



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-FIFTH LEGISLATURE

Bill 196

**An Act to establish Fondation,
le Fonds de développement
de la Confédération des syndicats
nationaux pour la coopération
et l'emploi**

Introduction

**Introduced by
Mr Michel Bourdon
Member for Pointe-aux-Trembles**



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EXPLANATORY NOTES

This bill gives concrete form to a proposal of the Confédération des syndicats nationaux.

Its object is to establish an investment fund which, while allowing for reasonable profitability and a judicious accumulation of retirement savings, is primarily designed to provide financial assistance to Québec enterprises so as to create or maintain jobs, stimulate the economy, promote the training of working men and women of Québec and foster their involvement in the development of businesses.

The bill provides for the organization of the Fund and defines its principal functions.

Fondaction, as the Fund is to be called, will be authorized to invest in any enterprise but it will have to devote at least 60 % of its assets to Québec enterprises otherwise than in the form of a loan guarantee or security.

Moreover, employees will be permitted to request, individually or through their certified association, that their employer make deductions from their salary or wages to allow them to acquire shares of the Fund.

Finally, the Commission des valeurs mobilières du Québec is entrusted with ascertaining the Funds's compliance with its obligations under the new legislation.

Bill 196

An Act to establish Fondation, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi

WHEREAS it is expedient to foster the development of collective worker-controlled projects with a view to the reinforcement of community resources, the development of effective solidarity within local communities and greater participation in economic activity by working men and women;

Whereas, while allowing for reasonable profitability and judicious accumulation of retirement savings, it is expedient to foster and support the active involvement of working men and women in the determination, organization and control of their work;

Whereas it is expedient to foster the maintenance and creation of high-quality permanent and socially useful employment by ensuring that working men and women wishing to organize their own employment have access to financial resources capable of adequately supporting their endeavours, and by making such resources available to young working men and women wishing to generate their own employment;

Whereas it is expedient to ensure that the initiators of collective projects have access to financial resources equivalent to the resources available to other types of enterprises;

Whereas it is expedient to provide individuals wishing to support working men and women in their efforts towards worker-organized employment with an incentive and a specific instrument of assistance as a means of collectively meeting the employment challenge;

Whereas it is expedient to foster the training of working men and women in economic matters and in the development and management of worker-controlled enterprises;

Whereas it is expedient to promote investment in environment-conscious enterprises whose commitments, conduct and activities contribute to preserving or improving the quality of the environment;

Whereas it is appropriate to accede to the request of the Confédération des syndicats nationaux;

Whereas the establishment of a fund of this type requires the enactment of special legislation regarding both its organization and the protection of investors;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

ARTICLES

CONSTITUTION AND HEAD OFFICE

1. A legal person is hereby constituted under the corporate name of “Fondaction, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l’emploi”, hereinafter called the “Fund”.

2. Notwithstanding section 125 of the Companies Act (R.S.Q., chapter C-38), the provisions of that Act which are applicable to companies incorporated by the filing of articles, adapted as required, apply to the Fund where they are not inconsistent with this Act, except the second paragraph of section 46, paragraph 1 of section 53, section 54, sections 123.9 to 123.11, section 123.22 as replaced by section 269 of chapter 48 of the statutes of 1993, sections 123.23 and 123.24, sections 123.26 and 123.27 as amended by sections 271 and 272 of chapter 48 of the statutes of 1993, sections 123.27.1 to 123.27.7 as enacted by section 273 of chapter 48 of the statutes of 1993, sections 123.55, 123.72, 123.82, 123.91 to 123.93, 123.95, 123.96, 123.98 to 123.100, the second paragraph of section 123.114, sections 123.115 to 123.136 and sections 123.138 and 123.39.

The Fund is deemed to have been incorporated by the filing of articles on *(insert here the date of assent to this Act)*.

The articles may be amended but the filing of articles shall not operate to amend any provision of this Act.

