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AN ACT TO PROMOTE THE CAPITALIZATION OF SMALL AND MEDIUM-SIZED BUSINESSES

Bill 410

Introduced by Mr Gérald Tremblay, Minister of Industry, Trade and Technology

Introduced 4 December 1991

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Assented to 23 June 1992

Coming into force: 23 June 1992

Act amended: None





CHAPTER 46

An Act to promote the capitalization of small and medium-sized businesses

[Assented to 23 June 1992]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

QUALIFIED INVESTMENT

1. A qualified investment within the meaning of section 2 for which a validation certificate has been issued by the Société de développement industriel du Québec must be made in a qualified corporation by a qualified investor in order to enable the qualified corporation to avail itself of the tax benefit provided in that respect under the Taxation Act (R.S.Q., chapter I-3).

2. An investment made by a qualified investor in a qualified corporation constitutes a qualified investment if, on the date of investment,

(1) at least 30 % of the total amount of qualified investment consists of common shares with full voting rights of the share capital of the qualified corporation, which were paid in cash and issued to a qualified investor as first purchaser;

(2) the remaining amount of qualified investment, if any, consists of a qualified convertible debenture which was paid in cash and issued to the qualified investor mentioned in paragraph 1 of this section, as first purchaser.

3. A qualified corporation is a corporation which, on the date of investment, meets the following requirements:

(1) it is a corporation;

(2) it has assets of less than \$25 000 000 or a net shareholders' equity not in excess of \$10 000 000, taking into account for that purpose the assets and equity of any corporation associated with the qualified corporation at any time during the 12-month period preceding the investment;

(3) it has its head office in Québec;

(4) it has paid, in the last 12 months preceding the date of acquisition or in the months preceding that date in the case of a corporation which has been in operation for less than 12 months, more than 75 % of the salaries paid to its employees, within the meaning given to that expression in the Taxation Act, to employees of an establishment situated in Québec; for that purpose, only salaries paid by the qualified corporation itself shall be considered;

(5) it operates mainly in one of the sectors of activity determined by regulation;

(6) it deals at arm's length with the qualified investor, within the meaning of the regulations, on that date.

Conditions The conditions set out in subparagraphs 4 and 5 of the first paragraph must be met by a qualified corporation during the 24 months following the acquisition of a qualified investment.

Conditions The corporation, unless authorized by the Société de développement industriel du Québec, must meet the condition set out in subparagraph 6 of the first paragraph during the entire term of the qualified investment, as defined by regulation.

Investment
in fledg-
ling cor-
poration **4.** For the purposes of section 3, where, in the opinion of the Société de développement industriel du Québec, the investment is made in a fledgling corporation as defined by regulation, the condition set out in subparagraph 4 of the first paragraph of section 3 must be met by that corporation only during the 24 months following the acquisition of a qualified investment and the condition set out in subparagraph 5 of the first paragraph of section 3 must be met within four months after the date of acquisition of the qualified investment.

Powers **5.** If it is of the opinion that an investment meets the objectives pursued by this Act, the Société de développement industriel du Québec may

(1) extend, in the case of a fledgling corporation, for the period it considers necessary according to the circumstances, the time limit of four months prescribed in section 4 for meeting the requirement set out in subparagraph 5 of the first paragraph of section 3;

(2) if an application therefor is filed with it before the date of the investment, admit a lower percentage as regards the requirement set out in subparagraph 4 of the first paragraph of section 3, for the last 12 months preceding the date of acquisition of an investment or for the period preceding that date in the case of a corporation which has been in operation for less than 12 months;

(3) authorize a qualified investor and a qualified corporation to deal otherwise than at arm's length to the extent that a transaction takes place in order to prevent the bankruptcy of the qualified corporation or for business reasons, such as financial problems, reorganization or financial requirements relating to major events.

Restriction **6.** No qualified corporation may be the beneficiary of one or more qualified investments for which a validation certificate has been issued by the Société de développement industriel du Québec and totalling more than \$5 000 000 within the same period of 24 months, taking into account for computing that amount the qualified investments made in a corporation associated with the qualified corporation. However, for the purpose of computing that amount, any excess amount is deemed not to be a qualified investment and qualified investments which have been held for more than 24 months in the qualified corporation and in the corporations with which it is associated shall not be taken into account.

Validation certificate **7.** The Société de développement industriel du Québec may refuse to issue a validation certificate in respect of an investment which, though consistent with the literal meaning of this Act and the regulations, does not, in its opinion, meet the objectives pursued by this Act and the regulations.

Validation certificate The Société de développement industriel du Québec may in particular refuse to issue a validation certificate in respect of an investment made by a qualified investor where one or more shareholders of the qualified corporation hold a significant interest, as defined by regulation, in the qualified investor.

Authorization **8.** In all cases where its prior authorization is required by this Act or the regulations, the Société de développement industriel du Québec may authorize a transaction, operation or event if it is proved that, notwithstanding the absence of prior authorization, the objectives pursued by this Act and the regulations are achieved.

Common share **9.** A common share with full voting rights is a common share within the meaning of the Taxation Act, to which are attached a number of voting rights in the issuing corporation, in all circumstances and regardless of the number of shares held, which is not less than

the number attached to any other share of the share capital of the corporation.

Qualified
convertible
debenture

10. A qualified convertible debenture is a debenture

(1) paid and issued after 19 June 1991, in respect of a debt of a corporation and acquired by a qualified investor for cash consideration;

(2) not guaranteed, directly or indirectly, by the qualified corporation or by any other person or corporation;

(3) having a minimum term of 60 months and a maximum term of 84 months from the date of the qualified investment;

(4) convertible, under its conditions of issue, at any time within the term of the qualified investment, into common shares carrying full voting rights of the share capital of the corporation;

(5) subject to mandatory conversion on or before its maturity date.

