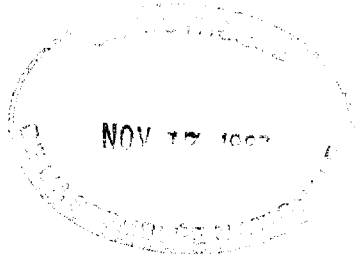
NATIONAL ASSEMBLY

FIRST SESSION THIRTY-THIRD LEGISLATURE

Bill 74

An Act respecting trust companies and savings companies



Introduction

Introduced by
Mr Pierre Fortier
Minister for Finance and Privatization

Québec Official Publisher
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EXPLANATORY NOTES

The object of this bill is the reform of the law governing trust companies and savings companies carrying on business in Québec.

The bill sets forth rules respecting their incorporation and operation, determines the activities that each may engage and substantially increases their powers. On the other hand, it places them under severer restrictions with respect to conflicts of interest, requiring them, among other things, to adopt and enforce a code of ethics. It increases the liability of directors and officers and introduces measures of control as to the allotment and tranfer of shares of a company.

The bill requires both Québec companies and outside companies wishing to carry on business in Québec to hold a permit.

It places the companies under the supervision of the Inspector General of Financial Institutions and gives him powers of inquiry, inspection and intervention, including the power to issue orders and directives.

Further, it authorizes the Government to appoint a provisional administrator to a company where the protection of investors requires it and lays down rules on financial disclosure, audit capital base, loans and investments and the necessary liquid assets of such companies in relation to their operations.

It provides, also, that the administrative costs of the Act will be borne by the companies to whom licences are issued.

Lastly, it contains transitional provisions regarding companies that are already carrying on business in Québec, and makes the necessary amendments for concordance.

ACTS AMENDED BY THIS ACT

— The Deposit Insurance Act (R.S.Q., chapter A-26)

— The Act respecting insurance (R.S.Q., chapter A-32)

— The Companies Act (R.S.Q., chapter C-38)

— The Extra-provincial Companies Act (R.S.Q., chapter C-46)

— The Companies Information Act (R.S.Q., chapter R-22)

— The Loan and Investment Societies Act (R.S.Q., chapter S-30)

ACT REPLACED BY THIS ACT

— The Trust Companies Act (R.S.Q., chapter C-41)

ACT REPEALED BY THIS ACT

— The Act respecting the acquisition of shares of certain hypothecary loan companies (R.S.Q., chapter A-3.1)

Bill 74

An Act respecting trust companies and savings companies

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

SCOPE AND DEFINITIONS

1. This Act applies to every company that is expressly authorized by its instrument of incorporation to act as tutor to property, subrogated tutor or curator to property, liquidator, syndic, liquidator of a succession, sequestrator, judicial advisor or trustee.

Every legal person authorized to carry on one of the activities mentioned in the first paragraph is a trust company.

2. This Act also applies to every company authorized by its instrument of incorporation to borrow money from the public in the form of deposits for the purposes of loans and investments.

Every legal person authorized to carry on the activity described in the first paragraph is a savings company.

3. Legal persons governed by the Act respecting insurance (R.S.Q., chapter A-32) are not subject to those provisions of this Act which are applicable to trust companies.

Legal persons governed by the Savings and Credit Unions Act (R.S.Q., chapter C-4), by the Act respecting the sociétés d'entraide économique (R.S.Q., chapter S-25.1), by Part I of the Banks and Banking

Law Revision Act (S.C., 1980-81-82-83) or by the Québec Savings Banks Act (R.S.C., 1970, chapter B-4) are not subject to those provisions of this Act which are applicable to savings companies.

4. In case of inconsistency between this Act and the instrument of incorporation of a company, this Act prevails.

5. The provisions of Part I of the Companies Act (R.S.Q., chapter C-38) that are consistent with this Act apply to companies incorporated by letters patent.

Section 88, paragraph 3 of section 89 and sections 89.1 to 89.4 of Part I and the provisions of Part II of the Companies Act that are consistent with this Act, except section 181 and paragraph 3 of section 182, apply to every company incorporated by a special Act.

Where, pursuant to Parts I and II of the Companies Act, any approval by the vote of at least two-thirds in value of the shares represented by the shareholders present at a special general meeting of the company is required, approval by at least two-thirds of the votes given by the shareholders at a special meeting called for that purpose is substituted therefor.

6. In this Act, unless otherwise indicated by the context,

"capital base" means the shareholders' equity plus or minus the assets or liabilities prescribed by regulation of the Government;

"company" means a savings company or a trust company whether a Québec company or an extra-provincial company;

"deposit" means money received or borrowed by a company by virtue of section 172 or 177;

"extra-provincial company" means a company, other than a Québec company, incorporated in Canada;

"instrument of incorporation" means the incorporating Act, the letters patent and the supplementary letters patent, as the case may be;

"Québec company" means a company incorporated under the laws of Québec or continued under such laws;

"senior officer" means the president, vice-president, chairman, vice-chairman, treasurer, assistant treasurer, secretary and assistant secretary of a company or of its board of directors, and any other person

designated as such by by-law of the company or by resolution of the board of directors or any person who performs functions similar to those of such officers;

"spouse" means a person who

(1) is married to and cohabits with another person; or

(2) cohabits with but is not married to another person, has been living with that person for at least three years, or for one year if a child has been or is to be born of their union, and is publicly represented as the person's spouse;

For the purposes of this Act, the word "loan" includes a letter of credit or of guarantee.

For the purposes of sections 69, 72, 73, 135 and 204, a person is an associate of another person where

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

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

(3) one person is a legal person and the other person, or the spouse or a minor child of the other person, or a group consisting of that other person, the spouse of that person or such a child, or, in the case of a legal person, a director or officer thereof, holds ten per cent or more of the shares issued by the legal person;

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

(5) they are legal persons controlled directly or indirectly by the same person or by persons associated with each other;

(6) they are members of a trust created with a view to exercising voting rights attached to shares in the same legal person or have signed an agreement to that effect;

(7) they are associated within the meaning of paragraphs 1 to 6, with the same person.

7. A legal person is controlled by another person where the latter person directly or indirectly holds shares therein to which are attached over fifty per cent of the voting rights or where the votes attached to the shares held by the person are sufficient, if exercised, to elect a majority of the directors of that legal person.

8. A legal person is a subsidiary of another person if it is controlled by that person.

9. A legal person is affiliated with another legal person if it is the subsidiary of the other person or if both are controlled by the same person.

10. A legal person affiliated with another legal person is deemed affiliated with every legal person affiliated with that other person.

CHAPTER II

INCORPORATION OF A COMPANY

11. From the coming into force of this Act, no company shall be incorporated in Québec otherwise than by virtue of Part I of the Companies Act.

12. At least seven applicants are required for the presentation of an application for the incorporation of a company.

13. The applicants shall publish in the *Gazette officielle du Québec*, for four consecutive weeks, a notice signed by them of their wish to be incorporated as a trust company or a savings company.

The applicants shall submit the application to the Inspector General of Financial Institutions within six months of publication of the notice.

The notice shall indicate

(1) the name of the company;

(2) the name, occupation, citizenship and residential address of each applicant;

(3) the locality in Québec where the head office of the company will be situated;

(4) the locality in Québec where the main decision-making centre of the company will be situated;

(5) the proposed capital stock and the projected capital surplus;

(6) the proposed activities.

14. In addition to the documents and information required by regulation of the Government, the Inspector General may require such

other documents and information as he considers necessary to evaluate the proposal of the petitioners.

15. The company shall not be incorporated unless the petitioners show that

(1) the common shareholders' equity is at least $3 000 000 in the case of a savings company, and at least $5 000 000 in the case of a trust company, or at least $3 000 000 if it is provided that power to receive deposits will be explicitly excluded from its instrument of incorporation;

(2) the subscription price of the common shares has been paid in cash which has been deposited in trust in Québec in a bank or an institution registered with the Régie de l'assurance-dépôts du Québec, to the account of the company;

(3) it is expedient, for the convenience of the public, that a company be established in the locality where the head office of the proposed company will be situated;

(4) each petitioner and each proposed director or officer is fit as to character and competence in view of the proposed activities;

(5) the project is financially feasible;

(6) the proposed activities will be carried on within a reasonable time.

16. The Minister, if he considers it expedient and after obtaining the advice of the Inspector General, shall authorize the latter to issue letters patent to incorporate the company.

The Inspector General shall give notice of issue of the letters patent in the *Gazette officielle du Québec*, at the expense of the company.

17. From the date of the letters patent, the company is a legal person within the meaning of the Civil Code.

CHAPTER III

AMENDMENT OF INSTRUMENT OF INCORPORATION

18. The Minister may, if he thinks it expedient and after obtaining the advice of the Inspector General, authorize the Inspector General to issue letters patent or supplementary letters patent to a Québec company incorporated before (*insert here the date of coming into force of this Act*) which applies therefor

(1) to replace the provisions of its incorporating Act by the corresponding provisions of this Act or, subject to the provisions of this Act, by those of Part II of the Companies Act;

(2) to repeal any provision of its incorporating Act for which there is no corresponding provision in this Act or in Part II of the Companies Act;

(3) to replace its instrument of incorporation where it is amalgamated or continued.

The Inspector General shall cause the letters patent to be published in the *Gazette officielle du Québec*, at the expense of the company, with a notice indicating their date of taking effect. The Québec Official Publisher shall insert in each annual volume of the Statutes of Québec a table indicating the dates on which the letters patent issued before the volume was printed take effect and the legislative provisions they replace or repeal.

19. The application contemplated in section 18 must be signed by the president or the vice-president and the secretary of the company, and cannot be presented to the Inspector General unless

(1) it is ratified by a by-law approved by two-thirds of the votes cast by the shareholders at a meeting called for that purpose;

(2) a notice giving a résumé of the content of the by-law is published in the *Gazette officielle du Québec* at least one week before the application is presented.

20. Where the letters patent or supplementary letters patent differ from the documents they replace, they prevail over them for any event that occurred from their date of issue, but the replaced documents prevail for any event that occurred before that date.

CHAPTER IV

CONTINUANCE OF A COMPANY

21. Any Québec trust company may continue as a savings company, and vice versa.

22. Every company wishing to be continued must adopt a by-law to that effect.

The by-law shall indicate

(1) the name of the company resulting from the continuance;

(2) the locality in Québec where the head office of the company resulting from the continuance will be situated;

(3) the locality in Québec where the main decision-making centre of the company resulting from the continuance will be situated;

(4) the proposed activities;

(5) the name, occupation, citizenship and address of each of the first members of the board of directors;

(6) the number of shares forming its capital stock, the par value of a share, where such is the case, and the mode of conversion of the capital stock;

(7) the description of the authorized capital stock of the company resulting from the continuance.

23. The continuance by-law must be approved by at least two-thirds of the votes given by the shareholders at a meeting called for that purpose.

24. The company shall cause a notice of the by-law to appear for four consecutive weeks in the *Gazette officielle du Québec* and in a daily newspaper published in the locality where the head office of the company is situated.

25. Within six months after publication of the notice, the company shall transmit to the Inspector General a certified true copy of the by-law approving the continuance and an application for ratification of the continuance by the Minister.

26. In addition to the documents and information required by regulation of the Government, the Inspector General may require such other documents and information as he considers necessary to evaluate the proposal of the petitioner.

27. A savings company cannot be continued as a trust company, or a trust company as a savings company, unless the petitioner shows that

(1) in the case of a savings company continued as a trust company, the common shareholders' equity is at least $5 000 000 or at least $3 000 000 if it is provided that power to receive deposits will be explicitly excluded from its instrument of incorporation;

(2) in the case of a trust company continued as a savings company, the common shareholders' equity is at least $3 000 000;

(3) it is expedient, for the convenience of the public, that a company be established in the locality where the head office of the company will be situated;

(4) each proposed director or officer is fit as to character and competence in view of the proposed activities;

(5) the project is financially feasible;

(6) the proposed activities will be carried on within a reasonable time;

(7) in the case of a trust company continued as a savings company, arrangements have been made to the satisfaction of the Inspector General to transfer the business of the trust company that cannot legally be continued by a savings company, other than deposits, to another trust company having a licence and capable of carrying on that business.

28. The Minister shall not grant the application unless he considers it expedient and has obtained the advice of the Inspector General. Where the Minister grants the application, he shall request the Inspector General to issue letters patent.

29. The continuance is ratified from the date of the letters patent.

30. The Inspector General shall publish a notice in the *Gazette officielle du Québec* at the expense of the company resulting from the continuance, to the effect that the continuance is ratified.

31. The company resulting from the continuance has, under the name indicated in the by-law, all the rights and obligations of the continued company and proceedings pending may be continued by or against it without continuance of suit.

32. Sums borrowed by a savings company before its continuance in the form of deposits are presumed to have been received by a trust company in accordance with section 172.

33. Deposits received by a trust company before its continuance are presumed to have been received by a savings company in accordance with section 177.

CHAPTER V

AMALGAMATION OF COMPANIES

34. Québec companies may amalgamate.

35. Companies proposing to amalgamate shall prepare an agreement in duplicate indicating

(1) the terms and conditions of the amalgamation;

(2) the kind of company resulting from the amalgamation;

(3) the name of the company resulting from the amalgamation;

(4) the locality in Québec where the head office of the company resulting from the amalgamation will be situated;

(5) the locality in Québec where the main decision-making centre of the company resulting from the amalgamation will be situated;

(6) the proposed activities;

(7) the name, occupation, citizenship and address of each of the first members of the board of directors;

(8) the number of shares forming the capital stock of each amalgamating company, the par value of each share, and the mode of conversion of the capital stock;

(9) the description of the authorized capital stock of the company resulting from the amalgamation;

(10) the name, occupation, citizenship and address of each person who, upon the amalgamation, will hold 10 per cent or more of the voting rights attached to the shares of the company.

The agreement may, in addition, set forth any other measure relating to the management and operation of the company resulting from the amalgamation.

36. Each company shall adopt the agreement by by-law of its board of directors. The by-law must be approved by at least two-thirds of the votes given by the shareholders at a meeting called for that purpose.

The approval of the shareholders shall be attested on each duplicate of the agreement by the secretary of each company.

37. The amalgamating companies shall cause a notice of the agreement to appear for four consecutive weeks in the *Gazette officielle du Québec* and in a daily newspaper distributed in the locality of the head office of each company.

