

NATIONAL ASSEMBLY

FIRST SESSION

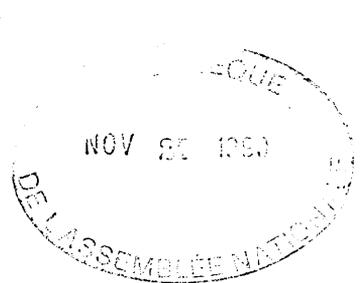
THIRTY-FOURTH LEGISLATURE

Bill 112

An Act to amend the Act respecting insurance and other legislation

Introduction

**Introduced by
Madam Louise Robic
Minister for Finance**



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EXPLANATORY NOTES

The object of this bill is to amend the Act respecting insurance to introduce new measures intended to control ownership of insurers incorporated in Québec.

It also amends the powers of insurers to invest, in particular by setting limits on investments in subsidiaries and associations depending on their activities.

The bill relaxes the rules concerning registration of an insurer's deposits, loans and investments.

It renders applicable to insurers transacting insurance of persons the rule prohibiting insurers transacting damage insurance from declaring dividends or interest or from distributing annual surpluses if, as a result, its assets would no longer comply with requirements.

It subjects insurers to certain rules respecting ethics and conflicts of interest, including in particular the obligation to establish a code of ethics and to see that it is applied.

Under the bill, the Inspector General of Financial Institutions is granted powers to intervene, including a power to make orders.

Finally, the bill introduces new regulatory powers and contains certain transitional provisions and provisions for concordance.

ACTS AMENDED BY THIS BILL:

- Act respecting insurance (R.S.Q., chapter A-32)
- Act respecting The Laurentian Mutual Management Corporation and The Laurentian Life Insurance Company Inc. (Private Bill 253 assented to on 22 June 1990).

Bill 112

An Act to amend the Act respecting insurance and other legislation

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 1 of the Act respecting insurance (R.S.Q., chapter A-32) is amended

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

“(*l*) “officer”: the president, vice-president, treasurer and secretary of a corporation, or the chairman, vice-chairman, treasurer and secretary of its board of directors, their assistants, the managing director and general manager, and any person holding a similar function;”;

(2) by striking out paragraph *t*;

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

“(*u*) “spouse”: a person who is married and cohabits with the person to whom he is married, or a person who is living with another person in a conjugal relationship outside marriage and has been living with that person for at least one year.”

2. The said Act is amended by inserting, after section 1, the following sections:

“1.1 A corporation is controlled by another person where that person is in a position to elect, directly or indirectly, the majority of the directors of the corporation.

“1.2 A corporation is a subsidiary of another corporation if it is controlled directly by that corporation.

“1.3 A corporation is affiliated with another corporation if one is a subsidiary of the other or if both are controlled by the same person or group.

“1.4 A corporation affiliated with another corporation is deemed to be affiliated with every corporation affiliated with that other corporation.

“1.5 A federation of mutual insurance associations and every corporation controlled by the federation are members of the same group.

“1.6 The following persons are associates of a director or officer:

- (1) his spouse, minor child or the minor child of his spouse;
- (2) his partner, or a partnership in which he is a partner;
- (3) a corporation controlled individually or jointly by him or by his spouse, his minor child or the minor child of his spouse;
- (4) a corporation in which he holds 10 % or more of the voting rights attached to the shares issued by it, or 10 % or more of such shares;
- (5) a corporation of which he is a director or officer.”

3. Section 34 of the said Act is amended by adding, at the end, the following paragraph:

“Sections 43 to 50.5 also apply to corporations which control such insurance companies.”

4. Sections 43 to 50 of the said Act are replaced by the following sections:

“43. Except with the written authorization of the Minister, no insurance company may allot its voting shares or register a transfer of its voting shares where the allotment or transfer would

- (1) directly or indirectly give to a person and his associates 10 % or more of the voting rights attached to the shares if they do not already control the company;
- (2) directly or indirectly increase the voting rights attached to the shares already held by a person and his associates to at least 10 % or at least a multiple of 10 % if they do not already control the company;

(3) directly or indirectly give to a person and his associates control of the company;

Where an allotment of voting shares or registration of a transfer of shares by a corporation that controls an insurance company has, in respect of such shares, an effect described in subparagraphs 1 to 3 of the first paragraph, the corporation shall cease to be entitled to exercise the voting rights attached to the shares of the insurance company, unless it obtains written authorization from the Minister.

Subparagraphs 1 and 2 of the first paragraph do not apply where the voting shares in the insurance company or the corporation that controls it are listed on a recognized stock exchange.

“44. Except with the written authorization of the Minister, no insurance company may allot its voting shares or register any transfer of voting shares where the effect of the allotment or transfer is to permit non-residents and their associates to hold, directly or indirectly, more than 30 % of the voting rights.

Where an allotment of voting shares or registration of a transfer of shares by a corporation that controls an insurance company and which is incorporated or continued under an Act of the Parliament of Canada or of a Canadian province has the effect of permitting non-residents and their associates to hold, directly or indirectly, more than 30 % of the voting rights, the corporation shall cease to be entitled to exercise the voting rights attached to the shares of the insurance company, unless it obtains written authorization from the Minister.

However, the authorization of the Minister is not required where non-residents and their associates already control the insurance company or the corporation that controls it.

“45. Every application for authorization made to the Minister must indicate

(1) the names in full, occupations and places of residence, where the persons concerned are natural persons;

(2) the corporate names, places of incorporation or continuance and the name of the shareholder holding a controlling interest, where the persons concerned are corporations;

(3) the number and characteristics of the shares in the insurance company or the corporation that controls it held by each person concerned;

(4) the number and characteristics of the shares being allotted or transferred, together with the name of the acquirer of the shares and, where applicable, the name of the seller.

“46. The Minister may grant the authorization referred to in section 43 or 44 if he considers it expedient, in particular, in the interest of the insurance company and its development, and in the interest of the insured. The Minister must be satisfied that the financial resources of the persons concerned are sufficient to provide continuous financial support to the insurance company in its operations and development. The Minister must also take account of the effect of the transaction on the insurance industry in Québec.

