



NATIONAL ASSEMBLY

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Bill 16

An Act to amend the Act respecting the Caisse de dépôt et placement du Québec

Introduction

**Introduced by
Mr Gérard D. Levesque
Minister of Finance**

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EXPLANATORY NOTES

This bill amends the Act respecting the Caisse de dépôt et placement du Québec in order principally to adjust some of the investment powers of the Fund. It also specifies the rights and obligations of the Fund in respect of the patrimony entrusted to it.

The bill provides the possibility for public bodies or agencies, municipal bodies, school bodies, health network bodies or the pension funds of any of the above, to become depositors of the Fund. It brings up-to-date the provisions relating to the Fund's deposits, funds and portfolios and permits new categories of funds and portfolios to be created by regulation.

It extends the acquisition of bonds by the Fund to those of institutions of the same type as the International Reconstruction and Development Bank, and revises the acquisition of bonds issued by public bodies into a single general description.

The bill replaces the term "company" by "legal person" wherever it appears in the Act, and replaces the various criteria for the acquisition of bonds or other evidences of indebtedness of legal persons.

For hypothecs, the bill removes the territorial restriction of the province of Québec. It also allows conventional hypothecary debts which exceed 75 % of the value of the real estate offered as security, where the excess amount is guaranteed or insured in accordance with the usual industry standards, and increases the maximum amount of a debt secured by an immovable from ½ % to 1 % of the total assets of the Fund.

For immovables, the bill removes the territorial restriction of the province of Québec, amends the description of real estate companies and abolishes the limit of 1 % of the total assets of the Fund for shares invested in real estate companies, while maintaining the present overall limit for hypothecs, immovables and shares in real estate companies.

The bill raises the limit for the holding of shares of legal persons from 30 % to 40 % of the total assets of the Fund, and includes in that limit the holding of units of indexed funds. In addition, it introduces new criteria for the selection of shares and other evidences of indebtedness.

The bill provides for the use by the Fund of new types of instruments and contracts of a financial nature, and it gives back to the Fund, along with its other powers of investment, powers respecting deposits with financial institutions. It amends the omnibus clause to cover all other investments, operations or loans.

It increases from two to five years the length of time for which the Fund may hold securities which it could not normally hold, following reorganizations or amalgamations, and extends this period to cover the exercise of other contractual rights or obligations. It provides, however, that the Fund must list in its annual report any such securities held for more than two years.

In addition, the bill authorizes the Fund to establish specialized entities for the holding of certain investments. Such entities have the status of agents of the Crown in right of Québec. The bill subjects them to the law in the same way as the Fund if it held such investments directly, while providing that certain sections may not necessarily apply.

Finally, the bill allows a number of departures from the pension plan of Fund employees, and enacts some more technical provisions of a transitory nature and for concordance.

Bill 16

An Act to amend the Act respecting the Caisse de dépôt et placement du Québec

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 4 of the Act respecting the Caisse de dépôt et placement du Québec (R.S.Q., chapter C-2) is amended

(1) by adding, at the end of the second paragraph, the following: “, but the performance of the obligations of the Fund may be levied against such property. The Fund may bind itself in any way whatsoever, in particular by borrowing, using the property as security or encumbering it as though it were not the property of the Crown in right of Québec”;

(2) by replacing the third and fourth paragraphs by the following paragraphs:

“The Fund binds only itself when it acts in its own name.

Legal persons all of whose shares are held directly or indirectly by the Fund are agents of the Crown in right of Québec and the provisions of this section are applicable to them.”

2. Section 15.2 of the said Act is amended by adding, after the first paragraph, the following paragraph:

“The Fund may, however, in the cases and on the conditions prescribed by regulation, authorize any exception to the application of the first paragraph.”

3. The said Act is amended by inserting, after section 20, the following sections:

“20.1 The Fund may also, on the conditions prescribed by regulation, receive on deposit any sum of money from a public body designated by regulation or belonging to a category of public bodies authorized by regulation, or from a pension fund of such a public body.

The following are public bodies: government agencies, municipal bodies, school bodies and health and social services establishments.

