



NATIONAL ASSEMBLY

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Bill 6

An Act to amend various legislative provisions respecting securities

Introduction

**Introduced by
Mr Pierre Fortier
Minister for Finance and Privatization**



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EXPLANATORY NOTES

The purpose of this bill is to amend various legislative provisions applicable to take-over bids, take-over bids by way of exchange and issuer bids to bring about closer harmony between the regulations of Québec and those of other provinces.

Other amendments are introduced to broaden the right of rescission granted to subscribers, to refer certain aspects of control of insider reporting to the regulations and to provide stronger remedial powers for offences relating to the use of privileged information.

ACTS AMENDED BY THIS BILL

- the Securities Act (R.S.Q., chapter V-1.1);
- the Act to amend the Securities Act (1984, chapter 41).

Bill 6

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

SECURITIES ACT

1. Section 5 of the Securities Act (R.S.Q., chapter V-1.1) is amended

(1) by replacing the definition of “adviser” by the following definition:

““adviser” means any person who

(1) advises others, personally or through printed materials or by any other means, as to the purchase or alienation of securities or as to becoming a party to trades in securities;

(2) manages, under a mandate, a securities portfolio;

(3) engages in soliciting clients in relation to his activities as adviser or portfolio manager;”;

(2) by replacing the definition of “privileged information” by the following definition:

““privileged information” means any information not yet generally known that could affect the value or the market price of the securities of an issuer;”;

(3) by replacing paragraph 1 of the definition of “distribution” by the following paragraph:

“(1) the endeavour to obtain, or the obtaining, by an issuer, of subscribers or acquirers of his securities;”.

2. Section 30 of the said Act is replaced by the following section:

“**30.** A person who subscribes for or purchases from a dealer securities offered in a distribution may unilaterally rescind the subscription or the contract merely by transmitting a notice of rescission to the dealer within two days after receipt of the prospectus or any amendment thereto. The rescission has effect by operation of law from receipt of the notice.”

3. Section 47 of the said Act is amended by replacing the last paragraph by the following paragraphs:

“Exemption under this section applies only if the Commission agrees thereto or raises no objection within 15 days of receiving an offering memorandum prepared in the form prescribed by regulation which must be transmitted to the prospective purchasers of the securities before the issuer accepts any undertaking from them.

The issuer shall notify the Commission in the form prescribed by regulation within 10 days after conclusion of the distribution.”

4. Section 63 of the said Act is replaced by the following section:

“**63.** No prospectus is required where a take-over bid by way of an exchange of securities is accompanied with a take-over bid circular consistent with Title IV or is made under an exemption in accordance with section 121.”

5. Section 97 of the said Act is replaced by the following section:

“**97.** An insider of a reporting issuer shall file a report in accordance with the conditions, in the form and within the time prescribed by regulation, disclosing any change in his control over the securities of the issuer.”

6. Section 187 of the said Act is replaced by the following section:

“**187.** No insider of a reporting issuer having privileged information relating to securities of the issuer may trade in such securities except in the following cases:

(1) he is justified in believing that the information is generally known or known to the other party;

(2) he avails himself of a plan for the acquisition of securities established before he learned the information.”

7. Section 204 of the said Act is replaced by the following section :

“**204.** Every person who commits an offence under any of sections 187 to 190 or sections 196 and 197 is liable, in addition to costs, to a fine and imprisonment for one month to two years, or to either penalty alone.

In the case of an offence under section 196 or 197, the fine shall be not less than \$5 000 nor more than \$100 000; in the case of an offence under any of sections 187 to 190, the maximum fine shall be \$1 000 000 or four times the profit that may be realized, whichever is greater, and the minimum fine shall be twice the profit but not less than \$5 000.

Where the person who committed the offence traded in a security relying on privileged information, profit that may be realized means the difference between the price at which the initial trade was effected and the average market price of the security in the 10 trading days following general disclosure of the information; if, however, the position is liquidated within those 10 trading days, the average market price is replaced by the price actually obtained to the extent that that price yields a greater profit than what would be obtained at the average market price.

Where the person who committed the offence communicated privileged information, profit that may be realized means the consideration received for having communicated the information.”

8. Section 208 of the said Act is replaced by the following section :

“**208.** Every person who, by act or omission, aids a person in the commission of an offence is guilty of the offence as if he had committed it himself. He is liable to the penalties provided in section 202 or 204 according to the nature of the offence.

The same rule applies to a person who, by incitation, counsel or order induces a person to commit an offence.”

