

FOURTH SESSION
THIRTY-FIRST LEGISLATURE

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 53

An Act respecting security fund corporations

First reading
Second reading
Third reading

M. GUY JORON
Ministre des consommateurs, coopératives et
institutions financières

L'ÉDITEUR OFFICIEL DU QUÉBEC

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EXPLANATORY NOTES

This bill enables the Government to incorporate security fund corporations upon the recommendation of the Ministre des consommateurs, coopératives et institutions financières, acting upon the application of a federation of savings and credit unions.

The objects of these corporations are to establish and administer a security, liquidity or mutual aid fund for the benefit of their affiliated unions and assist in the payment of losses sustained by the members of a union in case of a winding-up.

They will be empowered in particular, in the pursuit of their objects, to make loans and grants to their affiliated unions and to guarantee the repayment of advances or loans made to affiliated unions.

For these purposes, the bill provides that these corporations will be able to fix and collect a subscription from their affiliated unions, which the latter will have to pay. It is also provided that an agreement may be made with the federations to collect these subscriptions.

Furthermore, the bill authorizes the federations to transfer to these corporations capital elements corresponding to the whole or a part of the amounts accumulated for purposes similar to those pursued by these corporations.

Bill 53

An Act respecting security fund corporations

HER MAJESTY, with the advice and consent of the Assemblée nationale du Québec, enacts as follows:

DIVISION I

INTERPRETATION

- 1.** In this act, unless otherwise required by the context,
- Interpretation: “union”; “union” means a savings and credit union to which the Savings and Credit Unions Act (R.S.Q., c. C-4) applies;
- “corporation”; “corporation” or “security fund corporation” means a corporation incorporated under this act;
- “federation”; “federation” means a federation of unions or a federation of federations of unions to which the Savings and Credit Unions Act applies;
- “founder federation”; “founder federation” means the federation upon whose application the security fund corporation has been incorporated.
- 2.** Every union which is a member of the founder federation or of a federation which is a member of the founder federation is a union affiliated with the security fund corporation incorporated upon the application of the founder federation.
- Affiliation.

DIVISION II

INCORPORATION

- 3.** The Government may, upon the recommendation of the
- Objects. Ministre des consommateurs, coopératives et institutions finan-

cières acting upon the application of a federation, incorporate a security fund corporation for the following objects:

(1) to establish and administer a security, liquidity or mutual aid fund for the benefit of the unions affiliated with the corporation;

(2) to assist in the payment of losses sustained by the members of a union affiliated with the corporation, in case of a winding-up.

Restric-
tion.

4. No federation of unions which is a member of a federation of federations may apply for the incorporation of a security fund corporation.

Applica-
tion.

5. A federation wishing to obtain the incorporation of a security fund corporation shall send to the Minister an application accompanied with a certified copy of the resolution authorizing the application and indicating the name and the location of the head office of the proposed corporation.

Name.

6. The name of a security fund corporation shall include the expression "security fund corporation"; it shall, in addition, include the name of the founder federation or an indication identifying that federation.

Restric-
tion.

7. The name or corporate name of a corporation shall not include the expression "security fund corporation" unless the corporation has been incorporated under this act.

Head
office.

8. The head office of the corporation must be situated in Québec.

Notice.

9. The Minister shall give notice of the incorporation of the corporation in the *Gazette officielle du Québec*.

Powers.

10. The corporation is a corporation within the meaning of the Civil Code, and has all the powers of such a corporation in addition to those conferred on it by this act.

DIVISION III

ADMINISTRATION

Board of
directors.

11. The affairs of the corporation are administered by a board of directors composed of

(1) the persons holding the offices of president, managing director and director of the inspection service of the founder federation,

- (2) three persons appointed by the founder federation, and
- (3) the persons appointed in accordance with section 12.

Appoint-
ment by
federa-
tions.

12. When the founder federation is formed of federations, each of these federations may, within 15 days following the publication of the notice provided for in section 9 or within 15 days following the end of the fiscal period of the corporation, appoint a member to the board of directors.

Chairman.

13. The members of the board of directors shall, within 3 months following the expiry of the delay provided in section 12, elect a chairman and a vice-chairman of the corporation and every other officer whose election is provided for by by-law of the corporation.

Elections.

The chairman and the vice-chairman are elected from among the members of the board of directors.

Executive
commit-
tee.

14. The board of directors may establish an executive committee from among its members; this committee shall include the chairman of the corporation and, where the board of directors includes members appointed by federations which are members of the founder federation, at least one person contemplated in paragraph 1 or 2 of section 11 and at least one person contemplated in section 12.

Powers.

The executive committee exercises the powers delegated to it by the board by directors.

Term of
office.

15. A member of the board of directors appointed under paragraph 2 of section 11 or under section 12 remains in office for two years unless he is replaced before the expiry of that period by the federation which appointed him.