“20.2 Government agencies are

(a) agencies of which the Government or a minister appoints the majority of the members or directors;

(b) agencies to which, by law, the personnel is appointed or remunerated in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1);

(c) agencies whose property or capital stock forms part of the public domain;

(d) agencies at least one-half of whose operating costs are borne directly or indirectly by the consolidated revenue fund or by other funds administered by a public body, or by both at the same time;

(e) legal persons of which at least one-half of the voting shares form part of the public domain or are held by a public body.

“20.3 Municipal bodies are: local municipalities, mandatory bodies of a local municipality within the meaning of section 18 of the Act respecting the Pension Plan of Elected Municipal Officers (R.S.Q., chapter R-9.3) and supramunicipal bodies within the meaning of sections 18 and 19 of that Act.

“20.4 School bodies are: school boards, the Conseil scolaire de l'Île de Montréal, general and vocational colleges, institutions declared to be of public interest or recognized for purposes of subsidies under the Act respecting private education (R.S.Q., chapter E-9), institutions of higher education more than one-half of whose operating expenses are paid out of the appropriations which appear in the budget estimates tabled in the National Assembly, and any faculty, school or institute of any such institution.

“20.5 Health and social services establishments are: public establishments contemplated by sections 10 and 11 of the Act respecting health services and social services (R.S.Q., chapter S-5), private establishments within the meaning of that Act which operate

with sums of money from the consolidated revenue fund, regional health and social services boards established under that Act and the Corporation d'hébergement du Québec.”

4. Section 21 of the said Act is amended by replacing the words “keep the investments of every plan contemplated by section 20 separate from its own investments and manage them” in the first and second lines of the second paragraph by the words “manage the investments of any plan contemplated by section 20”.

5. Section 22 of the said Act is replaced by the following section :

“22. For the management of deposits and investments, and for the purpose of determining the respective rights of the depositors, the Fund shall establish common funds comprising a general fund, segregated funds and specific investment portfolios, and separate funds comprising individual funds and portfolios under separate management.

The general fund, individual funds and portfolios under separate management contain diversified investments; the segregated funds and specific investment portfolios contain only one category of investment.

The segregated funds, specific investment portfolios and individual funds receive only participation deposits; the general fund receives demand deposits, term deposits and participation deposits.

Participation deposits do not bear interest; they constitute a participation of their holders in the net equity and in the net revenues of the fund or portfolio in which they are made, calculated after deduction of the reserves, charges and fees which the Fund considers appropriate, and the holders of participation deposits share the net equity and net revenues so calculated.

Demand deposits and term deposits bear interest and constitute an indebtedness of the Fund to the depositors.

Specific investment portfolios may receive no deposits other than a deposit from a fund.

The general fund may receive demand deposits and term deposits from the Fund's various funds, portfolios and subsidiaries.”

6. Section 23 of the said Act is replaced by the following section :

“23. The Fund shall establish by regulation

(a) the rules relating to its internal management and its commercial affairs;

(b) the cases and conditions of the exceptions authorized under section 15.2;

(c) the public bodies or categories of public bodies and the pension funds of such bodies from which it may receive sums of money on deposit under section 20.1;

(d) the terms and conditions of the various types of deposits it offers;

(e) the terms and conditions of the various funds and portfolios;

(f) the method of calculating the charges, fees and reserves;

(g) the instruments and contracts of a financial nature authorized under paragraph *d* of section 33.1, and the framework for using the instruments and contracts referred to in section 33.1;

(h) the standards prescribed in subparagraph *c* of the first paragraph of section 37.1;

(i) the other provisions of this Act to which the legal persons mentioned in the first paragraph of section 37.1 are not subject.”

7. Section 24 of the said Act is amended by replacing subparagraph *d* of the first paragraph by the following subparagraph:

“(d) bonds of the International Reconstruction and Development Bank, the European Reconstruction and Development Bank, the Inter-American Development Bank and the Asian Development Bank.”

8. Section 26 of the said Act is replaced by the following section:

“26. The Fund may, without restriction, acquire and hold bonds or other evidences of indebtedness issued or guaranteed by a public body.”

9. Section 27 of the said Act is amended

(1) by replacing the word “company” in the second line of the first paragraph by the words “legal person”;

(2) by replacing the word “company” in the first line of subparagraph *b* of the first paragraph by the words “legal person”;

(3) by replacing subparagraph *c* of the first paragraph by the following subparagraph:

“(c) if they are issued or fully guaranteed by a legal person whose common or preferred shares may be acquired and held by the Fund under section 30 or 31.”;

(4) by striking out the last paragraph.