The Minister may grant the authorization referred to in section 44 only if, in addition, he is satisfied that the transaction is advisable in the circumstances for the maintenance or improvement of the financial position of the insurance company.

However, the second paragraph does not apply where the allotment of shares to non-residents and their associates gives them control at the time an insurance company is incorporated.

The Minister shall render his decision following a report from the Inspector General. He may impose any conditions he considers appropriate.

“47. For the purposes of sections 44 and 46, a non-resident is a natural person who resides in Canada for fewer than 183 days a year, a corporation incorporated or continued elsewhere than in Canada or any corporation controlled by such a natural person or corporation.

A voting share held jointly is deemed to be held by a non-resident if at least one of the joint holders is a non-resident.

“48. For the purposes of sections 43 and 44, the Inspector General, after having given the persons concerned an opportunity to be heard, may deem that a person holds voting rights attached to shares in an insurance company or a corporation that controls it if, in his opinion, that person, alone or with an associate, is in a position to influence the vote of persons holding shares in the insurance company or the corporation that controls it.

“49. For the purposes of sections 43, 44 and 48, persons are associates where

(1) one person is the spouse of the other, or is the minor child of either;

(2) one person is a corporation and the other is a director or officer thereof, or the spouse or minor child of that director, officer or spouse;

(3) one person is a corporation and the other person, or the spouse or a minor child of the other person or his spouse, or a group consisting of that other person, the spouse of that person or such a child or, in the case of a corporation, a director or officer thereof, holds 10 % or more of the voting rights of that corporation;

(4) one person is a partnership and the other is one of the partners;

(5) they are affiliated corporations;

(6) they are parties to an agreement with a view to exercising voting rights attached to shares in the same corporation;

(7) they are associates, within the meaning of paragraphs 1 to 6, of the same person;

(8) they are controlled by associates within the meaning of paragraphs 1 to 7.

“50. Where an agreement is made with a view to exercising, through a nominee, voting rights attached to shares in an insurance company or in the corporation that controls it, section 50.1 applies. The said section also applies to any changes made to such an agreement.

“50.1 Where an agreement referred to in section 50 is made with a view to exercising voting rights attached to shares in an insurance company, the nominee shall not be entitled to exercise the voting rights covered by such an agreement except with the authorization of the Inspector General.

Where an agreement referred to in section 50 is made with a view to exercising voting rights attached to shares in the corporation that controls an insurance company, the corporation shall no longer be entitled to exercise the voting rights attached to the shares in the insurance company except with the authorization of the Inspector General.

The Inspector General may give his authorization if he considers it expedient in the interest of the insurance company and the persons insured by it. He may impose any conditions he considers appropriate.

“50.2 The application for authorization made to the Inspector General must, in addition to the information required under paragraphs 1 to 3 of section 45, indicate the number and characteristics of the shares to which the agreement applies, and the name of the holder of such shares.

“50.3 The Inspector General may require any relevant information or document for the purposes of sections 43, 44 and 50.1.

Every person who is requested to furnish information shall comply with the request.

“50.4 Where shares in an insurance company are allotted or the transfer thereof is registered contrary to section 43 or 44, each person to or in favour of whom such shares are allotted or transferred shall not be entitled to exercise a number of voting rights attached to shares in the insurance company equivalent to the number of voting rights attached to the shares that were allotted or transferred and registered unlawfully.

“50.5 Where the authorization referred to in section 43 or 44 has not been obtained, the voting right may again be exercised if the Minister grants his authorization. Such authorization shall have effect on any date, even a prior date, determined by the Minister.

Such authorization may be granted for any allotment or transfer of shares effected before (*insert here the date of coming into force of section 43 enacted by section 4 of this Act*) contrary to section 43 of the Act as it read before (*insert here the date of coming into force of section 43 enacted by section 4 of this Act*).

Section 46 applies, adapted as required, to the exercise of the power of authorization.”

5. The said Act is amended by inserting, after section 52, the following sections:

“52.1 Insurance companies are prohibited from issuing any bearer share certificate.

“52.2 An application for letters patent which affects the voting rights held by shareholders in an insurance company shall be accompanied with a list indicating

(1) the name in full, occupation and place of residence of every natural person who, if the letters patent were granted, would hold,

alone or with his associates within the meaning of section 49, 10 % or more of the voting rights attached to the shares of the insurance company;

(2) the corporate name and the place of incorporation or continuance of every corporation which, if the letters patent were granted, would hold, alone or with its associates within the meaning of section 49, 10 % or more of the voting rights attached to the shares of the insurance company, and the name of the shareholder holding a controlling interest in the corporation.”

6. Section 57 of the said Act, amended by section 227 of chapter 48 of the statutes of 1989, is again amended

(1) by inserting the words “or officers” after the word “directors” in the second line;

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

“Natural persons and directors or officers of corporations to or in favour of whom or which shares have been allotted or transferred and registered without the authorization provided for in section 43 or 44, and natural persons and directors or officers of corporations bound by an agreement made without the authorization provided for in section 50.1, are also ineligible. Ineligibility lasts as long as the sanctions provided for in sections 43, 44, 50.1 and 50.4 remain applicable.”

7. Section 58 of the said Act is repealed.

8. Section 59 of the said Act is replaced by the following section:

“**59.** Not more than one-third of the board of directors or the executive committee of an insurance company may be composed of remunerated officers and employees of that company or of a corporation with which it is affiliated, including persons who have been employed by either the company or the corporation in the preceding two years.”

9. Section 61 of the said Act is repealed.

10. The said Act is amended by inserting, after section 90, the following section:

“**90.1** There is no quorum at an annual general meeting or special meeting if more than one-half of the members or proxies

present are directors, other mandataries or employees of the company.”

