund under subparagraph 2 of the first paragraph of section 547.32 or, in all cases, by the Authority if, under section 40.14 of the Deposit Institutions and Deposit Protection Act (chapter A-26), it is vested with the powers set out in paragraphs 1 to 9 of section 19.2 of the Act respecting the regulation of the financial sector (chapter A-33.2).

A financial services cooperative belonging to the Group may not be dissolved in any other manner.

“547.44. The Authority shall carry out any dissolution of a credit union that is ordered by the Fund under subparagraph 2 of the first paragraph of section 447.32.

Despite section 184, the Fund, rather than the Minister of Revenue, shall act as liquidator and have the seizin of property in the case of a dissolution ordered by the Fund.

“§4. — Winding-up of the Group

“547.45. All the financial services cooperatives belonging to the Group, together with the Fund, may be amalgamated into a single legal person to be wound up.

Such an amalgamation/winding-up requires a joint declaration of amalgamation/winding-up by the Federation and the Fund, approved by a resolution passed by a 3/4 majority of the votes cast by the credit unions that belong to the Group and whose members make up at least 3/4 of all the members of those credit unions.

A credit union belonging to the Group may not be wound up in any other manner. The same applies to the Federation and the Fund.

“547.46. The declaration of amalgamation/winding-up must include

- (1) the names of one or more of the liquidators and their remuneration;
- (2) the effective date of the amalgamation/winding-up; and
- (3) the name of the legal person being wound up.

“547.47. The Federation must send the Authority a certified copy of the declaration. It must also notify the enterprise registrar by filing a declaration to that effect, in accordance with the Act respecting the legal publicity of enterprises (chapter P-44.1), not later than 10 days after the resolution is passed.

The Federation must publish a notice to that effect stating the name and address of the liquidator and the address to which claims may be sent by interested persons.

“547.48. Upon receipt of the declaration of amalgamation/winding-up and the fees prescribed by government regulation, the Authority shall prepare in duplicate a certificate attesting the amalgamation and stating its effective date as given in the declaration, which may be subsequent to the date on which the certificate is made.

The Authority shall send a copy of the certificate attesting the amalgamation to the enterprise registrar, who shall deposit it in the enterprise register.

“547.49. As of the effective date shown on the certificate,

- (1) all the financial services cooperatives belonging to the Group, together with the Fund, are continued as a legal person to be wound up and their patrimonies are joined together to form the patrimony of the legal person; and
- (2) the rights and obligations of the cooperatives and the Fund become rights and obligations of the legal person to be wound up and the latter becomes a party to any judicial or administrative proceeding to which the cooperatives and the Fund were parties.

The legal person to be wound up is without organs or members; it has neither articles nor by-laws. It is dissolved immediately following the amalgamation provided for in the first paragraph and, as provided for in article 357 of the Civil Code, its legal personality subsists for the purposes of the winding-up.

“547.50. The liquidator shall exercise the rights and perform the obligations of the legal person to be wound up under the name of the financial services cooperative or Fund that, before the amalgamation referred to in the first paragraph of section 547.49, held those rights and owed those obligations.

The liquidator shall exercise the rights the legal person has acquired and perform the obligations to which it is bound after the amalgamation under the name that must be assigned to it in the declaration of amalgamation/winding-up.

Creditors of a financial services cooperative or of the Fund before the amalgamation referred to in the first paragraph of section 547.49 may file any judicial application against the legal person to be wound up, whether under the latter’s name or the cooperative’s or Fund’s name.

“547.51. The legal person to be wound up shall have its head office at the place where the Federation had its head office before the amalgamation referred to in the first paragraph of section 547.49.

For the purpose of determining the court having territorial jurisdiction in Québec to hear a judicial application based on a right held or obligation owed by a financial services cooperative or the Fund before the amalgamation referred to in the first paragraph of section 547.49, the court of the cooperative’s or Fund’s domicile before the amalgamation also has jurisdiction, at the plaintiff’s option.

“547.52. Any natural person fully capable of exercising his or her civil rights may be appointed liquidator.

A legal person authorized by law to administer the property of others may also be appointed liquidator.

The liquidator is entitled to the reimbursement of the expenses incurred in the performance of the duties of office.

“547.53. A liquidator is obliged to take out insurance or to provide security for the performance of the liquidator’s obligations; a liquidator who refuses or neglects to do so forfeits the office unless relieved from the default by the Authority.

“547.54. The Authority may remove from office and replace a liquidator, and is bound to fill any vacancy in the office of liquidator without delay.

The Authority may modify the remuneration set in the declaration of amalgamation/winding-up if it considers that it is insufficient to retain the services of a liquidator.

“547.55. Winding-up consists in determining the assets of the legal person, recovering its claims, performing or obtaining forgiveness of its obligations or otherwise making provision for them, paying the winding-up expenses, redeeming shares and subsequently giving a final account to the Authority and distributing the legal person’s remaining property to another legal person designated by the Government.

“547.56. As of the dissolution under the second paragraph of section 547.49 of the legal person to be wound up and for the time required for the winding-up, the liquidator has the seizin of the legal person’s property.

The liquidator shall act as administrator of the property of others charged with full administration.

The officers and managers of a financial services cooperative or of the Fund must, at the request of the liquidator, provide the liquidator with any document in their possession or explanation concerning the rights held and obligations owed by the cooperative or by the Fund before the amalgamation referred to in the first paragraph of section 547.49.

“547.57. The liquidator shall send a notice of the legal person’s winding-up without delay to the enterprise registrar, who shall deposit it in the enterprise register.

The notice must be filed with a certified copy of the declaration of amalgamation/winding-up, along with the resolution approving the declaration by the credit unions.

“547.58. If the winding-up continues for more than one year, the liquidator must, at the end of the first year and at least once a year after that, render a summary account of his or her management to the Authority.

“547.59. The liquidator may demand payment of any amount outstanding on shares issued by a financial services cooperative before the amalgamation referred to in the first paragraph of section 547.49, even if they are not yet due.

“547.60. The liquidator shall perform the obligations of the legal person to be wound up of which forgiveness has not been obtained, as and when the creditors come forward or in accordance with terms agreed on with the legal person’s creditors. However, the liquidator may constitute adequate provision for the performance of those obligations and make any arrangement with an authorized financial institution or a bank to assume the deposit liabilities of the legal person to be wound up.

“547.61. After performing or obtaining forgiveness of the obligations of the legal person to be wound up or otherwise making provision for them, the liquidator shall redeem the shares in accordance with the order referred to in subparagraph 2 of the second paragraph of section 60 as if the shares had been issued by one and the same financial services cooperative.

“547.62. After redeeming the shares, the liquidator shall produce a final account.

“547.63. The purpose of the final account is to determine the assets of the legal person to be wound up at the time the liquidator is appointed and its remaining property.

In the final account, the liquidator shall report on the disposal of the property of the legal person to be wound up, the sums realized, the obligations of the legal person that were performed, those of which the liquidator obtained forgiveness and those for which the liquidator otherwise made provision, and the overall manner in which the winding-up was conducted.

“547.64. The final account must be approved by the Authority. If such approval cannot be given, the winding-up continues under the supervision of the court.

“547.65. The winding-up of the legal person to be wound up is terminated by sending the enterprise registrar a notice of closure of the winding-up.

In the notice, the liquidator shall state that the final account has been approved, describe the conduct of the winding-up in accordance, if applicable, with the orders of the court, and sign the notice.

“547.66. The liquidator must preserve the books of the legal person for five years after the closure of the winding-up, or for a longer period if they are required as evidence in a judicial or administrative proceeding.

“547.67. The liquidator, the Authority or another interested person may ask the court to order that the legal person to be wound up be so under court supervision.

The application to that effect must be notified to the Authority and the liquidator, unless they are the applicants.

“547.68. As soon as the judgment ordering that the legal person be wound up under court supervision is rendered, the clerk of the court shall send a copy of the judgment to the enterprise registrar, who shall deposit it in the enterprise register.

If the judgment is appealed, the clerk shall send notice of the appeal without delay to the enterprise registrar, who shall deposit it in the enterprise register.

“547.69. When ruling on an application, the court may make any order concerning the winding-up of the legal person. It may, among other things,

(1) suspend any judicial or administrative proceeding against the legal person, on the conditions the court considers appropriate;

(2) prescribe any measure to identify and perform the obligations of the legal person or make provision for them;

(3) give instructions to the liquidator;

(4) approve the performance of any obligation or the execution of any arrangement made with an authorized financial institution or a bank to assume the deposit liabilities of the legal person to be wound up;

(5) order that provision be made for the performance of any obligation of the legal person to be wound up;

(6) fix, on the conditions it determines, a time after which no person may, without the authorization of the court, make a claim against the legal person;

(7) specify the order in which the shares of the different classes and series issued before the amalgamation referred to in the first paragraph of section 547.49 will be redeemed by the financial services cooperatives; and

(8) approve the liquidator’s final account.”

291. Section 556 of the Act is amended by replacing “legal person referred to in the first paragraph of section 480” in the first paragraph by “issuing corporation referred to in section 475”.

292. The Act is amended by inserting the following sections after section 564:

“564.1. Such information as is determined by the Minister by regulation that is held by a financial services cooperative in relation to the Authority’s supervision of the cooperative is confidential. It may not be used as evidence in any civil or administrative proceedings and is privileged for that purpose.

No person may be compelled, in any civil or administrative proceedings, to testify or to produce a document relating to that information.

“564.2. Despite section 564.1,

(1) the Attorney General, the Minister or the Authority may use the information made confidential by that section as evidence;

(2) the financial services cooperative concerned may, in accordance with the regulation made by the Minister, use that information as evidence in any proceedings concerning the administration or enforcement of this Act that are brought by the cooperative, the Minister, the Authority or the Attorney General; and

(3) anyone who may be compelled to testify or to produce a document relating to that information in any proceedings regarding the application of this Act or any other Act administered by the Authority to a cooperative may use that information provided the proceedings are brought by the cooperative concerned, the Attorney General, the Minister or the Authority.

“564.3. The communication of information referred to in sections 564.1 and 564.2 otherwise than in the cases provided for by their provisions does not entail a waiver of the confidentiality conferred by those provisions.

“564.4. The provisions of sections 564.1 to 564.3 do not apply to information that must be made public by law. In addition, the prohibition under the first paragraph of section 564.1 does not apply if the information or document concerned was sent in accordance with the provisions of another Act.”

293. Sections 565 and 566 of the Act are replaced by the following sections:

“564.5. The Authority may require a financial services cooperative to establish a legal person of which the cooperative will be the holder of control to carry on an activity other than the activities of a financial services cooperative,

(1) if the activity constitutes the operation of an enterprise, regardless of the cooperative’s other activities; and

(2) if, in the Authority’s opinion, the activity renders the application of this Act difficult or ineffective.

For the purposes of the first paragraph, an activity is deemed not to constitute the operation of an enterprise if it generates less than 2% of the gross income of a financial services cooperative.

“565. The Authority may establish instructions for a financial services cooperative or a security fund.

Instructions must be in writing and must be specific to the addressee, but need not be published.

The Authority must, before sending instructions, notify the addressee and give it an opportunity to present observations.

“565.1. The Authority may establish guidelines for all financial services cooperatives or a single class of such cooperatives, or for credit unions or a federation of which such credit unions are members.

The federation may also establish a guideline concerning all legal persons belonging to a cooperative group; such a guideline may be addressed to the federation belonging to that group.

Guidelines must be general and impersonal; the Authority publishes them in its bulletin after sending a copy of them to the Minister.

“566. A guideline informs its addressees of measures that, in the Authority’s opinion, they may establish to satisfy their obligations under this Act.

Instructions, on the other hand, inform their addressee of the obligations that, in the Authority’s opinion, are incumbent on it under that Act.”

294. Section 567 of the Act is replaced by the following section:

“567. The Authority may order a financial services cooperative or a security fund to cease a course of action or to implement specified measures if the Authority is of the opinion that the cooperative or fund is failing to perform its obligations under this Act in full, properly and without delay.

An order concerning two or more legal persons belonging to a cooperative group may be issued against the federation that belongs to the group.

The Authority may, for the same reasons, issue an order against a legal person that, on behalf of a financial services cooperative or a security fund, carries on the cooperative’s or fund’s activities or performs the cooperative’s or fund’s obligations.”

295. Section 568 of the Act is repealed.

296. Section 569 of the Act is amended by striking out the second paragraph.

297. The Act is amended by inserting the following section after section 569:

“569.1. At least 15 days before issuing an order under this division, the Authority shall notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the contravener in writing and, if applicable, to the federation of which the contravener is a member, stating the reasons which appear to justify the order, the date on which the order is to take effect and the right of the contravener or, if applicable, the federation, to present observations.

Where the contravener belongs to a cooperative group, the notice must also be notified to the federation belonging to that group.”

298. Section 570 of the Act is amended by striking out the second paragraph.

299. Section 571 of the Act is amended by replacing “upon receiving such an order” in the second paragraph by “within six days of receiving such an order”.

300. Section 572 of the Act is replaced by the following section:

“**572.** The Authority may revoke or amend an order it has issued under this division.”

301. Section 573 of the Act is amended by striking out “or a government regulation thereunder” in the first paragraph.

302. The Act is amended by inserting the following sections after section 573:

“**573.1.** The Authority may, on its own initiative and without notice, intervene in any proceeding relating to a provision of this Act.

“**573.2.** The Authority may apply to a court to cancel or suspend the performance of a contract entered into by a financial services cooperative in contravention of this Act if the Authority shows that the cancellation or suspension is in the interest of depositors and that, under the circumstances, that interest must prevail over the legal security of parties to the contract and of other persons whose rights and obligations would be affected by the cancellation or suspension.

The cancellation or suspension may only be applied for after the end of the 10th year after the contract concerned came into effect.

The court may also order that the officers who are party to such a contract, who have authorized it or who have otherwise facilitated its entering into, be solidarily required to pay the cooperative the amount of damages awarded as compensation for the injury suffered or the amount paid by the cooperative because of the contract.”

303. Section 591 of the Act is replaced by the following section:

“**591.** The costs that must be incurred by the Authority for the administration of this Act are to be borne by the federations and the credit unions that are not members of a federation; they are determined annually by the Government based on the forecasts provided to it by the Authority.

The difference noted between the forecast of the costs that must be incurred for the administration of this Act for a year and those actually incurred for the same year must be carried over to the similar costs determined by the Government for the year after the difference is noted.”

304. Section 599 of the Act is amended, in the first paragraph,

(1) by striking out subparagraphs 6 and 7;

(2) by replacing “le vérificateur” in subparagraph 8 in the French text by “l’auditeur”;

(3) by replacing “de vérification” in subparagraph 9 in the French text by “d’audit”;

(4) by striking out subparagraphs 10 to 14 and 17.

305. Section 600 of the Act is amended by replacing “standards under sections 369 and 371” in the first paragraph by “the standards it must adopt under the second paragraph of section 369”.

306. The Act is amended by inserting the following after section 601:

“601.1. The Authority may, by regulation, determine the standards applicable to financial services cooperatives in relation to their business and management practices.

“601.2. A regulation made under section 601.1 by the Authority is approved by the Minister with or without amendment.

The Minister may make such a regulation if the Authority fails to do so within the time specified by the Minister.

A draft of a regulation must be published in the Authority’s bulletin with the notice required under section 10 of the Regulations Act (chapter R-18.1).

The draft of the regulation may not be submitted for approval and the regulation may not be made before 30 days have elapsed since the publication of the draft.

A regulation under this section comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in it. It must also be published in the Authority’s bulletin. If the regulation published in the Authority’s bulletin differs from the one published in the *Gazette officielle du Québec*, the latter prevails.

Sections 4 to 8, 11 and 17 to 19 of the Regulations Act do not apply to a regulation of the Authority under this Act.

“601.3. The fees payable for the formalities prescribed by regulation of the Authority are prescribed by government regulation.

“CHAPTER XV.1

“MONETARY ADMINISTRATIVE PENALTIES

“DIVISION I

“FAILURES TO COMPLY

“601.4. A monetary administrative penalty of \$250 in the case of a natural person and \$1,000 in any other case may be imposed on

(1) a financial services cooperative

(a) that, in contravention of section 37, fails to send the required documents to the Authority within 30 days following its organization meeting,

(b) that, in contravention of section 131.7, fails to send a report on its complaint processing policy to the Authority,

(c) that, in contravention of section 147, fails to inform the Authority of the resignation of the auditor,

(d) that, in contravention of section 165, fails to send a copy of its annual report to a member who requests it, or

(e) that, in contravention of section 166, fails to send a copy of its annual report to the Authority;

(2) a credit union

(a) that, in contravention of section 218, fails to send the amendments made to its by-laws to the Authority,

(b) that, in contravention of section 221, fails to hold its annual meeting within four months from the end of its fiscal year, or

(c) that, not being a member of a federation, in contravention of section 426, fails to send a report to the Authority;

(3) a federation

(a) that, in contravention of section 303, fails to hold its annual meeting within four months from the end of its fiscal year,

(b) whose by-laws, in contravention of section 330, do not set out the number of times that a board member’s term of office may be renewed, whether consecutively or otherwise,

(c) that, in contravention of section 333, fails to give notice to the Authority of a change made among the directors of the board of directors,

(d) whose board of ethics and professional conduct, in contravention of section 353, fails to transmit a yearly report of its activities in matters of ethics and professional conduct to the Authority,

(e) that, in contravention of section 376, fails to transmit its by-laws and the standards it has adopted to the Authority,

(f) that, in contravention of section 385.6, fails to report to the Authority on the number of complaint records it has registered in the register of complaint records submitted for its examination and their nature,

(g) whose audit and inspection commission, in contravention of section 390, fails to send the Authority a report on its activities up to the closing date of its last fiscal year,

(h) that, in contravention of section 425, fails to send a copy of its annual report to a member who requests it,

(i) that, in contravention of section 426, fails to send a report to the Authority, or

(j) that, in contravention of section 427 or 463, fails to send its financial statements to the Authority;

(4) a security fund that, in contravention of section 528, fails to send a statement of operations for the fiscal year just ended to the Authority, prepared in the form prescribed by the Authority and in compliance with the requirements set out in sections 529 and 530;

(5) an auditor, other than the auditor referred to in the fifth paragraph of section 152, who, in contravention of that section, fails to send the required report to the Authority; or

(6) a financial services cooperative, a member of its financial group or its auditor if it or he or she refuses to communicate or provide access to a document or information required by the Authority for the purposes of this Act.

The penalties prescribed by the first paragraph also apply if the information or documents concerned are incomplete, or are not sent before the specified time limit.

“601.5. A monetary administrative penalty of \$500 in the case of a natural person and \$2,500 in any other case may be imposed on

(1) a financial services cooperative

(a) that, in contravention of section 66.1, fails to adopt a complaint processing policy,

(b) that, in contravention of section 66.1, fails to keep the complaints register prescribed by that section, or

(c) that, in contravention of section 470, fails to adopt an investment policy;

(2) a credit union

(a) that has not, in contravention of section 253.1, established an audit committee or that has established one whose composition contravenes that section, unless otherwise provided in the by-laws of the Group made under section 547.2, or

(b) whose board of supervision, in contravention of section 259, fails to adopt rules of ethics and professional conduct;

(3) a federation

(a) that fails to perform its obligations under an undertaking given to the Authority under section 81,

(b) whose board of ethics and professional conduct, in contravention of sections 346 and 347, fails to adopt rules of ethics and professional conduct,

(c) whose board of ethics and professional conduct, in contravention of section 355, fails to notify the Authority in writing within five days of its decision to suspend a director or a manager,

(d) that, in contravention of section 385.1, fails to adopt a policy on the examination of complaint records,

(e) that, in contravention of section 385.2, fails to keep the register of complaint records submitted for its examination prescribed by that section,

(f) whose board of directors, in contravention of section 388, fails to establish an audit and inspection commission formed in accordance with that section,

(g) that, in contravention of section 469, fails to establish the investment policy to be followed by its member credit unions, or

(h) that, belonging to the Group, fails to revise the recovery plan of the Group, in contravention of section 547.22;

(4) a security fund that, in contravention of section 517, fails to adopt an investment policy approved by the Authority; or

(5) the chief manager of a credit union who, in contravention of section 96, does not resign from that position if he or she becomes president or vice-president of the credit union's board of directors.

“601.6. A monetary administrative penalty of \$5,000 may be imposed on

(1) a financial services cooperative

(a) whose shares, in contravention of section 60, entitle its holder, in the event of the winding-up, insolvency or dissolution of the cooperative, to be reimbursed before the deposits and the other debts of the cooperative have been repaid,

(b) that, in contravention of section 61, purchases, repurchases or redeems shares without the authorization of the Authority,

(c) that, in contravention of section 82, hypothecates or gives property as security before obtaining the authorization of the Authority or the federation it is a member of, as the case may be, or

(d) that, in contravention of section 139, fails to cause its books and accounts to be audited every year by an auditor or whose auditor does not meet the qualification criteria set out in sections 143 and 144;

(2) a credit union

(a) that, not being a member of a federation, in contravention of section 88, does not comply with the government regulations referred to in that section,

(b) whose board of directors includes a member who is a disqualified person in contravention of section 227, or a number of directors that contravenes section 244, unless otherwise provided for in the by-laws of the Group made under section 547.2, or

(c) whose board of supervision includes a member who is a disqualified person, in contravention of section 227, or whose board of supervision, in contravention of section 260, is composed of fewer than three members, unless otherwise provided for in the by-laws of the Group made under section 547.2 or section 547.12;

(3) a federation

(a) whose movable property, in contravention of section 81, is charged with a hypothec or other security given,

(b) that, in contravention of section 87, allocates to a reserve any asset or liability not contemplated in that section,

(c) that permits, in contravention of section 288.1, its auxiliary members to exercise together more than 30% of the voting rights at a general meeting of the federation,

(d) whose board of directors, in contravention of section 326, is composed of fewer than five members or, in contravention of section 328, includes a member who is a disqualified person,

(e) whose board of ethics and professional conduct, in contravention of section 359, is composed of fewer than five members or, in contravention of section 361, includes a member who is a disqualified person, unless otherwise provided for in the by-laws of the Group made under section 547.2 or section 547.12,

(f) that, in contravention of section 391, fails to inspect the internal affairs and the activities of a credit union or the activities carried on on its behalf or, in contravention of section 399, fails to transmit a copy of its inspection report to the Authority,

(g) that, in contravention of section 413, entrusts all or part of the management of the funds it has established to any other person, without the authorization of the Authority, or

(h) that, in contravention of section 480, does not hold directly all the shares carrying voting rights of the issuing corporation referred to in section 475; or

(4) an issuing corporation that, in contravention of section 481, makes a public issue of securities without the amount and terms and conditions of such issue having received the prior approval of the federation that is the holder of control of the corporation.

“601.7. A monetary administrative penalty of \$2,000 in the case of a natural person and \$10,000 in any other case may be imposed on anyone who fails to comply with an order or a decision of the Authority.

“601.8. If a failure to comply for which a monetary administrative penalty may be imposed continues for more than one day, it constitutes a new failure for each day it continues.

“601.9. The Minister or the Authority may, in a regulation made under this Act, specify that a failure to comply with the regulation may give rise to a monetary administrative penalty.

The regulation may define the conditions for applying the penalty and set forth the amounts or the methods for determining them. The amounts may vary according to the seriousness of the failure to comply, without exceeding the maximum amounts provided for in section 601.7.

“DIVISION II

“NOTICE OF NON-COMPLIANCE AND IMPOSITION

“601.10. In the event of a failure to comply referred to in Division I, a notice of non-compliance may be notified to the party responsible for the failure urging that the necessary measures be taken immediately to remedy it.

Such a notice must mention that the failure may give rise to a monetary administrative penalty.

“601.11. The imposition of a monetary administrative penalty is prescribed by two years from the date of the failure to comply.

“601.12. The monetary administrative penalty for a failure to comply with a provision of this Act may not be imposed on the party responsible for the failure to comply after the commencement of penal proceedings against that party for a failure to comply with the same provision on the same day, based on the same facts.

For the purposes of this chapter, “party responsible for a failure to comply” means the person or group on whom or which a monetary administrative penalty is imposed or is likely to be imposed, as the case may be, for a failure to comply referred to in Division I of this chapter.

“601.13. A monetary administrative penalty is imposed on the party responsible for a failure to comply by the notification of a notice of claim.

The notice must state

- (1) the amount of the claim;
- (2) the reasons for it;
- (3) the time from which it bears interest;
- (4) the right, under section 601.14, to obtain a review of the imposition of the penalty and the time limit for exercising that right; and
- (5) the right to contest the review decision before the Financial Markets Administrative Tribunal and the time limit for bringing such a proceeding.

The notice must also include information on the procedure for recovery of the amount claimed. The party responsible for the failure to comply must also be informed that failure to pay the amount owing may give rise to the amendment, suspension or revocation of any authorization granted under this Act or to a refusal to grant such an authorization, and, if applicable, that the facts on which the claim is founded may result in penal proceedings.

Unless otherwise provided, the amount owing bears interest at the rate determined under the first paragraph of section 28 of the Tax Administration Act (chapter A-6.002), from the 31st day after notification of the notice.

“DIVISION III

“REVIEW

“601.14. The party responsible for a failure to comply may apply in writing to the Authority for a review of the decision to impose a monetary administrative penalty within 30 days after notification of the notice of claim.

The persons responsible for the review are designated by the Authority; they must not come under the same administrative authority as the persons responsible for imposing such penalties.

“601.15. The application for review must be dealt with promptly. After giving the applicant an opportunity to present observations and produce any documents to complete the record, the person responsible for the review shall render a decision on the basis of the record, unless the person deems it necessary to proceed in some other manner.

“601.16. The review decision must be written in clear and concise terms, with reasons given, must be notified to the applicant and must state the applicant’s right to contest the decision before the Financial Markets Administrative Tribunal and the time limit for bringing such a proceeding.

If the review decision is not rendered within 30 days after receipt of the application or, if applicable, within the time granted to the applicant to present observations or documents, the interest provided for in the fourth paragraph of section 601.13 on the amount owing ceases to accrue until the decision is rendered.

“601.17. A review decision that confirms the imposition of a monetary administrative penalty may be contested before the Financial Markets Administrative Tribunal by the party responsible for the failure to comply to which the decision pertains, within 60 days after notification of the review decision.

The Tribunal may only confirm or quash a contested decision.

When rendering its decision, the Tribunal may make a ruling with respect to interest accrued on the penalty while the matter was pending before it.

“DIVISION IV

“RECOVERY

“601.18. If the party responsible for a failure to comply has defaulted on payment of a monetary administrative penalty, its directors are solidarily liable with that party for the payment of the penalty, unless they establish that they exercised due care and diligence to prevent the failure.

“601.19. The payment of a monetary administrative penalty is secured by a legal hypothec on the debtor’s movable and immovable property.

For the purposes of this division, “debtor” means the party responsible for a failure to comply that is required to pay a monetary administrative penalty and, if applicable, each of its directors and officers who are solidarily liable with that party for payment of the penalty.

“601.20. The debtor and the Authority may enter into a payment agreement with regard to a monetary administrative penalty owing. Such an agreement, or the payment of the amount owing, does not constitute, for the purposes of any other administrative penalty under this Act, an acknowledgement of the facts giving rise to it.

“601.21. If the monetary administrative penalty owing is not paid in its entirety or the payment agreement is not adhered to, the Authority may issue a recovery certificate on the expiry of the time for applying for a review of the decision to impose the penalty, on the expiry of the time for contesting the review decision before the Financial Markets Administrative Tribunal or on the expiry of 30 days after the final decision of the Tribunal confirming all or part of the decision to impose the penalty or the review decision, as applicable.

However, a recovery certificate may be issued before the expiry of the time referred to in the first paragraph if the Authority is of the opinion that the debtor is attempting to evade payment.

A recovery certificate must state the debtor’s name and address and the amount of the debt.

“601.22. Once a recovery certificate has been issued, any refund owed to a debtor by the Minister of Revenue may, in accordance with section 31 of the Tax Administration Act (chapter A-6.002), be withheld for payment of the amount due referred to in the certificate.

Such withholding interrupts the prescription provided for in the Civil Code with regard to the recovery of an amount owing.

“601.23. On the filing of the recovery certificate at the office of the competent court, together with a copy of the final decision stating the amount of the debt, the decision becomes enforceable as if it were a final judgment of that court not subject to appeal, and has all the effects of such a judgment.

“601.24. The debtor is required to pay a recovery charge in the cases, under the conditions and in the amount determined by regulation of the Minister.

“DIVISION V

“REGISTER

“601.25. The Authority shall keep a register relating to monetary administrative penalties.

The register must contain at least the following information:

- (1) the date the penalty was imposed;
- (2) the date and nature of the failure, and the legislative provisions under which the penalty was imposed;
- (3) if the penalty was imposed on a legal person, its name and the address of its head office or that of one of its establishments;
- (4) if the penalty was imposed on a natural person, the person’s name, the name of the municipality in whose territory the person resides and, if the failure occurred during the ordinary course of business of the person’s enterprise, the enterprise’s name and address;
- (5) the amount of the penalty imposed;
- (6) the date of receipt of an application for review and the date and conclusions of the decision;
- (7) the date a proceeding is brought before the Financial Markets Administrative Tribunal and the date and conclusions of the decision rendered by the Tribunal, as soon as the Authority is made aware of the information;
- (8) the date a proceeding is brought against the decision rendered by the Financial Markets Administrative Tribunal, the nature of the proceeding and the date and conclusions of the decision rendered by the court concerned, as soon as the Authority is made aware of the information; and
- (9) any other information the Authority considers of public interest.

The information contained in the register is public information as of the time the decision imposing the penalty becomes final.”

307. Section 725 of the Act is amended by replacing “2006” in the first paragraph by “2022”.

308. The Act is amended by replacing “vérificateur”, “vérifier”, “vérifiés” and “vérification” wherever they appear in the French text in sections 139, 141, 142, 143, 145, 146, 147, 148, 150, 151, 152, 153, 154, 155, 157, 158, 159, 160, 253.1, 259, 390, 434, 523, 524, 525, 530, 550 and 552 and in the heading of Chapter VI, Division V of Chapter IX and Division III of Chapter XIII by “auditeur”, “auditer”, “audités” and “audit”, respectively, with the necessary modifications.

DIVISION II

SPECIAL TRANSITIONAL PROVISIONS

309. The Act respecting financial services cooperatives (chapter C-67.3) is to be read, from *(insert the date that is one month after the date of assent to this Act)* to *(insert the date preceding the date that is one year after the date of assent to this Act)*, as if

(1) “adequate capital to ensure its sustainability” and “adequate assets to meet the liabilities of the credit unions that belong to the network, as and when they become due” in the second paragraph of section 61, amended by section 49 of this Act, were replaced by “an adequate capital base consistent with sound and prudent management” and “adequate liquid assets to ensure sound and prudent management”, respectively;

(2) “Deposit Institutions and Deposit Protection Act” in paragraph 3 of section 81, amended by section 59 of this Act, were replaced by “Deposit Insurance Act”;

(3) “Deposit Institutions and Deposit Protection Act” in section 185.2, enacted by section 107 of this Act, were replaced by “Deposit Insurance Act”;

(4) subparagraph 4 of the second paragraph of section 369, replaced by section 205 of this Act, were replaced by the following subparagraph:

“(4) the management of the capital base and liquid assets;”;

(5) “the federation’s capital is inadequate to ensure the federation’s sustainability” in section 449.1, enacted by section 250 of this Act, were replaced by “the federation’s capital base is insufficient to ensure sound and prudent management”;

(6) “Deposit Institutions and Deposit Protection Act” in section 547.28, enacted by section 290 of this Act, were replaced by “Deposit Insurance Act”;

(7) “capital and other assets” in section 547.29, enacted by section 290 of this Act, were replaced by “capital base and liquid assets”;

(8) “deposit institution authorized under the Deposit Institutions and Deposit Protection Act” in the third paragraph of section 547.32, enacted by section 290 of this Act, were replaced by “financial institution registered with the Autorité des marchés financiers pursuant to the Deposit Insurance Act”;

(9) “Deposit Institutions and Deposit Protection Act” in the first paragraph of section 547.43, enacted by section 290 of this Act, were replaced by “Deposit Insurance Act”.

310. From (*insert the date of coming into force of section 24*), a credit union whose members share a common characteristic determined otherwise than on the basis of territory is deemed to be a group credit union described in the second paragraph of section 10 of the Act respecting financial services cooperatives (chapter C-67.3), as amended by section 23, and the provisions of its articles relating to the common characteristic are deemed to be in compliance with that paragraph.

From that date, a reference to a common characteristic made in the articles of any other member credit union of a federation is deemed not written.

311. Despite section 547.1 of the Act respecting financial services cooperatives, enacted by section 290 of this Act, the first by-laws of the Groupe coopératif Desjardins are those adopted for it by the board of directors of the Fédération des caisses Desjardins du Québec before (*insert the date that is 6 months after the date of assent to this Act*).

312. The provisions of Chapter XIII.1 of the Act respecting financial services cooperatives, except sections 547.1 to 547.4, enacted by section 290 of this Act, come into force on the date of the coming into force of the first by-laws of the Groupe coopératif Desjardins referred to in section 547.1.

The Fédération des caisses Desjardins du Québec must send the Authority a notice of the coming into force of the by-laws of the Groupe coopératif Desjardins.

313. Unless the context indicates otherwise, in any document, a reference to the Caisse centrale Desjardins or to La Caisse centrale Desjardins du Québec is a reference to the Fédération des caisses Desjardins du Québec.

314. The repeal of the Act respecting the Mouvement Desjardins (2000, chapter 77) under section 710 does not affect the amalgamation of the Fédération des caisses Desjardins du Québec with La Caisse centrale Desjardins du Québec.

The same is true of the repeal of any regulation made for the purposes of that Act entailed by the repeal of that same Act.

CHAPTER III

DEPOSIT INSTITUTIONS

DIVISION I

AMENDING PROVISIONS

DEPOSIT INSURANCE ACT

315. The title of the Deposit Insurance Act (chapter A-26) is replaced by the following title:

“DEPOSIT INSTITUTIONS AND DEPOSIT PROTECTION ACT”.

316. Division I of the Act becomes Title I.

317. Section 1 of the Act is amended

(1) by replacing “The purpose of this Act is to foster” by “This Act applies to the supervision and control of deposit institution business and of the activities of authorized deposit institutions, in particular their deposit institution activities and their other financial institution activities. In addition, it fosters”;

(2) by replacing “a registered institution” by “an authorized deposit institution”.

318. The Act is amended by inserting the following section after section 1:

“**1.0.1.** Deposit institution activities consist in soliciting and receiving deposits of money from the public.”

319. Section 1.1 of the Act is amended by striking out subparagraph 1 of the second paragraph.

320. Section 1.2 of the Act is replaced by the following sections:

“**1.2.** For the purposes of this Act, financial institution activities are, in addition to deposit institution activities and credit, the activities that a legal person may not carry on without being an authorized financial institution or a bank within the meaning of the Bank Act (Statutes of Canada, 1991, chapter 46).

“**1.3.** The following are authorized financial institutions:

(1) insurers authorized under the Insurers Act (*insert the year and chapter number of that Act*);

(2) financial services cooperatives within the meaning of the Act respecting financial services cooperatives (chapter C-67.3);

(3) trust companies authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*);

(4) authorized deposit institutions other than financial institutions referred to in paragraphs 1 to 3; and

(5) legal persons registered as dealers or advisers under the Derivatives Act (chapter I-14.01) or the Securities Act (chapter V-1.1) or registered as investment fund managers under the latter Act.

“1.4. In the case of a legal person constituted under the laws of a jurisdiction other than Québec, the organ on which the powers usually conferred on a board of directors are conferred is considered such a board. In that context, “director” means a member of that organ.

A legal person constituted under the laws of a jurisdiction other than Québec that, in a manner similar to that of a business corporation, confers voting rights otherwise than on a one member, one vote basis is considered a business corporation. If such rights are conferred through securities that it issues, the securities are considered shares.

“1.5. For the purposes of this Act, “holder of control” of the following groups means,

(1) in the case of a business corporation, the holder of shares conferring more than 50% of the voting rights or whoever can otherwise choose the majority of its directors;

(2) in the case of a federation of mutual companies, its member mutual companies;

(3) in the case of a partnership that is a limited partnership, the general partner, and in the case of any other partnership, the partner who can determine the outcome of collective decisions, if applicable;

(4) in the case of a trust, the trustee; and

(5) in the case of co-owners in indivision, the manager or, in the absence of a manager, if one of the co-owners can determine the outcome of collective decisions made by majority vote, that co-owner.

No one is the holder of control of a financial services cooperative, of a mutual company or of any other group that confers voting rights on a one member, one vote basis.

“1.6. Each of the following is the holder of a significant interest in a business corporation:

(1) the holder of a significant interest in the decisions of the corporation, that is, whoever can exercise 10% or more of the voting rights attached to the shares issued by the corporation; and

(2) the holder of a significant interest in the corporation’s equity capital, that is, the holder of shares issued by the corporation representing 10% or more of its equity capital.

“1.7. Control, in cases which allow it, also results from participation in the concerted and ongoing exercise of rights within the group controlled or of powers over that group, even though none of the participants in the exercise of such rights or powers would alone be the holder of control; in such cases, each of the participants is deemed to be the holder of control.

The same is true for a significant interest in the decisions of a business corporation; each of the participants in the concerted and ongoing exercise of voting rights attached to the shares issued by the corporation is deemed to be a holder of a significant interest.

“1.8. The following are deemed to participate in the concerted and ongoing exercise of their rights or powers and, consequently, to be the holders of control of a group:

(1) the participants that are controlled by a same holder of control as well as that holder, if the holder is a participant;

(2) the trustees of a same trust; and

(3) the natural persons between whom family ties are considered to exist.

The participants described in the first paragraph are deemed to participate in the concerted and ongoing exercise of their voting rights or of their rights in shares with a view to being the holders of a significant interest in a business corporation.

The presumptions under the first and second paragraphs regarding member mutual companies of a same federation also apply to the other member mutual companies of that federation that neither have rights within or powers over the group.

“1.9. The holder of control of a group is also, if that group is the holder of control of another group, the holder of control of that other group.

“1.10. For the purposes of this Act, the holder of control of a group is deemed

- (1) to hold any significant interest that is held by the group;
- (2) to hold such rights to acquire shares or other securities as are held by the group itself; and
- (3) to exercise the voting rights that the group may exercise.

“1.11. For the purposes of this Act, a security entitlement to a share or to another security is considered such a share or security, unless the holder of the security entitlement is a securities intermediary acting in that capacity.

“Securities intermediary” and “security entitlement” have the meaning assigned by the Act respecting the transfer of securities and the establishment of security entitlements (chapter T-11.002).

“1.12. Groups that have a common holder of control are affiliates, as is the holder of control, unless the latter is a natural person.

If one group among an aggregate of affiliated groups is an authorized deposit institution, the aggregate of affiliated groups is a financial group.

“1.13. Economic ties are considered to exist only between

- (1) natural persons between whom family ties are considered to exist;
- (2) the holder of a significant interest in a business corporation and the business corporation itself;
- (3) a partner in a partnership and the partnership;
- (4) each of the partners in a same partnership;
- (5) a legal person and its directors and officers; and
- (6) a person and a succession or trust in which the person has a substantial interest similar to that of a beneficiary or in respect of which the person serves as liquidator of the succession, trustee or other administrator of the property of others, mandatary or depositary.

Economic ties include any other ties between persons or groups that the Autorité des marchés financiers may determine by regulation.

“1.14. Family ties are considered to exist only between a person and

- (1) his or her spouse;
- (2) his or her children or spouse’s children; and
- (3) his or her parents or spouse’s parents.

“1.15. The contributed capital of a legal person is composed of the consideration paid to the legal person for,

- (1) in the case of a business corporation, the shares of its share capital;
- (2) in the case of a joint-stock company, the shares of its capital stock; and
- (3) in the case of a cooperative, a financial services cooperative or a mutual company, the shares of its capital stock or share capital.

The contributed capital of a partnership is composed,

- (1) in the case of a general partnership, of the contribution made by each partner to obtain a share in the partnership; and
- (2) in the case of a limited partnership, of the contribution made by the special partners to the partnership’s common stock.

“1.16. “Equivalent scheme” means any law providing depositor protection similar to that provided by Title III of this Act.”

321. Division II of the Act is replaced by the following:

“TITLE II

**“SUPERVISION AND CONTROL OF DEPOSIT INSTITUTION
ACTIVITIES**

“CHAPTER I

“SUPERVISION AND CONTROL

“2. The Autorité des marchés financiers (the Authority) shall supervise and control the carrying on of deposit institution activities in Québec.”

322. Division III of the Act is replaced by the following:

“CHAPTER II

“AUTHORIZATION OF THE AUTHORITY

“DIVISION I

“OBLIGATION TO BE AUTHORIZED

“23. Except in the case of a bank listed in Schedule I or II to the Bank Act (Statutes of Canada, 1991, chapter 46), the Authority’s authorization is required to carry on deposit institution activities in Québec.

“24. Only the following legal persons may obtain the Authority’s authorization:

(1) insurers authorized under the Insurers Act (*insert the year and chapter number of that Act*) other than a self-regulatory organization, a reciprocal union or Lloyd’s;

(2) financial services cooperatives within the meaning of the Act respecting financial services cooperatives (chapter C-67.3);

(3) trust companies authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*);

(4) business corporations regulated by Title III of the Trust Companies and Savings Companies Act that are not authorized, under that Act, to carry on the activities of a trust company;

(5) cooperatives established under the laws of a jurisdiction other than Québec and whose mission is similar to that of a financial services cooperative covered by an agreement under section 56.2;

(6) legal persons, other than cooperatives referred to in subparagraph 5, established under the laws of a jurisdiction other than Québec and that have the capacity to receive deposits of money from the public; and

(7) other legal persons constituted under an Act of Québec determined by regulation, except cooperatives within the meaning of the Cooperatives Act (chapter C-67.2).

To obtain the Authority’s authorization, the legal persons referred to in subparagraphs 4 to 7 of the first paragraph must hold at least \$5,000,000 in equity capital.

“24.1. For the purposes of this Act,

“authorized deposit institution” means a legal person referred to in the first paragraph of section 24 that has obtained the Authority’s authorization under section 23;

“authorized Québec deposit institution” means an authorized deposit institution constituted under an Act of Québec;

“Québec savings company” means a business corporation referred to in subparagraph 4 of the first paragraph of section 24 that has obtained the Authority’s authorization.”

323. Division IV of the Act is amended by replacing the portion before section 32 by the following:

“DIVISION II

“APPLICATION FOR AUTHORIZATION

“27. A legal person that intends to carry on deposit institution activities, when such activities require the Authority’s authorization, is responsible for filing an application with the Authority for its authorization.

An applicant must, in its application, show that it is able to comply with the applicable provisions of this Act.

It must also include the following information:

(1) its name, the name it intends to use in Québec if different, the address of its head office and, if the latter is not in Québec, the proposed address of its principal establishment in Québec, if any;

(2) if applicable, the conditions and restrictions it wishes to have attached to the authorization;

(3) a description of its financial structure;

(4) if applicable, the name and address of each holder of a significant interest in its decisions, as well as a description of that interest;

(5) if the applicant is not constituted under the laws of Québec, the name of the regulatory authority of its domicile (home regulator);

(6) if applicable, the name and address of the attorney designated under section 26 of the Act respecting the legal publicity of enterprises (chapter P-44.1);

(7) if it belongs to a financial group, the name under which the group is known, if any, and, if applicable, the names of the other financial institutions that belong to the group; and

(8) the other information prescribed by regulation of the Authority.

“27.1. The home regulator of a legal person is the competent authority with respect to the legal person’s deposit institution activities, under the laws of the jurisdiction whose legislation governs the legal person’s constituting act.

“27.2. If the applicant is an authorized financial institution referred to in any of subparagraphs 1 to 3 of the first paragraph of section 24, only the following information is required:

(1) the information required under subparagraph 2 of the third paragraph of section 27;

(2) if applicable, the information required under subparagraph 6 of that paragraph; and

(3) the information required to update the other information contained in the register provided for in section 32.9.

“27.3. The following must be filed with the application for authorization:

(1) a list of the applicant’s directors and officers, including their names and domiciliary addresses;

(2) the résumé of each director and officer;

(3) a copy of the applicant’s constituting act and by-laws or of any other document established for the same purpose;

(4) if applicable, a copy of the applicant’s audited financial statements for its most recent fiscal year ended and the financial statements it is required to file with its home regulator, to the extent and in the manner that may be determined by regulation of the Authority;

(5) the other documents prescribed by regulation of the Authority; and

(6) the fees and charges prescribed by government regulation.

“27.4. If the applicant is an authorized financial institution referred to in any of subparagraphs 1 to 3 of the first paragraph of section 24, the only documents required are those referred to in paragraphs 3 and, if applicable, 5 and 6 of section 27.3.

“DIVISION III

“GRANTING OF AUTHORIZATION

“28. The Authority shall grant its authorization to an applicant that meets the following conditions:

(1) the applicant has provided the information and documents required under this Act and has paid the fees and charges payable; and

(2) in the Authority’s opinion,

(a) the applicant has shown that it is able to comply with the applicable provisions of this Act,

(b) there are no serious reasons to believe that a holder of a significant interest in the applicant's decisions is likely to interfere with the applicant's adherence to sound commercial practices or sound and prudent management practices, and

(c) the applicant's name is not misleading.

“28.1. The Authority may, in granting its authorization, require any undertaking it considers necessary to ensure compliance with this Act.

The Authority may also, in granting its authorization, attach the conditions and restrictions it considers necessary for that purpose.

“28.2. The authorization granted by the Authority entails, for the authorized deposit institution, the obligation to maintain its existence until the final revocation of that authorization.

“28.3. The Authority shall notify the applicant in writing of its decision.

Before refusing to grant its authorization or granting an authorization with conditions or restrictions attached, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the applicant in writing and grant the latter at least 10 days to submit observations, unless the conditions or restrictions are attached at the applicant's request.

“CHAPTER III

“SPECIAL POWERS OF AUTHORIZED DEPOSIT INSTITUTIONS

“28.4. An authorized deposit institution may receive deposits of money from a minor or a person of full age who does not have legal capacity to contract, without anyone's authorization or intervention.

“CHAPTER IV

“NON-APPLICATION OF CERTAIN PROVISIONS FOR SOME AUTHORIZED FINANCIAL INSTITUTIONS

“28.5. The provisions of Chapters V to IX, except the third paragraph of section 28.21, do not apply to an authorized financial institution that is an authorized insurer, a financial services cooperative or an authorized trust company.

“CHAPTER V

“APPLICATION OF CERTAIN PROVISIONS TO FINANCIAL GROUPS AND LEGAL PERSONS ACTING ON BEHALF OF AN AUTHORIZED DEPOSIT INSTITUTION

“28.6. The obligations of an authorized deposit institution under the provisions of this Act remain unchanged by the mere fact that the deposit institution entrusts a third person to carry on any part of an activity governed by those provisions.

“28.7. An authorized deposit institution must ensure that any group in respect of which the deposit institution is the holder of control complies with the prohibitions imposed on the deposit institution by this Act.

A prohibition imposed on such an institution applies to the groups in respect of which it is the holder of control not only when each group is acting alone, but also when the acts or omissions of all or some would have contravened that prohibition had they been done or made by only one of them.

This section does not prohibit a group in respect of which an authorized deposit institution is the holder of control from carrying on activities the group is permitted to carry on by the Act governing it even though the deposit institution is not permitted to carry on those activities, provided the group is a financial institution.

“28.8. An authorized deposit institution is liable for failures to comply with this Act by a group in respect of which the deposit institution is the holder of control or by whoever is the holder of control of the group and performs an obligation of the deposit institution on the deposit institution’s behalf, as if those failures to comply were the deposit institution’s own.

“28.9. The Authority’s inspection functions and powers, provided for by the Act respecting the regulation of the financial sector (chapter A-33.2), that may be exercised in relation to an authorized deposit institution extend to any affiliated group if the person authorized to inspect the deposit institution considers it necessary to inspect the group in order to complete the verification of the deposit institution’s compliance with this Act, even though the group does not carry on activities governed by an Act referred to in section 7 of that Act.

“28.10. The Authority may prohibit that an authorized deposit institution’s obligations under this Act be performed by a third person on the deposit institution’s behalf if, in the Authority’s opinion, such performance would render the application of this Act difficult or ineffective.

Before rendering its decision, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the deposit institution in writing and grant the latter at least 15 days to submit observations.

“CHAPTER VI

“COMMERCIAL PRACTICES

“DIVISION I

“GENERAL PROVISIONS

“28.11. An authorized deposit institution must adhere to sound commercial practices.

In carrying on its financial institution activities, such practices include providing fair treatment to its clientele, in particular by

- (1) providing appropriate information;
- (2) adopting a policy for processing complaints filed by members of that clientele and resolving disputes with them; and
- (3) keeping a complaints register.

“28.12. An authorized deposit institution must be able to show to the Authority that it adheres to sound commercial practices.

“DIVISION II

“COMPLAINT PROCESSING AND DISPUTE RESOLUTION POLICY AND EXAMINATION OF COMPLAINT RECORDS BY THE AUTHORITY

“28.13. The complaint processing and dispute resolution policy adopted under subparagraph 2 of the second paragraph of section 28.11 must, in particular,

- (1) set out the characteristics that make a communication to the authorized deposit institution a complaint that must be registered in the complaints register kept under subparagraph 3 of the second paragraph of section 28.11; and
- (2) provide for a record to be opened for each complaint and prescribe rules for keeping such records.

The authorized deposit institution must make a summary of the policy, including the elements specified in subparagraphs 1 and 2 of the first paragraph, publicly available on its website and disseminate it by any appropriate means to reach the clientele concerned.

“28.14. Within 10 days after a complaint is registered in the complaints register, the authorized deposit institution must send the complainant a notice stating the complaint registration date and the complainant’s right, under section 28.15, to have the complaint record examined.