38. Within six months after publication of the notice, the amalgamating companies shall transmit to the Inspector General the

duplicates of the agreement, a certified true copy of each by-law approving the amalgamation and a joint application for ratification of the amalgamation by the Minister.

39. In addition to the information and documents required by regulation of the Government, the Inspector General may require such other documents and information as he considers necessary to evaluate the proposed amalgamation.

40. The applicant companies cannot amalgamate unless they show that

(1) where the company resulting from the amalgamation is a savings company, the common shareholders' equity is at least $3 000 000;

(2) where the company resulting from the amalgamation is a trust company, the common shareholders' equity is at least $5 000 000 or, if it is provided that power to receive deposits is expressly excluded from its proposed activities, at least $3 000 000;

(3) it is expedient, for the convenience of the public, that a company be established in the locality where the head office of the company resulting from the amalgamation will be situated;

(4) each proposed director and officer is fit as to character and competence in view of the proposed activities;

(5) the project is financially feasible;

(6) the proposed activities will be carried on within a reasonable time;

(7) where one of the applicants is a trust company and the company resulting from the amalgamation is a savings company, arrangements have been made to the satisfaction of the Inspector General to transfer the business of the trust company that cannot legally be continued by a savings company, other than deposits, to another Québec trust company having a licence and capable of carrying on that business.

41. The Minister shall not grant the application unless he considers it expedient and has obtained the advice of the Inspector General. Where the Minister grants the application, he shall request the Inspector General to issue letters patent.

42. The amalgamation is ratified from the date of the letters patent.

43. The Inspector General shall publish a notice in the *Gazette officielle du Québec*, at the expense of the company resulting from the amalgamation, indicating that the amalgamation has been ratified.

44. From the date of the letters patent, the amalgamated companies shall be continued as one and the same company.

The company resulting from the amalgamation has, under the name indicated in the agreement, all the rights and obligations of the amalgamated companies, and proceedings to which either of the original companies is a party are continued by or against it without continuance of suit.

45. Where one of the applicants is a trust company and the company resulting from the amalgamation is a savings company, the deposits received by the trust company are presumed to have been received by the savings company in accordance with section 177.

46. Where one of the applicants is a savings company and the company resulting from the amalgamation is a trust company, the sums borrowed by the savings company in the form of deposits are presumed to have been received by the trust company in accordance with section 172.

CHAPTER VI

CONTINUANCE OF AN EXTRA-PROVINCIAL COMPANY

47. An extra-provincial company may be continued as a savings company or a trust company, according as it is a savings company or a trust company, as though it had been incorporated under this Act, if it is so authorized under the Act that governs it.

48. A company wishing to be continued must pass a by-law to that effect.

The continuance by-law shall indicate

(1) the name of the company resulting from the continuance;

(2) the locality in Québec where the head office of the company resulting from the continuance will be situated;

(3) the locality in Québec where the principal decision-making centre of the company resulting from the continuance will be situated;

(4) the proposed activities;

(5) the name, occupation, citizenship and address of each of the first members of the board of directors;

(6) the number of shares forming its capital stock, the par value of each share, where such is the case, and the mode of conversion of the capital stock;

(7) the description of the authorized capital stock of the company resulting from the continuance;

(8) the full name, address, occupation and citizenship of each person who holds 10 per cent or more of the voting rights attached to the shares.

49. The continuance by-law must be approved by at least two-thirds of the votes given by the shareholders at a special meeting called for that purpose.

50. The company shall cause a notice of the by-law to appear for four consecutive weeks in the *Gazette officielle du Québec* and in a daily newspaper distributed in the locality where the head office of the company is situated.

51. Within six months after publication of the notice, the company shall transmit to the Inspector General a certified true copy of the by-law approving the continuance and an application for approval of the continuance by the Minister.

52. In addition to the documents and information required by regulation of the Government, the Inspector General may require such other documents and information as he considers necessary to evaluate the proposed continuance.

53. A company cannot be continued as a Québec company unless it shows that

(1) in the case of a savings company, the common shareholders' equity is at least $3 000 000;

(2) in the case of a trust company, the common shareholders' equity is at least $5 000 000 or, if it is provided that power to receive deposits will be expressly excluded from its instrument of incorporation, at least $3 000 000;

(3) it is expedient, for the convenience of the public, that a company be established in the locality where the head office of the company will be situated;

(4) each proposed director or officer is fit as to character and competence in view of the proposed activities;

(5) the project is financially feasible;

(6) the proposed activities will be carried on within a reasonable time.

54. The Minister shall not grant the application unless he considers it expedient and has obtained the advice of the Inspector General. Where the Minister grants the application, he shall request the Inspector General to issue letters patent.

55. The continuance takes place on the date of the letters patent.

56. The Inspector General shall publish a notice of the continuance in the *Gazette officielle du Québec* at the expense of the company resulting from the continuance, indicating that the continuance has been ratified.

57. No rights, obligations or acts of a company or of its shareholders are affected by the continuance.

58. The continued company is deemed, from the date of its letters patent, to be a company incorporated under this Act.

CHAPTER VII

NAME OF THE COMPANY

59. The name of a Québec trust company must include the word "fiducie" or "trust", except in the case of a company or trust created before (*insert here the date of coming into force of this Act*).

60. Only a trust company may include any of the words "fiducie", "trust" or "fideicommis" in its name.

No other legal person may use any of those words in such a way as to lead the public to believe that it is a licensed trust company.

61. The first paragraph of section 60 does not apply to a legal person whose name includes the word "fiducie", "trust" or "fideicommis" on (*insert here the date of coming into force of this Act*).

62. Only a savings company may include the expression "savings company" in its name.

No other legal person may use the expression "savings company" in such a way as to lead the public to believe that it is a licensed savings company.

63. Notwithstanding sections 60 and 62, the name of a subsidiary of a company may include the name or part of the name of the company.

CHAPTER VIII

CAPITAL STOCK

64. Shares of a Québec company shall not be issued until they are fully paid up in cash, except in the case of

(1) the invoking of a right of conversion attaching to other securities of the company;

(2) shares issued as dividends;

(3) shares issued under an amalgamation agreement;

(4) shares issued under a continuance by-law.

65. Québec companies are prohibited from issuing any bearer share certificate.

66. For the purposes of sections 18 to 20 of the Special Corporate Powers Act (R.S.Q., chapter P-16), the Minister responsible for the administration of this Act has the powers vested in the Government for the confirmation of a by-law for increasing or reducing the capital stock. In addition, such a by-law must be approved by at least two-thirds of the votes given by the shareholders at a special meeting called for that purpose.

67. No Québec company may effect the purchase or redemption of a share of its capital stock without prior authorization in writing of the Inspector General.

68. No Québec company may acquire or hold shares in the legal person by which it is controlled, or permit any of its subsidiaries to acquire or hold shares in itself or in the legal person by which it is controlled.

69. Except with prior authorization in writing of the Minister, no Québec company nor any legal person controlling a Québec company directly or indirectly has authority to allot its voting shares or register a transfer of its voting shares where the allotment or transfer would

(1) directly or indirectly gives to a person and his associates 10% or more of the voting rights attached to the shares if they do not already own over 50% of them and if the voting rights attached to the shares they own do not allow them to elect a majority of directors;

(2) directly or indirectly increases the voting rights attached to the shares already owned by a person and his associates to at least 10% or at least a multiple of 10% if they do not already own over 50% of them and if the voting rights attached to the shares they own do not allow them to elect a majority of directors;

(3) directly or indirectly gives to a person and his associates control of the company or of the legal person that controls it directly or indirectly.

70. The application for authorization made to the Minister must indicate the names and addresses of the persons concerned, the number and the particulars of the shares they hold of the capital stock of the company or of that of the legal person that controls it directly or indirecly,and, in respect of each person, the number and the particulars of the shares that it is proposed to allot or transfer.

71. The Minister shall render his decision after obtaining the advice of the Inspector General. The Minister may impose any conditions he deems advisable.

72. No Québec company nor any legal person that controls it directly or indirectly and that is incorporated under an Act of Parliament of Canada or of a Canadian province may allot voting shares in the company or register any transfer of voting shares in the company to a non-resident

(1) where the non-resident, alone or with an associate, already has, directly or indirectly, ten per cent or more of the voting rights in the company or in the legal person that controls it, or where the allotment or transfer in effect gives him, directly or indirectly, more than ten per cent of the voting rights;

(2) where all the non-resident shareholders and their associates already hold, directly or indirectly, 25 per cent or more of the voting rights attached to the shares in the company or in the legal person that controls it or where the allotment or transfer in effect gives them, directly or indirectly, more than twenty-five per cent of the voting rights;

(3) where the allotment or transfer directly or indirectly gives control of the company or of the legal person that controls it to non-residents or their associates.

73. A non-resident, for the purposes of section 72, is a natural person who resides in Canada for fewer than 183 consecutive days a year, a legal person directly or indirectly controlled by such a person or a legal person incorporated elsewhere than in Canada.

Every liquidator of a succession, administrator, tutor, curator, guardian or trustee in possession of shares of any class belonging in the greater part to non-residents is deemed a non-resident respecting those shares.

The same applies to a trust created by a non-resident or in which non-residents together hold fifty per cent of the interests.

74. No prohibition applies under section 72

(1) where the allotment or transfer does not in effect increase the percentage of voting rights already held, directly or indirectly, by a non-resident or by all the non-residents and their associates;

(2) to the allotment or transfer of voting shares where non-residents and their associates already hold over fifty per cent of the voting rights;

(3) to the allotment of shares carrying over fifty per cent of the voting rights to non-residents and their associates at the incorporation of a company.

75. For the purposes of section 72, the Inspector General, after giving the persons concerned an opportunity to be heard, may by order deem a person to have voting rights attached to shares in a Canadian company or legal person that controls a company directly or indirectly, if in his opinion that person, alone or with his associate, is in a position to influence the way in which any shares in the company are voted.

76. For the purposes of sections 69 and 72, where voting rights attached to shares in a company or shares in a legal person that controls the company, directly or indirectly, are held by another legal person, the shareholders of the latter are deemed to hold a percentage of the voting rights attached to the shares in the company or in the legal person that controls it, directly or indirectly, equal to the product of the percentage of voting rights they hold in the latter legal person and the percentage of voting rights held by the latter in the company or in the legal person that controls it directly or indirectly.

77. A company or the legal person that controls it directly or indirectly may request any information required for the application of sections 69 and 72.

Every person who is requested to furnish information shall comply with the request. If the person fails to comply, the allotment cannot be made nor the transfer registered in his favour.

Information obtained pursuant to the first paragraph must be communicated to the Inspector General at his request.

78. A voting share that is held jointly is, for the purposes of this chapter, deemed held by a non-resident if at least one of the holders is a non-resident.

79. Any allotment of shares made by a company contrary to sections 69 and 72 is null by operation of law.

80. No person may exercise a voting right attached to a share of a company where the registration of the transfer of the share was effected contrary to sections 69 and 72.

81. A legal person that controls a company directly or indirectly can no longer exercise voting rights attached to shares of the company where it has allotted its own shares or registered their transfer contrary to sections 69 and 72.

CHAPTER IX

SHAREHOLDERS' MEETING

82. The sole attendance of a shareholder at a shareholders' meeting is a waiver of notice of the meeting except where he attends it for the express purpose of objecting to the holding of the meeting on the ground that it was not lawfully called.

83. The shareholders of a Québec company that has not made a distribution of its securities to the public may participate and vote at a shareholders' meeting by any means allowing all the participants to communicate with each other

(1) if the instrument of incorporation or the by-laws of the company permit it;

(2) if all the shareholders entitled to participate and vote at the meeting consent thereto.

84. A resolution in writing, signed by all the shareholders entitled to vote on that resolution at a shareholders' meeting is as valid as if it had been passed at a meeting.

The resolution is kept with the minutes of the proceedings of shareholders'meetings.

CHAPTER X

DIRECTORS AND OFFICERS

DIVISION I

RULES RELATING TO THE BOARD OF DIRECTORS

85. The board of directors of a Québec company shall consist of not fewer than seven directors.

The number of directors shall be determined by the by-laws of the company.

86. A majority of the directors must be Canadian citizens and reside in Canada.

87. Not more than one-third of the board of directors of a Québec company may be composed of officers or employees of the company or of a legal person with which it is affiliated, including any person employed by either of them in the two preceding years.

88. A majority of the directors constitutes a quorum at meetings of the board of directors.

89. A director present at a meeting of the board or, as the case may be, of the executive committee is deemed to have approved any resolution passed or participated in any measure taken at that meeting, unless

(1) he demands at the meeting that his dissent be recorded in the minutes, or

(2) he notifies the secretary of the meeting in writing of his dissent before the adjournment or closing of the meeting.

90. A director of a company is not required to hold shares issued by the company.

91. The following persons cannot be directors of a company or of a legal person by which it is controlled:

(1) a minor;

(2) a person of full age under tutorship or curatorship;

(3) an undischarged bankrupt;

(4) a legal person;

(5) a person who holds, directly or indirectly, or on behalf of a non-resident, shares allotted or transferred in contravention of sections 69 to 75;

(6) an officer or director of another company, unless the two companies are affiliated.

92. A natural person may be a director in his capacity as representative of a legal person.

93. The term of office of a director shall not exceed three years.

94. A decrease in the number of directors does not terminate the term of the directors then in office.

95. Notwithstanding the expiry of his term, a director remains in office until he is re-elected, replaced or removed.

A director may resign from office by giving notice to that effect.

96. A director of a Québec company who resigns his office for reasons connected with the conduct of the operations of the company shall submit to the company a written statement of his reasons where he has reason to believe that such conduct is in contravention of this Act, the regulations thereunder, a provision of any Act, an order or written direction of the Inspector General or the Criminal Code.

He shall also submit such a written statement where he believes that such conduct will adversely affect the financial position of the company.

No director who in good faith makes such a statement may be prosecuted by reason of that fact.

97. Every Québec company shall give notice to the Inspector General of the resignation of a director within 10 days of the resignation and transmit to him a copy of the statement contemplated in section 96, if any.

98. No company or person referred to in section 107 incurs any liability by reason only of having transmitted a director's statement to the Inspector General in compliance with section 97.