11. Section 93.79 of the said Act, amended by section 156 of chapter 54 of the statutes of 1989, is again amended by replacing subparagraph 1 of the second paragraph by the following subparagraph:

“(1) an employee of the mutual insurance association or of another mutual insurance association, or an employee of the federation with which the mutual insurance association is affiliated, of the guarantee fund corporation associated with the federation or of a corporation belonging to the same group as the federation;”.

12. Section 93.84 of the said Act is repealed.

13. Section 93.147 of the said Act, amended by section 156 of chapter 54 of the statutes of 1989, is again amended by replacing the second paragraph by the following paragraph:

“However, in no case may more than one-third of the board of directors be composed of employees of the federation or the mutual insurance associations that are members of it, or employees of the guarantee fund corporation associated with the federation or of a corporation belonging to the same group as the federation.”

14. Section 93.154 of the said Act is replaced by the following sections:

“93.154 Every director who has an interest that is in conflict with the interest of the federation must, on pain of removal from office, disclose his interest, abstain from voting on any matter connected with it and avoid influencing any decision relating to it. He must also withdraw from the meeting while any such matter is being discussed or voted upon.

Any other person carrying on the duties of an officer and who has such an interest shall, on pain of removal from office, disclose his interest in writing to the federation. He shall in no way attempt to influence the decision of the directors.

“93.154.1 A director or officer is deemed to have the same interest as a person associated with him.

“93.154.2 Any person who is removed from office for having contravened section 93.154 or who resigns after having contravened

that section is disqualified from sitting as a director of any federation for a period of five years from his removal or resignation.

“93.154.3 The court, at the request of the federation or of a mutual insurance association that is a member of the federation or at the request of the Inspector General may, among other measures, order a director or officer who has contravened section 93.154 to render account and, where applicable, to remit any profit gained to the federation.

“93.154.4 Every director or officer of a federation must, within three months of his appointment or election and, subsequently, every year, disclose in writing and under oath to the board of directors of the federation any interest held by him in any undertaking.

No director or officer may discharge the duties of his office until he has fulfilled his obligations under this section. The vote of a director who discharges his duties in contravention of this section shall not be decisive.

However, no disclosure of interest is required where the holding amounts to less than 10 % of the shares issued by a corporation or of the voting rights attached to such shares.”

15. Section 93.156 of the said Act is amended by adding, at the end, the following paragraph:

“Not more than one-third of the executive committee may be composed of persons referred to in the second paragraph of section 93.147.”

16. Section 93.238 of the said Act is replaced by the following sections:

“93.238 Every director who has an interest that is in conflict with the interest of the corporation must, on pain of removal from office, disclose his interest, abstain from voting on any matter connected with it and avoid influencing any decision relating to it. He must also withdraw from the meeting while any such matter is being discussed or voted upon.

Any other person discharging the duties of an officer and who has such an interest shall, on pain of removal from office, disclose his interest to the corporation. In addition, he shall in no way attempt to influence the decision of the directors.

“93.238.1 A director or officer is deemed to have the same interest as a person associated with him.

“93.238.2 Any person who is removed from office for having contravened section 93.238 or who resigns after having contravened that section is disqualified from sitting as a director of any corporation for a period of five years from his removal or resignation.

“93.238.3 The court, at the request of the corporation, of a federation associated with the corporation or of a mutual insurance association that is a member of the federation or at the request of the Inspector General, may, among other measures, order a director or officer who has contravened section 93.238 to render account and, where applicable, to remit any profit gained to the corporation.

“93.238.4 Every director or officer of a guarantee fund corporation must, within three months of his appointment or election and, subsequently, every year, disclose in writing and under oath to the board of directors of the corporation any interest held by him in any undertaking.

No director or officer may discharge the duties of his office until he has fulfilled his obligations under this section. The vote of a director who discharges his duties in contravention of this section shall not be decisive.

However, no disclosure of interest is required where the holding amounts to less than 10 % of the shares issued by a corporation or of the voting rights attached to such shares.”

17. Section 118 of the said Act is repealed.

18. Section 119 of the said Act is amended by adding, after the first paragraph, the following paragraph:

“There is no quorum if more than one-half of the members or proxies present are directors, other mandataries or employees of the association.”

19. Section 130 of the said Act is replaced by the following section:

“130. The following persons shall not be directors of the association:

- (1) employees of the association;
- (2) insurance agents, claims adjusters, directors or officers of another corporation dealing in a similar capacity with the association.”

20. Section 174.6 of the said Act is amended

(1) by inserting the words “and officers” after the word “directors” in the first line of the second paragraph;

(2) by inserting the words “and officers” after the word “directors” in the third line of the second paragraph;

(3) by adding, at the end of the second paragraph, the following sentence: “A reference to the officers of an insurer is a reference to the administrators of an insurance fund and, where the administrators are corporations, to the directors thereof.”

21. Section 174.8 of the said Act, amended by section 156 of chapter 54 of the statutes of 1989, is again amended by adding, after paragraph 4, the following paragraphs:

“(5) an employee of a professional corporation whose main duty is concerned with the administration of the insurance fund;

“(6) a director, officer or employee of the administrator entrusted with the day-to-day operation of the fund.”

22. Section 186 of the said Act is amended by inserting, after subparagraph *g* of the first paragraph, the following subparagraph:

“(g.1) in the case of joint stock companies, the name in full, occupation and place of residence of every natural person who, from amalgamation, would hold, alone or with his associates within the meaning of section 49, 10 % or more of the voting rights attached to the shares in the company, and the corporate name and place of incorporation or continuance of every corporation that, from amalgamation, would hold, alone or with its associates within the meaning of section 49, 10 % or more of the voting rights attached to shares in the company, and the name of the shareholder who holds a controlling interest in the corporation;”.