“28.15. A complainant whose complaint has been registered in the complaints register may, if dissatisfied with the deposit institution’s processing of the complaint or the outcome, request the deposit institution to have the complaint record examined by the Authority.

The deposit institution is required to comply with the complainant’s request and send the complaint record to the Authority.

“28.16. The Authority shall examine the complaint records that are sent to it.

It may, with the parties’ consent and on payment by each party of the fees determined by government regulation, act as conciliator or mediator or designate a person to act as such.

Conciliation or mediation may not, alone or in combination, continue for more than 60 days after the date of the first conciliation or mediation session, as the case may be, unless the parties consent to it.

In exercising the regulatory power under the second paragraph, the Government may determine different fees according to the classes of persons or groups it determines.

“28.17. Unless the parties agree otherwise, nothing that is said or written in the course of a conciliation or mediation session may be admitted into evidence before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

A conciliator or mediator may not be compelled to disclose anything revealed or learned in the exercise of conciliation or mediation functions or to produce a document prepared or obtained in the course of such functions before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no one has a right of access to a document contained in the conciliation or mediation record.

“28.18. Despite sections 9 and 83 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Authority may not communicate a complaint record without the authorization of the authorized deposit institution that has sent it.

“28.19. On the date set by the Authority, an authorized deposit institution shall send it a report on the complaint processing and dispute resolution policy adopted under subparagraph 2 of the second paragraph of section 28.11 stating the number of complaints that the deposit institution has registered in the complaints register and their nature.

The report must cover the period determined by the Authority.

“DIVISION III

“SPECIAL PROVISIONS RESPECTING BUSINESS BETWEEN FINANCIAL INSTITUTIONS

“28.20. Except for the first paragraph of section 28.11, this chapter does not apply if the authorized deposit institution’s client is a bank or another financial institution.

“CHAPTER VII

“PRUDENTIAL RULES

“DIVISION I

“MANAGEMENT PRACTICES

“28.21. An authorized deposit institution must adhere to sound and prudent management practices ensuring, in particular, good governance and compliance with the laws governing its activities.

With respect to the deposit institution’s financial management, such practices must, in particular, provide that the deposit institution maintain

- (1) adequate assets to meet its liabilities, as and when they become due; and
- (2) adequate capital to ensure its sustainability.

For the purpose of determining the assets to be maintained, demand deposits are considered payable when and to the extent considered usual in the economic conditions prevailing at the time.

“28.22. An authorized deposit institution must be able to show to the Authority that it adheres to sound and prudent management practices.

“28.23. An authorized deposit institution must hold a fidelity insurance policy for an amount considered sufficient by the Authority according to generally accepted practices and to the volume of the deposit institution’s activities.

“28.24. The Authority may, if it considers that an authorized deposit institution’s capital is not adequate to ensure the deposit institution’s sustainability, order the deposit institution to adopt a compliance program within the time it prescribes and for the reasons it specifies.

Before exercising the power provided for in the first paragraph, the Authority must notify the deposit institution of its intention and give it at least 10 days to submit observations.

The Authority may not order an authorized deposit institution other than an authorized Québec deposit institution to adopt such a program if it may hinder the measures taken by the deposit institution's home regulator.

“28.25. The compliance program describes the measures that must be implemented by the authorized deposit institution within the time limits specified in it.

“28.26. The compliance program adopted by the authorized deposit institution is submitted for approval to the Authority.

“28.27. The authorized deposit institution is required to implement the compliance program approved by the Authority.

“28.28. An authorized deposit institution that is required to implement a compliance program must provide the Authority with any report the Authority may require on the implementation of the program at such intervals, in such form and with such content as the Authority determines.

“DIVISION II

“INVESTMENTS

“§1. — *Provisions applicable to all authorized deposit institutions*

“28.29. An authorized deposit institution must adopt an investment policy approved by its board of directors.

The investment policy must, in particular,

(1) provide for the matching of the respective maturities of the deposit institution's investments with the deposit institution's liabilities;

(2) provide for the appropriate diversification of those investments; and

(3) include a description of the types of investments and other financial transactions that it authorizes and the limits applicable to them.

The deposit institution must send its investment policy to the Authority at the Authority's request.

“28.30. An authorized deposit institution must follow the investment policy approved by its board of directors.

“§2.—Provisions applicable to authorized Québec deposit institutions

“I.—Acquisition of participations and co-ownership

“28.31. No authorized Québec deposit institution may acquire or hold contributed capital securities issued by a legal person or a partnership or participations in a trust in excess of

- (1) 30% of the value of those securities or participations; or
- (2) the number of those securities or participations allowing it to exercise more than 30% of the voting rights.

Nor may an authorized Québec deposit institution be the co-owner of property if its share of the right of ownership is greater than 30% without exceeding 50%, alone or together with the shares of groups affiliated with it.

“28.32. Despite section 28.31, an authorized Québec deposit institution may acquire up to all the contributed capital securities issued by a legal person or a partnership or all the participations in a trust if, following the acquisition, the deposit institution will be the holder of control of the person, partnership or trust.

“II.—Accessory guarantees for certain investments

“28.33. An authorized Québec deposit institution may become the owner of property in contravention of section 28.31 only if it does so to obtain or preserve an accessory guarantee for one of its investments or for any other financial transaction.

“III.—Penalties

“28.34. If an authorized Québec deposit institution holds or owns property, as the case may be, in contravention of section 28.31, it must dispose of that property as soon as market conditions permit.

“28.35. Directors of an authorized Québec deposit institution who agree to a contravention of section 28.31 are held solidarily liable for any resulting losses to the deposit institution.

A director cannot be held liable under the first paragraph if the director acted with a reasonable degree of prudence and diligence in the circumstances.

Furthermore, for the purposes of the first paragraph, the court may, after considering all the circumstances and on the terms the court considers appropriate, relieve a director, either wholly or partly, from the liability the director would otherwise incur if it appears to the court that the director has acted reasonably, honestly and loyally, and ought fairly to be excused.

“CHAPTER VIII

“GOVERNANCE

“DIVISION I

“GENERAL PROVISIONS

“28.36. An authorized deposit institution must have a board of directors composed of at least seven members.

“28.37. A director of an authorized deposit institution who resigns must declare his or her reasons to the deposit institution and to the Authority in writing.

“28.38. The board of directors must ensure that the authorized deposit institution adheres to sound commercial practices and sound and prudent management practices.

To that end, it must entrust certain directors it designates or a committee of such directors with the responsibility of seeing that sound commercial practices and sound and prudent management practices are adhered to and situations contrary to such practices are detected.

Within three months after the closing date of the authorized deposit institution’s fiscal year, the directors or the committee, as the case may be, shall report to the board of directors on the performance of the responsibility entrusted to them or it and, if applicable, on the other activities they or it carries on for the authorized deposit institution.

“28.39. A director designated in accordance with section 28.38 or the committee provided for in that section, as the case may be, must, on becoming aware of a situation that adversely affects the authorized deposit institution’s financial position, is otherwise contrary to sound and prudent management practices or is contrary to sound commercial practices, notify the board of directors in writing.

The board of directors must then see to it that the situation is promptly remedied.

“28.40. The director who or committee that notified the board of directors in accordance with section 28.39 shall, on finding that the situation mentioned in the notice has not been corrected, send the Authority a copy of the notice given under that section.

A description of any relevant events that have occurred since the notice was drafted and any other information the director or committee considers relevant must be sent with the notice.

“28.41. A director designated in accordance with section 28.38 or a director on the committee provided for in that section, as the case may be, who, in good faith, notifies the board of directors or the Authority in accordance with section 28.39 or 28.40 incurs no civil liability for doing so.

The same is true for any person who, in good faith, provides information or documents to one or more of those directors and for a director who makes a declaration under section 28.37.

“DIVISION II

“PROVISIONS SPECIFIC TO AUTHORIZED QUÉBEC DEPOSIT INSTITUTIONS

“§1. — *Composition of board of directors*

“28.42. More than half of the board of directors of an authorized Québec deposit institution must be composed of persons other than employees of that deposit institution or of a group of which it is the holder of control.

“28.43. An authorized Québec deposit institution must implement a policy aimed at fostering, in particular, the independence, competence and diversity of the members of its board of directors and of the members of the committees of the board.

“§2. — *Establishment and composition of audit committee and ethics committee*

“28.44. The board of directors of an authorized Québec deposit institution must establish an audit committee and an ethics committee from among its members.

“28.45. The audit committee and the ethics committee of an authorized Québec deposit institution must each be composed of at least three directors, a majority of whom are not

- (1) officers or employees of the deposit institution;
- (2) members of both the ethics committee and the audit committee;
- (3) directors, officers or other mandataries or employees of a group of which the deposit institution is the holder of control; or
- (4) holders of a significant interest in the deposit institution or in a business corporation affiliated with the deposit institution.

“28.46. The Authority may, if an authorized Québec deposit institution shows that the exercise of the committee’s functions will not be adversely affected, authorize

(1) the establishment of a committee whose composition does not comply with section 28.45; or

(2) the exercise by one of the committees mentioned in that section of the functions usually assigned to the other committee, in addition to its own functions.

The Authority may, in granting such an authorization, require any undertaking it considers necessary to ensure compliance with this Act.

“§3. — *Functions of the audit committee*

“28.47. The audit committee must examine all financial statements intended for the board of directors before they are submitted to the board.

The audit committee may be convened by one of its members or by the auditor. The auditor must be notified of every committee meeting and attend every meeting to which he or she is convened. The committee must provide the auditor an opportunity to be heard.

The committee must cause any error or misstatement in financial statements to be corrected and, if the financial statements were sent to the members, inform the general meeting of the members accordingly.

“§4. — *Functions of the ethics committee*

“28.48. An authorized Québec deposit institution must have rules of ethics; they must be adopted by its ethics committee and be sent to the Authority.

Those rules must pertain to such subjects as

(1) the conduct of the deposit institution’s directors and officers;

(2) the conduct of the deposit institution with natural persons or groups that are restricted parties with respect to it; and

(3) the formalities and conditions governing contracts with such persons or groups.

“28.49. An authorized Québec deposit institution must follow the rules of ethics adopted by its ethics committee; they are binding on its board of directors.

“28.50. The ethics committee of an authorized Québec deposit institution must see that the rules of ethics are complied with and notify the board of directors, in writing and without delay, of any violation of those rules.

“28.51. Each year, the ethics committee of an authorized Québec deposit institution shall send the Authority, within two months after the closing date of the deposit institution’s fiscal year, a report on the committee’s activities in that fiscal year.

The report must include or describe

- (1) the committee members’ names and addresses;
- (2) any change among the committee members;
- (3) the list of conflict of interest situations and contracts with natural persons or groups that are restricted parties with respect to the deposit institution which have come to the committee’s notice;
- (4) the measures taken to see that the rules of ethics are complied with; and
- (5) violations of the rules of ethics.

“28.52. An authorized Québec deposit institution must, when doing business with natural persons or groups that are restricted parties with respect to it, act in the same manner as it would when dealing at arm’s length.

Consequently, a contract entered into between the deposit institution and a natural person or group that is a restricted party with respect to it may not be less advantageous for the deposit institution than if it had been entered into at arm’s length.

“28.53. Section 28.52 does not apply to the remuneration of directors or any other matter connected with a contract of employment.

“28.54. The following natural persons and groups are restricted parties with respect to an authorized Québec deposit institution:

- (1) the deposit institution’s directors and officers;
- (2) the directors and officers of the group that is the holder of control of the deposit institution;
- (3) if the deposit institution is a Québec savings company, the holder of a significant interest in the company;
- (4) natural persons and groups having economic ties with the persons described in subparagraphs 1 to 3, except a group of which the deposit institution is the holder of control;

(5) a group whose board of directors is composed, in the majority, of members of the deposit institution's board of directors; and

(6) any other person or group designated under section 28.56.

An authorized financial institution is not a group that is a restricted party with respect to a deposit institution if the financial institution is the holder of exclusive control of the deposit institution, or if it is the holder of control of the deposit institution and both the authorized financial institution and the deposit institution have the same holder of exclusive control.

“28.55. For the purposes of section 28.54, the holder of control of a business corporation has exclusive control of the corporation if that holder alone can choose all the directors and exercise the voting rights attached to all the shares issued by the corporation, provided that, if applicable, the holder holds all the securities that are convertible into such shares carrying voting rights and all the rights to acquire such shares.

“28.56. The Authority may designate a natural person or a group as a restricted party if, in its opinion, that person or group is likely to receive preferential treatment to the detriment of the authorized Québec deposit institution.

The Authority may review a designation at the request of the person or group designated or the deposit institution concerned.

Before making or refusing to review a designation, the Authority must give the natural person or group and the deposit institution concerned an opportunity to submit observations.

The Authority shall notify the person or group designated and the deposit institution concerned of its decision on the designation or the review request, as applicable.

“28.57. Unless the obligations of an authorized Québec deposit institution under the following contracts are minimal, such contracts must be submitted to its board of directors for approval:

(1) a contract for the acquisition, by the deposit institution, of securities issued by a natural person or group that is a restricted party with respect to the deposit institution or for the transfer of assets between them; and

(2) a service contract between the deposit institution and a natural person or group that is a restricted party with respect to the deposit institution.

Before approving such contracts, the board of directors shall obtain the opinion of the ethics committee.

“28.58. Except to the extent authorized by its rules of ethics, no authorized Québec deposit institution may extend credit to its directors or officers, to natural persons or groups having economic ties with them or to the directors or officers of a legal person affiliated with the deposit institution.

“CHAPTER IX

“AUDITOR

“DIVISION I

“QUALIFICATIONS AND BEGINNING AND END OF TERM

“28.59. An auditor must be charged with auditing an authorized deposit institution’s books and accounts.

“28.60. An auditor charged with the functions provided for in this chapter must be a member of the Ordre professionnel des comptables professionnels agréés du Québec and hold a public accountancy permit.

However, in the case of an authorized deposit institution, other than an authorized Québec deposit institution, that carries on its activities in Québec and elsewhere in Canada, the auditor is not required to be a member of that order or to hold that permit if he or she holds an authorization of the same nature issued elsewhere in Canada.

“28.61. The auditor charged with the audit provided for in section 28.59 is the auditor elected, appointed or otherwise determined by the authorized deposit institution in accordance with the Act under which it is constituted. If the auditor does not meet the conditions set out in section 28.60, another auditor must be charged with those functions.

“28.62. The term of an auditor ends on the appointment of his or her successor, unless it ends as a result of his or her death, resignation, removal from office or bankruptcy or the institution of protective supervision for him or her or if he or she no longer has the qualifications required under this division.

“28.63. The authorized deposit institution must, within 10 days after the auditor’s term has ended, notify the Authority of the fact.

“28.64. If an authorized deposit institution fails to charge an auditor with the functions provided for in this chapter within the time specified by the Authority, the Authority may appoint one and determine the remuneration that the deposit institution must pay him or her.

“28.65. An authorized deposit institution must, before removing an auditor from office, give him or her at least 10 days’ prior notice in writing and send a copy of the notice to the Authority, unless the latter authorizes it to proceed earlier.

The prior notice must give the reasons for the removal.

“28.66. An auditor who resigns or who believes he or she was removed from office for reasons connected with his or her functions or with the conduct of the authorized deposit institution’s business or the business of a member of its financial group must declare those reasons to the Authority in writing.

The auditor must send a copy of the declaration to the deposit institution’s secretary.

The auditor must send those documents within 10 days after tendering his or her letter of resignation or learning of his or her removal from office, as the case may be.

“28.67. Before accepting the office of auditor provided for by this chapter, a person must ask the authorized deposit institution’s secretary whether the former auditor made the declaration required under section 28.66.

The secretary must provide the person with a copy of the declaration, if applicable.

“DIVISION II

“DUTIES AND POWERS

“28.68. An authorized deposit institution is required to see that its directors, officers and employees send the auditor the information or documents regarding the deposit institution, the groups of which it is the holder of control and any other group whose financial information is consolidated with its own that the auditor requests in the course of his or her functions.

The deposit institution is also required to see that persons having custody of such documents do so as well.

“28.69. An auditor who, in the course of his or her functions, becomes aware of a situation that in his or her opinion adversely affects the authorized deposit institution’s financial position, is otherwise contrary to sound and prudent management practices or is contrary to sound commercial practices must draft a detailed report on that situation.

The same is true for an auditor who believes that a refusal or failure to provide information or a document requested by him or her is hindering the exercise of his or her functions.

The auditor must send the report to the board of directors. If applicable, he or she must also send a copy of it to the attorney designated under section 26 of the Act respecting the legal publicity of enterprises (chapter P-44.1). The board of directors must then see to it that the situation is remedied.

“28.70. If an auditor becomes aware or is informed of an error or misstatement in financial statements that he or she has audited, and if in his or her opinion the error or misstatement is material, the auditor must inform the board of directors. The auditor may amend the financial statements if he or she considers it necessary.

On receiving the auditor’s report, the board of directors must send a copy of it to the shareholders or other members within 15 days.

“28.71. If the auditor finds that the situation that justified the drafting of the report submitted under section 28.69 has not been corrected, he or she must send a copy of it to the Authority.

A description of any relevant events that have occurred since the report was drafted and any other information the auditor considers relevant must be sent with the report.

“28.72. An auditor who, in good faith, makes a declaration under section 28.66, submits a report under section 28.69 or sends a copy of the latter to the Authority under section 28.71 incurs no civil liability for doing so. The same is true for a person who, in good faith, provides information or documents under section 28.68.

“DIVISION III

“CONTINUATION OR BROADENING OF AN AUDIT, SPECIAL AUDIT AND OTHER MEASURES

“28.73. If it considers it necessary, the Authority may order that the annual audit of an authorized deposit institution’s books and accounts be continued, that its scope be broadened or that a special audit be conducted.

The expenses incurred in such a case are payable by the deposit institution after approval by the Authority.

“28.74. If the Authority is of the opinion that an asset considered in the financial statements sent to it by an authorized deposit institution is overvalued, it may either require the deposit institution to cause an appraiser the choice of whom is approved by it to appraise that asset or appraise that asset itself. If the asset is a loan the repayment of which is guaranteed by property, the property is appraised.

If the results of the appraisal justify it, the Authority may require the deposit institution to modify its books and accounts as well as the financial statements referred to in the first paragraph to reflect the market value of the asset or, in the case of a loan, the value of the realization of the property guaranteeing the repayment. If a loan or another asset is that of a group of which the deposit institution is the holder of control, the Authority may, for those same purposes, require that the value of the deposit institution's investment in the group be modified. The Authority shall notify the auditor described in section 28.61 of the modification requested.

“28.75. Before exercising a power conferred on it by section 28.74, the Authority must give the authorized deposit institution at least 10 days to submit observations.

“28.76. The cost of the appraisal of an overvalued asset further to a decision of the Authority under section 28.74 is to be borne by the authorized deposit institution concerned, unless the Authority decides otherwise.

“28.77. Semi-annually, on the dates determined by the Authority, an authorized deposit institution shall send the latter statements showing the changes in its investments and loans during the preceding half year. The statements must be certified by two of the deposit institution's directors; they must be presented on the forms provided by the Authority.

“28.78. An authorized deposit institution must send the Authority, according to the content and form and at the time or intervals the latter determines, the documents the latter considers useful to determine whether the deposit institution is complying with this Act.

“28.79. The Authority may require an authorized deposit institution, the holder of control of the authorized deposit institution or a member of the authorized deposit institution's financial group to provide the documents or information the Authority considers useful for the purposes of this Act or that it or he or she otherwise provide access to those documents and information.

The Authority may likewise require the auditor of an authorized deposit institution to provide the documents or information he or she holds regarding the deposit institution.

The person to whom such a request is made is required to reply by not later than the date determined by the Authority.

“28.80. An authorized deposit institution must notify the Authority of the name and address of whoever has become or intends to become the holder of its control within 10 days from the time it becomes aware of either situation.

If the authorized deposit institution is a business corporation, it must also, within the same time, send such a notice to the Authority regarding whoever has become or intends to become the holder of a significant interest in its decisions.

The deposit institution must, within the same time, notify the Authority whenever the holder of control or of a significant interest ceases to be so.

“CHAPTER X

“REVIEW OF AN AUTHORIZATION

“DIVISION I

“GENERAL PROVISIONS

“28.81. The Authority shall, on its own initiative, on the deposit institution’s application in the cases provided for in Division III or when it is informed of certain operations described in Division IV, review the authorization it has granted to an authorized deposit institution.

“28.82. After reviewing an authorization, the Authority may maintain it as is, attach certain conditions or restrictions to it, withdraw existing conditions or restrictions, or revoke or suspend it.

“DIVISION II

“REVIEW ON THE AUTHORITY’S INITIATIVE

“28.83. The Authority may, on its own initiative, review an authorization it has granted whenever it considers it necessary to do so in order to ensure compliance with this Act.

Unless the authorization is maintained as is, the Authority shall, in accordance with Chapter XI, revoke or suspend it or attach conditions or restrictions to it.

“DIVISION III

“REVIEW ON AN AUTHORIZED DEPOSIT INSTITUTION’S APPLICATION

“28.84. The Authority is required to review the authorization it has granted to a deposit institution if the latter applies for such a review to have an attached condition or restriction withdrawn.

“28.85. The application for review must specify the condition or restriction the deposit institution wishes to have withdrawn and the reasons for the withdrawal.

The application must also include any other information prescribed by regulation of the Authority. The costs and fees prescribed by government regulation must be filed with the application.

“28.86. On receipt of the application and the required information, costs and fees, the Authority shall review the authorization to determine whether or not it may grant the application.

The Authority may, in withdrawing a condition or restriction, require any undertaking it considers necessary to ensure compliance with this Act.

When the Authority rules on an application for review filed by an authorized deposit institution, it shall send the deposit institution a document justifying its decision.

“DIVISION IV

“REVIEW IN LIGHT OF CERTAIN OPERATIONS

“29. The Authority is required to review an authorization on being notified of any of the following operations:

(1) the amalgamation of the authorized deposit institution with another legal person;

(2) a change as to the authorized deposit institution’s home regulator, in particular as a result of a continuance or another operation of the same nature;

(3) an operation not referred to in subparagraph 1 or 2 where the authorized deposit institution changes its juridical form or transmits its patrimony or part of it due to its division;

(4) a change of name of the authorized deposit institution; and

(5) in the case of an authorized Québec deposit institution, its becoming the holder of control of a group or either of the following events having a significant effect on it:

(a) an acquisition of assets by the deposit institution or by a group of which it is the holder of control, or

(b) the transfer of any part of the deposit institution’s assets or of the assets of such a group.

An authorized Québec deposit institution’s ceasing to be the holder of control of a group is deemed to be a transfer, by the group, of all its assets.

“30. For the purposes of subparagraph 5 of the first paragraph of section 29, an acquisition or transfer is deemed not to have a significant effect on a deposit institution if the resulting variation in the value of its assets does not exceed 5%.

The variation in the value of the deposit institution’s assets is established in relation to the value of those assets at the end of the fiscal year preceding the acquisition or transfer.

“30.1. An authorized deposit institution must inform the Authority of its intention to carry out one or more operations giving rise to a review not later than the 30th day before the operation or, in the case of more than one operation, before the first operation, by filing a notice with the Authority in the form determined by the Authority.

The costs and fees prescribed by government regulation must be filed with the notice.

However, the authorized deposit institution is not required to inform the Authority if it is also an authorized insurer or an authorized trust company and has filed a notice of the same nature, in accordance with section 143 of the Insurers Act (*insert the year and chapter number of that Act*) or with section 131 of the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*).

“30.2. A notice of intention to amalgamate must include

- (1) the name and address of each of the legal persons proposing to amalgamate;
- (2) the proposed name of the legal person resulting from the amalgamation;
- (3) the juridical form of the legal person resulting from the amalgamation;
- (4) the location of the proposed head office of the legal person resulting from the amalgamation; and
- (5) any other information required by the Authority.

A document including the same information as that required to be included in an initial application for authorization and the documents that must be filed with such an application must be filed with the notice of intention to amalgamate for the legal person resulting from the amalgamation.

In the case of an amalgamation involving more than one authorized deposit institution, a joint notice may be filed.

“30.3. A notice of intention to change the authorized deposit institution’s home regulator must include

- (1) a description of the operation from which the change results;
- (2) the deposit institution’s name and address;
- (3) the title of and exact reference to the Act of the jurisdiction of the home regulator that will govern the deposit institution’s deposit institution activities following the change and the title of and exact reference to the Act of the jurisdiction that will govern the deposit institution’s affairs, if different;
- (4) the location of the deposit institution’s proposed head office following the change, if different from that of its head office at the time the notice is sent; and
- (5) any other information required by the Authority.

“30.4. A notice of intention to carry out an operation described in subparagraph 3 of the first paragraph of section 29 must include

- (1) a description of the proposed operation;
- (2) if applicable, the authorized deposit institution’s new juridical form following the operation as well as the title of and exact reference to the Act that will govern its affairs;
- (3) if applicable, the names and addresses of all the groups, other than the authorized deposit institution, involved in the operation;
- (4) the location of the authorized deposit institution’s proposed head office following the operation, if different from that of its head office at the time the notice is sent; and
- (5) any other information required by the Authority.

A document including the same information as that required to be included in an initial application for authorization and, if required by the Authority, the documents that must be filed with such an application, must be filed with the notice of intention for each legal person resulting from the operation that will carry on deposit institution activities in Québec.

“30.5. A notice of intention to change names must include the name and address of the authorized deposit institution, in addition to its proposed name.

“30.6. A notice of intention to carry out an acquisition or transfer of assets having a significant effect on an authorized Québec deposit institution must include

(1) a description of the proposed acquisition or transfer, in particular, a description of the assets to be acquired or transferred by the deposit institution or the group of which it is the holder of control;

(2) the names and addresses of the parties to the acquisition or transfer; and

(3) any other information required by the Authority.

“30.7. On receipt from an authorized deposit institution of a notice of intention to carry out one or more operations giving rise to a review mentioned in section 29 and, if applicable, the required documents, costs and fees, the Authority shall publish the notice in its bulletin and review the authorization it has granted to the deposit institution to determine whether it can be maintained.

The Authority may, to maintain its authorization, require any undertaking it considers necessary to ensure compliance with this Act.

A notice of intention to carry out an acquisition or transfer of assets having a significant effect on an authorized Québec deposit institution is not published.

“30.8. Unless the Authority considers that it must revoke or suspend a deposit institution’s authorization, that authorization becomes the authorization of the deposit institution resulting from the operation, with any conditions and restrictions the Authority may attach to it.

“30.9. The sending of a notice by an authorized deposit institution in accordance with this chapter does not relieve the deposit institution of its obligation to file an application for revocation if the operation giving rise to a review involves the voluntary revocation of an authorization, nor does it relieve the deposit institution of its obligation to file an application for authorization if the operation involves the carrying on of an activity requiring the Authority’s authorization, when the deposit institution does not have it.

“30.10. The granting of the Authority’s authorization is governed by Chapter II; the revocation or suspension of, and the attachment of conditions or restrictions to, the authorization are governed by Chapter XI.

“CHAPTER XI

“REVOCATION AND SUSPENSION OF, AND CONDITIONS OR RESTRICTIONS THAT MAY BE ATTACHED TO, AN AUTHORIZATION

“DIVISION I

“GENERAL PROVISIONS

“30.11. The authorization granted by the Authority to a deposit institution is revoked by operation of law, by the Authority acting on its own initiative or on an application by the authorized deposit institution.

Revocation is said to be voluntary if it is ordered by the Authority on an application by a deposit institution; it is said to be forced in all other cases.

The Authority may also, where provided for by law, suspend an authorization or attach the conditions and restrictions it considers necessary to ensure compliance with this Act.

“30.12. The revocation of an authorization becomes final when the deposit institution concerned ceases to owe the deposits received in carrying on deposit institution activities.

“30.13. A deposit institution continues to be an authorized deposit institution as long as a revocation is not final. However, it may not solicit or receive deposits of money from the public, except to honour a right conferred on a depositor under a contract in force on that date.

Suspension produces the same effects for its duration.

“DIVISION II

“FORCED REVOCATION, SUSPENSION AND CONDITIONS OR RESTRICTIONS

“30.14. The authorization granted by the Authority to a deposit institution is revoked by operation of law if

(1) the deposit institution is dissolved or liquidated or wound up due to any external cause; or

(2) the authorization, if any, granted to it by the Authority to carry on activities as an insurer or trust company, is subject to forced revocation.

The deposit institution shall notify the Authority, without delay, of a fact referred to in subparagraph 1 of the first paragraph.

“31. The Authority may, if it considers that it is in the public interest, revoke or suspend the authorization it has granted to an authorized deposit institution if,

(1) in its opinion,

(a) the deposit institution is failing to comply or is about to fail to comply with its obligations under an Act administered by the Authority,

(b) the deposit institution has failed, without valid reasons, to repay a deposit of money at maturity or to pay interest on a deposit when due, or

(c) there are serious reasons to believe that the holder of control of the deposit institution or of another significant interest in the deposit institution's decisions is likely to interfere with the deposit institution's adherence to sound commercial practices or sound and prudent management practices;

(2) the deposit institution has not carried on deposit institution activities in Québec for at least three years;

(3) the Authority is informed by a competent authority that the deposit institution has failed to comply with an Act that is not administered by the Authority and is of the opinion that the failure is contrary to sound and prudent management practices; or

(4) the deposit institution fails to adopt or implement a compliance program or to provide the Authority with any report the latter requires on the implementation of such a program.

“31.1. In the cases described in section 31, instead of revoking or suspending the authorization granted to the authorized deposit institution and in order to allow the institution to remedy the situation, the Authority may attach such conditions or restrictions to the authorization as it considers necessary to ensure compliance with this Act.

“31.2. Before ordering the forced revocation or the suspension of an authorization or attaching a condition or restriction to it, the Authority shall notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the authorized deposit institution in writing and grant the latter at least 10 days to submit observations.

“31.3. A decision under section 31 may, within 30 days of its notification, be contested before the Financial Markets Administrative Tribunal.

The Tribunal may only confirm or quash a contested decision.”

324. Section 32 of the Act is amended

(1) by replacing “An institution” by “A deposit institution”;

(2) by replacing “permit has been suspended or cancelled” by “authorization has been suspended or revoked”.

325. Section 32.1 of the Act is replaced by the following section:

“32.1. The Authority shall publish, in its bulletin and in the *Gazette officielle du Québec*, a notice of any suspension or revocation of an authorization granted to a deposit institution on the expiry of the time within which the latter was entitled, under section 31.3, to contest the suspension or revocation. The Authority shall publish the notice without delay in the case of a revocation by operation of law.”

326. Division V of the Act is amended by replacing the portion before section 33.1 by the following:

“DIVISION III

“VOLUNTARY REVOCATION

“32.2. The Authority may not revoke the authorization of an authorized deposit institution that applies for its revocation and that, at the time of the application, owes deposits of money received in carrying on deposit institution activities, unless the deposit institution

(1) will continue to owe those deposits; or

(2) has made the necessary arrangements to have at least one other authorized financial institution or a bank succeed it and owe those deposits as of the date on which it plans to cease to owe them.

“32.3. The voluntary revocation of an authorization requires the filing of an application with the Authority for that purpose.

In addition, a written notice concerning the application, the documents prescribed by regulation of the Authority and the costs and fees prescribed by government regulation must be filed with the application.

“32.4. An application for revocation must describe any arrangements made to have an authorized financial institution or a bank succeed the applicant.

The application must include any other information determined by regulation of the Authority.

“32.5. A notice concerning an application for revocation must state the date on which the authorized deposit institution intends to cease its deposit institution activities, and the names and addresses of the authorized financial institutions or banks that will succeed it, if applicable.

“32.6. The Authority shall publish a notice concerning an application for revocation in its bulletin.

If an authorized financial institution or a bank is to succeed the authorized deposit institution, the latter must send the published notice to each of its depositors.

“32.7. The Authority shall grant an application for revocation only if the authorized deposit institution shows that

(1) it no longer owes deposits of money received in carrying on deposit institution activities;

(2) it can continue to owe such deposits, without soliciting or receiving new ones, until their maturity date, in compliance with the provisions of this Act; or

(3) the arrangements made to have an authorized financial institution or a bank succeed the applicant are adequate and ensure the protection of depositors, and that it has sent the latter the notice of application required under the second paragraph of section 32.6.

“32.8. The Authority shall send the deposit institution a document attesting its decision and publish the document in its bulletin.

“CHAPTER XII

“REGISTER OF AUTHORIZED DEPOSIT INSTITUTIONS

“32.9. The Authority shall establish and keep up to date a register of authorized deposit institutions that contains the following information for each of them:

(1) its name, the name it uses in Québec if different, the address of its head office and, if its head office is not in Québec, the address of its principal establishment in Québec;

(2) if applicable, the name and address of its attorney designated under section 26 of the Act respecting the legal publicity of enterprises (chapter P-44.1);

(3) the restrictions, if any, attached to the authorization granted by the Authority;

(4) the name and address of the auditor designated under section 28.61;

(5) the name of the financial group it belongs to or, if the group does not have a name, the names of the financial institutions that are members of it; and

(6) any other information considered by the Authority to be useful to the public.

The information contained in the register of authorized deposit institutions is public information; it may be set up against third persons as of the date it is entered and is proof of its contents for the benefit of third persons in good faith.

“32.10. An authorized deposit institution must declare to the Authority any change required to be made to the information concerning itself that is contained in the register, unless the Authority was otherwise informed by a notice or other document sent in accordance with this Act.

The declaration must be filed within 30 days of the date of the event giving rise to the change.

“CHAPTER XIII

“CONFIDENTIALITY OF SUPERVISORY INFORMATION

“32.11. Such information as is determined by the Minister by regulation that is held by an authorized deposit institution in relation to the Authority’s supervision of the authorized deposit institution is confidential. It may not be used as evidence in any civil or administrative proceedings and is privileged for that purpose.

No one may be compelled, in any civil or administrative proceedings, to testify or to produce a document relating to that information.

“32.12. Despite section 32.11,

(1) the Attorney General, the Minister or the Authority may use the information made confidential by that section as evidence;

(2) the authorized deposit institution concerned may, in accordance with the regulation made by the Minister, use that information as evidence in any proceedings concerning the administration or enforcement of this Act or, in the case of a Québec savings company, the Business Corporations Act (chapter S-31.1), that are brought by the deposit institution concerned, the Minister, the Authority or the Attorney General; and

(3) anyone who may be compelled to testify or to produce a document relating to that information in any proceedings regarding the application of this Act or any other Act administered by the Authority to an authorized deposit institution or of the Business Corporations Act to a Québec savings company may use that information provided the proceedings are brought by the deposit institution concerned, the Attorney General, the Minister or the Authority.

“32.13. The communication of information referred to in this chapter otherwise than in the cases provided for by its provisions does not entail a waiver of the confidentiality conferred by those provisions.

“32.14. This chapter does not apply to information that must be made public by law. In addition, the prohibition under the first paragraph of section 32.11 does not apply if the information or document concerned was sent in accordance with another Act.

“TITLE III

“PROTECTION OF DEPOSITS OF MONEY

“CHAPTER I

“GUARANTEE OF DEPOSITS OF MONEY”.

327. Section 33.1 of the Act is amended by replacing “a registered institution” by “an authorized deposit institution” in the first paragraph.

328. Section 34 of the Act is amended

(1) by replacing “a registered” in the first paragraph by “an authorized deposit”;

(2) in the second paragraph,

(a) by replacing “permit” by “authorization”;

(b) by replacing “any institution” by “a deposit institution”.

329. Section 34.1 of the Act is amended

(1) in the first paragraph,

(a) by inserting “authorized deposit” before “institution” in the introductory clause;

(b) by replacing subparagraphs *b* to *e* by the following subparagraph:

“(b) the deposit institution is in the process of voluntary or forced liquidation or winding-up or is being dissolved;”;

(2) by replacing “the word “institution” includes” in the second paragraph by “the expression “deposit institution” includes”.

330. Section 34.2 of the Act is repealed.

331. Section 34.3 of the Act is amended by replacing “registered institution” in the second paragraph by “authorized deposit institution”.

332. Section 34.4 of the Act is amended

(1) by inserting “deposit” before “institution”;

(2) by striking out “of subparagraphs *d* and *e*”.

333. Section 35 of the Act is amended by replacing “registered institution” in the first and second paragraphs by “authorized deposit institution”.

334. Section 36 of the Act is amended

(1) in the first paragraph,

(a) by replacing “an institution on the date of issue of a permit or” by “a deposit institution on the date the Authority’s authorization is granted or on the date of issue”;

(b) by replacing “a registered institution” by “an authorized deposit institution”;

(2) by replacing “an institution” in the second paragraph by “a deposit institution”.

335. Section 37 of the Act is amended

(1) in the first paragraph,

(a) by replacing “an institution” by “a deposit institution”;

(b) by replacing “its permit” by “the authorization granted by the Authority”;

(2) by striking out the second paragraph;

(3) by replacing “The institutions” in the third paragraph by “The deposit institutions”.

336. Section 38 of the Act is amended by inserting “deposit” before “institution”.

337. Section 38.1 of the Act is amended

(1) by inserting “deposit” before all occurrences of “institutions” in the first paragraph;

(2) by replacing all occurrences of “the institution” in the first and second paragraphs by “the deposit institution”.

338. Section 38.2 of the Act is amended

(1) by replacing “by a registered institution” and “of a registered institution or a bank, or of an institution whose permit has been suspended or cancelled” in the first paragraph by “by an authorized deposit institution” and “of an authorized deposit institution or a bank”, respectively;

(2) by inserting “deposit” before all occurrences of “institutions” and “institution” in the second paragraph.

339. Division VI of the Act, comprising sections 40 to 40.0.9, is repealed.

340. Division VI.1 of the Act is amended by replacing the portion before section 40.1 by the following:

“CHAPTER II

“PREMIUM”.

341. Section 40.2 of the Act is amended by replacing “registered institution” by “authorized deposit institution”.

342. Section 40.2.1 of the Act is amended by replacing both occurrences of “a registered institution” by “an authorized deposit institution”.

343. Section 40.3 of the Act is amended

(1) by replacing “institution and registered” in paragraph *a* by “authorized deposit institution”;

(2) by adding the following paragraph at the end:

“A regulation made for the purposes of subparagraph *b* of the first paragraph may authorize the Authority to take into account, in determining the amount of the premium, the fact that a deposit institution is a member of a cooperative group referred to in Division II of Chapter III. Such an amount may then be applicable to all the members of the cooperative group, to a certain category of them or to the federation of which they are members.”

344. Section 40.3.1 of the Act is repealed.

345. Section 40.4 of the Act is amended by replacing “a registered institution” by “an authorized deposit institution”.

346. Division VII of the Act is amended by replacing the portion before section 41 by the following:

“CHAPTER III

“MITIGATION OF RISKS AND LOSSES, AND RESOLUTION PROCESS

“DIVISION I

“MITIGATION OF RISKS AND LOSSES

“40.5. The Authority may, in particular, on the conditions it determines, for the purpose of reducing a risk to the Authority or averting or reducing a threatened loss to the Authority,

(1) make advances of money, with or without security, to an authorized deposit institution or guarantee payment of the debts of such an institution;

(2) acquire the assets of an authorized deposit institution;

(3) make a deposit or guarantee a deposit made with an authorized deposit institution;

(4) guarantee an authorized deposit institution against any loss it may incur following an amalgamation with an authorized deposit institution or following the acquisition of the assets together with the take-over of the liabilities of such an institution;

(5) with the authorization of the Minister, enter, with any body or agency which, in the opinion of the Authority, administers an equivalent scheme, into an agreement concerning a deposit institution whose deposits are guaranteed or insured partly by the Authority and partly by such a body or agency;

(6) constitute a legal person or a partnership under an Act of Québec to carry out the liquidation or winding-up of the assets acquired from an authorized deposit institution;

(7) acquire any security issued by an authorized deposit institution; and

(8) apply to the Superior Court for an order to force the sale or amalgamation of an authorized deposit institution.

The Authority may, in addition, act as liquidator of a deposit institution whose authorization has been revoked or act as receiver of an authorized deposit institution.

“DIVISION II

“RESOLUTION PROCESS

“§1.—*Resolution planning and resolution board*

“40.6. The Authority shall plan operations to resolve problems that could arise from the failure of authorized deposit institutions belonging to a cooperative group within the meaning of section 6.2 of the Act respecting financial services cooperatives (chapter C-67.3) and implement them when their implementation is ordered.

“40.7. The functions of a resolution board are to approve the plan established by the Authority, order the implementation and closure of the resolution operations, and authorize any resolution operation that was not provided for in the plan.

“40.8. The resolution board is composed of the person appointed as Deputy Minister of Finance under section 6 of the Act respecting the Ministère des Finances (chapter M-24.01), the President and Chief Executive Officer of the Authority appointed under section 20 of the Act respecting the regulation of the financial sector (chapter A-33.2), who are both members of the board by virtue of office, and a third person appointed by the Minister.

The board shall adopt operating rules.

The Authority must provide the resolution board with the services and equipment the board requests from it, free of charge.

“40.9. The objective of resolution operations is to ensure the sustainability of a cooperative group’s deposit institution activities despite the group’s failure and without recourse to public funds.

The Authority shall establish a resolution plan specifying, in particular, the operations it intends to implement in case of an institution’s failure in order to achieve that objective. The operations may be those provided for under this subdivision or other measures that the Authority is authorized by law to take.

“40.10. The resolution plan shall be submitted to the resolution board for approval. The same shall apply to any amendments that may be made to the plan.

The board may ask the Authority to update the plan; it may also request any information about the plan that it considers necessary from the Authority.

“§2.—Implementation of resolution operations

“40.11. The Authority shall notify the resolution board without delay if it considers that the failure of deposit institutions belonging to the cooperative group is likely to cause the failure of the other deposit institutions belonging to the group and that the powers conferred on it by the Act respecting financial services cooperatives (chapter C-67.3) are insufficient to remedy the situation.

“40.12. The resolution board shall order the implementation of resolution operations if it deems it to be in the public interest.

“40.13. The order of the resolution board is, in all respects, final and conclusive and may not be questioned or reviewed in any court. It must be recorded in writing and a copy of the writing must be sent to the Authority, which must publish it without delay in its bulletin.

“§3.—Impacts of the resolution board’s order

“40.14. The resolution board’s order designates the Authority as the receiver of all the legal persons belonging to the cooperative group, including the security fund within the meaning of section 487 of the Act respecting financial services cooperatives (chapter C-67.3), until the closure of the resolution operations.

The Authority is then vested with the powers provided for in paragraphs 1 to 9 of section 19.2 of the Act respecting the regulation of the financial sector (chapter A-33.2), and sections 19.3 to 19.5 and 19.9 of that Act apply to the receivership so established, except any reference to an order of the Superior Court.

“40.15. Unless otherwise provided in this Act, no civil, administrative or arbitration proceedings may be brought against the legal persons belonging to the cooperative group during the resolution operations. The same shall apply to measures to be taken prior to the exercise of a right or power against those legal persons.

During the resolution process, the following are suspended by operation of law:

- (1) the measures to be taken by a creditor prior to the exercise of a right or power against those legal persons;
- (2) the civil, administrative or arbitration proceedings brought against any legal person belonging to the group; and
- (3) the execution, forced or voluntary, of judgments and other juridical acts on which the law confers the same force and effect as a judgment against those legal persons.

“40.16. Unless otherwise provided in this Act, compensation may not, during the resolution operations, be claimed from legal persons belonging to the cooperative group, but the legal persons may claim compensation.

They may not, however, claim an amount to which they would not have been entitled had it not been for the impossibility to claim compensation from them.

“40.17. Unless otherwise provided in this Act, no one may, during the resolution operations, terminate a contract entered into with a legal person belonging to the cooperative group, amend it, or cause the legal person to lose the benefit of the term stipulated in the contract for any of the following reasons:

- (1) insolvency or deteriorated financial position of the legal person, any other legal person in the group, the group, its guarantor or any providers of credit support;
- (2) a default, before the resolution operations were implemented, by the legal person or another legal person belonging to the cooperative group in the performance of obligations under the contract, unless it is a monetary default that is not remedied within the first 60 days of the resolution operations;
- (3) the resolution board’s order to implement the resolution operations;
- (4) any resolution operation; or
- (5) the conversion of any of the legal person’s securities or liabilities in accordance with their terms.

The provisions of a contract to which such a legal person is a party that are inconsistent with the provisions of the first paragraph and provisions which, for the reasons described in the first paragraph, cause the legal person to lose a right or create new obligations for the institution are inoperative.

“40.18. Unless otherwise provided in this Act, no legal person or organization of which a legal person belonging to the cooperative group is a member at the time the resolution operations are implemented may, for the reasons described in the first paragraph of section 40.17, withdraw the legal person’s membership or otherwise cause it to lose its membership or the rights it confers.

The provisions of a constituting act or of the by-laws of a legal person or organization of which the legal person belonging to the cooperative group is a member that are inconsistent with the provisions of the first paragraph and provisions which, for the reasons described in the first paragraph of section 40.17, cause the legal person to lose a right or create new obligations for the legal person are inoperative.

“40.19. Sections 40.15 to 40.18 do not prohibit requiring that a legal person belonging to the cooperative group pay a sum of money as consideration for a prestation.

They do not require the lending of a sum of money or the provision of any service that would be provided on credit because of the resolution operations.

“40.20. A security agreement on the property of a legal person belonging to the cooperative group and the rights it confers on that legal person’s creditor are exempt from the application of sections 40.15 to 40.17 in either of the following cases:

- (1) the security guarantees a claim of the Bank of Canada or the Authority; or
- (2) the agreement has been exempted from the application of those sections under section 40.21.

“40.21. At the request of a legal person belonging to the cooperative group, the Authority may, if so authorized by the resolution board, exempt a security agreement on that legal person’s property from the application of sections 40.15 to 40.17. The Authority may not exercise that power during the resolution operations.

As a result of that exemption, the Authority is not required to ensure that the secured obligation will be assumed by a third person, or to provide the third person with financial assistance enabling it to perform that obligation.

“40.22. A regulation of the Authority is to specify how sections 40.15 to 40.18 are to apply to the financial contracts the Authority determines by regulation.

“40.23. The Authority may exempt a legal person belonging to the cooperative group from the application of any part of sections 40.15 to 40.18 to the extent provided by the resolution plan or, failing that, if it has received prior authorization from the resolution board to do so.

“40.24. The Superior Court may, on the conditions it considers appropriate, authorize a person to do anything that the person would otherwise be prohibited from doing under sections 40.15 to 40.18, if it is satisfied that

(1) the person would suffer serious injury if the authorization was not granted; or

(2) it is equitable on other grounds to grant the authorization.

The Authority is a party to any application under the first paragraph as a defendant and is entitled to receive notice of the application in the manner the Court considers appropriate.

“§4.—*Resolution operations*

“I.—*Consent, authorization and approval*

“40.25. The Authority may implement any resolution operation without the consent, authorization or approval of anyone if the operation is in the resolution plan, or with the sole authorization of the resolution board if it is not in the resolution plan, despite any other Act applicable to the Authority or to any such operation.

The Authority may, subject to the same conditions, exercise all the powers that are conferred by the Act respecting financial services cooperatives (chapter C-67.3) on the federation or on the security fund belonging to the cooperative group.

The first paragraph of section 39 of the Act respecting the regulation of the financial sector (chapter A-33.2) and sections 77.1 to 77.3 of the Financial Administration Act (chapter A-6.001) apply to the Authority only if it makes a borrowing or an investment, an acquisition or transfer of assets or a financial commitment that was neither provided for in the resolution plan nor authorized by the resolution board.

“II.—*Amalgamation/continuance and amalgamation/winding-up*

“40.26. The Authority may amalgamate all the financial services cooperatives as well as the security fund belonging to the same cooperative group and have them continued as one Québec savings company. The Authority may also do so with regard to any part of those legal persons that it determines.

That amalgamation/continuance process requires articles of amalgamation/continuance.

“40.27. The articles of amalgamation/continuance must contain the provisions required to be set out in the articles of constitution of a business corporation that elects to become regulated by Title III of the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*), except the particulars concerning the founders.

They must also contain the following information as regards the shares issued by the amalgamating financial services cooperatives:

(1) the manner in which they are to be converted into shares of the Québec savings company resulting from the amalgamation/continuance;

(2) if the shares of one of the financial services cooperatives are not to be wholly converted into shares of the savings company, the amount of money or other form of payment the holders of those shares will be entitled to receive in addition to or instead of shares of the Québec savings company resulting from the amalgamation/continuance;

(3) if applicable, the amount of money or other form of payment that is to be received instead of fractional shares of the Québec savings company resulting from the amalgamation/continuance; and

(4) if applicable, a provision stating that any shares of a financial services cooperative held by another legal person belonging to the cooperative group are to be cancelled when the amalgamation/continuance becomes effective without any repayment of capital in respect of those shares, and that such shares are not to be converted into shares of the Québec savings company resulting from the amalgamation/continuance.

“40.28. After having prepared the articles of amalgamation/continuance, the Authority shall prepare, in duplicate, a certificate attesting the amalgamation/continuance and stating its date of effect, which may be subsequent to the date on which the certificate is made.

The Authority shall send a copy of the articles and of the certificate attesting the amalgamation/continuance to the enterprise registrar, who shall deposit them in the enterprise register.

“40.29. As of the date of effect shown on the certificate,

(1) all the legal persons involved in the amalgamation/continuance are continued as one Québec savings company and their patrimonies are joined together to form the patrimony of that savings company; and

(2) the rights and obligations of the legal persons involved in the amalgamation/continuance become rights and obligations of the Québec savings company resulting from the amalgamation/continuance and the latter becomes a party to any judicial or administrative proceeding to which those legal persons were parties.

“40.30. The Québec savings company resulting from the amalgamation/continuance shall exercise the rights and perform the obligations under the name of the financial services cooperative or the security fund which, before the amalgamation/continuance, held those rights or owed those obligations.

The savings company shall exercise the rights it has acquired and perform the obligations to which it is bound after the amalgamation/continuance under the name that is assigned to it in the articles of amalgamation/continuance.