99. Only the shareholders who are entitled to elect a director may remove him, at a meeting called for that purpose.

100. No director may be removed unless he has been informed in writing of the grounds for his removal and of the place, date and time of the meeting with the same advance time as that prescribed for calling the meeting.

A director who is to be removed may be heard at the meeting or give the reasons he objects to his removal in a written statement read by the chairman of the meeting.

101. A vacancy created by the removal of a director may be filled at the meeting at which the removal takes place or in accordance with paragraph 3 of section 89 of the Companies Act.

The notice calling the meeting must mention that an election is to be held if the resolution for removal is adopted.

102. Within 30 days of any change in the composition of the board of directors of a Québec company, the company shall give notice of the change to the Inspector General and furnish a list of the directors indicating the name, occupation, citizenship and address of each.

The Inspector General shall register the notice in the register of trust companies and savings companies.

103. Every director is entitled to attend and be heard at shareholders' meetings. The secretary shall transmit every notice of meeting to the directors.

104. The board of directors of a Québec company has no authority to delegate the power

(1) to submit to the shareholders a question requiring the approval of the shareholders;

(2) to fill a vacancy among the directors or a committee of the board of directors;

(3) to fill a vacancy in the office of auditor;

(4) to issue or distribute shares;

(5) to issue bonds or other debt securities described in subparagraphs 1 and 2 of the first paragraph of section 193, unless the board expressly determines the terms and conditions applicable in each case;

(6) to declare dividends;

(7) to purchase or redeem shares issued by the company;

(8) to approve the statements referred to in paragraph 2 of section 287 or in sections 293, 299, 300 and 301;

(9) to adopt by-laws;

(10) to approve any other document or item requiring the approval of the directors under this Act.

105. Every Québec company shall fix by by-law the aggregate amount of remuneration which may be paid to the members of the board of directors for a given period. No director may receive any remuneration before the by-law is adopted.

106. The by-law requires the affirmative vote of at least two-thirds of the votes given by the shareholders at a meeting called for that purpose.

DIVISION II

LIABILITY OF DIRECTORS AND OFFICERS

107. The directors and officers of a company are deemed to be mandataries of the company.

The same holds true for the other representatives of the company.

108. Every person contemplated in section 107 shall in discharging his duties act within the limits of the powers conferred on him.

He shall comply with this Act, the regulations thereunder made by the Government, the orders and written directions of the Inspector General, the instrument of incorporation and the by-laws of the company.

109. Every person referred to in section 107 shall exercise the care, prudence, diligence and skill that a reasonable person would exercise in comparable circumstances.

He shall also act honestly and in good faith in the best interests of the company and in view of the company's objects. In so doing, he shall take into account the interests of shareholders, depositors and, where such is the case, beneficiaries.

He shall avoid placing himself in situations where his personal interest is in conflict with his obligations.

110. The liability of a director is not involved under section 109 if he has acted in reliance on an expert's report, in good faith, on reasonable grounds and after verifying the facts or circumstances.

111. Directors who authorize any investment or loan in contravention of this Act or any regulation thereunder made by the Government are jointly and severally liable for the resulting losses to the company.

Directors are also jointly and severally liable to restore to the company any amount paid to a shareholder, a director or an officer that it has been unable to recover, where the effect of the payment of the sum has been to reduce the capital base of the company to an amount lower than the limit required under this Act.

112. The sole fact that the loans or investments of a Québec company are in conformity with this Act and the regulations thereunder made by the Government does not exempt the persons contemplated in section 107 from liability.

113. A Québec company shall assume the defence of any person contemplated in section 107 who is prosecuted by a third person for an act done in the performance of his duties and shall pay damages, if any, resulting from that act, unless he has committed a grievous offence or a personal offence separable from the performance of his duties.

In penal or criminal proceedings, the company shall assume payment of the expenses of a person only where he had reasonable grounds to believe that his conduct was in conformity with the law, or if he has been freed or acquitted.

114. A Québec company shall assume the expenses of any person contemplated in section 107 whom it prosecutes for an act done in the performance of his duties, if it loses its case and the court so decides.

If the company wins its case only in part, the court may determine the amount of the expenses it shall assume.

115. A Québec company shall assume the obligations contemplated in sections 113 and 114 in respect of any person who acted at its request as director or officer of a legal person in which it is a shareholder or of which it is a creditor.

116. A Québec company may purchase insurance for the benefit of a person contemplated in section 107 or any person who acts at its request as director or officer of a legal person in which the company

is a shareholder or of which it is a creditor, against any liability incurred by such person by reason of his duties except liability resulting from failure to act honestly and in good faith.

CHAPTER XI

CONFLICTS OF INTEREST

DIVISION I

ETHICS COMMITTEE

117. Every Québec company shall appoint an ethics committee from among the members of the board of directors. The committee shall be composed of not fewer than three directors, a majority of whom shall be persons who are neither officers nor employees of the company or of a legal person affiliated with the company nor persons holding ten per cent or more of the shares of any class issued by the company or by a legal person affiliated with the company.

118. The committee shall make rules for the enforcement of the provisions of this chapter by the company.

The rules shall concern, in particular, the formalities governing contracts with restricted parties, the obligation of the company or restricted parties to disclose information, the protection of confidential information held by the company on its clients and the conduct of the company in cases where the interests of the company or of a legal person affiliated with it may be in conflict with that of its clients or beneficiaries.

The rules require the approval of the board of directors of the company. A copy of the rules and any amendments thereto must be transmitted to the Inspector General within 30 days of their approval.

The committee must see to the enforcement of the rules made by it and notify the board of directors of the company without delay of any serious breach of any of these rules.

119. The ethics committee shall each year transmit to the Inspector General a report of its activities ending with the closing date of the last fiscal period of the company.

The report must be submitted within two months of the closing date. The report must indicate

(1) the composition of the committee;

(2) any changes in the membership of the committee;

(3) the content of any mandate referred to the committee;

(4) the list of cases of conflict of interest and self dealing in which the committee has intervened;

(5) the cases where the advice of the committee has not been followed by the board of directors.

DIVISION II

SPECIAL RULES CONCERNING THE PROTECTION OF THE INTERESTS OF A COMPANY

§ 1.—*Rules concerning restricted parties*

120. No Québec company or subsidiary of a Québec company shall make a loan to a restricted party or acquire shares or debt securities issued by a restricted party or be a party to any other contract with a restricted party even in its quality as administrator of the property of others.

121. The following are restricted parties

(1) a director or an officer of a company or of a legal person affiliated with it or the spouse or child of such director or officer or the child of such spouse;

(2) a shareholder of a company holding, directly or indirectly, ten per cent or more of the shares of one class or of all the shares and, in the case of a natural person, his spouse, his children and the children of his spouse or, in the case of a corporation, a director or an officer of the company and the spouse or child of such director or officer and the child of such spouse;

(3) a shareholder of a company, his spouse and their minor children if they jointly hold, directly or indirectly, ten per cent or more of the shares of one class or of all the shares;

(4) a legal person in which a person described in paragraph 1 or 2 or a group described in paragraph 3 holds ten per cent or more of the voting shares;

(5) an employee of a company;

(6) the auditor of a company;

(7) a legal person affiliated with a company other than a wholly-owned subsidiary of the company whose obligations are entirely guaranteed by the company;

(8) a shareholder of a company holding, directly or indirectly, ten per cent or more of the voting shares of one class or of all the voting shares of a legal person affiliated with a company;

(9) a person designated as a "restricted party" by the Inspector General.

122. The Inspector General may designate a person to be a restricted party

(1) if he is of the opinion that the person is acting in concert with another restricted party to participate in a transaction prohibited under section 120;

(2) if he is of the opinion that there exists between the person and the company such an interest or relationship as might affect the exercise of the best judgment of the company with respect to an investment or transaction;

(3) if the person is a shareholder of the company or of a legal person affiliated with the company and if he is of the opinion that the shareholder is acting in concert with another shareholder of the company or of a legal person affiliated with the company to control ten per cent or more of any class of shares or of all the shares of the company.

For the purposes of this section, any shareholder of a legal person that is a shareholder of a company is deemed to hold a percentage of the voting rights attached to shares of the company equal to the product of the percentage of the voting rights he holds in the legal person multiplied by the percentage of the voting rights that the legal person holds in the company.

123. The Inspector General shall notify his decision to the person he designates to be a restricted party and to the company.

He may revise his decision on the application of the company or the designated person.

Before making any designation or refusing to revise his decision, the Inspector General shall give the person he proposes to designate or has designated, and the company, an opportunity to be heard.

124. Section 120 does not apply in respect of securities of the Government of Canada or of a province traded at their market value, nor to loans fully guaranteed by such securities.

125. Section 120 does not apply in respect of the following transactions with an affiliated financial institution:

(1) in respect of deposits made at market conditions to meet liquidity needs of the depositor where the depositary is an institution registered with the Régie de l'assurance-dépôts du Québec or is a member of the Canada Deposit Insurance Corporation;

(2) in respect of assets consisting of securities in active trading through dealers in securities provided the transfer is made at the market price and that the issuer has not defaulted payment of the interest or dividends on the securities;

(3) in respect of assets consisting of securities, including leasing contracts, on which the payments of principal and interest are regularly made at each due date;

(4) in respect of agreements respecting the amalgamation, transfer or purchase of the enterprise of a company for the reorganization of its affairs, with the approval of the Inspector General, who may impose conditions.

126. Notwithstanding section 120, a company or its subsidiary may grant a loan to an officer or employee of the company or of an affiliated legal person, or to the spouse or child of such an officer, provided the aggregate amount of loans to the officer, spouse, child or employee is less than the annual salary of the officer or employee, nor over $25 000, or that the loan is secured by hypothec on the principal residence of the officer or employee.

127. A trust company may be authorized by the deed creating its administration to make exceptions to section 120 in its use of funds, other than deposits, that it administers for another.

The authorization must be expressly stated and must not leave any discretion to the company as to how the funds are to be used.

128. Notwithstanding section 120, a company may accept a deposit from a restricted party on terms not more favourable than it grants in the ordinary course of business or issue a debt security contemplated in subparagraphs 1 and 2 of the first paragraph of section 193 to such a party.

129. Notwithstanding section 120, a company or its subsidiary may be party to a contract with a restricted party where only nominal sums are involved or the object of the contract is

(1) services connected with the management or carrying on of their activities;

(2) business or professionnal services which they offer to the public in the ordinary course of business and not involving any loan, acquisition of securities or transfer of assets;

(3) movable or immovable property which they use for their own requirements;

(4) conditions of employment of an employee or officer, pension funds, insurance plans and anything else connected with a labour contract;

(5) anything else that may be determined by regulation of the Government.

A contract contemplated in subparagraph 1, 2 or 3 of the first paragraph must be made on competitive terms or terms favourable to the company or the subsidiary.

130. A contract contemplated in section 129 must be in writing and receive the approval of the board of directors of the company after the board obtains the advice of the ethics committee.

The Inspector General may demand a copy of such a contract.

131. The approval of the board of directors is not required for

(1) a labour contract with employees other than directors or officers;

(2) a contract involving nominal sums of money.

132. The onus is on the company or the subsidiary to show that the contract was made on competitive or favourable terms.

133. The Minister, after obtaining the advice of the Inspector General, may on the conditions he determines authorize a loan, an acquisition of securities or a contract contemplated in section 120. His authorization cannot contemplate funds administered for others, except deposits.

The Minister must be satisfied that the transaction is necessary for the improvement or maintenance of the financial situation of the company.

§ 2.—*Disclosure requirements*

134. Every director of a Québec company whose interest in an enterprise comes into conflict with that of the company or a subsidiary of the company shall, on pain of forfeiture of office, disclose his interest

and abstain from voting on any matter related to the enterprise in which he has an interest. He shall also withdraw from the meeting while the board is deliberating or voting on the matter.

Every person contemplated in section 107, other than a director, who has an interest described in the first paragraph shall, on pain of forfeiture of office, disclose his interest in writing to the company. No such person shall attempt in any way to influence the decision of the directors.

135. A director is deemed to have an interest in any enterprise in which a person associated with him has an interest.

The same rule applies to any other person contemplated in section 107.

136. Every person contemplated in section 107 forfeited of office for having contravened section 134 becomes disqualified for the office of director of the company for a period of five years from the act alleged.

137. Where a person contemplated in section 107 contravenes section 134, the court, at the request of the company, a shareholder, a depositor, a beneficiary or the Inspector General may, among other measures, order that person to render account and to remit to the company the profit realized.

138. A Québec company shall, within 30 days of the election of a director or the appointment of any other person contemplated in section 107, and each year thereafter, require that director or other person to make a written declaration of his interest in the manner and form and on the matters prescribed by regulation of the Government.

The statement must be made under oath and be transmitted to the company within 30 days of the request.

139. Failure to transmit the declaration of interest in the prescribed time disqualifies the director or other person contemplated in section 107 from office until the situation is remedied.

DIVISION III

SPECIAL RULES ON PROTECTION OF THE INTERESTS OF THIRD PERSONS

140. No company may, as administrator of the property of another, exercise its powers in its own interest or in the interest of a third person; nor may it place itself in a situation of conflict between its personal interest and its obligations as administrator.

If the company itself is the beneficiary, it must exercise its powers in the common interest giving the same consideration to its own interest as to that of the other beneficiaries.

141. A company shall without delay give notice in writing to the beneficiary of any interest it has in an enterprise and that might place it in a situation of conflict of interest, and of any rights it may claim against him or against the administered property, indicating the nature and value of such rights. It is not required to give notice of any interest or rights resulting from the act that gave rise to the administration.

Notification of interests or rights in property of a trust that is subject to the supervision of a person or body designated by law shall be given to the latter.

142. No company may during its administration enter into a contract affecting the administered property or acquire rights in the property or against the beneficiary except by succession.

A company may, notwithstanding the first paragraph, be expressly authorized by the beneficiary or the court to enter into such a contract or acquire such rights where a beneficiary is unable to act or fails to act.

143. No company may use for its own benefit property under its administration or information it obtains through its administration unless the beneficiary has consented to such use or unless such use is authorized by law or the instrument constituting its administration.

144. No trust company engaged in stock brokerage activities may acquire, on behalf of a beneficiary, securities owned or traded by it in its quality as broker or securities owned or traded by a person affiliated with it in that quality, except with the consent of the beneficiary after disclosing its interest to him.