23. Section 194 of the said Act is amended by inserting, after subparagraph *f* of the second paragraph, the following subparagraph:

“(f.1) where the new corporation is to be a joint stock company, the name in full, occupation and place of residence of every natural person who, from conversion, would hold, alone or with his associates within the meaning of section 49, 10 % or more of the voting rights attached to the shares in the company, and the corporate name and place of incorporation or continuance of every corporation that, from conversion, would hold, alone or with its associates within the meaning of section 49, 10 % or more of the voting rights attached to

shares in the company, and the name of the shareholder who holds a controlling interest in the corporation;”.

24. Section 200.3 of the said Act is amended by inserting, after subparagraph *f* of the second paragraph, the following subparagraph:

“(f.1) in the case of a joint stock company, the name in full, occupation and place of residence of every natural person who, from continuance, would hold, alone or with his associates within the meaning of section 49, 10 % or more of the voting rights attached to the shares in the company, and the corporate name and place of incorporation or continuance of every corporation that, from continuance, would hold, alone or with its associates within the meaning of section 49, 10 % or more of the voting rights attached to shares in the company, and the name of the shareholder who holds a controlling interest in the corporation;”.

25. Section 245 of the said Act, amended by section 554 of chapter 64 of the statutes of 1988, is again amended

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

“(d) have subsidiaries other than those mentioned in subparagraphs *d.1* and *e* of this paragraph, nor invest in associations where such associations carry on activities other than those mentioned in subparagraphs *d.1* and *e*;

“(d.1) invest more than 4 % of its assets in a single subsidiary or association whose principal activity is the purchase, management, sale or leasing of immovables, the offering of participation in investment portfolios, the making of loans and investments, factoring, leasing, or the offering of computing services, actuarial advisory services or travel assistance services, or any other principal activity determined by regulation, nor hold combined investments in all such subsidiaries and associations which exceed 15 % of its assets;”;

(2) by replacing subparagraph *e* of the first paragraph by the following subparagraph:

“(e) invest more than 15 % of its assets in a single subsidiary that is an insurer, a bank, a trust company, a savings company or a securities dealer or adviser;”;

(3) by replacing the words “except if the corporation is a subsidiary;” in the third and fourth lines of subparagraph *f* of the first

paragraph by the words “except if the corporation is a corporation referred to in subparagraph *d.1* or *e*, whether or not it is a subsidiary of the insurer;”;

(4) by replacing subparagraph *h* of the first paragraph by the following subparagraph:

“(*h*) invest a total of more than 50 % of its assets in investments referred to in subparagraphs *c*, *d.1*, *e* and *f* of this paragraph and in section 247, and a total of more than 25 % of its assets in the investments described in subparagraphs *d.1* and *e* of this paragraph and in section 247;”;

(5) by inserting, after the first paragraph, the following paragraphs:

“Any investment made contrary to subparagraph *d* of the first paragraph is null of absolute nullity.

However, an insurer that on (*insert here the date of coming into force of this section*), holds investments which do not comply with the provisions of subparagraphs *d*, *d.1* and *e* of the first paragraph may continue to hold them. It may continue to invest in a subsidiary or association other than those referred to in subparagraphs *d.1* and *e* of the first paragraph provided that its total investment in that subsidiary or association does not exceed 4 % of its assets. In addition, such investments must be taken into account in computing the 15 % and 25 % limits prescribed in subparagraphs *d.1* and *h* of the first paragraph.”

26. The said Act is amended by inserting, after section 245, the following section:

“245.0.1 The limit provided for in subparagraph *a* of the first paragraph of section 245 shall not apply

(*a*) to securities guaranteed by the government of Canada or a government of a Canadian province or territory, or to securities issued or guaranteed by any of their agencies or by a municipal corporation in Canada;

(*b*) to securities on which payment in principal and interest is guaranteed by the grant of a subsidy by the government of Québec payable out of the sums voted each year for that purpose by the National Assembly of Québec;

(*c*) to bank deposits and debt securities, payment of which is guaranteed by a bank;

(d) to debt securities issued or secured by an institution that is registered with the Régie de l'assurance-dépôts du Québec or that is a member of the Canada Deposit Insurance Corporation, and to deposits with those institutions;

(e) to any other investments determined by regulation.”

27. Section 247 of the said Act is amended

(1) by replacing the words “subparagraphs *d* and *e*” in the first line of the first paragraph by the words “subparagraph *d*”;

(2) by replacing the figure “50 %” in the third line of the first paragraph by the figure “25 %”;

(3) by inserting the words “and Chapter III.1” after the word “chapter” in the second line of the second paragraph;

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

“An insurer who, on (*insert here the date of coming into force of this section*), has invested more than 25 % of his assets in a downstream holding may keep that investment.”

28. Section 248 of the said Act is amended by adding, at the end of the first paragraph, the words “and the diversification of investments”.

29. Section 249 of the said Act is repealed.

30. Sections 259 to 265 of the said Act are repealed.

31. Section 268 of the said Act is amended by replacing the words and figures “sections 244 to 265” in the fourth line by the words “the investment rules prescribed by this Act”.

32. Section 270 of the said Act is replaced by the following section:

“**270.** An insurer shall effect its deposits, loans and investments in its corporate name, unless it does so through a clearing house recognized by the Inspector General or unless, at the request of the insurer, the Inspector General exempts it from the obligation to do so in such cases and on such conditions as he may determine according to the circumstances.”

33. Section 271 of the said Act is replaced by the following section:

“271. The directors or officers of an insurer who agree to a loan or investment which contravenes this Act shall be held jointly and severally liable for any losses resulting therefrom for the insurer.”

34. Section 272 of the said Act is replaced by the following section:

“272. The sole fact that the loans or investments made by an insurer comply with this Act does not exempt the directors and officers of that insurer from liability.”

35. Section 273 of the said Act is amended by replacing the words “An investment not in accordance with this Act shall not be recognized as assets of an insurer unless” in the first and second lines by the words “Subject to the third paragraph of section 245 and the fifth paragraph of section 247, no investment which does not comply with subparagraph *d* of the first paragraph of section 245, and no amount which exceeds the permitted limits, shall be recognized by the Inspector General, and any such investment or amount shall be deducted from the assets for the purposes of his financial analyses, unless the investment concerned”.

