



NATIONAL ASSEMBLY

FIFTH SESSION

THIRTY-SECOND LEGISLATURE

Bill 213
(Private)

An Act respecting the Société mutuelle de réassurance du Québec

Introduction

**Introduced by
Mr Claude Lachance
Member for Bellechasse**

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(Private)

An Act respecting the Société mutuelle de réassurance du Québec

WHEREAS it is in the interest of the Société mutuelle de réassurance du Québec that its charter, chapter 110 of the statutes of 1975, amended by chapter 104 of the statutes of 1977 and chapter 100 of the statutes of 1979, be replaced;

Whereas the members of the Société mutuelle de réassurance du Québec are members of the Fédération des mutuelles d'incendie inc.;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

INTERPRETATION

1. In Divisions II, VI, VII and VIII of this Act, the word "federation" means the Fédération des mutuelles d'incendie inc., a corporation incorporated on 25 November 1970 by letters patent issued under Part III of the Companies Act (R.S.Q., chapter C-38) and continued as a federation of mutual insurance associations under the Act to amend the Act respecting insurance and other legislation (1985, chapter *insert here the chapter number of the said Act in the statutes of Québec of 1985*).

DIVISION II

CONTINUANCE

2. The Société mutuelle de réassurance du Québec is continued as a corporation governed by this Act.

3. The firm name of the corporation, hereinafter called “the association”, shall be “Société mutuelle de réassurance du Québec”, rendered in English as “Québec Mutual Reinsurance Association”.

4. Subject to this Act and its application, no rights, obligations or acts of the association or of its members are affected by continuance.

5. Subject to this Act, Part I of the Companies Act, adapted as required and except sections 3 to 27, 34, 34.1, 37 to 43, 45 to 76, 79 to 95, 97 to 114, 116, 117, 119, 120, 122 and 123.0.1 thereof, applies to the association.

The Act respecting insurance (R.S.Q., chapter A-32) also applies to the association, subject to this Act.

The provisions of the Act respecting insurance prevail over the provisions of Part I of the Companies Act that are applicable to the association.

In the application of section 31 of the Companies Act to the association, the word “shareholder” means a member of the association and in the application of section 118 of the said Act to the association, the word “shareholder” means a member of the association or a director of the federation. In the application of sections 44 and 77 of the said Act to the association, the word “shareholders” means the directors of the federation and the words “general meeting of the company” and “general meeting” mean a meeting of the board of directors of the federation. Moreover, where a provision of an Act requires the vote of shareholders representing a specific proportion of the capital stock of a company, the provision shall be construed as requiring the vote of a number of directors of the federation equal to the specific proportion in value.

6. The head office of the association shall be in the judicial district of Québec.

7. The association may, by by-law, change its firm name and the judicial district in which its head office is located.

The by-law shall be submitted for approval to the Inspector General of Financial Institutions and if he approves it, the Inspector General shall give notice thereof in the *Gazette officielle du Québec*.

In the case of a change of firm name, the association shall be designated under its new firm name from the date of publication of the notice provided for in the second paragraph.

DIVISION III

OBJECT AND POWERS

8. The object of the association is to transact damage reinsurance business. The association may also transact damage insurance business to the extent provided for in this Act.

The association's reinsurance transactions are not limited to its members.

The association shall transact damage insurance only on the conditions and within the limits provided for in section 10.

9. Sections 33.1 to 33.3 of the Act respecting insurance apply to the association.

10. The association may, after obtaining the authorization of the Inspector General of Financial Institutions and on the conditions he determines, transact damage insurance in the territories in which the members of the association carry on their activities and in the groups from which the members of the association recruit their members.

The application for authorization shall be accompanied with certified copies of the resolutions, passed by a majority of the members of the association, authorizing the association to submit the application.

Notwithstanding the foregoing, in no case may the association transact, in the territory in which a member of the association carries on its activities or in the group from which a member of the association recruits its members, the classes of damage insurance that the member's licence authorizes it to transact.

11. The association shall require any person entrusted with the management or custody of funds of the association to deposit a security of not less than \$25 000 and determine the nature thereof.

DIVISION IV

CAPITAL

12. The capital of the association shall consist of the sums paid by its members as their participation in the capital. The capital shall not be less than \$3 000 000.

13. The board of directors of the association may require from its members any sum as participation in the capital of the association, and payment thereof is mandatory.

14. The association shall, where its capital is reduced below \$3 000 000, require from its members any additional participation sufficient to bring the capital to not less than \$3 000 000.

15. The association shall determine, by by-law, the criteria for fixing the amount of and the terms and conditions governing the participation of its members in its capital.

