

NATIONAL ASSEMBLY

THIRD SESSION

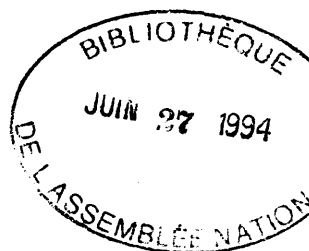
THIRTY-FOURTH LEGISLATURE

Bill 36

**An Act to amend the Savings and
Credit Unions Act and the Act
respecting security fund
corporations**

Introduction

**Introduced by
Mr André Bourbeau
Minister of Finance**



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EXPLANATORY NOTES

This bill amends the Savings and Credit Unions Act and the Act respecting security fund corporations to allow a confederation to institute, through a legal person controlled by the confederation, a centralized mechanism for public distribution of securities which will afford credit unions affiliated with federations affiliated with the confederation increased access to the financial market. To that end, the legal person will issue securities and acquire as consideration therefor subordinated debt securities issued in its favour by each of the affiliated credit unions.

Under this bill, the Government may determine, by regulation, the minimum requirements for a subordinated debt security issued by a credit union in favour of the legal person.

In addition, the bill proposes an internal process for the reallocation of capital.

In another connection, the bill permits a federation affiliated with La Confédération des caisses populaires et d'économie Desjardins du Québec to participate in a clearing and settlement system for instruments of payment or securities transactions. For that purpose, it allows a federation to provide the necessary guarantees and to secure the obligations of La Caisse centrale Desjardins du Québec.

In addition, the Inspector General of Financial Institutions is accorded certain powers of authorization and supervision relating to the matters covered by the bill.

Finally, the bill contains provisions for concordance and transitional measures.

Bill 36

An Act to amend the Savings and Credit Unions Act and the Act respecting security fund corporations

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 5 of the Savings and Credit Unions Act (R.S.Q., chapter C-4.1) is amended by inserting, after paragraph 1, the following paragraph:

“(1.1) to protect, through a legal person referred to in the first paragraph of section 469.1, the interests of the credit unions affiliated with federations affiliated with the confederation, foster the attainment of their objects and promote their development;”.

2. Section 213 of the said Act is amended by inserting, after paragraph 6, the following paragraph:

“(6.1) where it is affiliated with a federation affiliated with a confederation and where the confederation has given its approval pursuant to the first paragraph of section 469.2, borrow from a legal person referred to in the first paragraph of section 469.1, in the amount resulting from the apportionment made under the second paragraph of section 469.2, with the authorization of the Inspector General and subject to such conditions and restrictions as he may determine, by way of the issue of subordinated debt securities;”.

3. Section 217 of the said Act is amended

(1) by inserting the words “, other than the legal person referred to in the first paragraph of section 469.1,” after the word “person” in the first line of paragraph 3;

(2) by inserting the words “, other than the legal person referred to in the first paragraph of section 469.1,” after the word “person” in the first line of paragraph 6.

4. Section 258 of the said Act is amended by inserting, after the first paragraph, the following paragraph:

“A credit union affiliated with a federation affiliated with a confederation may acquire one non-participating non-voting share of a legal person referred to in the first paragraph of section 469.1.”

5. Section 314 of the said Act is amended by replacing the word “He” in the second line of the first paragraph by the words “The subordinated debt securities issued by the credit union under subparagraph 6.1 of the first paragraph of section 213 rank equally with one another and are subordinated in right of payment to all other indebtedness of the credit union. The liquidator”.

6. Section 328 of the said Act is amended by inserting the words “subparagraph 6.1 of the first paragraph of section 213, sections” after the figure “111,” in the third line of the second paragraph.

7. Section 334 of the said Act is amended by adding, after the second paragraph, the following paragraphs:

“Notwithstanding the first and second paragraphs, a federation affiliated with a confederation may, with the authorization of the Inspector General and subject to such conditions and restrictions as he may determine, issue preferred shares of one or more classes to a security fund corporation.

Preferred shares issued under the third paragraph may not be redeemed without the authorization of the Inspector General.”

8. Section 354 of the said Act is amended by inserting the words “of a legal person referred to in the first paragraph of section 469.1 or” after the word “employee” in the third line.

