SIXTH SESSION

THIRTY-FIRST LEGISLATURE

NATIONAL ASSEMBLY OF QUÉBEC

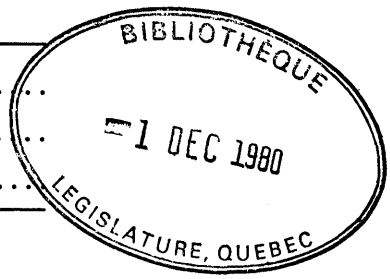
Bill 5

An Act to amend the Companies Act and the Companies and Partnerships Declaration Act

First reading .....

Second reading .....

Third reading .....



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L'ÉDITEUR OFFICIEL DU QUÉBEC

1980

EXPLANATORY NOTES

This bill is designed to complete the juridical framework of Part IA of the Companies Act by setting out rules in various matters, but mainly regarding the internal management of a company.

Thus, it deals with contracts made in the interest of a company before its incorporation, the acquisition by a company of its own shares of any class, the grant of financial assistance by the company to its shareholders, the amalgamation of companies without discretionary control by management, the declaration of dividends, the reduction of issued capital, and the criteria of solvency in such cases.

It establishes the rights and obligations as well as the responsibilities of the directors of companies governed by Part IA and proposes clauses on unanimous agreements by shareholders, as well as the terms and conditions applicable to meetings and decisions of the shareholders.

It exempts companies, in certain circumstances, from the obligation of having an auditor examine the books, and sets out new rules applicable to continuance under Part IA of the Companies Act of companies presently governed by Part I.

The bill also reworks the whole text of Part IA, making the described amendments, so as to produce a revised text.

Finally, it enables the Minister of Consumer Affairs, Cooperatives and Financial Institutions to cease to issue letters patent and supplementary letters patent under Part I of the Companies Act, except for certain categories of companies, and it authorizes the Minister responsible for the application of the Companies and Partnerships Declaration Act to change the form and content of the forms prescribed in that act.

Bill 5

An Act to amend the Companies Act and
the Companies and Partnerships Declaration Act

HER MAJESTY, with the advice and consent of the National Assembly of Québec, enacts as follows:

1. Section 1.2 of the Companies Act (R.S.Q., c. C-38), enacted by section 1 of chapter 31 of the statutes of 1979, is amended by striking out the second paragraph.

2. Sections 2.1 to 2.3 of the said act, enacted by section 1 of chapter 31 of the statutes of 1979, are replaced by the following sections:

"**2.1** Any person may examine the register referred to in section 2.

"**2.2** The Minister shall issue copies of the documents he registers and of the certificates of their registration and prepare, over his signature, for all persons requiring them, certificates relating to those objects.

"**2.3** The Director shall register, in the manner the Government determines by regulation, all the documents required to be registered under Part IA.

He shall prepare, for every person requiring it, a certificate establishing that the documents have been registered, or certified true copies of those documents."

3. Section 3 of the said act is amended by replacing the part preceding paragraph 1 by the following:

"**3.** In this Part, in any deed of incorporation, in regulations made by the Government and in by-laws made by a company, unless the context indicates otherwise,".

4. Section 3.1 of the said act, enacted by section 2 of chapter 31 of the statutes of 1979, is replaced by the following section:

"**3.1** In this Part, "deed of incorporation" means, as the case may be, the memorandum of agreement, letters patent, supplementary letters patent, the by-laws made under sections 21 and 87 and the notices contemplated in section 32 or, where the provision applies to companies governed by Part IA, the articles of these companies, together with the certificate contemplated in paragraph 2 of section 123.15, the documents contemplated in section 123.14 and the notices contemplated in sections 123.37 and 123.81."

5. Section 4 of the said act is amended

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

"(*b*) To every company incorporated under Part I of chapter 223 of the Revised Statutes, 1925, or of chapter 276 of the Revised Statutes, 1941, or of chapter 271 of the Revised Statutes, 1964;";

(2) by replacing paragraph *f* of subsection 1 by the following paragraph:

"(*f*) To every corporation incorporated without share capital under the provisions of Part III of The Québec Companies Act, 1920, or of chapter 223 of the Revised Statutes, 1925, or of chapter 276 of the Revised Statutes, 1941, or of chapter 271 of the Revised Statutes, 1964, or under a general or special act, and which, after the creation of a capital divided into shares, has obtained supplementary letters patent under Part I of The Québec Companies Act, 1920, or of chapter 223 of the Revised Statutes, 1925, or of chapter 276 of the Revised Statutes, 1941, or of chapter 271 of the Revised Statutes, 1964;";

(3) by replacing paragraph *g* of subsection 1 by the following paragraph:

"(*g*) To every corporation incorporated without share capital under the provisions of Part III of The Québec Companies Act, 1920, of chapter 223 of the Revised Statutes, 1925, or of chapter 276 of the Revised Statutes, 1941, or of chapter 271 of the Revised Statutes, 1964, or of this act, or under a general or special act, and which, after the creation of a capital divided into shares, obtains supplementary letters patent under the provisions of this Part."

6. Section 16 of the said act is replaced by the following section:

"**16.** The Minister may in any letters patent issued under this Part to any existing company name the first directors of the new company, and the letters patent may be issued to the new company by the corporate name of the old company or by another name."

7. Section 18 of the said act is amended

(1) by replacing subsection 1 by the following subsection:

"**18.**(1) Only the companies to which, as expressly determined by another act, this Part applies may amalgamate under the rules provided in this division and enter into all contracts and agreements necessary to such amalgamation; the amalgamation of the other companies to which this Part applies is governed by Chapter XVII of Part IA.";

(2) by replacing subsection 4 by the following subsection:

"(4) To be adopted, the joint agreement must be voted by at least two-thirds in value of the shares represented by the shareholders present at the meeting; the adoption shall be certified on the agreement by the secretary of each of the companies under the corporate seal thereof."