The by-law shall be submitted for approval to the Inspector General of Financial Institutions.

Failing such a by-law, any additional participation by the members in the capital shall be *pro rata* to their initial participation in the capital.

16. Each year, the association shall transmit to each member a certificate indicating the percentage and amount of its participation in the capital.

17. In the case of the winding-up, dissolution, withdrawal or expulsion of a member of the association, the member may apply for the reimbursement of its participation in the capital. The association may order the reimbursement of the participation of a member in the capital, even if the member does not apply therefor.

Except in the case of the winding-up of the association, the reimbursement of the participation of a member in the capital shall correspond to the lesser of the following amounts:

- (1) the aggregate of the sums paid as participation; and
- (2) the amount obtained by multiplying the excess amount of assets over liabilities of the association by the percentage of the participation of the member in the capital.

18. In no case, however, may the association proceed with the reimbursement of the participation of a member

- (1) if the reimbursement would result in the association's being unable to meet its liabilities on their due dates;
- (2) if the reimbursement would result in reducing the excess amount of assets over liabilities of the association below the amount required under section 275 of the Act respecting insurance or below \$3 000 000, whichever amount is greater.

19. A member shall apply for the reimbursement of its participation in the capital by transmitting a written notice to that effect to the association not later than ninety days before 31 December of the current year.

In no case may the reimbursement of a member's participation in the capital be made before 1 January of the following year.

20. The association may issue the preferred equity shares contemplated in section 93.1 of the Act respecting insurance on the terms and conditions provided for therein.

21. In no case may the association redeem or reimburse the shares contemplated in section 20

(1) if the redemption or reimbursement would result in the association's being unable to meet its liabilities on their due dates;

(2) if the redemption or reimbursement would result in reducing the excess amount of assets over liabilities of the association below the amount required under section 275 of the Act respecting insurance or below \$3 000 000, whichever amount is greater.

22. The directors who authorize a redemption or reimbursement contrary to sections 17 to 19 and 21 are jointly and severally liable for the sums involved and not yet recovered.

23. The members of the association are not personally liable for the debts of the association and their liability is limited to the unpaid portion of their participation in the capital of the association.

24. In the case of the winding-up or dissolution of the association, the balance of the assets of the association shall be distributed to the members *pro rata* to their participation in the capital.

DIVISION V

SURPLUSES

25. The board of directors may distribute to the members of the association all or part of the operating surplus and of any undistributed surplus or allocate all or part of the operating surplus for the establishment of an undistributed surplus account.

26. In no case may the association make a payment in application of section 25 if the payment would result in reducing the excess amount of assets over liabilities of the association below the amount required under section 275 of the Act respecting insurance or below \$3 000 000, whichever amount is greater.

27. The directors who authorize a payment contrary to section 26 are jointly and severally liable for the sums involved and not yet recovered.

28. The association may deduct from any sum payable to one of its members any sum owed by the member to the association.

DIVISION VI

MEMBERS

29. Every mutual insurance association within the meaning of paragraph *d* of section 1 of the Act respecting insurance that is a member of the federation is a member of the association. A mutual insurance association shall remain a member of the association as long as it remains a member of the federation.

30. No reinsurance contract of a member of the association is cancelled by reason only of its withdrawal or expulsion from the federation.

DIVISION VII

DIRECTORS

31. The association is administered by a board of directors consisting of not fewer than seven persons appointed by the board of directors of the federation.

The directors may administer the affairs of the association and make, on its behalf, any kind of contract permitted by law. They may pass by-laws not contrary to the law or to the charter of the association for the management of the affairs of the association. Such by-laws do not require the approval of the members.

32. No bankrupt, minor, interdicted person or person of unsound mind declared incapable by a court, even a court of another jurisdiction, may be appointed a director of the association.

33. In no case may the board of directors of the association consist, for more than one-third, of paid members of the staff of the mutual insurance associations that are members of the association, of the federation or of the guarantee fund corporation related to the federation.

34. The board of directors of the federation shall determine the number of directors of the association and their terms of office.

Notwithstanding the foregoing, in no case may the term of office of the directors of the association be less than one year nor more than three years.

35. Every director shall remain in office unless he resigns or is replaced before the expiry of his term of office by the board of directors of the federation.

36. Notwithstanding the expiry of his term of office, every director shall remain in office until he is reappointed or replaced by the board of directors of the federation.

37. Any vacancy occurring during the term of office of a director shall be filled by the board of directors of the federation for the unexpired portion of the term of office of the director.