3. The head office of the Fund shall be established in the territory of the Communauté urbaine de Montréal.

ADMINISTRATION

4. The affairs of the Fund are managed by a board of directors consisting of

(1) four persons appointed by the executive committee of the Confédération des syndicats nationaux;

(2) two persons appointed by the board of directors of the Fédération des caisses d'économie Desjardins du Québec;

(3) three persons elected by the general meeting of holders of class "A" and class "B" shares;

(4) two persons appointed by the members referred to in paragraphs 1, 2 and 3.

5. The members of the board of directors shall designate the senior executives of the board from among their number.

6. If a vacancy occurs among the members of the board of directors referred to in paragraph 1 of section 4, the executive committee of the Confédération des syndicats nationaux may fill the vacancy by appointing a person for the unexpired portion of the term.

If a vacancy occurs among the members of the board of directors referred to in paragraph 2 of section 4, the board of directors of the Fédération des caisses d'économie Desjardins du Québec may fill the vacancy by appointing a person for the unexpired portion of the term.

7. The first persons appointed under paragraphs 1 and 2 of section 4 may appoint three persons for a period not exceeding one year to act as directors until the election of persons under paragraph 3 of the said section.

Upon the appointment of the directors under paragraphs 1 and 2 of section 4, two copies of a list of their full names and addresses shall be filed with the Inspector General of Financial Institutions by the secretary of the Confédération des syndicats nationaux. The directors come into office on the date of the filing of the list.

8. Subject to section 20, the Fund is authorized to issue class "A" shares without par value, and class "B" shares without par value, carrying the rights defined in section 123.40 of the Companies Act, the right to elect three directors and the right of redemption defined in sections 11 and 13 of this Act.

The Fund is also authorized, subject to section 20, to issue class "A" and class "B" fractional shares without par value, carrying proportionately the same rights as class "A" and class "B" shares, except the voting rights attached to such shares.

Class "B" shares shall be issued by series, each series being related to the raising of specific funds for a specific project and bearing mention thereof. For that purpose, the directors of the Fund are authorized to determine the number and designation of each series of class "B" shares.

Class "B" shares shall not be redeemable. However, they may be exchanged at any time at the option of the Fund or of the holder for class "A" shares at the rate of one class "A" share for each class "B" share held by the shareholder.

Furthermore, the directors may, by articles of amendment, in accordance with sections 123.101 and 123.103 of the Companies Act, create any other class of non-participating shares not carrying the right to vote at meetings of the shareholders. The articles of amendment shall determine the other rights, privileges, conditions and restrictions attached to the shares of each such class.

9. Only a natural person may acquire or hold a class "A" or class "B" share or fractional share. The holder of a class "A" or class "B" share or fractional share may not alienate it and a class "A" share or fractional share, subject to section 123.56 of the Companies Act, may not be purchased by agreement by the Fund except with the authorization of the board of directors or a committee composed of persons designated by the board for that purpose.

The Fund may purchase by agreement a class "A" share or fractional share only in the cases and in the manner provided in a policy adopted by the board of directors and approved by the Minister of Finance and only at a price not exceeding the redemption price determined in accordance with section 14.

10. Notwithstanding section 9, a class "A" or class "B" share or fractional share may be transferred to or acquired by a trustee within the scope of a registered retirement savings plan under which the shareholder or the spouse of the shareholder is the beneficiary. The beneficiary of the plan is deemed, however, to keep the voting rights attached to the share thus transferred. For the purposes of the second paragraph of section 9 and section 11, the spouse is deemed to be the person who acquired the transferred share or fractional share from the Fund.

The trustee is, however, subject to section 9 in respect of any transfer to a person other than the shareholder from whom he acquired the class "A" or class "B" share or fractional share.