145. Unless expressly authorized by the instrument creating the administration, a trust company shall not invest funds administered by it for another person in its own shares or in debt securities contemplated in subparagraphs 1 and 2 of the first paragraph of section 193 issued by it or in the shares or securities of legal persons affiliated with it, nor shall it lend such funds on the security of such securities.

146. Where a trust company holds, on behalf of another person, its own shares or shares of a legal person affiliated with it in respect of which it may exercise voting rights or of which it may freely dispose, every decision concerning the vote, the disposition or an offer to purchase

shares requires the approval of the board of directors of the company if the aggregate of the shares it holds is equal to or exceeds ten per cent of the shares of one class or of all the shares of the company or of a legal person affiliated with it.

The reasons for the decision shall be entered in the minutes of the meeting of the board of directors.

147. Each year, the board of directors of a trust company shall prepare a report on the shares referred to in section 146 describing the shares and giving the reasons for their retention.

DIVISION IV

MISCELLANEOUS PROVISIONS

148. Any loan, investment or contract granted or made in contravention of this chapter may be cancelled by the court on the application of the Inspector General, the company or any interested person.

The court may order every director or officer who is a party to a transaction made in contravention of this chapter or who facilitated the carrying out thereof pay to the company, jointly and severally, either the amount of damages suffered or the amount paid by the company in view of the transaction.

149. The auditor of a company shall promptly report to the board of directors any breach of any provision of this chapter of which he is aware during the audit or of which he is made aware by a person referred to in section 150. If the board does not act to rectify the breach within a reasonable time, the auditor shall promptly report the breach to the Inspector General.

150. Any person undertaking professional services for a company, other than an auditor, who in providing the services is aware of a breach of any provision of this chapter shall promptly report the breach to the auditor and to the board of directors of the company.

The first paragraph does not apply to an attorney or notary providing professional services to a company.

151. Sections 149 and 150 apply notwithstanding section 9 of the Charter of human rights and freedoms (R.S.Q., chapter C-12).

152. No person providing professional services may provide services to a company in relation to a loan, investment or contract to which he is a party or in which he has a direct or indirect interest.

153. No person who in good faith makes a report under sections 149 and 150 shall incur any civil liability thereby.

CHAPTER XII

SALE OR PURCHASE OF A COMPANY

154. A Québec company shall not sell all of its property or of its enterprise except to another Québec company. It may purchase all of the property or enterprise of any other company.

155. The sale or purchase shall be made on the following conditions:

(1) the vendor company and the purchasing company must draw up in duplicate an agreement on the terms and conditions of the transaction, which agreement must be approved by at least two-thirds of the votes given by the shareholders at the shareholders' meeting of each company called for that purpose;

(2) the approval of the shareholders must be attested on each copy of the agreement by the secretary of each company;

(3) notice of the agreement must be published in the *Gazette officielle du Québec* and in a daily newspaper published in the locality where the head office of each company is situated;

(4) the purchasing company must be the holder of a licence issued under this Act for the carrying on of the purchased enterprise;

(5) the purchasing company must assume the obligations of the vendor company;

(6) the applicants must show to the satisfaction of the Minister that

(*a*) it is expedient, for the convenience of the public, that the sale or purchase take place;

(*b*) the sale or purchase is not likely to affect the security of depositors or beneficiaries;

(7) where a savings company purchases the property or enterprise of a trust company, agreements must be made to the satisfaction of the Inspector General so that the operations of the trust company that

cannot be legally continued by a savings company, except deposits, be transferred to another Québec trust company that holds a licence and is capable of carrying on such operations.

156. After obtaining the advice of the Inspector General, the Minister may, if he considers it expedient, approve the agreement, which shall take effect only from the time of the approval or on any later date he determines.

157. Where a savings company purchases the property or enterprise of a trust company, the deposits received by the trust company are presumed to have been received by the savings company in accordance with section 172.

158. Where a trust company purchases the property or enterprise of a savings company, the sums borrowed by the savings company as deposits are presumed to have been received by the trust company in accordance with section 177.

159. The name of the purchasing company is deemed to be substituted for the name of the vendor company in all documents prior to the date of purchase.

160. A Québec company which sells all of its enterprise shall, from the time the Minister approves the agreement, carry on its activities only for the purpose of winding up its affairs.

CHAPTER XIII

WINDING-UP OF A COMPANY

161. The Winding-up Act (R.S.Q., chapter L-4) applies to the winding-up of any Québec company, subject to the provisions of this chapter.

162. From the time the winding-up takes effect, every action or suit against the property of the company, particularly by seizure by garnishment, seizure before judgment or seizure in execution, shall be suspended.

The costs incurred by a creditor, after he has become aware of the winding-up, by himself or through his attorney, shall not be collocated out of the proceeds of the property of the company which are distributed by reason of the winding-up.

A judge of the Superior Court for the district in which the head office of the company is situated may, however, upon the conditions that he considers suitable, authorize the institution or continuance of any action or suit.

163. Every company that has decided to effect its winding-up shall give notice of it to the Inspector General and forward to him a copy of the resolution passed to that effect by the general meeting; the notice shall be published in the *Gazette officielle du Québec* and in a daily newspaper published in the locality where the head office of the company is situated.

The notice shall indicate the date on which the company will cease to carry on its activities, the name and address of the liquidator and the address where interested persons may send him their claims.

164. In order to guarantee the performance of his duties before taking possession of the property of the company, the liquidator shall give sufficient security and maintain it thereafter. At the request of the Inspector General or of any other interested person, a judge of the Superior Court may determine the amount and nature of the security and increase it according to circumstances.

165. The liquidator appointed to the property of a company shall act under the control and direction of the Inspector General who may, even if he alleges no particular interest, act before the courts in all matters respecting the winding-up and exercise, on behalf of any shareholder, depositor, beneficiary or creditor of the company, the rights which those persons have against the company.

166. The liquidator shall, within seven days after the end of any three month period, transmit to the Inspector General a summary report of his activities for that period. The report shall indicate the income and expenses of the winding-up and a statement of his assets and liabilities at the end of that period.

167. The liquidator shall, at the end of each year, transmit to the Inspector General a copy of the report contemplated in section 15 of the Winding-up Act.

168. The assets referred to in the second paragraph of section 180 shall not be used except for the repayment of the deposits received by the company. Any balance shall be used for the repayment of the other obligations of the company.

CHAPTER XIV

DISSOLUTION OF A COMPANY

169. The Inspector General may dissolve a Québec company in accordance with sections 26 and 27 of the Companies Act

(1) if it has remained inactive for at least two years from the date of its incorporation;

(2) if it has ceased to carry on its activities for more than one year;

(3) if it has failed to apply for the renewal of its licence or, where such is the case, for the issue of a new licence within three months after the cancellation of the licence or after the expiry of the suspension period of the licence.

CHAPTER XV

POWERS OF A COMPANY

DIVISION I

GENERAL PROVISIONS

170. Every Québec trust company and, if its instrument of incorporation so authorizes, every extra-provincial trust company may, in addition to its activities as tutor to property, subrogated tutor or curator to property, liquidator, syndic, liquidator of a succession, sequestrator, judicial counsel, trustee or fiduciary provided for in its instrument of incorporation,

(1) act as mandatary and administer any movable or immovable property for the account of others;

(2) act as depositary for the safekeeping of securities, collection agent, real estate broker or agent for the registration or transfer of securities;

(3) offer and administer savings plans registered under the Taxation Act (R.S.Q., chapter I-3) or the Income Tax Act (S.C., 1970-1971-1972, chapter 63);

(4) enter into contracts for the payment of fixed-term annuities;

(5) offer investment counselling services and portfolio management services and act as securities dealer, on such conditions as the Minister may impose;

(6) furnish judicial recognizances for the benefit of parties requiring them, and extra-judicial security for the performance of contracts;

(7) offer for sale the products of a financial institution;

(8) engage in leasing operations;

(9) rent safety deposit boxes;

(10) issue debit or credit cards and assume the management thereof;

(11) sell lottery tickets and transit tickets;

(12) carry on any other activity authorized by the Minister after obtaining the advice of the Inspector General.

171. Every Québec savings company and, if so authorized by its instrument of incorporation, every extra-provincial savings company may, in addition to borrowing funds from the public in the form of deposits for the purposes of loans and investments, carry on the activities contemplated in paragraphs 8 to 11 of section 170 and any other activity authorized by the Minister after obtaining the advice of the Inspector General.

172. Every Québec savings company and any other savings company that has capacity to do so may borrow money from the public.

The company may issue debt securities in respect of the money received under the first paragraph.

In the event of insolvency of the company, all such debt securities rank equally.

173. The Minister may require a Québec company to establish a subsidiary in order to carry on a particular activity where he is of the opinion that with the carrying on of that activity, considering its nature or extent in relation to the other activities of the company, the application of supervision and control norms would be ineffective.

174. A trust company is entitled to remuneration for services rendered, including services that are gratuitous according to law.

175. A trust company may be the sole trustee of a trust of which it is settlor.

176. Unless required by law, by the instrument constituting its administration or by the court, a trust company is not required to give any security to guarantee the performance of a charge entrusted to it.

177. Every Québec trust company and any other trust company that has capacity to do so may, for the purpose of investment, receive deposits.

The company may issue investment certificates or other evidences of the deposits received.

The funds so received are presumed to be held in trust by the company and the company is presumed to guarantee their repayment.

An investment certificate or other evidence of money received shall indicate that it is guaranteed only as against the assets of the company.

178. Moneys constituting fixed-term annuities are unseizable in the hands of the trust company as fixed-term annuities transacted by insurers.

179. A trust company may stipulate that it will retain the income and interest from the investment of money received as deposits, in excess of the amount of interest it has undertaken to pay on the money.

180. In no case may a trust company allow the assets it administers for another person to be mixed with its own assets. It shall keep in its books a separate account for each administration.

It shall earmark and keep in a separate account assets equal to the aggregate amount of money received as deposits.

It may make investments in its sole name, without indicating its quality.

181. A company shall not dispose gratuitously of property entrusted to it unless the power to do so results from the nature of its administration, or except in the case of objects of little value disposed of in the interest of the beneficiary or the object pursued.

A company shall not, without valuable consideration, waive a right belonging to the beneficiary or forming part of the patrimony under administration.

182. A company may bring an action in respect of any matter affecting its administration. It may also intervene in any action respecting the property under administration.

183. Where there are several beneficiaries of the administration, simultaneously or successively, the company is bound to act in their regard with impartiality, taking into account the rights of each.

184. In appraising the extent of the liability of a company and fixing resultant damages, the court may reduce or abate them taking into account the circumstances under which the administration was assumed.

185. A trust company may entrust securities in its safekeeping or records kept thereon to another person in accordance with the regulations of the Government.

186. A trust company may lend or invest in its own name money it administers for other persons. It must make the proper book entries to allot to each administration its fair share in the loan or investment so made.

187. Unless prohibited by the instrument constituting the administration, a trust company may

(1) group together moneys which it administers for others for the purposes of loans or investments;

(2) invest moneys from different accounts which it administers or holds for others, except deposits, in a mutual investment fund which it creates and manages in accordance with the regulations of the Government.

The company must obtain the consent of every person acting jointly with it as administrator of the property of others to make a loan or investment under this section.

188. A trust company may establish and manage a mutual investment fund governed by the Securities Act (R.S.Q., chapter V-1.1) and offer units in the fund to the public.

189. A company may require 30 days' notice for the partial or full withdrawal of a deposit repayable on demand received after (*insert here the date of coming into force of this Act*).

190. A company is not required to see to the performance of a trust to which a deposit is subject.

Notwithstanding the foregoing, if the company is advised of the existence of a trust to which a deposit entered in the name of several persons is subject, the only valid quittance is the receipt or the order for payment given by all such persons or by those among them who, under the deed or Act creating the trust, may be entitled to the sums payable in respect of the deposit.

DIVISION II

ESTABLISHMENT OF SECURITY

191. No Québec company may pledge, hypothecate or pawn its property or the property allocated to the payment of deposits unless it does so

(1) to secure a loan contracted to meet its short-term liquidity needs;

(2) to acquire or improve an immovable intended for its own use, in which case the security must affect only the immovable;

(3) in respect of an advance made under the Canada Deposit Insurance Corporation Act (R.S.C., 1970, chapter C-3) or the Deposit Insurance Act (R.S.Q., chapter A-26);

(4) in favour of the Government of Québec or the Government of Canada in respect of the subscription of savings bonds;

(5) in cases provided for by regulation of the Government.

192. A company shall promptly notify the Inspector General of any security granted under paragraph 1, 2, 3 or 5 of section 191, stating the name of the creditor, the amount of security, the property affected and any other information determined by regulation of the Government.

DIVISION III

LOANS

193. In addition to the loans contracted by a company in cases where it is authorized to grant security on its property and the deposits it receives, no Québec company may

(1) issue bonds or other debt securities unless they are unsecured and they stipulate that the indebtedness will, in the event of winding-up of the company, rank after the other debts, equally with the other unsecured evidences of indebtedness issued by it and before the subordinated loans it has contracted;

(2) borrow by the acceptance of subordinated loans unless they are granted by the shareholders of the company or of a legal person affiliated with it for a fixed term and the debt security stipulates that the loan will, in the event of winding-up of the company, rank with the other similar loans but after all the other debts.

The company must comply with the terms and conditions, restrictions and limits prescribed by regulation of the Government.

194. Subject to sections 191 and 193, no Québec trust company may borrow except from a bank, a company registered with the Canada Deposit Insurance Corporation or a company registered with the Régie de l'assurance-dépôts du Québec.

DIVISION IV

CAPITAL BASE AND LIQUID ASSETS

195. A company shall, in relation to its operations, maintain an adequate capital base and adequate liquidities suitable for its needs. It shall comply in that respect with the regulations of the Government and the written directions of the Inspector General.

The company shall comply with the directions within the time fixed by the Inspector General.

196. Before giving directions to a company, the Inspector General shall give it the opportunity to be heard within a reasonable period of time.

197. In determining whether the capital base of a Québec company is adequate, the Inspector General must exclude from it the value of loans or investments or of a part of a loan or investment made by the company contrary to the limits established by this Act or the regulations of the Government unless they were made before (*insert here the date of coming into force of this Act*) and recognized as assets by the Inspector General for the period and on the conditions he determines.