38. The board of directors of the federation shall fix the aggregate amount of the remuneration that may be paid to the directors of the association for any specified period. No director of the association may receive any remuneration before the aggregate amount is fixed.

39. A majority of the directors are a quorum at meetings of the board of directors.

40. The decisions of the board of directors are made by a majority vote of the directors present. In the case of a tie, the chairman has a casting vote.

41. Meetings of the board of directors shall be called by the chairman or by two directors. Except where otherwise provided by the by-laws of the association, meetings shall be called on at least five days' notice.

42. Any director may in writing waive a notice calling a meeting of the board.

His mere presence at a meeting is a waiver except where he attends a meeting for the sole purpose of objecting to the holding of the meeting on the ground of irregularity in the calling.

43. Subject to the by-laws of the association, the directors may, if all agree, participate in a meeting of the board by using means enabling all participants to communicate with one another orally, particularly by telephone. They are then deemed to have attended the meeting.

44. Every resolution in writing and signed by all the directors is as valid as if it had been passed at a meeting of the board.

A duplicate of every resolution is kept with the minutes of the proceedings of the board.

45. A director present at a meeting of the board is deemed to have acquiesced in every resolution passed or in every measure taken while he is present at the meeting, except

(1) if at the meeting he requests that his dissent be recorded in the minutes;

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

46. A director absent from a meeting of the board is deemed not to have approved any resolution passed or participated in any measure taken in his absence.

47. The association shall assume the defence of its directors or other mandataries prosecuted by a third person for an act done in the exercise of their duties and shall pay the damages, if any, resulting from that act, unless they have committed a grievous offence or a personal offence separable from the exercise of their duties.

Notwithstanding the foregoing, in a penal or criminal proceeding the association shall assume only the payment of the expenses of its directors or other mandataries if they had reasonable grounds to believe that their conduct was in conformity with the law or if they have been freed or acquitted.

48. The association shall assume the expenses of its directors or other mandataries if, having prosecuted them for an act done in the exercise of their duties, it loses its case and the court so decides.

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

49. The association shall assume the obligations contemplated in sections 47 and 48 in respect of any person who, at the association's request, acted as a director of a corporation of which it is a shareholder or creditor.

50. The board of directors of the association may establish an executive committee consisting of not fewer than three directors.

In no case may the number of members of the executive committee exceed one-half of the number of directors.

51. The executive committee shall exercise the powers delegated to it by the board of directors.

52. Sections 39 to 46, adapted as required, apply to the executive committee.

53. The board of directors may replace any member of the executive committee.

DIVISION VIII

BOOKS AND ANNUAL REPORT

54. The association shall keep and maintain at its head office

(1) its by-laws and copies of the resolutions concerning the association passed by the board of directors of the federation;

(2) the minutes of the meetings of the board of directors and the executive committee, if any;

(3) a register of the surnames, given names, addresses and occupations of the directors;

(4) a register of the members of the association and their participation in the capital.

The members of the association may examine the registers and documents contemplated in subparagraph 1 of the first paragraph at the head office of the corporation during regular office hours.

55. The board of directors shall give an account of its management and submit the annual report of the association at the annual meeting of the members of the federation.

DIVISION IX

TRANSITIONAL AND FINAL PROVISIONS

56. Every mutual fire-insurance association or every mutual company of insurance against fire, lightning and wind that is a member of the *Fédération des mutuelles d'incendie inc.* or that becomes a member of the federation after the continuance of the federation as a federation of mutual insurance associations pursuant to the Act to amend the Act respecting insurance and other legislation is a member of the association as long as it remains a member of the federation.

57. Every contribution to the guarantee capital of the *Société mutuelle de réassurance du Québec* made before (*insert here the date of coming into force of this Act*) by a mutual fire-insurance association or a mutual company of insurance against fire, lightning and wind that

is a member of the association on (*insert here the date of coming into force of this Act*) constitutes its participation in the capital of the Société mutuelle de réassurance du Québec.

58. The sums making up the surplus of the Société mutuelle de réassurance du Québec on (*insert here the date of coming into force of this Act*) are deemed to form part of the undistributed surpluses of the association. They may be distributed in accordance with Division V.

In no case does this section affect the rights, obligations and acts of the association in respect of those who were members thereof before (*insert here the date of coming into force of this Act*).

59. This Act replaces the Act to incorporate the Mutual Fire Reinsurance Association of Québec (1975, chapter 110), the Act respecting the Mutual Fire Reinsurance Association of Québec (1977, chapter 104) and the Act respecting the Société mutuelle de réassurance du Québec (1979, chapter 100).

60. This Act comes into force on the date fixed by proclamation of the Government.