11. A class "A" share or fractional share is redeemable by the Fund only in the following cases:

(1) at the request of a person who acquired the share or fractional share from the Fund at least 730 days prior to the request if, after reaching 60 years of age, he has availed himself of his right to early retirement or retirement or if he has reached 65 years of age;

(2) at the request of a person who is the holder of the share or fractional share without being the person who acquired it from the Fund, if the person who acquired it from the Fund has reached 65 years of age or, if deceased, would have reached that age had he lived, provided that the share or fractional share was issued by the Fund at least 730 days prior to the date of redemption;

(3) at the request of a person to whom the share or fractional share has devolved by succession;

(4) at the request of a person who acquired the share or fractional share from the Fund, if he applies to the Fund therefor in writing within 60 days after subscribing for the share or fractional share or, in the cases described in section 32, within 60 days after the first deduction from his salary or wages or after the first debit from his account;

(5) at the request of a person who acquired the share or fractional share from the Fund, if he is declared, in the manner prescribed by by-law of the board of directors, to be suffering from a severe and prolonged physical or mental disability which prevents him from working.

12. For the purposes of paragraph 5 of section 11, a disability is severe only if by reason thereof the person is regularly incapable of holding any substantially gainful occupation. However, in the case of a person 60 years of age or over, a disability is severe if by reason thereof the person is regularly incapable of carrying on the substantially gainful occupation he held at the time he ceased to work owing to his disability.

A disability is prolonged only if it is likely to result in death or to be of indefinite duration.

13. Subject to the second paragraph of section 123.54 of the Companies Act, the Fund is bound to redeem any class "A" share or fractional share at the request of a person pursuant to section 11 of this Act.

14. The price of redemption of the class "A" shares or fractional shares shall be fixed by the board of directors twice a year, on dates six months apart, on the basis of the value of the Fund as established by experts under the responsibility of independent chartered accountants and according to generally accepted accounting principles. The board of directors may also fix the price of redemption at any other time in the year, on the basis of an internal valuation which, in each case, must be the subject of a special report of independent chartered accountants confirming continued adherence to the generally accepted accounting principles and methods used to value the Fund.

The Fund may, however, accept the offer of a shareholder to receive the last price of redemption so determined rather than the subsequent one. The redemption shall be made within a reasonable time after the date of the request therefor.

However, in the case described in paragraph 4 of section 11, the Fund is bound to redeem the share or fractional share at the price at which it was acquired from the Fund and to make the payment not later than 30 days after the date of receipt of the request.

15. Each shareholder is entitled to receive written confirmation of the number of shares or fractional shares he holds and of the amount paid thereon.

The confirmation shall be provided annually to the shareholder free of charge in the form and according to the procedure prescribed by by-law of the Fund.

Where a mode of confirmation other than a share certificate is prescribed, the document sent to the shareholder stands in lieu of a certificate issued pursuant to section 53 of the Companies Act.

Moreover, at the request of the holder of fractional shares, the Fund shall exchange the fractional share certificates, or the documents standing in lieu thereof, for certificates, or documents standing in lieu thereof, representing the corresponding whole shares.

DIVISION II

INVESTMENTS

16. While allowing for reasonable profitability and judicious accumulation of retirement savings, the main functions of the Fund are

(1) to promote investment in enterprises by guaranteeing or standing surety for any obligation contracted by them or by investing directly so as to allow the creation, maintenance and preservation of jobs;

(2) to foster the development of the enterprises described in section 17 by inviting the working men and women and other community resources to participate in their development by subscribing for shares of the Fund;

(3) to develop the management skills of the working men and women in worker-controlled enterprises and facilitate their active involvement in the economic development of Québec;

(4) to help enterprises conform to environmental laws and regulations;

(5) to foster the development of environmental policies within enterprises.

17. The Fund shall direct its action mainly toward

(1) worker-controlled enterprises, whether cooperative or not, operated on the basis of an equal apportionment of voting rights among all the shareholders or members;

(2) enterprises whose work organization enables the men and women who work in the enterprise to participate in the determination, organization and control of their work;

(3) environmentally-concerned enterprises whose commitments, conduct or activities contribute to the preservation or improvement of the quality of the environment.