End of
office.

16. A member of the board of directors appointed under section 12 ceases to hold office when the federation which appointed him ceases to be a member of the founder federation.

Conti-
nuance in
office.

17. Notwithstanding the expiry of his term, a member of the board of directors appointed under paragraph 2 of section 11 or under section 12 remains in office until he is reappointed or replaced by the federation which appointed him.

Vacancy.

18. Any vacancy occurring during the course of the term of a member of the board of directors appointed under paragraph 2 of section 11 or under section 12 is filled by the federation which appointed that member, for the remainder of the term of that member.

Remuneration. **19.** The board of directors may determine the remuneration and allowances of its members.

Quorum. **20.** A majority of the members of the board of directors are a quorum at meetings; every decision requires the consent of the majority of the members present.

Change of name. **21.** The board of directors may, by by-law, change the name of the corporation and the location of its head office.

Approval of by-laws. Every by-law for one of these objects must be approved by the Minister; if he approves it, he shall give notice of it in the *Gazette officielle du Québec* and the by-law comes into force from the publication of that notice.

Decisions. **22.** The chairman of the corporation shall see to the carrying out of the decisions of the board of directors.

Replacement. If the chairman is absent or temporarily unable to act, he shall be replaced by the vice-chairman for as long as he is absent or unable to act.

First meeting. **23.** The president of the founder federation shall call the first meeting of the board of directors.

Conflict of interest. **24.** Any member of the board of directors having any direct or indirect interest in an undertaking or a union with which the corporation has or intends to have business relations, must, under pain of forfeiture of office, disclose his interest and refrain from voting on any matter concerning that undertaking or union.

Minutes. **25.** The minutes of the meetings approved by the corporation are authentic; the same rule applies to copies or extracts emanating from the corporation or contained in its records if they are certified by the chairman, the vice-chairman or by any other authorized person.

DIVISION IV

POWERS

Powers. **26.** The corporation may, in the pursuit of its objects,
 (1) make loans and grants to the unions affiliated with it;
 (2) guarantee the repayment of an advance or of a loan made to a union affiliated with it;
 (3) make an agreement with a union affiliated with it under which the affairs of the union will be managed by the corporation for a fixed period;

(4) acquire, in whole or in part, the assets of a union affiliated with it;

(5) act as the liquidator or trustee of a union affiliated with it;

(6) act as the provisional administrator of a union affiliated with it for the purposes of the Savings and Credit Unions Act.

Additional
powers.

27. The corporation may, in the case of a loan or grant to a union affiliated with it, determine the measures to be taken by that union in order to remedy certain financial and administrative practices.

Author-
ization.

28. The corporation shall not, without the authorization of the Government, enter into an agreement contemplated in section 88 of the Act respecting cooperative credit associations (Revised Statutes of Canada, 1970, c. C-29).

Inspection.

29. The corporation shall at least once each year inspect or cause the founder federation to inspect the affairs of the unions affiliated with the corporation.

DIVISION V

SUBSCRIPTION

Subscrip-
tion.

30. The corporation may, for each of its fiscal periods, fix and collect a subscription from the unions affiliated with it, and they must pay this subscription.

Amount.

31. The amount of the subscription is established for each union from returns that it must submit to the corporation in such form and tenor and at such time as the corporation may determine by by-law.

Terms.

The corporation may also specify by by-law the terms and conditions of payment of the subscription.

Agree-
ments.

32. The corporation and the founder federation or, where such is the case, the federations which are members of it may enter into an agreement under which the founder federation or the federations which are members of it are authorized to collect the subscription for the corporation.

DIVISION VI

ADVERTISEMENT

Advertise-
ment.

33. No person may make any advertisement in connection with a security fund corporation except in such cases and in such manner and form as the Government may prescribe by regulation.

DIVISION VII

INVESTMENTS

Invest-
ments.

34. The corporation shall not make any investment other than those contemplated in sections 35 to 42.

Deposits.

35. The corporation may make deposits with a bank, a trust company or a federation.

Bonds.

36. The corporation may acquire and hold bonds or other securities

(1) issued or guaranteed by Québec or Canada;

(2) issued by a corporation, a board or an association, of which at least ninety per cent of the shares, capital or property form part of the public domain of Québec;

(3) issued by a municipal or school corporation in Québec;

(4) secured by the transfer to a trustee of an undertaking of Québec to pay each year sufficient subsidies to meet the interest and principal upon their respective maturities;

(5) issued by a public authority having as its object the operation of a public service and entitled to impose a tariff for that service.

Bonds.