36. The said Act is amended by inserting, after section 275, the following section:

“275.0.1 The directors shall be held jointly and severally liable for any amount paid to a shareholder or to a director where the insurer, due to payment of that amount, contravenes the provisions of section 275.”

37. Section 275.2 of the said Act is amended by striking out the words “transacting damage insurance” in the first line.

38. The said Act is amended by inserting, after section 275.3, the following sections:

“DIVISION III.1

“SALE OF THE ENTERPRISE

“275.4 No insurer may sell all or part of its enterprise unless it gives prior notice of 45 days to the Inspector General. The prior notice shall indicate the corporate name and the address of the head office of the parties. It shall also be accompanied with a draft copy of the contract the parties intend to sign.

“275.5 The Inspector General may prohibit the transaction or impose certain conditions on it if he considers it expedient in the interest of the insured or of one of the parties.

Where the Inspector General considers that insufficient time is available to him to carry out an adequate examination of the transaction, he may extend the period by an additional 45 days.

The Inspector General shall inform the parties of any such extension not less than five days before the expiry of any period of 45 days.”

39. The said Act is amended by inserting, after section 285, the following chapter:

“CHAPTER III.1

“ETHICS AND CONFLICTS OF INTEREST

“DIVISION I

“APPLICATION

“285.1 This chapter applies to every insurer incorporated in Québec, notwithstanding any provision of its charter that is inconsistent herewith.

However, Division IV of this chapter does not apply to mutual benefit associations which do not issue policies or certificates guaranteeing, for their duration, the amount of mutual benefits and assessments fixed therein, nor to funeral insurance companies.

“DIVISION II

“DIRECTORS AND OFFICERS

“285.2 A director or officer of an insurer shall exercise the care, prudence, diligence and skill that a reasonable person would exercise in similar circumstances.

He shall also act with honesty and fairness in the best interest of the insurer. In doing so, he shall take into account the interests of the insured, the shareholders or the members, and shall avoid placing himself in situations where his personal interest is in conflict with his obligations.

“285.3 A director or officer is presumed to have exercised the care, prudence, diligence and skill that a reasonable person would

have exercised if he acted in good faith and based his decisions on an expert's opinion or report.

"285.4 No director or officer of an insurer may be a director of another insurer unless one of the insurers transacts insurance of persons and the other transacts damage insurance, or unless they are affiliated.

"285.5 The vote of a director who does not possess the qualifications required by this Act shall not be decisive.

"285.6 A director or officer of an insurer shall, when communicating information concerning the insurer or the persons insured by it, comply with the regulations and, where applicable, with the rules adopted by the ethics committee.

"285.7 Every director who resigns for reasons relating to the conduct of the affairs of the insurer shall declare his reasons to the insurer and to the Inspector General,

(1) where he has grounds to believe that such conduct is contrary to a provision of this Act or the regulations, a provision of any other Act, an order of the Inspector General or the Criminal Code;

(2) where he has grounds to believe that such conduct may have an adverse effect on the financial position of the insurer.

A director who makes such a declaration in good faith shall not incur any civil liability by doing so.

"DIVISION III

"DISCLOSURE REQUIREMENTS

"285.8 Every director of an insurer who has an interest that is in conflict with the interest of the insurer must, on pain of removal from office, disclose his interest, abstain from voting on any matter connected with it and avoid influencing any decision relating to it. He must also withdraw from the meeting while any such matter is being discussed or voted upon.

Any other person discharging the duties of an officer and who has such an interest shall, on pain of removal from office, disclose his interest to the insurer. He shall in no way attempt to influence the decision of the directors.

"285.9 A director or officer is deemed to have the same interest as a person associated with him.

“285.10 Any person who is removed from office for having contravened section 285.8 or who resigns after having contravened that section is disqualified from sitting as a director of any insurer for a period of five years from his removal or resignation.

“285.11 The court, at the request of the insurer or of a shareholder, member, insured person or the Inspector General, may, among other measures, order a director or officer who has contravened section 285.8 to render account and, where applicable, to remit any profit gained to the insurer.

“285.12 Every director or officer of an insurer must, within three months of his appointment or election and, subsequently, every year, disclose in writing and under oath to the board of directors of the insurer any interest held by him in any undertaking.

No director or officer may discharge the duties of his office until he has fulfilled his obligations under this section. The vote of a director who discharges his duties in contravention of this section shall not be decisive.

However, no disclosure of interest is required where the holding of a person and his associates within the meaning of section 49 amounts to less than 10 % of the shares issued by a corporation or of the voting rights attached to such shares.

“DIVISION IV

“ETHICS COMMITTEE

“285.13 Every insurer shall appoint an ethics committee from among the members of the board of directors.

The committee shall be composed of not less than three directors, a majority of whom shall be persons who are not

- (1) officers and employees of the insurer;
- (2) members of another committee of the board of directors;
- (3) directors, officers, other mandataries and employees of a corporation affiliated with the insurer;
- (4) directors, officers and other mandataries, where the insurer is a mutual insurance association, of the federation with which that association is affiliated, of the guarantee fund corporation of which it is a member or of a corporation belonging to the same group as the federation;

(5) shareholders holding 10 % or more of the voting rights attached to shares issued by the insurer or by a corporation affiliated with it, or 10 % or more of such shares.

The Inspector General may authorize the appointment of a committee composed other than as prescribed in the second paragraph where he considers that the circumstances warrant it.

“285.14 The ethics committee shall adopt rules for the application of the provisions of this chapter to the insurer. It shall see that the rules are complied with, and shall advise the board of directors without delay of any serious breach thereof.

The rules shall concern, in particular, the conduct of the insurer with respect to restricted parties or associates of its directors or officers, the formalities and conditions governing contracts with restricted parties and the protection of confidential information held by the insurer in respect of persons insured by it.

In addition, the ethics committee shall carry out any mandate assigned to it by the board of directors.