Creditors of a financial services cooperative or of the security fund before the amalgamation/continuance may file a judicial application against the savings company, whether under the latter’s name or under the name of the cooperative or fund.

“40.31. The Québec savings company resulting from the amalgamation/continuance shall have its head office at the place where the federation had its head office before the amalgamation/continuance.

For the purpose of determining the court having territorial jurisdiction in Québec to hear a judicial application based on a right held or obligation owed by a financial services cooperative or the security fund before the amalgamation/continuance, the court of the cooperative’s or fund’s domicile before the amalgamation also has jurisdiction, at the plaintiff’s option.

“40.32. The Authority may, as the receiver of the federation and the fund under section 40.14, exercise the power conferred on them by section 547.45 of the Act respecting financial services cooperatives (chapter C-67.3) to carry out an amalgamation/winding-up not only with respect to all the financial services cooperatives belonging to the cooperative group and the fund, but also with respect to any number of those legal persons that it determines.

If the amalgamation/winding-up does not involve all the legal persons belonging to the group, the declaration of amalgamation/winding-up required under section 547.46 of that Act must specify the legal persons involved. The other provisions of that Act relating to an amalgamation/winding-up apply with the necessary modifications.

“40.33. The provisions of this Act that are applicable, in the event of resolution, to a legal person belonging to a cooperative group apply to any other legal person in which the legal person belonging to that group has been continued, even if, because of such a continuance, the cooperative group as defined by law ceases to exist.

Those provisions continue to apply to the legal persons that belonged to the group and were not continued or dissolved at the time it ceased to exist.

“III. — Establishment and operation of a bridge institution and an asset management company

“40.34. The Authority may establish one of the following deposit institutions in order to have it assume the liabilities, in relation to deposits of money, of a deposit institution belonging to the cooperative group:

- (1) a financial services cooperative;
- (2) a Québec savings company; or
- (3) a trust company.

Such a deposit institution is referred to as a “bridge institution”. The Authority shall grant the authorization referred to in section 28 to the bridge institution as soon as it is established and without an application being filed by that deposit institution.

“40.35. The Authority acting alone may found a financial services cooperative that is to be a bridge institution. If the cooperative is a credit union, it is not required to be a member of a federation.

As and when the cooperative that is the bridge institution assumes liabilities in relation to deposits of money, the depositors concerned become members of that cooperative by operation of law.

Sections 7, 8, 11 to 15, 33 to 37, 186 to 190, 195 and 286 of the Act respecting financial services cooperatives (chapter C-67.3) do not apply to a cooperative that is a bridge institution.

“40.36. If the Authority acts as the founder of a business corporation that will be a trust company or a Québec savings company, sections 161 to 178 of the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*) do not apply. In addition, if the business corporation is to be a trust company, the Authority shall grant it the authorization required under section 17 of that Act as soon as it is incorporated and without an application being filed by the corporation.

“40.37. The Authority may establish a business corporation with a view to transferring any part of the assets or liabilities of a legal person belonging to the cooperative group to the corporation, except liabilities in relation to deposits of money.

For the purposes of this Act, such a corporation is called an “asset management company”.

“40.38. The Authority shall be the receiver of the bridge institution and of the asset management company, unless it designates a person to act as receiver.

The receiver is then vested with the powers provided for in paragraphs 1 to 9 of section 19.2 of the Act respecting the regulation of the financial sector (chapter A-33.2), and sections 19.3 to 19.5 and 19.9 of that Act apply to the receivership thus established, except any reference to an order from the Superior Court.

“40.39. Despite any contrary provision, bridge institutions and asset management companies are not mandataries of the Authority or of the State.

Likewise, the legislative provisions applicable to a body for any of the following reasons do not apply to a bridge institution or an asset management company:

(1) at least half of its expenditures are borne directly or indirectly by the Consolidated Revenue Fund;

(2) at least half of its financing, resources or share capital is derived from that fund; or

(3) its capital stock forms part of the domain of the State.

“IV.—Transfer of a legal person’s assets and liabilities

“40.40. The Authority may transfer the assets and liabilities of a legal person belonging to the cooperative group to any acquirer. It may also renounce the exercise of a right or concede a right in an asset or a liability.

A transfer or concession may relate to specific assets or liabilities or a universality of assets and liabilities. The Authority is not limited as to the number of such acts it may perform.

A transfer, renunciation or concession may be by gratuitous or onerous title.

“40.41. If a transfer or concession is made between the legal person and, as the case may be, the Authority, the bridge institution or the asset management company, the Authority shall unilaterally determine the assets or liabilities to be transferred, the rights to be conceded, the consideration to be paid as well as the other terms of the contract.

If a transfer or a concession is made with a third person, the Authority may, on behalf of the legal person, agree on the terms of the contract.

“40.42. Unless the Authority decides otherwise, the transfer of an asset purges the real rights charging it, unless the asset is part of a universality and the rights charging it secure the liabilities that are part of that universality.

“40.43. If the Authority transfers to a bridge institution all the deposits of money that are guaranteed by the Authority and entered, at the time the bridge institution is established, in the registers of a same deposit institution belonging to the cooperative group, the deposits and withdrawals made with the latter deposit institution until that time but not yet entered in its registers, as well as the deposits and withdrawals made after that time, are deemed to have been made with the bridge institution. The bridge institution is responsible for the interest accruing on those deposits.

“40.44. A bridge institution that assumes a liability in relation to a deposit of money that is not entirely guaranteed by the Authority is subrogated pleno jure in all the rights of the depositor against the deposit institution with which the deposit was made for the entire deposit.

Despite the first paragraph of article 1658 of the Civil Code, the depositor may not exercise his or her rights against the deposit institution belonging to the cooperative group, unless the bridge institution receives an amount equal to the non-guaranteed part of the deposit.

“40.45. Despite any contrary provision of this Act, the assumption by a bridge institution of a liability in relation to a deposit of money does not grant a depositor a guarantee that is superior to the guarantee the depositor would have been granted had the bridge institution not assumed the liability.

“40.46. Sections 40.15 to 40.19 and 40.24 apply, with the necessary modifications, to any acquirer of the assets and liabilities of a legal person belonging to the cooperative group who, because of such an acquisition, becomes a party to a proceeding to which that legal person was a party, becomes a party to a contract to which that legal person was a party or becomes a member of a legal person or of any other organization of which that legal person was a member.

The prohibition under the first paragraph of section 40.15 and the suspension under the second paragraph of that section are only effective for 90 days from the date of acquisition, but the acquirer may renounce it.

“V.—Guarantees and other financial obligations of the Authority

“40.47. To enable a member of Payments Canada to act as a clearing agent on behalf of a deposit institution belonging to the cooperative group, or on behalf of the bridge institution, the Authority may, in accordance with the Canadian Payments Act (Revised Statutes of Canada, 1985, chapter C-21) and Payments Canada’s rules and regulations, undertake to

(1) unconditionally guarantee the deposit institution’s obligations to the clearing agent as clearing agent; or

(2) ensure that the deposit institution’s obligations to the clearing agent as clearing agent are assumed by the bridge institution.

“40.48. The Authority may incur any financial obligation necessary to ensure the implementation of the resolution plan.

“VI.—Transfer, cancellation and conversion of securities and of certain debts

“40.49. The Authority may order the transfer, in its favour, in favour of the bridge institution or in favour of the asset management company, of any part that it determines of the shares and subordinated debt obligations issued by the deposit institutions belonging to the cooperative group.

The transfer takes place as soon as it is entered in the issuer’s registers and, as a result, the acquirer of those shares or obligations becomes a protected purchaser within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements (chapter T-11.002).

“40.50. The Authority may cancel any part of the shares issued by a deposit institution belonging to the cooperative group. It may also convert such shares into contributed capital securities of a legal person constituted or resulting from an amalgamation/continuance or other conversion carried out for the purposes of the resolution.

The Authority may write off all or part of the negotiable and transferable unsecured debts whose term, on the date of issue, was over 400 days. It may also convert them into contributed capital securities of a legal person constituted or resulting from an amalgamation/continuance or other conversion carried out for the purposes of the resolution.

“40.51. The Government may prescribe by regulation an indemnification plan for the holders of shares or securities transferred under section 40.49 or the holders of shares that were cancelled or converted under the first paragraph of section 40.50 and for creditors whose debts were written off or converted under the second paragraph of that section.

Only the persons prescribed by regulation who are in a worse financial position than they would have been had the deposit institution belonging to the cooperative group been liquidated or wound up are entitled to receive an indemnity.

“§5.—Closure of resolution operations

“40.52. The Authority shall notify the resolution board when it considers that the resolution operations are finished with respect to a legal person belonging to the cooperative group.

“40.53. The resolution board shall order the closure of the resolution operations with respect to a legal person when it considers that it is in the public interest to do so.

“40.54. The order of the resolution board is, for all purposes, final and conclusive and may not be questioned or reviewed in any court. It must be recorded in writing and a copy of the writing must be sent to the Authority, which must publish it without delay in its bulletin.

As soon as the decision is published, the provisions of this division cease to apply to the legal person named in it.

“§6.—Administration of resolution operations and immunities

“40.55. The Authority shall recover, out of the assets of any legal person belonging to the cooperative group and in priority to all other claims, all the costs, charges and expenses properly incurred by the Authority in connection with the resolution operations.

“40.56. During the resolution operations, the resolution board may ask the Authority to provide any information the board considers desirable to obtain.

“40.57. Neither the Authority nor the Government are liable for the obligations of legal persons belonging to the cooperative group.

“TITLE IV

“ENFORCEMENT AND REGULATIONS

“CHAPTER I

“RETURNS”.

347. Section 41 of the Act is amended

(1) by replacing “registered” in the first paragraph by “authorized deposit”;

(2) by replacing “du vérificateur” in subparagraph 2 of the second paragraph in the French text by “de l’auditeur”.

348. Section 41.1 of the Act is amended by replacing “registered” by “authorized deposit”.

349. Section 41.3 of the Act is amended by replacing “a registered institution” in the first paragraph and “registered” in the second paragraph by “an authorized deposit institution” and “authorized deposit”, respectively.

350. Division VIII of this Act is amended by replacing the portion before section 43 by the following:

“CHAPTER II

“INSTRUCTIONS, GUIDELINES AND ORDERS

“42.1. The Authority may establish instructions for an authorized deposit institution or a federation of which such an institution is a member.

Instructions must be in writing and must be specific to the addressee, but need not be published.

The Authority must, before sending instructions, notify the addressee and give it an opportunity to submit observations.

“42.2. The Authority may establish guidelines for all authorized deposit institutions, a single class of such institutions or the federations of which such institutions are members.

Guidelines must be general and impersonal; the Authority shall publish them in its bulletin after sending a copy of them to the Minister.

“42.3. A guideline informs its addressees of measures that, in the Authority’s opinion, they may establish to satisfy their obligations under this Act.

Instructions inform their addressee of the obligations that, in the Authority’s opinion, are incumbent on it under that Act.

“42.4. The Authority may order an authorized deposit institution, or the federation of which it is a member, to cease a course of action or to implement specified measures if the Authority is of the opinion that the institution or federation is failing to perform its obligations under this Act in full, properly and without delay.

At least 15 days before issuing an order, the Authority shall notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the contravener in writing, stating the reasons which appear to justify the order, the date on which the order is to take effect and the contravener’s right to submit observations.

“42.5. The Authority’s order must state the reasons for which it is issued. The order must be served on all the groups or persons to whom it applies.

The order takes effect on the date it is served or on any later date specified in it.

“42.6. The Authority may, without prior notice, issue a provisional order valid for up to 15 days if, in its opinion, any period of time granted to the person concerned to submit observations may be detrimental.

The order must include reasons and takes effect on the date it is served on the person concerned. That person may, within six days of receiving the order, submit observations to the Authority.

“42.7. The Authority may revoke or amend any order it has issued under this Act.

“CHAPTER III

“CONSERVATORY MEASURES

“42.8. The Authority, for the purposes or in course of an investigation or when it is informed that an authorized deposit institution is voluntarily dissolving or liquidating or winding up in contravention of section 28.2 or intends to do so, may request the Financial Markets Administrative Tribunal

(1) to order a person or group not to dispose of funds, securities or other property in the person’s or group’s possession; or

(2) to order a person or group to refrain from withdrawing funds, securities or other property on deposit with or under the control or in the safekeeping of any other person or group.

Such an order takes effect from the time the person or group concerned is notified of it and, unless otherwise provided, remains binding for a 12-month period; the order may be revoked or otherwise amended during that period.

“42.9. The person or group concerned must be notified at least 15 days before any hearing during which the Tribunal is to consider an application for the renewal of an order.

The Tribunal may renew the order if the person or group concerned has not requested to be heard or has failed to establish that the reasons for the initial order have ceased to exist.

“42.10. A person or group named in an order issued under section 42.8 who has put a safety deposit box at the disposal of a third person or has allowed a third person to use a safety deposit box shall immediately notify the Authority.

On the Authority’s request, the person or the group’s duly authorized representative shall open the safety deposit box in the presence of an agent of the Authority, draw up an inventory of the contents in triplicate, and give one copy to the Authority and another to the person or group concerned.

“42.11. No order applies to funds or securities deposited with a clearing-house or a transfer agent, unless the order so provides.

“42.12. An order applies also to funds, securities and other property received after the order becomes effective.

“42.13. An order that names a bank or another financial institution applies only to the agencies or branches specified.

“42.14. A person or group directly affected by an order issued under section 42.8, if in doubt as to the application of the order to particular funds, securities or other property, may apply to the Financial Markets Administrative Tribunal for clarification; such a person or group may also apply for an amendment to or the revocation of the order.

A written notice setting out the reasons for the application for amendment or revocation must be filed with the Tribunal. The notice must be served on the Authority at least 15 days before the hearing set to hear the application.

“42.15. An order issued under section 42.8 is admissible for publication in the same register as that in which rights in the funds, securities or other property covered by the order are required to be published or admissible for publication.

Likewise, the order may be published in a register kept outside Québec if such orders are admissible for publication under the Act governing that register.

“42.16. In addition to any measure imposed in an order, the Financial Markets Administrative Tribunal may require a person or group named in the order to repay to the Authority the costs incurred in connection with the inspection or investigation that established non-compliance with the provision concerned, according to the tariff set by government regulation.

“42.17. The Financial Markets Administrative Tribunal may prohibit a person from acting as a director or officer of an authorized deposit institution on the grounds set out in article 329 of the Civil Code or when a sanction has been imposed on the person under this Act.

The prohibition imposed by the Tribunal may not exceed five years.

The Tribunal may, at the request of the person concerned, lift the prohibition on such conditions as it considers appropriate.

“CHAPTER IV

“INJUNCTION AND PARTICIPATION IN PROCEEDINGS

“42.18. The Authority may apply to a judge of the Superior Court for an injunction in respect of any matter relating to the carrying out of this Act.

The application for an injunction constitutes a proceeding in itself.

The procedure prescribed in the Code of Civil Procedure (chapter C-25.01) applies, except that the Authority cannot be required to give security.

“42.19. The Authority may, on its own initiative and without notice, intervene in any proceeding relating to a provision of this Act or the Business Corporations Act (chapter S-31.1) that is applicable to an authorized deposit institution.

“CHAPTER V

“CANCELLATION OF A CONTRACT OR SUSPENSION OF ITS PERFORMANCE

“42.20. The Authority may apply to a court to cancel or suspend the performance of a contract entered into by an authorized deposit institution in contravention of this Act if the Authority shows that the cancellation or suspension is in the interest of the deposit institution’s depositors and that, under the circumstances, that interest must prevail over the legal security of parties to the contract and of other persons whose rights and obligations would be affected by the cancellation or suspension.

The cancellation or suspension may only be applied for after the end of the 10th year after the contract concerned came into effect.

The court may also order that directors who are party to such a contract, who have authorized it or who have otherwise facilitated its entering into, be solidarily required to pay the authorized deposit institution the amount of damages awarded as compensation for the injury suffered or the sum paid by the authorized deposit institution because of the contract.

“CHAPTER VI

“REGULATIONS”.

351. Section 43 of the Act is amended

(1) in paragraph *a*,

(*a*) by replacing “institution applying for a permit or” by “legal person applying for”;

(*b*) by striking out “permit or”;

(2) by striking out paragraphs *a.1* to *c.1*;

(3) by replacing paragraph *d* by the following paragraph:

“(d) determining the form and tenor of applications for policies, the form and tenor of policies, and the form of applications for authorization;”;

(4) by replacing “an institution becomes a registered institution” in paragraph *e.1* by “a legal person becomes an authorized deposit institution”;

(5) by replacing paragraph *g* by the following paragraph:

“(g) determining the books and accounts that authorized deposit institutions other than authorized insurers and authorized trust companies must keep;”;

(6) by striking out paragraph *h*;

(7) by replacing all occurrences of “a registered” in paragraphs *i* and *i.1* by “an authorized deposit”;

(8) by replacing “registered” in paragraph *l* by “authorized deposit”;

(9) by striking out paragraphs *m.2*, *n* and *s*;

(10) by inserting the following paragraph after paragraph *s*:

“(s.1) clarifying the application of sections 40.15 to 40.18 to the financial contracts it determines;”;

(11) by replacing paragraph *u* by the following paragraph:

“(u) determining the standards applicable to authorized deposit institutions in relation to their commercial practices and their management practices.”

352. Section 45 of the Act is amended by replacing “paragraph *c.1*, *l.1*, *m.1* or *s*” in the second paragraph by “paragraph *l.1*”.

353. Division IX of the Act is amended by replacing the portion before section 48.1 by the following:

“TITLE V

“PROHIBITIONS, MONETARY ADMINISTRATIVE PENALTIES AND PENAL PROVISIONS

“CHAPTER I

“PROHIBITIONS

“**45.2.** No one may falsely purport, in any manner whatsoever, that the deposits of money received by them are guaranteed under this Act.

“45.3. No one may, if not covered by the second paragraph, hold themselves out as a deposit institution or use a name that includes those words. Similarly, no one may, if not covered by the third paragraph, hold themselves out as a savings company or use a name that includes those words.

A bank within the meaning of the Bank Act (Statutes of Canada, 1991, chapter 46) or an authorized deposit institution may hold itself out as a deposit institution or use a name that includes those words.

In addition to a Québec savings company within the meaning of the second paragraph of section 1 of the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*), an authorized deposit institution that is a legal person referred to in subparagraph 6 of the first paragraph of section 24 may hold itself out as a savings company or use a name that includes those words.

“CHAPTER II

“MONETARY ADMINISTRATIVE PENALTIES

“DIVISION I

“FAILURES TO COMPLY

“45.4. A monetary administrative penalty of \$250 in the case of a natural person and \$1,000 in any other case may be imposed on

(1) an authorized deposit institution

(a) that, in contravention of section 28.19, fails to send the Authority a report on its complaint processing policy,

(b) whose ethics committee, in contravention of section 28.51, fails to send the Authority a report on its activities,

(c) that, in contravention of section 28.63, fails to notify the Authority of the end of the auditor’s term, or

(d) that, in contravention of section 41, fails to furnish the Authority with a detailed return of its operations at the times determined by the regulations; or

(2) an authorized deposit institution, the holder of control of the deposit institution, a member of its financial group, or its auditor, if it or he or she refuses to communicate or provide access to a document or information required by the Authority for the purposes of this Act.

The penalties prescribed by the first paragraph also apply if the information or documents concerned are incomplete, or are not sent before the specified time limit.

“45.5. A monetary administrative penalty of \$2,500 may be imposed on an authorized deposit institution

(1) that fails to perform its obligations under an undertaking given to the Authority under section 28.1, 28.46 or 28.86;

(2) that, in contravention of section 28.11, fails to adopt a complaint processing policy or that, in contravention of section 28.29, fails to adopt an investment policy approved by its board of directors or whose ethics committee, in contravention of section 28.48, fails to adopt rules of ethics;

(3) that, in contravention of section 28.11, fails to keep the complaints register prescribed by that section;

(4) if, in contravention of section 28.38, neither a director nor a committee has reported to the board of directors on the responsibility conferred on the director or committee of seeing that sound commercial practices and sound and prudent management practices are adhered to and situations contrary to such practices are detected; or

(5) that, without the Authority’s authorization under section 28.46, has not, in contravention of section 28.44, established an audit committee or an ethics committee or has established one whose composition contravenes section 28.45.

“45.6. A monetary administrative penalty of \$5,000 may be imposed on an authorized deposit institution

(1) that holds contributed capital securities issued by a legal person or partnership, participations in a trust or a share in a co-ownership acquired in contravention of the limits prescribed by section 28.31 without becoming the holder of control of it in accordance with section 28.32;

(2) more than half of whose board of directors, in contravention of section 28.42, is not composed of persons other than its employees or employees of a group of which it is the holder of control;

(3) for which no auditor, in contravention of section 28.59, has been charged with the functions provided for in that section or for which an auditor has been charged with those functions but does not have the qualifications required under section 28.30; or

(4) that, in contravention of any of sections 30.2 to 30.6, fails to notify the Authority of any of the operations described in section 29, sends the Authority an incomplete notice of intention or fails to comply with the time limit prescribed by section 30.1 for filing the notice of intention although it is not exempted from filing such a notice under the latter section.

“45.7. A monetary administrative penalty of \$2,000 in the case of a natural person and \$10,000 in any other case may be imposed on anyone who fails to comply with an order or other decision of the Authority.

“45.8. If a failure to comply for which a monetary administrative penalty may be imposed continues for more than one day, it constitutes a new failure for each day it continues.

“45.9. The Minister or the Authority may, in a regulation made under this Act, specify that a failure to comply with the regulation may give rise to a monetary administrative penalty.

The regulation may define the conditions for applying the penalty and set forth the amounts or the methods for determining them. The amounts may vary according to the seriousness of the failure to comply, without exceeding the maximum amounts provided for in section 45.7.

“DIVISION II

“NOTICE OF NON-COMPLIANCE AND IMPOSITION

“45.10. In the event of a failure to comply referred to in Division I, a notice of non-compliance may be notified to the party responsible for the failure urging that the necessary measures be taken immediately to remedy it.

Such a notice must mention that the failure may give rise to a monetary administrative penalty.

“45.11. The imposition of a monetary administrative penalty is prescribed by two years from the date of the failure to comply.

“45.12. The monetary administrative penalty for a failure to comply with a provision of this Act may not be imposed on the party responsible for a failure to comply if a statement of offence has already been served for a failure to comply with the same provision on the same day, based on the same facts.

For the purposes of this chapter, “party responsible for a failure to comply” means the person or group on whom or which a monetary administrative penalty is imposed or is likely to be imposed, as the case may be, for a failure to comply referred to in Division I.

“45.13. A monetary administrative penalty is imposed on the party responsible for a failure to comply by the notification of a notice of claim.

The notice must state

- (1) the amount of the claim;
- (2) the reasons for it;

- (3) the time from which it bears interest;
- (4) the right, under section 45.14, to obtain a review of the decision to impose the penalty and the time limit for exercising that right; and
- (5) the right to contest the review decision before the Financial Markets Administrative Tribunal and the time limit for bringing such a proceeding.

The notice must also include information on the procedure for recovery of the amount claimed. The party responsible for the failure to comply must also be informed that failure to pay the amount owing may give rise to the amendment, suspension or revocation of any authorization granted under this Act or to a refusal to grant such an authorization, and, if applicable, that the facts on which the claim is founded may result in penal proceedings.

Unless otherwise provided, the amount owing bears interest at the rate determined under the first paragraph of section 28 of the Tax Administration Act (chapter A-6.002), from the 31st day after notification of the notice.

“DIVISION III

“REVIEW

“45.14. The party responsible for a failure to comply may apply in writing to the Authority for a review of the decision to impose a monetary administrative penalty within 30 days after notification of the notice of claim.

The persons responsible for the review are designated by the Authority; they must not come under the same administrative authority as the persons responsible for imposing such penalties.

“45.15. The application for review must be dealt with promptly. After giving the applicant an opportunity to submit observations and produce any documents to complete the record, the person responsible for the review shall render a decision on the basis of the record, unless the person deems it necessary to proceed in some other manner.

“45.16. The review decision must be written in clear and concise terms, with reasons given, must be notified to the applicant and must state the applicant’s right to contest the decision before the Financial Markets Administrative Tribunal and the time limit for bringing such a proceeding.

If the review decision is not rendered within 30 days after receipt of the application or, if applicable, within the time granted to the applicant to submit observations or documents, the interest provided for in the fourth paragraph of section 45.13 on the amount owing ceases to accrue until the decision is rendered.

“45.17. A review decision that confirms the imposition of a monetary administrative penalty may be contested before the Financial Markets Administrative Tribunal by the party responsible for the failure to comply to which the decision pertains, within 60 days after notification of the review decision.

The Tribunal may only confirm or quash a contested decision.

When rendering its decision, the Tribunal may make a ruling with respect to interest accrued on the penalty while the matter was pending before it.

“DIVISION IV

“RECOVERY

“45.18. If the party responsible for a failure to comply has defaulted on payment of a monetary administrative penalty, its directors are solidarily liable with that party for the payment of the penalty, unless they establish that they exercised due care and diligence to prevent the failure.

“45.19. The payment of a monetary administrative penalty is secured by a legal hypothec on the debtor’s movable and immovable property.

For the purposes of this division, “debtor” means the party responsible for a failure to comply that is required to pay a monetary administrative penalty and, if applicable, each of its directors and officers who are solidarily liable with that party for payment of the penalty.

“45.20. The debtor and the Authority may enter into a payment agreement with regard to a monetary administrative penalty owing. Such an agreement, or the payment of the amount owing, does not constitute, for the purposes of any other administrative penalty under this Act, an acknowledgement of the facts giving rise to it.

“45.21. If the monetary administrative penalty owing is not paid in its entirety or the payment agreement is not adhered to, the Authority may issue a recovery certificate on the expiry of the time for applying for a review of the decision to impose the penalty, on the expiry of the time for contesting the review decision before the Financial Markets Administrative Tribunal or on the expiry of 30 days after the final decision of the Tribunal confirming all or part of the decision to impose the penalty or the review decision, as applicable.

However, a recovery certificate may be issued before the expiry of the time referred to in the first paragraph if the Authority is of the opinion that the debtor is attempting to evade payment.

A recovery certificate must state the debtor’s name and address and the amount of the debt.

“45.22. Once a recovery certificate has been issued, any refund owed to a debtor by the Minister of Revenue may, in accordance with section 31 of the Tax Administration Act, be withheld for payment of the amount due referred to in the certificate.

Such withholding interrupts the prescription provided for in the Civil Code with regard to the recovery of an amount owing.

“45.23. On the filing of the recovery certificate at the office of the competent court, together with a copy of the final decision stating the amount of the debt, the decision becomes enforceable as if it were a final judgment of that court not subject to appeal, and has all the effects of such a judgment.

“45.24. The debtor is required to pay a recovery charge in the cases, under the conditions and in the amount determined by regulation of the Minister.

“DIVISION V

“REGISTER

“45.25. The Authority shall keep a register relating to monetary administrative penalties.

The register must contain at least the following information:

- (1) the date the penalty was imposed;
- (2) the date and nature of the failure, and the legislative provisions under which the penalty was imposed;
- (3) if the penalty was imposed on a legal person, its name and the address of its head office or that of one of its establishments or of the business establishment of one of its agents;
- (4) if the penalty was imposed on a natural person, the person’s name, the name of the municipality in whose territory the person resides and, if the failure occurred during the ordinary course of business of the person’s enterprise, the enterprise’s name and address;
- (5) the amount of the penalty imposed;
- (6) the date of receipt of an application for review and the date and conclusions of the decision;
- (7) the date a proceeding is brought before the Financial Markets Administrative Tribunal and the date and conclusions of the decision rendered by the Tribunal, as soon as the Authority is made aware of the information;

(8) the date a proceeding is brought against the decision rendered by the Financial Markets Administrative Tribunal, the nature of the proceeding and the date and conclusions of the decision rendered by the court concerned, as soon as the Authority is made aware of the information; and

(9) any other information the Authority considers of public interest.

The information contained in the register is public information as of the time the decision imposing the penalty becomes final.

“CHAPTER III

“PENAL PROVISIONS

“46. The secretary of an authorized deposit institution who contravenes the second paragraph of section 28.67 by refusing or neglecting to provide the declaration sent to him or her by an auditor in accordance with section 28.66 or who destroys or falsifies the declaration commits an offence and is liable to a fine of \$1,000 to \$10,000.

“46.1. Anyone who

(1) fails to comply with a request made under section 28.15,

(2) removes an auditor from office otherwise than in accordance with section 28.65, or

(3) fails to notify the Authority in accordance with section 28.80 or to notify it of an operation described in subparagraph 5 of the first paragraph of section 29, in accordance with section 30.6,

commits an offence and is liable to a fine of \$2,500 to \$25,000 in the case of a natural person and \$7,500 to \$75,000 in any other case.

“46.2. Anyone who

(1) contravenes section 45.2 or 45.3,

(2) carries on deposit institution activities without the Authority’s authorization although the authorization is required under this Act,

(3) provides a document or information that they know is false or inaccurate, or access to such a document or information, to the Minister or the Authority, a member of the Minister’s or Authority’s staff or a person appointed by the Minister or Authority in the course of activities governed by this Act, or

(4) hinders or attempts to hinder, in any manner, the exercise of a function by a member of the Authority’s staff or by a person appointed by the Authority for the purposes of this Act,

commits an offence and is liable to a fine of \$5,000 to \$50,000 in the case of a natural person and \$15,000 to \$150,000 in any other case.

“46.3. Anyone who

(1) contravenes an order, or

(2) carries on deposit institution activities although the authorization required under this Act has been refused or revoked, or carries on deposit institution activities beyond what this Act authorizes if the authorization is suspended,

commits an offence and is liable, in the case of a natural person, to a fine of \$5,000 to \$100,000 or, despite article 231 of the Code of Penal Procedure (chapter C-25.1), to a maximum term of imprisonment of 18 months, or to both the fine and imprisonment, and, in any other case, to a fine of \$30,000 to \$2,000,000.

An authorized deposit institution that, in contravention of section 28.2, decides to dissolve or liquidates or winds up voluntarily commits an offence and is liable to the fine prescribed in the first paragraph.

A director of such a deposit institution who gives his or her assent to the dissolution or liquidation or winding-up in contravention of section 28.2 commits an offence and is liable to the fine and imprisonment prescribed in the first paragraph; the same shall apply to a liquidator who agrees to proceed with such a liquidation or winding-up.

“46.4. Despite sections 46 to 46.3, the Minister may determine the regulatory provisions made under this Act whose contravention constitutes an offence and renders the offender liable to a fine the minimum and maximum amounts of which are set by the Minister. The Government may also provide that, despite article 231 of the Code of Penal Procedure (chapter C-25.1), a contravention renders the offender liable to a term of imprisonment, or both the fine and imprisonment.

The maximum penalties under the first paragraph may vary according to the seriousness of the offence, without exceeding those prescribed in section 46.3.

“46.5. The fines prescribed by sections 46 to 46.3 or the regulations are doubled for a second offence and tripled for a subsequent offence. The maximum term of imprisonment is five years less a day for a second or subsequent offence.

If an offender commits an offence under this Act after having previously been found guilty of any such offence and if, without regard to the amounts prescribed for a second or subsequent offence, the minimum fine to which the offender was liable for the first offence was equal to or greater than the minimum fine prescribed for the second offence, the minimum and maximum fines and, if applicable, the term of imprisonment prescribed for the second offence become, if the prosecutor so requests, those prescribed in the case of a second or subsequent offence.

This section applies to prior findings of guilty pronounced in the two-year period preceding the second offence or, if the minimum fine to which the offender was liable for the prior offence is that prescribed in section 46.3, in the five-year period preceding the second offence. Fines for a third or subsequent offence apply if the penalty imposed for the prior offence was the penalty for a second or subsequent offence.

“46.6. If an offence under this Act is committed by a director or officer of a legal person or of another group, regardless of its juridical form, the minimum and maximum fines that would apply in the case of a natural person are doubled.

“46.7. If an offence under this Act continues for more than one day, it constitutes a separate offence for each day it continues.

“46.8. Anyone who, by an act or an omission, helps or, by encouragement, advice, consent, authorization or order, induces another person to commit an offence under this Act commits an offence and is liable to the same penalty as that prescribed for the offence they helped or induced the person to commit.

“46.9. In any penal proceedings relating to an offence under this Act, proof that the offence was committed by an agent, mandatary or employee of any party is sufficient to establish that it was committed by that party, unless the party establishes that it exercised due diligence, taking all necessary precautions to prevent the offence.

“47. If a legal person or an agent, mandatary or employee of a legal person, of a partnership or of an association without legal personality commits an offence under this Act, the directors of the legal person, partnership or association are presumed to have committed the offence unless it is established that they exercised due diligence, taking all necessary precautions to prevent the offence.

For the purposes of this section, in the case of a partnership, all partners, except special partners, are presumed to be directors of the partnership unless there is evidence to the contrary appointing one or more of them, or a third person, to manage the affairs of the partnership.

“47.1. In determining the penalty, the judge shall take into account aggravating factors such as

- (1) the intentional, negligent or reckless nature of the offence;
- (2) the foreseeable character of the offence or the failure to follow recommendations or warnings to prevent it;
- (3) the offender’s attempts to cover up the offence or failure to mitigate its consequences;
- (4) the increase in revenues or decrease in expenses that the offender intended to obtain by committing the offence or by omitting to take measures to prevent it; and
- (5) the offender’s failure to take reasonable measures to prevent the commission of the offence or mitigate its consequences despite the offender’s ability to do so.

A judge who, despite the presence of an aggravating factor, decides to impose the minimum fine must give reasons for the decision.

“47.2. On an application made by the prosecutor and submitted with the statement of offence, the judge may impose on the offender, in addition to any other penalty, a further fine not exceeding the financial benefit realized by the offender as a result of the offence, even if the maximum fine has also been imposed.

“48. When determining a fine higher than the minimum fine prescribed in this Act, or when determining the time within which an amount must be paid, the judge may take into account the offender’s inability to pay, provided the offender furnishes proof of assets and liabilities.”

354. Section 48.3 of the Act is amended by replacing “for an offence under section 46” in the first paragraph by “for an offence under a provision of this Act”.

355. Division X of the Act becomes Title VI.

356. Section 53 of the Act is amended by replacing “40” by “40.5”.

357. Division XI of the Act is amended by replacing the portion before section 57 by the following:

“56.1. The costs that must be incurred by the Authority for the administration of this Act are to be borne by the authorized deposit institutions; they are determined annually by the Government based on the forecasts provided to it by the Authority.

Such costs, for each deposit institution, correspond to the sum of the minimum contribution set by the Government and the proportion of those costs corresponding to the proportion that the deposit institution's gross income in Québec for the preceding year is of the aggregate of the similar income of all the authorized deposit institutions for the same period.

The difference noted between the forecast of the costs that must be incurred for the administration of this Act for a year and those actually incurred for the same year must be carried over to similar costs determined by the Government for the year after the difference is noted.

The certificate of the Authority shall definitively establish the amount payable by each deposit institution under this section.

“TITLE VII

“FINAL PROVISIONS

“56.2. The Minister, with the Government's approval, may make agreements with the government of another province or a territory of Canada or with the government of a foreign State allowing a cooperative having a similar mission to that of a financial services cooperative and constituted under an Act of that province, territory or State to obtain the authorization prescribed in section 28.

The Minister may make such an agreement only if

(1) the laws of that province, territory or State grant financial services cooperatives constituted under the laws of Québec a status equivalent to the status granted by those laws to cooperatives constituted under the laws of that province, territory or State;

(2) deposits received in Québec by the cooperative constituted under the laws of that province, territory or State are guaranteed or insured by the body or agency of that province, territory or State which administers a scheme equivalent to the one provided for by this Act.”

DIVISION II

SPECIAL TRANSITIONAL PROVISIONS

358. The Deposit Insurance Act (chapter A-26) is to be read, from (*insert the date that is one month after the date of assent to this Act*) to (*insert the date preceding the date that is one year after the date of assent to this Act*), as if

(1) the following definitions were inserted in alphabetical order in section 1.2:

““contributed capital”, with respect to a legal person, means capital composed of the consideration paid to the legal person for,

- (1) in the case of a business corporation, the shares of its share capital;
- (2) in the case of a joint-stock company, the shares of its capital stock; and
- (3) in the case of a cooperative, a financial services cooperative or a mutual damage-insurance company, the shares of its capital stock or share capital;

“registered institution activities” means activities that consist in soliciting and receiving deposits of money from the public.”;

(2) all occurrences of “authorized deposit institution” and “deposit institution” and all occurrences of “authorized deposit institutions” and “deposit institutions” in sections 40.5, 40.6, 40.9, 40.11, 40.34, 40.43, 40.44, 40.47, 40.49, 40.50 and 40.51, enacted by section 346 of this Act, were replaced by “registered institution” and “registered institutions”, respectively;

(3) all occurrences of “legal person” and “legal persons” in sections 40.14, 40.15, 40.16, 40.17, 40.18, 40.19, 40.20, 40.21, 40.23, 40.32, 40.33, 40.37, in the heading before section 40.40, and in sections 40.41, 40.46, 40.52, 40.53, 40.54, 40.55 and 40.57, enacted by section 346 of this Act, were replaced by “institution” and “institutions”, respectively, with the necessary modifications;

(4) “that elects to become regulated by Title III of the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)” in the first paragraph of section 40.27, enacted by section 346 of this Act, were replaced by “whose deposit is subject to the Minister’s authorization under the second paragraph of section 11 of the Act respecting trust companies and savings companies (chapter S-29.01)”;

(5) section 40.36, enacted by section 346 of this Act, were replaced by the following section:

“40.36. If the Authority acts as the founder of a Québec trust company or a Québec savings company, the second paragraph of section 11 of the Act respecting trust companies and savings companies (chapter S-29.01) and sections 12 to 16 of that Act do not apply. In addition, the Authority shall issue the licence required under section 221 of that Act to the company as soon as it is established and without an application being filed by the company.”

359. Institutions that, on (*insert the date before the date of coming into force of section 315*), hold licences issued under the Deposit Insurance Act are, by operation of law, authorized deposit institutions from (*insert the date of coming into force of section 315*).

CHAPTER IV

TRUST COMPANIES AND SAVINGS COMPANIES

360. The Trust Companies and Savings Companies Act, the text of which appears below, is enacted.

“TRUST COMPANIES AND SAVINGS COMPANIES ACT

“TITLE I

“PURPOSE, DEFINITIONS AND OTHER INTRODUCTORY PROVISIONS

“1. This Act applies to the supervision and control of the business of trust companies and authorized trust companies and of their financial institution activities in particular.

In addition, it supplements, through appropriate specific rules, the operation, dissolution and liquidation regime applicable to business corporations that, because they are regulated by its Title III, may be authorized either

(1) to carry on trust company activities and therefore be authorized Québec trust companies; or

(2) to carry on only deposit institution activities under the Deposit Institutions and Deposit Protection Act (chapter A-26) and therefore be Québec savings companies.

“2. Trust company activities, for a legal person, consist in being a trustee, an adviser to a person of full age, a tutor or curator to property, a sequestrator or the liquidator of a succession, legal person or partnership.

“3. For the purposes of this Act, financial institution activities are, in addition to trust company activities and credit, the activities that a legal person may not carry on without being an authorized financial institution or a bank within the meaning of the Bank Act (Statutes of Canada, 1991, chapter 46).

“4. The following are authorized financial institutions:

(1) trust companies authorized to carry on trust company activities under this Act;

(2) deposit institutions authorized under the Deposit Institutions and Deposit Protection Act, except a company referred to in paragraph 1;

(3) financial services cooperatives within the meaning of the Act respecting financial services cooperatives (chapter C-67.3);

(4) insurers authorized under the Insurers Act (*insert the year and chapter number of that Act*); and

(5) legal persons registered as dealers or advisers under the Derivatives Act (chapter I-14.01) or the Securities Act (chapter V-1.1) or registered as investment fund managers under the latter Act.

“5. In the case of a legal person constituted under the laws of a jurisdiction other than Québec, the organ on which the powers usually conferred on a board of directors are conferred is considered such a board. In that context, “director” means a member of that organ.

A legal person constituted under the laws of a jurisdiction other than Québec that, in a manner similar to that of a business corporation, confers voting rights otherwise than on a one member, one vote basis is considered a business corporation. If those rights are conferred through securities that it issues, the securities are considered shares.

“6. For the purposes of this Act, “holder of control” of the following groups means

(1) in the case of a business corporation, the holder of shares conferring more than 50% of the voting rights or whoever can otherwise choose the majority of its directors;

(2) in the case of a federation of mutual companies, its member mutual companies;

(3) in the case of a partnership that is a limited partnership, the general partner, and in the case of any other type of partnership, the partner who can determine the outcome of collective decisions, if applicable;

(4) in the case of a trust, the trustee; and

(5) in the case of co-owners in indivision, the manager or, in the absence of a manager, if one of the co-owners can determine the outcome of collective decisions made by majority vote, that co-owner.

No one is the holder of control of a financial services cooperative, of a mutual company or of any other group that confers voting rights on a one member, one vote basis.

“7. Each of the following is the holder of a significant interest in a business corporation:

(1) the holder of a significant interest in the decisions of the corporation, that is, whoever can exercise 10% or more of the voting rights attached to the shares issued by the corporation; and

(2) the holder of a significant interest in the corporation's equity capital, that is, the holder of shares issued by the corporation representing 10% or more of its equity capital.

“8. Control, in cases which allow it, also results from participation in the concerted and ongoing exercise of rights within the group controlled or of powers over that group, even though none of the participants in the exercise of such rights or powers would alone be the holder of control; in such cases, each of the participants is deemed to be the holder of control.

The same is true for a significant interest in the decisions of a business corporation: each of the participants in the concerted and ongoing exercise of the voting rights attached to the shares issued by the corporation is deemed to be a holder of a significant interest.

“9. The following are deemed to participate in the concerted and ongoing exercise of their rights or powers and, consequently, to be the holder of control of a group:

(1) the participants that are controlled by a same holder of control as well as that holder, if the holder is a participant;

(2) the trustees of a same trust;

(3) the member mutual companies of a same federation; and

(4) the natural persons between whom family ties are considered to exist.

The participants described in the first paragraph are deemed to participate in the ongoing and concerted exercise of their voting rights or of their rights in shares with a view to being the holders of a significant interest in a business corporation.

The presumptions under the first and second paragraphs regarding member mutual companies of a same federation also apply to the other member mutual companies of that federation that neither have rights within or powers over that group.

“10. The holder of control of a group is also, if that group is the holder of control of another group, the holder of control of that other group.

“11. For the purposes of this Act, the holder of control of a group is deemed

(1) to hold any significant interest that is held by the group;

(2) to hold such rights to acquire shares or other securities as are held by the group itself; and

(3) to exercise the voting rights that the group may exercise.

“12. For the purposes of this Act, a security entitlement to a share or to another security is considered such a share or security, unless the holder of the security entitlement is a securities intermediary acting in that capacity.

“Security entitlement” and “securities intermediary” have the meaning assigned by the Act respecting the transfer of securities and the establishment of security entitlements (chapter T-11.002).

“13. Groups that have a common holder of control are affiliates, as is the holder of control, unless the latter is a natural person.

If one group among an aggregate of affiliated groups is an authorized trust company, the aggregate of affiliated groups is a financial group.

“14. Economic ties are considered to exist only between

- (1) natural persons between whom family ties are considered to exist;
- (2) the holder of a significant interest in a business corporation and the business corporation itself;
- (3) a partner in a partnership and the partnership;
- (4) each of the partners in a same partnership;
- (5) a legal person and its directors and officers; and
- (6) a person and a succession or trust in which the person has a substantial interest similar to that of a beneficiary or in respect of which the person serves as liquidator of the succession, trustee or other administrator of the property of others, mandatary or depositary.

Economic ties include any other ties between persons or groups that the Autorité des marchés financiers may determine by regulation.

“15. Family ties are considered to exist only between a person and

- (1) his or her spouse;
- (2) his or her children and spouse’s children; and
- (3) his or her parents and spouse’s parents.

“TITLE II

“SUPERVISION AND CONTROL OF TRUST COMPANY ACTIVITIES AND OTHER TRUST COMPANY BUSINESS

“CHAPTER I

“SUPERVISION AND CONTROL

“16. The Autorité des marchés financiers (the Authority) supervises and controls trust company business in Québec.

“CHAPTER II

“AUTHORIZATION OF THE AUTHORITY

“DIVISION I

“OBLIGATION TO BE AUTHORIZED

“17. Unless otherwise provided by this Act, the Authority’s authorization is required to carry on trust company activities in Québec if such activities constitute the operation of an enterprise, regardless of any other activities that may be carried on by the operator.

“18. Trust company activities are carried on in Québec in the following cases:

(1) if they consist in being a trustee, when the settlor or another person who transfers some of his or her property to a trust patrimony is domiciled in Québec;

(2) if they consist in being tutor to the property of a minor person or of a person of full age, or curator to the property of a person of full age or adviser to a person of full age, when that person is domiciled in Québec;

(3) if they consist in being the liquidator

(a) of a succession, when the last domicile of the deceased is in Québec; or

(b) of a legal person or a partnership, when the liquidation is governed by the laws of Québec; and

(4) if they consist in being sequestrator, when the contract is governed by the laws of Québec or the sequestration is ordered under the Code of Civil Procedure (chapter C-25.01).

“19. Only the following legal persons may obtain the Authority’s authorization if they have at least \$5,000,000 in capital:

(1) business corporations regulated by Title III; and

(2) legal persons constituted under the laws of a Canadian jurisdiction other than Québec and having the capacity to carry on trust company activities.

For the purposes of this Act,

“authorized Québec trust company” means a business corporation regulated by Title III that has been authorized by the Authority to carry on trust company activities;

“authorized trust company” means a legal person referred to in the first paragraph who has been authorized by the Authority to carry on trust company activities.

“20. Authorized insurers under the Insurers Act and financial services cooperatives governed by the Act respecting financial services cooperatives are not required to obtain the Authority’s authorization to carry on trust company activities, subject to the limits prescribed by government regulation.

“DIVISION II

“APPLICATION FOR AUTHORIZATION

“21. A legal person that intends to carry on trust company activities requiring the Authority’s authorization is responsible for filing an application with the Authority for its authorization.

An applicant must, in its application, show that it is able to comply with the applicable provisions of this Act.

It must also include the following information:

(1) its name, the name it intends to use in Québec if different, the address of its head office and, if the latter is not in Québec, the proposed address of its principal establishment in Québec, if any;

(2) if applicable, the conditions and restrictions it wishes to have attached to the authorization;

(3) a description of its financial structure;

(4) if applicable, the name and address of each holder of a significant interest in its decisions, as well as a description of that interest;

(5) if the applicant is not a business corporation regulated by Title III, the name of the regulatory authority of its domicile (home regulator);

(6) if applicable, the name and address of the attorney designated under section 26 of the Act respecting the legal publicity of enterprises (chapter P-44.1);

(7) if it belongs to a financial group, the name under which the group is known, if any, and, if applicable, the names of the other financial institutions that belong to the group; and

(8) the other information prescribed by regulation of the Authority.

“22. The home regulator of a trust company is the competent authority with respect to the company’s trust company activities, under the laws of the jurisdiction whose legislation governs the company’s constituting act.

“23. The following must be filed with the application for authorization:

(1) a list of the applicant’s directors and officers, including their names and domiciliary addresses;

(2) the résumé of each director and officer;

(3) a copy of the applicant’s constituting act and by-laws or of any other documents established for the same purposes;

(4) if applicable, a copy of the applicant’s audited financial statements for its most recent fiscal year ended and the financial statements it is required to file with its home regulator, to the extent and in the manner determined by regulation of the Authority;

(5) the other documents prescribed by regulation of the Authority; and

(6) the fees and charges prescribed by government regulation.

“DIVISION III

“GRANTING OF AUTHORIZATION

“24. The Authority grants its authorization to an applicant that meets the following conditions:

(1) the applicant has provided the information and documents required under this Act and paid the fees and charges payable;

(2) in the Authority’s opinion,

(a) the applicant has shown that it is able to comply with the applicable provisions of this Act,

(b) there are no serious reasons to believe that a holder of a significant interest in the applicant’s decisions is likely to interfere with the applicant’s adherence to sound commercial practices or sound and prudent management practices, and

(c) the applicant's name is not misleading.

“25. The Authority may, in granting its authorization, require any undertaking it considers necessary to ensure compliance with this Act.

The Authority may also, in granting its authorization, attach the conditions and restrictions it considers necessary for that purpose.

“26. The authorization granted by the Authority entails, for the authorized trust company, the obligation to maintain its existence until the final revocation of that authorization.

“27. The Authority notifies the applicant in writing of its decision.

Before refusing to grant its authorization or issuing an authorization with conditions or restrictions attached, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the applicant in writing and grant the latter at least 10 days to submit observations, unless the conditions or restrictions are attached at the applicant's request.

“CHAPTER III

“APPLICATION OF CERTAIN PROVISIONS TO FINANCIAL GROUPS AND LEGAL PERSONS ACTING ON BEHALF OF AN AUTHORIZED TRUST COMPANY

“28. The obligations of an authorized trust company under the provisions of this Act remain unchanged by the mere fact that the company entrusts a third party to carry on any part of an activity governed by those provisions.

“29. An authorized trust company must ensure that any group in respect of which the company is the holder of control complies with the prohibitions imposed on the company by this Act.

A prohibition imposed on such a trust company applies to the groups in respect of which it is the holder of control not only when each of them is acting alone, but also when the acts or omissions of all or some of them would have contravened that prohibition had they been done or made by only one of them.

This section does not prohibit a group in respect of which an authorized trust company is the holder of control from carrying on activities the group is permitted to carry on by the Act governing it even though the company is not permitted to carry on those activities, provided the group is a financial institution.

“30. An authorized trust company is liable for failures to comply with this Act by a group in respect of which the company is the holder of control or by whoever is the holder of control of the group and performs an obligation of the company on the company’s behalf, as if those failures were the company’s own.