9. Section 364 of the said Act is amended

(1) by inserting, after paragraph 8, the following paragraph:

“(8.1) establish one or more classes of preferred shares;”;

(2) by adding, after paragraph 11, the following paragraphs:

“(12) where it is affiliated with La Confédération des caisses populaires et d'économie Desjardins du Québec, become a member of a securities clearing-house recognized by the Commission des valeurs mobilières du Québec as a self-regulatory organization or of any association the object of which is to organize a clearing and settlement system for instruments of payment or securities transactions, and provide the necessary guarantees;

“(13) where it is affiliated with La Confédération des caisses populaires et d’économie Desjardins du Québec, act in the stead of La Caisse centrale Desjardins du Québec, if the latter is in default, on behalf of the members of La Caisse centrale Desjardins du Québec and any other person for the clearing and settlement of instruments of payment or securities transactions, and provide the necessary guarantees;

“(14) with the authorization of the Inspector General and subject to such conditions and restrictions as he may determine, where it is affiliated with La Confédération des caisses populaires et d’économie Desjardins du Québec, secure jointly and severally the obligations of La Caisse centrale Desjardins du Québec, those of the other federations that are members of the latter and those of any other person, where La Caisse centrale Desjardins du Québec acts on behalf of its members and any other person for the clearing and settlement of instruments of payment or securities transactions;

“(15) with the authorization of the Inspector General and subject to such conditions and restrictions as he may determine, where it is affiliated with La Confédération des caisses populaires et d’économie Desjardins du Québec, hypothecate or otherwise give as security property held by it for the purposes referred to in paragraphs 12, 13 and 14.”

10. Section 390 of the said Act is amended by adding, at the end, the following paragraph:

“For the purposes of subparagraph 5 of the first paragraph, investments made by the security fund corporation in a legal person referred to in the first paragraph of section 469.1 shall be subtracted from the security fund, liquidity fund or mutual aid fund.”

11. Section 391 of the said Act is amended by inserting, after the first paragraph, the following paragraph:

“Notwithstanding the first paragraph, subordinated debt securities issued under subparagraph 6.1 of the first paragraph of section 213 shall be excluded from the liabilities of a federation to the extent that they are included in its capital base.”

12. Section 403 of the said Act is amended by inserting the words “a legal person referred to in the first paragraph of section 469.1 or” after the word “in” in the fourth line of the second paragraph.

13. Section 405 of the said Act is replaced by the following section:

“405. A federation shall not acquire shares in a legal person referred to in the first paragraph of section 469.1 or in a holding company if the legal person or holding company is controlled by the confederation with which the federation is affiliated, where that is the case.”

14. The said Act is amended by inserting, after section 408, the following section:

“408.1 Notwithstanding section 408, a federation affiliated with a confederation may, with the authorization of the Inspector General and subject to such conditions and restrictions as he may determine, acquire and hold subordinated debt securities issued by a security fund corporation.

Any such acquisition shall be made out of the sums deposited by the credit unions affiliated with the federation in a fund established for such purpose in accordance with section 415. The sums deposited by a credit union in the fund shall be in the amount determined under the second paragraph of section 469.2 and shall consist solely of all or part of the proceeds received by the credit union following the issue of subordinated debt securities under subparagraph 6.1 of the first paragraph of section 213.”

15. Section 417 of the said Act is amended by adding, at the end of the second paragraph, the following sentence: “Deposits into the fund referred to in the second paragraph of section 408.1 constitute claims ranking equally with one another and are subordinated in rank of payment to all other indebtedness of the federation.”

16. Section 442 of the said Act is amended by inserting the words “subparagraph 6.1 of the first paragraph of section 213, sections” after the figure “183,” in the second line of the second paragraph.

17. The said Act is amended by inserting, after section 469, the following sections:

“469.1 Notwithstanding the first paragraph of section 469, a confederation may acquire shares in a legal person constituted under Part IA of the Companies Act (R.S.Q., chapter C-38), which is or becomes, as a result of that acquisition, a legal person directly controlled by the confederation, if the sole objects of the legal person are to make public issues of securities and to acquire as consideration therefor subordinated debt securities issued by a credit union affiliated with a federation affiliated with the confederation.

The confederation shall, at all times, hold directly all the voting rights attached to the shares of the legal person referred to in the first paragraph.

Notwithstanding sections 123.15, 123.105, 123.119, 123.136 and 123.160 of the Companies Act, any provision relating to the objects of a legal person referred to in the first paragraph must be approved by the Inspector General. After giving his approval, the Inspector General shall issue a certificate in accordance with the procedure set out in section 123.15 of that Act.

“469.2 Every issue of securities by a legal person referred to in the first paragraph of section 469.1 and the amount and terms and conditions of such issue must receive the prior approval of a confederation, by resolution.

The resolution of the confederation shall also determine the apportionment of the proceeds of the issue among the credit unions affiliated with the federations affiliated with the confederation and shall specify, where applicable, the sums to be deposited by a credit union in accordance with the second paragraph of section 408.1.

The resolution of the confederation is binding on the credit unions affiliated with the federations affiliated with the confederation and each such credit union is bound to borrow in the amount resulting from the apportionment made by the confederation, in accordance with subparagraph 6.1 of the first paragraph of section 213.