18. For the purposes of this Act, unless the context indicates otherwise,

(1) “enterprise” means a partnership or legal person carrying on organized economic activity in Québec and at least 10 % of whose employees are resident in Québec;

(2) “Québec enterprise” means an enterprise the majority of whose employees are resident in Québec, whose assets are less than \$100 000 000 and whose net equity is less than \$40 000 000. The assets or net equity of a Québec enterprise are the assets or net equity shown in the financial statements for its fiscal year ended before the date on which the investment is made, minus the write-up surplus of its property and intangible assets. In the case of an enterprise which has not completed its first fiscal year, an independent chartered accountant must confirm in writing to the Fund that the assets or net equity, as the case may be, of the enterprise are, immediately before the investment, under the limits prescribed in this paragraph;

(3) “investment” means any financial assistance granted to an enterprise in the form of a loan, guarantee, security, acquisition of bonds or other evidences of indebtedness or shareholding or in any other form.

19. The Fund may make investments in any enterprise, with or without a guarantee or security.

However, in the course of each fiscal year, the proportion of the Fund’s investments in Québec enterprises, entailing no security or hypothec, must represent, on the average, at least 60 % of the average net assets of the Fund for the preceding year, of which a part representing at least two-thirds of that minimum percentage must be invested in enterprises whose assets are less than \$50 000 000 or whose net equity is less than \$20 000 000.

For the purposes of this section and of section 20,

(1) the average net assets of the Fund for the preceding fiscal year shall be determined by adding the net assets at the beginning of the year concerned to the net assets at the end of the year

concerned and by dividing the sum obtained by 2. Net assets do not include the movable or immovable property used by the Fund to carry on its operations;

(2) the average investments for the current fiscal year shall be determined by adding the investments at the beginning of the year concerned to the investments at the end of the year concerned and by dividing the sum obtained by 2.

For the purposes of the rule set out in this section, investments referred to in the second paragraph which are the subject of an agreement during the year or the preceding year and for which financial commitments have been contracted by the Fund but not yet fulfilled at the end of the fiscal year are eligible investments.

Investments made by the Fund otherwise than as first purchaser for the acquisition of securities issued by Québec enterprises, up to a sum not exceeding 20 % of the net assets of the Fund at the end of the preceding fiscal year are also eligible investments. For that purpose, a broker acting as an intermediary or underwriter is considered not to be a first purchaser.

The requirement set out in the second paragraph applies from the fourth fiscal year of the Fund.

20. If, in the course of a fiscal year, the Fund fails to comply with a requirement set out in the second paragraph of section 19, the Fund may not issue class “A” or class “B” shares or fractional shares in the course of the following fiscal year for a total consideration exceeding the amount determined as follows:

(1) 75 % of the total consideration paid for class “A” and class “B” shares or fractional shares issued in the preceding fiscal year, excluding the total consideration paid for class “A” and class “B” shares or fractional shares acquired and paid by payroll deduction or account debit in accordance with Division V or acquired under a subscription agreement entered into with an employer in favour of his employees, if the proportion of the eligible average investments concerned represents 50 % to 59 % of the average net assets of the Fund for the preceding year or if the proportion of such investments that are made in Québec enterprises whose assets are less than \$50 000 000 or whose net equity is less than \$20 000 000 represents 35 % to 39 % of such average net assets;

(2) 50 % of such consideration, if the proportion of the eligible average investments concerned represents 40 % to 49 % of such average net assets or if the proportion of such investments that are made in Québec enterprises whose assets are less than \$50 000 000 or whose net equity is less than \$20 000 000 represents 30 % to 34 % of such average net assets; and

(3) 25 % of such consideration, if the proportion of the eligible average investments concerned represents 30 % to 39 % of such average net assets or if the proportion of such investments that are made in Québec enterprises whose assets are less than \$50 000 000 or whose net equity is less than \$20 000 000 represents 25 % to 29 % of such average net assets.

If the proportion of the eligible average investments concerned represents less than 30 % of such average net assets or if the proportion of such investments that are made in Québec enterprises whose assets are less than \$50 000 000 or whose net equity is less than \$20 000 000 represents less than 25 % of such average net assets, the Fund may not issue any class "A" or class "B" shares or fractional shares during that fiscal year.