8. Section 23 of the said act, amended by section 11 of chapter 31 of the statutes of 1979, is again amended by replacing the first paragraph of subsection 5 by the following paragraph:

"(5) The regulations of the Government, except those respecting the fees to be paid, shall be made only on prior notice of thirty days publied in the *Gazette officielle du Québec* reproducing the text thereof."

9. Section 46 of the said act is amended

(1) by replacing the first paragraph by the following paragraph:

"**46.** Shares of a company are moveable property and are transferable in the manner and on the conditions prescribed by this Part, the deed of incorporation or the by-laws of the company.";

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

"(*a*) such restrictions are prescribed in the deed of incorporation; and".

10. Section 88 of the said act, amended by section 8 of chapter 31 of the statutes of 1979, is replaced by the following section:

"**88.** Directors of the company shall be elected by the shareholders, at such times, in such manner and for such term, not exceeding two years, as the deed of incorporation or, as the case may be, the by-laws of the company prescribe."

11. Section 91 of the said act, amended by section 8 of chapter 31 of the statutes of 1979, is again amended by replacing paragraph *e* of subsection 2 by the following paragraph:

"(*e*) The time and the place for the holding of the annual meetings of the company, the calling of meetings, regular and special, of the board of directors and of the company, the quorum, the requirements as to proxies not otherwise prescribed by this Part, and the procedure in all things at such meetings;".

12. The said act is amended by inserting, after section 123, the following heading and section:

"DIVISION XXXII

"FINAL PROVISIONS

"**123.0.1** The Minister shall cease to grant letters patent from such date as he may determine, except those he may grant under sections 14 and 17 or upon an application in respect of a company to which another act expressly declares Part I applicable.

He shall also cease to grant supplementary letters patent from such date as he may determine, except those he may grant under section 19 or upon an application made in respect of a company to which another act expressly declares Part I applicable.

The Minister shall publish a notice of the cessation in the *Gazette officielle du Québec* at least 30 days before the determined date, in the case of letters patent, and at least 180 days before the determined date, in the case of supplementary letters patent."

13. Part IA of the said act, enacted by section 27 of chapter 31 of the statutes of 1979, is replaced by the following part:

"PART IA

"COMPANIES INCORPORATED BY THE FILING OF ARTICLES

"CHAPTER I

"INTERPRETATION

"**123.1** In this Part, unless the context indicates otherwise,

"corporation" means a legally constituted corporation, regardless of the manner or place of its incorporation;

"parent corporation" means a corporation that controls another corporation;

"subsidiary" means a corporation controlled by another corporation.

"**123.2** A corporation controls another corporation if it holds, otherwise than as a creditor, shares giving it over 50 per cent of the votes enabling it to elect the majority of the directors of the other corporation.

"**123.3** A company is deemed to have made a distribution of securities to the public where the securities issued by it were

(1) listed on a stock exchange or with a regulatory body for control of trade in such securities, or

(2) described in a document filed prior to their issue, such as a prospectus or a statement of material facts.

"CHAPTER II

"SCOPE

"**123.4** This Part applies to every company incorporated, continued or resulting from an amalgamation under this Part.

"**123.5** Companies whose objects come under the legislative authority of Québec, except companies incorporated to carry on the trust business or to build and operate railroads, or which, under another act, may be incorporated only under Part I, may be incorporated under this Part.

"**123.6** Part I applies, *mutatis mutandis*, to the companies governed by this Part, except paragraphs 1 and 2 of section 3, sections 4 and 6 to 12, subsections 1 and 2 of section 13, sections 14 to 25, 30 to 32, 34.1, 36 to 40 and 44, subsections 1, 8, 9 and 13 of section 48, the second paragraph of subsection 2 of section 49, sections 55 to 65, 79, 80, 83 to 87, 90, 94, 95 and 104 to 106, paragraph *d* of section 107, section 108, subsection 1 of section 113 and sections 120 and 123.0.1.

However, sections 77 and 92 must be read as if the expression "by the vote of at least two-thirds in value of the shares represented by the shareholders present" were replaced by the expression "by two-thirds of the votes given by the shareholders".

"CHAPTER III

"REPRESENTATION OF THE COMPANY BEFORE ITS INCORPORATION

"**123.7** A company is bound by any deed performed in its interest before its incorporation provided it ratifies the deed within 90 days after its incorporation.

The ratification transfers to the company the rights and obligations of the party who performed the deed, but does not of itself effect a novation; moreover, the person who performed the deed has the same rights and is bound by the same obligations as a mandatary of the company.

"**123.8** The person who performs a deed in the interest of a company before its incorporation is bound by that deed unless the contract entered into for the company includes a clause excluding or limiting his liability and a statement to the effect that the company might not be incorporated or might not assume its obligations.

"CHAPTER IV

"INCORPORATION

"**123.9** A company may be incorporated by one or more incorporators.

"**123.10** Any person may be an incorporator, except

(1) a person who is under eighteen years of age;

(2) an interdicted person;

(3) a person of unsound mind, who has been declared incapable by a court in another province or in another country;

(4) an undischarged bankrupt;

(5) a liquidating corporation.

"**123.11** The articles of the company must be filed with the Director in two copies signed by each incorporator.