However, the ethics committee shall not, without the authorization of the Inspector General, exercise responsibilities normally assigned to another committee.

“285.15 The rules adopted by the ethics committee shall be transmitted to the board of directors of the insurer which is bound by them. A copy shall also be transmitted to the Inspector General.

“285.16 Each year, the ethics committee shall transmit to the Inspector General, within two months of the closing date of the fiscal year of the insurer, a report on its activities to the closing date.

The report shall set out, in particular,

(1) the full name, address and occupation of every member of the committee;

(2) any change among the members of the committee;

(3) the nature of the mandates assigned to the committee by the board of directors;

(4) the list of cases of conflict of interest and self-dealing which have come to the notice of the committee;

(5) the cases where the rules adopted by the committee have not been complied with.

“DIVISION V

“TRANSACTIONS WITH RESTRICTED PARTIES AND WITH ASSOCIATES OF DIRECTORS
OR OFFICERS

“285.17 An insurer or any subsidiary thereof shall, in respect of restricted parties and associates of the directors or officers of the insurer with whom it does business, act in the same manner as when it is dealing at arm’s length.

In cases of contestation, the onus is on the insurer or its subsidiary to show that it acted in this manner.

However, notwithstanding the first paragraph, a contract may be entered into, even where the parties thereto include an insurer or its subsidiary and an affiliated corporation whose principal activity is an activity referred to in subparagraph *d.1* or *e* of the first paragraph of section 245, provided such a contract is authorized by the Inspector General. The same applies to a contract between a mutual insurance association and a corporation belonging to the same group as its federation, where the principal activity of the corporation is an activity referred to in subparagraph *d.1* or *e* of the first paragraph of section 245.

In addition, the first paragraph does not apply to contracts concerning the conditions of employment, pension funds, insurance schemes and any other matter connected with contracts of employment of an employee or an officer.

“285.18 The following are restricted parties with respect to an insurer:

- (1) the directors and officers of the insurer;
- (2) in the case of a joint stock company, the directors and officers of the corporation that controls it;
- (3) in the case of a mutual insurance association, the directors and officers of the federation with which it is affiliated or of the guarantee fund corporation of which it is a member;
- (4) in the case of a professional corporation, the members of its Office and the directors and employees of the administrator entrusted with the day-to-day operation of the fund;
- (5) the spouse and minor children of any of the persons described in subparagraphs 1 to 4, and the minor children of the spouse;

(6) any person who holds, directly or indirectly, 10 % or more of the voting rights attached to shares issued by the insurer, or 10 % or more of such shares and, in the case of a natural person, his spouse and minor children and the minor children of his spouse or, in the case of a corporation, any director or officer thereof, his spouse and minor children and the minor children of his spouse;

(7) a shareholder of the insurer, his spouse and their minor children, if they jointly hold, directly or indirectly, 10 % or more of the voting rights attached to shares issued by the insurer, or 10 % or more of such shares;

(8) a corporation in which 10 % or more of the voting rights attached to the shares, or 10 % or more of such shares, are held by a person described in subparagraphs 1 to 5;

(9) a corporation in which a majority of the directors or officers are directors or officers of the insurer or of the corporation that controls it;

(10) the employees of the insurer;

(11) an auditor, actuary or expert referred to in the fifth paragraph of section 309;

(12) a corporation affiliated with the insurer, other than a subsidiary of the insurer;

(13) a corporation controlled by a federation of mutual insurance associations with which the insurer is affiliated;

(14) any person determined by regulation;

(15) any other person who, in the opinion of the Inspector General, might receive preferential treatment to the detriment of the interests of the insurer or the persons insured.

For the purposes of this section, any shareholder of a corporation that is itself a shareholder of an insurer is deemed to hold a percentage of the voting rights attached to shares issued by the insurer or a percentage of such shares equal to the product of the percentage of the voting rights or shares he holds in the corporation and the percentage of the voting rights or shares held by the corporation in the insurer.

“285.19 The Inspector General shall notify any person he designates as being a restricted party in accordance with

subparagraph 15 of the first paragraph of section 285.18, and the insurer concerned by that decision.

The Inspector General may revise his decision at the request of the person so designated or the insurer concerned.

Before rendering his decision or refusing to revise it, the Inspector General shall give the person and the insurer concerned an opportunity to be heard.

“285.20 All transactions of an insurer with restricted parties or with associates of its directors or officers must comply with the provisions of this Act, the regulations and, where applicable, the rules adopted by the ethics committee.

“285.21 No insurer may invest in

- (1) a corporation that controls it;
- (2) a corporation affiliated with it that carries out activities other than those mentioned in subparagraphs *d.1* and *e* of the first paragraph of section 245, except in the case of a downstream holding;
- (3) a corporation holding, directly or indirectly, 10 % or more of the voting rights attached to the shares of the insurer, or 10 % or more of such shares;
- (4) a corporation holding, directly or indirectly, 10 % or more of the voting rights attached to the shares of the corporation that controls the insurer, or 10 % or more of such shares;
- (5) a corporation that controls the corporation referred to in subparagraph 3;
- (6) a corporation controlled by a person holding, directly or indirectly, 10 % or more of the voting rights attached to the shares of the insurer, or 10 % or more of such shares, and, where applicable, the spouse or minor child of such a shareholder and the minor child of the spouse.

The prohibition contained in subparagraphs 3 and 4 of the first paragraph also applies to a natural person, his spouse and minor child and the minor child of his spouse.

“285.22 Every transaction by an insurer to acquire securities issued by a restricted party or to transfer assets between them must, in addition, be approved by the board of directors of the insurer, which shall, where applicable, obtain the opinion of the ethics committee.

No bad debts, unproductive assets or assets repossessed from a debtor in default may be transferred to an insurer, except in the case of a transfer of assets *en bloc* authorized by the Inspector General as part of a reorganization.

“285.23 Every service contract between an insurer and a restricted party must be made on favourable terms for the insurer, or at least on competitive terms.