Class "A" and class "B" shares or fractional shares acquired and paid by payroll deduction or account debit in accordance with Division V or acquired under a subscription agreement entered into with an employer in favour of his employees are excluded from the application of this section.

21. The Fund may make no investment in an enterprise that would cause the total amount of its investments in the enterprise to exceed 5 % of the assets of the Fund as established on the basis of the latest valuation by chartered accountants referred to in section 14.

The percentage may be increased up to 10 % to enable the Fund to acquire securities in an enterprise other than a Québec enterprise. In such a case, the Fund may not, directly or indirectly, acquire or hold shares carrying more than 30 % of the voting rights attached to the shares of the enterprise that may be exercised under any circumstances.

Where the Fund avails itself of the second paragraph as regards an enterprise in which it already holds, directly or indirectly, shares carrying more than 30 % of the voting rights attached to the shares of the enterprise that may be exercised under any circumstances, the Fund has five years from the date of the investment to bring its shareholding into conformity with that paragraph.

These restrictions do not apply, however, where the Fund makes an investment in

(1) securities guaranteed by Québec, Canada or a Canadian province or territory;

(2) securities guaranteed by an undertaking made to a trustee by Québec to pay sufficient subsidies to pay the interest and principal on their respective maturity dates;

(3) bills of exchange accepted or certified by a bank or financial institution registered with the Régie de l'assurance-dépôts du Québec.

An enterprise that holds securities enabling it, under all circumstances, to elect a majority of the directors of another enterprise is deemed to form with that other enterprise one and the same enterprise for the purposes of this section.

22. The Fund may make any investment, other than investments in Québec enterprises, through a separate investment fund the management of which may be entrusted to a third person, provided that the third person is accountable directly to the board of directors of the Fund for any funds entrusted to him.

Any investment made by the manager of such a fund must be made in conformity with this Act and the investment policy adopted by the Fund.

For the purposes of section 21, investments made by the manager of the fund are deemed to be made directly by the Fund.

23. Where the Fund makes an investment in the form of a guarantee or security, it shall establish and maintain for the term of the guarantee or security a reserve equivalent to not less than 50 % of the amount of the guarantee or security.

The Fund may invest, directly or indirectly, the money deposited in the reserve under this section in the manner provided in paragraphs 2, 3, 4, 5 and 10 of article 1339 of the Civil Code of Québec.

DIVISION III

LOANS

24. The Fund may not contract any loan that would cause the current principal of its total debt to exceed 100 % of the total consideration paid for its class "A" and class "B" shares or fractional shares.

For the purposes of this section, "total debt" means the amount obtained by applying the following equation:

$x = \text{the debt of the Fund} + y^1 [\text{debt of any subsidiary of the Fund} + y^2 (\text{debt of any subsidiary of the particular subsidiary of the Fund})]$

where

$x = \text{the total debt of the Fund; and}$

$y^1 = \text{the percentage of the shares carrying voting rights held, directly or indirectly, by the Fund in the capital stock of its particular subsidiary; and}$

$y^2 = \text{the percentage of the shares carrying voting rights held, directly or indirectly, by the particular subsidiary of the Fund in the capital stock of the particular subsidiary of that subsidiary of the Fund.}$

Furthermore, the debt of a subsidiary does not include the principal of a loan granted to the subsidiary by the parent corporation, either directly or by subscription for any evidence of indebtedness.

This equation, adapted as required, applies to any subsidiary of a subsidiary, in descending line.

DIVISION IV

CONFLICTS OF INTEREST

25. Any director having an interest in an economic activity causing his personal interest to conflict with that of the Fund shall, under pain of forfeiture of office, disclose his interest and abstain from voting on any decision involving the activity in which he has an interest.

A director is deemed to have an interest in any economic activity in which his spouse or child has an interest.

26. The Fund may not make an investment for the benefit of one of its senior executives, his spouse or a child of either, nor for the benefit of one of its major shareholders.

“Senior executive” has the meaning assigned by the Securities Act (R.S.Q., chapter V-1.1).

27. The Fund may not invest in an enterprise in which a director or a senior executive who is not a director has a major or controlling interest.