DIVISION V

DEBT RATIO

198. The aggregate of deposits, borrowings and other commitments specified by regulation of the Government, except borrowings contemplated in subparagraphs 1 and 2 of the first paragraph of section 193 and hypothecs on immovables which a Québec company holds for its own requirements, must not exceed 10 times the capital base of the company.

Notwithstanding the foregoing, the Inspector General, on the application of the company and on such conditions as he determines, may authorize a higher limit but not over 25 times the capital base of the company. The application of the company must be accompanied with a resolution of the board of directors.

The Inspector General may also, where he considers it necessary, reduce the limit he has authorized, but not to less than 10 times the capital base of the company.

199. On the application of a company, the Inspector General may allow the limit authorized under section 198 to be exceeded temporarily.

The application of the company must be accompanied with a resolution of the board of directors approving the exceeding of the limit.

The resolution must indicate the limit of the excess, which must not be greater than 3% of the deposits, borrowings and other commitments of the company. The excess amounts must be invested as prescribed by regulation of the Government.

The resolution is valid for not over three months and takes effect on the date of its approval by the Inspector General, with or without amendment.

DIVISION VI

LOANS AND INVESTMENTS

200. Every company shall, in exercising its loan and investment powers, act as a prudent and reasonable person would act in similar circumstances, honestly and faithfully and in the best interests of the shareholders, the depositors and, as the case may be, the beneficiaries.

201. Every trust company shall invest the funds it administers for other persons, other than deposits, in accordance with the Civil Code, except to the extent provided in the instrument creating the administration.

It shall invest its own funds, as well as the deposits it receives, in accordance with this chapter.

202. A Québec company may, in accordance with this Act and the regulations of the Government, make investments and secured or insecured loans. It may make loans on the security of conditional sales agreements and acquire property relating to such agreements and to leasing contracts.

203. At least sixty per cent of the assets of a Québec company must consist of

(1) hypothecary claims which meet the criteria contemplated in section 205;

(2) securities issued or guaranteed by the Government of Canada or of a province or territory of Canada or by a municipal corporation in Canada;

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

(4) securities on which payment is insured by the levy of a tax by a school or municipal corporation under a law of Canada or a Canadian province or territory on property situated in the territory of the municipal or school corporation;

(5) bank deposits and debt securities the payment of which is guaranteed by a bank;

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

(7) interest bearing debt securities traded on the market.

204. No Québec company may, directly or indirectly, by the purchase of shares or the granting of loans, including financing by leasing, invest an amount equal to more than one per cent of its assets in one person or a group of associated persons.

In computing that amount, no account shall be taken of securities contemplated in paragraphs 2, 3, 5 and 6 of section 203 nor of hypothecs the repayment of which is guaranteed or insured by the government of Québec or of another Canadian province or of Canada or a mandatary of such a government or by a hypothec insurance policy issued by an insurance company authorized to carry on business in Canada.

This section does not apply to a loan to or a placement or other investment in a subsidiary of the company.

205. No loan secured on immovable property may be granted in an amount which, together with any other claim of the same rank or prior rank against such property, is greater than seventy-five per cent of the market value of the charged property at the time the loan is granted, unless the excess amount is guaranteed or insured by the government of Québec or of another Canadian province or of Canada or by a mandatary of the government of Québec or of Canada or by a hypothec insurance policy issued by an insurance company authorized to carry on business in Canada.

206. Section 205 does not apply where a company makes a loan to the purchaser of an immovable it is disposing of and that it had acquired to protect its interests.

207. No Québec company may invest in shares, bonds or debentures an amount in excess of twenty-five per cent of its assets consolidated with the assets of its subsidiaries other than a subsidiary whose business consists in offering shares in investment portfolio or in dealing in securities.

In computing the amount, no account shall be taken of securities contemplated in paragraphs 2 to 6 of section 203 or securities determined by regulation of the Government.

208. No Québec company may acquire or hold more than ten per cent of the voting shares of a legal person other than its subsidiary.

Shares held by the subsidiary are deemed held by the company.

209. Loans granted to an individual, including financing by way of leasing, but not including loans secured on immovable property, are limited to the market value of the security at the time of the grant of the loan, or to $100 000 if they are unsecured.

210. Loans granted to enterprises for commercial purposes, including financing by way of leasing, letters of credit and letters of guarantee granted by an enterprise other than a subsidiary, but not including loans secured on immovable property, must not exceed five per cent of the assets of a Québec company consolidated with the assets of its subsidiaries which are not companies within the meaning of this Act, except with the authorization of the Inspector General.

211. In examining the application for authorization, the Inspector General shall take into account the experience and solvency of the company and the competence of its directors and officers.

He may attach conditions, particularly the requirement for greater capitalization than that prescribed by section 15.

212. The board of directors of a Québec company shall each year prepare a statement of overdue loans of the company. The statement shall be presented at a meeting of the board of directors and attached to the minutes of the meeting. A copy of these documents must be transmitted to the Inspector General within thirty days of the meeting.

The Government, by regulation, shall define the expression "overdue loan" for the purposes of this section.

213. No Québec company may purchase immovables for an amount exceeding ten per cent of its consolidated assets.

The amount that may be so invested in an individual immovable is limited to two per cent of the consolidated assets of the company, and to one per cent where the immovable is not income producing.

For the purposes of this section, an income producing immovable is an immovable on which the rate of net annual income is at least fifty per cent of that on long term Government of Canada bonds.

214. No account shall be taken of immovables charged with a hypothec or otherwise in favour of the company and which it acquires to protect its interests within the meaning of section 213. However, a company cannot hold such an immovable for over seven years from the date of acquisition or beyond any additional period the Inspector General may allow.

The immovable must be sold or alienated otherwise during that period so that the company retains no interest in it other than as security.

215. A company shall hold only so much movable property for its own use as it needs.

216. A company may make deposits in an institution registered with the Régie de l'assurance-dépôts du Québec or that is a member of the Canada Deposit Insurance Corporation, or in a bank outside Canada where the company carries on business.

217. A company must adopt an investment policy approved by the board of directors, establishing rules to be followed in making decisions concerning loans and investments and the management thereof.

218. A company may, on the conditions prescribed by regulation of the Government, have the following subsidiaries:

(1) a company within the meaning of this Act;

(2) a legal person whose principal activity is the purchase, management or sale of immovable property, or which acts as mandatary for the sale or purchase of such property;

(3) a legal person whose principal activity consists in offering shares in an investment portfolio;

(4) a legal person whose principal activity consists in leasing;

(5) any other legal person, with the approval of the Minister.

219. A company may guarantee the debt securities of its subsidiary.

220. No company may accept, as security for a loan, shares of its capital stock or debt securities contemplated in paragraphs 1 and 2 of the first paragraph of section 193 issued by it, or shares or debt securities of a legal person affiliated with it.

CHAPTER XVI

SUPERVISION AND CONTROL OF COMPANIES

DIVISION I

LICENCES

§ 1.—*Issuance of licences*

221. Every company shall hold a licence to carry on its activities in Québec.

222. Every company applying for a licence shall furnish the Inspector General with the following documents and information:

(1) the name of the company;

(2) the name, occupation, citizenship and address of each director and officer of the company;

(3) the locality in Québec where the head office or chief place of business of the company will be situated;

(4) the locality where the main decision-making centre of the company will be situated;

(5) the activities it intends to carry on;

(6) a copy of the instrument of incorporation of the company and of its by-laws;

(7) a certified copy of the audited financial statements of the company for each of the last three years and, at the request of the Inspector General, of each legal person affiliated with it and, where the end of the last financial year dates back to more than one hundred and twenty days but to less than one year before the application for

a licence, a certified copy of the unaudited statements to not later than ninety days before the date of the application for a licence;

(8) any other information or documents required by the Inspector General.

223. Every extra-provincial company applying for a licence shall also furnish

(1) a copy of the licence or other certificate issued by the administrative authority in the place where the company was incorporated;

(2) a copy of the business statement that the company is required to file with the administrative authority in the place where the company was incorporated;

(3) a copy of the last inspection report given to the company by the administrative authority in the place where the company was incorporated, or authorization to obtain the report.

224. Every company shall keep up to date the documents and information furnished with the application for a licence.

225. No extra-provincial company may exercise more powers in Québec than are granted to a Québec company under this Act.

226. Every extra-provincial company which does not have its head office in Québec shall, to obtain a licence, appoint a chief representative in Québec.

The company shall send a certified copy of the power of attomey designating its chief representative in Québec to the Inspector General. The power of attorney shall indicate, in particular, the name and address in Québec of the chief representative and his duties or powers.

227. The Inspector General shall issue the licence if the company

(1) furnishes all the required documents and information;

(2) complies with this Act and the regulations of the Government thereunder and, in the case of an extra-provincial company, with any act of another legislative authority governing its activities, and the regulations thereunder;

(3) adheres to sound commercial and financial practices;

(4) has a sufficient capital base, in the opinion of the Inspector General, to provide adequate protection of the depositors or to operate efficiently, and common shareholders' equity of at least $5 000 000 in the case of a trust company, or of at least $3 000 000 in the case of a savings company or of a trust company whose instrument of incorporation explicitly excludes the power to receive deposits;

(5) shows that, in the locality where its head office or chief place of business will be situated, it is expedient for the convenience of the public that a company be established;

(6) shows that each director or officer is fit as to character and competence in view of the proposed activities;

(7) shows that its directors and the directors of the legal person by which it is controlled fulfil the conditions prescribed in section 91;

(8) shows that the proposed activities will be carried on within a reasonable time;

(9) holds a fidelity insurance policy for an amount deemed sufficient by the Inspector General according to generally accepted practices and to the volume of the company's operations.

A Québec company shall also establish that its main decision-making centre is in Québec.

The Inspector General may impose conditions and restrictions in respect of the issuance of a permit to an extra-provincial company if he is of the opinion that the law governing it or its instrument of incorporation does not provide guarantees to third persons equivalent to those required of Québec companies under this Act.

228. In addition to the requirements of section 227, an extra-provincial company applying for a licence must

(1) give the Inspector General written authorization to carry out such inspections and examinations as he deems necessary, in accordance with sections 305 to 308, at the head office of the company or of its subsidiary, wherever that may be, or in the branch offices, and undertake in its own name and in the name of its subsidiaries by resolution of the board of directors to furnish any information to the Inspector General that he requires and to observe the prescriptions of this Act, the regulations thereunder of the Government, the written orders and directives of the Inspector General and the terms and conditions attached to the licence;

(2) show that its name or the French version of its name appearing in its instrument of incorporation conforms to the law or that it has adopted, subject to the Acts that are applicable to it, an assumed name that conforms to the above requirements;

(3) undertake not to carry on any activity authorized by the law governing it or its instrument of incorporation that Québec companies are not authorized to carry on under this Act, except with authorization given by the Minister, on the conditions he determines, after obtaining the advice of the Inspector General.

229. The authorization contemplated in paragraph 1 of section 228 is also required of a Québec company for examinations and inspections in its branches outside Québec and in its subsidiaries.

230. The assumed name of an extra-provincial company must appear on the licence in addition to its name or the French version of its name. The company shall then identify itself and be identified in Québec under the assumed name and shall then be designated by that name with the same validity as by its name.

231. Every company which, on (*insert here the date of coming into force of this Act*), is registered under the Trust Companies Act or with the Régie de l'assurance-dépôts du Québec and which does not fulfil the requirements of subparagraph 4 of the first paragraph of section 227 has five years from (*insert here the date of coming into force of this Act*) to comply therewith.

232. No licence may be issued to a company whose name does not conform to law.

233. Where the name of a company does not conform to the law, the Inspector General may, after giving the company an opportunity to be heard, order it to change its name within sixty days of service of the order.

234. Where a company fails to change its name within the prescribed time, the Inspector General may of his own initiative assign it another name in the case of a Québec company or suspend or revoke its licence in the case of an extra-provincial company.

235. The Inspector General may refuse to issue a licence to a company having a name identical to that of another legal person carrying on business in Québec or that so resembles another name that the public may be confused or misled as to its identity or the nature of its activities.

236. If an extra-provincial company holding a licence changes its corporate name, it must transmit to the Inspector General a certified copy of the document establishing that such change has been legally obtained.

The Inspector General shall change the licence accordingly, and cause notice of the change of name to be published in the *Gazette officielle du Québec* at the company's expense.

237. The Inspector General shall, on refusing to issue a licence, give notice of the refusal in writing to the applicant, specifying the reasons for his refusal.

238. The Inspector General may, at the request of any company, replace its licence to enable it to carry on other activities authorized by its instrument of incorporation.

The company shall fulfil the same requirements as for the issue of a licence.

239. Every extra-provincial company resulting from an amalgamation shall obtain a licence to carry on its activities in Québec even if one of the companies that were party to the amalgamation was a licence holder.

240. The licence of a company shall be valid until 30 June following its date of issue. It may be renewed each year upon application and on the conditions prescribed by this Act and the regulations of the Government thereunder.

The licence may be issued for a period of less than one year and contain such restrictions and conditions as the Inspector General deems necessary to give effect to this Act and the regulations thereunder.

241. After the issuance of a licence, the Inspector General may

(1) reduce the period of its validity;

(2) impose such conditions and restrictions as he deems necessary to give effect to this Act;

(3) change or cancel the conditions or restrictions attached to the licence.

Before exercising his powers under this section, the Inspector General shall inform the company of his intention and give it an opportunity to be heard.

The Inspector General shall also give notice in writing of his decision and the reasons therefor to the company.

242. Upon issuing a licence, the Inspector General shall publish a notice in the *Gazette officielle du Québec* indicating the corporate name

and the address of the head office of the company and, as the case may be, the address of its chief place of business, and the name and address in Québec of its chief representative.

The Inspector General shall publish, before 1 August each year, in the *Gazette officielle du Québec*, the list of companies whose licences are renewed and those whose licences have not been renewed, and the addresses of their head offices and, as the case may be, of their chief places of business, and the names and addresses in Québec of their chief representatives.

243. The Inspector General shall

(1) keep a register of trust companies and savings companies holding licences in which shall be entered the name of each company, the address of its head office, the address of its principal place of business, and the name and Québec address of its chief representative;

(2) keep a duplicate of every licence issued;

(3) keep a copy of every power of attorney filed under section 226.