The resolution of the confederation is also binding on the federations affiliated with the confederation.

“469.3 Upon each public issue of securities, a legal person referred to in the first paragraph of section 469.1 shall, if expedient, issue subordinated debt securities to a security fund corporation.

The security fund corporation is bound to acquire the debt securities so issued.

“469.4 A legal person referred to in the first paragraph of section 469.1 may not invest the sums referred to in the first paragraph of section 469.3 otherwise than in accordance with the investment policy approved beforehand by the Inspector General.

“469.5 A legal person referred to in the first paragraph of section 469.1 may acquire and hold subordinated debt securities issued by a credit union affiliated with a federation affiliated with a confederation.”

18. Section 475 of the said Act is amended

(1) by inserting the words “a legal person referred to in the first paragraph of section 469.1 or” after the word “of” in the first line;

(2) by inserting the words “the legal person or” after the word “to” in the fourth line.

19. Section 476 of the said Act is amended

(1) by replacing subparagraph 1 of the first paragraph by the following subparagraph:

“(1) the legal person referred to in the first paragraph of section 469.1 or holding company whose directors or officers authorized the investment;”;

(2) by inserting the words “legal person or the” before the words “holding company” in the first line of subparagraph 2 of the first paragraph and by replacing the words “holding company, if the latter” in the second line of that subparagraph by the words “legal person or the holding company, if the legal person or the holding company”;

(3) by inserting the words “legal person or the” before the words “holding company” in the first and second lines of subparagraph 3 of the first paragraph and by replacing the word “latter” in the second line of that subparagraph by the words “legal person or the holding company”.

20. Section 477 of the said Act is amended by inserting the words “legal person referred to in the first paragraph of section 469.1 or a” before the words “holding company” in the first line.

21. Section 491 of the said Act is amended by inserting the words “legal person referred to in the first paragraph of section 469.1” after the word “confederation,” in the fifth line.

22. Section 499 of the said Act is amended by replacing the words “or a legal person controlled by such a holding company” in the third and fourth lines by the words “, a legal person controlled by such a holding company or a legal person referred to in the first paragraph of section 469.1”.

23. Section 516 of the said Act is amended by inserting, after paragraph 5, the following paragraph:

“(5.1) prescribe minimum requirements for a subordinated debt security referred to in subparagraph 6.1 of the first paragraph of section 213;”.

24. Section 587 of the said Act is amended by adding, at the end of subparagraph 4 of the first paragraph, the words “and a legal person referred to in the first paragraph of section 469.1”.

25. Section 3 of the Act respecting security fund corporations (R.S.Q., chapter C-69.1) is amended by inserting, after subparagraph 1 of the first paragraph, the following subparagraph:

“(1.1) to assist, in accordance with subparagraph 8 of the first paragraph of section 26 and section 39.1, federations whose unions are affiliated with the corporation;”.

26. Section 26 of the said Act is amended

(1) by adding, after paragraph 7, the following paragraph:

“(8) for the purposes referred to in section 39.1, borrow from a federation whose unions are affiliated with the corporation, in an amount equal to the sums deposited into the fund referred to in the second paragraph of section 408.1 of the Savings and Credit Unions Act, with the authorization of the Inspector General and subject to such conditions and restrictions as he may determine, by way of the issue of subordinated debt securities.”;

(2) by adding, at the end, the following paragraph:

“Subordinated debt securities issued under subparagraph 8 of the first paragraph may not be redeemed without the authorization of the Inspector General.”

27. The said Act is amended by inserting, after section 37, the following section:

“37.1 The corporation shall, for the purposes of section 469.3 of the Savings and Credit Unions Act, acquire and hold subordinated debt securities issued by a legal person referred to in the first paragraph of section 469.1 of that Act.”

28. The said Act is amended by inserting, after section 39, the following section:

“39.1 The corporation may, with the authorization of the Inspector General and subject to such conditions and restrictions as

he may determine, acquire and hold preferred shares issued by a federation whose unions are affiliated with the corporation.

Any such acquisition shall be made out of the sums borrowed under subparagraph 8 of the first paragraph of section 26.”

29. Section 43 of the said Act is amended by inserting, after the second paragraph, the following paragraph:

“Investments made under sections 37.1 and 39.1 shall not be taken into account for the purposes of subparagraph 2 of the second paragraph.”

30. Section 45 of the said Act is amended by adding, at the end, the following paragraph:

“Furthermore, the corporation shall keep a separate register and separate accounting for transactions under subparagraph 8 of the first paragraph of section 26 and section 39.1.”

31. Subparagraph 1.1 of the first paragraph of section 3 of the Act respecting security fund corporations, enacted by section 25 of this Act, applies to every security fund corporation existing on (*insert here the date of assent to this Act*).

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