9. The said Act is amended by inserting, after section 225, the following section :

“**225.1** Where a bid is made through the facilities of a stock exchange, any misrepresentation contained in a disclosure document equivalent to a document referred to in any of sections 222 to 225 and

filed with the stock exchange or forwarded to the shareholders in accordance with the exchange's requirements gives rise to a right of action under those sections."

10. The said Act is amended by replacing the heading of Chapter IV of Title VIII by the following heading:

"PRESCRIPTION AND MISCELLANEOUS PROVISIONS".

11. The said Act is amended by inserting, after section 236, the following section:

"236.1 Any action under this Title or any action under the ordinary rules of law in respect of facts related to the distribution of a security or to a take-over bid or issuer bid may be brought before the court of the plaintiff's residence.

In matters pertaining to the distribution of a security, the laws of Québec are applicable where the subscriber or purchaser resides in Québec, regardless of the place of the contract.

Any contrary stipulation as to the jurisdiction of the courts or the applicable legislation is null."

12. Section 269 of the said Act is replaced by the following section:

"269. The Commission may, of its own initiative and without notice, intervene in any civil action relating to any provision of this Act or the regulations."

13. Section 269.1 of the said Act is amended by striking out the words "in the name and in behalf of the person contemplated therein" in the second and third lines.

14. Section 331 of the said Act is amended

(1) by inserting, after paragraph 4, the following paragraph:

"(4.1) establish the form of insiders' reports, as well as the conditions and time limits for filing them;"

(2) by inserting, after paragraph 21, the following paragraphs:

"(21.1) establish, with respect to issuer bids or take-over bids, any other rule necessary to give effect to the intent of Title IV;

“(21.2) fix the formula for establishing the average market price referred to in section 123;”.

ACT TO AMEND THE SECURITIES ACT

15. Section 99, enacted by section 36 of the Act to amend the Securities Act (1984, chapter 41), is replaced by the following section:

“**99.** A report under sections 96 and 97 is not required where the facts to be reported have already been disclosed in a report under sections 147.11 to 147.16.”

16. The provisions enacted by section 40 of the said Act are amended as follows:

(1) section 119 is replaced by the following section:

“**119.** A take-over bid to all security holders through a stock exchange recognized by the Commission for the purposes of this section made in accordance with the rules of that exchange is exempt from the requirements of Chapters III and IV, except sections 141 to 144.”;

(2) section 121 is amended by replacing subparagraph 1 by the following subparagraph:

“(1) there are fewer than 50 holders of the class sought by the offer who are resident in Québec according to the addresses entered in the records of the offeree company or in the records of dealers acting as nominee;”;

(3) section 122 is replaced by the following section:

“**122.** The acquisition of securities issued by a company that is not a reporting issuer and which are not traded on an organized market is exempt from Chapters III and IV provided that there are not more than 50 security holders, excluding holders who are or have been employees of the company or of an affiliate of the company.”;

(4) section 123 is replaced by the following section:

“**123.** The purchase, without a general offer to all the holders, of securities from not more than five holders by way of block purchase at a price that may vary by not over 15% from the average market price established with the formula prescribed by regulation, is exempt from Chapters III and IV.

By way of exception to section 113, the conditions of an exemption under this section apply to every purchase from a limited number of holders having no connection with Québec provided that at least one holder of securities of the class sought has a connection with Québec as shown by the addresses entered in the records of the offeree company.”;

(5) section 126 is amended by replacing the first paragraph by the following paragraph:

“**126.** A person who acquires not more than 5% of the securities of the class is exempt from Chapters III and IV, provided that neither he nor his joint actors, within any twelve-month period, acquire under this exemption, or an exemption under section 119, 120 or 123, more than 5% of the securities of the class that are outstanding at the beginning of the period.”;

(6) section 130 is amended by adding the following two paragraphs:

“The notice shall be given even where the variation in the terms results from the exercise of a right contained in the bid.

Notwithstanding the foregoing, the terms of the bid shall not be varied after the expiry of the bid except the waiver of a term for which the offeror had made a stipulation to the effect that it could be waived unilaterally by him; in that case, the notice of variation shall be replaced by a press release, which must be issued and filed with the Commission within five days after the expiry of the bid.”;

(7) the following section is inserted after section 142:

“**142.1** An offeror who, within the period of 90 days preceding the bid, acquired, on terms not generally offered to all the holders, securities which increased his interest in the class subject to the bid shall offer terms at least equivalent, in terms of the consideration for and percentage of the securities acquired, to the most advantageous terms granted by him in that period.”;

(8) section 143 is replaced by the following section:

“**143.** Neither the offeror nor his joint actors shall, on and from the day of the announcement of the bid until its expiry, sell any securities that would reduce their interest, or enter into an agreement that would permit them to sell the securities with the same result, but the joint actors may deposit securities in response to the bid.