“31. The Authority’s inspection functions and powers, provided for by the Act respecting the regulation of the financial sector (chapter A-33.2), that may be exercised in relation to an authorized trust company extend to any affiliated group if the person authorized to inspect the company considers it necessary to inspect the group in order to complete the verification of the company’s compliance with this Act, even though the group does not carry on activities governed by an Act referred to in section 7 of that Act.

“32. The Authority may prohibit that an authorized trust company’s obligations under this Act be performed by a third person on the company’s behalf if, in the Authority’s opinion, such performance would render the application of this Act difficult or ineffective.

Before rendering its decision, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice to the company in writing and grant the latter at least 15 days to submit observations.

“CHAPTER IV

“COMMERCIAL PRACTICES

“DIVISION I

“GENERAL PROVISIONS

“33. An authorized trust company must adhere to sound commercial practices.

In carrying on its financial institution activities, such practices include providing fair treatment to its clientele, in particular,

- (1) providing appropriate information;
- (2) adopting a policy for processing complaints filed by members of that clientele and resolving any disputes with them; and
- (3) keeping a complaints register.

“34. An authorized trust company must be able to show to the Authority that it adheres to sound commercial practices.

“DIVISION II

“COMPLAINT PROCESSING AND DISPUTE RESOLUTION POLICY AND EXAMINATION OF COMPLAINT RECORDS BY THE AUTHORITY

“35. The complaint processing and dispute resolution policy adopted under subparagraph 2 of the second paragraph of section 33 must, in particular,

(1) set out the characteristics that make a communication to the authorized trust company a complaint that must be registered in the complaints register kept under subparagraph 3 of the second paragraph of section 33; and

(2) provide for a record to be opened for each complaint and prescribe rules for keeping such records.

The authorized trust company must make a summary of the policy, including the elements specified in subparagraphs 1 and 2 of the first paragraph, publicly available on its website and disseminate it by any appropriate means to reach the clientele concerned.

“36. Within 10 days after a complaint is registered in the complaints register, the authorized trust company must send the complainant a notice stating the complaint registration date and the complainant’s right, under section 37, to have the complaint record examined.

“37. A complainant whose complaint has been registered in the complaints register may, if dissatisfied with the company’s processing of the complaint or the outcome, request the company to have the complaint record examined by the Authority.

The company is required to comply with the complainant’s request and send the record to the Authority.

“38. The Authority examines the complaint records that are sent to it.

It may, with the parties’ consent and on payment by each party of the fees determined by government regulation, act as conciliator or mediator or designate a person to act as such.

Conciliation or mediation may not, alone or in combination, continue for more than 60 days after the date of the first conciliation or mediation session, as the case may be, unless the parties consent to it.

In exercising the regulatory power provided for in the second paragraph, the Government may determine different fees according to the classes of persons or groups it determines.

“39. Unless the parties agree otherwise, nothing that is said or written in the course of a conciliation or mediation session may be admitted as evidence before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

A conciliator or mediator may not be compelled to disclose anything revealed or learned in the exercise of conciliation or mediation functions or to produce a document prepared or obtained in the course of such functions before a court or before a person or body of the administrative branch exercising adjudicative functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no one has a right of access to a document contained in conciliation or mediation records.

“40. Despite sections 9 and 83 of the Act respecting Access to documents held by public bodies and the Protection of personal information, the Authority may not communicate a complaint record without the authorization of the authorized trust company that has sent it.

“41. On the date set by the Authority, an authorized trust company must submit a report on the complaint processing and dispute resolution policy adopted under subparagraph 2 of the second paragraph of section 33 stating the number of complaints that the company has registered in the register and their nature.

The report must cover the period determined by the Authority.

“DIVISION III

“SPECIAL PROVISIONS RESPECTING FIXED TERM ANNUITIES AND CERTAIN INVESTMENT FUNDS

“42. In a fixed term annuity contract, the fact that an authorized trust company offers a choice of investments does not preclude it from controlling the capital accumulated for the payment of the annuity.

The right to withdraw all or part of the capital accumulated for the payment of an annuity may be stipulated, but the exercise of that right reduces the company’s obligations correlatively.

In addition, the amount of the annuity to be paid periodically must, at the time the contract is entered into, be determinate, or at least determinable according to variables and a computation method specified in the contract.

“43. The capital accumulated for the payment of a fixed term annuity is unseizable in the hands of the authorized trust company as if it were a fixed term annuity transacted by an authorized insurer.

For the capital accumulated for the payment of an annuity to be exempt from seizure, a person must be designated, in accordance with article 2457 or 2458 of the Civil Code, as qualified to receive the capital or the related annuity following the death of the annuitant or of the person who furnishes the capital.

“DIVISION IV

“SPECIAL PROVISIONS RESPECTING ACTIVITIES BETWEEN FINANCIAL INSTITUTIONS

“44. Except for the first paragraph of section 33 and Division III, this chapter does not apply if the authorized trust company’s client is a bank or another financial institution.

“CHAPTER V

“PRUDENTIAL RULES

“DIVISION I

“MANAGEMENT PRACTICES

“45. An authorized trust company must adhere to sound and prudent management practices ensuring, in particular, good governance and compliance with the laws governing its activities.

With respect to the company’s financial management, such practices must, in particular, provide that the company maintain

- (1) adequate assets to meet its liabilities, as and when they become due; and
- (2) adequate capital to ensure its sustainability.

“46. An authorized trust company must be able to show to the Authority that it adheres to sound and prudent management practices.

“47. An authorized trust company must hold a fidelity insurance policy for an amount considered sufficient by the Authority according to generally accepted practices and to the volume of the company’s activities.

“48. An authorized trust company may establish and manage an investment fund governed by the Securities Act and offer units of participation in the fund to the public.

“49. The Authority may, if it considers that an authorized trust company’s capital is not adequate to ensure the company’s sustainability, order the company to adopt a compliance program within the time it prescribes and for the reasons it specifies.

Before exercising the power provided for in the first paragraph, the Authority must notify the company and give it at least 10 days to submit observations.

The Authority may not order an authorized trust company other than an authorized Québec trust company to adopt such a program if it may hinder measures taken by the company's home regulator.

“50. The compliance program describes the measures that must be implemented by the authorized trust company within the time limits specified in it.

“51. The compliance program adopted by the authorized trust company is submitted for approval to the Authority.

“52. The authorized trust company is required to implement the compliance program approved by the Authority.

“53. An authorized trust company that is required to implement a compliance program must provide the Authority with any report the Authority may require on the implementation of the program at such intervals, in such form and with such content as the Authority determines.

“DIVISION II

“ADMINISTRATION OF THE PROPERTY OF OTHERS

“54. An authorized trust company must keep a separate account in its books for each administration.

“55. Despite article 1275 of the Civil Code, an authorized trust company that is the settlor of a trust may be the sole trustee of the trust.

“56. Despite article 1344 of the Civil Code, an authorized trust company may make investments in its sole name without indicating its quality.

“57. An authorized trust company that carries on securities brokerage activities may not acquire, on behalf of the beneficiary of the administration of the property of others entrusted to the company, acquire securities held by it or held by a group affiliated with it as broker, except with the consent of the beneficiary after disclosing its interest to the latter.

“58. Unless expressly authorized by the instrument creating the administration, an authorized trust company may not invest funds administered by it for others in the following securities or lend such funds on the security of such securities:

(1) the shares it issues;

(2) the debt securities it issues that confer on their holders a claim ranking lower than the company's unsecured claims; or

(3) contributed capital securities, participations and debt obligations issued by a group affiliated with it.

“59. If an authorized trust company holds, on behalf of another, its own shares or those of a legal person affiliated with it and may exercise voting rights in respect of those shares or may dispose of them at its discretion, any decision regarding the vote, the disposition or an offer to acquire the shares must be approved by the company’s board of directors if the aggregate of the shares it holds is equal to or greater than 10% of the shares of any class of shares or of all the shares of the company or affiliated legal person.

The reasons for the decision must be entered in the minutes of the meeting of the board of directors.

“60. Each year, the board of directors must prepare a report on the shares referred to in section 59 describing the shares and giving the reasons for which they were retained.

“61. The contributed capital of a legal person is composed of the consideration paid to the legal person for,

- (1) in the case of a business corporation, the shares of its share capital;
- (2) in the case of a joint-stock company, the shares of its capital stock; or
- (3) in the case of a cooperative, a financial services cooperative or a mutual company, the shares of its capital stock or share capital.

The contributed capital of a partnership is composed,

- (1) in the case of a general partnership, of the contribution made by each partner to obtain a share in the partnership; or
- (2) in the case of a limited partnership, of the contribution made by the special partners to the partnership’s common stock.

“DIVISION III

“INVESTMENTS

“§1.—*Provisions applicable to all authorized trust companies*

“62. This division does not apply to an authorized trust company acting as an administrator of the property of others.

However, it does apply to such a company in its administration of the deposits it receives, even if it receives them as the administrator of the property of others; the rules for the administration of the property of others set out in the Civil Code and those set out in Division II of this chapter do not apply to the administration of such deposits.

“63. For the purposes of this Act, “deposit” means a deposit of money within the meaning of the Deposit Institutions and Deposit Protection Act.

“64. An authorized trust company must adopt an investment policy approved by its board of directors.

The investment policy must, in particular,

(1) provide for the matching of the respective maturities of the company’s investments with the company’s liabilities;

(2) provide for the appropriate diversification of those investments; and

(3) include a description of the types of investments and other financial transactions it authorizes and the limits applicable to them.

The company must send its investment policy to the Authority at the Authority’s request.

“65. An authorized trust company must follow the investment policy approved by its board of directors.

“66. An authorized trust company must identify and keep in a separate account assets in an amount equal to the aggregate of the money received as deposits.

Such assets may be used only for the repayment of deposits received by the company. The balance, if any, must be used to pay the company’s other obligations.

“§2.—*Provisions applicable to authorized Québec trust companies*

“I.—*Acquisition of participations and co-ownership*

“67. No authorized Québec trust company may acquire or hold contributed capital securities issued by a legal person or a partnership or participations in a trust in excess of

(1) 30% of the value of those securities or participations; or

(2) the number of those securities or participations allowing it to exercise more than 30% of the voting rights.

Nor may an authorized Québec trust company be the co-owner of property if its share of the right of ownership is greater than 30% without exceeding 50%, alone or together with the shares of groups affiliated with it.

“68. Despite section 67, an authorized Québec trust company may acquire up to all the contributed capital securities issued by a legal person or a partnership or all the participations in a trust if, following the acquisition, the company will be the holder of control of the person, partnership or trust.

“II. — Accessory guarantees for certain investments

“69. An authorized Québec trust company may become the owner of property in contravention of section 67 only if it does so to obtain or preserve an accessory guarantee for one of its investments or for another financial transaction.

“III. — Penalties

“70. If an authorized Québec trust company holds or owns property, as the case may be, in contravention of section 67, it must dispose of that property as soon as market conditions permit.

“71. Directors of an authorized Québec trust company who agree to a contravention of section 67 are held solidarily liable for any resulting losses to the company.

A director cannot be held liable under the first paragraph if the director acted with a reasonable degree of prudence and diligence in the circumstances.

Furthermore, for the purposes of the first paragraph, the court may, after considering all the circumstances and on the terms the court considers appropriate, relieve a director, either wholly or partly, from the liability the director would otherwise incur if it appears to the court that the director has acted reasonably, honestly and loyally, and ought fairly to be excused.

“CHAPTER VI

“GOVERNANCE

“DIVISION I

“GENERAL PROVISIONS

“72. An authorized trust company must have a board of directors composed of at least seven members.

“73. A director of an authorized trust company who resigns must declare his or her reasons to the company and to the Authority in writing.

“74. The board of directors must ensure that the authorized trust company adheres to sound commercial practices and sound and prudent management practices.

To that end, it must entrust certain directors it designates or a committee of such directors with the responsibility of seeing that sound commercial practices and sound and prudent management practices are adhered to and situations contrary to such practices are detected.

Within three months after the closing date of the company’s fiscal year, the directors or the committee, as the case may be, report to the board of directors on the carrying out of the responsibility entrusted to them and it, if applicable, on the other activities carried on by them or it for the company.

“75. A director designated in accordance with section 74 or the committee provided for in that section, as the case may be, must, on becoming aware of a situation that adversely affects the authorized trust company’s financial position, is otherwise contrary to sound and prudent management practices or is contrary to sound commercial practices, notify the board of directors in writing.

The board of directors must then see to it that the situation is remedied.

“76. The director or committee that notified the board of directors in accordance with section 75 must, on finding that the situation mentioned in the notice has not been corrected, send the Authority a copy of the notice given under that section.

A description of any relevant events that have occurred since the notice was drafted and any other information the director or committee considers relevant must be sent with the notice.

“77. A director designated in accordance with section 74 or a director on the committee provided for in that section who, in good faith, notifies the board of directors or the Authority in accordance with section 75 or 76 incurs no civil liability for doing so.

The same is true for any person who, in good faith, provides information or documents to one or more of those directors and for a director who makes a declaration under section 73.

“DIVISION II

“PROVISIONS SPECIFIC TO AUTHORIZED QUÉBEC TRUST COMPANIES

“§1. — *Composition of the board of directors*

“78. More than half of the board of directors of an authorized Québec trust company must be composed of persons other than employees of that company or of a group of which it is the holder of control.

“79. An authorized Québec trust company must implement a policy to foster, in particular, the independence, competence and diversity of the members of its board of directors and of the members of the committees of the board.

“§2. — *Establishment and composition of the audit committee and ethics committee*

“80. The board of directors of an authorized Québec trust company must establish an audit committee and an ethics committee from among its members.

“81. The audit committee and the ethics committee of an authorized Québec trust company are each composed of at least three directors, a majority of whom are not

- (1) officers or employees of the company;
- (2) members of both the ethics committee and the audit committee;
- (3) directors, officers or other mandataries or employees of a group of which the company is the holder of control; or
- (4) holders of a significant interest in the company or in a business corporation affiliated with the company.

“82. The Authority may, if an authorized Québec trust company shows that the exercise of the committee’s functions will not be adversely affected, authorize

- (1) the establishment of a committee whose composition does not comply with section 81; or
- (2) the exercise by one of the committees mentioned in that section of the functions usually assigned to the other committee, in addition to its own functions.

The Authority may, in granting such an authorization, require any undertaking it considers necessary to ensure compliance with this Act.

“§3. — Functions of the audit committee

“83. The audit committee must examine all financial statements intended for the board of directors before they are submitted to the board.

The audit committee may be convened by one of its members or by the auditor. The auditor must be notified of every committee meeting and attend every meeting to which he or she is convened. The committee must give the auditor an opportunity to be heard.

The committee must cause any error or misstatement in the financial statements to be corrected and, if the financial statements were sent to the shareholders, inform the general meeting of shareholders accordingly.

“§4. — Functions of the ethics committee

“84. An authorized Québec trust company must have rules of ethics; they must be adopted by its ethics committee and be sent to the Authority.

Those rules must pertain to such subjects as

- (1) the conduct of the company’s directors and officers;
- (2) the conduct of the company with natural persons or groups that are restricted parties with respect to it; and
- (3) the formalities and conditions governing contracts with such persons or groups.

“85. An authorized Québec trust company must follow the rules of ethics adopted by its ethics committee; they are binding on its board of directors.

“86. The ethics committee of an authorized Québec trust company must see that the rules of ethics are complied with and notify the board of directors, in writing and without delay, of any violation of those rules.

“87. Each year, the ethics committee of an authorized Québec trust company must send the Authority, within two months after the closing date of the company’s fiscal year, a report on the committee’s activities in that fiscal year.

The report must include or describe

- (1) the committee members’ names and addresses;
- (2) any change among the committee members;
- (3) a list of conflict of interest situations and contracts with natural persons or groups that are restricted parties with respect to the company which have come to the committee’s notice;

- (4) the measures taken to see that the rules of ethics are complied with; and
- (5) violations of the rules of ethics.

“88. An authorized Québec trust company, when doing business with natural persons or groups that are restricted parties with respect to it, must act in the same manner as it would when dealing at arm’s length.

Consequently, a contract entered into between the company and a natural person or group that is a restricted party with respect to it may not be less advantageous for the company than if it had been entered into at arm’s length.

“89. Section 88 does not apply to the remuneration of directors or any other matter connected with a contract of employment.

“90. The following natural persons and groups are restricted parties with respect to an authorized Québec trust company:

- (1) the company’s directors and officers;
- (2) the directors and officers of the group that is the holder of control of the company;
- (3) the holder of a significant interest in the company;
- (4) natural persons and groups having economic ties with the persons described in subparagraphs 1 to 3, except a group of which the company is the holder of control;
- (5) a group whose board of directors is composed, in the majority, of members of the company’s board of directors; and
- (6) any other person or group designated under section 92.

An authorized financial institution is not a group that is a restricted party with respect to the company if the financial institution is the holder of exclusive control of the company, or if it is the holder of control of the company and both the authorized financial institution and the company have the same holder of exclusive control.

“91. For the purposes of section 90, the holder of control of a business corporation has exclusive control of the corporation if that holder alone can choose all the directors and exercise the voting rights attached to all the shares issued by the corporation, provided that, if applicable, the holder holds all the securities that are convertible into such shares carrying voting rights and all the rights to acquire such shares.

“92. The Authority may designate a natural person or a group as a restricted party if, in its opinion, that person or group is likely to receive preferential treatment to the detriment of the authorized trust company.

The Authority may review a designation at the request of the person or group designated or the company concerned.

Before making or refusing to review a designation, the Authority must give the natural person or group and the company concerned an opportunity to submit observations.

The Authority notifies the person or group designated and the company concerned of its decision regarding the designation or review request, as applicable.

“93. Unless the obligations of an authorized Québec trust company under the following contracts are minimal, such contracts must be submitted to its board of directors for approval:

(1) a contract for the acquisition, by the company, of securities issued by a natural person or group that is a restricted party with respect to the company or for the transfer of assets between them; and

(2) a service contract between a company and a natural person or group that is a restricted party with respect to the company.

Before approving such contracts, the board of directors must obtain the opinion of the ethics committee.

“94. Except to the extent authorized by its rules of ethics, no authorized Québec trust company may extend credit to its directors or officers, to natural persons or groups having economic ties with them or to the directors or officers of a legal person affiliated with the company.

“CHAPTER VII

“AUDITOR

“DIVISION I

“QUALIFICATIONS AND BEGINNING AND END OF TERM

“95. An auditor must be charged with auditing the books and accounts of an authorized trust company.

“96. An auditor charged with the functions provided for in this chapter must be a member of the Ordre professionnel des comptables professionnels agréés du Québec and hold a public accountancy permit.

However, in the case of an authorized trust company, other than an authorized Québec trust company, that carries on its activities in Québec and elsewhere in Canada, the auditor is not required to be a member of that order or hold that permit if he or she holds an authorization of the same nature issued elsewhere in Canada.

“97. An auditor charged with conducting the audit referred to in section 95 is the auditor elected, appointed or otherwise determined by the authorized trust company in accordance with the Act under which the company is constituted. If the auditor does not meet the conditions set out in section 96, another auditor must be charged with conducting that audit.

“98. The term of an auditor ends on the appointment of his or her successor, unless it ends as a result of his or her death, resignation, removal from office or bankruptcy or the institution of protective supervision for him or her or if he or she no longer has the qualifications required under this division.

“99. The authorized trust company must, within 10 days after an auditor’s term has ended, inform the Authority of the fact.

“100. If an authorized trust company fails to charge an auditor with the functions provided for in this chapter within the time specified by the Authority, the Authority may appoint one and determine the remuneration that the company must pay him or her.

“101. An authorized trust company must, before removing an auditor from office, give him or her at least 10 days’ prior notice in writing and send a copy of the notice to the Authority, unless the latter authorizes it to proceed earlier.

The prior notice must give the reasons for the removal.

“102. An auditor who resigns or who believes he or she was removed from office for reasons connected with his or her functions or with the conduct of the authorized trust company’s business or the business of a member of its financial group must declare those reasons to the Authority in writing.

The auditor must send a copy of the declaration to the secretary of the authorized trust company.

The auditor must send those documents within 10 days after tendering his or her letter of resignation or learning of his or her removal from office, as the case may be.

“103. Before accepting the office of auditor provided for in this chapter, a person must ask the authorized trust company’s secretary whether the former auditor made the declaration required under section 102.

The secretary must provide the person with a copy of the declaration, if applicable.

“DIVISION II

“DUTIES AND POWERS

“104. An authorized trust company is required to see that its directors, officers and employees send the auditor the information or documents regarding the company, the groups of which the company is the holder of control or any other group whose financial information is consolidated with its own that the auditor requests in the course of his or her functions.

The company must also see that persons having custody of such documents do so as well.

“105. An auditor who, in the course of his or her functions, becomes aware of a situation that in his or her opinion adversely affects the authorized trust company’s financial position, is otherwise contrary to sound and prudent management practices or is contrary to sound commercial practices must submit a detailed report on that situation.

The same is true for an auditor who believes that a refusal or failure to provide information or a document requested by him or her is hindering the exercise of his or her functions.

The auditor must send the report to the board of directors, and, if applicable, a copy of it to the attorney designated under section 26 of the Act respecting the legal publicity of enterprises. The board of directors must then see to it that the situation is remedied.

“106. If the auditor becomes aware or is informed of an error or misstatement in financial statements that he or she has audited and, if in his or her opinion, the error or misstatement is material, the auditor must inform the board of directors. The auditor may amend the financial statements if he or she considers it necessary.

On receiving the auditor’s report, the board of directors must send a copy of it to the shareholders within 15 days.

“107. If the auditor finds that the situation that justified the drafting of the report submitted under section 105 has not been corrected, he or she must send a copy of it to the Authority.

A description of any relevant events that have occurred since the report was drafted and any other information the author considers relevant must be sent with the report.

“108. An auditor who, in good faith, makes a declaration under section 102, submits a report under section 105 or sends a copy of the latter to the Authority under section 107 incurs no civil liability for doing so. The same is true for a person who, in good faith, provides information or documents under section 104.

“DIVISION III

“CONTINUATION OR BROADENING OF AN AUDIT, AND SPECIAL AUDIT

“109. If it considers it necessary, the Authority may order that the annual audit of an authorized trust company’s books and accounts be continued, that its scope be broadened or that a special audit be conducted.

The expenses incurred in such a case are payable by the company after approval by the Authority.

“CHAPTER VIII

“ANNUAL STATEMENTS AND OTHER COMMUNICATIONS WITH THE AUTHORITY

“110. An authorized trust company must prepare an annual statement of the position of its affairs as at the date determined by the Authority and include financial statements audited by the auditor described in section 97.

The annual statement must be certified by two of the company’s directors; its form and content and the date on which it must be sent to the Authority are determined by the Authority.

“111. Each year, on the dates determined by the Authority, an authorized trust company must send

- (1) the financial statements prepared for the purposes of the Act under which the company is constituted;
- (2) the auditors’ reports; and
- (3) the résumé of each director and officer if it has not already been sent to the Authority.

An authorized Québec trust company must, in addition, send a statement of its overdue loans and unproductive investments as at the closing date of its fiscal year.

The Authority may, by regulation, define the expressions “overdue loans” and “unproductive investments” for the purposes of the second paragraph.

“112. If the Authority is of the opinion that an asset considered in the financial statements sent to it by an authorized trust company is overvalued, it may either require the company to cause an appraiser the choice of whom is approved by it to appraise the asset or to appraise that asset itself. If the asset is a loan the repayment of which is guaranteed by property, the property is appraised.

If the results of the appraisal justify it, the Authority may require the company to modify its books and accounts as well as the financial statements referred to in the first paragraph to reflect the market value of the asset or, in the case of a loan, the value of the realization of the property guaranteeing the repayment. If a loan or another asset is that of a group of which the company is the holder of control, the Authority may, for those same purposes, require that the value of the company's investment in the group be modified. The Authority notifies the auditor described in section 97 of the modification requested.

“113. Before exercising a power conferred on it by section 112, the Authority must give the authorized trust company at least 10 days to submit observations.

“114. The cost of the appraisal of an overvalued asset further to a decision of the Authority under section 112 is to be borne by the authorized trust company concerned, unless the Authority decides otherwise.

“115. Semi-annually, on the dates determined by the Authority, an authorized trust company must file statements showing the changes in its investments and loans during the preceding half year. The statements must be certified by two of the company's directors.

“116. An authorized trust company must send the Authority, according to the content and form and at the time or intervals it determines, the documents it considers useful to determine whether the company is complying with this Act.

“117. The Authority may require an authorized trust company, the holder of control of the authorized trust company or a member of the authorized trust company's financial group to provide the documents or information the Authority considers useful for the purposes of this Act or that it or he or she otherwise provide access to those documents and information.

The Authority may likewise require the auditor of an authorized trust company to provide the documents or information he or she holds regarding the company.

The person to whom such a request is made is required to reply not later than the date determined by the Authority.

“118. An authorized trust company must notify the Authority of the name and address of whoever has become or intends to become the holder of its control within 10 days from the time it becomes aware of either situation.

If the authorized trust company is a business corporation, it must also, within the same time, send the Authority such a notice regarding whoever has become or intends to become the holder of a significant interest in its decisions.

The company must, within the same time, notify the Authority whenever the holder of control or of a significant interest ceases to be so.

“CHAPTER IX

“REVIEW OF AN AUTHORIZATION

“DIVISION I

“GENERAL PROVISIONS

“119. The Authority shall, on its own initiative, on the authorized trust company’s application in the cases provided for in Division III or when it is informed of certain operations described in Division IV, review an authorization it has granted to an authorized trust company.

“120. After reviewing an authorization, the Authority may maintain it as is, attach certain conditions or restrictions to it, withdraw existing conditions or restrictions, or revoke or suspend it.

“DIVISION II

“REVIEW ON THE AUTHORITY’S INITIATIVE

“121. The Authority may, on its own initiative, review an authorization it has granted whenever it considers it necessary to do so to ensure compliance with this Act.

Unless the authorization is maintained as is, the Authority, in accordance with the provisions of Chapter X, revokes or suspends it or attaches conditions or restrictions to it.

“DIVISION III

“REVIEW ON AN AUTHORIZED TRUST COMPANY’S APPLICATION

“122. The Authority is required to review the authorization it has granted to a trust company if the latter applies for such a review to have an attached condition or restriction withdrawn.

“123. The application for review must specify the condition or restriction the trust company wishes to have withdrawn and the reasons for the withdrawal.

The application must also include any other information prescribed by regulation of the Authority. The costs and fees prescribed by government regulation must be filed with the application.

“124. On receipt of the application and the required information, costs and fees, the Authority reviews the authorization to determine whether or not it may grant the application.

The Authority may, in withdrawing a condition or restriction, require any undertaking it considers necessary to ensure compliance with this Act.

When the Authority rules on an application for review filed by an authorized trust company, it sends the company a document justifying its decision.

“DIVISION IV

“REVIEW IN LIGHT OF CERTAIN OPERATIONS

“125. The Authority is required to review an authorization on being notified of any of the following operations:

(1) the amalgamation of the authorized trust company with another legal person;

(2) a change as to the authorized trust company’s home regulator, in particular as a result of a continuance or other operation of the same nature;

(3) an operation not referred to in subparagraph 1 or 2 where the authorized trust company changes its juridical form or transmits its patrimony or part of it due to its division;

(4) a change of name of the authorized trust company; and

(5) in the case of an authorized Québec trust company, its becoming the holder of control of a group or either of the following events having a significant effect on it:

(a) an acquisition of assets by the company or by a group of which it is the holder of control, or

(b) the transfer of any part of the company’s assets or of the assets of such a group.

An authorized Québec trust company’s ceasing to be the holder of control of a group is deemed to be a transfer, by the group, of all its assets.

“126. For the purposes of subparagraph 5 of the first paragraph of section 125, an acquisition or transfer is deemed to not have a significant effect on a trust company if the resulting variation in the value of its assets does not exceed 5%.

The variation in the value of the company’s assets is established in relation to the value of those assets at the end of the fiscal year preceding the acquisition or transfer.

“127. An authorized trust company must inform the Authority of its intention to carry out one or more operations giving rise to a review not later than the 30th day before the operation or, in the case of more than one operation, before the first operation, by filing a notice with the Authority in the form determined by the Authority.

The costs and fees prescribed by government regulation must be filed with the notice.

“128. A notice of intention to amalgamate must include

- (1) the name and address of each of the legal persons proposing to amalgamate;
- (2) the proposed name of the legal person resulting from the amalgamation;
- (3) the juridical form of the legal person resulting from the amalgamation;
- (4) the location of the proposed head office of the legal person resulting from the amalgamation; and
- (5) any other information required by the Authority.

A document including the same information as that required to be included in an initial application for authorization and the documents that must be filed with such an application must be filed with the notice of intention to amalgamate for the legal person resulting from the amalgamation.

In the case of an amalgamation involving more than one authorized trust company, a joint notice may be filed.

“129. A notice of intention to change the authorized trust company’s home regulator must include

- (1) a description of the operation from which the change results;
- (2) the trust company’s name and address;
- (3) the title of and exact reference to the Act of the jurisdiction of the home regulator that will govern the company’s trust company activities following the change and the title of and exact reference to the Act of the jurisdiction that will govern the company’s affairs, if different;
- (4) the location of the company’s proposed head office following the change, if different from that of its head office at the time the notice is sent; and
- (5) any other information required by the Authority.

“130. A notice of intention to carry out an operation referred to in subparagraph 3 of the first paragraph of section 125 must include

- (1) a description of the proposed operation;
- (2) if applicable, the authorized trust company’s new juridical form following the operation as well as the title of and exact reference to the Act that will govern its affairs;

(3) if applicable, the names and addresses of all the groups, other than the authorized trust company, involved in the operation;

(4) the location of the authorized trust company's proposed head office following the operation, if different from that of its head office at the time the notice is sent; and

(5) any other information required by the Authority.

A document including the same information as that required to be included in an initial application for authorization and, if required by the Authority, the documents that must be filed with such an application must be filed with the notice for each legal person resulting from the operation that will carry on trust company activities in Québec.

“131. A notice of intention to change names must include the name and address of the authorized trust company, in addition to its proposed name.

“132. A notice of intention to carry out an acquisition or transfer of assets having a significant effect on an authorized Québec trust company must include

(1) a description of the proposed acquisition or transfer, in particular, a description of the assets to be acquired or transferred by the company or the group of which it is the holder of control;

(2) the names and addresses of the parties to the acquisition or transfer; and

(3) any other information required by the Authority.

“133. On receipt from an authorized trust company of a notice of intention to carry out one or more operations giving rise to a review referred to in section 125 and, if applicable, the required documents, costs and fees, the Authority publishes the notice in its bulletin and reviews the authorization it has granted to the company to determine whether it can be maintained.

The Authority may, to maintain its authorization, require any undertaking it considers necessary to ensure compliance with this Act.

A notice of intention to carry out an acquisition or a transfer of assets having a significant effect on an authorized Québec trust company is not published.

“134. Unless the Authority considers that it must revoke or suspend a trust company's authorization, that authorization becomes the authorization of the company resulting from the operation, with the conditions and restrictions the Authority may attach to it.

“135. The sending of a notice by an authorized trust company in accordance with this chapter does not relieve the company of its obligation to file an application for revocation if the operation giving rise to a review involves the voluntary revocation of an authorization, nor does it relieve the company of its obligation to file an application for authorization, if the operation involves the carrying on of an activity requiring the Authority’s authorization, when the company does not have it.

“136. The granting of the Authority’s authorization is governed by Chapter II; the revocation or suspension of, and the attachment of conditions or restrictions to, the authorization are governed by Chapter X.

“CHAPTER X

“REVOCATION AND SUSPENSION OF, AND CONDITIONS OR RESTRICTIONS THAT MAY BE ATTACHED TO, AN AUTHORIZATION

“DIVISION I

“GENERAL PROVISIONS

“137. The authorization granted by the Authority to a trust company is revoked by operation of law, by the Authority acting on its own initiative or on an application by the authorized trust company.

Revocation is said to be voluntary if it is ordered by the Authority on an application by a trust company; it is said to be forced in all other cases.

The Authority may also, where provided for by law, suspend an authorization or attach the conditions and restrictions it considers necessary to ensure compliance with this Act.

“138. The revocation of an authorization becomes final when the trust company concerned ceases to be bound by the contracts and other acts made under the authorization.

“139. A trust company continues to be an authorized trust company as long as a revocation is not final. However, it may not bind itself under a contract or other act made in accordance with the authorization to which the revocation applies if the contract or act is made after the revocation date, or offer to make a contract, except to honour a right conferred on the other party under a contract in force on that date.

Suspension produces the same effects for its duration.

“DIVISION II

“FORCED REVOCATION, SUSPENSION AND CONDITIONS OR RESTRICTIONS

“140. The authorization granted by the Authority to a trust company is revoked by operation of law if the company is dissolved or liquidated due to any external cause.

The company must notify the Authority, without delay, of its dissolution or liquidation.

“141. The Authority may, if it considers that it is in the public interest, revoke or suspend the authorization it has granted to an authorized trust company if

(1) in its opinion

(a) the company is failing to or is about to fail to comply with its obligations under an Act administered by the Authority,

(b) the company often fails to perform, in full, properly and without delay, its obligations under the contracts and other acts it has made in accordance with the authorization granted to it by the Authority, or

(c) there are serious reasons to believe that the holder of control of the company or of another significant interest in the company’s decisions is likely to interfere with the company’s adherence to sound commercial practices or sound and prudent management practices;

(2) the company has not carried on trust company activities in Québec for at least three years;

(3) the Authority is informed by a competent authority that the company has failed to comply with an Act that is not administered by the Authority and is of the opinion that the failure is contrary to sound and prudent management practices; or

(4) the company fails to adopt or implement a compliance program or to provide the Authority with any report the latter requires on the implementation of such a program.

“142. In the cases described in section 141, instead of revoking or suspending the authorization granted to the authorized trust company and in order to allow the company to remedy the situation, the Authority may attach such conditions and restrictions to the authorization as it considers necessary to ensure compliance with this Act.

“143. Before ordering the forced revocation or the suspension of an authorization or attaching a condition or restriction to it, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice to the authorized trust company in writing and grant the latter at least 10 days to submit observations.

“144. A decision under section 141 may, within 30 days of its notification, be contested before the Financial Markets Administrative Tribunal.

The Tribunal may only confirm or quash a contested decision.

“145. The Authority publishes in its bulletin a notice of any revocation of an authorization granted to a trust company on the expiry of the time within which the latter was entitled, under section 144, to contest the revocation. The Authority publishes the notice without delay in the case of a revocation by operation of law.

“DIVISION III

“VOLUNTARY REVOCATION

“146. The Authority may not revoke the authorization of an authorized trust company that applies for its revocation and, at the time of the application, is bound by contracts or other acts made in accordance with the authorization, unless the company

(1) continues to be bound by those contracts or other acts; or

(2) has made the necessary arrangements to have at least one other authorized financial institution or a bank succeed it in its financial institution activities as of the date on which it plans to cease to be bound by those contracts or other acts.

“147. The voluntary revocation of an authorization requires the filing of an application with the Authority for that purpose.

In addition, a written notice concerning the application, the documents prescribed by regulation of the Authority and the costs and fees prescribed by government regulation must be filed with the application.

“148. An application for revocation must describe any arrangements made to have an authorized financial institution or a bank succeed the applicant.

The application must include any other information determined by regulation of the Authority.

“149. A notice concerning an application for revocation must state the date on which the authorized trust company intends to cease carrying on trust company activities, and the names and addresses of the authorized financial institutions or banks that will succeed it, if applicable.

“150. The Authority publishes a notice concerning an application for revocation in its bulletin.

If an authorized financial institution or a bank is to succeed the authorized trust company, the latter must send the published notice to each party to a contract it entered into in accordance with the authorization whose revocation it is applying for, and to every other person on whom rights are conferred by another act made in accordance with that authorization.

“151. The Authority grants an application for revocation only if the authorized trust company shows that

(1) it is not bound by any contract or other act made in accordance with the authorization whose revocation it is applying for;

(2) it can continue to be bound, until the date of maturity, by contracts and other acts made in accordance with the authorization whose revocation it is applying for, while complying with this Act; or

(3) the arrangements made to have an authorized financial institution or a bank succeed it are adequate and ensure the protection of the parties to a contract it has entered into in accordance with the authorization whose revocation it is applying for and of other persons on whom rights are conferred by another act made in accordance with that authorization, and it has sent those parties and persons the notice of application required under the second paragraph of section 150.

“152. The Authority must send the trust company a document attesting its decision and publish the document in its bulletin.

“CHAPTER XI

“REGISTER OF AUTHORIZED TRUST COMPANIES

“153. The Authority must establish and keep up to date a register of authorized trust companies that contains the following information for each of them:

(1) its name, the name it uses in Québec if different, the address of its head office and, if its head office is not in Québec, the address of its principal establishment in Québec;

(2) if applicable, the name and address of the attorney designated under section 26 of the Act respecting the legal publicity of enterprises;

(3) if applicable, the restrictions attached to the authorization granted to it by the Authority;

(4) the name and address of the auditor designated under section 97;

(5) the name of the financial group it belongs to or, if the group does not have a name, the names of the financial institutions that are members of it; and

(6) any other information considered by the Authority to be useful to the public.

The information contained in the register of authorized trust companies is public information; it may be set up against third persons as of the date it is recorded and is proof of its contents for the benefit of third persons in good faith.

“154. An authorized trust company must declare to the Authority any change to be made to the information concerning itself that is contained in the register, unless the Authority was otherwise informed by a notice or other document sent in accordance with this Act.

The declaration must be filed within 30 days after the date of the event giving rise to the change.

“CHAPTER XII

“CONFIDENTIALITY OF SUPERVISORY INFORMATION

“155. Such information as is determined by the Minister by regulation that is held by an authorized trust company in relation to the Authority’s supervision of the trust company is confidential. It may not be used as evidence in any civil or administrative proceedings and is privileged for that purpose.

No one may be compelled, in any civil or administrative proceedings, to testify or produce a document relating to that information.

“156. Despite section 155,

(1) the Attorney General, the Minister or the Authority may use the information made confidential by that section as evidence;

(2) the authorized trust company concerned may, in accordance with the regulation made by the Minister, use that information as evidence in any proceedings concerning the administration or enforcement of this Act or the Business Corporations Act (chapter S-31.1) that are brought by the company, the Attorney General, the Minister or the Authority; and

(3) anyone who may be compelled to testify or to produce a document relating to that information in any proceedings regarding the application of this Act or any other Act administered by the Authority to an authorized trust company or of the Business Corporations Act to an authorized trust company may use that information provided the proceedings are brought by the trust company concerned, the Attorney General, the Minister or the Authority.

“157. The communication of information referred to in this chapter otherwise than in the cases provided for by its provisions does not entail a waiver of the confidentiality conferred by those provisions.

“158. This chapter does not apply to information that must be made public by law. In addition, the prohibition under the first paragraph of section 155 does not apply if the information or document concerned was sent in accordance with another Act.

“TITLE III

“QUÉBEC TRUST COMPANIES AND QUÉBEC SAVINGS COMPANIES

“CHAPTER I

“REGULATION BY THIS TITLE

“DIVISION I

“COMPANIES CONCERNED

“159. This Title applies to business corporations constituted, continued or amalgamated under the Business Corporations Act that elect to become regulated by it.

“160. Business corporations become regulated by this Title as a result of a decision to that effect by the Minister, following the filing of an application for that purpose with the Authority and the publication of a notice of intention to apply to become regulated by this Title.

“DIVISION II

“BECOMING REGULATED BY THIS TITLE

“161. A business corporation may apply to become regulated by this Title only if it is authorized to do so by its shareholders.

“162. Shareholder authorization is given by special resolution.

By that resolution, the shareholders also authorize a director or an officer of the business corporation to see to the preparation of the documents necessary for it to become regulated by this Title and of those necessary for its change of name, and to sign those documents.

“163. The adoption of the special resolution authorizing a business corporation to apply to become regulated by this Title and change its name confers on shareholders the right to demand the repurchase of their shares.

That right is exercised in accordance with Chapter XIV of the Business Corporations Act as if it were provided for in section 372 of that Act.

The adoption of such a resolution confers on shareholders who do not own shares with voting rights the right to demand, in the same manner, that the corporation repurchase all their shares.

“DIVISION III

“NOTICE OF INTENTION AND APPLICATION TO BECOME REGULATED BY THIS TITLE

“164. A notice of intention to apply to become regulated by this Title must state

(1) the proposed name of the business corporation once it becomes regulated by this Title and its name at the time the notice is sent if different;

(2) the trust company activities or the deposit institution activities, within the meaning of the Deposit Institutions and Deposit Protection Act, for which the corporation is applying for the Authority’s authorization; and

(3) the location of the proposed head office of the regulated corporation and, if different, the location of its head office at the time the notice is sent.

The notice of intention must accompany the application to become regulated by this Title filed with the Authority.

“165. An application to become regulated by this Title filed by a business corporation must include the information prescribed by regulation of the Minister in addition to the information stated in the notice of intention.

It may also include the date and, if applicable, the time as of which the applicant wishes to become regulated by this Title, if later than the date and time of the Minister’s decision.

“166. An application to become regulated by this Title filed by a business corporation must, in addition, state the name and address of each holder of a significant interest in the corporation.

“167. In addition to the notice of intention, the following must be filed with the application:

(1) the articles of the business corporation;

(2) a description of the projected capital structure of the corporation and its business plan and financial forecasts for a three-year period;

(3) a certified copy of the special resolution authorizing the corporation to file an application to become regulated by this Title;

(4) the other documents prescribed by regulation of the Minister; and

(5) the fees prescribed by government regulation.

“168. An application to become regulated by this Title must be filed with the Authority together with the required documents and fees.

“169. On receipt of the application to become regulated by this Title and the required documents and fees, the Authority publishes the notice of intention in its bulletin.

“170. The Authority must prepare a report on the reasons for granting or denying the application to become regulated by this Title in which it assesses consumer interest and the impact of the decision on the relevant markets in Québec.

The report must cover such matters as

(1) the nature and scope of the financial means gathered for the ongoing financial support of the business corporation;

(2) if applicable, the grounds for disqualification for office as director of a regulated corporation that exist with respect to a director of, or a holder of a significant interest in, the applicant;

(3) the quality and feasibility of the business plan and the financial forecasts for the carrying on and development of the corporation’s activities;

(4) the compliance of the corporation’s proposed name with this Act.

The report must also assess the competency and experience of the corporation’s directors and officers.

“171. To the extent that the corporation’s proposed name is compliant with the requirements of this Act, the Authority sends its report to the Minister together with the application to become regulated by this Title and the accompanying documents.

“DIVISION IV

“MINISTER’S DECISION

“172. The Minister may, if the Minister considers it advisable, make a business corporation that has filed an application to that end subject to regulation by this Title.

“173. When the Minister makes a business corporation subject to regulation by this Title, the Minister sends a document attesting that decision to the corporation and to the Authority.

The document must include the date and time of the Minister's decision and, if different, the date and time specified in the application to become regulated by this Title.

“CHAPTER II

“APPLICATION OF THE BUSINESS CORPORATIONS ACT TO A REGULATED CORPORATION

“174. Subject to the other provisions of this Title that may limit or exclude their application in specific matters, the provisions of the Business Corporations Act continue to apply, with the necessary modifications, to regulated corporations, except sections 3 to 6, 8 to 10 and 126, Division III of Chapter VII, section 239 and Chapters X, XIV, XVI and XVII.

“CHAPTER III

“CONCLUSION OF THE ORGANIZATION OF A QUÉBEC TRUST COMPANY OR QUÉBEC SAVINGS COMPANY

“175. The organization of a regulated corporation concludes when the Authority, in accordance this Act, grants its authorization to carry on trust company activities, when it grants its authorization, under the Deposit Institutions and Deposit Protection Act, to carry on financial institution activities, or when it refuses to grant such authorizations or when such authorizations have not been obtained on the expiry of a one-year period after the corporation became regulated by this Title without there having been a refusal to grant it.

The Minister may, on the corporation's application, extend its organization for a period not exceeding one year.

“176. A regulated corporation that has obtained the Authority's authorization to carry on trust company activities is an authorized Québec trust company, regardless of whether it is authorized to carry on deposit institution activities.

“177. A regulated corporation whose organization ends without its having obtained the Authority's authorization must repurchase the shares it issued for consideration paid in money, unless the shareholder who holds them refuses.

The repurchase price of a share corresponds to that consideration, less, if applicable, an aliquot share corresponding to the proportion that the sums incurred for the corporation to become regulated by this Title and for its organization are of the total number of shares in circulation at the time the organization ended.

A corporation that is unable to pay the full repurchase price offered because there are reasonable grounds for believing that it is, or would after the payment be, unable to pay its liabilities as they become due is only required to pay the maximum amount it may legally pay. In that case, the shareholders remain creditors of the corporation for the unpaid balance of the repurchase price and are entitled to be paid as soon as the corporation is legally able to do so or, in the event of liquidation, are entitled to be collocated after the other creditors but by preference over the other shareholders.

“178. A business corporation ceases to be regulated by this Title, except the third paragraph of section 177, once it has repurchased all the shares for which a shareholder has not refused the repurchase.

“CHAPTER IV

“NAME

“179. Sections 23 and 27 of the Business Corporations Act do not apply to a regulated corporation’s name.

For the purpose of applying the other provisions of Division I of Chapter IV of that Act to corporations, the Authority exercises the functions and powers conferred on the enterprise registrar.

“180. A change of name of a regulated corporation does not affect its rights and obligations and any proceedings to which it is a party may be continued under its new name without continuance of suit.

“181. This chapter applies despite the Act respecting the legal publicity of enterprises.

“CHAPTER V

“RESTRICTIONS ON ACTIVITIES

“182. The Authority may require a regulated corporation to establish a legal person of which the corporation will be the holder of control in order to carry on an activity other than trust company activities or deposit institution activities,

(1) if it constitutes the operation of an enterprise, regardless of the regulated corporation’s other activities; and

(2) if, in the Authority’s opinion, it renders the application of this Act difficult or ineffective.

For the purposes of the first paragraph, an activity is deemed not to constitute the operation of an enterprise if it generates less than 2% of a corporation’s gross income.

“CHAPTER VI

“LOANS, HYPOTHECS AND OTHER SECURITIES

“183. Except in the case of a short-term loan to meet liquidity requirements, no regulated corporation may borrow by issuing debt obligations unless the loan is unsecured.

In addition, the total unsecured loans for which debt obligations were issued by a corporation may not exceed the limits determined by regulation of the Authority. The regulation may prescribe the terms of the debt obligations.

Each issue of debt obligations must be the subject of a resolution by the board of directors which must set the terms of the issue. The Authority may, by regulation, determine the terms required to be set by that resolution.

“184. No regulated corporation may, without the Authority’s authorization, grant a hypothec or other security on its movable property, except to secure a short-term loan contracted to meet liquidity requirements.

The Authority may, in granting its authorization, require any undertaking it considers necessary to ensure compliance with this Act.

“CHAPTER VII

“SHARE CAPITAL

“DIVISION I

“ISSUE

“185. Despite section 53 of the Business Corporations Act, the shares of a regulated corporation are issued only when they are fully paid.

“DIVISION II

“MAINTENANCE OF SHARE CAPITAL

“186. A regulated corporation may not make a payment to purchase or redeem shares if, in addition to the grounds referred to in section 95 of the Business Corporations Act, there are reasonable grounds for believing that the corporation is, or would after the payment be, unable to maintain, in accordance with section 45, adequate assets to meet its liabilities, as and when they come due, and adequate capital to ensure its sustainability.

The reference to section 95 of the Business Corporations Act in sections 97 and 98 of that Act is replaced by a reference to the first paragraph when those sections apply to a regulated corporation.

“187. A regulated corporation may not reduce the amount of its issued share capital if, in addition to the grounds referred to in section 101 of the Business Corporations Act, there are reasonable grounds for believing that the corporation is, or would after the payment be, unable to maintain, in accordance with section 45, adequate assets to meet its liabilities, as and when they come due, and adequate capital to ensure its sustainability.

“188. A regulated corporation may not declare or pay a dividend, except by issuing shares or options or rights to acquire shares, if, in addition to the grounds referred to in section 104 of the Business Corporations Act, there are reasonable grounds for believing that the corporation is, or would after the payment be, unable to maintain, in accordance with section 45, adequate assets to meet its liabilities, as and when they come due, and adequate capital to ensure its sustainability.

“DIVISION III

“DISCLOSURE OF CERTAIN INTERESTS AND RESTRICTIONS CONCERNING THE EXERCISE OF THE VOTING RIGHTS CARRIED BY THE SHARES ISSUED BY A REGULATED CORPORATION

“189. Anyone who intends to become the holder of a significant interest in a regulated business corporation’s decisions must send a notice of intention to the Authority not later than the 30th day before the day on which the person will become the holder of that interest.

The same is true for whoever is already the holder of such an interest but not the holder of control of the corporation and who intends to become the holder of such control.

“190. A notice of intention under section 189 must include

(1) the name and address of the person or group that intends to become the holder of the interest referred to in that section, and in the case of a natural person, his or her résumé, or, in the case of a group, its juridical form and, if applicable, the identity of the holder of control of the group; and

(2) a description of the shares issued by the corporation the voting rights attached to which would make the person or group the holder of the interest referred to in section 189.

“191. On receipt of the notice of intention, the Authority must prepare a report on the effect of the transaction on the regulated business corporation and its development as well as on the relevant markets in Québec.

The Authority must send the report to the Minister.

“192. The Minister may, if the Minister considers it advisable, approve the acquisition of control or the acquisition of another significant interest referred to in section 189.

“193. The Authority may order that the voting rights conferred by the shares issued by a regulated business corporation on the holder of an interest referred to in section 189 be exercised by an administrator of the property of others appointed by the Authority if the holder has not obtained the Minister’s certification.