The register and the documents are public.

§ 2.—*Suspension and cancellation of licences*

244. The Inspector General may suspend the licence of any company

(1) which no longer complies with the conditions prescribed for the issuance of a licence or with the conditions or restrictions attached to its licence;

(2) whose capital base is insufficient, in the opinion of the Inspector General, to provide adequate protection of the depositors or to operate efficiently;

(3) which does not, in the opinion of the Inspector General, adhere to sound commercial and financial practices;

(4) which has committed an offence or which, in the opinion of the Inspector General, contravenes this Act, another Act of Québec, the laws of another province or an Act of the Parliament of Canada which governs its activities or any regulation made under any such Act or law;

(5) which refuses to authorize the Inspector General to carry out the examinations and searches he deems necessary in accordance with sections 305 to 308 or fails to honour its commitments under paragraph 1 of section 228;

(6) which contravenes an order or a written direction of the Inspector General, notwithstanding any appeal or extraordinary recourse in respect of the order or direction, or any injunction issued under section 328.

245. The Inspector General may cancel the licence of any company whose licence was obtained in reliance on false or inaccurate information and which, in his opinion is in an unsatisfactory financial condition that cannot be remedied.

246. The Inspector General may suspend or cancel the licence of any company whose licence issued by competent authority other than Québec has been suspended or cancelled.

247. The Inspector General shall, before ordering the cancellation or suspension of a licence, give its holder an opportunity to be heard. He shall also give notice in writing of his decision to the holder, with the reasons on which it is based.

248. The Inspector General shall also give notice in the *Gazette officielle du Québec* of any suspension or cancellation of a licence.

249. The licence of any company becomes null of right where

(1) its instrument of incorporation is repealed or cancelled or expires, as the case may be;

(2) a resolution ordering its winding-up has been adopted;

(3) a winding-up order has been made against it.

250. A company whose licence has been suspended or cancelled or has not been renewed shall no longer carry on business in Québec except to wind up its business. However, the suspension, cancellation or non-renewal of a licence does not affect the obligations of the company.

§ 3.—*Appeal*

251. The refusal, suspension or cancellation of a licence may be appealed where

(1) factual or legal grounds invoked in support of the decision of the Inspector General are erroneous on their face;

(2) the procedure followed contained a serious irregularity;

(3) the decision was not impartial.

252. An appeal shall be brought before a judge of the Provincial Court in the district where the head office of the company is situated in Québec or, if the head office is situated outside Québec, before a judge of the Provincial Court where the principal place of business of the company is situated in Québec.

253. An appeal shall be brought by way of a motion filed in the office of the Provincial Court within 30 days of mailing of notice of the Inspector General's decision to the applicant. It must be served on the Inspector General.

Upon receipt of the notice of appeal, the Inspector General shall transmit the record relating to the appealed decision to the office of the Provincial Court.

254. The record shall consist of the minutes of the hearing, the decision of the Inspector General and, if any, the documents filed and the transcript of stenographed testimony at the request and expense of the appellant.

255. The appeal is governed by articles 491 to 524 of the Code of Civil Procedure, adapted as required, but the parties need file only four copies of their factums.

256. The judge is vested for the appeal with the powers and immunity granted a commissionner appointed under the Act respecting public inquiry commissions (R.S.Q., chapter C-37).

257. The appeal does not suspend execution of the decision of the Inspector General where the decision suspends or cancels the licence of the appellant unless the judge orders otherwise in a case of exceptional urgency.

258. The Provincial Court may in the manner provided in article 47 of the Code of Civil Procedure make the rules of practice deemed necessary for the carrying out of this subdivision.

259. Every person who testifies before the judge has the same privileges and immunity as a witness before the Superior Court and

articles 307 to 310 of the Code of Civil Procedure apply to him, adapted as required.

260. An appeal lies from the decision to the Court of Appeal.

DIVISION II

BOOKS, REGISTERS AND AUDIT

§ 1.—*Books and registers*

261. Every Québec company shall keep

(1) the books and registers necessary for the preparation of statements referred to in sections 287, 293, 299, 300 and 301;

(2) a register containing the names and addresses of depositors and the amounts of their deposits;

(3) in the case of a trust company, a register of the operations concerning the property it administers for others;

(4) any other book or register prescribed by regulation of the Government.

262. Every Québec company shall keep at its head office the books and registers contemplated in section 261.

Every extra-provincial company shall keep at its principal place of business in Québec a copy of the books and registers prescribed by regulation of the Government.

§ 2.—*Audit*

263. Every Québec company shall have its books and accounts audited every year by an auditor who has the qualifications required under this division.

264. Every company shall, within ten days, inform the Inspector General of the resignation, non-renewal of the mandate or decision to propose the dismissal, during his mandate, of the auditor.

265. If a company fails to have its books and accounts audited in accordance with section 263, the Inspector General may appoint an auditor to make such audit at the expense of the company.

266. The auditor of a company must be an accountant qualified to practice public accounting . He must be a member in good standing of an institute or association of accountants incorporated under the laws of a province of Canada or a firm of accountants in which one or more of the officers or employees fulfil those requirements.

267. The auditor shall be disqualified to act as such where he or an associate or the spouse or child of either living with him or the associate

(1) is a director or officer of the company or of a legal person affiliated with it;

(2) holds, directly or indirectly, ten per cent or more of the voting shares of one class or of all the voting shares of the company or of a legal person affiliated with it or can control the election of a majority of the directors of the company or of a legal person affiliated with it;

(3) has been the sequestrator, liquidator or trustee in bankruptcy of any legal person affiliated with the company within the two years preceding his appointment as auditor.

The auditor is also disqualified from acting as such where he or an associate is an employee of the company or of a legal person affiliated with the company.

268. On the application of any interested person, a judge of the Superior Court may, on such terms as he thinks fit, exempt, even with retroactive effect, an auditor from the application of section 267 if no harm is caused to the shareholders.

269. An auditor of a company who ceases to be qualified shall resign forthwith.

270. The Inspector General or any interested person may apply to the Superior Court for the dismissal of an auditor who does not fulfil the requirements of sections 266 and 267.

271. The auditor of a company shall be appointed auditor of its subsidiaries. Where such appointment is not possible the company shall inform the Inspector General of the circumstances that prevent such appointment.

The Inspector General may agree to the appointment of an auditor for the company who is not the auditor of its subsidiary.

272. Every auditor shall have access to all the books, registers and accounts of the company and of the legal persons affiliated with it; every person having custody of those documents must facilitate his examination of them.

The auditor is also entitled to require from the company, from the legal persons affiliated with it, and from their directors, officers, employees and other representatives the information and explanations necessary for the carrying out of his mandate.

273. The auditor's report forms part of the annual report.

274. The auditor shall indicate in his report

(1) whether he has carried out his audit in accordance with generally accepted auditing standards;

(2) whether, in his opinion, the financial statements give a faithful account of the financial position of the company, the income from its operations and the changes in its financial position according to generally accepted accounting principles applied in the same manner as during the preceding fiscal year;

(3) any other information prescribed by regulation of the Government.

The auditor shall also give sufficient explanations in his report of any reservations he expresses in the report.

275. If, in the normal course of his audit, the auditor acquires knowledge of facts that may lead him to believe that the company is in contravention of this Act or the regulations of the Government thereunder or is engaging in practices that may be harmful to the company's business, he must report the facts to the board of directors.

276. If the board of directors fails to take measures in a reasonable time to remedy the situation, the auditor shall inform the Inspector General.

This section applies notwithstanding section 9 of the Charter of human rights and freedoms.

277. The auditor is entitled to attend any shareholder's meeting and be heard thereat on any question related to his mandate.

278. A director or shareholder of the company may, by means of a notice sent ten days before the holding of a meeting, convene the auditor. The latter is then bound to attend the meeting.

279. Where the directors become aware, after the annual general meeting of shareholders, of facts that may have entailed important amendments to the company's financial statements, they shall forthwith inform the auditor and send him financial statements amended accordingly.

280. If the auditor is notified or becomes aware of an error or misstatement in a financial statement on which he reported, and if in his opinion the error or misstatement is material, he shall inform each director accordingly.

The directors who are informed of the error or misstatement shall, within sixty days, prepare and publish amended financial statements or inform the shareholders and the Inspector General accordingly.

Where the auditor considers it necessary to amend his report, the board of directors shall send the shareholders a copy of the amended report within fifteen days of receiving it.

281. An auditor who in good faith makes a report under section 275 or 276 shall not be liable in any civil action arising therefrom.

§ 3.—*Audit committee*

282. Every Québec company shall form an audit committee within its board of directors. The committee shall be composed of not less than three directors, the majority of whom are not officers, employees of the company or of a legal person affiliated with it or shareholders holding ten per cent or more of the shares of any class or of all the shares of the company or of a legal person affiliated with it.

The committee shall examine every financial statement intended for the shareholders and the annual statement referred to in section 293 before they are approved by the board of directors or certified by two directors.

The committee shall also examine every auditor's report contemplated in section 275 and any matter prescribed by regulation of the Government.

283. The audit committee may be convened by one of its members, by the auditor or by a director. The auditor shall attend any meeting to which he is convened to answer any questions relating to his mandate.

At the request of the auditor, the chairman of the audit committee shall call a meeting of the committee on matters which, in the auditor's opinion, ought to be submitted to the directors or shareholders.

284. The committee shall cause any error or misstatement in a financial statement to be corrected and inform the general meeting thereof.

285. The audit committee shall each year transmit a report of its activities to the Inspector General to the close of the last fiscal period of the company.

The report shall be transmitted within two months from the closing date. It must indicate the composition of the committee, any changes in its membership and the content of any mandate entrusted to it.

DIVISION III

ANNUAL REPORT TO THE SHAREHOLDERS

286. The fiscal period of a Québec company shall end on 31 December each year. The Inspector General may, on the application of a company, allow the fiscal period to end at the expiration of the last day of a different month.

287. The accounts of a Québec company shall be closed at the end of the fiscal period and, during the ensuing two months, the board of directors shall prepare the annual report which shall set forth, in particular,

(1) the names and addresses of the directors;

(2) the consolidated financial statements, including a statement of assets and liabilities, a statement of transactions with an income statement, a statement of changes in the cash on hand and a statement of retained earnings, presented on a comparative basis with the statements for the corresponding period of the preceding fiscal period;

(3) the report of the auditor on the consolidated financial statements referred to in paragraph 2;

(4) the unconsolidated financial statements of the company;

(5) any other information required by the instrument of incorporation, the regulations of the Government or the company by-laws.

288. The financial statements shall be prepared in accordance with generally accepted accounting principles, subject to this Act and the regulations of the Government thereunder.

The company shall take into account in the financial statements presented by it to its shareholders or distributed by it to the public the value assigned to certain property under sections 319 to 323.

289. The financial statements contemplated in paragraph 2 of section 287 must be approved by the board of directors and the approval shall be evidenced by the signature of two directors designated by the board of directors.

290. The annual report shall be submitted to the annual general meeting of shareholders.

291. No company may publish or circulate the statements contemplated in paragraph 2 of section 287 unless they have been approved and signed in accordance with section 289 and are accompanied by the report of the auditor of the company.

292. Every holder of debt securities issued by the company and every depositor applying therefor in writing may obtain a copy of the annual report of the company free of charge.

DIVISION IV

ANNUAL STATEMENT FOR THE INSPECTOR GENERAL

293. Every company shall prepare each year a statement of the condition of its affairs to the date of the close of its last fiscal period. The statement shall be presented on the form provided by the Inspector General.

The company shall transmit the statement, with the auditor's report on the statement, to the Inspector General within two months of the date to which the annual statement refers or on any later date approved by the Inspector General.

294. The annual statement of a company must be certified by at least two of its directors and must be accompanied with the consolidated and unconsolidated financial statements of the company and of its subsidiaries.

295. The auditor's report on the annual statement of a Québec company shall indicate

(1) whether he has performed his work in accordance with generally accepted auditing standards;

(2) whether, in his opinion, the financial statements appearing in the annual statement give a faithful account of the financial position of the company, the income from its operations and the changes in its financial position in accordance with generally accepted accounting principles applied in the same manner as in the preceding fiscal period;

(3) whether, in his opinion, the method used to present particulars that affect the security of the depositors is adequate;

(4) whether, in the normal course of his audit, he has become aware of situations or transactions leading him to believe that the company has not adhered to sound financial practices;

(5) whether, in his opinion, the methods of management adopted by the company concerning the administration and safekeeping of property administered for other persons are adequate and whether the controls over such property are effective;

(6) whether, in his opinion, the methods of management adopted by the company to comply with the law as regards self-dealing and conflicts of interest are adequate and whether the company is complying therewith;

(7) any other information prescribed by regulation of the Government.

296. The Inspector General may order that the annual audit of the operations of a company be carried on or extended or that a special audit be made.

For such purposes, the Inspector General may appoint an auditor to carry out the audit at the company's expense.

297. Every company shall, at the request of the Inspector General, make a report indicating the names and addresses of the persons authorized to represent it in Québec and of the persons it has remunerated or promised to remunerate for having acted in that capacity.

298. The Inspector General may require the board of directors of a company to examine a request for information at its next meeting.

The letter of the Inspector General and the reply of the company thereto shall be attached to the minutes of the meeting. A certified copy of the extract from the minutes shall be sent to the Inspector General and to all the directors within thirty days of the meeting.

299. On 30 June and 31 December each year, every company shall prepare statements showing the changes in investments and loans of the company during the preceding half year.

300. Every company shall prepare a statement of its assets and liabilities as at 31 March, 30 June, 30 September and 31 December each year, indicating the type and date of maturity thereof.

The company shall also prepare statements of its liquid assets as at the dates set out in the first paragraph.

301. Every company shall also prepare quarterly financial statements, including a statement of assets and liabilities, the statement of transactions with an income statement and the statement of retained earnings. These statements shall be presented on a comparative basis with the statements for the corresponding period of the preceding fiscal period, and shall be accompanied with a statement establishing the debt ratio on the last day of the quarter.

302. The statements contemplated in sections 299, 300 and 301 shall be sent to the Inspector General within thirty days after the date in respect of which they are prepared. Those contemplated in sections 299 and 300 shall be presented on the forms provided by the Inspector General.