Every such contract, except where the amounts involved are minimal, must also be approved by the board of directors of the insurer, which shall, where applicable, obtain the opinion of the ethics committee.

The ethics committee is responsible for determining whether the amounts involved are minimal.

In cases of contestation, the onus is on the insurer to show that the service contract to which it is a party meets the prescribed requirements.

However, notwithstanding the first paragraph, a service contract may be entered into, even where the parties thereto include an insurer or its subsidiary and an affiliated corporation whose principal activity is an activity referred to in subparagraph *d.1* or *e* of the first paragraph of section 245, provided such a contract is authorized by the Inspector General. The same applies to a contract between a mutual insurance association and a corporation belonging to the same group as its federation, where the principal activity of the corporation is an activity referred to in subparagraph *d.1* or *e* of the first paragraph of section 245.

“285.24 No insurer may grant a loan to a restricted party or an associate of any of its directors or officers on more favourable terms than those applicable in the ordinary course of its operations, except where that party or associate is one of its employees.

“285.25 No insurer may grant a loan to any of its directors or officers or their associates for a total amount exceeding the annual salary paid by the insurer to the director or officer concerned if he is remunerated, or if not, the amount determined according to the rules of the ethics committee, unless the loan is secured by a first hypothec on the principal residence of the borrower.

“285.26 An insurer must, where applicable, disclose to the ethics committee any loans granted by it to restricted parties or associates of its directors or officers.

The disclosure shall indicate the name of the restricted party or associate, the amount of the loan, the maturity date, the rate of interest and the security offered.”

40. Section 293 of the said Act is amended by striking out the third paragraph.

41. Section 294 of the said Act is replaced by the following sections:

“294. The auditor shall be disqualified from acting in respect of an insurer where he or his spouse or minor child living with him, or an associate or the spouse or minor child thereof living with the associate

(1) is a director, officer or other mandatary of the insurer or of a corporation affiliated with it, or is an associate of such a director, officer or mandatary;

(2) is a director, officer or other mandatary of the federation, of a corporation belonging to the same group as the federation, or of the guarantee fund corporation of which the mutual insurance association he is appointed to audit is a member;

(3) holds, directly or indirectly, 10 % or more of the voting rights attached to a class of shares or to all the shares of the insurer or of a corporation affiliated with the insurer;

(4) is the sequestrator, liquidator or receiver of any corporation affiliated with the insurer.

In addition, the auditor shall be disqualified from acting if he is a member of the insurer or if he or a partner is an employee of the insurer or of a corporation affiliated with the insurer.

“294.1 The auditor shall resign upon ceasing to be qualified.

“294.2 The Inspector General or any interested person may apply to the Superior Court to obtain the revocation of the appointment of an auditor who is not qualified.”

42. The said Act is amended by inserting, after section 295, the following sections:

“295.1 The auditor shall, in the ordinary course of his audit, submit a report to the board of directors on the facts having come to his notice which may appreciably limit the ability of the insurer to fulfill its obligations. The report shall also cover the facts having come

to his notice which give grounds to believe that the insurer is contravening this Act or the regulations.

Where applicable, he shall transmit a copy of that report to the ethics committee.

Every person other than an advocate or a notary who provides independent professional services to the insurer has, in respect of transactions to which the insurer is a party, the same obligations.

“295.2 The auditor or a person referred to in the third paragraph of section 295.1 who makes a report in good faith in accordance with the said section shall not incur any civil liability by doing so.”

43. Section 298.1 of the said Act is amended by striking out the words “The committee shall be composed of not less than three directors, the majority of whom are not officers.” in the second and third lines of the first paragraph.

44. The said Act is amended by inserting, after section 298.1, the following section:

“298.2 The auditing committee shall be composed of not less than three directors, a majority of whom shall be persons who are not

- (1) officers and employees of the insurer;
- (2) members of another committee of the board of directors;
- (3) directors, officers, other mandataries and employees of a corporation affiliated with the insurer;
- (4) directors, officers and other mandataries, where the insurer is a mutual insurance association, of the federation with which that association is affiliated, of the guarantee fund corporation of which it is a member or of a corporation belonging to the same group as the federation;

(5) shareholders holding 10 % or more of the voting rights attached to shares issued by the insurer or by a corporation affiliated with it, or 10 % or more of such shares.

Where the Inspector General considers that circumstances justify it, he may authorize the appointment of a committee composed in a way which does not comply with the requirements of the first paragraph.”

45. Section 316 of the said Act is amended by replacing the words “from any person holding a licence or a certificate the information and supplementary particulars respecting any statement or report required by this chapter in respect of its insurance business in Québec.” in the first, second, third and fourth lines by the words “any person holding a licence or a certificate, any person controlling an insurer, any corporation affiliated with an insurer, the auditor, or the external actuary of an insurer to provide him, on the dates he determines, with the documents and information he considers appropriate for the purposes of the Act and the regulations.”

46. The said Act is amended by inserting, after section 325, the following chapters:

“CHAPTER V.1

“ORDERS OF THE INSPECTOR GENERAL

“325.1 Where, in the opinion of the Inspector General, an insurer, a director or officer, a federation of mutual insurance associations or a guarantee fund corporation does not adhere to sound financial practices or contravenes this Act, the regulations or the rules of ethics, he may order him or it to cease such practices and to remedy the situation.

Before issuing an order, the Inspector General shall serve on the contravener notice of at least 10 days stating the grounds which appear to justify the order, the date on which the order is to take effect and the right of the contravener to be heard.

“325.2 The order of the Inspector General must state the reasons which support it, and shall be sent to all the persons to whom it applies. It shall also be sent to every director of the corporation or insurer concerned. The order shall become effective on the day it is served or on any later date indicated therein.

“325.3 However, the Inspector General may, without prior notice, issue a provisional order valid for a period not exceeding 10 days if in his opinion any delay in holding a hearing may be detrimental.

Such an order must state the reasons on which it is based and shall become effective on the day it is served on the person to whom it applies. That person may, within six days of receiving the order, apply in writing to the Inspector General for a hearing.