28. A director or a senior executive who is not a director is considered to have a major interest in an enterprise if he holds more than 10 % of the stock or shares of the enterprise.

A director or a senior executive who is not a director is deemed to control an enterprise if he holds securities enabling him under all circumstances to elect a majority of its directors.

29. A person is considered to be a major shareholder of the Fund if he holds, directly or indirectly, more than 10 % of the issued and paid-up share capital.

30. Any contract made in contravention of section 26 or 27 may be cancelled within one year of the date on which it is made.

The senior executives of the Fund who made the contract or consented thereto are solidarily liable for the resulting losses to the Fund, except in the case described in section 31.

31. A contract in contravention of section 26 or 27 is not subject to cancellation if the contravention results from the opening of a succession or from a gift and if the beneficiary renounces the property concerned or disposes of it with dispatch.

DIVISION V

ACQUISITION OF CLASS “A” OR CLASS “B” SHARES OR FRACTIONAL SHARES BY PAYROLL DEDUCTION OR BY AGREEMENT WITH A SAVINGS UNION

32. An individual may request his employer to deduct the amount he determines from his salary or wages, for the period he specifies, to pay for the class “A” or class “B” shares or fractional shares he has decided to acquire from the Fund.

An individual may request a savings union affiliated with the Fédération des caisses d'économie Desjardins du Québec, hereinafter called a "savings union", if an agreement for deductions at source exists between his employer and the savings union, to debit his account, for the period he specifies, to pay for the class "A" or class "B" shares or fractional shares he has decided to acquire from the Fund.

33. The employer shall, within a reasonable time, make the deduction from the salary or wages of the individual requesting it if 50 employees, or 20 % of the employees, whichever number is lesser, avail themselves of this section.

34. An individual having requested a payroll deduction may at any time notify the employer of his decision to cease acquiring shares from the Fund by payroll deduction. The employer shall comply with the individual's decision with reasonable dispatch.

An individual who has authorized a savings union to debit his account for the amounts required to acquire shares from the Fund may at any time notify the savings union of his decision to cease acquiring shares by account debit and the savings union shall comply with the individual's decision with reasonable dispatch.

35. The employer or savings union shall remit to the Fund or to the trustee designated by the Fund the deducted or debited amounts not later than the fifteenth day of the month following the month in which the deduction or debit is made. The remittance shall be accompanied with a statement indicating the amount deducted or debited and the name, address, date of birth and social insurance number of the investor.

A copy of the statement shall also be forwarded to the certified association, if any.

The amounts deducted by an employer remain due to the employee as salary or wages until they are remitted by the employer to the Fund or to the trustee designated by the Fund.

36. An individual for the benefit of whom sums have been remitted is deemed to have subscribed for as many of the Fund's class "A" or class "B" shares or fractional shares as the amounts remitted permit him to acquire.

DIVISION VI

MISCELLANEOUS AND FINAL PROVISIONS

37. In addition to the other statutory functions it may exercise regarding the operations of the Fund, the Commission des valeurs mobilières du Québec shall be charged with inspecting the internal affairs and the operations of the Fund annually to ascertain whether this Act is being complied with and whether sound and prudent commercial and financial practices are being observed.

For the purposes of the inspection, the Commission has the powers vested in it by Chapters I and II of Title IX of the Securities Act.

The Commission shall make a report upon each inspection to the Minister of Finance and shall include therein any other information or document the Minister determines.

38. The Commission may designate a person other than a member of its personnel to inspect the internal business and operations of the Fund.

For that purpose, the Commission may delegate to that person any power arising from any Act or any regulation, subject to section 308 of the Securities Act.

The person designated shall make a report to the Commission and deliver to it all documents pertaining to the inspection.

39. Sections 123.77 to 123.79 of the Companies Act apply only in the case of the directors elected under paragraph 3 of section 4.

40. A shareholder may, on payment of the fee prescribed by by-law of the board of directors, obtain a copy of the articles and by-laws of the Fund.

41. This Act comes into force on *(insert here the date of assent to this Act)*.