“194. Instead of revoking or suspending the authorization granted to a regulated corporation under subparagraph *c* of subparagraph 1 of the first paragraph of section 141, or attaching a condition or restriction to the authorization under section 142, the Authority may order that the voting rights conferred by the shares issued by the corporation on the holder of control of the corporation or the holder of a significant interest in the decisions of the corporation be exercised by an administrator of the property of others appointed by the Authority.

The order may not be effective for more than five years from the day it was made.

“195. An order under section 193 or 194 may, within 30 days of its notification, be contested before the Financial Markets Administrative Tribunal.

The Tribunal may only confirm or quash a contested order.

“CHAPTER VIII

“DIRECTORS AND OFFICERS

“DIVISION I

“BOARD OF DIRECTORS

“196. A majority of a regulated corporation’s directors must be resident in Canada.

“DIVISION II

“DISQUALIFICATION

“197. In addition to persons disqualified for office as directors under the Civil Code, the following persons cannot be directors of a regulated corporation:

(1) a person found guilty of an indictable offence or other offence involving fraud or dishonesty, unless the person has obtained a pardon; and

(2) a person who, by reason of an order issued by the Authority under section 193 or 194, cannot exercise the voting rights conferred on the person by shares issued by the corporation.

“198. The Authority may dismiss a director holding office in a regulated corporation if the director is disqualified for office as such.

“199. Before dismissing a director of a regulated corporation, the Authority notifies the prior notice prescribed by section 5 of the Act respecting administrative justice to the director and the corporation in writing and grants them at least 10 days to submit observations.

“200. A decision under section 198 may, within 30 days of its notification, be contested before the Financial Markets Administrative Tribunal.

The Tribunal may only confirm or quash a contested decision.

“DIVISION III

“QUORUM

“201. Despite section 138 of the Business Corporations Act, the quorum at a meeting of the board of directors of a regulated corporation may not be less than a majority of the directors in office.

“DIVISION IV

“FUNCTIONS AND POWERS OF THE BOARD OF DIRECTORS

“§1.—*Provisions applicable to all regulated corporations*

“202. Any delegation of powers must be authorized by special resolution.

“203. A committee of the board of directors may exercise delegated powers as delegatee provided a majority of its members are Canadian residents.

Only those officers of the corporation who are Canadian residents may exercise delegated powers as delegates.

“204. Any director who, after the shareholders’ meeting, becomes aware of facts that would have entailed material amendments to the corporation’s financial statements must inform the auditor and the board of directors immediately; the latter must, without delay, send the auditor revised financial statements.

“§2.—Provisions specific to trust companies

“205. The directors of a trust company may, if a special resolution has been passed for that purpose, delegate the exercise of their powers relating to the administration of the property of others to one or more officers of the corporation, with or without the power of subdelegation to other officers.

“DIVISION V

“PROHIBITED ACTS AND LIABILITY

“206. For the purpose of applying section 156 of the Business Corporations Act to a regulated corporation, the following modifications must be made:

(1) the reference to section 95 of that Act in paragraph 3 of section 156 is replaced by a reference to section 186 of this Act; and

(2) the reference to section 104 of that Act in paragraph 4 of section 156 is replaced by a reference to section 188 of this Act.

“CHAPTER IX

**“AMENDMENT, CONSOLIDATION, CORRECTION AND
CANCELLATION OF ARTICLES**

“207. The amendment of the articles of a regulated corporation requires the Authority’s permission. The same is true for the consolidation and correction of the articles, the only exception being the correction of an obvious error.

The cancellation of articles also requires the Authority’s permission, except the cancellation of articles of amalgamation or continuance, which requires the Minister’s permission.

“208. The Authority may order a regulated corporation to consolidate its articles.

“209. To obtain the Authority’s or the Minister’s permission, a regulated corporation must file an application for permission with the Authority.

“210. The information that an application for permission must include is determined by regulation of the Minister or of the Authority, depending on whose permission must be requested.

“211. The following must be filed with the application:

(1) the proposed articles of amendment, if the application is for permission to amend or correct the regulated corporation’s articles;

(2) the proposed consolidated articles, if the application is for permission to consolidate the regulated corporation's articles;

(3) the other documents prescribed by regulation of the Minister or the Authority, as the case may be; and

(4) the fees prescribed by government regulation.

“212. On receipt of an application for permission and the required documents and fees, the Authority,

(1) when the permission that must be requested is the Minister's, prepares a report for the Minister on the reasons for granting or denying the application; or

(2) when the permission that must be requested is its own, grants the application if it considers it advisable.

“213. The Minister may, if the Minister considers it advisable, grant a regulated corporation permission to cancel its articles of amalgamation or continuance.

“214. When ruling on an application filed by a regulated corporation, the Minister or Authority must send the corporation a document justifying the decision.

“215. A regulated corporation may, from the receipt of the document granting the permission requested, send the enterprise registrar, as applicable,

(1) the articles of amendment that were filed with the application for permission to amend or correct the corporation's articles;

(2) the consolidated articles that were filed with the application for permission to consolidate the corporation's articles; or

(3) the application for cancellation of the articles.

In all cases, the document granting the permission requested must be filed with the application or the articles sent to the enterprise registrar.

“216. If a regulated corporation's articles of amendment or consolidated articles are deposited in the enterprise register, the enterprise registrar must send a certified copy of them to the Authority.

“CHAPTER X

“CONTINUANCE

“DIVISION I

“CONTINUANCE AS A REGULATED CORPORATION

“217. The following legal persons may be continued as regulated corporations:

(1) a legal person of the nature of a business corporation constituted under the laws of a jurisdiction other than Québec, if the Act governing the corporation confers on it the capacity to carry on trust company activities or to solicit or receive deposits of money from the public; and

(2) legal persons forming part of a cooperative group in the case provided for in section 40.26 of the Deposit Institutions and Deposit Protection Act.

The continuance of legal persons forming part of a cooperative group is governed by the Deposit Institutions and Deposit Protection Act.

“218. In addition to the articles of continuance required to be filed under section 289 of the Business Corporations Act, continuance as a regulated corporation requires a permission granted by the Minister following the filing of an application for continuance with the Authority.

An application for continuance must include the name and address of each of the holders of a significant interest in the corporation.

“219. The following must be filed with the application for continuance:

(1) the articles of continuance and other documents that, under section 292 of the Business Corporations Act, must be sent to the enterprise registrar;

(2) the other documents prescribed by regulation of the Minister; and

(3) the fees prescribed by government regulation for processing the application for continuance.

“220. A legal person that files an application for continuance but that is not an authorized trust company or an authorized deposit institution is required, when filing that application, to also file either an application with the Authority for authorization to carry on trust company activities or an application for authorization to carry on deposit institution activities in accordance with the Deposit Institutions and Deposit Protection Act.

“221. On receipt of the application for continuance and the required documents and fees, the Authority processes, if applicable, the application for authorization and prepares a report on the reasons for granting or denying the application for continuance.

The report must include the information from the report it must prepare in accordance with section 170 when processing an application to become regulated by this Title.

“222. The Authority sends its report to the Minister, together with the application for continuance and the accompanying documents, unless the Authority denies the application for authorization made, if applicable, in accordance with section 220.

“223. The Minister may, if the Minister considers it advisable, allow the continuance of the authorized trust company or authorized deposit institution.

“224. When ruling on an application filed by a legal person, the Minister must send the legal person and the Authority a document attesting the decision.

“225. A legal person that is continued as a regulated corporation may, from receipt of the document attesting the Minister’s permission, send the enterprise registrar the articles of continuance that were filed with the application for continuance.

The document attesting the Minister’s permission must be filed with the articles sent to the enterprise registrar.

“226. A legal person becomes, as of the date and, if applicable, the time shown on the certificate of continuance issued by the enterprise registrar, a regulated business corporation.

“227. When the articles of continuance are deposited in the enterprise register, the enterprise registrar must send a certified copy of them to the Authority.

“DIVISION II

“CONTINUANCE UNDER THE LAWS OF A JURISDICTION OTHER THAN QUÉBEC

“228. A regulated corporation may not, without the Minister’s permission, apply for continuance under the laws of a jurisdiction other than Québec under section 297 of the Business Corporations Act.

“229. To obtain the Minister’s permission, a regulated corporation must file an application for permission with the Authority.

The corporation must, in the application, show that the parties to contracts it has entered into in accordance with the authorization granted to it by the Authority, the persons on whom rights are conferred by any other act made in accordance with that authorization, or its other creditors or its shareholders will not suffer injury as a result of the continuance.

“230. The following must be filed with the application for permission:

- (1) the notice of intention to change the corporation’s home regulator described in section 129;
- (2) the other documents prescribed by regulation of the Minister; and
- (3) the fees prescribed by government regulation.

“231. On receipt of the application and the required documents and fees, in addition to publishing the notice of intention and reviewing the authorization under section 133, the Authority must prepare a report on the reasons for granting or denying the application.

The Authority must indicate in the report whether, in its opinion, the parties to a contract the regulated corporation has entered into in accordance with the authorization granted to it by the Authority, its other creditors and its shareholders will not suffer injury as a result of the continuance.

“232. The Authority sends its report to the Minister, together with the application for permission and the accompanying documents.

“233. The Minister may, if the Minister considers it advisable, grant the regulated corporation the permission to apply for continuance under the laws of a jurisdiction other than Québec under section 297 of the Business Corporations Act.

“234. When ruling on an application by a regulated corporation, the Minister must send the Authority a document attesting the decision.

The corporation must include the document with the application it sends to the enterprise registrar in accordance with section 297 of the Business Corporations Act.

“235. A corporation ceases to be regulated by this Title as of the date and, if applicable, the time shown on the certificate of discontinuance issued under section 302 of the Business Corporations Act.

The enterprise registrar sends the Authority a certified copy of the certificate of discontinuance that the registrar issued in respect of a regulated business corporation.

“CHAPTER XI

“AMALGAMATION

“DIVISION I

“GENERAL PROVISIONS

“236. In addition to the articles of amalgamation and, as applicable, the amalgamation agreement required to be filed under the Business Corporations Act, an amalgamation involving a regulated corporation requires the Minister’s permission and the filing of an application for that purpose with the Authority, together with a notice of intention to amalgamate under section 128.

“237. The amalgamation of a regulated corporation with one or more other business corporations, regardless of whether the latter are regulated business corporations, is allowed only if the amalgamated corporation is authorized to carry on the same activities as each of the amalgamating regulated corporations.

“DIVISION II

“APPLICATION FOR PERMISSION TO AMALGAMATE

“238. An application for permission to amalgamate must include, in addition to the information required to be included in a notice of intention to amalgamate under section 128, the information prescribed by regulation of the Authority.

The application must also include the name and address of each holder of a significant interest in the amalgamated business corporation, if any.

In the case of an amalgamation involving more than one regulated corporation, the application must be a joint one.

“239. In addition to the notice of intention, the following must be filed with the application:

- (1) the articles of amalgamation;
- (2) the amalgamation agreement, except in the case of a short-form amalgamation, within the meaning of the Business Corporations Act, where one of the amalgamating business corporations is a regulated business corporation;
- (3) the special resolutions of the shareholders authorizing the amalgamation of each amalgamating corporation;
- (4) the other documents prescribed by regulation of the Minister; and
- (5) the fees prescribed by government regulation.

“240. On receipt of the application and the required documents and fees, in addition to publishing the notice of intention and reviewing the authorization under section 133, the Authority must prepare a report for the Minister on the reasons for granting or denying the application for permission to amalgamate.

The report must include, in particular, the information from the report the Authority must prepare in accordance with section 170 when processing an application to become regulated by this Title.

“241. The Authority sends the Minister its report, together with the application for permission to amalgamate and the documents filed with it, unless it determines that the amalgamated corporation would not be authorized to carry on the same activities as each of the amalgamating regulated corporations.

“DIVISION III

“MINISTER’S DECISION

“242. The Minister may, if the Minister considers it advisable, allow the amalgamation of a regulated corporation.

“243. When ruling on an application for permission to amalgamate, the Minister must send the Authority and the amalgamating corporations a document attesting the decision.

“244. Amalgamating corporations may, from receipt of the document by which the Minister grants permission, send the enterprise registrar the articles of amalgamation that were filed with the application for permission to amalgamate.

The document by which the Minister grants permission must be filed with the articles of amalgamation sent to the enterprise registrar.

“245. The amalgamated corporation is, as of the date and, if applicable, the time shown on the certificate of amalgamation issued by the enterprise registrar, a regulated corporation.

“246. When the articles of amalgamation of a regulated business corporation are deposited in the enterprise register, the enterprise registrar sends a certified copy of them to the Authority.

“CHAPTER XII

“TERMINATION OF REGULATION BY THIS TITLE

“247. Unless it is continued under the laws of a jurisdiction other than Québec, a corporation may cease to be regulated by this Title only if the revocation of every authorization granted to it by the Authority under this Act to carry on trust company activities, or under the Deposit Institutions and Deposit Protection Act to carry on deposit institution activities, is final.

If two authorizations are being revoked, a business corporation ceases to be regulated by this Title when the revocation of the last authorization becomes final.

“248. A business corporation ceases to be regulated by this Title when the full revocation of its authorization becomes final. If, in the situation referred to in section 247, two authorizations were granted to a same corporation, the corporation ceases to be regulated by this Title when the revocation of the last authorization becomes final.

“249. A regulated business corporation may apply for the revocation of its authorization only if it is so authorized by its shareholders and the latter have authorized it to change its name for one that does not include a word or expression reserved under section 286 of this Act or under section 45.3 of the Deposit Institutions and Deposit Protection Act.

“250. Shareholder authorization is given by special resolution.

By that resolution, the shareholders also authorize a director or an officer of the business corporation to see to the preparation of the documents necessary for the revocation and of those necessary for its change of name, and to sign the documents.

“251. A consent, declaration or decision referred to in section 304 of the Business Corporations Act, whose object is the dissolution of a regulated business corporation has no effect other than granting the authorizations referred to in section 250, until the corporation ceases to be regulated under this Title.

“CHAPTER XIII

“MINISTER’S POWERS

“252. The Minister may request the Authority to provide the documents and information the Minister considers useful in assessing the applications on which the Minister is to rule in accordance with this Title.

“TITLE IV

“ENFORCEMENT AND OTHER POWERS OF THE AUTHORITY

“CHAPTER I

“INSTRUCTIONS, GUIDELINES AND ORDERS

“253. The Authority may establish instructions for an authorized trust company.

Instructions must be in writing and specific to the addressee, but need not be published.

The Authority must, before sending instructions, notify the addressee and give it the opportunity to submit observations.

“254. The Authority may establish guidelines for all authorized trust companies or a single class of them.

Guidelines must be general and impersonal; the Authority publishes them in its bulletin after sending a copy of them to the Minister.

“255. A guideline informs its addressees of measures that, in the Authority’s opinion, they may establish to satisfy their obligations under Title II.

Instructions inform their addressee of the obligations that, in the Authority’s opinion, are incumbent on it under that title.

“256. The Authority may order an authorized trust company to cease a course of action or to implement specified measures if the Authority is of the opinion that the company is failing to perform its obligations under this Act in full, properly and without delay.

The Authority may, for the same reasons, issue an order against a legal person that, on behalf of an authorized trust company, carries on its activities or performs its obligations.

At least 15 days before issuing an order, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice to the contravener in writing, stating the reasons which appear to justify the order, the date on which the order is to take effect and the contravener’s right to submit observations.

“257. The Authority’s order must state the reasons for which it is issued. The order must be served on all of the groups or all the persons to whom it applies.

The order takes effect on the date it is served or on any later date specified in it.

“258. The Authority may, without prior notice, issue a provisional order valid for up to 15 days if, in its opinion, any period of time granted to the person concerned to submit observations may be detrimental.

The order must include reasons and takes effect on the date it is served on the person concerned. The latter may, within six days after receiving the order, submit observations to the Authority.

“259. The Authority may revoke or amend an order it has issued under this Act.

“CHAPTER II

“CONSERVATORY MEASURES

“260. The Authority, for the purposes of or in the course of an investigation or when it is informed that an authorized trust company is voluntarily dissolving or liquidating in contravention of section 26 or intends to do so, may request the Financial Markets Administrative Tribunal

(1) to order a person or group not to dispose of funds, securities or other property in the person’s or group’s possession; or

(2) to order a person or group to refrain from withdrawing funds, securities or other property on deposit with, under the control of or in the safekeeping of any other person or group.

Such an order takes effect from the time the person or group concerned is notified of it and, unless otherwise provided, remains binding for a 12-month period; the order may be revoked or otherwise amended during that period.

“261. The person or group concerned must be notified at least 15 days before any hearing during which the Financial Markets Administrative Tribunal is to consider an application for the renewal of an order.

The Tribunal may renew the order if the person or group concerned has not requested to be heard or has failed to establish that the reasons for the initial order have ceased to exist.

“262. A person or group named in an order issued under section 260 who has put a safety deposit box at the disposal of a third person or has allowed a third person to use a safety deposit box must immediately notify the Authority.

On the Authority’s request, the person or the group’s duly authorized representative must open the safety deposit box in the presence of an agent of the Authority, draw up an inventory of the contents in triplicate, and give one copy to the Authority and another to the person or group concerned.

“263. No order applies to funds or securities deposited with a clearing-house or a transfer agent, unless the order so provides.

“264. An order also applies to funds, securities and other property received after the order becomes effective.

“265. An order that names a bank or another financial institution applies only to the agencies or branches specified.

“266. A person or group directly affected by an order issued under section 260, if in doubt as to the application of the order to particular funds, securities or other property, may apply to the Financial Markets Administrative Tribunal for clarification; such a person or group may also apply for an amendment to or the revocation of the order.

A written notice setting out the reasons for the application for amendment or revocation must be filed with the Tribunal. The notice must be served on the Authority at least 15 days before the hearing set to hear the application.

“267. An order issued under section 260 is admissible for publication in the same register as that in which rights in the funds, securities or other property covered by the order are required to be published or admissible for publication.

Likewise, the order may be published in a register kept outside Québec if such orders are admissible for publication under the Act governing that register.

“268. In addition to any measure imposed in an order, the Financial Markets Administrative Tribunal may require a person or group named in the order to repay the costs incurred in connection with the inspection or inquiry that established non-compliance with the provision concerned, according to the tariff set by government regulation.

“269. The Financial Markets Administrative Tribunal may prohibit a person from acting as a director or officer of an authorized trust company on the grounds set out in article 329 of the Civil Code or when a sanction has been imposed on the person under this Act.

The prohibition imposed by the Tribunal may not exceed five years.

The Tribunal may, at the request of the person concerned, lift the prohibition on such conditions as it considers appropriate.

“CHAPTER III

“INJUNCTION AND PARTICIPATION IN PROCEEDINGS

“270. The Authority may apply to a judge of the Superior Court for an injunction in respect of any matter relating to the carrying out of this Act.

The application for an injunction constitutes a proceeding in itself.

The procedure prescribed in the Code of Civil Procedure applies, except that the Authority cannot be required to give security.

“271. The Authority may, on its own initiative and without notice, intervene in any proceeding relating to a provision of this Act or of the Business Corporations Act that is applicable to a company governed by this Act.

“CHAPTER IV

“CANCELLATION OF A CONTRACT OR SUSPENSION OF ITS PERFORMANCE

“272. The Authority may apply to a court to cancel or suspend the performance of a contract entered into by an authorized trust company in contravention of this Act if the Authority shows that the cancellation or suspension is in the interest of the company’s co-contracting parties and that, under the circumstances, that interest must prevail over the legal security of parties to the contract and of other persons whose rights and obligations would be affected by the cancellation or suspension.

The cancellation or suspension may only be applied for after the end of the 10th year after the contract concerned came into effect.

The court may also order that directors who are party to such a contract, who have authorized it or who have facilitated its entering into, be solidarily required to pay the authorized trust company the amount of damages awarded as compensation for the injury suffered or the sum paid by the authorized trust company because of the contract.

“CHAPTER V

“ADMINISTRATION OF THE ACT, REPORTS AND MISCELLANEOUS PROVISIONS

“273. The Authority may require an authorized trust company, a regulated corporation or anyone who files an application under this Act to provide any document or information that is useful in assessing the applications on which the Authority or the Minister is to rule in accordance with this Act.

“274. The costs that must be incurred by the Authority for the administration of this Act are to be borne by the authorized trust companies; they are determined annually by the Government based on the forecasts provided to it by the Authority.

Such costs, for each company, correspond to the sum of the minimum contribution set by the Government and the proportion of those costs corresponding to the proportion that the company's gross income in Québec for the preceding year is of the aggregate of the similar income of all the companies for the same period.

The difference noted between the forecast of the costs that must be incurred for the administration of this Act for a year and those actually incurred for the same year must be carried over to the similar costs determined by the Government for the year after the difference is noted.

A certificate of the Authority must definitively establish the amount payable by each company under this section.

“275. The Authority must, before 30 June each year, report to the Minister, on the basis of the information obtained from the authorized trust companies and other regulated corporations and following the investigations, inspections and evaluations made by the Authority, on the affairs of all the companies and corporations carrying on business in Québec for the year ending on the preceding 31 December.

“276. The Minister tables the Authority's report in the National Assembly within 30 days of its receipt or, if the Assembly is not sitting, within the 15 days of resumption.

“CHAPTER VI

“REGULATIONS

“277. In addition to other regulations that it may make under this Act, the Authority may, by regulation, determine the standards applicable to authorized trust companies in relation to their commercial and management practices.

“278. A regulation made under this Act by the Authority is approved by the Minister with or without amendment.

The Minister may make such a regulation if the Authority fails to do so within the time period specified by the Minister.

A draft of a regulation must be published in the Authority's bulletin with the notice required under section 10 of the Regulations Act (chapter R-18.1).

The draft of the regulation may not be submitted for approval and the regulation may not be made before 30 days have elapsed since the publication of the draft.

A regulation under this section comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in it. It must also be published in the Authority's bulletin. If the regulation published in the Authority's bulletin differs from the one published in the *Gazette officielle du Québec*, the latter prevails.

Sections 4 to 8, 11 and 17 to 19 of the Regulations Act do not apply to a regulation of the Authority under this Act.

“279. The fees payable for the formalities prescribed by regulation of the Authority or the Minister are prescribed by government regulation.

“TITLE V

“PROHIBITIONS, MONETARY ADMINISTRATIVE PENALTIES AND PENAL PROVISIONS

“CHAPTER I

“MISCELLANEOUS PROHIBITIONS

“280. No one may, without being a regulated corporation applying for the Authority's authorization to carry on trust company activities or an authorized trust company, hold themselves out as an authorized trust company or use a name that includes any of the following words: “fiducie”, “fidéicommis” or “trust”.

“CHAPTER II

“MONETARY ADMINISTRATIVE PENALTIES

“DIVISION I

“FAILURES TO COMPLY

“281. A monetary administrative penalty of \$250 in the case of a natural person and \$1,000 in any other case may be imposed on

(1) an authorized trust company

(a) that, in contravention of section 41, fails to send the Authority a report on its complaint processing and dispute resolution policy,

(b) whose ethics committee, in contravention of section 87, fails to send the Authority a report on its activities,

(c) that, in contravention of section 99, fails to notify the Authority of the end of the auditor's term,

(d) that, in contravention of section 110, fails to send the Authority an annual statement of the position of its affairs,

(e) that, in contravention of the first paragraph of section 111, fails to send the Authority the financial statements or an auditor's report referred to in that section, or

(f) that, being a Québec company and in contravention of the second paragraph of section 111, fails to send the Authority a statement of its overdue loans and unproductive investments;

(2) a regulated corporation that, in contravention of section 225 of the Business Corporations Act, fails to send its financial statements to a shareholder who requests them; or

(3) an authorized trust company, the holder of control of the company, a member of its financial group or its auditor if it or he or she refuses to communicate or provide access to a document or information required by the Authority for the purposes of this Act.

The penalties prescribed by the first paragraph also apply if the documents or information concerned are incomplete, or are not sent before the specified time limit.

“282. An monetary administrative penalty of \$2,500 may be imposed on

(1) an authorized trust company

(a) that fails to perform its obligations under an undertaking given to the Authority under section 25, 82 or 124,

(b) that, in contravention of section 33, fails to adopt a complaint processing policy or that, in contravention of section 64, fails to adopt an investment policy approved by its board of directors, or whose ethics committee, in contravention of section 84, fails to adopt rules of ethics,

(c) that, in contravention of section 33, fails to keep the complaints register prescribed by that section,

(d) if, in contravention of section 74, neither a director nor a committee has reported to the board of directors on the responsibility conferred on them of seeing that sound commercial practices and sound and prudent management practices are adhered to and situations contrary to such practices are detected, or

(e) that, without the Authority's authorization under section 82 has not, in contravention of section 80, established an audit committee or an ethics committee or has established one whose composition contravenes section 81; or

(2) a regulated corporation that fails to perform its obligations under an undertaking given to the Authority under section 184.

“283. A monetary administrative penalty of \$1,000 in the case of a natural person and \$5,000 in any other case may be imposed on

(1) an authorized trust company

(a) that holds contributed capital securities issued by a legal person or partnership, participations in a trust or a share in a co-ownership acquired in contravention of the limits prescribed in section 67 without becoming the holder of control of it in accordance with section 68,

(b) more than half of whose board of directors, in contravention of section 78, is not composed of persons other than its employees or employees of a group of which it is the holder of control,

(c) for which no auditor, in contravention of section 95, has been charged with the functions provided for in that section or for which an auditor has been charged with those functions but does not have the qualifications required under section 96, or

(d) that, in contravention of any of sections 128 to 132, fails to notify the Authority of any of the operations described in section 125, sends the Authority an incomplete notice of intention or fails to comply with the time limit prescribed by section 127 for filing the notice of intention; or

(2) a regulated corporation

(a) whose board of directors, in contravention of section 196, is not composed of a majority of directors who are resident in Canada,

(b) that has outstanding debt obligations issued in contravention of section 183 or whose movable property is charged with a hypothec or other security granted in contravention of section 184, or

(c) that has outstanding shares that were issued without being fully paid, in contravention of section 185.

“284. A monetary administrative penalty of \$2,000 in the case of a natural person and \$10,000 in any other case may be imposed on any person who fails to comply with an order or other decision of the Authority.

“285. If a failure to comply for which a monetary administrative penalty may be imposed continues for more than one day, it constitutes a new failure for each day it continues.

“286. The Minister or the Authority may, in a regulation made under this Act, specify that a failure to comply with the regulation may give rise to a monetary administrative penalty.

The regulation may define the conditions for applying the penalty and set forth the amounts or the methods for determining them. The amounts may vary according to the seriousness of the failure to comply, without exceeding the maximum amounts provided for in section 284.

“DIVISION II

“NOTICE OF NON-COMPLIANCE AND IMPOSITION

“287. In the event of a failure to comply referred to in Division I, a notice of non-compliance may be notified to the party responsible for the failure urging that the necessary measures be taken immediately to remedy it.

Such a notice must mention that the failure may give rise to a monetary administrative penalty.

“288. The imposition of a monetary administrative penalty is prescribed by two years from the date of the failure to comply.

“289. The monetary administrative penalty for a failure to comply with a provision of this Act may not be imposed on the party responsible for the failure if a statement of offence has already been served on the person for a failure to comply with the same provision on the same day, based on the same facts.

For the purposes of this chapter, “party responsible for a failure to comply” means the person or group on whom or which a monetary administrative penalty is imposed or is likely to be imposed, as the case may be, for a failure to comply referred to in Division I.

“290. A monetary administrative penalty is imposed on the party responsible for a failure to comply by notification of a notice of claim.

The notice must include

- (1) the amount of the claim;
- (2) the reasons for it;
- (3) the time from which it bears interest;
- (4) the right, under section 291, to obtain a review of the decision to impose the penalty and the time limit for exercising that right; and
- (5) the right to contest the review decision before the Financial Markets Administrative Tribunal and the time for bringing such a proceeding.

The notice must also include information on the procedure for recovery of the amount claimed. The party responsible for the failure to comply must also be informed that failure to pay the amount owing may give rise to the amendment, suspension or revocation of any authorization granted under this Act or to a refusal to grant such an authorization, and, if applicable, that the facts on which the claim is founded may result in penal proceedings.

Unless otherwise provided, the amount owing bears interest at the rate determined under the first paragraph of section 28 of the Tax Administration Act (chapter A-6.002), from the 31st day after notification of the notice.

“DIVISION III

“REVIEW

“291. The party responsible for a failure to comply may apply in writing to the Authority for a review of the decision to impose a monetary administrative penalty within 30 days after notification of the notice of claim.

The persons responsible for the review are designated by the Authority; they must not come under the same administrative authority as the persons responsible for imposing such penalties.

“292. The application for review must be dealt with promptly. After giving the applicant an opportunity to submit observations and produce any documents to complete the record, the person responsible for the review renders a decision on the basis of the record, unless the person deems it necessary to proceed in some other manner.

“293. The review decision must be written in clear and concise terms, with reasons given, must be notified to the applicant and must state the applicant’s right to contest the decision before the Financial Markets Administrative Tribunal and the time limit prescribed for bringing such a proceeding.

If the review decision is not rendered within 30 days after receipt of the application or, if applicable, within the time granted to the applicant to submit observations or documents, the interest provided for in the fourth paragraph of section 290 on the amount owing ceases to accrue until the decision is rendered.

“294. A review decision that confirms the imposition of a monetary administrative penalty may be contested before the Financial Markets Administrative Tribunal by the party responsible for the failure to comply to which the decision pertains, within 60 days after notification of the review decision.

The Tribunal may only confirm or quash a contested decision.

When rendering its decision, the Tribunal may make a ruling with respect to interest accrued on the penalty while the matter was pending before it.

“DIVISION IV

“RECOVERY

“295. If the party responsible for a failure to comply has defaulted on payment of a monetary administrative penalty, its directors are solidarily liable with that party for the payment of the penalty, unless they establish that they exercised due care and diligence to prevent the failure.

“296. The payment of a monetary administrative penalty is secured by a legal hypothec on the debtor’s movable and immovable property.

For the purposes of this division, “debtor” means the party responsible for a failure to comply that is required to pay a monetary administrative penalty and, as applicable, each of its directors and officers are solidarily liable with that party for payment of the penalty.

“297. The debtor and the Authority may enter into a payment agreement with regard to the monetary administrative penalty owing. Such an agreement, or the payment of the amount owing, does not constitute, for the purposes of any other administrative penalty under this Act, an acknowledgement of the facts giving rise to it.

“298. If the monetary administrative penalty owing is not paid in its entirety or the payment agreement is not adhered to, the Authority may issue a recovery certificate on the expiry of the time for applying for a review of the decision to impose the penalty, on the expiry of the time for contesting the review decision before the Financial Markets Administrative Tribunal or on the expiry of 30 days after the final decision of the Tribunal confirming all or part of the decision to impose the penalty or the review decision, as applicable.

However, a recovery certificate may be issued before the expiry of the time referred to in the first paragraph if the Authority is of the opinion that the debtor is attempting to evade payment.

A recovery certificate must state the debtor’s name and address and the amount of the debt.

“299. Once a recovery certificate has been issued, any refund owed to a debtor by the Minister of Revenue may, in accordance with section 31 of the Tax Administration Act, be withheld for payment of the amount due referred to in the certificate.

Such withholding interrupts the prescription provided for in the Civil Code with regard to the recovery of an amount owing.

“300. On the filing of a recovery certificate at the office of the competent court, together with a copy of the final decision stating the amount of the debt, the decision becomes enforceable as if it were a final judgment of that court not subject to appeal, and has all the effects of such a judgment.

“301. The debtor is required to pay a recovery charge in the cases, under the conditions and in the amount determined by regulation of the Minister.

“DIVISION V

“REGISTER

“302. The Authority keeps a register relating to monetary administrative penalties.

The register must contain at least the following information:

- (1) the date the penalty was imposed;
- (2) the date and nature of the failure, and the legislative provisions under which the penalty was imposed;
- (3) if the penalty was imposed on a legal person, its name and the address of its head office or one of its establishments or of the business establishment or of one of its agents;
- (4) if the penalty was imposed on a natural person, the person’s name, the name of the municipality in whose territory the person resides and, if the failure occurred during the ordinary course of business of the person’s enterprise, the enterprise’s name and address;
- (5) the amount of the penalty imposed;
- (6) the date of receipt of an application for review and the date and conclusions of the decision;
- (7) the date a proceeding is brought before the Financial Markets Administrative Tribunal and the date and conclusions of the decision rendered by the Tribunal, as soon as the Authority is made aware of the information;
- (8) the date a proceeding is brought against the decision rendered by the Financial Markets Administrative Tribunal, the nature of the proceeding and the date and conclusions of the decision rendered by the court concerned, as soon as the Authority is made aware of the information; and
- (9) any other information the Authority considers of public interest.

The information contained in the register is public information as of the time the decision imposing the penalty becomes final.

“CHAPTER III

“PENAL PROVISIONS

“303. The secretary of an authorized trust company who contravenes the second paragraph of section 103 by refusing or neglecting to provide the declaration sent to him or her by an auditor in accordance with section 102 or who destroys or falsifies the declaration commits an offence and is liable to a fine of \$1,000 to \$10,000.

“304. Anyone who

(1) fails to comply with a request made under section 37,

(2) removes an auditor from office otherwise than in accordance with section 101, or

(3) fails to notify the Authority in accordance with section 118 or to notify it of an operation described in subparagraph 5 of the first paragraph of section 125, in accordance with section 132,

commits an offence and is liable to a fine of \$2,500 to \$25,000 in the case of a natural person and \$7,500 to \$75,000 in any other case.

“305. Anyone who

(1) contravenes the capital maintenance rules prescribed by any of sections 186 to 188,

(2) holds themselves out as a trust company or uses a name that includes a word or a combination of words prohibited listed in section 280,

(3) carries on trust company activities without the Authority’s authorization although the authorization is required under this Act,

(4) provides a document or information that they know is false or inaccurate, or access to such a document or information, to the Minister or the Authority, a member of the Minister’s or Authority’s staff or a person appointed by the Minister or Authority, in the course of activities governed by this Act,

(5) hinders or attempts to hinder, in any manner, the exercise of a function of a member of the Authority’s staff or by a person appointed by the Authority for the purposes of this Act,

commits an offence and is liable to a fine of \$5,000 to \$50,000 in the case of a natural person and \$15,000 to \$150,000 in any other case.

“306. Anyone who

(1) contravenes an order, or

(2) carries on trust company activities although the authorization required under this Act has been refused or revoked, or carries on trust company activities beyond what this Act authorizes if the authorization is suspended,

commits an offence and is liable to a fine of \$5,000 to \$100,000 in the case of a natural person or, despite article 231 of the Code of Penal Procedure (chapter C-25.1), to a maximum term of imprisonment of 18 months, or to both the fine and imprisonment, and, in any other case, to a fine of \$30,000 to \$2,000,000.

An authorized trust company that, in contravention of section 26, decides to dissolve or liquidates voluntarily commits an offence and is liable to the fine prescribed in the first paragraph.

A director of such a company who gives his or her assent to the dissolution or liquidation in contravention of section 26 commits an offence and is liable to the fine and imprisonment prescribed in the first paragraph; the same is true for a liquidator who agrees to proceed with such a liquidation.

“307. Despite sections 303 to 306, the Minister may determine the regulatory provisions made under this Act whose contravention constitutes an offence and renders the offender liable to a fine of which the minimum and maximum amounts are set by the Minister. The Government may also provide that, despite article 231 of the Code of Penal Procedure, a contravention renders the offender liable to a term of imprisonment, or both the fine and imprisonment.

The maximum penalties under the first paragraph may vary according to the severity of the offence, without exceeding those prescribed in section 306.

“308. The fines prescribed by sections 303 to 306 or the regulations are doubled for a second offence and tripled for a subsequent offence. The maximum term of imprisonment is five years less a day for a second or subsequent offence.

If an offender commits an offence under this Act after having previously been found guilty of any such offence and if, without regard to the amounts prescribed for a second or subsequent offence, the minimum fine to which the offender was liable for the first offence was equal to or greater than the minimum fine prescribed for the second offence, the minimum and maximum fines and, if applicable, the term of imprisonment prescribed for the second offence become, if the prosecutor so requests, those prescribed in the case of a second or subsequent offence.

This section applies to prior findings of guilty pronounced in the two-year period preceding the second offence or, if the minimum fine to which the offender was liable for the prior offence is that prescribed in section 306, in the five-year period preceding the second offence. Fines for a third or subsequent offence apply if the penalty imposed for the prior offence was the penalty for a second or subsequent offence.

“309. If an offence under this Act is committed by a director or officer of a legal person, or of another group, regardless of its juridical form, the minimum and maximum fines that would apply in the case of a natural person are doubled.

“310. If an offence under this Act continues for more than one day, it constitutes a separate offence for each day it continues.

“311. Anyone who, by an act or an omission, helps or, by encouragement, advice, consent, authorization or order, induces another person to commit an offence under this Act commits an offence and is liable to the same penalty as that prescribed for the offence they helped or induced the person to commit.

“312. In any penal proceedings relating to an offence under this Act, proof that the offence was committed by an agent, mandatary or employee of any party is sufficient to establish that it was committed by that party, unless the party establishes that it exercised due diligence, taking all necessary precautions to prevent the offence.

“313. If a legal person or an agent, mandatary or employee of a legal person, of a partnership or of an association without legal personality commits an offence under this Act, the directors of the legal person, partnership or association are presumed to have committed the offence unless it is established that they exercised due diligence, taking all necessary precautions to prevent the offence.

For the purposes of this section, in the case of a partnership, all partners, except special partners, are presumed to be directors of the partnership unless there is evidence to the contrary appointing one or more of them, or a third person, to manage the affairs of the partnership.

“314. In determining the penalty, the judge may take into account aggravating factors such as

- (1) the intentional, negligent or reckless nature of the offence;
- (2) the foreseeable character of the offence or the failure to follow recommendations or warnings to prevent it;
- (3) the offender’s attempts to cover up the offence or his or her failure to try to mitigate its consequences;
- (4) the increase in revenues or decrease in expenses that the offender intended to obtain by committing the offence or by omitting to take measures to prevent it; and
- (5) the offender’s failure to take measures to prevent the commission of the offence or to mitigate its consequences despite the offender’s ability to do so.

A judge who, despite the presence of an aggravating factor, decides to impose the minimum fine must give reasons for the decision.

“315. On an application made by the prosecutor and submitted with the statement of offence, the judge may impose on the offender, in addition to any other penalty, a further fine not exceeding the financial benefit realized by the offender as a result of the offence, even if the maximum fine has also been imposed.

“316. When determining a fine higher than the minimum fine prescribed by this Act, or when determining the time within which an amount must be paid, the judge may take into account the offender’s ability to pay, provided the offender furnishes proof of assets and liabilities.

“317. Penal proceedings for offences under this Act are prescribed by three years from the date the investigation record relating to the offence was opened. However, no proceedings may be instituted if more than five years have elapsed since the date of the offence.

The certificate of the secretary of the Authority indicating the date on which the investigation record was opened constitutes conclusive proof of the date, in the absence of any evidence to the contrary.

“318. Penal proceedings for an offence under this Act may be instituted by the Authority.

“319. The fine imposed by the court is remitted to the Authority if it has taken charge of the prosecution.

“TITLE VI

“TRANSITIONAL PROVISIONS

“320. Trust companies that, on (*insert the date preceding the date of coming into force of section 1*), hold a licence issued under the Act respecting trust companies and savings companies (chapter S-29.01) are, by operation of law, authorized trust companies as of (*insert the date of coming into force of section 1*).

The conditions and restrictions imposed by the Authority in relation to the operations of a trust company that holds a licence referred to in the first paragraph become the conditions and restrictions attached to the authorization.

However, if the sole purpose of the conditions or restrictions is to prevent the company from signing new contracts, the company holding the licence becomes a company whose authorization has been revoked without the revocation having become final.

“321. A proceeding brought before the Administrative Tribunal of Québec under section 251 of the Act respecting trust companies and savings companies prior to (*insert the date of coming into force of section 1*) is continued before the Tribunal, unless the hearing has not commenced by then; in such a case, the proceeding is continued before the Financial Markets Administrative Tribunal.

“TITLE VII

“FINAL PROVISIONS

“322. The costs incurred by the Government for the administration of this Act, as determined each year by the Government, are borne by the Authority.

“323. The Minister must, at least once every five years, report to the National Assembly on the carrying out of this Act and make recommendations on the advisability of maintaining or amending its provisions.

“324. This Act replaces the Act respecting trust companies and savings companies.

“325. The Authority is responsible for the administration of this Act.

“326. The Minister of Finance is responsible for the carrying out of this Act.”

PART III

BROKERAGE AND DISTRIBUTION

CHAPTER I

REAL ESTATE BROKERAGE

DIVISION I

AMENDING PROVISIONS

REAL ESTATE BROKERAGE ACT

361. Sections 1 to 3 of the Real Estate Brokerage Act (chapter C-73.2) are replaced by the following sections:

“1. For the purposes of this Act, a “real estate brokerage contract” means

(1) a contract by which a party, the client, for the purpose of entering into an agreement for the sale or lease of an immovable, asks the other party to act as its intermediary in dealing with persons who might be interested in purchasing or leasing the immovable and, possibly, in bringing about an agreement of wills between the client and a buyer, promisor-buyer or promisor-lessee;

(2) a contract by which a party, the client, for the purpose of entering into an agreement for the purchase or lease of an immovable, asks the other party to act as its intermediary in dealing with persons who are offering an immovable for sale or lease and, possibly, in bringing about an agreement of wills between the client and a seller, promisor-seller or promisor-lessor.

A contract by which an intermediary obligates himself or herself without remuneration is not a real estate brokerage contract under this Act.

“1.1. For the purposes of section 1,

(1) the following are considered to be immovables:

(a) a promise of sale of an immovable;

(b) an enterprise, if the enterprise’s property, according to its market value, consists mainly of immovable property; and

(c) a mobile home placed on a chassis, with or without a permanent foundation; and

(2) an exchange is considered to be a sale.

“2. No person, except the persons referred to in section 3, may be the intermediary party to a real estate brokerage contract for the sale or purchase of an immovable without holding a broker’s or agency licence issued in accordance with this Act or a special authorization from the real estate self-regulatory organization known as the Organisme d’autoréglementation du courtage immobilier du Québec (the Organization) established under section 31, unless the immovable is a mobile home placed on a chassis, with or without a permanent foundation.

Consequently, the intermediary party to a real estate brokerage contract for such a mobile home or for the lease of any immovable is not required to hold a broker’s or agency licence. Such a licence may nevertheless be issued if the intermediary applies for it, as if the licence were necessary.

Subject to Division IV of Chapter II, a person who contravenes the first paragraph may not claim or receive remuneration for performing the obligations of an intermediary.

“3. The persons referred to in any of the following paragraphs are not required to hold a licence when they are parties, as intermediaries, to a real estate brokerage contract under that paragraph, unless they use a title that is restricted under this Act:

(1) advocates, notaries, liquidators, sequestrators, syndics or trustees, provided the contract is entered into in the exercise of their functions;

(2) forest engineers, provided the contract concerns a forest property;

(3) members in good standing of the Ordre professionnel des comptables professionnels agréés du Québec, provided the contract concerns the purchase or sale of an enterprise, a promise to purchase or sell an enterprise, or the purchase or sale of such a promise;

(4) chartered administrators, provided the contract is entered into incidentally to the exercise of their real estate management functions and is not governed by section 23;

(5) trust companies authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*), provided the contract concerns an immovable they hold or administer for others;

(6) the spouse, child, father, mother, brother or sister of the owner of an immovable, provided the contract is entered into with the owner of the immovable and concerns that immovable; and

(7) the sole shareholder of a legal person if the contract is entered into with the legal person.

“3.1. “Brokerage transaction” means the actions taken in performing the obligations of the holder of a licence issued under this Act or of a special authorization issued by the Organization who is a party to a real estate brokerage contract as an intermediary even if the real estate brokerage contract does not require that the intermediary hold such a licence or authorization.”

362. The heading of Chapter II of the Act is amended by striking out “AND MORTGAGE BROKERAGE”.

363. The heading of Division I of Chapter II of the Act is replaced by the following heading:

“REAL ESTATE BROKER’S LICENCE”.

364. Section 4 of the Act is replaced by the following section:

“4. A real estate broker’s licence authorizes its holder to be a party, as an intermediary, to a real estate brokerage contract, provided he or she personally performs his or her obligations under the contract, or to engage in a brokerage transaction for a real estate agency, personally or within a business corporation. The licence also authorizes its holder to hold himself or herself out as a real estate broker.

Only a natural person may hold a broker’s licence.

No broker's licence holder who engages in a brokerage transaction through the intermediary of a person who is not a licence holder may claim or receive remuneration for the transaction."

365. Section 6 of the Act is amended, in the first paragraph,

- (1) by replacing "broker" in the first sentence by "broker's licence holder";
- (2) by replacing "broker" and "the broker's" in the second sentence by "broker's licence holder" and "his or her", respectively.

366. Section 7 of the Act is repealed.

367. Section 8 of the Act is amended

- (1) by replacing "broker" in the first paragraph by "broker's licence holder";
- (2) by replacing "the broker" in the second paragraph by "he or she".

368. Section 9 of the Act is amended

- (1) by replacing the first paragraph by the following paragraph:

"A broker's licence is suspended by operation of law if its holder fails to comply with section 8.";

- (2) by replacing "The broker" in the second paragraph by "The broker's licence holder".

369. Section 10 of the Act is amended

- (1) by replacing "a broker", "the broker's" and "the broker" in the first paragraph by "a broker's licence holder", "his or her" and "him or her", respectively;

- (2) by replacing "into the financing fund established under section 47, as specified in the Organization's regulations" in the second paragraph by "to the Organization, as specified in the Organization's regulations".

370. Section 11 of the Act is amended

- (1) by replacing "broker" and "the broker's" in the first paragraph by "broker's licence holder" and "his or her", respectively;
- (2) by replacing "broker" in the second paragraph by "broker's licence holder".

371. Section 12 of the Act is amended by replacing "broker" by "broker's licence holder".

372. The heading of Division II of Chapter II of the Act is replaced by the following heading:

“REAL ESTATE AGENCY LICENCE”.

373. Section 13 of the Act is replaced by the following section:

“**13.** A real estate agency licence authorizes its holder to be a party, as a broker, to a real estate brokerage contract, provided the licence holder causes the licence holder’s obligations under the contract to be performed by natural persons acting for the licence holder and that those persons hold a real estate broker’s licence. The licence also authorizes its holder to hold himself, herself or itself out as a real estate agency.

No real estate agency licence holder who engages in a brokerage transaction through the intermediary of a natural person who is not a licence holder may claim or receive remuneration for the transaction.”

374. Section 15 of the Act is amended

(1) by replacing “An agency” in the first paragraph by “An agency licence holder”;

(2) by replacing “agency’s” in the second paragraph by “licence holder’s”.

375. Section 16 of the Act is replaced by the following section:

“**16.** An agency licence holder must disclose to the Organization the names of the broker’s licence holders through whom the agency licence holder is acting and inform the Organization of any changes in this regard.”

376. Section 17 of the Act is amended

(1) by replacing “An agency” in the first paragraph by “An agency licence holder”;

(2) by replacing “agency” in the second paragraph by “licence holder”.

377. Sections 18 and 19 of the Act are replaced by the following sections:

“**18.** An agency licence holder is liable for any injury caused to a person or partnership by the fault of one of its broker’s licence holders in the performance of the broker’s functions.

The agency licence holder nevertheless has a right of action against the broker concerned.

“19. An agency licence holder and, if applicable, its directors and executive officers must oversee the conduct of the broker’s licence holders who represent the agency licence holder and ensure that they comply with this Act.”

378. Section 20 of the Act is amended by replacing “An agency” and “its” by “An agency licence holder” and “the licence holder’s”, respectively.

379. The Act is amended by inserting the following section after section 20:

“20.1. Only a broker’s licence holder who has carried on brokerage activities during the period determined by regulation of the Organization may be an executive officer of an agency licence holder.”

380. Section 21 of the Act is amended by replacing “Brokers, agencies and the directors and executive officers of agencies” in the first paragraph by “Licence holders and, if applicable, their directors and executive officers”.

381. Section 22 of the Act is amended

(1) by replacing “brokers and agencies” in the first paragraph by “licence holders”;

(2) by striking out “or mortgage” in the second paragraph.

382. The heading of Division IV of Chapter II before section 22.1 of the Act is replaced by the following heading:

“ACTIVITIES OF CERTAIN BROKER’S LICENCE HOLDERS”.

383. Section 22.1 of the Act is amended

(1) by replacing “A broker” and “the broker” in the first paragraph by “A broker’s licence holder” and “he or she”, respectively;

(2) by replacing “the broker for” and “by the broker” in the second paragraph by “the broker’s licence holder” and “by him or her”, respectively.

384. Section 22.2 of the Act is amended by replacing all occurrences of “broker” by “broker’s licence holder”.

385. Section 22.3 of the Act is amended by replacing “broker” by “broker’s licence holder”.

386. Section 22.4 of the Act is amended by replacing “A broker”, “the broker” and “the broker’s” by “A broker’s licence holder”, “he or she” and “his or her”, respectively.

387. Section 22.5 of the Act is amended

(1) by replacing “a broker” and “the broker” in the first paragraph by “a broker’s licence holder” and “he or she”, respectively;

(2) by replacing “broker” in the second paragraph by “broker’s licence holder”.

388. Section 22.6 of the Act is amended by replacing “broker” by “broker’s licence holder”.

389. Section 23 of the Act is amended by replacing the introductory clause by the following:

“**23.** This chapter applies to real estate brokerage contracts concerning any of the following immovables:”.

390. Section 24 of the Act is replaced by the following section:

“**24.** The contract must be evidenced in writing on the mandatory form prepared by the Organization.

The contract is formed only when the parties have signed the form.”

391. Section 25 of the Act is amended by replacing “broker or agency” in the first paragraph by “licence holder”.

392. Section 26 of the Act is amended

(1) by striking out the first paragraph;

(2) by replacing “it does not include all the information or particulars required by regulation” in the second paragraph by “the mandatory form evidencing the contract has not been filled out”.