"**123.12** The articles set out

(1) the corporate name of the company;

(2) the judicial district in which it establishes its head office in Québec;

(3) the surname, given name, address and occupation of each

incorporator or, as the case may be, the corporate name and address of the head office of the incorporator corporation and the act under which it is incorporated;

(4) the amount to which its share capital is limited, where such is the case;

(5) the par value of its shares, where such is the case;

(6) in the case of a plurality of classes of shares, the rights, privileges, conditions and restrictions attaching to each class;

(7) if a class of shares is issued in series, the authority given to the directors to determine, before issue, the number and the designation of the shares of each series and the rights, privileges, conditions and restrictions attaching to the shares of each series;

(8) the restrictions, if any, imposed on the transfer of its shares;

(9) the precise number or the minimum and maximum number of directors; and

(10) the limits, if any, imposed on its activities.

"**123.13** The articles may set out any other provision permitted by law to be set out in the by-laws, in addition to the provisions permitted by this act to be set out.

"**123.14** The following documents must accompany the articles:

(1) a list of the directors of the company indicating the surname, given name, address and occupation of each;

(2) a notice of the address of the head office of the company, within the limits of the judicial district indicated in the articles;

(3) the other documents required by regulation of the Government.

"**123.15** The Director must, upon receiving the articles, the documents accompanying them and the fees prescribed by regulation of the Government,

(1) endorse on each duplicate of the articles the word "Filed" and the date of the filing;

(2) issue in duplicate the appropriate certificate and attach to each certificate one copy of the articles;

(3) register a copy of the certificate and attached articles and documents;

(4) send to the company or its representative a copy of the certificate and articles;

(5) publish a notice of the issue of the certificate in the *Gazette officielle du Québec*.

"**123.16** From the date indicated in the certificate of incorporation, the company is a corporation within the meaning of the Civil Code.

"CHAPTER V

"ORGANIZATION MEETING

"**123.17** After the company is incorporated, the directors shall hold an organization meeting at which they must issue at least one share.

"**123.18** Any incorporator or director may call an organization meeting by notifying each director, at least ten days in advance, of the date, time and place of the meeting.

"**123.19** At the organization meeting, the directors may

(1) make general by-laws;

(2) appoint officers;

(3) adopt all measures respecting the banking arrangements of the company.

"**123.20** A majority of the directors is a quorum of the organization meeting.

"CHAPTER VI

"CORPORATE NAME

"**123.21** The corporate name of a company must be in conformity with the regulations of the Government and not be reserved for a third person under this act.

"**123.22** The corporate name of a company must include an expression indicating, in accordance with the regulations of the Government, that it is an undertaking with limited liability.

"**123.23** At the request of the incorporators or the company, the Director shall assign a designating number to the company as its corporate name.

"**123.24** The Director may order a company to which a designating number has been assigned to replace it by a corporate name.

"**123.25** The Director may also order a company to change its corporate name if it is not in conformity with the laws and regulations in force when it is granted.

"**123.26** If a company fails to comply with an order of the Director within sixty days of its service, the Director may revoke the designating number of the company or, where such is the case, its corporate name and assign to it *ex officio* a corporate name.

The corporate name assigned by the Director is deemed to have been requested by the company.

"**123.27** Where the Director assigns a corporate name to a company *ex officio*, he shall deliver in duplicate a certificate establishing the change and publish a notice of the change in the *Gazette officielle du Québec*.

The Director shall register one duplicate of the certificate and send the other duplicate to the company or its representative.

The change has effect from the date indicated in the certificate.

"**123.28** The Director may reserve a corporate name for such period as he may determine upon the request of any person.

"CHAPTER VII

"POWERS OF A COMPANY

"**123.29** A company has the full enjoyment of civil rights in Québec and outside Québec, except respecting what is proper to the human person and subject to the laws applicable in that respect.

"**123.30** Third persons are not presumed to have knowledge of the contents of a document concerning a company by reason only that the document has been registered or is available for inspection at the offices of the company.

"**123.31** Third persons may presume that

(1) the company exercises its powers within the scope of its articles and by-laws and the unanimous agreement of the shareholders or the statement referred to in section 123.91;

(2) the documents sent to the Director and registered under this Part contain true information;

(3) the directors and officers of the company validly hold office and lawfully exercise the powers arising therefrom;

(4) the documents of the company issued by one of its directors, officers or other mandataries are valid.

"**123.32** Sections 123.30 and 123.31 do not apply to third persons in bad faith or to persons who ought to have knowledge to the contrary by virtue of their position with or relationship to the company.

"**123.33** In no case may third persons invoke against the company the restrictions imposed on its operations by its articles.

"CHAPTER VIII

"HEAD OFFICE

"**123.34** A company shall at all times have a head office in Québec, in the judicial district specified in its articles.

Its domicile is at its head office.

"**123.35** A company may change the address of its head office within the limits of the judicial district specified in its articles by giving notice of the change to the Director.

The change of address has effect from the receipt of the notice by the Director.

"**123.36** A company may transfer its head office to another judicial district by way of amendment to its articles.

A notice respecting the address of a head office must accompany any amendment to the articles transferring the head office; in such a case, the change of address has effect from the date of the amendment to the articles.

"**123.37** The Director shall register every notice respecting the change of address of a head office.

"CHAPTER IX

"SHARE CAPITAL

"DIVISION I

"GENERAL PROVISIONS

"**123.38** A company has an unlimited share capital and its shares are without par value, except where otherwise provided in its articles.

"**123.39** The share capital of a company may consist of shares with par value or shares without par value, or both.

"**123.40** The share capital of a company must include shares giving the right

(1) to vote at all meetings of the shareholders,

(2) to receive any declared dividend, and

(3) to share the residual assets at the winding-up of the company.