10. Section 28 of the said Act is amended

(1) by striking out the words “in Québec” in the second line of the first paragraph;

(2) by replacing subparagraph *a* of the second paragraph by the following subparagraph:

“(a) the Fund may not acquire or hold a conventional hypothecary debt the amount of which exceeds 75 % of the value of the real estate securing payment thereof, after deduction of the other claims secured by that real estate which have the same rank as or a prior rank to the Fund’s hypothec, except in the following cases:

i. the excess amount is guaranteed or insured by the government of Québec, of Canada or of a province, the Canadian Mortgage and Housing Corporation, the Société d’habitation du Québec or an insurance company authorized to issue hypothecary insurance policies;

ii. the excess amount is secured by privilege or another charge on a security which the Fund may otherwise acquire or hold;

iii. the excess amount is guaranteed by a legal person whose securities may otherwise be acquired or held by the Fund;”;

(3) by replacing the figure “½ %” in the second line of subparagraph *b* of the second paragraph by the figure “1 %”;

(4) by striking out subparagraph *c* of the second paragraph.

11. Section 29 of the said Act is amended

(1) by striking out the words “in Québec” in the first line of that part of the section which precedes paragraph *a*;

(2) by striking out the words “and in the shares of each company having as its sole object the acquisition, holding, leasing or administration of immoveables” in the second, third and fourth lines of paragraph *a*;

(3) by replacing the words “companies having as their sole” in the third line of paragraph *b* by the words “legal persons having as their principal”.

12. Section 30 of the said Act is amended

(1) by replacing the word “company” in the first line by the words “legal person”;

(2) by striking out the words “or 31.1 and, notwithstanding paragraph *c* of section 27, evidences of indebtedness issued or guaranteed by such a company” in the second, third and fourth lines.

13. Section 31 of the said Act is amended

(1) by replacing paragraph *a* by the following paragraph:

“(a) a legal person which has as its principal object the acquisition, holding, leasing or administration of immovables or which has as its object the holding of shares or other securities of such legal persons;”;

(2) by replacing paragraphs *b*, *c* and *d* by the following paragraph:

“(b) a legal person whose shares have a potential for yield or growth.”;

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

“The Fund may acquire and hold units of indexed funds.”

14. Section 31.1 of the said Act is replaced by the following section:

“31.1 In the investments referred to in sections 27, 30 and 31, the Fund shall, in respect of all the assets, act as a prudent and reasonable person would have done in similar circumstances.”

15. Section 32 of the said Act is amended

(1) by replacing the word “companies” in the second line of that part of the section which precedes paragraph *a* by the words “legal persons”;

(2) by replacing the words “company unless such company has as its sole object the acquisition, holding, leasing or administration

of immoveables” in the second, third and fourth lines of paragraph *a* by the words “legal person, except in the case of a legal person to which subparagraph *a* of the first paragraph of section 31 applies;”;

(3) by replacing the words “30 % of its total assets in” in the first line of paragraph *b* by the words “40 % of its total assets in units of indexed funds and”;

(4) by replacing paragraph *c* by the following paragraph:

“(c) it may not acquire securities which increase its total investment in shares and evidences of indebtedness issued by the same legal person to more than 5 % of its total assets, except in the case of a legal person to which subparagraph *a* of the first paragraph of section 31 applies.”

16. The said Act is amended by inserting, after section 33, the following sections:

“33.1 The Fund may, within the framework for use determined by regulation and with no other restriction, acquire, hold, sell, invest in or conclude

(a) options and futures contracts;

(b) currency exchange agreements;

(c) interest rate exchange agreements;

(d) any other instrument or contract of a financial nature determined by regulation.

The Fund may dispose of the instruments, contracts and investments referred to in this section or terminate, according to their terms, contracts or agreements concluded in accordance with this section upon such conditions and for such amounts as it considers most advantageous.

“33.2 The Fund may, without restriction, make deposits with financial institutions.”