393. Section 27 of the Act is amended

(1) by replacing “a broker or an agency” in the first paragraph by “a licence holder”;

(2) in the second paragraph,

(a) by replacing “broker” in the introductory clause by “licence holder”;

(b) by replacing “broker” after “interested through the” in subparagraph 2 by “broker’s licence holder”;

(c) by replacing “broker or another agency” in subparagraph 3 by “licence holder”.

394. Section 28 of the Act is amended

(1) by striking out “, unless the client has written in its entirety and signed a waiver” in the first paragraph;

(2) by replacing “broker or to the agency” in the second paragraph by “licence holder”.

395. Section 29 of the Act is amended by replacing “The broker or agency” by “A licence holder”.

396. Section 32 of the Act is amended

(1) in the first paragraph,

(a) by striking out “and mortgage”;

(b) by replacing “brokers and agencies. It is to ensure, among other things, that the transactions engaged in by brokers and agencies” by “licence holders. The Organization is in particular to ensure that brokerage transactions”;

(2) by replacing “brokers and agency executive officers” in the second paragraph by “broker’s licence holders and executive officers of agency licence holders”.

397. Section 34 of the Act is amended by replacing the first paragraph by the following paragraph:

“The Organization may act as conciliator or mediator in disputes between a licence holder and a client, if the parties so request.”

398. Section 37 of the Act is amended by replacing “brokerage-related” in paragraph 3 by “related to brokerage transactions”.

399. Section 38 of the Act is amended

(1) by replacing “of a broker” and “the broker” in the introductory clause by “of a broker’s licence holder” and “he or she”, respectively;

(2) by replacing “brokerage-related” in paragraph 3 by “related to brokerage transactions”.

400. Section 39 of the Act is amended by replacing “the broker or the agency” in the second paragraph by “the licence holder”.

401. Section 43 of the Act is amended

(1) by replacing “, 38 or” in the first paragraph by “or 38 or from a decision to suspend a licence made under section”;

(2) by striking out the third paragraph.

402. Section 46 of the Act is amended

(1) by replacing “broker or an executive officer of an agency” in paragraph 1 by “broker’s licence holder or an executive officer of an agency licence holder”;

(2) in paragraph 2,

(a) by inserting “continuing or” after “governing”;

(b) by replacing “an agency’s brokers or executive officers” by “the broker’s licence holders or of the executive officers of agency licence holders”;

(3) by replacing “brokers and to executive officers of an agency” in paragraph 5 by “broker’s licence holders or executive officers of agency licence holders”;

(4) by replacing “, a broker or an agency” in paragraph 6 by “or executive officer or by a licence holder”;

(5) by replacing “1” in paragraph 8 by “3.1”;

(6) by replacing “brokers and agencies” in paragraph 9 by “licence holders”;

(7) by replacing paragraph 11 by the following paragraph:

“(11) the real estate brokerage contracts to which, on an ad hoc basis or occasionally, persons, partnerships or groups of persons or partnerships, other than licence holders, may be parties as brokers following a special authorization, the terms and conditions applicable to the resulting brokerage transactions and the fees chargeable for such transactions;”;

(8) by replacing “agency” in paragraph 12 by “agency licence holder”;

(9) by striking out paragraph 13;

(10) by replacing “brokers and agencies” in paragraph 14 by “licence holders”;

(11) by replacing “the fee that must be paid by brokers and agencies” and “for that fee” in paragraph 17 by “the contributions that must be paid by licence holders” and “for those contributions”, respectively.

403. Section 47 of the Act is repealed.

404. Section 48 of the Act is amended by replacing “broker” by “broker’s licence holder”.

405. Section 49 of the Act is amended by replacing “real estate brokers, mortgage brokers, real estate agencies or mortgage agencies” by “licence holders”.

406. Section 51 of the Act is repealed.

407. Section 52 of the Act is replaced by the following section:

“52. If the Autorité des marchés financiers grants an authorization to the Organization in accordance with section 41 of the Insurers Act (*insert the year and chapter number of that Act*), the Organization may establish an insurance fund and administer it in accordance with that Act and require licence holders to subscribe to it.

The Organization determines, by resolution, the tariff of rates and amounts of the premiums broker’s or agency licence holders must pay.”

408. Section 53 of the Act is amended by striking out the first paragraph.

409. Section 54 of the Act is amended by striking out the second paragraph.

410. Section 56 of the Act is repealed.

411. Section 57 of the Act is amended

(1) by replacing “13” by “12”;

(2) by adding the following paragraph at the end:

“Directors may not hold office for more than 10 years, whether consecutively or otherwise.”

412. Section 58 of the Act is amended

(1) by replacing the first and second paragraphs by the following paragraphs:

“After consulting the Organization, the Minister appoints six directors who are neither broker’s licence holders nor directors or executive officers of agency licence holders.

The licence holders authorized to engage in brokerage transactions relating to contracts referred to in section 23 elect from among their number three directors; the other licence holders elect from among their number the other three directors. The internal by-laws must prescribe the rules applicable to the election of the directors.”;

(2) by replacing “real estate brokers, agencies or” in the third paragraph by “licence holders or”.

413. The Act is amended by inserting the following section after section 58:

“**58.1.** The members of the board of directors designate, in the manner prescribed in the internal by-laws, a chair from among the members appointed by the Minister.”

414. The Act is amended by inserting the following sections after section 59:

“**59.1.** A vacancy among the directors appointed by the Minister is filled by the Minister; a vacancy among the other directors is filled by the board of directors.

A director who is appointed or elected to fill a vacancy holds office for the unexpired portion of his or her predecessor’s term.

“**59.2.** A member’s absence from the number of board meetings determined by the Organization’s internal by-laws constitutes a vacancy, in the cases and circumstances they specify.”

415. Section 61 of the Act is amended by adding the following paragraph at the end:

“However, the Act respecting the protection of personal information in the private sector (chapter P-39.1) applies to personal information held by a liability insurance fund established in accordance with section 52.”

416. Section 63 of the Act is amended by replacing the second and third paragraphs by the following paragraphs:

“The register must contain the name of each broker’s licence holder, the titles he or she may use, the address where he or she carries on brokerage activities and, if applicable, the name of the agency licence holder that he or she represents, a statement that he or she carries on brokerage activities within a business corporation, the name of the business corporation and any restrictions or conditions on his or her licence.

The register must contain the name of each agency licence holder, the address of the agency licence holder’s head office, the restrictions or conditions on the agency licence holder’s licence, and the names of the broker’s licence holders through whose intermediary the agency licence holder carries on activities.”

417. Section 64 of the Act is amended, in the French text,

(1) by replacing “vérifier” and “vérificateur” in the first paragraph by “auditer” and “auditeur”, respectively;

(2) by replacing “vérifier”, “cette vérification” and “vérificateur” in the second paragraph by “auditer”, “cet audit” and “auditeur”, respectively.

418. Section 65 of the Act is amended by replacing “Le vérificateur” in the first paragraph in the French text by “L’auditeur”.

419. Section 66 of the Act is amended by replacing “Le vérificateur” in the French text by “L’auditeur”.

420. Section 68 of the Act is amended

(1) by striking out “audited” in the first paragraph;

(2) by adding the following sentence at the end of the second paragraph: “The auditor’s report must be attached.”

421. Section 74 of the Act is amended

(1) by replacing “brokers and agencies” by “licence holders”;

(2) by replacing “which brokers” by “which broker’s licence holders”.

422. Section 75 of the Act is amended

(1) by replacing “broker or agency” in the first paragraph by “licence holder”;

(2) in the third paragraph,

(a) by replacing “broker or an executive officer of an agency” by “broker’s licence holder or an executive officer of an agency licence holder”;

(b) by replacing “The broker or” by “The broker’s licence holder or”.

423. Section 78 of the Act is amended, in the first paragraph,

(1) by replacing “broker or agency” and “which the broker” in subparagraph 1 by “licence holder” and “which the broker’s licence holder”, respectively;

(2) by replacing “activities of the broker or agency” in subparagraph 2 by “licence holder’s activities”.

424. Section 84 of the Act is amended by replacing “broker or an agency, including” and “of an agency” in the first and second paragraphs by “licence holder and, if applicable,” and “of the licence holder”, respectively.

425. Section 85 of the Act is amended by replacing “broker” in the first paragraph by “broker’s licence holder”.

426. Section 88 of the Act is amended

(1) by replacing the first sentence by the following sentence: “The syndic or an assistant syndic may, by way of a complaint, seize the discipline committee of any decision finding a broker’s licence holder, the business corporation within which he or she carries on brokerage activities or an agency licence holder guilty of an offence or an indictable offence which, in the syndic’s or assistant syndic’s opinion, is related to the licence holder’s activities.”;

(2) by replacing “broker or the agency” in the last sentence by “licence holder”.

427. Section 92 of the Act is amended by adding “make one of the following decisions:” at the end of the introductory clause.

428. The Act is amended by inserting the following section after section 92:

“**92.1.** An ad hoc syndic’s decision to file or not to file a complaint under subparagraph 3 of the first paragraph of section 92 may not be submitted to the review committee for a ruling.”

429. Section 93 of the Act is amended by replacing “broker or an agency, including” and “of an agency” in the second paragraph by “broker’s licence holder or agency licence holder, including, in the latter case,” and “of the licence holder”, respectively.

430. Section 94 of the Act is amended

(1) by striking out “appointed for a term of three years” in the first paragraph;

(2) by replacing “brokers” in the third paragraph by “broker’s licence holders”;

(3) by adding the following paragraph at the end:

“The term of office of the members appointed by the Minister is not more than five years and that of the other members is three years; the terms of office are renewable.”

431. Section 95 of the Act is amended by adding the following paragraphs at the end:

“Any proceedings before the discipline committee are public. Anyone may attend committee hearings wherever they are held, and have access to the committee’s records.

The discipline committee may make an exception to the principle of open proceedings if, in its opinion, public order requires that the hearing be held in camera, that access to a document or the disclosure or release of information or documents specified by the committee be prohibited or restricted, or that the anonymity of the persons involved be protected.”

432. Section 96 of the Act is amended by replacing “broker or an agency has ceased to hold a licence issued by the Organization” by “licence holder has ceased to hold a licence”.

433. Section 98 of the Act is amended

(1) in the first paragraph,

(a) by replacing “broker or the agency, including a director or executive officer of the agency” in the introductory clause by “licence holder, including, in the case of an agency licence holder, a director or executive officer of the agency licence holder”;

(b) by replacing “broker’s or the agency’s” in subparagraph 2 by “licence holder’s”;

(c) by replacing “\$1,000 nor more than \$12,500” in subparagraph 3 by “\$2,000 nor more than \$50,000”;

(d) by replacing “broker or agency” in subparagraph 4 by “licence holder”;

(2) by replacing the second paragraph by the following paragraph:

“When a licence holder is found guilty of having appropriated, without entitlement, sums of money or other assets held by the licence holder for others, or of having used such sums of money or assets for purposes other than those for which they were entrusted to the licence holder, the discipline committee imposes on the licence holder at least the licence suspension prescribed by subparagraph 2 of the first paragraph.”;

(3) by adding the following paragraph at the end:

“In determining the amount of a fine, the discipline committee considers such factors as the injury suffered as a result of and the benefits derived from the offence.”

434. Section 98.1 of the Act is amended

(1) by replacing “a newspaper distributed in the place where the broker’s or agency’s establishment is located” in the first paragraph by “the newspaper it considers most likely to be read by the licence holder’s clientele”;

(2) by replacing the three occurrences of “broker or agency” in the first and second paragraphs by “licence holder”;

(3) by replacing both occurrences of “broker or agency” in the third paragraph by “licence holder”;

(4) by replacing “ordering the broker” in the third paragraph by “ordering the licence holder”.

435. Section 102 of the Act is amended by replacing “broker or agency” by “licence holder”.

436. Section 103 of the Act is amended

(1) by replacing “broker or an agency” in the first paragraph by “licence holder”;

(2) in the second paragraph,

(a) by striking out “broker’s or agency’s”;

(b) by replacing “broker or agency” by “licence holder”.

437. Section 104 of the Act is amended, in the first paragraph,

(1) by replacing “A broker or agency whose licence has been suspended or made” by “The holder of a licence that has been suspended or made”;

(2) by adding the following sentence at the end: “The syndic may contest the petition; the licence holder must serve the petition on the syndic, in accordance with the Code of Civil Procedure (chapter C-25.01), at least 10 days before it is to be presented.”

438. Section 108 of the Act is amended by replacing “broker or agency” in the second paragraph by “licence holder”.

439. Section 109 of the Act is amended

(1) in the first paragraph,

(a) by replacing “fees” by “contributions”;

(b) by replacing “broker or agency” by “licence holder”;

(2) by replacing “amount of fees” in the third paragraph by “contribution”.

440. The heading of Chapter VI before section 113 of the Act is amended by replacing “INSPECTION” by “OVERSIGHT”.

441. Section 124 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

“Subject to sections 2 and 3 and to special authorizations granted by the Organization, any person who does not hold the licence required under this Act and in any manner claims to be a broker’s or agency licence holder, uses a title that may lead others to believe that the person is a broker’s or agency licence holder, enters into a real estate brokerage contract, claims to have the right to enter into such a contract or acts in such a way as to lead others to believe that the person is authorized to enter into such a contract is guilty of an offence.”;

(2) by replacing “engaged in a brokerage transaction described in section 1, the transaction is deemed to have been engaged in” in the second paragraph by “was a party to a real estate brokerage contract as an intermediary, the defendant is presumed to have bound himself, herself or itself”.

442. Section 125 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

“The following are guilty of an offence and are liable to a fine of not less than \$2,500 nor more than \$62,500 in the case of natural persons and to a fine of not less than \$5,000 nor more than \$125,000 in other cases:

(1) an agency licence holder or a director or executive officer of the agency licence holder who, in contravention of section 19, neglects or fails to oversee the conduct of the broker’s licence holders who represent the agency licence holder or to ensure that they comply with this Act;

(2) an agency licence holder who, in contravention of section 20, neglects or fails to ensure that the licence holder’s directors, executive officers and employees comply with this Act;

(3) a broker’s licence holder who, in exercising brokerage activities within a business corporation, neglects or fails, in contravention of section 22.3, to ensure that its directors, executive officers and employees comply with this Act; and

(4) anyone who contravenes any of sections 80, 116 and 124.”;

(2) by replacing “\$1,500 nor more than \$20,000” in the second paragraph by “\$2,500 nor more than \$62,500”.

443. The heading of Chapter VIII of the Act is amended by inserting “MANDATORY FORMS AND” at the beginning.

444. Section 129 of the Act, enacted by section 129 of chapter 9 of the statutes of 2008, is replaced by the following:

“DIVISION I

“MANDATORY FORMS

“129. The Minister determines the brokerage contracts and other acts relating to brokerage transactions that must be evidenced on a mandatory form.

“129.1. The Organization prepares the mandatory forms for the contracts and other acts determined by the Minister under section 129.

The forms so prepared are submitted to the Minister for approval.

The Organization posts the forms on its website on their being approved by the Minister and makes them available to licence holders. The Organization also determines, by regulation, the manner in which the forms must be completed.

“129.2. The Minister may prepare a form if the Organization fails to do so within the time specified by the Minister.

“DIVISION II

“MISCELLANEOUS PROVISIONS”.

445. Section 131 of the Act is repealed.

446. Section 132 of the Act is replaced by the following section:

“132. The costs incurred by the Government for the administration of this Act, as determined each year by the Government, are borne by the Organization.”

447. Section 134 of the Act is amended, in the first paragraph,

(1) by replacing both occurrences of “broker or a director” by “broker’s licence holder or a director”;

(2) by replacing both occurrences of “of an agency” by “of an agency licence holder”;

(3) by replacing “the broker, director or executive officer” by “the licence holder, including the licence holder’s director or executive officer,”;

(4) by striking out “ou qu’elle” in the French text.

448. Section 146 of the Act is amended by striking out the second paragraph.

449. Section 147 of the Act is amended by striking out the second paragraph.

DIVISION II

SPECIAL TRANSITIONAL PROVISIONS

450. The Real Estate Brokerage Act (chapter C-73.2) is, for the period from *(insert the date that is one month after the date of assent to this Act)* to *(insert the date preceding the date that is one year after the date of assent to this Act)*, to be read as if

(1) “authorized under the Trust Companies and Savings Companies Act *(insert the year and chapter number of that Act)*” in paragraph 5 of section 3, replaced by section 361 of this Act, were replaced by “that hold a licence issued under the Act respecting trust companies and savings companies (chapter S-29.01)”;

(2) “broker or an agency” in the second paragraph of section 52 were replaced by “broker’s or agency licence holder”.

451. The Real Estate Brokerage Act and the regulations, as they read on *(insert the date preceding the date of coming into force of section 361)*, continue to apply, until *(insert the date of coming into force of section 477)*, to brokerage transactions relating to loans secured by immovable hypothec.

452. Applications received before *(insert the date of coming into force of section 477)* for a licence authorizing the licence holder to engage in brokerage transactions relating to loans secured by immovable hypothec are to be processed, after that date, by the Organisme d’autoréglementation du courtage immobilier du Québec (the Organization) in accordance with the Real Estate Brokerage Act and the regulations, as they read on *(insert the date preceding the date of coming into force of section 361)*. The Organization must process these applications within 30 days of receiving them.

The licences issued under the first paragraph are, for the purposes of this division, considered to have been in force on *(insert the date preceding the date of coming into force of section 477)*.

453. The holder of a mortgage broker’s licence issued under the Real Estate Brokerage Act and in force on *(insert the date preceding the date of coming into force of section 477)* becomes, as of *(insert the date of coming into force of section 477)*, a representative holding a certificate issued under the Act respecting the distribution of financial products and services (chapter D-9.2) authorizing him or her to carry on activities in the mortgage brokerage sector.

As of that date, brokers who do not act for a mortgage agency are deemed to be registered with the Autorité des marchés financiers (the Authority) as independent representatives in that sector.

454. A legal person or partnership that holds a mortgage agency licence issued under the Real Estate Brokerage Act and in force on *(insert the date preceding the date of coming into force of section 477)* becomes, as of *(insert the date of coming into force of section 477)*, as the case may be, a firm or an independent partnership registered with the Authority under the Act respecting the distribution of financial products and services in the mortgage brokerage sector.

455. A natural person who, on *(insert the date of assent to this Act)*, is a mortgage agency licence holder must, before *(insert the date that is 30 days before the date of coming into force of section 477)*, constitute a legal person to pursue the activities of a mortgage agency after *(insert the date of coming into force of section 477)*. If that legal person is controlled by that licence holder, it is deemed to be the holder of a mortgage agency licence as of the date of its constitution for the purposes of sections 453 and 454.

456. The holder of a real estate broker's or real estate agency licence issued under the Real Estate Brokerage Act that allows the licence holder to engage in mortgage brokerage transactions must, not later than *(insert the date that is three months after the date of assent to this Act)*, notify the Organization of the licence holder's intention to pursue those transactions after *(insert the date of coming into force of section 477)*.

A real estate agency licence holder who sends the notice referred to in the first paragraph within the required time is deemed to be the holder of a mortgage agency licence for the purposes of section 455.

A real estate broker's licence holder who, while having sent the notice mentioned in the first paragraph within the required time, acts on behalf of a real estate agency that does not send such a notice within that time must, not later than *(insert the date that is nine months after the date of assent to this Act)*, notify the Organization of his or her intention to act, as of *(insert the date of coming into force of section 477)*, either on behalf of the firm or independent partnership he or she specifies or as an independent representative.

457. A civil liability insurance contract subscribed for by the licence holders referred to in sections 453 to 456 before *(insert the date of coming into force of section 477)* with the insurance fund established by the Organization remains in force after that date and for the remainder of its duration; it is deemed, for that period, to be insurance that complies with section 76 or 131, as applicable, of the Act respecting the distribution of financial products and services.

458. The certificate authorizing a real estate broker referred to in section 456 and who obtained his or her licence before 1 May 2010 to carry on activities in the mortgage brokerage sector is revoked by operation of law if the certificate holder has not, before (*insert the date that is two years after the date of coming into force of section 477*), met the requirements relating to professional development determined in accordance with paragraph 2 of section 202.1 of the Act respecting the distribution of financial products and services.

459. The Organization must cooperate with the Authority on any transitional measure concerning their respective missions relating to mortgage brokerage.

To that end, the Organization and the Authority may enter into any agreement on the sharing and transfer of documents and information. In addition, the Authority is to have access to a copy of the register provided for in section 63 of the Real Estate Brokerage Act containing information relating to holders of a mortgage broker's or agency licence.

460. The Organization remits to the Authority the portion of the fees received from mortgage brokers and agencies that corresponds to the period between (*insert the date of coming into force of section 477*) and the following 1 May as well as any portion of the fees received from real estate brokers and agencies relating to their mortgage brokerage transactions that corresponds to that period.

461. The rights and obligations of the Organization under the contracts in force on (*insert the date of coming into force of section 477*) entered into with an educational institution in relation to mortgage brokerage become, as of that date, the rights and obligations of the Authority.

462. Any investigation by a syndic of the Organization relating to mortgage brokerage that is in progress on (*insert the date of coming into force of section 477*) is continued by the Authority.

463. The Organization's discipline committee continues to exercise its functions relating to mortgage brokerage to conclude cases concerning a complaint made before (*insert the date of coming into force of section 477*).

464. The Organization remits the portion of the fees received from brokers and agencies authorized to carry on brokerage transactions relating to loans secured by immovable hypothec before (*insert the date of coming into force of section 477*) to the Authority.

The sums thus remitted form a patrimony that is separate from the Fonds d'indemnisation des services financiers' other assets and are dedicated to the payment of indemnities to victims of fraud, fraudulent tactics or misappropriation of funds occurring before that date.

465. The Authority continues the examination of the indemnity claims begun before (*insert the date of coming into force of section 477*) by the indemnity committee, in accordance with section 106 of the Real Estate Brokerage Act, on which the committee has not yet ruled on that date.

Claims filed with the Authority for compensation for fraud, fraudulent tactics or embezzlement under section 258 of the Act respecting the distribution of financial products and services are governed by the legislation in force at the time of the fraud, fraudulent tactics or embezzlement.

466. Should the sums referred to in the second paragraph of section 464 prove insufficient to meet the claims relating to acts committed before (*insert the date of coming into force of section 477*), the Authority may impose a special assessment on independent representatives, independent partnerships and firms registered in the mortgage brokerage sector.

467. The Government may, as of (*insert the date that is five years after the date of coming into force of section 477*), authorize the Authority to integrate the sums referred to in the second paragraph of section 464 into the Fonds d'indemnisation des services financiers.

468. A member of the board of directors of the Organization who is in office on (*insert the date preceding the date of coming into force of section 412*) remains in office until that member is replaced. However, the duties of the board member who represents the licence holders entitled to engage in brokerage transactions relating to loans secured by immovable hypothec cease on (*insert the date of coming into force of section 477*) without the member being replaced.

All board members not appointed by the Minister must be elected not later than (*insert the date that is 18 months after the date of coming into force of section 412*).

Any vacancy on the board between (*insert the date preceding the date of coming into force of section 412*) and the date the board members are replaced, including a vacancy in a seat reserved for a member appointed by the Minister, is filled by the board.

CHAPTER II

DISTRIBUTION OF FINANCIAL PRODUCTS AND SERVICES

DIVISION I

AMENDING PROVISIONS

ACT RESPECTING THE DISTRIBUTION OF FINANCIAL PRODUCTS AND SERVICES

469. Section 1 of the Act respecting the distribution of financial products and services (chapter D-9.2) is amended by replacing “or a financial planner” by “, a financial planner or a mortgage broker”.

470. Section 3 of the Act is amended

(1) by striking out “acts as an advisor in the field of individual insurance of persons and” in the second paragraph;

(2) by striking out “that does not guarantee the payment of a benefit upon the occurrence of a risk” in subparagraph 2 of the third paragraph.

471. Section 4 of the Act is amended by striking out the second sentence of the first paragraph.

472. Section 5 of the Act is amended

(1) by striking out the second sentence of the first paragraph;

(2) by striking out the second paragraph.

473. Section 6 of the Act is amended by striking out the last sentence.

474. The Act is amended by inserting the following section after section 7:

“**7.1.** A suretyship contract is not an insurance product even if it is designated as a suretyship insurance contract.”

475. Section 8 of the Act is replaced by the following section:

“**8.** An insurer is an insurer authorized under the Insurers Act (*insert the year and chapter number of that Act*), other than a self-regulatory organization authorized to insure the professional liability of the persons governed by it.”

476. Section 10 of the Act is amended by replacing subparagraph 2 of the second paragraph by the following subparagraph:

“(2) natural persons responsible for appraising damage to automobiles.”

477. The Act is amended by inserting the following sections after section 11:

“11.1. A mortgage broker is a natural person who, for others and in return for remuneration, engages in brokerage transactions relating to loans secured by immovable hypothec.

“11.2. The following persons are not mortgage brokers, if, in the exercise of their functions, they engage in mortgage brokerage transactions:

- (1) lawyers and notaries;
- (2) trustees;
- (3) members in good standing of the Ordre professionnel des comptables professionnels agréés du Québec; and
- (4) persons employed by a hypothecary creditor, provided the brokerage transaction is carried out solely on behalf of that creditor.”

478. Section 13 of the Act is amended by adding the following dash at the end:

“—mortgage brokerage.”

479. Section 27 of the Act is replaced by the following section:

“27. Insurance representatives must inquire into their clients’ situation to assess their needs.

They must be sure to appropriately advise their clients regarding matters that fall within the sectors in which they are authorized to act.”

480. Section 39 of the Act is amended by replacing “Damage insurance agents and brokers must, when renewing an insurance policy,” by “When the renewal of an insurance policy includes a change other than to the premium, damage insurance agents and brokers must”.

481. Section 41 of the Act is replaced by the following section:

“41. Only a special broker may offer the insurance products of an outside insurer if the firm for which the special broker is acting has met the requirements of the second paragraph of section 77.

A special broker is a damage insurance broker who acts for a firm and who is authorized to act in that capacity on the conditions that the Authority determines by regulation. The broker’s certificate shall include the relevant particulars.

An outside insurer is a damage insurer that, under subparagraph 3 of the first paragraph of section 27 of the Insurers Act (*insert the year and chapter number of that Act*), does not require the Authority's authorization."

482. Section 42 of the Act is amended by striking out "and surety insurance".

483. Section 43 of the Act is amended by replacing "does not hold an insurance licence in Québec" in the first paragraph by "is not an insurer authorized to carry on its activities in Québec".

484. Section 70 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

"A legal person offering financial products and services acts either as a single-sector firm or a multi-sector firm.";

(2) by striking out "through representatives" in the second paragraph;

(3) by adding the following paragraph at the end:

"A firm is considered to offer products and services in the mortgage brokerage sector if it engages in mortgage brokerage transactions."

485. The Act is amended by inserting the following section after section 70:

"70.1. For the purposes of section 70, a hypothecary creditor is not a firm operating in the mortgage brokerage sector."

486. Section 71 of the Act is amended by adding the following paragraph at the end:

"A legal person that, without acting as a firm, receives a commission or other remuneration based on the sale of financial products or the provision of financial services must be registered with the Authority. As of its registration, the legal person is, for the purposes of this Act, considered to be acting as a firm in the sector in which the products and services are offered."

487. The Act is amended by inserting the following section after section 71:

"71.1. A firm may offer products and services in a given sector, without the intermediary of a natural person, if it employs a representative who is authorized to transact business in that sector."

488. Section 72 of the Act is amended by replacing "within the meaning of the Act respecting trust companies and savings companies (chapter S-29.01)" in the fifth dash in the second paragraph by "authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)".

489. Section 76 of the Act is amended by striking out the second paragraph.

490. Section 82 of the Act is amended

(1) by striking out the first paragraph;

(2) by replacing “the provisions of the first paragraph” by “section 71.1, 74, 76 or 77”.

491. Section 83 of the Act is amended by striking out “or, if an insurance fund has been established, pay the insurance premium fixed by the Authority” and “or, if an insurance fund has been established, has paid the insurance premium fixed by the Authority”.

492. The Act is amended by inserting the following section after section 86:

“86.0.1. Sections 17 to 19, 26 to 28, 31, 32, 35, 36, 38 and 39 apply, with the necessary modifications, to firms that offer a product or service without the intermediary of a natural person.”

493. Section 95 of the Act is amended, in the first paragraph,

(1) by replacing “sections 23 and 24 of the Deposit Insurance Act” by “section 23 of the Deposit Institutions and Deposit Protection Act”;

(2) by inserting “authorized under that Act” after “deposit institution”.

494. Section 101 of the Act is amended by replacing the second paragraph by the following paragraph:

“Likewise, the following may make themselves known as offering financial planning services:

(1) a firm or an independent partnership acting through a financial planner;

(2) a firm that, without acting through the intermediary of a natural person, employs at least one financial planner.”

495. Sections 103 to 103.4 of the Act are replaced by the following sections:

“103. Every firm must process the complaints filed with it in a fair manner. To that end, a firm must

(1) follow a policy for processing complaints filed by its clients and resolving disputes with them; and

(2) keep a complaints register.

Unless such a policy is fully set out in a regulation made under section 216.1, the firm must adopt one itself.

“103.1. The complaint processing and dispute resolution policy adopted under subparagraph 1 of the first paragraph of section 103 must, in particular,

(1) set out the characteristics that make a communication to the firm a complaint that must be registered in the complaints register kept under subparagraph 2 of the first paragraph of section 103; and

(2) provide for a record to be opened for each complaint and prescribe rules for keeping such records.

The firm must make a summary of the policy, including the elements specified in subparagraphs 1 and 2 of the first paragraph, publicly available on its website, if the firm has one, and disseminate it by any appropriate means to reach the clientele concerned.

“103.2. Within 10 days after a complaint is registered in the complaints register, the firm must send the complainant a notice stating the complaint registration date and the complainant’s right, under section 103.3, to have the complaint record examined.

“103.3. A complainant whose complaint has been registered in the complaints register may, if dissatisfied with the firm’s processing of the complaint or the outcome, request the firm to have the complaint record examined by the Authority.

The firm is required to comply with the complainant’s request and send the record to the Authority.

“103.4. The Authority shall examine the complaint records that are sent to it.

It may, with the parties’ consent and on payment by each party of the fees determined by government regulation, act as conciliator or mediator or designate a person to act as such.

Conciliation or mediation may not, alone or in combination, continue for more than 60 days after the date of the first conciliation or mediation session, as the case may be, unless the parties consent to it.

In exercising the regulatory power under the second paragraph, the Government may determine different fees according to the classes of persons or groups it determines.

“103.5. Unless the parties agree otherwise, nothing that is said or written in the course of a conciliation or mediation session may be admitted into evidence before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

A conciliator or mediator may not be compelled to disclose anything revealed or learned in the exercise of conciliation or mediation functions or to produce a document prepared or obtained in the course of such functions before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

Notwithstanding section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person has a right of access to a document contained in the conciliation or mediation record.

“103.6. Notwithstanding sections 9 and 83 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Authority may not communicate a complaint record without the authorization of the firm that has sent it.

“103.7. On the date set by the Authority, a firm must send it a report on the complaint processing and dispute resolution policy adopted under subparagraph 1 of the first paragraph of section 103 stating the number of complaints that the firm has registered in the complaints register and their nature.

The report must cover the period determined by the Authority.”

496. Section 115 of the Act is amended by replacing the last sentence of the first paragraph by the following sentence: “The Tribunal may also impose an administrative penalty not exceeding \$2,000,000 for each contravention, except for a contravention of the rules of ethics determined by regulation under section 202.1, in which case the administrative penalty is not less than \$2,000 and not more than \$50,000 for each contravention.”

497. Section 115.3 of the Act is amended by replacing “for a renewable period of 120 days as of the time the party concerned is notified” in the second paragraph by “from the time the party concerned is notified of it and, unless otherwise provided, remains binding for a 12-month period; the order may be revoked or otherwise amended during that period”.

498. Section 115.7 of the Act is amended

(1) by inserting “; they may also apply for an amendment to or the revocation of the order” at the end;

(2) by adding the following paragraph at the end:

“A written notice setting out the reasons for the application for amendment or revocation must be filed with the Tribunal. The notice must be served on the Authority at least 15 days before the hearing set to hear the application.”

499. The Act is amended by inserting the following sections after section 115.9:

“115.9.1. If the Tribunal issues an order under paragraph 7 of section 115.9, the Tribunal must, if the proof justifying the order shows that persons have sustained a loss in the course of the non-compliance referred to in that paragraph 7, order the Authority to submit to the Tribunal the terms under which the amounts disgorged to the Authority will be administered and may be distributed to the persons who have sustained a loss, unless it is shown to the Tribunal that the amounts so disgorged are less than those to be incurred for their distribution.

The terms must provide the following at a minimum:

(1) the rules according to which the amounts will be deposited with a deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26) or a bank or otherwise invested until the distribution ends;

(2) the conditions to meet to be entitled to participate in the distribution of the amounts disgorged, including the time limit after which a person may not participate;

(3) the means that must be taken to notify the persons concerned of the possibility of participating in the distribution of the amounts; and

(4) the date on which the distribution is to end should the amounts disgorged not be distributed in their entirety.

“115.9.2. The Authority must publish the terms that it proposes in its bulletin at least 30 days before submitting them to the Tribunal.

Any interested person may contest the terms before the Tribunal, except the representative, firm or other person responsible for the non-compliance against whom or which the order was issued under paragraph 7 of section 115.9.

The Tribunal shall approve the terms submitted by the Authority with or without amendments; it may also order the Authority to submit new terms.

“115.9.3. The Authority shall administer and distribute the amounts in accordance with the terms approved by the Tribunal.

The rules for the simple administration of the property of others apply to the Authority with respect to the amounts disgorged to it while the terms of their administration and distribution have not been approved by the Tribunal.

The Authority may amend the terms by following the procedure provided for in section 115.9.2.

“115.9.4. If the Tribunal issues an order under paragraph 7 of section 115.9 directing that amounts be disgorged to the Authority without ordering the Authority to submit terms of administration and distribution, the Authority must pay the amounts to the Minister of Finance.

The same applies to the balance of the amounts disgorged to the Authority remaining, if any, on the date on which a distribution ends.”

500. Section 128 of the Act is amended by replacing “and claims adjusters” in the first paragraph by “, claims adjusters and mortgage brokers”.

501. Section 131 of the Act is amended by striking out the second paragraph.

502. Section 136 of the Act is amended by striking out “or, if an insurance fund has been established, pay the insurance premium fixed by the Authority” in the first paragraph.

503. Section 142 of the Act is amended, in the first paragraph,

(1) by replacing “sections 23 and 24 of the Deposit Insurance Act” by “section 23 of the Deposit Institutions and Deposit Protection Act”;

(2) by inserting “authorized under that Act” after “a deposit institution”.

504. Section 146 of the Act is amended by replacing “103.4” in the first and second paragraphs by “103.7”.

505. The heading of Chapter III of Title II before section 147 of the Act is amended by replacing “OWNERSHIP OF” by “PARTICIPATION IN”.

506. Section 147 of the Act is amended by replacing “acts through a damage insurance broker” in the definition of “firm” by “is not an insurer or is not bound by an exclusive contract with an insurer”.

507. Section 150 of the Act is amended by replacing “act through a damage insurance broker or purport to be acting through a damage insurance broker” by “offer a product or service through a natural person or without the intermediary of such a person or purport to do so”.

508. Section 154 of the Act is amended by replacing “act through a damage insurance broker or purport to be acting through a damage insurance broker” by “offer a product or service through a natural person or without the intermediary of such a person or purport to do so”.

509. Section 157 of the Act is amended by replacing “act through a damage insurance broker or purport to be acting through a damage insurance broker” by “offer a product or service through a natural person or without the intermediary of such a person or purport to do so”.

510. Sections 187, 188, 191 and 192 of the Act are repealed.

511. Section 193 of the Act is amended

(1) by replacing “the roll of hearings of the discipline committees” by “an excerpt of the roll of hearings of the Financial Markets Administrative Tribunal concerning cases relating to the administration of this Act”;

(2) by striking out “and restricted certificate holders”.

512. Section 194 of the Act is amended by striking out “and the draft regulation made by a Chamber under the fourth paragraph of section 312” in the first paragraph.

513. Sections 198 and 199 of the Act are repealed.

514. Section 200 of the Act is amended by adding the following paragraph at the end:

“The Authority may, on the conditions it determines, assign to any legal person the exclusive jurisdiction to authorize the use, by a representative, of titles or abbreviations determined by a regulation made under subparagraph 6 of the first paragraph.”

515. The Act is amended by inserting the following section after section 202.1:

“202.2. The Authority may, for each sector, determine by regulation the information and documents that a firm acting without the intermediary of a natural person must give to clients, as well as their form.”

516. Section 208 of the Act is amended by replacing “and damage insurance brokers” by “, damage insurance brokers and firms that are not insurers or that are not bound by an exclusive contract with an insurer”.

517. Section 211 of the Act is amended by replacing “representatives in insurance of persons upon replacing an insurance policy” by “insurance representatives upon the replacement or renewal of an insurance or annuity contract”.

518. Section 216 of the Act is amended by replacing “or claims adjuster” in paragraph 1 by “, claims adjuster or mortgage broker”.

519. The Act is amended by inserting the following section after section 216:

“**216.1.** The Authority may, by regulation,

(1) determine the policy that firms must follow pursuant to section 103 or elements of such a policy;

(2) determine the policy that independent representatives must follow pursuant to the first paragraph of section 146 and section 103 or elements of such a policy; and

(3) determine the policy that independent partnerships must follow pursuant to the second paragraph of section 146 and section 103 or elements of such a policy.”

520. Section 217 of the Act is amended

(1) by striking out “or a regulation made by a Chamber under the fourth paragraph of section 312” in the first paragraph;

(2) by replacing “any of sections 115.2 and 198, paragraph 2 of section 203, sections 225, 226, 228, 274.1 and 278, paragraph 3 of section 423, paragraph 6 of section 449 and section 452” in the second paragraph by “section 115.2, paragraph 2 of section 203 or any of sections 225, 226, 228, 274.1 and 278”;

(3) by striking out “or a Chamber” in the fourth paragraph.

521. Section 218 of the Act is amended by striking out “by the discipline committee or” in subparagraph 2.1 of the first paragraph.

522. Section 219 of the Act is amended by striking out “by the discipline committee or” in paragraph 1.

523. Section 239 of the Act is amended by striking out “, except the register referred to in section 240”.

524. Sections 240 to 243 of the Act are repealed.

525. Section 256 of the Act is amended by replacing “, independent partnerships and the holders of restricted-practice certificates” in the third paragraph by “and independent partnerships”.

526. Section 258 of the Act is amended by replacing the second paragraph by the following paragraphs:

“The fund shall be assigned to the payment of indemnities payable to victims of fraud, fraudulent tactics or embezzlement in relation to financial products and services provided or offered by representatives, firms, independent representatives, independent partnerships, mutual fund dealers or scholarship plan dealers registered in accordance with Title V of the Securities Act (chapter V-1.1) or a representative of such dealers, regardless of the sector or class of sectors in which they are authorized to act under their certificate or registration.

The suspension or cancellation of the certificate of a representative responsible for fraud, fraudulent tactics or embezzlement or of such a representative’s right to transact business does not deprive the victim of the right to the indemnity provided for in the second paragraph if

(1) the victim was doing business with the representative before the suspension or revocation; and

(2) the fraud, fraudulent tactics or embezzlement occurred in the two years after the revocation or after the beginning of the suspension.

The same applies to the cancellation and suspension of a firm’s independent representative’s or independent partnership’s registration.”

527. Section 277 of the Act is amended by adding the following paragraphs at the end:

“The filing of a claim with the Authority to obtain the indemnity referred to in the second paragraph of section 258 suspends prescription against the claimant for any right the claimant may assert with respect to the fraud, fraudulent tactics or embezzlement for which the claim is made.

The suspension lasts as long as an irrevocable decision has not been rendered with respect to the claim; the suspension may not, however, exceed two years.”

528. The Act is amended by inserting the following section after section 277:

“277.1. The claimant may, within 30 days of the Authority’s decision to summarily dismiss the claimant’s claim or of a decision of the indemnity committee, apply to the Financial Markets Administrative Tribunal for a review. The Tribunal proceeds on the record only and may confirm or quash the initial decision and, in the latter case, render the decision that should have been rendered.

Notwithstanding section 115.16 of the Act respecting the regulation of the financial sector (chapter A-33.2), the Tribunal’s decision may not be appealed.”

529. Titles V to VI of the Act, comprising sections 283.1 to 379, are repealed.

530. Section 408 of the Act is amended by adding the following paragraph at the end:

“Only a natural person may distribute an insurance product on behalf of a distributor.”

531. Sections 410 to 418 of the Act are repealed.

532. Section 419 of the Act is amended by replacing “section 226 or 423” in the first paragraph by “section 226”.

533. Sections 420 to 423 of the Act are repealed.

534. Section 424 of the Act is amended

(1) by inserting the following paragraph after paragraph 4:

“(4.1) the civil liability insurance contract referred to in section 19 of the Act respecting off-highway vehicles (chapter V-1.2) covering bodily injury and property damage caused by an off-highway vehicle;”;

(2) by replacing “422 of the Act respecting insurance (chapter A-32)” in paragraph 5 by “71 of the Insurers Act (*insert the year and chapter number of that Act*)”.

535. Sections 429 and 430 of the Act are repealed.

536. Section 431 of the Act is amended by inserting “, whether the person is a distributor or a natural person assigned that task by the distributor,” after “who distributes an insurance product” in the first paragraph.

537. Section 435 of the Act is repealed.

538. Section 436 of the Act is amended by replacing “under section 423” in the first paragraph by “made under the Insurers Act (*insert the year and chapter number of that Act*)”.

539. Section 438 of the Act is replaced by the following section:

“**438.** A distributor who, after having been notified by an insurer of its decision to cease distributing an insurance product through the distributor, sells that product to a client is liable for any injury the client may suffer.”

540. Chapter III of Title VIII of the Act, comprising sections 445 to 460, is repealed.

541. Section 463 of the Act is amended by replacing “a representative or the holder of a restricted certificate” by “a representative”.

542. Section 464 of the Act is amended by replacing “a representative or the holder of a restricted certificate” by “a representative”.

543. Section 466 of the Act is amended by inserting “or a firm for which a financial planner exclusively pursues his or her activities,” after “through a financial planner,”.

544. Section 469 of the Act is repealed.

545. Section 470 of the Act is amended by striking out both occurrences of “or the holder of a restricted certificate”.

546. Sections 473 to 476 of the Act are repealed.

547. Section 479 of the Act is replaced by the following section:

“479. An offence under any of sections 463, 464, 471, 472, 477 and 478 committed by a natural person to whom a distributor has entrusted the distribution of an insurance product is deemed to have been committed by the distributor.”

548. Section 481 of the Act is repealed.

549. Title IX.1 of the Act, comprising section 494.1, is repealed.

ACT TO AMEND THE ACT RESPECTING THE AUTORITÉ DES MARCHÉS FINANCIERS AND OTHER LEGISLATIVE PROVISIONS

550. Section 82 of the Act to amend the Act respecting the Autorité des marchés financiers and other legislative provisions (2008, chapter 7) is amended by inserting the following section after section 274.1:

“274.1.1. The Authority may summarily dismiss any claim without a decision from the indemnity committee if the Authority considers the claim to be frivolous or clearly unfounded.”

DIVISION II

SPECIAL TRANSITIONAL PROVISIONS

551. Section 115.9.1 of the Act respecting the distribution of financial products and services (chapter D-9.2), enacted by section 499 of this Act, is, for the period from *(insert the date that is one month after the date of assent to this Act)* to *(insert the date preceding the date that is one year after the date of assent to this Act)*, to be read as if “deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26)” in subparagraph 1 of the second paragraph were replaced by “financial institution registered with the Autorité des marchés financiers under the Deposit Insurance Act (chapter A-26)”.

552. The Autorité des marchés financiers (the Authority) is the receiver of the Chambre de l’assurance de dommages and the Chambre de la sécurité financière. Subject to this Act, section 19.2, except paragraphs 6 and 9, and sections 19.3, 19.4 and 19.9 of the Act respecting the regulation of the financial sector (chapter A-33.2) apply to the receivership so established without it being necessary to obtain an order of the Superior Court and with any other necessary modifications.

553. Investigations by the syndic of the Chambre de l’assurance de dommages or the Chambre de la sécurité financière in progress on *(insert the date that is one month after the date of assent to this Act)* are continued by the Authority.

554. No complaint may be brought before the discipline committee of the Chambre de l’assurance de dommages or the Chambre de la sécurité financière after *(insert the date preceding the date that is one month after the date of assent to this Act)*.

A complaint brought before either of the committees the hearing of which has not commenced on that date is continued before the Financial Markets Administrative Tribunal.

A hearing of a complaint already commenced on that date is continued before the discipline committee of the Chambre de l’assurance de dommages or the Chambre de la sécurité financière, as the case may be, unless the parties consent to a new hearing before the Tribunal or agree to the hearing being continued before the Tribunal, relying, as regards testimonial evidence already produced, on the notes and minutes of the hearing or, as applicable, on the stenographer’s notes or the recording of the hearing. The Tribunal may, however, on its own initiative or on a party’s request, recall a witness or require any other evidence.

555. The decision that must be rendered by the discipline committee of a chamber for any complaint of whatever nature must be rendered within three months after being taken under advisement if it was taken under advisement after (*insert the date of assent to this Act*) or within three months of that date if it was taken under advisement before then unless the president of the Financial Markets Administrative Tribunal has, for a valid reason, granted an extension.

The members of a discipline committee seized of a complaint who fail to give a decision within three months or, as the case may be, within the additional time granted, cease to be seized of the matter, unless the president of the Tribunal, on his or her own initiative or on a committee member's request, decides otherwise. The president of the Tribunal must take the parties' circumstances and interests into account.

556. A complaint that has been withdrawn from the members of a discipline committee is to be heard again by the Financial Markets Administrative Tribunal, unless the parties agree to the hearing being continued before the Tribunal, relying, as regards testimonial evidence already produced, on the notes and minutes of the hearing or, as applicable, on the stenographer's notes or the recording of the hearing. The Tribunal may, however, on its own initiative or on a party's request, recall a witness or require any other evidence.

557. The term of a member of a discipline committee ends when the member has given a decision on the complaints he or she has taken under advisement before (*insert the date that is one month after the date of assent to this Act*) or on those that are continued after that date under the third paragraph of section 554, unless it is terminated earlier by the member's death or resignation or the member's being placed under protective supervision.

Section 556 applies, with the necessary modifications, to a complaint that has been heard by the members of a discipline committee but that has not been decided at the time the members cease to hold office.

558. The Authority liquidates a chamber as of the end of the terms of all the members of the chamber's discipline committee.

The Authority must publish a notice of liquidation for each chamber in the Authority's bulletin.

559. The Authority designates, before the time described in the first paragraph of section 558, the employees of the *Chambre de l'assurance de dommages* and the *Chambre de la sécurité financière*, in office on (*insert the date that is one month after the date of assent to this Act*), who are to become its employees, without further formality and on the date it determines, which may not be later than the time described in the first paragraph of section 558.

As of that time, the Authority terminates the contracts of employment of the other members of a chamber's personnel who are still in office.

The employees of the chambers who become employees of the Authority hold the position and exercise the functions assigned to them by the Authority.

560. On the date determined by the Authority, which cannot be later than the time described in the first paragraph of section 558,

(1) the Authority becomes, without continuance of suit, a party to all proceedings to which a chamber was a party;

(2) the documents of a chamber become those of the Authority; and

(3) the documents of the discipline committee established within the chamber become those of the Financial Markets Administrative Tribunal.

561. The Authority retains the documents of a chamber for five years after the time described in the first paragraph of section 558; it retains them for a longer period if they are required as evidence in proceedings. The Authority disposes of them afterwards as it sees fit.

The same is true for the Financial Markets Administrative Tribunal with regard to the documents of a discipline committee.

562. The Code of ethics of claims adjusters (chapter D-9.2, r. 4), the Code of ethics of damage insurance representatives (chapter D-9.2, r. 5) and the Regulation respecting the compulsory professional development of the *Chambre de l'assurance de dommages* (chapter D-9.2, r. 12.1) made by the *Chambre de l'assurance de dommages* under sections 202.1 and 312 of the Act respecting the distribution of financial products and services (chapter D-9.2) continue to apply, with the necessary modifications, until repealed or replaced by a regulation made by the Authority under section 202.1.

563. The Code of ethics of the *Chambre de la sécurité financière* (chapter D-9.2, r. 3) and the Regulation of the *Chambre de la sécurité financière* respecting compulsory professional development (chapter D-9.2, r. 13.1) made by the *Chambre de la sécurité financière* under sections 202.1 and 312 of the Act respecting the distribution of financial products and services continue to apply, with the necessary modifications, until repealed or replaced by a regulation made by the Authority under section 202.1.

564. Until a regulation made under subparagraph 6 of the first paragraph of section 200 of the Act respecting the distribution of financial products and services provides otherwise,

(1) only a representative in insurance of persons or a group insurance representative who, before the time described in the first paragraph of section 558, was authorized by the *Chambre de la sécurité financière* to use the title of “chartered life underwriter” and the abbreviation “(C.L.U.)” or the title of “registered life underwriter” and the abbreviation “(R.L.U.)” may do so if authorized by the Authority to act as such;

(2) only a damage insurance broker who, before the time described in the first paragraph of section 558, was authorized by the Chambre de l'assurance de dommages to use the title of "chartered insurance broker" and the abbreviation "(C.I.B.)" or the title of "associate insurance broker" and the abbreviation "(A.I.B.)" may do so if authorized by the Authority to act as such.

565. Claims filed with the Authority for compensation for fraud, fraudulent tactics or embezzlement under section 258 of the Act respecting the distribution of financial products and services are governed by the legislation in force at the time of the fraud, fraudulent tactics or embezzlement.