The rights need not be attached to shares of the same class.

"**123.41** Except where provided to the contrary in the articles, the rights mentioned in section 123.40 attach to every share.

If a right under this section is attached to no issued share, every restriction to that right has no effect until a share is issued to which the right affected by that restriction is attached.

"**123.42** When a company acquires a share of its share capital, the share is cancelled.

However, the cancelled share again becomes an unissued share if the articles limit the number of authorized shares, except where provided to the contrary in the articles.

"DIVISION II

"HOLDING SHARES

"**123.43** No company may hold its own shares or those of its parent corporation, nor allow its shares to be acquired by its subsidiary.

"**123.44** A company may, however, hold its own shares or those of its parent corporation as mandatary, pledgee, or adminis-

trator of the property of another person.

No voting rights attached to the shares may be exercised except at the demand of the owner and on such terms and conditions as he may fix.

"**123.45** A company that becomes the subsidiary of a corporation must sell, within five years after the change, the shares it holds of its parent corporation.

In no case may the company exercise the voting rights attached to the shares while it continues to hold them.

"**123.46** Should the company fail to sell the shares of its parent corporation within the prescribed time, the court, on the motion of any person concerned, may order the company to sell the shares or take any other measure it deems expedient.

"DIVISION III

"ACCOUNT OF ISSUED AND PAID-UP SHARE CAPITAL

"**123.47** A company shall keep an account of issued and paid-up share capital.

The company shall subdivide the account by class or series of shares.

"**123.48** The company shall pay into the issued and paid-up share capital account the amounts received in consideration of the shares it issues, but not more than the amount of the par value in the case of a share having a par value.

"**123.49** A company that issues shares without par value may pay into the issued and paid-up share capital account the whole or a part of the consideration received, if the shares are issued

(1) in exchange for property of a person with whom, at the time of the exchange, it is not dealing at arm's length within the meaning of the Taxation Act (R.S.Q., c. I-3);

(2) in exchange for property of a corporation with which, at the time of the exchange or immediately afterwards, it is not dealing at arm's length within the meaning of the said act; or

(3) to shareholders of an amalgamating company that receives the shares in addition to or instead of securities of the company resulting from the amalgamation in accordance with section 123.122.

"**123.50** A company changes its issued and paid-up share capital account every time it acquires shares of its issued share capital or reduces or increases the amount of its issued and paid-up share capital.

"**123.51** A company that acquires shares or fractions of shares it has issued shall reduce its issued and paid-up share capital account

(1) by the product obtained by multiplying the par value of the shares by the number of shares or fractions of shares acquired, or

(2) by the product obtained by multiplying, in the case of shares without par value, the amount being the average of the amounts received by or credited to the account, as the case may be, for the shares, at the time of issue of the shares of the class or series concerned, by the number of shares or fractions of shares acquired.

"CHAPTER X

"RULES RESPECTING THE MAINTAINING OF THE SHARE CAPITAL

"DIVISION I

"ACQUISITION OF SHARES

"**123.52** A company may acquire fully paid-up shares it has issued to make up for the debt of any of its shareholders, except where there is reasonable ground to believe that, as a consequence,

(1) it could not discharge its liabilities when due; or

(2) the book value of its assets would be less than the aggregate of its liabilities and the sums necessary for the payment, in case of redemption or winding-up, of the shares payable by preference or concurrently.

"**123.53** A company may acquire fully paid-up shares it has issued and that, under its articles, it may redeem unilaterally at the price determined in its articles or computed in accordance with the method provided in the articles.

In no case, however, may a company acquire the shares where there is reasonable ground to believe that, as a consequence,

(1) it could not discharge its liabilities when due; or

(2) the book value of its assets would be less than the aggregate of its liabilities and the sums necessary for the payment, in

case of redemption or winding-up, of the shares payable by preference or concurrently.

"**123.54** A company may acquire fully paid-up shares it has issued and that, under its articles, it must redeem on demand of a shareholder or on a fixed date or a date that may be fixed, for a price determined in its articles or computed in accordance with the method provided in the articles.

In no case, however, may a company pay for the shares where there is reasonable ground to believe that, as a consequence,

(1) it could not discharge its liabilities when due, or

(2) the book value of its assets would be less than the aggregate of its liabilities and the sums necessary for the payment, in case of redemption or winding-up, of the shares payable by preference or concurrently.

"**123.55** A company may acquire fully paid-up shares it has issued to avoid, in whole or in part, the splitting of its shares or to carry out an unassignable contract under which it has an option to purchase or must purchase shares owned by one of its directors, officers or employees.

In no case, however, may a company pay for the shares where there is reasonable ground to believe that, as a consequence,

(1) it could not discharge its liabilities when due, or

(2) the book value of its assets would be less than the aggregate of its liabilities and the sums necessary for the payment, in case of redemption or winding-up, of the shares payable by preference.

"**123.56** In all other cases, a company may acquire fully paid-up shares it has issued, but in no case may it pay for the shares where there is reasonable ground to believe that, as a consequence,

(1) it could not discharge its liabilities when due; or

(2) the book value of its assets would be less than the sum of its liabilities and its issued and paid-up share capital account.

"**123.57** In no case may a company be required to pay for a share of its share capital that it has acquired if it shows that by paying for the share at its book value it would contravene sections 123.54 to 123.56.

The person who held the share then becomes a creditor of the company and is entitled to be paid as soon as the company may

legally do so or, in the case of a winding-up, to be collocated by preference to the shareholders of the class of the shares he held, but after the creditors.