DIVISION II

QUALIFIED INVESTORS

Qualified
investors

11. The following are qualified investors:

(1) any body, institution, partnership or corporation which is a designated venture capital corporation, recognized as such by regulation;

(2) any private corporation publicly known as a venture capital corporation which meets the conditions prescribed by regulation;

(3) any other investor which is an authorized venture capital corporation, according to the criteria established by regulation, recognized as such by the Société de développement industriel du Québec.

DIVISION III

VALIDATION CERTIFICATE

Validation
certificate

12. The Société de développement industriel du Québec shall issue a validation certificate in respect of a qualified investment if the investment meets the requirements of this Act and the regulations.

Validation
certificate

13. The Société de développement industriel du Québec shall issue a validation certificate to the qualified corporation as well as confirmation of the granting of the validation certificate to the qualified investor, attesting in particular the amount of the qualified investment for which a validation certificate has been issued pursuant to this Act and the regulations.

Revocation

14. The Société de développement industriel du Québec may revoke a validation certificate granted in respect of a qualified investment if the qualified investor or the qualified corporation

(1) contravenes the provisions of this Act or the regulations;

(2) has furnished false information or documents;

(3) has filed an application for the revocation of its validation certificate.

Notice of
revocation

The notice of revocation of the validation certificate shall indicate the date of the revocation giving the reasons therefor and shall be sent to the head office of the qualified corporation by registered or certified mail.

Revocation

15. A validation certificate is revoked by operation of law upon the occurrence of any of the following events with regard to the qualified corporation during the term of the qualified investment:

(1) upon the qualified corporation's dissolution;

(2) upon adoption or approval, by the shareholders, of a resolution to wind up the qualified corporation, except with the prior authorization of the Société de développement industriel du Québec;

(3) upon the qualified corporation's being placed under a winding-up order for a reason other than bankruptcy or insolvency;

(4) upon the qualified corporation's being placed under a receiving order pursuant to the Bankruptcy Act (Revised Statutes of Canada, 1985, chapter B-3) or having made an assignment of its property within the meaning of the said Act.

Cancellat-
ion of
revocation

16. The Minister is authorized to cancel the revocation of a validation certificate if, in his opinion and taking the circumstances into account, the revocation would entail disproportionate consequences.

DIVISION IV

INFORMATION AND REPORTS

Information,
documents
and reports **17.** The Société de développement industriel du Québec may, in addition to the information, documents and reports prescribed by regulation, require from the qualified corporation and qualified investor any information or document that, in its opinion, may enlighten it as to the advisability of issuing a validation certificate in respect of an investment made in a corporation.

Information
and docu-
ments A qualified corporation and a qualified investor shall, upon the written request of the Société de développement industriel du Québec and within the time fixed therein, furnish to it any information and any document it may require.

Information **18.** The Société de développement industriel du Québec or, as the case may be, the Minister, shall send to the Minister of Revenue the information the latter deems necessary where the Société de développement industriel du Québec grants or revokes a validation certificate or where the Minister cancels the revocation thereof.

Register **19.** The Société de développement industriel du Québec shall keep a register containing the following information:

(1) the name of the qualified corporations in respect of which an investment has been subject of a validation certificate;

(2) the date on which the validation certificate granted by the Société de développement industriel du Québec takes effect;

(3) the addresses of their head offices;

(4) the amount of the qualified investment;

(5) the name of the qualified investor and the address of its head office.

DIVISION V

REGULATIONS

Regulations **20.** The Government may make regulations to

(1) determine the information, authorizations, attestations, reports or documents that a corporation or investor must furnish to

the Société de développement industriel du Québec and the time at which they must be filed, and determine the form of such reports, authorizations and attestations and the information they must contain;

(2) determine what constitutes the assets of a corporation and its shareholders' equity, including those of a corporation associated with the corporation, and the method of computing them;

(3) determine the sectors of activity in which a corporation referred to in section 3 is required to operate, except the activities it determines;

(4) define the expressions "associated corporations", "fledgling corporation", "significant interest", "employee", "arm's length", "related corporation", "related persons", "publicly known" and "term of a qualified investment";

(5) determine for the purposes of this Act the meaning of "designated venture capital corporation" and establish the criteria according to which the Société de développement industriel du Québec may recognize a "corporation publicly known as a venture capital corporation" and an "authorized venture capital corporation";

(6) determine the conditions which must be met by a qualified corporation and a qualified investor during the term of a qualified investment;

(7) while ensuring that the objectives of this Act with regard to the promotion of capitalization are respected and maintained, require that certain transactions be subject to the prior authorization of the Société de développement industriel du Québec in respect of

(a) the sector of activity in which a qualified corporation is required to operate during the term of a qualified investment;

(b) the use of funds resulting from a qualified investment by a qualified corporation;

(c) substantial cash outflows that may be made by a qualified corporation.

DIVISION VI

FINAL PROVISIONS

Minister
responsible

21. The Minister of Industry, Trade and Technology is responsible for the administration of this Act.

CHAP. 46 *Capitalization of small and medium-sized businesses* 1992

Regulations **22.** The regulations made pursuant to section 20 of this Act between the date on which it comes into force and 30 September 1992 may provide that they apply from any date not prior to 20 June 1991.

Effect **23.** This Act has effect with respect to any qualified investment made after 19 June 1991.

Coming into force **24.** This Act comes into force on 23 June 1992.