17. Section 34 of the said Act is amended

(1) by inserting the word “, operations” after the word “investments” in the first line of that part of the section which precedes paragraph *a*;

(2) by inserting the word “, operations” after the word “investments” in the first line of paragraph *a*;

(3) by replacing the word “company” in the second and fourth lines of paragraph *b* by the words “legal person”.

18. Section 36 of the said Act is replaced by the following section:

“36. The Fund may not hold for more than five years any security which it holds following the reorganization or winding-up of a legal person, the amalgamation of legal persons, the realization of a security securing an investment of the Fund or the realization or exercise of contractual rights or obligations, and which it could not otherwise hold under this Act.”

19. Section 37 of the said Act is repealed.

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

“DIVISION IV.1

“SPECIALIZED ENTITIES

“37.1 The Fund may, without restriction, acquire and hold all or some of the shares or other securities of a legal person

(a) whose principal activity consists in acquiring or managing investments in mining, oil or gas resources;

(b) whose principal activity consists in acquiring or managing investments in risk capital;

(c) whose principal activity consists, in accordance with the standards prescribed by regulation, in mounting operations of securitization of assets or in offering, managing or distributing assets which have been the subject of securitization;

(d) whose principal activity consists in holding shares or other securities of a legal person described in this section, or in holding international investments or private investments, to the extent that the Fund is authorized to hold such investments directly.

Where the Fund holds more than 30 % of their capital stock, the legal persons mentioned in the first paragraph may not acquire or hold investments which the Fund may not acquire or hold under the provisions of Division IV; where all the shares in their capital stock

are held by the Fund, such legal persons are subject to the provisions of this Act, adapted as required, except the provisions of sections 1, 2 and 5 to 14.1, Division III, Division VI and any other provision prescribed by regulation.

For the purposes of paragraph *a* of section 32, the Fund shall include in its own investments the common shares held by a legal person mentioned in the first paragraph, where such a legal person is held wholly by the Fund or by a legal person held wholly by the Fund, or the proportion attributable to it in such legal persons.

For the purposes of paragraphs *b* and *c* of section 32, the Fund shall include in its own investments the proportion attributable to it of the shares or other securities of a legal person mentioned in the first paragraph."

21. Section 39 of the said Act is amended by replacing the word "company" in the first and third lines of the first paragraph and in the second line of the second paragraph by the words "legal person".

22. Section 40 of the said Act is amended

(1) by replacing the word "company" in the first line of subparagraph *c* of the second paragraph and in the first and second lines of subparagraph *e* of the second paragraph by the words "legal person";

(2) by replacing the word "companies" in the first line of subparagraph *d* of the second paragraph by the words "legal persons".

23. Section 42 of the said Act is amended by replacing the word "companies" in the fourth line of the first paragraph by the words "legal persons".

24. Section 44 of the said Act is amended by replacing the words and figure "the 15th of" in the first line of the first paragraph by the figure "31" and by striking out the word "in" in the first line of the first paragraph.

25. Section 45 of the said Act is amended

(1) by replacing the words and figure "31 March each year" in the first line of the first paragraph by the words "two weeks after the tabling of its annual report" and by inserting the words "to each depositor and" after the word "submit" in the first line of the first paragraph;

(2) by replacing the words and figure “31 March each year” in the first line of the second paragraph by the words “two weeks after the tabling of its annual report”.

26. Section 46 of the said Act is amended

(1) by replacing paragraph *b* by the following paragraph:

“(b) audited financial statements drawn up in accordance with generally accepted accounting principles;”;

(2) by replacing paragraphs *d*, *e* and *f* by the following paragraphs:

“(d) a description of the operations carried out in respect of the management of depositors’ funds;

“(e) a list of the securities held by the Fund pursuant to section 36 for more than two years.”

27. Section 47 of the said Act is replaced by the following section:

“**47.** For the purposes of the limits expressed as a percentage of the total assets of the Fund, investments shall be entered at cost price.”

28. The Fund may conclude transactions relating to the instruments or contracts of a financial nature provided for in section 33.1 of the Act respecting the Caisse de dépôt et placement du Québec until 1 July 1993, even though the regulations provided for in paragraph *g* of section 23 of that Act are not in force.

29. The provisions of this Act come into force on (*insert here the date of assent to this Act*).