"**123.58** Directors who authorize the acquisition of shares or payment therefor in contravention of this division are jointly and severally liable for the sums or property not recovered.

"**123.59** No acquisition of shares or payment therefor contrary to this division may be cancelled, in the case of a shareholder in good faith, except where the company is still in a condition described in sections 123.52 to 123.56.

"**123.60** A company may accept any gift or legacy of shares of its share capital or of the share capital of its parent corporation if the shares are fully paid-up.

"DIVISION II

"INCREASES AND REDUCTIONS OF THE SHARE CAPITAL

"**123.61** A company may increase the amount of its issued and paid-up share capital only if a by-law to that effect is adopted by the company, except where the increase is a result of the payment of shares.

"**123.62** A company may also reduce the amount of its issued share capital, in particular to limit or remove the shareholder's obligation to pay for the shares issued, or to reimburse any portion of the share capital exceeding its needs to the shareholders, if a by-law to that effect is adopted by the company.

"**123.63** A company may in no case reduce the amount of its issued share capital if there is reasonable ground to believe that, as a consequence,

(1) it could not discharge its liabilities when due, or

(2) the book value of its assets would, after the reduction, be less than the sum of its liabilities and its issued and paid-up share capital account.

"**123.64** Directors who authorize a reduction of share capital in contravention of section 123.63 are jointly and severally liable for the sums or property accounting for the unlawful reduction.

"**123.65** The by-law to increase or to reduce the share capital must be confirmed by the vote of two-thirds of the shareholders present at a special general meeting called for that purpose.

"DIVISION III

"FINANCIAL ASSISTANCE

"**123.66** A company may in no case grant a loan, give security or furnish any other form of financial assistance to a shareholder, a shareholder of its parent corporation or to a person for the purchase of its shares if there is reasonable ground to believe that, as a consequence,

(1) it could not discharge its liabilities when due, or

(2) the book value of its assets would be less than the sum of its liabilities and its issued and paid-up share capital account.

"**123.67** The company may, however, notwithstanding the rules provided in paragraphs 1 and 2 of section 123.66, grant financial assistance to

(1) a shareholder or a shareholder of the parent corporation within the framework of its ordinary activities if the lending of money is part of its activities or as an advance for expenses incurred on its behalf; or

(2) a shareholder who is an employee or an employee of the parent corporation within the framework of a share purchasing program.

"**123.68** Financial assistance granted in contravention of section 123.66 does not entail the nullity of the contract granting the assistance in respect of the company and the lender in good faith.

"**123.69** Directors who authorize the granting of financial assistance in contravention of section 123.66 are jointly and severally liable for the restitution to the company of the sums not recovered.

"DIVISION IV

"PAYMENT OF DIVIDENDS

"**123.70** In no case may a company pay or declare a dividend if there is reasonable ground to believe that, as a consequence,

(1) it could not discharge its liabilities when due, or

(2) the book value of its assets would be less than the sum of its liabilities and its issued and paid-up share capital account.

"**123.71** Directors who authorize the payment of a dividend

in contravention of section 123.70 are jointly and severally liable for the sums or property not recovered.

"CHAPTER XI

"DIRECTORS

"**123.72** The affairs of a company shall be managed by a board of one or more directors.

However, the affairs of a company that has made a distribution to the public of its securities shall be managed by a board of not fewer than three directors.

"**123.73** Any natural person may be a director, except

(1) a person who is under eighteen years of age;

(2) an interdicted person;

(3) a person of unsound mind, who has been declared incapable by a court in another province or in another country;

(4) an undischarged bankrupt.

"**123.74** Unless otherwise provided in the articles, it is not necessary to be a shareholder in order to be a director of a company.

"**123.75** Unless otherwise provided in the articles or by-laws or by unanimous agreement of the shareholders or in a statement contemplated in section 123.91, the directors may establish their remuneration and that of the officers and other representatives of the company notwithstanding subsection 1 of section 91.

"**123.76** A director remains in office until he is re-elected or replaced.

A director may, by giving notice to that effect, resign his duties.

"**123.77** Unless otherwise provided in the articles, only the shareholders who are entitled to elect a director may remove him, at a special meeting called for that purpose.

"**123.78** A vacancy created by the removal of a director may be filled at the meeting at which the removal took place or, if not so filled, in accordance with paragraph 3 of section 89.

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

"**123.79** A director who is to be removed must be informed of the place, date and time of the meeting within the same period as that provided for calling the meeting.

He may attend the meeting and be heard or, in a written statement read by the chairman of the meeting, give the reasons why he opposes the resolution proposing his removal.

"**123.80** A decrease in the number of directors does not terminate the term of office of the directors then in office.

"**123.81** Within fifteen days after a change is made to the composition of the board of directors, the company must give a notice containing the information contemplated in paragraph 1 of section 123.14 to the Director, and he shall register it.

On the motion of any person concerned or the Director, the court may require a company to comply with this section, and take any other appropriate measure that it thinks fit.

"**123.82** Where there is only one director, he shall exercise the rights and assume the obligations of a board of directors.

He may hold the offices of chairman, secretary or any other officer of the company at the same time.

"**123.83** Directors, officers and other representatives of a company are considered to be mandataries of the company.

"**123.84** A director is presumed to have acted with appropriate skill and all the care of a prudent administrator if he relies on the opinion or report of an expert to take a decision.

"**123.85** A director present at a meeting of the board or executive committee is deemed to have approved any resolution or participated in any measure taken at that meeting, unless

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

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

"**123.86** A director absent from a meeting of the board or of the executive committee is presumed not to have approved a resolution or participated in a measure taken at that meeting.