303. Every company and, where such is the case, the legal person by which it is controlled shall transmit to the Inspector General a copy of every financial statement furnished to its shareholders within five days after the distribution of the statement to the shareholders.

304. Every company and the legal person by which it is controlled shall in addition to the statements and information required by this Act and the regulations thereunder, provide to the Inspector General, at his request, such statements, statistics, other information and reports as he deems appropriate, on the dates and in the form he determines.

DIVISION V

INSPECTION

305. The Inspector General shall, at least once a year, carry out or commission such examination and search as he considers necessary or expedient into the internal affairs and activities of a company.

He may, in the case of an extra-provincial company, accept instead of the inspection, the report of an inspection into the company made by another competent administrative authority.

306. In order to facilitate an examination, audit or inspection of the books and registers of a company, the Inspector General may require it to produce the books and records at its principal place of business in Québec, or at such other place as he may direct.

307. The Inspector General may address any inquiries to a company or an officer of a company for the purpose of investigating a complaint directly or indirectly involving the company.

The company or the officer shall reply promptly in writing to the Inspector General's inquiries.

308. The Inspector General or a person he designates in writing to represent him may, in carrying out an inspection,

(1) enter the place of business of a company or of its subsidiary at any reasonable time;

(2) examine and make copies from the books, registers, accounts, records and other documents with respect to the activities of a company or of its subsidiary;

(3) require any information or document with respect to the administration of this Act.

Every person entrusted with the keeping, possession or supervision of the books, registers, accounts, records and other documents shall communicate them to the Inspector General or his representative at his request and facilitate his examination of them.

309. The Inspector General or his representative, in exercising his powers of inspection, may, if he has reasonable grounds to believe an offence has been committed under this Act or another Act under the administration of the Inspector General or a regulation of the Government thereunder, seize any relevant document provided he leaves a copy with the person from whom it is seized; the Inspector General shall have the safekeeping of the seized document.

The Inspector General shall not detain the seized document for over ninety days unless a complaint is filed within that time. The chief judge or associate chief judge of the Court of the Sessions of the Peace may order the detention period reduced or extended for a further ninety days.

310. The Inspector General or his representative shall identify himself on request and produce a certificate of his quality when exercising his powers under sections 308 and 309.

311. No person may hinder the work of any person exercising his powers under sections 308 and 309, or mislead or attempt to mislead him.

312. The Inspector General may order an inquiry into any matter within his jurisdiction, if he is of the opinion that the public interest requires it.

The Inspector General and any person appointed by him in writing have the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (R.S.Q., chapter C-37).

DIVISION VI

REPORT OF THE INSPECTOR GENERAL

313. The Inspector General shall each year submit a report on the financial condition of the companies to the Minister.

314. The Minister shall on or before 30 June each year table a report of the Inspector General in the National Assembly on the state of affairs of the companies in Québec. If the National Assembly is not sitting at the fixed date, the report shall be tabled within fifteen days from the beginning of the next session or resumption.

DIVISION VII

ORDERS OF THE INSPECTOR GENERAL

315. Where, in the opinion of the Inspector General, a company or other person contemplated in section 107 does not adhere to sound financial practices or is not complying with this Act, the regulations of the Government thereunder, a voluntary compliance program or an undertaking given under this Act, the Inspector General may order the company or person to cease such practices and to remedy the situation.

The Inspector General shall give the company or person contemplated in section 107 at least fifteen days' notice indicating the reasons in support of the order, the date on which the order takes effect and the right of interested persons to be heard.

316. Where in the opinion of the Inspector General the interests of the company, depositors or beneficiaries may be gravely affected by any delay in the hearing, the Inspector General may make an order without giving the company or any other person an opportunity to be heard.

The company or any other person contemplated in the order may, within six days of receipt thereof, apply in writing to the Inspector General for a hearing.

317. The Inspector General shall send a copy of the order to each director of the company.

318. The Inspector General may revoke an order made under this division.

DIVISION VIII

APPRAISAL OF ASSETS

319. Where the Inspector General is of the opinion that the value assigned by a Québec company to an immovable property held by the company or by its subsidiary is too high, he may require the company to cause an appraiser approved by him to appraise the property or cause it to be appraised himself. Following the appraisal, the Inspector General may assign the value he deems appropriate to the immovable property or change the book value of the investment of the company in its subsidiary.

320. Where the Inspector General is of the opinion that the value of an immovable property securing a claim of a Québec company or its subsidiary is less than the amount of the loan granted, including accrued and current interest, or where he considers the immovable property to be insufficient security, he may require the company to cause an appraiser approved by him to appraise the property or cause it to be appraised himself. Following the appraisal, the Inspector General may reduce the book value of the loan or change the book value of the investment of the company in its subsidiary to an amount that in his opinion may be realized on that security.

321. Where the Inspector General is of the opinion that the market value of any other asset of a Québec company or of its subsidiary is less than the book value, he may require the company to cause an appraiser approved by him to appraise that asset or cause it to be appraised himself. Following the appraisal, the Inspector General may reduce the book value of the company to the value determined by the appraisal or change the book value of the investment of the company in its subsidiary.

322. The Inspector General must give notice in writing to the company and to its auditor of any assignment or reduction of value pursuant to section 319, 320 or 321.

323. Every appraisal made under section 319, 320 or 321 shall be at the expense of the company, unless the Inspector General decides otherwise.

DIVISION IX

VOLUNTARY COMPLIANCE PROGRAM

324. Where, in the opinion of the Inspector General, a Québec company is having financial difficulties such that it may become insolvent, the company may, with the approval of the Inspector General, adopt a voluntary compliance program to remedy the situation.

325. The voluntary compliance program shall be in writing and must be approved by the Inspector General prior to its implementation.

326. Notwithstanding the approval of a voluntary compliance program, the Inspector General may issue the order contemplated in section 315 if he deems it expedient.

327. The Inspector General may, upon the application of the company, approve any alteration to the voluntary compliance program.

DIVISION X

INJUNCTION

328. 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 this Act or the regulations of the Government thereunder.

The motion for an injunction is an action.

The procedure prescribed in the Code of Civil Procedure applies, except that the Inspector General cannot be required to give security.

DIVISION XI

FREEZE ORDERS

329. The Inspector General may, in view of or in the course of an investigation pursuant to section 9.1 of the Act respecting the Inspector General of Financial Institutions (R.S.Q., chapter I-11.1) or where he has suspended or cancelled or is about to suspend or cancel a licence or where a complaint has been made or is about to be made by reason of an offence under this Act or the regulations of the

Government thereunder, order the person who is or is about to be investigated, the company that is the object of the complaint or whose licence has been or is about to be suspended or cancelled, any person being a party to an offence under this Act or the regulations of the Government thereunder or any other person who has in his possession, in safekeeping or under his control assets of the company or assets he holds or administers for others, not to dispose of those assets or to refrain from withdrawing those assets from the person having them on deposit, under control or in safekeeping.

330. The order is effective for a renewable period of ninety days from the time the person concerned is notified.

331. Every person contemplated in an order because he has the safekeeping or possession of assets of the person concerned shall, if he has rented or placed a safe deposit box at the disposal of the person, notify the Inspector General.

At the request of the Inspector General, the person contemplated in the order shall break open the safe deposit box in the presence of a witness certified by the Inspector General, draw up an inventory of the contents in triplicate, and give one copy to the Inspector General and one copy to the person concerned.

332. No order applies to funds or securities in a clearing-house or with a transfer agent, unless the order so states.

333. Where an order concerns a bank or a company, it applies only to the places of business mentioned therein.

334. An order applies also to funds, securities and other assets received after the effective date of the order.

335. Every person concerned by an order may apply to the Inspector General for clarification as regards the funds, securities or other assets contemplated by the order.

336. The Inspector General may notify the registry office of the order for registration.

An order registered under this section may be set up against any person whose right is registered subsequently.

DIVISION XII

PROVISIONAL ADMINISTRATION, CONTROL AND POSSESSION OF ASSETS

337. The Inspector General or, at his request or if he is absent or unable to act, any person designated by the Minister may provisionally assume the administration of a company or, in the case of an extra-provincial company, take control or possession of its assets in Québec for a period of seven working days if he has reason to believe

(1) that the assets have been misappropriated or that there is an inexplicable deficiency in the assets;

(2) that there has been a serious offence, especially malfeasance or breach of trust by one or more directors, or that the board of directors has been seriously remiss in the performance of the obligations imposed upon it by this Act or the regulations of the Government thereunder or engages in administrative practices which endanger the rights of shareholders, depositors or beneficiaries or that the assets or controls over the assets are insufficient to provide adequate protection of the rights of the shareholders, depositors or beneficiaries.

The Inspector General or the person designated by the Minister may authorize any person to perform the functions contemplated in the first paragraph.

338. The Minister may extend the period prescribed in section 337.

339. When assuming provisional administration of a company or the control and possession of its assets, the Inspector General or the person designated by the Minister to perform such duties shall, as soon as possible, present a complete report of his findings to the Minister, together with his recommendations.

340. The costs, fees and expenses incurred by the provisional administration or by the control and possession of assets shall be assumed by the company which is subject to it unless the Minister orders otherwise.

341. If the report of the Inspector General or the person designated by the Minister confirms the existence of any situation contemplated in section 337, the Minister shall submit it to the Government after giving the company an opportunity to be heard.

The Minister may, where it is imperative to do so and after obtaining the advice of the Inspector General, submit the report to the Government

before hearing the company, provided that the company is given an opportunity to be heard within fifteen days of submission of the report.

342. Before submitting the report to the Government, the Minister may make any inquiry he deems expedient.

343. The company may be heard by any public servant designated by the Minister.

344. The Minister shall attach to the report of the Inspector General or the person designated by him a summary of the representations that the company has made to him and his own recommendations.

345. The Government may, as soon as the documents contemplated in section 344 have been submitted to it,

(1) order the Inspector General to submit the licence of the company to the restrictions and conditions that the Government deems appropriate;

(2) prescribe the time within which the company shall remedy any insufficiency in its assets or any other situation contemplated in section 337;

(3) direct the Inspector General or any person designated by the Minister to extend his administration or control and possession of the assets of a company or terminate it on such conditions as it may impose.

346. When the Inspector General or the person designated by the Minister assumes administration of a company, the powers of the board of directors of the company are suspended and the Inspector General or the person designated by the Minister shall assume the powers thereof and those of the general meeting.

In no case may the Inspector General or the person designated by the Minister be prosecuted by reason of any act performed in good faith in carrying out his duties.

347. The Inspector General or the person designated by the Minister shall render an account to the Minister when the situation contemplated in section 337 has been corrected or where it cannot be corrected.

348. The Inspector General or, at his request, in his absence or if he is unable to act, any person designated by the Minister may also

assume provisional administration of any Québec company or, in the case of an extra-provincial company, take control and possession of its assets in Québec

(1) if the licence of the company has been cancelled;

(2) if the licence of the company has been suspended and the causes of the suspension have not been remedied within thirty days of its taking effect;

(3) if in the opinion of the Inspector General the company is carrying on any activity without the required licence.

Where he assumes provisional administration or control and possession of the assets of a company under this section, the Inspector General shall report his findings to the Minister, who shall make a report to the Government as soon as possible.

The preceding paragraph also applies to any person designated by the Minister to perform such duties.

349. After receiving the report provided for in section 347 or 348, the Government may take one or more of the following measures:

(1) lift the suspension of the powers of the members of the board of directors of the company;

(2) declare the directors of the company forfeited of office and order the holding of an extraordinary meeting of shareholders to elect new directors;

(3) order, on the conditions it determines, the winding-up of the company and appoint a liquidator;

(4) subject the licence of the company to the restrictions and conditions that it considers appropriate;

(5) order the Inspector General or the person designated by the Minister to extend his administration of the company or control and possession of the assets for the period determined by the Minister;

(6) terminate the provisional administration or the control and possession of the assets.

Every member of the board of directors forfeited of office pursuant to this section is disqualified for office as a director for a period of five years.

350. The decision of the Government ordering the winding-up of the company has the same effect as an order made by a judge of the Superior Court under section 24 of the Winding-up Act. Sections 161 to 168 of this Act apply, adapted as required.

Notwithstanding the foregoing, the Government may terminate the winding-up if the interests of the depositors, beneficiaries or shareholders justify it.

351. No appeal lies from a decision of the Government made pursuant to this division.

CHAPTER XVII

REGULATIONS

352. The Government, by regulation, may for the purposes of this Act determine which assets or liabilities may be added to or subtracted from the shareholders' equity to determine the capital base of a company, what assets the capital base is composed of and their relative proportions, the conditions and restrictions attached to different assets and liabilities and to the other components of the capital base, and define the expression "overdue loan" for the purposes of section 212.