566. Despite section 137 of chapter 25 of the statutes of 2009, paragraph 4 of section 424 of the Act respecting the distribution of financial products and services, enacted by section 105 of chapter 25 of the statutes of 2009, comes into force on the date of assent to this Act.

PART IV

REGULATION OF THE FINANCIAL SECTOR

ACT RESPECTING THE AUTORITÉ DES MARCHÉS FINANCIERS

567. The title of the Act respecting the Autorité des marchés financiers (chapter A-33.2) is replaced by the following title:

"ACT RESPECTING THE REGULATION OF THE FINANCIAL SECTOR".

568. The heading of Chapter III of Title I of the Act is replaced by the following:

"INSPECTIONS AND INVESTIGATIONS, WHISTLEBLOWER PROTECTION AND IMMUNITY AND PENAL PROVISIONS

"DIVISION I

"INSPECTIONS AND INVESTIGATIONS".

569. Section 15.1 of the Act is amended by striking out "section 15 of the Act respecting insurance (chapter A-32)," and ", section 312 of the Act respecting trust companies and savings companies (chapter S-29.01)" in the first paragraph.

570. Section 15.6 of the Act is amended by replacing "the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information" in paragraph 3 by "a multilateral memorandum of understanding concerning consultation and cooperation and the exchange of information".

571. The Act is amended by inserting the following after section 17:

“DIVISION II

“WHISTLEBLOWER PROTECTION

“17.0.1. Any person who wishes to make a disclosure may do so by communicating any information to the Authority that the person believes could show that a contravention of an Act referred to in section 7 has been committed or is about to be committed, or that could show that the person has been asked to commit such a contravention.

A person who discloses such a contravention may do so despite the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Act respecting the protection of personal information in the private sector (chapter P-39.1), any other communication restrictions under other laws of Québec, any provision of a contract or any duty of loyalty or confidentiality that may be binding on the person, in particular with respect to an employer or client.

However, the lifting of professional secrecy authorized under this section does not apply to professional secrecy between a lawyer or a notary and a client.

“17.0.2. The Authority must take all the measures necessary to protect the identity of persons who make a disclosure. However, the Authority may communicate the identity of such a person to the Director of Criminal and Penal Prosecutions or to another competent authority.

“17.0.3. If a person makes a disclosure to the Authority that should have been made to the Anti-Corruption Commissioner or to another competent authority, the Authority must inform the person of that fact, unless the Authority is unable to contact the person.

“17.0.4. It is forbidden to take a reprisal against a person who, in good faith, makes a disclosure to the Authority or who cooperates in an investigation conducted under this Act, or to threaten to take a reprisal against a person so that he or she will abstain from making such a disclosure or cooperating in such an investigation.

“17.0.5. For the purposes of this division, the demotion, suspension, dismissal or transfer of an employee or any disciplinary or other measure that adversely affects his or her employment or working conditions is presumed to be a reprisal.

“DIVISION III

“IMMUNITY AND PENAL PROVISIONS”.

572. Section 17.1 of the Act is amended by replacing “A person of good faith who” by “A person who, in good faith and in accordance with section 17.0.1,”.

573. Section 19 of the Act is replaced by the following sections:

“19. Anyone who

(1) provides information, when making a disclosure under section 17.0.1, that they know to be false or misleading, or

(2) contravenes section 17.0.4,

is guilty of an offence and is liable to a fine of \$2,000 to \$20,000 in the case of a natural person and \$10,000 to \$250,000 in all other cases.

The fines are doubled for a subsequent offence.

“19.0.1. Anyone who

(1) hinders or attempts to hinder the action of an inspector or investigator in the exercise of inspection or investigation functions or powers or who hides, destroys or refuses to provide information, a document or a thing the inspector or investigator is entitled to require or examine when exercising those functions or powers, or

(2) fails to appear after summons or refuses to testify in connection with an inspection or investigation,

is guilty of an offence and is liable to a fine of \$5,000 to \$50,000 in the case of a natural person and \$15,000 to \$150,000 in all other cases.

The minimum and maximum fines are doubled for a second offence and tripled for a subsequent offence.

“19.0.2. Anyone who helps a person to commit an offence under section 19 or 19.0.1 or who, by encouragement, advice or consent or by an authorization or order, induces another person to commit such an offence is guilty of an offence and is liable to the same penalty as that prescribed for the offence they helped or induced the person to commit.”

574. Section 19.1 of the Act is amended by replacing the second paragraph by the following paragraph:

“The Authority may also request that the Court issue a receivership order if the authorization granted under the Insurers Act (*insert the year and chapter number of that Act*), the Deposit Institutions and Deposit Protection Act

(chapter A-26) or the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*) was suspended and the causes for the suspension were not remedied within 30 days after the suspension took effect, or in cases where a person, partnership or other entity is carrying on activities without having been granted such an authorization although the authorization is required.”

575. Section 19.6 of the Act is amended by replacing “if it is imperative to do so” in the first paragraph by “if urgent action is required or to prevent irreparable injury”.

576. Section 19.8 of the Act is replaced by the following section:

“19.8. Receivership with respect to the property of a federation of mutual companies governed by the Insurers Act (*insert the year and chapter number of that Act*) includes receivership with respect to its guarantee fund and, if applicable, receivership with respect to its segregated investment funds.”

577. Section 19.12 of the Act is replaced by the following section:

“19.12. The liquidator of a federation of mutual companies must, within 10 days after the decision of the Court ordering the winding-up of the federation, notify the federation’s member companies.”

578. This Act is amended by inserting the following section after section 25:

“25.0.1. An attestation issued by the Authority concerning any matter relating to the administration of this Act or an Act referred to in section 7 constitutes proof of its content in any proceeding without further proof of the signature or authority of the signatory, until proof to the contrary.”

579. This Act is amended by inserting the following section after section 36:

“36.1. Despite section 8 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the President and Chief Executive Officer of the Authority may delegate to a member of the management staff of the agency authorized under section 178 of the Automobile Insurance Act (chapter A-25) the functions assigned to the person responsible for access to documents or the protection of personal information by the Act respecting Access to documents held by public bodies and the Protection of personal information concerning the exercise of the rights of access and correction with regard to the information referred to in section 177 of the Automobile Insurance Act, but only as concerns insured persons’ automobile driving experience.”

580. Sections 38.1 and 38.2 of the Act are replaced by the following sections:

“38.1. The Authority shall remit half the sums collected as fines or administrative sanctions or penalties to the Minister of Finance, at the intervals the latter determines. However, the sums collected as penalties under sections 115.2 and 419 of the Act respecting the distribution of financial products and services (chapter D-9.2), except the sums collected in a case prescribed by regulation, must be remitted in full to the Minister.

“38.2. Despite section 38.1, the Authority shall keep all the sums it receives under the Act respecting transparency measures in the mining, oil and gas industries (chapter M-11.5) as monetary administrative penalties or fines.”

581. Section 46 of the Act is replaced by the following section:

“46. The Authority shall send the Minister an activity plan according to the form, content and timetable the Minister determines.

The advisory opinion of the Conseil consultatif de régie administrative, provided for in paragraph 2 of section 57, must be attached to the activity plan.”

582. Section 49 of the Act is amended by replacing the second, third and fourth paragraphs by the following paragraphs:

“These persons are chosen for their expertise in administrative management and their knowledge of the financial sector.

However, a person holding employment or an office or exercising a function that may, directly or indirectly, place the person’s interest in conflict with the person’s duties as a member of the Council may not be appointed to the Council.”

583. The Act is amended by inserting the following after section 58:

“TITLE II.1

“COMITÉ CONSULTATIF DES CONSOMMATEURS DE PRODUITS ET UTILISATEURS DE SERVICES FINANCIERS

“CHAPTER I

“ESTABLISHMENT

“58.1. The “Comité consultatif des consommateurs de produits et utilisateurs de services financiers”, hereinafter called “the Committee”, is established within the Authority.

“58.2. The Committee is composed of not fewer than five or more than nine members.

The President and Chief Executive Officer shall appoint the members of the Committee after consultation with the Council and designate the chair of the Committee from among them.

Sections 50 and 56 apply, with the necessary modifications, to the Committee members.

“58.3. Any vacancy occurring during a term of office is filled by the chair of the Committee, after consultation with the Council, for the unexpired portion of the term of the member to be replaced.

Absence from the number of Committee meetings determined by the Committee’s by-laws constitutes a vacancy, in the cases and circumstances indicated in the by-laws.

“58.4. The Committee shall meet at least once every three months and more often if necessary, at the request of the chair or a majority of the members. However, it may not meet more than 12 times per year.

The Committee may hold its meetings anywhere in Québec.

“58.5. Committee members receive no remuneration, except in the cases, on the conditions and to the extent determined by a regulation of the Authority.

However, Committee members are entitled to the reimbursement of expenses incurred in the exercise of their functions, on the conditions and to the extent determined by the regulation.

“58.6. The Authority may make a regulation with respect to the Committee for the purpose of

- (1) determining the criteria for selecting its members;
- (2) establishing its rules of governance;
- (3) determining the role and responsibilities of its chair;
- (4) determining the rules of ethics and professional conduct and confidentiality rules applicable to its members; and
- (5) determining the conditions and terms applicable to the services and equipment it is required to provide to the Committee under section 58.11.

“58.7. A draft regulation made under section 58.5 or 58.6 must be sent to the Minister. The Authority may not make the regulation before the expiry of a period of 30 days after receipt of the draft regulation by the Minister; during that period, the Minister may indicate to the Authority any changes it must make to the draft regulation.

“CHAPTER II

“MISSION AND FUNCTIONS

“58.8. The mission of the Committee is to present the opinion of financial product consumers and financial service users before the Authority.

“58.9. In the pursuit of its mission, the functions of the Committee are

(1) to comment on the Authority’s policies, rules, guidelines and other publications, in cases where they are likely to affect financial product consumers and financial service users, and to make any recommendations on them that the Committee considers useful; and

(2) to make its observations and recommendations to the Authority on any subject that concerns those consumers and users.

“58.10. The Committee may, in the exercise of its functions, require that any research paper or information used by the Authority in drafting its policies, rules, guidelines or other publications that affect financial product consumers and financial service users be communicated to the Committee.

The Authority’s officers, employees and mandataries must, on request, communicate such papers or information to the Committee and facilitate their examination.

“58.11. The Authority must provide the Committee with the services and equipment it requires to exercise its functions.

“58.12. Not later than 30 June each year, the Committee must submit a report to the Authority on its activities for the previous fiscal year. The Committee’s report must be appended to the Authority’s activity report.”

584. Section 63 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

“No proceedings may be brought against a recognized organization, its board of directors, a committee formed by the organization, or the organization’s personnel for acts performed in good faith in the exercise of the functions or powers delegated to them in accordance with this division or in the exercise of management or regulatory functions.”;

(2) by adding the following paragraph at the end:

“If an organization referred to in the first paragraph is also recognized under section 169 of the Securities Act (chapter V-1.1) or section 12 of the Derivatives Act (chapter I-14.01), the immunity provided for in that paragraph applies only to the acts resulting either from the examination of the compliance of a person or from the implementation of rules.”

585. Section 63.1 of the Act is amended by replacing “in the exercise of the powers delegated to it under this division” in the first paragraph by “, the members of its board of directors, a committee formed by the organization, or the organization’s personnel in the exercise of the functions and powers delegated to them in accordance with this division or in the exercise of management or regulatory functions”.

586. Section 68 of the Act is amended by replacing “to exercise its functions and powers” in the first paragraph by “to carry on its activities”.

587. Section 70.1 of the Act is amended by replacing “exercise its functions and powers” in paragraph 3 by “carry on its activities”.

588. Section 81 of the Act is amended by replacing “Within the scope of the exercise of its functions and powers” in the first paragraph by “In carrying on its activities”.

589. Section 83 of the Act is amended by replacing “in the exercise of its functions and powers” by “in carrying on its activities”.

590. The heading of Chapter I of Title IV before section 92 of the Act is replaced by the following heading:

“ESTABLISHMENT AND JURISDICTION”.

591. Section 93 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

“The function of the Tribunal is to make determinations with respect to matters brought under this Act and the Acts listed in Schedule I. Except where otherwise provided by law, the Tribunal shall exercise its jurisdiction to the exclusion of any other tribunal or adjudicative body.”;

(2) by replacing “The” in the third paragraph by “In reviewing a decision rendered by the Authority under the Securities Act or the Derivatives Act, the”;

(3) by adding the following paragraph at the end:

“In this Title, unless the context indicates otherwise, “matters” also includes any application, complaint, contestation or motion, as well as any action falling within the jurisdiction of the Tribunal.”

592. Section 94 of the Act is replaced by the following section:

“94. At the request of the Authority, the Tribunal may take any measure conducive to ensuring compliance with an undertaking given to the Authority under any of the Acts listed in the first paragraph of section 93 or compliance with those Acts.”

593. Section 97 of the Act is renumbered 96 and is amended by striking out the second, third and fourth paragraphs.

594. Sections 97.1 to 115 and Chapter II of Title IV of the Act, comprising sections 115.1 to 115.15, are replaced by the following:

“97. The Tribunal has the power to decide any issue of law or fact necessary for the exercise of its jurisdiction.

In addition to the other powers conferred on it by law, the Tribunal may

(1) summarily reject any matter it considers abusive or dilatory, or make it subject to conditions;

(2) render a decision on any pre-hearing application;

(3) make any order, including a provisional order, it considers appropriate to safeguard the parties’ rights or if required to protect the public;

(4) confirm, vary or quash the contested decision or order and, if appropriate, render or make the decision or order that, in its opinion, should have been rendered or made initially;

(5) order that a party pay costs determined by law or by regulation;

(6) ratify an agreement, if it is in compliance with the law; and

(7) render any other decision it considers appropriate.

“98. The Tribunal and its members have the powers and immunity conferred on commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.

“CHAPTER II

“PROCEDURE

“DIVISION I

“COMMENCEMENT

“99. A matter is commenced by a pleading, called the originating pleading, being filed at the secretariat of the Tribunal in accordance with the Tribunal’s rules of evidence and procedure.

“100. The originating pleading must specify the conclusions sought and set out the grounds invoked in support of them.

It must also contain any other information required by the Tribunal's rules of evidence and procedure.

“101. The Tribunal may accept a pleading despite a defect of form or an irregularity.

“102. The Tribunal may extend a time limit or relieve a person from the consequences of failing to act within the allotted time if it is shown that the person could not reasonably have acted within that time and if, in the Tribunal's opinion, no other party suffers serious injury as a result.

“103. A proceeding before the Tribunal does not suspend the execution of the contested decision, unless a provision of law provides otherwise or, on a motion heard and judged by preference, a member of the Tribunal orders otherwise because of the urgency of the situation or because of the risk of irreparable injury.

If the law provides that the proceeding suspends the execution of the decision, or if the Tribunal issues such an order, the proceeding is heard and judged by preference.

“104. The rules pertaining to the notices provided for in articles 76 and 77 of the Code of Civil Procedure (chapter C-25.01) apply, with the necessary modifications, to matters brought before the Tribunal.

“105. The notification of pleadings must be made in accordance with the rules established by the Tribunal.

“106. Whether or not the same parties are involved, matters in which the issues in dispute are substantially the same or could fittingly be combined may be joined by order of the president of the Tribunal or a person designated by the president, on specified conditions.

On its own initiative or at a party's request, the Tribunal may revoke such an order if, on hearing the matter, it is of the opinion that the interests of justice will thus be better served.

The Tribunal may also order that a matter be separated into different matters if it considers it advisable in order to protect the parties' rights.

“DIVISION II

“PRE-HEARING CONFERENCE

“107. The Tribunal may call the parties to a pre-hearing conference.

“108. The pre-hearing conference is held by a Tribunal member. Its purpose is

- (1) to define the issues to be argued at the hearing;
- (2) to assess the advisability of clarifying and specifying the parties’ contentions and the conclusions sought;
- (3) to ensure that all documentary evidence is exchanged by the parties;
- (4) to plan the conduct of the proceeding and the order of presentation of evidence at the hearing;
- (5) to examine the possibility for the parties of admitting certain facts or of proving them by means of sworn statements; and
- (6) to examine any other matter likely to simplify or accelerate the conduct of the hearing.

The pre-hearing conference may also allow the parties to come to an agreement and thus terminate the matter.

“109. Minutes of the pre-hearing conference must be drawn up in accordance with the Tribunal’s rules of evidence and procedure. The points on which the parties have reached an agreement, the facts admitted, and the decisions made by the member are recorded in the minutes. The minutes must be filed in the record and a copy of them sent to the parties.

Agreements, admissions and decisions recorded in the minutes govern, as far as they may apply, the conduct of the proceeding, unless the Tribunal, when hearing the matter, permits a departure from them to prevent an injustice.

“110. If the parties fail to comply with the timetable, the member may make the appropriate determinations, including foreclosure. The member may, on request, relieve a defaulting party from default if he considers doing so required in the interest of justice.

“DIVISION III

“HEARING

“111. Every matter is heard by a Tribunal member.

If the president considers it appropriate, the president may assign a matter to a panel of three members.

The president or the member designated by the president to preside the hearing may conduct the hearing and decide any application made in the course of the proceeding alone.

“112. A member examining a disciplinary matter is assisted by two assessors appointed under section 115.15.43, who shall advise the member on any issue of a professional nature.

The assessors must be representatives belonging to one of the categories listed in section 113 in connection with the activities carried on by the defendant in the course of which the defendant allegedly committed the contravention he has been charged with.

“113. Matters aimed solely at sanctioning violations of the rules of ethics determined by regulation under section 202.1 of the Act respecting the distribution of financial products and services (chapter D-9.2) committed by a representative belonging to one of the following categories are disciplinary matters:

- (1) representatives in insurance of persons;
- (2) group insurance representatives;
- (3) financial planners;
- (4) mortgage brokers;
- (5) damage insurance agents;
- (6) damage insurance brokers;
- (7) claims adjusters;
- (8) mutual fund dealer representatives; and
- (9) scholarship plan dealer representatives.

The categories provided for in subparagraphs 1 to 7 of the first paragraph apply to representatives within the meaning of the Act respecting the distribution of financial products and services, while those provided for in subparagraphs 8 and 9 of that paragraph apply to representatives registered under either of the titles mentioned in those subparagraphs in accordance with Title V of the Securities Act (chapter V-1.1).

“114. The president may, in the interests of the sound administration of justice, determine that a matter must be heard and decided by preference or as a matter of priority.

“115. A member who has knowledge of a valid cause for recusation must declare that cause in a writing filed in the record and advise the parties of it.

“115.1. A party may, at any time before the decision and provided the party acts with dispatch, apply for the recusal of a member seized of the matter if the party has serious reasons to believe that there is a cause for recusal.

The application for recusal must be addressed to the president. Unless the member removes himself or herself from the matter, the application is decided by the president, or by a member designated by the president, in particular when the matter concerns the president personally.

“115.2. Before rendering its decision, the Tribunal shall allow the parties to be heard by any means provided for in its rules of evidence and procedure. However, with the parties’ consent, the Tribunal may proceed on the record if it considers doing so appropriate.

However, a decision adversely affecting the rights of a person may, if urgent action is required or to prevent irreparable injury, be rendered without a prior hearing.

In such a case, the person concerned has 15 days after the decision is rendered to file a notice of contestation with the Tribunal.

“115.3. Except in the cases and on the conditions provided for by the Tribunal’s rules of evidence and procedure, the Tribunal shall hold its hearings at its head office.

If the Tribunal holds a hearing in a locality where a court of justice sits, the court clerk shall allow the Tribunal to use court premises unless they are being used for court sittings.

“115.4. Notice must be sent to the parties, in accordance with the Tribunal’s rules of evidence and procedure, within a reasonable time before the hearing, stating

- (1) the purpose, date, time and place of the hearing;
- (2) that the parties have the right to be assisted or represented; and
- (3) that the Tribunal has the authority to proceed without further delay or notice despite a party’s failure to appear at the stated time and place if no valid excuse is provided.

“115.5. If a duly notified party does not appear at the time set for the hearing and has not provided a valid excuse for the party’s absence, or chooses not to be heard, the Tribunal may proceed with hearing the matter and render a decision.

“115.6. A party who wishes to have witnesses heard and to produce documents shall proceed in the manner prescribed by the rules of evidence and procedure.

“115.7. The Tribunal may reject any evidence that is irrelevant or that was obtained under such circumstances that fundamental rights and freedoms are violated and whose use could bring the administration of justice into disrepute.

“115.8. The Tribunal’s sittings are public. The Tribunal may, however, on its own initiative or at a party’s request, order a closed-door hearing in the interest of good morals or public order.

“115.9. The Tribunal may, on its own initiative or at a party’s request and where necessary to maintain good morals or public order, prohibit or restrict the disclosure, publication or release of information or documents it specifies.

“115.10. A member may order an expert appraisal by a qualified person the member designates to examine and assess the facts relating to a matter that is before the member. In such a case, the member shall specify the mission entrusted to the expert, give the expert the instructions needed to carry out the appraisal, set the time within which the expert must file his or her report, and rule on the expert’s fees and how they are to be paid. The decision must be notified to the expert without delay.

“115.11. The mission of an expert whose services have been retained by a single party or by the parties jointly or who has been appointed by the Tribunal is to enlighten the Tribunal in its decision-making. This mission overrides the parties’ interests.

Experts must fulfill their mission objectively, impartially and thoroughly.

“115.12. If a member cannot continue a hearing owing to an inability to act, another member designated by the president may, with the parties’ consent, continue the hearing and rely, as regards testimonial evidence, on the notes and minutes of the hearing or, if applicable, on the stenographer’s notes or the recording of the hearing, subject to a witness being recalled or other evidence being required if the member finds the notes or the recording insufficient.

The same rule applies to the continuance of a hearing after a member ceases to hold office and to any matter heard but not yet determined at the time a member is removed from the matter.

If a matter is heard by more than one member, the hearing is continued by the remaining members.

“115.13. In the absence of provisions applicable to a particular case, the Tribunal may remedy the inadequacy by any procedure consistent with this Act and its rules of evidence and procedure.

“DIVISION IV

“DECISION

“115.14. A matter is decided by the member who heard it. If a matter is heard by more than one member, the decision is made by the majority.

If a matter is continued by two members under the third paragraph of section 115.12 and opinions are equally divided on an issue, the issue is referred to the president or a member designated by the president, to be decided according to law. In such a case, the president or designated member may, with the parties' consent, rely, as regards testimonial evidence, on the notes and minutes of the hearing or, if applicable, on the stenographer's notes or the recording of the hearing, subject to a witness being recalled or other evidence being required if the president or designated member finds the notes or the recording insufficient.

“115.15. In all matters, whatever their nature, the decision must be rendered within six months after the matter is taken under advisement.

The president may extend the time limit for rendering a decision. Before doing so, the president must take the parties' circumstances and interests into account.

“115.15.1. Failure by the Tribunal to observe either of the time limits provided for in section 115.15 does not cause the matter to be withdrawn from the member or invalidate a decision or order rendered or made by the member after the expiry of the time limit.

However, if a member to whom a matter is referred does not render a decision within the applicable time limit, the president may, on his or her own initiative or at a party's request, remove the member from the matter.

Before taking such action, the president must take the parties' circumstances and interests into account.

“115.15.2. Where a member is removed from a matter, the matter may be continued in the manner provided for in section 115.12.

“115.15.3. A member who, after taking a matter under advisement, notes that a rule of law or a principle material to the outcome of the case was not debated during the hearing and that he or she must make a determination on the relevant issue in order to decide the dispute must give the parties an opportunity to make submissions in the manner the member considers most appropriate.

Alternatively, the hearing may be ordered reopened on the member's own initiative or at a party's request. Such a decision must give reasons and state how the reopened hearing is to be conducted. The member must send the decision without delay to the president of the Tribunal and to the parties.

“115.15.4. The Tribunal’s decisions must be communicated in clear and concise terms.

A decision which terminates a matter must give reasons and be set out in writing, signed and sent to the interested parties.

The Tribunal may, on the conditions it determines, ask a party to notify the decision that was rendered following an *ex parte* hearing. In such a case and on receiving proof of the notification, the Tribunal is not required to send the decision to the interested parties.

“115.15.5. Unless an order of the Tribunal states otherwise, decisions of the Tribunal are published in the bulletin provided for in section 34.

The full text of a decision of the Tribunal need not be published in the bulletin if it is published on the Société’s website in accordance with the regulation made under section 21 of the Act respecting the Société québécoise d’information juridique (chapter S-20). In such a case, a mention of the decision and a reference to the text so published must nevertheless be published in the bulletin.

“115.15.6. The Tribunal or any interested person may file an authentic copy of a decision of the Tribunal at the office of the clerk of the Superior Court of the district in which the residence or domicile of the person who is the subject of the decision is situated or, if the person has neither residence nor domicile in Québec, at the office of the Superior Court of the district of Montréal.

The decision, on being filed, becomes enforceable in the same way as, and has all the effects of, a decision of the Superior Court.

“115.15.7. A decision containing an error in writing or calculation or any other clerical error may be corrected on the record and without further formality by the member who rendered the decision, on the member’s own initiative or on request; the same applies to a decision which, through obvious inadvertence, grants more than was sought or fails to rule on part of the matter.

If the person is unable to act or has ceased to hold office, another Tribunal member designated by the president may correct the decision.

“115.15.8. The Tribunal may, on application, review or revoke a decision or an order it has rendered or made

(1) if a new fact is discovered which, had it been known in sufficient time, could have warranted a different decision;

(2) if an interested party, owing to reasons considered sufficient, could not make representations or be heard; or

(3) if a substantive or procedural defect is of a nature likely to invalidate the decision.

In the case described in subparagraph 3 of the first paragraph, the decision or order may not be reviewed or revoked by the member who rendered or made it.

“115.15.9. An application to the Tribunal for a review of a decision does not suspend the execution of the decision, unless the Tribunal decides otherwise.

“CHAPTER II.1

“TRIBUNAL MEMBERS

“DIVISION I

“RECRUITING AND SELECTION

“115.15.10. Only a person who, in addition to having the qualifications required by law, has 10 years’ experience relevant to the exercise of the Tribunal’s functions may be a member of the Tribunal.

“115.15.11. Tribunal members appointed by the Government under section 96 are chosen from among persons declared qualified according to the recruiting and selection procedure established by government regulation.

The regulation must, in particular,

(1) determine the publicity to be made for recruitment purposes and its content;

(2) determine the application procedure to be followed by candidates;

(3) authorize the establishment of selection committees to assess the qualifications of candidates and formulate an opinion concerning them;

(4) determine the composition of the committees and the mode of appointment of committee members, ensuring, where applicable, adequate representation of the sectors concerned;

(5) determine the selection criteria to be taken into account by a committee; and

(6) determine the information a committee may require from a candidate and the consultations it may hold.

“115.15.12. The names of the persons declared qualified are recorded in a register kept at the Ministère du Conseil exécutif.

“115.15.13. A certificate of qualification is valid for a period of 18 months or for any other period determined by government regulation.

“115.15.14. The members of a selection committee receive no remuneration except in the cases, on the conditions and to the extent that may be determined by the Government.

They are, however, entitled to the reimbursement of any expenses incurred in the exercise of their functions, on the conditions and to the extent determined by the Government.

“115.15.15. No legal proceedings may be brought against members of a selection committee for acts performed in good faith in the exercise of their functions.

“DIVISION II

“TERM AND RENEWAL

“115.15.16. Tribunal members are appointed for a term of five years.

However, the Government may determine a shorter term of a fixed duration in a member’s instrument of appointment if the candidate so requests for serious reasons or if special circumstances stated in the instrument of appointment require it.

“115.15.17. The term of a Tribunal member that has terminated because it has expired is renewed for five years according to the procedure provided for in section 115.15.18,

(1) unless the member is otherwise notified by the agent authorized for that purpose by the Government, at least three months before the expiry of the member’s term; or

(2) unless the member requests otherwise and so notifies the Minister at least three months before the expiry of the member’s term.

A variation of the term is valid only for a fixed period of less than five years determined in the instrument of renewal and, unless it is requested by the member for serious reasons, only if special circumstances stated in the instrument of renewal require it.

“115.15.18. The renewal of a Tribunal member’s term must be examined according to the procedure established by government regulation. The regulation may, in particular,

(1) authorize the establishment of committees;

(2) determine the composition of the committees and the mode of appointment of committee members, who must not belong to the Administration within the meaning of the Public Administration Act (chapter A-6.01) or represent it;

(3) determine the criteria to be taken into account by a committee; and

(4) determine the information a committee may require from a Tribunal member and the consultations it may hold.

An examination committee may not make a recommendation against the renewal of a Tribunal member's term without first informing the member of its intention to do so and its reasons for doing so, and without giving the member an opportunity to make representations.

“115.15.19. The members of an examination committee receive no remuneration except in the cases and on the conditions that may be determined by the Government.

They are, however, entitled to the reimbursement of any expenses incurred in the exercise of their functions, on the conditions determined by the Government.

“115.15.20. No proceedings may be brought against members of an examination committee for acts performed in good faith in the exercise of their functions.

“DIVISION III

“REMUNERATION AND OTHER CONDITIONS OF EMPLOYMENT

“115.15.21. The Government shall make regulations determining

(1) the mode of remuneration of the members and the applicable standards and scales as well as the method for determining the annual percentage of salary advancement up to the maximum salary rate and the annual percentage of the adjustment of the remuneration of members whose salary has reached the maximum rate; and

(2) the conditions under which and the extent to which a member may be reimbursed for expenses incurred in the exercise of the functions of office.

The Government may also make regulations determining other conditions of employment applicable to all or some members, including employee benefits other than a pension plan.

Regulatory provisions may vary according to whether they apply to a full-time or part-time member or a member holding an administrative office referred to in section 115.15.39.

The regulations come into force on the 15th day following the date of their publication in the *Gazette officielle du Québec* or on a later date specified in the regulations.

“115.15.22. The Government shall determine the members’ remuneration, employee benefits and other conditions of employment in accordance with the regulations.

“115.15.23. Once a member’s remuneration has been set, it may not be reduced.

However, additional remuneration attaching to an administrative office within the Tribunal ceases on termination of the office.

“115.15.24. The pension plan of full-time members of the Tribunal is determined pursuant to the Act respecting the Pension Plan of Management Personnel (chapter R-12.1).

“DIVISION IV

“ETHICS AND IMPARTIALITY

“115.15.25. Before entering office, members shall take an oath, solemnly affirming the following: “I (...) swear that I will exercise the powers and fulfil the duties of my office impartially and honestly and to the best of my knowledge and abilities.”

Members shall take the oath before the president of the Tribunal; the president takes the oath before a judge of the Court of Québec.

“115.15.26. The Government shall, after consultation with the president, establish a code of ethics applicable to the members.

The Tribunal must publish the code on its website.

“115.15.27. The code of ethics must set out the rules of conduct of members and their duties toward the public, the parties, the parties’ witnesses and the persons representing the parties; it must define, in particular, conduct that is derogatory to the honour, dignity or integrity of members. In addition, it may determine the activities or situations that are incompatible with their office, their obligations concerning the disclosure of interests, and the functions they may exercise free of charge.

The code of ethics may provide specific rules for part-time members.

“115.15.28. A member may not, on pain of forfeiture of office, have a direct or indirect interest in an enterprise that may cause the member’s personal interest to conflict with the duties of office, unless the interest devolves to the member by succession or gift and the member renounces it or disposes of it with dispatch.

“115.15.29. In addition to complying with conflict of interest requirements and the rules of conduct and duties imposed by the code of ethics established under this Title, members must refrain from engaging in activities or placing themselves in situations that are incompatible, within the meaning of that code, with the exercise of their functions.

“115.15.30. Full-time members must devote themselves exclusively to their office, but may, with the president’s written consent, engage in teaching activities for which they may be remunerated. They may also carry out any mandate conferred on them by the Government after consultation with the president.

“DIVISION V

“END OF TERM AND SUSPENSION

“115.15.31. A member’s term may terminate prematurely only if the member retires or resigns or is dismissed or otherwise removed from office in the circumstances described in this division.

“115.15.32. To resign, a member must give the Minister reasonable notice in writing and send a copy to the president.

“115.15.33. The Government may dismiss a Tribunal member if the Conseil de la justice administrative (the council) so recommends, following an inquiry into a complaint for a breach of the code of ethics, of a duty under this Act or of the requirements relating to conflicts of interest or incompatible functions. It may also suspend or reprimand the member.

Any person may lodge a complaint with the council against a Tribunal member for such a breach. The complaint must be in writing, briefly state the grounds on which it is based and be sent to the seat of the council.

“115.15.34. When examining a complaint brought against a Tribunal member, the council shall act in accordance with sections 184 to 192 of the Act respecting administrative justice (chapter J-3), with the necessary modifications.

However, if the council forms an inquiry committee for the purposes of section 186 of that Act, two committee members, at least one of whom neither practises a legal profession nor is a member of a body of the Administration whose president or chair is a member of the council, must be chosen from among the council members referred to in paragraphs 1 to 4 and 7 to 9 of section 167 of that Act. The third member of the inquiry committee is the council member referred to in paragraph 4.2 of that section or is chosen from a list drawn up by the president of the Tribunal, after consultation with all the members of the Tribunal. In the latter case, if the inquiry committee finds the complaint to be justified, the third member shall take part in the deliberations of the council for the purpose of determining a penalty.

“115.15.35. The Government may remove a Tribunal member from office for loss of a qualification required by law to exercise the functions of office or if in its opinion a permanent disability prevents the member from satisfactorily performing the duties of office. Permanent disability is ascertained by the council after an inquiry is conducted at the request of the Minister or of the president of the Tribunal.

When conducting an inquiry to determine whether a member has a permanent disability, the council shall act in accordance with sections 193 to 197 of the Act respecting administrative justice (chapter J-3), with the necessary modifications; however, the formation of an inquiry committee is subject to the rules set out in the second paragraph of section 115.15.34.

“115.15.36. A Tribunal member who has been replaced and whose term has terminated otherwise than by the member’s resignation, dismissal or because he or she was otherwise removed from office may, with the authorization of and for the time determined by the president of the Tribunal, continue to exercise the functions of office in order to conclude the matters the member has begun to hear but has yet to determine; in such instances, the member is considered to be a supernumerary member for the time required.

“CHAPTER II.2

“CONDUCT OF TRIBUNAL’S BUSINESS

“DIVISION I

“ADMINISTRATIVE OFFICE

“115.15.37. The Government shall designate a president and vice-presidents from among the Tribunal members or the other persons declared qualified according to the recruiting and selection procedure referred to in section 115.15.11.

Those persons must meet the requirements set out in section 115.15.10. On being appointed, they become Tribunal members holding an administrative office.

“115.15.38. The Minister shall designate a vice-president to temporarily replace the president or another vice-president when required.

If the vice-president so designated is absent or unable to act, the Minister shall designate another vice-president as a replacement.

“115.15.39. The administrative office of the president or a vice-president is of a fixed duration of up to five years determined in the instrument of appointment or renewal.

“115.15.40. The administrative office of the president or a vice-president may terminate prematurely only if they relinquish that office, if their appointment as member expires, or if they are dismissed or removed from administrative office in the circumstances described in section 115.15.41.

“115.15.41. The Government may remove the president or a vice-president from administrative office for loss of a qualification required by law to hold that office.

The Government may also remove those persons from administrative office if the Conseil de la justice administrative so recommends, after an inquiry conducted at the Minister’s request concerning a breach pertaining only to their administrative powers and duties. The council shall act in accordance with sections 193 to 197 of the Act respecting administrative justice (chapter J-3), with the necessary modifications; however, the formation of an inquiry committee is subject to the rules set out in the second paragraph of section 115.15.34.

“DIVISION II

“MANAGEMENT AND ADMINISTRATION

“115.15.42. In addition to the powers and duties that may otherwise be assigned to the president, the president is responsible for the Tribunal’s administration and general management.

The president’s functions include

(1) directing the Tribunal’s personnel and ensuring that they carry out their functions;

(2) fostering members’ participation in the formulation of guiding principles for the Tribunal so as to maintain a high level of quality and coherence in its decisions;

(3) designating a member to be responsible for the administration of the Tribunal;

(4) coordinating the work of and assigning work to the Tribunal members, who must comply with the president's orders and directives in that regard;

(5) seeing that standards of ethical conduct are complied with;

(6) promoting the professional development of Tribunal members and personnel as regards the exercise of their functions; and

(7) periodically evaluating the knowledge and skills of the members in the exercise of their functions as well as their contribution to processing the cases before the Tribunal and to achieving the objectives of this Act.

“115.15.43. To expedite Tribunal business involving disciplinary matters, the president shall appoint part-time or temporary assessors and determine their fees.

Assessors are not members of the Tribunal's personnel.

“115.15.44. Assessors are chosen from among representatives belonging to the categories provided for in the first paragraph of section 113 who

(1) have 10 years' experience relevant to the exercise of the Tribunal's disciplinary functions; and

(2) are declared qualified according to the recruiting and selection procedure established by the president.

The recruiting and selection procedure must be published in the bulletin provided for in section 34.

“115.15.45. The names of the representatives declared qualified are recorded in a register kept at the Tribunal; a certificate of qualification is valid for a period of three years.

“115.15.46. The president must establish a code of ethics applicable to assessors and see that it is observed.

The code comes into force on the 15th day following the date of its publication in the bulletin provided for in section 34 or on any later date specified in the bulletin. It must also be published on the Tribunal's website.

“115.15.47. The president may delegate all or some of the president's powers and duties to the vice-presidents.

In addition to the powers and duties that may be delegated to them by the president or otherwise be assigned to them, the vice-presidents shall assist and advise the president in the exercise of the president's functions and perform their administrative functions under the president's authority.

“DIVISION III

“PERSONNEL AND MATERIAL AND FINANCIAL RESOURCES

“115.15.48. The secretary and the other members of the Tribunal’s personnel are appointed in accordance with the Public Service Act (chapter F-3.1.1).

“115.15.49. The secretary has custody of the Tribunal’s records.

“115.15.50. Documents emanating from the Tribunal are authentic if they are signed or, in the case of copies, if they are certified by the president, a vice-president or the secretary or by a person designated by the president for that purpose.

“115.15.51. The Financial Markets Administrative Tribunal Fund is established.

The Fund is dedicated to financing the Tribunal’s activities.

“115.15.52. The following are credited to the Fund:

(1) the sums paid by the Authority in the amount and according to the terms and conditions determined by the Government;

(2) the sums collected pursuant to the tariff of administrative fees, professional fees and other charges related to matters heard by the Tribunal; and

(3) the sums transferred to it by the Minister of Finance under the first paragraph of section 54 of the Financial Administration Act (chapter A-6.001).

Despite section 51 of the Financial Administration Act, the books of account of the Financial Markets Administrative Tribunal Fund need not be kept separately from the Tribunal’s books and accounts. In addition, section 53, the second paragraph of section 54 and section 56 of that Act do not apply to the Fund.

“115.15.53. The sums required for the purposes of this Title are debited from the Fund.

“115.15.54. The Tribunal’s fiscal year ends on 31 March.

“115.15.55. Each year, the president of the Tribunal shall submit the Tribunal’s budgetary estimates for the following fiscal year to the Minister according to the form and content and at the time determined by the Minister. The estimates are submitted to the Government for approval.

The Tribunal's budgetary estimates must include, in relation to the Financial Markets Administrative Tribunal Fund, the elements listed in subparagraphs 1 to 5 of the second paragraph of section 47 of the Financial Administration Act (chapter A-6.001) and, if applicable, the excess amount referred to in section 52 of that Act.

The third paragraph of section 47 of the Financial Administration Act does not apply to the Financial Markets Administrative Tribunal Fund.

Once approved by the Government, the Tribunal's budgetary estimates are sent to the Minister of Finance, who shall include the elements relating to the Financial Markets Administrative Tribunal Fund in the special funds budget.

“115.15.56. The Tribunal's books and accounts are audited by the Auditor General each year and whenever the Government so orders.

“115.15.57. Not later than 31 July each year, the Tribunal must submit to the Minister its financial statements as well as a report on its activities for the previous fiscal year.

The report must not refer by name to any person involved in matters heard by the Tribunal.

“115.15.58. The Minister shall table the Tribunal's activity report and financial statements before the National Assembly within 30 days of receiving them or, if the Assembly is not sitting, within 30 days of resumption.

The Auditor General's report must accompany those documents.

“DIVISION IV

“REGULATIONS

“115.15.59. In a regulation passed by a majority of its members, the Tribunal may make rules of evidence and procedure specifying the manner in which the rules established by this Act or by the Acts under which matters are heard by the Tribunal are to be applied.

“115.15.60. The Government may, by regulation, determine the tariff of administrative fees, professional fees and other charges relating to matters heard by the Tribunal, as well as the classes of persons who may be exempted from such fees and charges.

“DIVISION V

“IMMUNITY AND RECOURSES

“115.15.61. No proceedings may be brought against the Tribunal, its members, members of its personnel, or assessors for acts performed in good faith in the exercise of their functions.

The same applies to any person or organization governed by Chapter II of Title X of the Securities Act (chapter V-1.1) when that person or organization exercises the functions or powers of a person mentioned in the first paragraph.

“115.15.62. If proceedings are brought against a Tribunal member by a third party for an act performed in the exercise of the functions of office, the Tribunal shall assume the member’s defence and pay any damages awarded as compensation for the injury resulting from the act, unless the member committed a gross fault or a personal fault separable from the exercise of those functions.

However, in penal or criminal proceedings, the Tribunal shall pay the defence costs of a Tribunal member only if the member had reasonable grounds to believe that his or her conduct was in conformity with the law, or if the member was discharged or acquitted.

“115.15.63. If the Tribunal brings proceedings against a Tribunal member for an act performed in the exercise of the functions of office and loses its case, it shall pay the member’s defence costs if a court of justice so decides.

If the Tribunal wins its case only in part, a court of justice may determine the amount of the defence costs it must pay.

“115.15.64. Except on a question of jurisdiction, no application for judicial review under the Code of Civil Procedure (chapter C-25.01) may be exercised nor any injunction granted against the Tribunal or Tribunal members acting in their official capacity.

A judge of the Court of Appeal may, on an application, summarily annul any decision, order or injunction made or granted contrary to this section.”

595. Sections 115.17 and 115.18 of the Act are replaced by the following sections:

“115.17. The appeal is brought by filing a notice to that effect with the Court of Québec within 30 days after the date the parties receive the final decision.

The notice of appeal must be filed at the office of the Court of Québec in the judicial district of Québec or Montréal, depending on whether the district in which the Tribunal held its hearings is under the territorial jurisdiction of the Court of Appeal sitting at Québec or at Montréal under article 40 of the Code of Civil Procedure (chapter C-25.01).

“115.18. The notice of appeal must be served on the parties and notified to the Tribunal within 10 days after it is filed at the office of the Court of Québec.

At the request of the clerk of the Court of Québec, the secretary of the Tribunal shall send the office a copy and list of the exhibits in the record.”

596. Section 115.20 of the Act is replaced by the following sections:

“115.20. The clerk of the Court of Québec shall, without delay, send the decision on the appeal to the secretary of the Tribunal.

“115.20.1. The Court of Québec may, in the manner prescribed in the Courts of Justice Act (chapter T-16), adopt the regulations considered necessary for the application of this chapter.”

597. Title V of the Act, comprising sections 116 to 156, is repealed.

598. Sections 733 and 739 of the Act are repealed.

PART V

OTHER MEASURES CONCERNING THE FINANCIAL SECTOR

CHAPTER I

FUNERAL INSURANCE

CIVIL CODE OF QUÉBEC

599. Article 2442 of the Civil Code of Québec is amended by replacing the first paragraph by the following paragraph:

“A funeral insurance contract that does not meet the conditions set out in the Act respecting prearranged funeral services and sepultures (chapter A-23.001) is null.”

ACT RESPECTING PREARRANGED FUNERAL SERVICES AND SEPULTURES

600. Section 2 of the Act respecting prearranged funeral services and sepultures (chapter A-23.001) is amended

(1) by inserting “, as well as to every funeral insurance contract” at the end of the first paragraph;

(2) by inserting “or a guarantee of payment under the terms of a funeral insurance contract” at the end of the second paragraph;

(3) by inserting “or a guarantee of payment under the terms of a funeral insurance contract” at the end of the fourth paragraph;

(4) by inserting the following paragraph after the fifth paragraph:

“A funeral insurance contract is a contract whereby an insurer undertakes, for a premium, to make a payment following the insured’s death to cover the cost of the goods or services stipulated in a prearranged funeral services contract or the associated prepurchased sepulture contract.”

601. Chapter II of the Act is amended by replacing the portion before section 3 by the following:

“CHAPTER II

“PREARRANGED FUNERAL SERVICES CONTRACTS AND PREPURCHASED SEPULTURE CONTRACTS

“DIVISION I

“PRELIMINARY PROVISIONS

“**2.1.** This chapter applies to prearranged funeral services contracts and prepurchased sepulture contracts.”

602. The Act is amended by inserting the following chapter after section 18:

“CHAPTER II.1

“FUNERAL INSURANCE CONTRACTS

“**18.1.** A funeral insurance contract must guarantee the payment of a benefit at least equal to the price of the goods and services stipulated in a prearranged funeral services contract or the associated prepurchased sepulture contract, increased annually by the percentage contemplated in the second paragraph of section 27.

Despite the first paragraph, a funeral insurance contract may provide that the benefit payable by the insurer must not exceed the aggregate of the premiums paid if the insured dies before two years of uninterrupted insurance.

“18.2. Following the insured’s death and on receipt of a sworn declaration produced by the seller who is party to the associated contract, the insurer must pay to the seller an amount corresponding to the price of the goods and services stipulated in the associated contract and provided by the latter, increased as specified in section 18.1.

The sworn declaration produced by the seller must include

- (1) the number of the attestation of the insured’s certificate of death contemplated in section 46 of the Public Health Act (chapter S-2.2); and
- (2) a description and the price of the goods and services stipulated in the associated contract and provided by the seller.

Once the amount referred to in the first paragraph has been paid to the seller, the insurer must pay the balance of the benefit stipulated in the funeral insurance contract to the beneficiary designated by the holder of that contract or, failing that, to the insured’s succession.

“18.3. The seller may not claim any amount from the insured’s succession, except to make up the difference between the amount paid to the seller by the insurer and the price of the goods and services stipulated in the associated contract, increased as specified in section 18.1.

“18.4. The rights conferred by a funeral insurance contract are exempt from seizure as long as the insurer has not made a payment in accordance with section 18.2.

“18.5. A funeral insurance contract remains valid despite the nullity or cancellation of the associated contract.

If no new contract is associated with the funeral insurance contract at the time of the insured’s death, the benefit stipulated in the insurance contract is considered entirely as a balance for the purposes of the third paragraph of section 18.2.

“18.6. Annulment or resiliation of a funeral insurance contract entails cancellation of the associated contract. The insurer must immediately notify the seller in writing.

The associated contract may however be reinstated if the seller and the insured or the holder of the insurance contract enter into an agreement to that effect within 90 days following its cancellation.

Such an agreement must specify the terms of payment of the price of the goods and services stipulated in the associated contract, increased as specified in section 18.1, for each year that has passed since the associated contract was entered into.

The amounts received by the seller under an agreement entered into under this section must be deposited in trust.”

603. Section 21 of the Act is amended by adding the following subparagraph at the end of the second paragraph:

“(3) the amount representing the credit charges payable under a contract.”

CHAPTER II

COMMUNICATION OF INFORMATION RELATING TO AUTOMOBILE INSURANCE

AUTOMOBILE INSURANCE ACT

604. Section 179.1 of the Automobile Insurance Act (chapter A-25) is amended

(1) by replacing the introductory clause of the first paragraph by the following:

“The Autorité des marchés financiers may communicate the following information to the authorized insurer who so requests for the purpose of issuing or renewing an automobile insurance policy:”;

(2) by inserting the following paragraphs after the first paragraph:

“That information may be communicated at the time a person expresses the intention to apply for or renew an automobile insurance policy with an insurer; that information may only be used for purposes of classification and rate application based on the risk the person represents.

If the insurer issues a policy, the information referred to in the first paragraph is presumed to have been confirmed by that person, subject to any other circumstances the person is required to declare in that respect, and the obligation relating to that declaration is presumed to have been properly discharged.”

605. Section 180 of the Act is amended by replacing “one copy of his rate manual with the Autorité des marchés financiers immediately upon its being compiled and, thereafter, within 10 days of any amendment” in the first paragraph by “a copy of its rate manual with the Autorité des marchés financiers on the dates and in the form the Autorité des marchés financiers determines”.

606. The Act is amended by inserting the following section after section 181:

“181.1. If it is brought to the attention that an authorized insurer has failed to comply with section 180 or 181, the Autorité des marchés financiers may, once the facts have been established, impose on that authorized insurer a monetary administrative penalty not exceeding \$1,000.”

CHAPTER III

MEASURES CONCERNING MONEY-SERVICES BUSINESSES

MONEY-SERVICES BUSINESSES ACT

607. Section 27 of the Money-Services Businesses Act (chapter E-12.000001) is amended

(1) by replacing the first and second paragraphs by the following paragraphs:

“Every three years after a money-services business’s licence is issued and whenever informed of a fact likely to affect the validity of the licence or to render any of sections 11 to 17 applicable, the Authority sends the information on the licence holder concerned to the Sûreté du Québec and the police force in the local municipal territory where the business offers money services so that they may conduct such checks as they consider necessary.

The Sûreté du Québec must then issue new security clearance reports to the Authority stating the grounds on which the business’s licence should be suspended or revoked, if that is the case.”;

(2) by replacing “a licence” in the third paragraph by “the business’s licence”.

608. Section 50 of the Act is amended by replacing “for a renewable period of 120 days from the time the person or entity concerned is notified” in the second paragraph by “from the time the person or entity concerned is notified and, unless otherwise provided, remains binding for a renewable period of 12 months; it may be revoked or otherwise amended during that period.”

609. Section 54 of the Act is amended

(1) by inserting “; the person or entity may also apply for an amendment to or the revocation of the order” at the end of the first paragraph;

(2) by adding the following paragraph at the end:

“A written notice stating the grounds for the application for amendment or revocation must be filed with the Tribunal. The notice must be served on the Authority at least 15 days before the hearing set to hear the application.”