"**123.87** A company shall assume the defence of its mandatary prosecuted by a third person for an act done in the exercise of his duties and shall pay damages, if any, resulting from that act, unless the mandatary has committed a grievous offence or a personal offence separable from the exercise of his duties.

However, in a penal or criminal proceeding the company shall assume only the payment of the fine and the expenses of its mandatary if he had reasonable grounds to believe that his conduct was in conformity with the law, or the payment of the expenses of its mandatary if he has been freed or acquitted.

"**123.88** A company shall assume the expenses of its mandatary if, having prosecuted him for an act done in the exercise of his duties, 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.

"**123.89** A company shall assume the obligations contemplated in sections 123.87 and 123.88 in respect of any person who acted at its request as director for a corporation of which it is a shareholder or creditor.

"CHAPTER XII

"SHAREHOLDERS

"DIVISION I

"GENERAL PROVISION

"**123.90** A shareholder holding all the voting shares holds the powers of the shareholders' meeting by himself.

"DIVISION II

"UNANIMOUS AGREEMENT OF THE SHAREHOLDERS

"**123.91** The shareholders, if all of them consent thereto and make a written agreement to that effect, may restrict the powers of the directors.

The sole shareholder may also restrict the powers of the directors if he makes a written statement to that effect.

"**123.92** The shareholders or the sole shareholder, as the case may be, shall then manage the affairs of the company as if they, or he, were its directors; they, or he, shall exercise the rights

that have been withdrawn from the directors and assume the obligations from which the directors have been discharged.

The shareholders may, however, govern the exercise of their voting rights.

"**123.93** A person who becomes a shareholder while a unanimous agreement of the shareholders is in force is deemed to be a party to the agreement.

However, the person may, within six months after the contract by virtue of which he became a shareholder, have it annulled if, at the time it was entered into, he was not aware of the agreement.

The person is presumed not to have been aware of the unanimous agreement of the shareholders if the share certificates held by him do not mention the existence of such an agreement.

"CHAPTER XIII

"SHAREHOLDERS' MEETING

"**123.94** A shareholder may waive a notice of a shareholders' meeting.

His sole attendance at a meeting is a waiver except where he attends a meeting for the express purpose of objecting to the holding of the meeting on the ground that the manner of calling it was irregular.

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

(1) if the by-laws of the company permit it, or,

(2) failing provisions in the by-laws in that regard, if all the shareholders entitled to participate and vote at the meeting consent thereto.

"**123.96** 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 the shareholders' meeting.

"CHAPTER XIV

"AUDITORS

"123.97 The shareholders shall at their first meeting and at every subsequent annual meeting appoint an auditor whose term of office expires at the next annual meeting.

"123.98 The shareholders of a company that has not made a distribution to the public of its securities may decide, by resolution, not to appoint an auditor.

"123.99 The shareholders of a company that has made a distribution to the public of its securities and that has redeemed or reimbursed them may also decide, by resolution, not to appoint an auditor.

"123.100 A resolution for the purpose of not appointing an auditor must receive the consent of all the shareholders, including those who otherwise are not qualified to vote.

The resolution is valid only until the next annual meeting.

"CHAPTER XV

"AMENDMENTS TO ARTICLES AND SHARE CAPITAL

"DIVISION I

"GENERAL PROVISIONS

"123.101 To amend the articles of a company, the directors must pass a by-law.

"123.102 The directors, before issuing shares in series that the articles authorize them to issue, must amend the articles in order to enter therein, as necessary, the number and description and the rights, privileges, conditions and restrictions attaching to such shares.

"123.103 Except in the case provided for in section 123.102, the by-law amending the articles of a company must be confirmed by two-thirds of the votes cast by the shareholders at a special general meeting called for that purpose.

The by-law must authorize one of the directors to sign the articles of amendment.

The directors may, before the appropriate certificate is prepared, annul the by-law if they are authorized to do so by the by-law.

"**123.104** Two copies of the articles of amendment signed by one of the directors must be filed with the Director.

"**123.105** Upon receipt of the articles of amendment, the accompanying documents, if any, and the fees prescribed by regulation of the Government, the Director shall prepare a certificate attesting the amendment according to the procedure in section 123.15.

"**123.106** The amendment becomes effective from the date shown on the certificate attesting it.

"DIVISION II

"COMPROMISE OR ARRANGEMENT

"**123.107** The articles are amended to confirm a compromise or arrangement approved by the shareholders and sanctioned by the judge in accordance with section 49, without its being necessary to follow the procedure in sections 123.103 and 123.104.

The intervention of the judge is not required if all the shareholders approve the compromise or the arrangement, but the procedure in sections 123.103 and 123.104 must then be followed.

"**123.108** Two copies, signed by one of the directors, of the articles confirming a compromise or arrangement shall be filed with the Director.

"**123.109** Upon receipt of the articles confirming a compromise or arrangement, or of a copy of the judgment and of the fees prescribed by regulation of the Government, the Director shall prepare a certificate attesting the amendment in accordance with the procedure in section 123.15.

"**123.110** The compromise or arrangement is binding on the company and the shareholders or a class of the shareholders, as the case may be, from the date shown on the certificate attesting it.

"CHAPTER XVI

"BOOK OF THE COMPANY

"**123.111** Every company shall keep a book containing

(1) its articles, its by-laws and the unanimous agreement of the shareholders or the statement contemplated in section 123.91 and the latest notice of address of its head office and the latest list of its directors;

(2) the minutes of proceedings of meetings and the resolutions of shareholders;

(3) the surname and given name of each of its directors with an indication, for each term of office, of the date on which it begins and the date on which it ends;

(4) the information contemplated in section 123.113 in respect of shares.