Notwithstanding the foregoing, an offeror who has disclosed his intention to sell in the take-over bid circular may before the expiry of the bid enter into an agreement to sell securities that may be taken up after the expiry of the bid.”;

(9) section 144 is replaced by the following section:

“**144.** In the period beginning with the expiry of the bid and ending at the end of the twentieth business day thereafter, neither the offeror nor his joint actors, nor the holder of an interest that exceeds 20% of the voting securities of the offeror nor the associates or affiliates of such holder may acquire securities of the same class on terms not generally offered to all the holders of that class of securities, regardless of the result of the bid.”;

(10) section 147.5 is amended

(a) by replacing paragraph 2 by the following paragraph:

“(2) for securities not taken up or paid for by the offeror, before the expiry of ten days from the notice provided for in section 130 and after 45 days from the date of the bid.”;

(b) by adding the following paragraph:

“Notwithstanding the foregoing, securities may not be withdrawn in the following cases:

(1) during an extension of the bid, where the variation in the conditions of the bid consists solely of an increase in the consideration and of an extension of the time for deposit for a period not greater than that required to allow for a period of 10 days after the notice provided for in section 130;

(2) where the consideration offered for the securities by the offeror consists solely of cash and he waives one of the conditions of the bid before its expiry;

(3) where the offeror, after the expiry of the bid, waives one of the conditions of the bid, pursuant to the third paragraph of section 130.”;

(11) section 147.6 is amended by replacing the second paragraph by the following paragraph:

“Any securities taken up by the offeror shall, nevertheless, be paid for by the offeror as soon as possible, and in any event not more than three days after the taking up of the securities.”;

(12) section 147.8 is replaced by the following section:

“147.8 Where there is a variation in the conditions of a bid, the bid shall not expire before 10 days after the notice of variation has been delivered unless the variation consists solely in the waiver of a condition where the consideration offered consists solely of cash.”;

(13) section 147.9 is replaced by the following section:

“147.9 An offeror wishing to extend the period during which securities may be deposited pursuant to a bid all the conditions of which have been complied with shall first take up and pay for all securities deposited thereunder.”;

(14) section 147.11 is replaced by the following section:

“147.11 Every offeror whose interest in voting securities of any class issued by a reporting issuer increases to 10% or more shall, immediately after the transaction, issue and file with the Commission a press release in the form prescribed by regulation unless the transaction was effected by way of a take-over bid in accordance with Chapters III and IV or in reliance on an exemption under section 119 or 121. In view of calculating the interest of a person, any security or right enabling him to acquire, after a period of 60 days, securities of a given class shall be considered to be securities of that class.

Within two business days, the person shall transmit to the Commission, to the issuer of the securities and, as the case may be, to the stock exchange on which the security is listed, a report containing the information prescribed by regulation.

The same formalities shall be observed in respect of the non-voting shares described in section 115.”;

(15) section 147.12 is replaced by the following section:

“147.12 Any material change in the information furnished shall be the subject of a press release and a report in accordance with the requirements of section 147.11.

The formalities must be observed, in particular, in respect of any increase of interest of 2% or more.”;

(16) section 147.13 is repealed;

(17) section 147.14 is amended by adding a second paragraph:

“This rule applies only where the interest already reported is less than 20% of the class of securities.”;

(18) section 147.15 is replaced by the following section:

“**147.15** Where, after a bid has been made for the securities of a reporting issuer in accordance with Chapters III and IV, a person, other than the offeror, acquires by himself or with joint actors, securities constituting an interest of 5% or more of the securities of the class subject to the bid, the person shall, not later than the opening of trading on the next business day, issue a press release in the form prescribed by regulation, file it with the Commission and transmit it to the stock exchanges on which the security is listed.

The same rule applies where a bid is made in reliance upon an exemption under section 119 or 121.”;

(19) section 147.16 is amended by replacing the percentage “2.5” in the last line of the first paragraph by the percentage “2”;

(20) sections 147.17 and 147.18 are repealed;

(21) section 147.20 is replaced by the following section:

“**147.20** Sections 111 to 113, 115 to 119, 121, 122, 127 to 133 and 141 to 147.16 apply, *mutatis mutandis*, to an issuer bid.”

17. The provisions of this Act will come into force on (*insert here the date of assent to this Act*) except the provisions of sections 3 to 5 and 14 to 16, which will come into force on later dates fixed by the Government.