37. The corporation may acquire and hold bonds or other securities issued by a corporation incorporated in Canada and carrying on business in Québec,

(1) if they are secured by privilege or hypothec ranking first on real estate and equipment, or by pledge of securities allowable for investment under this division;

(2) if they are secured by privilege ranking first on equipment and if the corporation has paid in full the interest on its other debts during the ten years preceding the acquisition; or

(3) if the corporation which issued them has, during each of the five years preceding the acquisition, earned and paid on its common shares a dividend of at least 4% of their book value.

Bonds.

38. The corporation may acquire and hold bonds or other securities issued by any loan society incorporated by an act of the Legislature or authorized to do business in Québec under the Loan and Investment Societies Act (R.S.Q., c. S-30), which has been specially approved by the Government for the application of this section and the ordinary operations of which in Québec are to

make loans to municipal or school corporations and *fabriques*, or loans secured by first privilege or first hypothec on real estate situated in Québec.

Preferred
shares.

39. The corporation may acquire and hold fully paid preferred shares, issued by a corporation incorporated in Canada and carrying on business in Québec,

(1) if the corporation which issued them has, during each of the five years preceding the acquisition, earned and paid on its preferred shares issued and not redeemed a dividend at least equal to the rate specified for such shares; and

(2) if the corporation has, during each of the five years preceding the acquisition, earned and paid on its common shares a dividend of at least 4% of their book value.

Common
shares.

40. The corporation may acquire and hold fully paid common shares issued by a corporation incorporated in Canada and carrying on business in Québec, if the corporation which has issued them has, during each of the five years preceding the acquisition, earned and paid on its common shares a dividend of at least 4% of their book value.

Hypothec.

41. The corporation may acquire and hold debts secured by hypothec on real estate situated in Québec,

(1) if payment of these debts in principal and interest is guaranteed or assured by Québec or Canada; or,

(2) in the case of a hypothec ranking first, if the amount of the debt is not more than 75% of the value of the real estate securing payment of it.

Real
estate.

42. The corporation may, to assure total or partial payment of any amount owed to it, acquire the real estate which secures its payment. Nevertheless, it must dispose of the real estate so acquired within a delay of seven years unless that delay is extended by the Minister.

Liquidity.

43. The corporation shall at all times maintain at least 10% of its assets in deposits payable on demand in a bank or with a trust company.

Restric-
tion.

Furthermore, it shall not, in the exercise of the powers conferred on it by this division,

(1) invest more than 10% of its assets in deposits with a federation;

(2) invest more than 25% of its assets in investments contemplated in sections 38 to 42;

(3) acquire more than 5% of the shares of the same corporation.

Restriction.

In addition, the corporation shall not acquire shares, bonds or other securities of a corporation which fails to pay the prescribed dividends on its shares or the interest on its bonds or other securities, nor make a loan to such a corporation.

DIVISION VIII

BOOKS, AUDIT AND ANNUAL REPORT

Books.

44. The corporation shall keep and preserve at its head office a register of the names, addresses and occupations of the members of the board of directors, and the books in which are entered the by-laws of the corporation and the minutes of the sittings of the board of directors and of the executive committee, where such is the case.

Accounting.

45. The corporation shall keep books to properly show its affairs in accordance with generally recognized accounting practices.

Fiscal period.

46. The fiscal period of the corporation is the same as that of the founder federation.

Audit.

47. The corporation shall have its books and accounts audited each year.

Auditor.

48. If the corporation fails to have its books and accounts audited in accordance with section 47, the Minister may appoint an auditor to make such audit and fix the remuneration that the corporation must pay to that auditor.

Access.

49. The auditor has, to carry out his duties, access to all the books, registers, accounts and other records of the corporation, and every person having the custody of them must facilitate his examination of them.

Information.

He may also require from the members of the board of directors and officers of the corporation the information and explanations necessary for the carrying out of his duties.

Annual report.

50. The accounts of the corporation are closed at the end of the fiscal period and, during the ensuing three months, the board of directors shall prepare an annual report which must set forth, in particular,

(1) the names and addresses of the members of the board of directors;

(2) the number of unions affiliated with the corporation;

(3) the balance sheet, the operations statement, the statement of developments in the financial situation and the surplus statement;

(4) the report of the auditor.

Approval. **51.** The balance sheet and the operations statement must be approved by the board of directors, which shall appoint two of its members to sign the balance sheet.

Copies. **52.** The corporation must, as soon as possible, send a copy of the annual report to the founder federation and to the federations forming it, where such is the case.

DIVISION IX

STATEMENT OF OPERATIONS, INSPECTION AND PROVISIONAL ADMINISTRATION

Statement of operations. **53.** The corporation shall, within three months following the end of the fiscal period, prepare and send to the Minister, who shall send a copy of it to the Régie de l'assurance-dépôts du Québec, a statement of operations for the fiscal period just ended, prepared in the form prescribed by the Minister.

Contents. **54.** The statement must show the financial condition of the corporation and set out the information and documents required by section 50 and the information required by the Minister.