610. Section 77 of the Act is repealed.

CHAPTER IV

MEASURES CONCERNING DERIVATIVES

DIVISION I

AMENDING PROVISIONS

DERIVATIVES ACT

611. Section 3 of the Derivatives Act (chapter I-14.01) is amended

(1) by inserting “a derivatives trading platform,” after “a trade repository,” in the definition of “regulated entity”;

(2) by replacing all occurrences of “standardized derivative” and “standardized derivatives” by “exchange-traded derivative” and “exchange-traded derivatives”, respectively.

612. Section 10 of the Act is amended by replacing “A standardized derivative” by “An exchange-traded derivative”.

613. Section 12 of the Act is amended by inserting “a derivatives trading platform,” after “a trade repository,” in the first paragraph.

614. Section 39 of the Act is amended by replacing “a standardized derivative” by “an exchange-traded derivative”.

615. Sections 74 to 77 of the Act are replaced by the following sections:

“74. All dealers and advisers must process the complaints filed with them in a fair manner. To that end, they must

(1) follow a policy for processing complaints filed by their clients and resolving disputes with them; and

(2) keep a complaints register.

Unless such a policy is fully set out in a regulation made under subparagraph 19.1 of the first paragraph of section 175, dealers and advisers must adopt one themselves.

“75. The complaint processing and dispute resolution policy adopted under subparagraph 1 of the first paragraph of section 74 must, in particular,

(1) set out the characteristics that make a communication to a dealer or adviser a complaint that must be registered in the complaints register kept under subparagraph 2 of the first paragraph of section 74; and

(2) provide for a record to be opened for each complaint and prescribe rules for keeping such records.

Dealers and advisers must make a summary of the policy, including the elements specified in subparagraphs 1 and 2 of the first paragraph, publicly available on their website, if they have one, and disseminate it by any appropriate means to reach the clientele concerned.

“76. Within 10 days after a complaint is registered in the complaints register, the dealer or adviser must send the complainant a notice stating the complaint registration date and the complainant’s right, under section 77, to have the complaint record examined.

“77. A complainant whose complaint has been registered in the complaints register may, if dissatisfied with the dealer’s or adviser’s processing of the complaint or the outcome, request the dealer or adviser to have the complaint record examined by the Authority.

The dealer or adviser is required to comply with the complainant’s request and send the record to the Authority.

“77.1. The Authority examines the complaint records that are sent to it.

It may, with the parties’ consent and on payment by each party of the fees determined by government regulation, act as conciliator or mediator or designate a person to act as such.

Conciliation or mediation may not, alone or in combination, continue for more than 60 days after the date of the first conciliation or mediation session, as the case may be, unless the parties consent to it.

In exercising the regulatory power under the second paragraph, the Government may determine different fees according to the classes of persons or groups it determines.

“77.2. Unless the parties agree otherwise, nothing that is said or written in the course of a conciliation or mediation session may be admitted into evidence before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

A conciliator or mediator may not be compelled to disclose anything revealed or learned in the exercise of conciliation or mediation functions or to produce a document prepared or obtained in the course of such functions before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no one has a right of access to a document contained in the conciliation or mediation record.

“77.3. Despite sections 9 and 83 of the Act respecting Access to documents held by public bodies and the Protection of personal information, the Authority may not communicate a complaint record without the authorization of the dealer or adviser that has sent it.

“77.4. On the date set by the Authority, dealers and advisers must send it a report on the complaint processing and dispute resolution policy adopted under subparagraph 1 of the first paragraph of section 74 stating the number of complaints they have registered in the complaints register and their nature.

The report must cover the period determined by the Authority.”

616. Section 82 of the Act is amended, in the first paragraph,

(1) by striking out “recognized”;

(2) by inserting “, other than an exchange-traded derivative,” after “markets a derivative”.

617. Section 82.2 of the Act is amended by striking out “, especially as regards the independence of directors and the auditing of financial statements”.

618. Section 90 of the Act is amended by inserting the following subparagraph after subparagraph 5.3 of the first paragraph:

“(5.4) a recognized derivatives trading platform or one of its subscribers;”.

619. Section 102 of the Act is repealed.

620. Section 115 of the Act is amended by adding the following paragraph at the end:

“The Authority may also inspect the affairs of a person to verify compliance with the provisions applicable to the person with respect to over-the-counter derivatives under this Act.”

621. Section 120 of the Act is amended by replacing “, for a renewable period of 120 days” in the first paragraph by “and, unless otherwise provided, remains binding for a 12-month period; it may be revoked or otherwise amended during that period.”

622. Section 125 of the Act is amended

(1) by inserting “; the person may also apply for an amendment to or the revocation of the order” at the end of the first paragraph;

(2) by adding the following paragraph at the end:

“A written notice stating the grounds for the application for amendment or revocation must be filed with the Tribunal. The notice must be served on the Authority at least 15 days before the hearing set to hear the application.”

623. The Act is amended by inserting the following sections after section 127:

“127.1. If the Tribunal issues an order under paragraph 7 of section 127, the Tribunal must, if the proof justifying the order shows that persons have sustained a loss in the course of the non-compliance referred to in that paragraph 7, order the Authority to submit to the Tribunal the terms under which the amounts disgorged to the Authority will be administered and may be distributed to the persons who have sustained a loss, unless it is shown to the Tribunal that the amounts so disgorged are less than those to be incurred for their distribution.

The terms must provide the following at a minimum:

(1) the rules according to which the amounts will be deposited with a deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26) or a bank or otherwise invested until the distribution ends;

(2) the conditions to meet to be entitled to participate in the distribution of the amounts disgorged, including the time limit after which a person may not participate;

(3) the means that must be taken to notify the persons concerned of the possibility of participating in the distribution of the amounts; and

(4) the date on which the distribution is to end should the amounts disgorged not be distributed in their entirety.

“127.2. The Authority must publish the terms that it proposes in its bulletin at least 30 days before submitting them to the Tribunal.

Any interested person may contest the terms before the Tribunal, except the representative, firm or other person responsible for the non-compliance against whom or which the order was issued under paragraph 7 of section 127.

The Tribunal shall approve the terms submitted by the Authority with or without amendments; it may also order the Authority to submit new terms.

“127.3. The Authority shall administer and distribute the amounts in accordance with the terms approved by the Tribunal.

The rules for the simple administration of the property of others apply to the Authority with respect to the amounts disgorged to it while the terms of their administration and distribution have not been approved by the Tribunal.

The Authority may amend the terms by following the procedure provided for in section 127.2.

“127.4. If the Tribunal issues an order under paragraph 7 of section 127 directing that amounts be disgorged to the Authority without ordering the Authority to submit terms of administration and distribution, the Authority must pay the amounts to the Minister of Finance.

The same applies to the balance of the amounts disgorged to the Authority remaining, if any, on the date on which a distribution ends.”

624. Section 145.1 of the Act is amended by replacing all occurrences of “a standardized derivative”, “the standardized derivative” and “standardized derivatives” by “an exchange-traded derivative”, “the exchange-traded derivative” and “exchange-traded derivatives”, respectively.

625. Section 151 of the Act is amended by replacing “or participates” in the introductory clause by “, participates or attempts to engage or participate”.

626. Section 175 of the Act, amended by section 61 of the Act to amend various legislative provisions mainly concerning the financial sector (2011, chapter 26), is again amended, in the first paragraph,

(1) by replacing subparagraph 11 by the following subparagraph:

“(11) make rules concerning derivatives transactions, in particular, rules concerning record keeping, declarations, transparency, guarantees, security, margins, capital, trading, compensation and settlement in relation to a derivative;”;

(2) by inserting the following subparagraph after subparagraph 19:

“(19.1) determine the policy that dealers and advisers must adopt under section 74, or elements of that policy;”.

627. Section 176 of the Act is amended by replacing paragraph 3 by the following paragraph:

“(3) determine the fees referred to in section 77.1.”

628. The Act is amended by inserting the following section after section 176:

“176.1. A provision of a regulation made for the purposes of this Act that does not apply to the Government does not apply to the following bodies either:

(1) a body referred to in paragraph 2 of section 77 of the Financial Administration Act (chapter A-6.001);

(2) a municipality, metropolitan community or school board or the Comité de gestion de la taxe scolaire de l’île de Montréal;

(3) a transit authority constituted under an Act of Québec;

(4) a public institution or regional council within the meaning of the Act respecting health services and social services for Cree Native persons (chapter S-5) or a public institution or health services and social services agency referred to in the Act respecting health services and social services (chapter S-4.2);

(5) a university-level educational institution referred to in any of paragraphs 1 to 11 of section 1 of the Act respecting educational institutions at the university level (chapter E-14.1);

(6) general and vocational colleges; and

(7) intermunicipal boards.”

DIVISION II

SPECIAL TRANSITIONAL PROVISIONS

629. Section 127.1 of the Derivatives Act, enacted by section 623 of this Act, is, for the period from (*insert the date that is one month after the date of assent to this Act*) to (*insert the date preceding the date that is one year after the date of assent to this Act*), to be read as if “deposit institution authorized under the Deposit Institutions and Deposit Protection Act” in subparagraph 1 of the second paragraph were replaced by “financial institution registered with the Authority under the Deposit Insurance Act”.

CHAPTER V

MEASURES CONCERNING SECURITIES

DIVISION I

AMENDING PROVISIONS

SECURITIES ACT

630. Section 5 of the Securities Act (chapter V-1.1) is amended

(1) by replacing the definition of “non-redeemable investment fund” by the following definition:

““non-redeemable investment fund” means an issuer having all the following characteristics:

(1) its primary purpose is to invest money provided to it by its security holders;

(2) it does not invest for the following purposes:

(a) exercising or seeking to exercise control of an issuer, except any issuer that is a mutual fund or a non-redeemable investment fund; or

(b) being actively involved in the management of any issuer in which it invests, except any issuer that is a mutual fund or a non-redeemable investment fund; and

(3) it is not a mutual fund;”;

(2) by striking out “under section 43 or prescribed by regulation” in paragraph 3 of the definition of “distribution”.

631. Section 148.3 of the Act is amended, in the first paragraph,

(1) by replacing “sections 23 and 24 of the Deposit Insurance Act” by “section 23 of the Deposit Institutions and Deposit Protection Act”;

(2) by inserting “authorized under that Act” after “deposit institution”.

632. The Act is amended by inserting the following section after section 160.1:

“160.1.1. A dealer registered as a mutual fund dealer or scholarship plan dealer may share a commission the dealer receives only with another dealer or adviser governed by this Act, a firm, an independent representative or independent partnership governed by the Act respecting the distribution of financial products and services (chapter D-9.2), a broker’s or agency licence holder governed by the Real Estate Brokerage Act (chapter C-73.2), a dealer or adviser governed by the Derivatives Act (chapter I-14.01), a deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26), an insurer authorized under the Insurers Act (*insert the year and chapter number of that Act*) or a federation within the meaning of the Act respecting financial services cooperatives (chapter C-67.3).

The commission is to be shared in the manner determined by regulation of the Authority.

The dealer shall enter every sharing of a commission in a register, in accordance with the regulations.”

633. Sections 168.1.1 to 168.1.5 of the Act are replaced by the following sections:

“168.1.1. All dealers and advisers must process the complaints filed with them in a fair manner. To that end, they must

(1) follow a policy for processing complaints filed by their clients and resolving disputes with them; and

(2) keep a complaints register.

Unless such a policy is fully set out in a regulation made under paragraph 27.0.4 of section 331.1, dealers and advisers must adopt one themselves.

“168.1.2. The complaint processing and dispute resolution policy adopted under subparagraph 1 of the first paragraph of section 168.1.1 must, in particular,

(1) set out the characteristics that make a communication to a dealer or adviser a complaint that must be registered in the complaints register kept under subparagraph 2 of the first paragraph of section 168.1.1; and

(2) provide for a record to be opened for each complaint and prescribe rules for keeping such records.

Dealers and advisers must make a summary of the policy, including the elements specified in subparagraphs 1 and 2 of the first paragraph, publicly available on their website, if they have one, and disseminate it by any appropriate means to reach the clientele concerned.

“168.1.3. Within 10 days after a complaint is registered in the complaints register, the dealer or adviser must send the complainant a notice stating the complaint registration date and the complainant’s right, under section 168.1.4, to have the complaint record examined.

“168.1.4. A complainant whose complaint has been registered in the complaints register may, if dissatisfied with the dealer’s or adviser’s processing of the complaint or the outcome, request the dealer or adviser to have the complaint record examined by the Authority.

The dealer or adviser is required to comply with the complainant’s request and send the record to the Authority.

“168.1.5. The Authority shall examine the complaint records that are sent to it.

It may, with the parties’ consent and on payment by each party of the fees determined by government regulation, act as conciliator or mediator or designate a person to act as such.

Conciliation or mediation may not, alone or in combination, continue for more than 60 days after the date of the first conciliation or mediation session, as the case may be, unless the parties consent to it.

In exercising the regulatory power under the second paragraph, the Government may determine different fees according to the classes of persons or groups it determines.

“168.1.6. Unless the parties agree otherwise, nothing that is said or written in the course of a conciliation or mediation session may be admitted into evidence before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

A conciliator or mediator may not be compelled to disclose anything revealed or learned in the exercise of conciliation or mediation functions or to produce a document prepared or obtained in the course of such functions before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no one has a right of access to a document contained in the conciliation or mediation record.

“168.1.7. Despite sections 9 and 83 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Authority may not communicate a complaint record without the authorization of the dealer or adviser that has sent it.

“168.1.3. On the date set by the Authority, dealers and advisers shall send it a report on the complaint processing and dispute resolution policy adopted pursuant to subparagraph 1 of the first paragraph of section 168.1.1 stating the number of complaints they have registered in the complaints register and their nature.

The report must cover the period determined by the Authority.”

634. Section 199 of the Act is amended by inserting the following subparagraph after subparagraph *a* of subparagraph 4 of the first paragraph:

“(a.1) the declaration is authorized by regulation;”.

635. Section 199.1 of the Act is amended by replacing “or participates” in the introductory clause of the first paragraph by “, participates or attempts to engage or participate”.

636. Section 204.1 of the Act is amended by replacing “of section 11” by “of section 11 or 12”.

637. Section 208.1 of the Act is amended by replacing “or who contravenes any of sections 187 to 191.1, 195.2, 196, 197” by “or 12 or who contravenes any of sections 187 to 191.1, 195.2, 196, 197, 199.1”.

638. Section 211 of the Act is amended by replacing “168.1.3” in the first paragraph by “168.1.4”.

639. Section 225.3 of the Act is amended by replacing “d’offre établie pour le” in the definition of “document essentiel” in the French text by “de”.

640. Section 235 of the Act is amended by adding the following paragraph at the end:

“The prescription provided for by this section is suspended by the filing of a request for authorization with the court under section 225.4; moreover, the suspension of prescription provided for by article 2908 of the Civil Code is effective only as of the filing of that request. The suspension ceases, as the case may be,

(1) when the court has rendered its decision on the request for authorization and the decision can no longer be appealed;

(2) the plaintiff has discontinued the action.”

641. Section 250 of the Act is amended by replacing “for a renewable period of 120 days from the time the person concerned is notified” in the first paragraph by “from the time the person concerned is notified and, unless otherwise provided, remains binding for a 12-month period; it may be revoked or otherwise amended during that period.”

642. Section 255 of the Act is amended

(1) by inserting “; the person may also apply for an amendment to or the revocation of the order” at the end;

(2) by adding the following paragraph at the end:

“A written notice stating the reasons for the application for amendment or revocation must be filed with the Tribunal. The notice must be served on the Authority not less than 15 days before the hearing set to hear the application.”

643. The Act is amended by inserting the following sections after section 262.1:

“262.2. If the Tribunal issues an order under paragraph 9 of section 262.1, the Tribunal must, if the proof justifying the order shows that persons sustained a loss in the course of the non-compliance referred to in that paragraph 9, order the Authority to submit to the Tribunal the terms under which the amounts disgorged to the Authority will be administered and may be distributed to the persons who have sustained a loss, unless it is shown to the Tribunal that the amounts so disgorged are less than those to be incurred for their distribution.

The terms must provide the following at a minimum:

(1) the rules according to which the amounts will be deposited with a deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26) or a bank or otherwise invested until the distribution ends;

(2) the conditions to meet to be entitled to participate in the distribution of the amounts disgorged, including the time limit after which a person may not participate;

(3) the means that must be taken to notify the persons concerned of the possibility of participating in the distribution of the amounts; and

(4) the date on which the distribution is to end should the amounts disgorged not be distributed in their entirety.

“262.3. The Authority must publish the terms that it proposes in its bulletin at least 30 days before submitting them to the Tribunal.

Any interested person may contest the terms before the Tribunal, except the person responsible for the non-compliance against whom the order was issued under paragraph 9 of section 262.1.

The Tribunal shall approve the terms submitted by the Authority with or without amendments; it may also order the Authority to submit new terms.

“262.4. The Authority shall administer and distribute the amounts in accordance with the terms approved by the Tribunal.

The rules for the simple administration of the property of others apply to the Authority with respect to the amounts disgorged to it while the terms of their administration and distribution have not been approved by the Tribunal.

The Authority may amend the terms by following the procedure provided for in section 262.3.

“262.5. If the Tribunal issues an order under paragraph 9 of section 262.1 directing that amounts be disgorged to the Authority without ordering the Authority to submit terms of administration and distribution, the Authority must pay the amounts to the Minister of Finance.

The same applies to the balance of the amounts disgorged to the Authority remaining, if any, on the date on which a distribution ends.”

644. Section 295 of the Act is repealed.

645. Section 323.8.1 of the Act is amended

(1) by replacing “115.1 to 115.10” in the first paragraph by “102, 107 to 110, 115.1, 115.2, 115.4, 115.6, 115.7 and 115.15.59”;

(2) by replacing “If it is imperative to do so” in the second paragraph by “If urgent action is required or to prevent irreparable injury”.

646. Section 323.8.2 of the Act is repealed.

647. Section 331.1 of the Act is amended by inserting the following paragraphs after paragraph 27.0.2:

“(27.0.3) determine the manner in which a commission is to be shared under section 160.1.1;

“(27.0.4) determine the policy that dealers and advisers must adopt under section 168.1.1, or elements of that policy.”

648. Section 332 of the Act is amended by replacing paragraph 3 by the following paragraph:

“(3) determine the fees referred to in section 168.1.5.”

DIVISION II

SPECIAL TRANSITIONAL PROVISIONS

649. The Securities Act (chapter V-1.1) is, for the period from *(insert the date that is one month after the date of assent to this Act)* to *(insert the date preceding the date that is one year after the date of assent to this Act)*, to be read as if

(1) “deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26), an insurer authorized under the Insurers Act *(insert the year and chapter number of that Act)*” in the first paragraph of section 160.1.1, enacted by section 632 of this Act, were replaced by “financial institution registered with the Authority under the Deposit Insurance Act (chapter A-26), an insurer holding a licence issued under the Act respecting insurance (chapter A-32)”;

(2) “deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26)” in the first paragraph of section 262.2, enacted by section 643 of this Act, were replaced by “financial institution registered with the Authority under the Deposit Insurance Act (chapter A-26)”.

PART VI

AMENDING PROVISIONS

CIVIL CODE OF QUÉBEC

650. Article 1339 of the Civil Code of Québec is amended by replacing “a hypothecary insurance policy issued by a company holding a licence under the Act respecting insurance (chapter A-32)” in subparagraph *c* of paragraph 7 by “a hypothecary insurance contract issued by an insurer authorized under the Insurers Act *(insert the year and chapter number of that Act)*”.

651. Article 1583 of the Code is amended by inserting “authorized under the Trust Companies and Savings Companies Act *(insert the year and chapter number of that Act)*” after “trust company” in the first paragraph.

652. Article 2713.6 of the Code is amended by replacing “trust companies, savings companies and” in the second paragraph by “trust companies authorized under the Trust Companies and Savings Companies Act *(insert the year and chapter number of that Act)*, deposit institutions authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26) and”.

ACT RESPECTING PREARRANGED FUNERAL SERVICES AND SEPULTURES

653. Section 20 of the Act respecting prearranged funeral services and sepultures (chapter A-23.001) is amended by replacing the third paragraph by the following paragraph:

““Financial institution” means a deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26) or a bank.”

654. Section 26 of the Act is amended by inserting “authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)” after “trust company” in the first sentence of the second paragraph.

AUTOMOBILE INSURANCE ACT

655. Section 156 of the Automobile Insurance Act (chapter A-25) is amended by replacing “Act respecting insurance (chapter A-32), holding a permit issued by the Autorité des marchés financiers” in the second paragraph by “Insurers Act (*insert the year and chapter number of that Act*)”.

HOSPITAL INSURANCE ACT

656. Section 11 of the Hospital Insurance Act (chapter A-28) is amended by replacing the fifth paragraph by the following paragraph:

““Insurer” means a legal person authorized by the Autorité des marchés financiers to carry on insurance of persons activities.”

HEALTH INSURANCE ACT

657. Section 15 of the Health Insurance Act (chapter A-29) is amended by replacing the fourth paragraph by the following paragraph:

““Insurer” means a legal person authorized by the Autorité des marchés financiers to carry on insurance of persons activities.”

ACT RESPECTING PRESCRIPTION DRUG INSURANCE

658. Section 4 of the Act respecting prescription drug insurance (chapter A-29.01) is amended by replacing the first paragraph by the following paragraph:

““Insurer” means a legal person authorized by the Autorité des marchés financiers to carry on insurance of persons activities.”

BUILDING ACT

659. Section 58 of the Building Act (chapter B-1.1) is amended by replacing the third paragraph by the following paragraph:

“Subparagraph 8.2 of the first paragraph does not apply to the authorized financial institutions referred to in paragraphs 1 to 4 of section 4 of the Insurers Act (*insert the year and chapter number of that Act*) or to the banks listed in Schedules I and II to the Bank Act (Statutes of Canada, 1991, chapter 46).”

660. Section 60 of the Act is amended by replacing the second sentence of the third paragraph by the following sentence: “However, under no circumstances does it apply to the authorized financial institutions referred to in paragraphs 1 to 4 of section 4 of the Insurers Act (*insert the year and chapter number of that Act*) or to the banks listed in Schedules I and II to the Bank Act (Statutes of Canada, 1991, chapter 46).”

UNCLAIMED PROPERTY ACT

661. Section 3 of the Unclaimed Property Act (chapter B-5.1) is amended by replacing “financial services cooperative, a savings company, a trust company or any other institution authorized by law to receive deposits of money” in subparagraph 1 of the first paragraph by “deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26)”.

ACT RESPECTING THE CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC

662. Section 28 of the Act respecting the Caisse de dépôt et placement du Québec (chapter C-2) is amended by replacing “an insurance company authorized to issue hypothecary insurance policies” in subparagraph *i* of subparagraph *a* of the second paragraph by “an insurer authorized under the Insurers Act (*insert the year and chapter number of that Act*) to underwrite hypothecary insurance contracts”.

ACT CONSTITUTING CAPITAL RÉGIONAL ET COOPÉRATIF DESJARDINS

663. Section 20 of the Act constituting Capital régional et coopératif Desjardins (chapter C-6.1) is amended by replacing “financial institution registered with the Autorité des marchés financiers pursuant to the Deposit Insurance Act” in subparagraph 3 of the fourth paragraph by “deposit institution authorized under the Deposit Institutions and Deposit Protection Act”.

CHARTER OF VILLE DE MONTRÉAL

664. Section 263 of Schedule C to the Charter of Ville de Montréal (chapter C-11.4) is amended by replacing “fire insurance companies doing business in its territory and” in paragraph 1 by “insurers authorized under the Insurers Act (*insert the year and chapter number of that Act*) doing business in its territory and”.

CHARTER OF VILLE DE QUÉBEC, NATIONAL CAPITAL OF QUÉBEC

665. Section 162 of Schedule C to the Charter of Ville de Québec, national capital of Québec (chapter C-11.5) is amended by inserting “authorized to do business in the province of Québec” after “trust companies” in the first paragraph.

CITIES AND TOWNS ACT

666. Section 99 of the Cities and Towns Act (chapter C-19) is amended

(1) by replacing “any legally constituted bank, financial services cooperative or trust company” in the first paragraph by “any bank or any deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26)”;

(2) by replacing “any legally constituted bank, financial services cooperative or trust company” in the second paragraph by “any bank or any deposit institution authorized under the Deposit Institutions and Deposit Protection Act”.

667. Section 464 of the Act is amended by replacing “a life insurance company or a trust company” in the first paragraph of subparagraph 8 of the first paragraph by “an insurer authorized under the Insurers Act (*insert the year and chapter number of that Act*) or a trust company authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)”.

668. Section 465.10 of the Act is replaced by the following section:

“465.10. For the application of the Insurers Act (*insert the year and chapter number of that Act*) to a legal person, the latter is considered to be a mutual company. However, unlike such a company,

(a) the legal person is prohibited from pursuing any other object than that provided for in section 465.1;

(b) despite Division II of Chapter VIII of Title III of that Act, the legal person does not have capital stock;

(c) despite Chapter XII of Title III of that Act, the legal person's letters patent are to be amended only under this subdivision; and

(d) despite Chapters XIII and XIV of Title III of that Act, the legal person may not be continued under any other Act or amalgamate with another mutual company.

Despite section 23 of the Insurers Act, the Authority may grant its authorization to a legal person that does not have at least \$5,000,000 in capital. In addition, the legal person is not required, in its investments, to comply with sections 84 and 85 of that Act.

Despite section 351 of that Act, in the case of the winding-up of the legal person, persons who were mutual members in any of the three years preceding the commencement of the winding-up shall share the legal person's remaining property in proportion to the sums they paid over the course of those years."

669. Section 465.15 of the Act is amended by striking out the eighth paragraph.

670. Section 465.17 of the Act is replaced by the following section:

"465.17. Despite section 89 of the Insurers Act (*insert the year and chapter number of that Act*), a legal person is not required to be a member of a compensation body recognized by the Authority."

CODE OF CIVIL PROCEDURE

671. Article 216 of the Code of Civil Procedure (chapter C-25.01) is amended by replacing "be licensed under the Act respecting trust companies and savings companies (chapter S-29.01)" in the first paragraph by "be authorized to carry on trust company activities under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)".

672. Article 547 of the Code is amended by inserting "authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)" after "trust company" in subparagraph 5 of the second paragraph.

PROFESSIONAL CODE

673. Section 16.8 of the Professional Code (chapter C-26) is amended by replacing "deposits in a bank or financial institution registered with the Autorité des marchés financiers pursuant to the Deposit Insurance Act" in paragraph 2 by "deposits with a bank or deposit institution authorized under the Deposit Institutions and Deposit Protection Act".

MUNICIPAL CODE OF QUÉBEC

674. Article 203 of the Municipal Code of Québec (chapter C-27.1) is amended, in the first paragraph,

(1) by replacing “any legally constituted bank, financial services cooperative or trust company” in the first sentence by “any bank or any deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26)”;

(2) by replacing “such legally constituted bank, financial services cooperative or trust company as” in the second sentence by “any bank or any deposit institution authorized under the Deposit Institutions and Deposit Protection Act which”.

675. Article 704 of the Code is amended by replacing “a life insurance company or a trust company” in the first paragraph by “an authorized insurer or trust company”.

676. Article 711.11 of the Code is replaced by the following article:

“711.11. For the application of the Insurers Act (*insert the year and chapter number of that Act*) to a legal person, the latter is considered to be a mutual company. However, unlike such a company,

(1) the legal person is prohibited from pursuing any other object than that provided for in article 711.2;

(2) despite Division II of Chapter VIII of Title III of that Act, the legal person does not have capital stock;

(3) despite Chapter XII of Title III of that Act, the legal person’s letters patent are to be amended only under this Title; and

(4) despite Chapters XIII and XIV of Title III of that Act, the legal person may not be continued under any other Act or amalgamate with another mutual company.

Despite section 23 of the Insurers Act, the Authority may grant its authorization to a legal person that does not have capital in the amount of at least \$5,000,000. In addition, the legal person is not required, in its investments, to comply with sections 84 and 85 of that Act.

Despite section 351 of that Act, in the case of the winding-up of the legal person, persons who were mutual members in any of the three years preceding the commencement of the winding-up shall share the legal person’s remaining property in proportion to the sums they paid over the course of those years.”

677. Article 711.16 of the Code is amended by striking out the eighth paragraph.

678. Article 711.18 of the Code is replaced by the following article:

“711.18. Despite section 89 of the Insurers Act (*insert the year and chapter number of that Act*), a legal person is not required to be a member of a compensation body recognized by the Authority.”

COMPANIES ACT

679. Section 51 of the Companies Act (chapter C-38) is amended by inserting “authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)” after “trust company” in paragraph 3.

680. Section 125 of the Act is amended by replacing “insurance companies constituted” in the second paragraph by “insurers constituted”.

681. Section 149 of the Act is amended by inserting “authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)” after “trust company” in paragraph 3.

ACT RESPECTING THE CONSEIL DES ARTS ET DES LETTRES DU QUÉBEC

682. Section 25 of the Act respecting the Conseil des arts et des lettres du Québec (chapter C-57.02) is amended by replacing “financial institution registered with the Autorité des marchés financiers pursuant to the Deposit Insurance Act,” in paragraph 3 by “deposit institution authorized under the Deposit Institutions and Deposit Protection Act”.

ACT RESPECTING THE CONSERVATION AND DEVELOPMENT OF WILDLIFE

683. Section 151 of the Act respecting the conservation and development of wildlife (chapter C-61.1) is amended by replacing “registered institution within the meaning of the Deposit Insurance Act” in paragraph 1 by “deposit institution authorized under the Deposit Institutions and Deposit Protection Act”.

ACT RESPECTING THE CONSERVATOIRE DE MUSIQUE ET D’ART DRAMATIQUE DU QUÉBEC

684. Section 61 of the Act respecting the Conservatoire de musique et d’art dramatique du Québec (chapter C-62.1) is amended by replacing “financial institution registered with the Autorité des marchés financiers pursuant to the Deposit Insurance Act,” in paragraph 3 by “deposit institution authorized under the Deposit Institutions and Deposit Protection Act”.

ACT RESPECTING CONTRACTING BY PUBLIC BODIES

685. Schedule I to the Act respecting contracting by public bodies (chapter C-65.1) is amended

(1) by inserting the following in alphabetical order:

Insurers Act (<i>insert the year and chapter number of that Act</i>)	512 (4)	Providing a document or information that is false or inaccurate, or access to such a document or information, to the Autorité des marchés financiers
Deposit Institutions and Deposit Protection Act (chapter A-26)	46.2 (3)	Providing a document or information that is false or inaccurate, or access to such a document or information, to the Autorité des marchés financiers
Trust Companies and Savings Companies Act (<i>insert the year and chapter number of that Act</i>)	305 (4)	Providing a document or information that is false or inaccurate, or access to such a document or information, to the Autorité des marchés financiers

(2) by striking out all references to the Deposit Insurance Act (chapter A-26), the Act respecting insurance (chapter A-32) and the Act respecting trust companies and savings companies (chapter S-29.01).

COOPERATIVES ACT

686. Section 2 of the Cooperatives Act (chapter C-67.2) is amended by replacing “the activities of a trust company or a savings company governed by the Act respecting trust companies and savings companies (chapter S-29.01)” by “trust company activities within the meaning of the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*) or deposit institution activities within the meaning of the Deposit Institutions and Deposit Protection Act (chapter A-26)”.

FORESTRY CREDIT ACT

687. Section 46.2 of the Forestry Credit Act (chapter C-78) is amended by striking out “or as investments under sections 243 to 274 of the Act respecting insurance (chapter A-32) and section 201 of the Act respecting trust companies and savings companies (chapter S-29.01)” in the second paragraph.

688. Section 46.5 of the Act is amended by replacing “an institution registered with the Autorité des marchés financiers pursuant to the Deposit Insurance Act” in the first paragraph by “a deposit institution authorized under the Deposit Institutions and Deposit Protection Act”.

ACT TO PROMOTE FOREST CREDIT BY PRIVATE INSTITUTIONS

689. Section 55 of the Act to promote forest credit by private institutions (chapter C-78.1) is amended by striking out “or as investments under sections 243 to 274 of the Act respecting insurance (chapter A-32) or under section 201 of the Act respecting trust companies and savings companies (chapter S-29.01)” in the third paragraph.

690. Section 58 of the Act is amended by replacing “an institution registered with the Autorité des marchés financiers pursuant to the Deposit Insurance Act” in the first paragraph by “a deposit institution authorized under the Deposit Institutions and Deposit Protection Act”.

LAND TRANSFER DUTIES ACT

691. Section 41 of the Land Transfer Duties Act (chapter D-17) is amended by replacing paragraph *a* of subsection 2 by the following paragraph:

“(a) an insurer authorized under the Insurers Act (*insert the year and chapter number of that Act*) or a corporation authorized under an Act of a legislative authority other than Québec to carry on insurer activities elsewhere in Canada;”.

ACT RESPECTING ELECTIONS AND REFERENDUMS IN MUNICIPALITIES

692. Section 364 of the Act respecting elections and referendums in municipalities (chapter E-2.2) is amended by inserting “authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)” after “trust company” in the definition of “financial institution”.

693. Sections 499.5 and 512.14 of the Act are amended by replacing all occurrences of “trust company” by “authorized trust company”.

ACT RESPECTING SCHOOL ELECTIONS

694. Section 206.1 of the Act respecting school elections (chapter E-2.3) is amended by inserting “authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)” after “trust company” in the definition of “financial institution”.

695. Section 209.20 of the Act is amended by inserting “authorized” before “trust company” in the third paragraph.

ELECTION ACT

696. Section 80 of the Election Act (chapter E-3.3) is amended by inserting “authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)” after “trust company”.

697. Sections 88, 95, 99, 104.1, 127.5, 414 and 457.15 of the Act are amended by replacing all occurrences of “trust company” by “authorized trust company”.

ACT TO SECURE HANDICAPPED PERSONS IN THE EXERCISE OF THEIR RIGHTS WITH A VIEW TO ACHIEVING SOCIAL, SCHOOL AND WORKPLACE INTEGRATION

698. Section 26 of the Act to secure handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration (chapter E-20.1) is amended by replacing “insurance companies” in paragraph *a* by “insurers authorized under the Insurers Act (*insert the year and chapter number of that Act*)”.

699. Sections 26.4 and 75 of the Act are amended by replacing all occurrences of “insurance company” by “authorized insurer”.

ACT RESPECTING FABRIQUES

700. Section 18 of the Act respecting fabriques (chapter F-1) is amended by replacing “of a mutual fire insurance company or be a member of a financial services cooperative which is a registered institution within the meaning of the Deposit Insurance Act (chapter A-26)” in paragraph *t* by “of an authorized Québec insurer, other than a regulated business corporation, within the meaning of the Insurers Act (*insert the year and chapter number of that Act*) or be a member of a financial services cooperative that is a deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26)”.

EDUCATION ACT FOR CREE, INUIT AND NASKAPI NATIVE PERSONS

701. Section 309 of the Education Act for Cree, Inuit and Naskapi Native Persons (chapter I-14) is amended by replacing “an insurance company lawfully constituted” by “an insurer authorized under the Insurers Act (*insert the year and chapter number of that Act*)”.

DERIVATIVES ACT

702. Section 6 of the Derivatives Act (chapter I-14.01) is amended by replacing “holding a licence under the Act respecting insurance (chapter A-32) or under other insurance legislation in Canada” in paragraph 3 by “authorized under the Insurers Act (*insert the year and chapter number of that Act*) or by a legal person authorized under an Act of a legislative authority other than Québec to carry on insurer activities elsewhere in Canada”.

ACT RESPECTING ADMINISTRATIVE JUSTICE

703. Section 167 of the Act respecting administrative justice (chapter J-3) is amended by inserting the following paragraphs after paragraph 4:

“(4.1) the president of the Financial Markets Administrative Tribunal;

“(4.2) a member of the Financial Markets Administrative Tribunal, other than a vice-president, chosen after consultation with all its members;”.

704. Section 168 of the Act is amended by inserting “4.2,” after “paragraphs 2, 4,”.

705. Schedule IV to the Act is amended by striking out paragraphs 4 and 23.

ACT RESPECTING TRANSPARENCY MEASURES IN THE MINING, OIL AND GAS INDUSTRIES

706. Section 20 of the Act respecting transparency measures in the mining, oil and gas industries (chapter M-11.5) is amended

(1) by replacing “Persons within the Authority who are designated by the Minister” in the first paragraph by “The Authority”;

(2) by replacing “the Minister” in the second paragraph by “the Authority”.

707. Section 23 of the Act is amended

(1) by replacing “When a person designated by the Minister” in the first paragraph by “When the Authority”;

(2) by replacing “the person imposing the penalty” in the second paragraph by “the Authority”.

708. Section 25 of the Act is replaced by the following section:

“**25.** The persons responsible for reviewing a decision to impose an administrative penalty are designated by the Authority; they must not come under the same administrative authority as the persons responsible for imposing such penalties.”

709. Section 33 of the Act is amended by replacing “The person designated by the Minister under section 23” in the first paragraph by “The Authority”.

710. Section 40 of the Act is amended by striking out “and, despite section 38.2 of the Act respecting the Autorité des marchés financiers (chapter A-33.2), are not paid into the Education and Good Governance Fund”.

711. Section 44 of the Act is amended by striking out “and, despite section 38.2 of the Act respecting the Autorité des marchés financiers (chapter A-33.2), is not paid into the Education and Good Governance Fund”.

ACT RESPECTING LABOUR STANDARDS

712. Section 122 of the Act respecting labour standards (chapter N-1.1) is amended, in subparagraph 7 of the first paragraph,

(1) by inserting “, on the ground of a non-compliance with an Act referred to in section 7 of the Act respecting the regulation of the financial sector (A-33.2)” after “Anti-Corruption Act (chapter L-6.1)”;

(2) by adding “or non-compliance” at the end.

CONSUMER PROTECTION ACT

713. Section 257 of the Consumer Protection Act (chapter P-40.1) is amended by replacing “institution authorized by the Deposit Insurance Act” in the first paragraph by “deposit institution authorized under the Deposit Institutions and Deposit Protection Act”.

714. Section 260.9 of the Act is amended

(1) by inserting “authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)” after “trust company” in the first paragraph;

(2) by inserting “authorized” before “trust company” in the second paragraph.

715. Section 321 of the Act is amended by replacing “a legal person authorized to act in Québec as an insurer and holding a permit issued by the Autorité des marchés financiers” in paragraph *d* by “an insurer authorized under the Insurers Act (*insert the year and chapter number of that Act*)”.

716. Sections 257, 260.9, 260.11, 260.12 and 323.1 of the Act as well as Schedule 11 to the Act are amended by replacing all occurrences of “a trust company” and “trust company” by “an authorized trust company” and “authorized trust company”, respectively.

ACT RESPECTING THE LEGAL PUBLICITY OF ENTERPRISES

717. Section 21 of the Act respecting the legal publicity of enterprises (chapter P-44.1) is amended by adding the following subparagraph after subparagraph 8 of the first paragraph:

“(9) a union of persons reciprocally bound by insurance contracts to which the laws of Québec apply.”

718. Schedule II to the Act is amended

(1) by replacing the item relating to a certificate of constitution or of revival by the following item:

“Certificate of constitution or of revival \$300”;

(2) by replacing all occurrences of “insurance company” by “insurance company, trust company and savings company”.

ACT RESPECTING THE COLLECTION OF CERTAIN DEBTS

719. Section 6 of the Act respecting the collection of certain debts (chapter R-2.2) is amended by replacing “a trust company” in paragraph 1 by “an authorized trust company”.

720. Section 27 of the Act is amended by replacing “, financial services cooperative, trust company or other institution authorized by the Deposit Insurance Act (chapter A-26) to receive deposits,” in the first paragraph by “or a deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26)”.

ACT RESPECTING THE GOVERNMENT AND PUBLIC EMPLOYEES
RETIREMENT PLAN

721. Section 76 of the Act respecting the Government and Public Employees Retirement Plan (chapter R-10) is amended by replacing “an insurance company holding a licence issued under the Act respecting insurance (chapter A-32)” by “an insurer authorized under the Insurers Act (*insert the year and chapter number of that Act*)”.

SUPPLEMENTAL PENSION PLANS ACT

722. Section 164 of the Supplemental Pension Plans Act (chapter R-15.1) is amended by inserting “authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)” after “a trust company”.

VOLUNTARY RETIREMENT SAVINGS PLANS ACT

723. Section 14 of the Voluntary Retirement Savings Plans Act (chapter R-17.0.1) is amended by replacing subparagraphs 1 and 2 of the second paragraph by the following subparagraphs:

“(1) insurers authorized, within the meaning of the Insurers Act (*insert the year and chapter number of that Act*), to carry on insurer activities in life insurance;

“(2) authorized trust companies within the meaning of the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*); and”.

724. Section 28 of the Act is amended by replacing “licensed as an insurer, trust company or deposit institution under an Act of Canada or of a Canadian province or territory” in subparagraph 2 of the second paragraph by “authorized under an Act of a jurisdiction in Canada to carry on insurer, trust company or deposit institution activities”.

725. Section 39 of the Act is amended by replacing “no longer holds an insurer’s licence under the Act respecting insurance (chapter A-32), no longer holds a trust company licence under the Act respecting trust companies and savings companies (chapter S-29.01),” by “is no longer authorized, as the case may be, to carry on the activities of an insurer, trust company or deposit institution in accordance with the Insurers Act (*insert the year and chapter number of that Act*), the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*) or the Deposit Institutions and Deposit Protection Act (chapter A-26)”.

726. Section 107 of the Act is amended by replacing “329 to 336 of the Act respecting trust companies and savings companies (chapter S-29.01)” in the second paragraph by “260 to 268 of the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)”.

PRIVATE SECURITY ACT

727. Section 2 of the Private Security Act (chapter S-3.5) is amended

(1) by striking out “or licences” and “and the Act respecting insurance (chapter A-32)” in paragraph 4;

(2) by inserting the following paragraph after paragraph 4:

“(4.1) insurers authorized under the Insurers Act (*insert the year and chapter number of that Act*);”.

ACT RESPECTING THE SOCIÉTÉ DES LOTERIES DU QUÉBEC

728. Section 18 of the Act respecting the Société des loteries du Québec (chapter S-13.1) is amended by replacing “an institution registered with the Autorité des marchés financiers pursuant to the Deposit Insurance Act” by “a deposit institution authorized under the Deposit Institutions and Deposit Protection Act”.

BUSINESS CORPORATIONS ACT

729. Section 404 of the Business Corporations Act (chapter S-31.1) is amended by replacing “, trust company, bank or other institution governed by the Deposit Insurance Act (chapter A-26) or” in the second paragraph by “a trust company authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*), a bank or a deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26) or governed by”.

PROFESSIONAL SYNDICATES ACT

730. Section 9 of the Professional Syndicates Act (chapter S-40) is amended by striking out “, which shall be governed exclusively by the by-laws approved by the Autorité des marchés financiers” in subparagraph 1 of the second paragraph.

731. Section 20 of the Act is amended by replacing “The approval by the Autorité des marchés financiers of the by-laws governing an insurance or an indemnity fund established by a confederation,” in the second paragraph by “The establishment by a confederation of an insurance or indemnity fund”.

ACT RESPECTING THE TRANSFER OF SECURITIES AND THE ESTABLISHMENT OF SECURITY ENTITLEMENTS

732. Section 8 of the Act respecting the transfer of securities and the establishment of security entitlements (chapter T-11.002) is amended by replacing “trust companies, savings companies and” in the first paragraph by “trust companies authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*) and deposit institutions authorized under the Deposit Institutions and Deposit Protection Act (chapter A-26) as well as”.

SECURITIES ACT

733. Section 3 of the Securities Act (chapter V-1.1) is amended

(1) by replacing “insurance association within the meaning of paragraph *d* of section 1 of the Act respecting insurance (chapter A-32)” in paragraph 5.1 by “company within the meaning of the Insurers Act (*insert the year and chapter number of that Act*)”;

(2) by replacing paragraph 9 by the following paragraph:

“(9) a deposit of money within the meaning of the Deposit Institutions and Deposit Protection Act (chapter A-26), provided that it is received by a deposit institution authorized under that Act or by a bank or an authorized foreign bank listed in Schedule I, II or III to the Bank Act (Statutes of Canada, 1991, chapter 46);”;

(3) by replacing “holding a licence in accordance with the Act respecting trust companies and savings companies (chapter S-29.01)” in paragraph 11 by “authorized under the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*)”;

(4) by replacing “holding a licence under the Act respecting insurance” in paragraph 13 by “authorized under the Insurers Act”.

ACT RESPECTING THE MOUVEMENT DESJARDINS

734. The Act respecting the Mouvement Desjardins (2000, chapter 77) is repealed.

ACT TO AMEND THE SECURITIES ACT AND OTHER LEGISLATIVE PROVISIONS

735. Sections 48 to 51 of the Act to amend the Securities Act and other legislative provisions (2009, chapter 25) are repealed.

ACT RESPECTING THE LEGAL PUBLICITY OF ENTERPRISES

736. Sections 184 and 185 of the Act respecting the legal publicity of enterprises (2010, chapter 7) are repealed.

737. Section 302 of the Act is amended by striking out paragraphs 1 and 2.

ACT CONCERNING THE POSSIBILITY FOR THE MUNICIPAL FOUNDER TO STAND SURETY FOR THE SOCIÉTÉ D'ÉCONOMIE MIXTE D'ÉNERGIE RENOUVELABLE DE LA RÉGION DE RIVIÈRE-DU-LOUP INC.

738. Section 1 of the Act concerning the possibility for the municipal founder to stand surety for the Société d'économie mixte d'énergie renouvelable de la région de Rivière-du-Loup inc. (2013, chapter 38) is amended by replacing “holding a license in conformity with the laws in force in Québec that authorizes it” in the second paragraph by “authorized under the Insurers Act (*insert the year and chapter number of that Act*)”.

PART VII

TRANSITIONAL AND FINAL PROVISIONS

739. The Government may, by a regulation made before (*insert the date that is two years after the date of assent to this Act*), enact any other transitional measure necessary for the carrying out of this Act.

Such a regulation is not subject to the publication requirement set out in section 8 of the Regulations Act (chapter R-18.1). Despite section 17 of that Act, the Government may set the date of coming into force of the regulation on any day later than the date of assent to this Act.

740. In any Act or statutory instrument and in any other document,

(1) a reference to the Deposit Insurance Act (chapter A-26) or any of its provisions is replaced by a reference to the Deposit Institutions and Deposit Protection Act (chapter A-26), or, as the case may be, to the corresponding provision of that Act;

(2) a reference to the Act respecting insurance (chapter A-32) or any of its provisions is replaced by a reference to the Insurers Act (*insert the year and chapter number of that Act*) or, as the case may be, to the corresponding provision of that Act;

(3) a reference to the Act respecting the Autorité des marchés financiers (chapter A-33.2) or any of its provisions is replaced by a reference to the Act respecting the regulation of the financial sector (chapter A-33.2) or, as the case may be, to the corresponding provision of that Act; and

(4) a reference to the Act respecting trust companies and savings companies (chapter S-29.01) or any of its provisions is replaced by a reference to the Trust Companies and Savings Companies Act (*insert the year and chapter number of that Act*) or, as the case may be, to the corresponding provision of that Act.

741. The provisions of this Act come into force on (*insert the date that is one month after the date of assent to this Act*), except

(1) sections 459, 552, 554, 555, 568, 571 to 573, 712 and 739 and paragraph 3 of section 740, which come into force on (*insert the date of assent to this Act*);

(2) sections 599 to 603 and 735, which come into force on (*insert the date that is six months after the date of assent to this Act*);

(3) sections 3 to 15, 53 and 54, section 58 insofar as it repeals section 74 of the Act respecting financial services cooperatives, sections 66, 67, 93, 212, 233, 236, 241 to 243, 245, 246, 251, 252, 254, 255, 257 to 259, paragraph 1 of section 260, paragraph 1 of section 261, section 262, subparagraphs *c* and *d* of paragraph 2 of section 268, sections 315 to 338, section 339 except insofar as it repeals section 40 of the Deposit Insurance Act (chapter A-26), sections 340 to 345, 360, 407, 408, 469, 474 to 478, 480 to 488, 490, 492 to 495, 500, 503, 504 and 506 to 509, section 510 insofar as it repeals section 187 of the Act respecting the distribution of financial products and services (chapter D-9.2), paragraph 2 of section 511, sections 515, 516, 518, 519, 525, 530 to 549, 569, 574, 576 and 577, section 594 insofar as it enacts subparagraph 4 of the first paragraph of section 113 of the Act respecting the Autorité des marchés financiers (chapter A-33.2), section 615, paragraph 2 of section 626, sections 627,

631, 633 and 638, section 647 insofar as it enacts paragraph 27.0.4 of section 331.1 of the Securities Act (chapter V-1.1), and sections 648, 650 to 702, 713 to 733 and 736 to 738, which come into force on (*insert the date that is one year after the date of assent to this Act*);

(4) sections 527, 528 and 550, which come into force on the date or dates to be set by the Government; and

(5) section 510 insofar as it repeals sections 191 and 192 of the Act respecting the distribution of financial products and services, sections 521 and 522, and section 529 insofar as it repeals the following provisions of that Act: sections 284 to 287, the provisions of section 289 referred to in the fifth paragraph of section 312, that paragraph, sections 313, 317, 318, 320 to 320.5 and 323, the second paragraph of section 327, sections 331 to 335, 337 and 348 to 351 and Title VI, comprising sections 351.3.1 to 379, which come into force on the date of publication in the Authority's bulletin of the notice provided for in the second paragraph of section 558 of this Act.

AN ACT MAINLY TO IMPROVE THE REGULATION OF THE
FINANCIAL SECTOR, THE PROTECTION OF DEPOSITS OF MONEY
AND THE OPERATION OF FINANCIAL INSTITUTIONS

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