353. The Government, by regulation, may also prescribe

(1) the fees exigible for incorporation, issuance of letters patent or supplementary letters patent, licences and licence renewals;

(2) the fees exigible for any formality or measure prescribed by this Act or the regulations thereunder;

(3) the documents and information that must be transmitted to the Minister or the Inspector General in addition to those required by the Act, and the form and content of such documents and the number of copies required;

(4) when and how depositors must be informed of the fees relating to their deposits and the other requirements for their valid information;

(5) when and how depositors must be informed of the rates of interest on their deposits and the mode of computing interest and the other requirements for their valid information;

(6) the matters that may be the object of contracts between a company or its subsidiary and a restricted person, the standards governing such contracts and the conditions under which they may be entered into;

(7) the conditions and restrictions governing the circulation of information within a company or between a company and a restricted person, in view of reducing the risk of conflicts of interest;

(8) the terms and conditions governing declarations of interests under section 138, and the matters which must be declared;

(9) the conditions and limits to the exercise of the activities of a company;

(10) the standards of protection of the public and confidentiality of information where a company offers for sale the products of a financial institution;

(11) the standards governing arrangements between a company and a financial institution for the sale of products of the latter, and the conditions under which they may be made;

(12) the conditions precedent to entrusting the safekeeping or custody of securities of a company or the keeping of the relevant registers to another person, and the conditions governing the safekeeping or custody of such securities and the keeping of such registers by such a person;

(13) standards and conditions for the creation of a mutual investment fund by a company, the composition and administration and membership of the fund and authorized investments;

(14) other cases where, in respect of paragraph 5 of section 191, a company may give security on its property or, as the case may be, on property charged with payment of deposits;

(15) the additional information that must be indicated in the notice to be given by a company to the Inspector General pursuant to section 192;

(16) conditions and restrictions with respect to the issuing of bonds or other debt securities by a company, and to the acceptance of subordinated loans by the company;

(17) standards of adequacy of the capital base and liquidity of a company;

(18) the undertakings that must be posted to the liabilities of a company for the purposes of section 198;

(19) the conditions and restrictions as to investment of excess of deposits, borrowings and other undertakings contemplated in section 199;

(20) conditions, restrictions and prohibitions respecting the exercise of the loan and investment powers of a company or its related financial and administrative practices, applicable to all loans and investments or any specified category thereof or any specified kind of loan or investment of that category;

(21) the time allowed a company whose loans and investments do not fulfil the requirements of this Act and the regulations thereunder at the coming into force of this Act to comply therewith;

(22) the securities not taken into account in establishing the amount contemplated in section 207;

(23) the conditions to be met by a company and by a subsidiary contemplated in section 218 in order for the latter to be held by the company;

(24) the conditions for the issuance and renewal of licences;

(25) the books and registers to be kept by a Québec company, and the content of such registers;

(26) the books and registers of which copies must be kept by an extra-provincial company in its principal place of business in Québec;

(27) the additional information that must be indicated by the auditor in the reports contemplated in sections 274 and 287;

(28) the matters or additional reports that must be examined by the audit committee pursuant to section 282;

(29) the cases where the Inspector General may or must communicate information to the auditor, the audit committee and the board of directors of a company, and the nature of such information;

(30) the cases where the auditor, the members of the board of directors, the officers and the members of the audit committee of a company may or must communicate information to the Inspector General and the nature of such information;

(31) the additional information that must appear in the annual report of a company to the shareholders;

(32) the mode of calculating the gross income of a company in Québec;

(33) the provisions of the regulations under this section which it will be an offence to contravene;

(34) the form and content of financial statements.

CHAPTER XVIII

PENAL PROVISIONS

354. Every person who contravenes any of sections 60, 62, 64, 65, 67, 68, 69, 72, 77, 111, 117, 120, 134, 140, 141, 142, 143, 144, 145, 149, 150, 152, 164, 180, the second paragraph of section 187, any of sections 191, 195, 201, 217, 220, 221, 262, 263, 275, 282, the second paragraph of section 288 or section 291 or 292 or 383 is guilty of an offence.

355. Every director or officer of a company or of a legal person affiliated with it who is party to an act prohibited under section 120 or who participated in the decision of the company or of the subsidiary is guilty of an offence. The same is true of every person holding ten per cent or more of the voting rights in a company and every shareholder of the company holding ten per cent or more of the voting rights in a legal person affiliated with the company.

356. Every person who knowingly gives the Minister, the Inspector General or any other person false or misleading information required under this Act or the regulations of the Government thereunder is guilty of an offence.

357. Every person who neglects or refuses to supply information required under this Act or the regulations of the Government thereunder is guilty of an offence.

358. Every person who knowingly makes a false or misleading entry in a book or register is guilty of an offence.

359. Every person who refuses or neglects to make, in a book or register, an entry required under this Act or a regulation of the Government thereunder is guilty of an offence.

360. Every person who hinders or attempts to hinder in any way a person who performs an act required under this Act or a regulation of the Government thereunder or authorized by it is guilty of an offence.

361. Every person who fails to comply with a written direction given by the Inspector General under this Act is guilty of an offence.

362. Every person who contravenes a provision of a regulation that it is an offence to contravene, pursuant to paragraph 33 of section 353, is guilty of an offence.

363. Every person found guilty of an offence described in sections 354 to 362 is liable, in addition to costs, to a fine of not less than $200 nor more than $2 000 in the case of a natural person and of not less than $600 nor more than $30 000 in the case of a legal person. However, persons contemplated in section 355 are liable to the fines prescribed for a legal person, whether found guilty or not.

For each subsequent offence within two years of conviction for an offence under the same provision, the minimum and maximum fines for a first offence shall be doubled.

In determining the fines, the court shall take particular account of the damage involved and the benefits derived as a result of the commission of the offence.

364. Every person who, by act or omission, aids another in committing an offence may be found guilty of the offence as if he had committed it himself, if he knew or should have known that his act or omission would probably result in aiding in the commission of the offence.

365. Every person who abets, counsels or commands another to commit an offence may be found guilty of the offence and of any other offence committed by the other as a result of the abetment, counsel or command, if he knew or should have known that his action would probably result in the commission of the offence.

366. Proceedings are instituted in accordance with the Summary Convictions Act (R.S.Q., chapter P-15) by the Attorney General or by a person generally or specially authorized by him in writing to that effect.

367. In any proceedings brought under this Act, the documents prescribed thereunder that appear to have been signed, furnished or produced by the accused are deemed to have been so in fact.

CHAPTER XIX

AMENDMENTS

368. Section 1 of the Deposit Insurance Act (R.S.Q., chapter A-26) is amended by replacing paragraph *f* by the following paragraphs:

"(*f*) "trust company": a trust company within the meaning of the Act respecting trust companies and savings companies (1987, chapter (*insert here the chapter number of this bill*);

"(*f*.1) "savings company": a savings company within the meaning of the Act respecting trust companies and savings companies (1987, chapter *insert here the chapter number of this bill*);".

369. Section 25 of the said Act is amended by replacing, in the French text, the words "compagnie de fidéicommis" in the first line of paragraph *b* by the words "société de fiducie".

370. Section 28 of the said Act is amended by inserting the words "savings company" before the words "or any other" in the second line.

371. Section 31.1 of the said Act is amended by replacing the words "However, it must" in the second line by the words "In addition, it may".

372. Section 31.4 of the said Act is amended by replacing the second paragraph by the following paragraph:

"For the application of section 31.3, a trust company or savings company which is in a position contemplated in section 250 of the Act respecting trust companies and savings companies is deemed to be under an order contemplated in paragraph *c* of section 31.3."

373. Section 34.2 of the said Act is amended by replacing the second paragraph by the following paragraph:

"For the purposes of the first paragraph of section 34.1, a trust company or savings company which is in a position contemplated in section 250 of the Act respecting trust companies and savings companies is deemed to be under an order contemplated in subparagraph *d* of the first paragraph of section 34.1."

374. Section 43 of the said Act is amended

(1) by replacing the words "and trust companies" in the second line of paragraph *b* by the words ", trust companies and savings companies";

(2) by inserting the words ", except trust companies and savings companies," after the word "institutions" in the second line of paragraph *g*;

(3) by inserting the words ", trust companies and savings companies" after the words "savings and credit unions" in the second line of paragraph *h*.

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

(1) by inserting the words "a trust company that enters into fixed-term annuity contracts," after the word "excluding" in the fifth line of paragraph *a*;

(2) by adding the words "but excluding a person who enters into a fixed-term annuity contract on behalf of a trust company" at the end of paragraph *i*.

376. Section 6 of the Companies Act (R.S.Q., chapter C-38) is amended by striking out the words "or the transaction of trust business" in the last line of the first paragraph.

377. Section 124 of the said Act is amended by striking out the words "for the transaction of trust business," in the fourth and fifth lines of paragraph 1.

378. Section 2 of the Extra-provincial Companies Act (R.S.Q., chapter C-46) is amended by replacing paragraph 3 by the following paragraph:

"(3) Trust companies and savings companies incorporated in virtue of an Act of a province other than Québec or of a foreign country;".

379. Section 2 of the Companies Information Act (R.S.Q., chapter R-22) is amended by replacing paragraph 3 by the following paragraph:

"(3) This section shall not apply to trust companies, savings companies or insurance companies."

380. Section 4 of the said Act is amended by inserting the words ", savings companies" after the words "Trust companies" in the first line of subsection 8.

381. Section 1 of the Loan and Investment Societies Act (R.S.Q., chapter S-30) is amended by adding, after the first paragraph, the following paragraph:

"No savings company within the meaning of the Act respecting trust companies and savings companies (1987, chapter *insert here the*

chapter number of this bill) may obtain the licence contemplated in the first paragraph."

CHAPTER XX

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

382. Letters patent and supplementary letters patent issued under this Act shall be registered by the Inspector General pursuant to section 2 of the Companies Act.

Sections 2.2, 2.3 and 2.5 of the Companies Act apply to the registration.

383. A company whose loans or investments do not comply with this Act on (*insert here the date of coming into force of this Act*) has two years from that date to conform.

The Inspector General may extend the period, for such time and on such conditions as he determines, if he considers it expedient.

384. A société d'entraide économique governed by the Act respecting the sociétés d'entraide économique may be continued as a savings company governed by this Act in accordance with sections 48 to 58 and upon such conditions as the Minister may impose.

385. Section 52 of the Act respecting the sociétés d'entraide économique continues to apply to a société d'entraide économique continued as a savings company.

Section 60 of the said Act, as well as any regulation thereunder, continues to apply in respect of shares held at the time of the continuation.

386. Any document the service of which is prescribed by this Act may be sent by certified or registered mail to the last known address of the person for whom it is intended.

387. Any written proceeding may be validly served on the chief representative of an extra-provincial company whose head office is not in Québec at the address indicated in the power of attorney.

388. It shall not be necessary in any proceedings to produce the original of any book, document, order or register in the possession of the Inspector General; a copy or extract certified true by him shall be sufficient proof of the original.

389. The production of the affidavit of a member of the personnel of the Inspector General makes proof before the court of the signature and quality of the signatory.

390. A document signed by the Inspector General attesting the existence or lack of a licence makes proof of its content.

391. The Inspector General may, of his own motion and without notice, intervene in any civil action respecting a provision of this Act or the regulations of the Government thereunder to take part in the investigation or hearing as if he were a party.

392. The Inspector General may extend the time prescribed under this Act or a regulation of the Government thereunder for the furnishing of information or transmission of documents.

393. The Inspector General has all the necessary powers for the administration of this Act and the regulations of the Government thereunder. He may, in particular,

(1) enter into agreements with companies respecting their management;

(2) accept undertakings from extra-provincial companies and enter into agreements with them;

(3) enter into agreements with third persons according to law respecting the administration of this Act, particularly with regard to section 305.

394. The Inspector General may act out of Québec for the administration of this Act.

395. No person employed by the Government or authorized by the Inspector General to exercise powers of inspection and investigation may disclose or allow the disclosure to anyone of any information obtained by virtue of this Act or the regulations of the Government thereunder nor allow any document produced by virtue thereof to be examined except so far as authorized by the Inspector General.

Notwithstanding sections 9, 23, 24 and 59 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1), only a person generally or specially authorized by the Inspector General may have access to information or a document contemplated in the first paragraph.

396. The Minister may, according to law, enter with any government, a department thereof or any agency, into any agreement respecting the administration of this Act.

397. The Minister shall not later than (*insert here the date of the fifth anniversary of the coming into force of this Act*) make a report to the Government on the implementation of this Act, and thereafter, every five years, on the advisability of maintaining in force and, if necessary, of amending it.

The report must be tabled within the following fifteen days before the National Assembly or, if it is not sitting, the report must be filed with the President of the National Assembly.

398. The register of trust companies kept at the office of the Inspector General under the Trust Companies Act becomes the Register of trust companies and savings companies.

399. Trust companies holding a certificate of registration under the Trust Companies Act on (*insert here the date of coming into force of this Act*) are deemed to hold on that date a licence issued under this Act to carry on business as a trust company, subject to the conditions or restrictions on the certificate.

400. Legal persons registered with the Régie de l'assurance-dépôts du Québec on (*insert here the date of coming into force of this Act*) that are savings companies by virtue of this Act are deemed to hold on that date a licence issued under this Act to carry on business as a savings company.

401. Notwithstanding sections 399 and 400, the Inspector General may issue a licence to a company including conditions or restrictions to the exercise of its activities, if he deems it expedient for the administration of this Act.

402. In any Act, or statutory instrument, or in any contract or other document,

(1) a reference to the Trust Companies Act or to any of its provisions is considered to be a reference to this Act or to the equivalent provision of this Act;

(2) the expression "compagnie de fidéicommis" or "compagnie de fiducie" means a "société de fiducie";

(3) the expression "registered trust company" means "licensed trust company";

(4) the expression "certificate of registration" where it means a certificate under the Trust Companies Act means a licence issued to a trust company under the Act respecting trust companies and savings companies;

(5) the expression "company incorporated by an Act of the Legislature or authorized to carry on its activities in Québec" or the expression "loan and investment society incorporated under an Act of Québec or registered in accordance with the Loan and Investment Societies Act" or "loan society incorporated by an Act of the Legislature or authorized to carry on business in Québec under the Loan and Investment Societies Act" means, as the case may be, "a savings company holding a licence under the Act respecting trust companies and savings companies and a loan and savings society registered in accordance with the Loan and Savings Societies Act."

403. Every Québec company shall, if its fiscal period does not, on (*insert here the date of coming into force of section 286*), correspond to the calendar year, extend its fiscal period to the end of the calendar year, subject to section 286.

404. Sections 86 and 87, paragraphs 5 and 6 of section 91 and section 105 do not apply to directors in office on (*insert here the date of coming into force of this Act*) until (*insert here the date of the third anniversary of the coming into force of this Act*).

[[**405.** The sums required for the administration of this Act shall be taken for the fiscal year 1987-88 and so far as the Government may determine, out of the consolidated revenue fund.]]

406. The expenditures incurred for the administration of this Act, as determined each year by the Government shall be charged to the companies holding licences. These expenditures shall be calculated in respect of each company on the basis of a minimum share fixed each year by the Government and in accordance with the ratio of the gross revenues of the company in Québec during the preceding year to the aggregate gross revenues in Québec of all the companies holding licences.

The certificate of the Inspector General shall definitively establish the amount payable by each company under this section.

407. The Inspector General of Financial Institutions is responsible for the enforcement of this Act.

408. The Government shall designate the Minister responsible for the administration of this Act.

409. The Act respecting the acquisition of shares of certain hypothecary loan companies (R.S.Q., chapter A-3.1) is repealed.

410. The Trust Companies Act (R.S.Q., chapter C-41) is replaced by this Act to the extent indicated by the proclamations made pursuant to section 411.

411. The provisions of this Act come into force on the dates fixed by the Government.

An order made under this section shall indicate which provisions of the Trust Companies Act are replaced by the provisions of this Act put into force by the order.

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