Certification. **55.** The statement must be certified, under oath, by at least two members of the board of directors and be accompanied with the auditor's report to the Minister attesting the scope of his audit and his opinion on the financial condition of the corporation.

Inspection. **56.** The affairs of the corporation must be inspected once each year or whenever the Minister considers it necessary to inspect them; they are inspected by an inspector appointed by the Minister.

Access. **57.** The inspector has, at all times, access to the books, registers, accounts and other records of the corporation, and every person having the custody of them must facilitate his examination of them. He may also require from the members of the board of directors and officers of the corporation the information and explanations necessary for the carrying out of his duties.

Copy. **58.** The Minister shall send, to the Régie de l'assurance-dépôts du Québec, a copy of the report sent to him by the inspector.

Dubious
practices.

59. If, following an inspection made under section 56 or the production of the statement contemplated in section 53, the Minister is of opinion that a serious fault has been committed, particularly malfeasance or breach of trust by one or more members of the board of directors, or that the board of directors resorts to administrative or financial practices he deems reprehensible, he may appoint an administrator to assume the powers of the board of directors, provisionally, for a period of seven working days.

Provisional
adminis-
trator.

60. When the provisional administrator assumes the administration of the corporation in accordance with this division, the powers of the board of directors are suspended.

Extension.

61. The Minister may extend the period provided for in section 59.

Report.

62. The provisional administrator must present to the Minister, with the least possible delay, a detailed report of his findings, together with his recommendations.

Confirma-
tion.

63. If the report of the provisional administrator confirms the existence of any situation contemplated in section 59, the Minister shall forward it to the Government.

Represent-
ations.

64. Before submitting the report to the Government, the Minister shall give the corporation the opportunity to be heard.

Recom-
mendation.

65. The Minister shall attach to the report of the provisional administrator a summary of the representations the corporation has made to him and his own recommendations.

Decision.

66. The Government may, as soon as the documents contemplated in section 65 have been submitted to it,

(1) order the corporation to remedy any situation contemplated in section 59 within the delay it determines;

(2) order the provisional administrator to prolong his administration of the corporation for a determined period, or to terminate it unless the corporation fails to comply with the order contemplated in paragraph 1.

Immunity.

67. The provisional administrator cannot be prosecuted for acts done in good faith in the performance of his duties.

Findings.

68. The provisional administrator must inform the Minister as soon as he ascertains that the situation contemplated in section 59 has been or cannot be corrected. The Minister must report to the Government as soon as possible.

Powers of
the Gov-
ernment.

69. After receiving the report provided for in section 68, the Government may

(1) cancel the suspension of the members of the board of directors of the corporation, or

(2) order, on the conditions it determines, the winding-up of the corporation and appoint a liquidator.

Report.

70. The provisional administrator must, as soon as his mandate has expired, make a complete report of his administration to the Minister.

Expendi-
tures.

The expenses, fees and expenditures of the provisional administration are at the expense of the corporation unless the Minister decides otherwise.

Winding-
up.

71. The decision of the Government ordering the winding-up of the corporation has the same effect as an order made by a judge of the Superior Court under section 25 of the Winding-up Act (R.S.Q., c. L-4); in other respects, the provisions of Division IV of the said act apply *mutatis mutandis* to the winding-up so ordered to the extent that they are not inconsistent with this act.

Liqui-
dator.

72. The liquidator first pays the debts of the corporation and the costs of winding it up, and the balance from the winding-up devolves to the founder federation.

DIVISION X

OFFENCES

Offence.

73. Every person is guilty of an offence who

(1) knowingly gives the Minister incorrect information;

(2) contravenes any provision of this act.

Fine.

74. Every person who commits an offence against this act is liable to a fine of not under 300 \$ nor over 1 000 \$ for each offence and to a fine of not under 1 000 \$ nor over 5 000 \$ for every subsequent offence within two years.

Attorney-
General.

75. Proceedings under this act are instituted by the Attorney-General or by a person generally or specially authorized by him for that purpose in writing; the Summary Convictions Act (R.S.Q., c. P-15) applies to those proceedings.

DIVISION XI

MISCELLANEOUS PROVISIONS

Transfer
of capital.

76. Within a delay of one year from the incorporation of the corporation, the founder federation and, where such is the case, the federations which are members of it may transfer to the corporation capital elements corresponding to the whole or a part of the amounts accumulated for purposes similar to those pursued by a security fund corporation.

Author-
ization.

The Minister may authorize the corporation to acquire and hold, for such period and on such conditions as he determines, the capital elements so transferred, where the acquisition and holding of those elements would otherwise constitute an offence against this act.

Minister.

77. The Ministre des consommateurs, coopératives et institutions financières is responsible for the application of this act.

Coming
into force.

78. This act comes into force on the day of its sanction.