“325.4 The Inspector General may revoke an order issued under this Act.

“CHAPTER V.2

“INJUNCTION AND PARTICIPATION IN PROCEEDINGS

“325.5 The Inspector General may, by a motion, apply to a judge of the Superior Court for an injunction in respect of any matter relating to the carrying out of this Act or the regulations.

The motion for an injunction constitutes an action.

The procedure prescribed in the Code of Civil Procedure (R.S.Q., chapter C-25) applies, except that the Inspector General shall not be required to give security.

“325.6 The Inspector General may, of his own motion and without notice, intervene in any civil action concerning a provision of this Act or the regulations to take part in the proof or hearing as if he were a party thereto.

“CHAPTER V.3

“CANCELLATION OF TRANSACTIONS

“325.7 The Inspector General or any person having a sufficient interest may apply to the court for the cancellation of a transaction entered into by an insurer contrary to the provisions of this Act.

The court may also order every director or officer who is a party to such a transaction or who facilitated its carrying out to pay to the insurer, jointly and severally, either the amount of damage suffered or the amount paid by the insurer as a result of the transaction.”

47. Section 358 of the said Act is amended by adding, after paragraph *j*, the following paragraph:

“(k) which contravenes an order of the Inspector General, notwithstanding any extraordinary recourse, or an injunction issued upon application by the Inspector General.”

48. Section 406 of the said Act is amended by adding, after paragraph *q*, the following paragraphs:

“(r) being an insurer, contravenes section 43, 44 or 52.1;

“(s) contravenes section 50;

“(t) being a director or officer, communicates information in contravention of the regulations or of the rules adopted by the ethics committee;

“(u) fails to comply with an order of the Inspector General given under this Act;

“(v) contravenes the provisions of Chapter III.1 of Title IV.”

49. Section 408 of the said Act, replaced by section 86 of chapter 4 of the statutes of 1990, is amended by adding, after the first paragraph, the following paragraph:

“However, every natural or legal person contemplated in section 407 convicted of an offence under paragraph *r* of section 406 is liable to a fine of \$5 000 to \$50 000.”

50. Section 420 of the said Act is amended by adding, after paragraph *ai*, the following paragraphs:

“(aj) define the notion of indirect control referred to in section 1.1;

“(ak) define, for the purposes of the Act, the notion of indirect holding;

“(al) determine any other principal activity for the purposes of subparagraphs *d* and *d.1* of the first paragraph of section 245;

“(am) determine the terms and conditions according to which an insurer may invest in subsidiaries or associations whose principal activity is the purchase, management, sale or leasing of immovables, or the making of loans and investments;

“(an) determine any other investments to which the limit prescribed in subparagraph *a* of the first paragraph of section 245 does not apply;

“(ao) determine the other persons that are restricted parties with respect to an insurer;

“(ap) determine the conditions and restrictions governing the flow of information to and from an insurer and a restricted party, with a view to reducing the risks of conflicts of interest;

“(aq) prescribe standards designed to ensure the protection of the public and the confidentiality of information where an insurer offers for sale the products of a financial institution;

“(ar) prescribe standards governing arrangements between an insurer and a financial institution for the sale of the financial products of either, and conditions permitting such arrangements to be made.”

AMENDMENTS

51. Section 6 of the Act respecting The Laurentian Mutual Management Corporation and The Laurentian Life Insurance Company Inc. (1990, chapter *(insert here the chapter number of Private Bill 253, assented to on 22 June 1990, in the statutes of 1990)*) is amended by replacing the word “Under” in the first line of the first paragraph by the words “Notwithstanding section 275.4 of the Act respecting insurance, under”.

52. Section 16 of the said Act is replaced by the following section:

“16. The object of the holding company is, in particular, to control directly, at all times, old Laurentian Life and to control indirectly, at all times, Laurentian Life through old Laurentian Life, Corporation du Groupe and Financial Security.”

53. Section 18 of the said Act is repealed.

54. Section 21 of the said Act is amended by replacing the word and figures “43 to 50” in the second line of the first paragraph by the word and figures “43 to 50.5”.

55. The said Act is amended by inserting, after section 29, the following chapter:

“CHAPTER III.1

“OTHER PROVISIONS

“29.1 For the purposes of the Act respecting insurance, there is deemed to be direct control from one legal person contemplated by this Act to the next.”

56. Section 33 of the said Act is amended by replacing the word “Under” in the first line of the second paragraph by the words “Notwithstanding section 275.4 of the Act respecting insurance, under”.

TRANSITIONAL AND FINAL PROVISIONS

57. A director of an insurer elected in accordance with the Act respecting insurance, in office at the time of the coming into force of the provisions of this Act relating to the qualification of a director which would apply to him, may remain in office until his term expires.

58. An auditor of an insurer appointed in accordance with the provisions of the Act respecting insurance, in office on (*insert here the date of coming into force of section 41 of this Act*), may remain in office until his term expires.

59. Where the composition of the auditing committee of an insurer does not comply with the requirements of this Act on (*insert here the date of coming into force of section 44 of this Act*), the insurer has three months from that date to comply.

60. An insurer shall appoint an ethics committee in the three months following (*insert here the date of coming into force of section 285.13, enacted by section 39 of this Act*).

61. Sections 2 and 3 shall have effect from (*insert here the date of introduction of this Act*) in respect of corporations that control insurance companies.

62. From (*insert here the date of coming into force of section 236 of the Act respecting market intermediaries (1989, chapter 48)*), the words “insurance agents, claims adjusters” in section 130, enacted by section 19 of this Act, shall be replaced by the words “market intermediaries in insurance business”.

63. In any Act or statutory instrument, or in any contract or other document, unless the context indicates otherwise, a reference to one of the provisions of the Act respecting insurance is considered to be a reference to the corresponding provision enacted by this Act.

64. The provisions of this Act come into force on the date or dates to be fixed by the Government.