"**123.112** The book of the company also contains the minutes of proceedings of the meetings and resolutions of the board of directors and the executive committee.

"**123.113** The book of the company contains the following information in respect of each share:

(1) the surnames alphabetically arranged, and the last known address of the persons who hold or have held shares, where such is the case;

(2) the number of shares held by those persons;

(3) the date and details of the issue and transfer of each share;

(4) the amount due on each share, if any.

"**123.114** Every shareholder may consult the book containing the particulars contemplated in section 123.111.

A shareholder may also obtain, free of charge, a copy of the articles and by-laws and a copy of a unanimous agreement of the shareholders.

"CHAPTER XVII

"AMALGAMATION

"DIVISION I

"GENERAL PROVISIONS

"**123.115** Companies governed by this Part or Part I, excluding those to which another act expressly declares Part I applicable, may amalgamate.

Amalgamation effects continuance without its being necessary for a company to continue in accordance with Chapter XVIII.

"**123.116** In no case may companies amalgamate, however, if there is reasonable ground to believe that, as a consequence,

(1) the company resulting from the amalgamation could not discharge its liabilities when due; or

(2) the book value of the assets of the company resulting from the amalgamation would be less than the sum of its liabilities and its issued and paid-up share capital account.

"**123.117** The articles of amalgamation contain, in addition to the other provisions authorized by this act to be included, the provisions contemplated in paragraphs 1, 3, 4 and 5 of section 123.122 or in paragraph 2 of section 123.129 and in paragraph 2 of section 123.130, as the case may be.

The articles must be accompanied with the documents contemplated in section 123.14.

"**123.118** Two copies of the articles of amalgamation, signed by one of the directors of each of the amalgamating companies, are filed with the Director.

"**123.119** Upon receipt of the articles of amalgamation, the accompanying documents and the fees prescribed by regulation of the Government, the Director shall prepare a certificate attesting the amalgamation according to the procedure in section 123.15.

"**123.120** From the date shown on the certificate of amalgamation, the companies that have amalgamated continue in existence as one and the same company.

The resulting company has the rights of the amalgamated companies and assumes their obligations.

"**123.121** The directors of the amalgamated companies who authorize the amalgamation in contravention of section 123.116 are jointly and severally liable to pay to the company resulting from the amalgamation an amount equal to the amount by which the sum of its liabilities and its issued and paid-up share capital account exceeds the book value of its assets.

"DIVISION II

"ORDINARY AMALGAMATION

"**123.122** Companies that propose to amalgamate shall enter into an agreement that, in addition to the terms and conditions of amalgamation, indicates

(1) the provisions contemplated in section 123.12, with the exception of paragraph 3 and, where applicable, in section 123.13;

(2) the surname, given name, address and occupation of each of the future directors of the company resulting from the amalgamation;

(3) the terms and conditions of converting the shares of each company into shares or other securities of the company resulting from the amalgamation;

(4) if shares of one of those companies are not converted into shares of the company resulting from the amalgamation, the amount of money or any other form of payment that the holders of those shares must receive in addition to or instead of the shares of the company resulting from the amalgamation;

(5) the amount of money or any other form of payment that must take the place of fractions of shares of the company resulting from the amalgamation;

(6) the by-laws of the company resulting from the amalgamation, those it proposes to adopt or those it designates;

(7) the provisions necessary to complete the amalgamation and to ensure the organization and management of the company resulting from the amalgamation, where such is the case.

"**123.123** An agreement must also provide that any share of one of the amalgamating companies that is the property of another amalgamating company is cancelled at the time of the amalgamation without reimbursement of the capital represented by the share. No such shares may be converted into a share of the company resulting from the amalgamation.

"**123.124** The directors of each of the amalgamating companies shall adopt a by-law in order to approve the agreement and authorize one among them to sign the articles of amalgamation.

"**123.125** The by-law of amalgamation is submitted to the shareholders of each of the amalgamating companies at a special general meeting called for that purpose.

The notice of the meeting is accompanied with a copy or a summary of the agreement of amalgamation.

"**123.126** The by-law must be confirmed by two-thirds of the votes cast by the shareholders at the special general meeting.

For the purposes of the meeting, every share is a voting share with respect to the by-law of amalgamation.

"**123.127** The shareholders of each class shall vote separately on the specific amendments to their class when the by-law of amalgamation affects the rights, privileges, conditions or restrictions of shares of a class or changes them in relation to another class.

In similar circumstances, the shareholders of each series shall also vote separately on the specific amendments to their series.

Those amendments must be confirmed by two-thirds of the votes cast by those shareholders at a special meeting called for that purpose.

"**123.128** Within ten days of the confirmation of the by-law of amalgamation, the board of directors of a company may annul the by-law of amalgamation if the by-law authorizes it to do so.

"DIVISION III

"SIMPLIFIED VERTICAL AND HORIZONTAL AMALGAMATION

"**123.129** A company and a subsidiary of which it holds all the shares may, if their shares are without par value, amalgamate without conforming to Division II, if their board of directors adopts a resolution providing that

(1) the shares of the subsidiary will be cancelled without reimbursement of the capital represented by these shares;

(2) the articles of amalgamation will be identical to the deed of incorporation of the parent company, taking account, however, of this Part and the regulations of the Government;

(3) the company resulting from the amalgamation will not issue shares or other titles of indebtedness at the time of amalgamation;

(4) the directors of the company resulting from the amalgamation will be those designated by the parent company and the general by-laws of the company resulting from the amalgamation will be those of the parent company or those that it proposes.

"**123.130** Subsidiaries all of whose shares are held by the same corporation may, if their shares are without par value, amalgamate without conforming to Division II if their board of directors adopts a resolution providing that

(1) the shares of the subsidiaries, except those of one of them, will be cancelled, without reimbursement of the capital represented by these shares;

(2) the articles of amalgamation will be identical to the deed of incorporation of the subsidiary whose shares are not cancelled, taking account, however, of this Part and the regulations of the Government;

(3) the issued and paid-up share capital account of the amalgamated subsidiaries will be added, to the extent that the subsidiaries determine, to the account of the subsidiary whose shares are not cancelled.

"CHAPTER XVIII

"CONTINUANCE

"**123.131** This chapter applies to companies governed by Part I, excluding those to which another act expressly declares Part I applicable.

"**123.132** The directors of a company may make a by-law to continue under this Part.

"**123.133** The by-law contemplating the continuance of the company must be confirmed by two-thirds of the votes cast by the shareholders at a special general meeting called for that purpose.

The by-law must authorize one of the directors to sign the articles of continuance.

The directors may, before the certificate is prepared, cancel the by-law if it authorizes them to do so.

"**123.134** A company may change its corporate name, reduce its issued share capital in accordance with section 123.63 or make any other amendment to its deed of incorporation that a company governed by this Part may make to its articles.

However, the company may not make any amendment that affects the rights, conditions, privileges or restrictions attaching to issued shares without obtaining the consent of all the shareholders, including those not otherwise eligible to vote; however, it is not necessary to obtain their consent to increase the share capital or the number of shares of the company.

"**123.135** Two copies, signed by one of the directors, of the articles of continuance shall be filed with the Director.

"**123.136** Upon receipt of the articles of continuance, of the accompanying documents and of the fees prescribed by regulation of the Government, the Director shall prepare a certificate attesting the continuance of the company in accordance with the proce-

"**123.168** The right of action derived from sections 123.58, 123.64, 123.69, 123.71 and 123.121 is prescribed by two years from the deed impugned.

"**123.169** The Government may, by regulation,

(1) establish the fees to be paid and fix the amount thereof, in respect of the filing, examination or copying of any document, or in respect of any action that the Director is authorized or required to take under this Part;

(2) determine the form and content of the articles, certificates and other documents required to be registered under this Part;

(3) determine the standards, terms and requirements regarding the corporate names or any other name a company may use to identify itself;

(4) determine the nature of the documents which must be filed with the Director and the number of copies of each;

(5) determine the manner of registering the documents required to be registered under this Part;

(6) make any other provision for the carrying out of this Part.

"**123.170** Instead of making regulations applicable to this Part, the Government may declare the regulations made under sections 23 to 25 applicable, with or without amendment.

The regulations of the Government, other than those contemplated in paragraph 5 of section 123.169 and those establishing or amending fees to be paid, shall be made only on prior notice of thirty days published in the *Gazette officielle du Québec* reproducing the text thereof.

These regulations come into force on the date of the publication in the *Gazette officielle du Québec* of a notice indicating that they have been made by the Government or, if amended by it, of their final text, or on any later date fixed in the notice or in the final text.

"**123.171** The Director may prescribe the forms, including the forms of notices, required for the application of this Part.

These forms come into force on the date of their publication in the *Gazette officielle du Québec* or on a later date indicated in the notice accompanying the publication."

14. Section 31.2 of the said act, enacted by section 19 of chapter 31 of the statutes of 1979 is renumbered 34.1 as if that section had been revised under the Act respecting the consolidation of the statutes and regulations (R.S.Q., c. R-3).

15. Section 217 of the said act is amended by replacing paragraphs 2 and 3 by the following paragraphs:

"(2) Every corporation incorporated under Part III of The Québec Companies Act, 1920, or of chapter 223 of the Revised Statutes, 1925 or of chapter 276 of the Revised Statutes, 1941, or of chapter 271 of the Revised Statutes, 1964;

"(3) Every corporation existing under any special or general act, which has obtained letters patent under the provisions of section 6088 of the Revised Statutes, 1909, as contained in The Québec Companies Act, 1920, of section 201 of chapter 223 of the Revised Statutes, 1925, or of section 217 of chapter 276 of the Revised Statutes, 1941, or of section 217 of chapter 271 of the Revised Statutes, 1964;".

16. Section 224 of the said act is amended

(1) by replacing, in the last line, the word and figure "and 123" by the following word and figures: ", 123 and 123.0.1";

(2) by adding the following paragraph:

"Subsection 1 of section 18 must, however, be read as follows:

"(1) Corporations to which this Part applies may, in the manner herein provided, amalgamate and enter into all contracts and agreements necessary to such amalgamation." "

17. The Companies and Partnerships Declaration Act (R.S.Q., c. D-1) is amended by inserting after section 20 the following section:

"DIVISION VI

"FORMS

"**21.** The Minister responsible for the application of this act may change the form and tenor of the forms provided for in this act.

The forms so changed are published in the *Gazette officielle du Québec* and come into force on the date of their publication or on a later date indicated in the notice accompanying the publication."

[[**18.** The sums required for the application of this act are taken for the fiscal year 1980-1981 out of the consolidated revenue fund.]]

19. Sections 5 and 15 have effect from 31 December 1977.

20. Section 9 has effect from 30 January 1980.

21. This act will come into force on the date to be fixed by proclamation of the Government, except the provisions excluded by that proclamation, which will come into force, in whole or in part, on any later date to be fixed by proclamation of the Government.