



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 437

(1998, chapter 22)

**An Act respecting Société Innovatech
du sud du Québec**

Introduced 14 May 1998

Passage in principle 27 May 1998

Passage 9 June 1998

Assented to 12 June 1998

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EXPLANATORY NOTES

The object of this bill is to provide for the continuance of Société Innovatech du sud du Québec as a legal person with share capital established in the public interest.

The mission of the Société will be to promote and support initiatives designed to develop technological innovation capabilities in the territory served by the Société so as to improve the competitiveness and economic growth of Québec.

The bill amends the composition of the board of directors of the Société to provide that the chief executive officer will be a member of the board. Rules relating to conflicts of interest and the protection of directors in the case of prosecution are introduced.

The bill includes financial provisions establishing the authorized capital of the Société and the manner in which the financial commitments the Société is authorized to make are to be fulfilled. The bill also contains various technical provisions.

Bill 437

AN ACT RESPECTING SOCIÉTÉ INNOVATECH DU SUD DU QUÉBEC

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

CHAPTER I

ESTABLISHMENT AND ORGANIZATION

1. Société Innovatech du sud du Québec, a legal person established under chapter 19 of the statutes of 1995, shall be endowed with share capital.

2. The head office of the Société is in the territory described in Schedule A. Notice of any change of location shall be published in the *Gazette officielle du Québec*.

The board of directors of the Société may hold its meetings at any place in the territory described in Schedule A.

3. The Société is a mandatary of the State.

The property of the Société forms part of the domain of the State, but the execution of its obligations may be levied against its property.

The Société binds only itself when it acts in its own name.

4. The board of directors of the Société is composed of

(1) the chief executive officer;

(2) eight other members appointed by the Government for a term not exceeding three years.

5. The Minister shall designate a delegate to the board of directors from among the personnel members of the Ministère de l'Industrie, du Commerce, de la Science et de la Technologie.

6. The delegate is not a member of the board of directors. However, the delegate is entitled to be called to meetings of the board of directors and to attend and speak at the meetings.

7. The Government shall appoint a chair from among the members of the board of directors. The chair shall preside at meetings of the board, oversee its operation and assume all other functions assigned to the chair by the Société.

8. The members of the board of directors shall appoint the chief executive officer of the Société for a term not exceeding five years. The chief executive officer is responsible for the administration and direction of the Société within the scope of its by-laws and policies.

The chief executive officer shall hold office on a full-time basis.

9. On the expiry of their term, the members of the board of directors shall remain in office until they are replaced or reappointed.

10. The Government shall fix the remuneration, employment benefits and other conditions of employment of the chief executive officer.

The other members of the board of directors are not remunerated, except in the cases, on the conditions and to the extent which may be determined by the Government. However, they are entitled to the reimbursement of expenses incurred in the exercise of their functions, on the conditions and to the extent determined by the Government.

11. Any vacancy occurring in the course of the term of office of a member of the board of directors shall be filled in accordance with the rules of appointment set out in section 4.

Absence from the number of meetings of the board of directors determined by an internal by-law of the Société constitutes a vacancy in the cases and circumstances indicated therein.

12. No act, document or writing is binding on or may be attributed to the Société unless it is signed by the chair of the board of directors, the chief executive officer or a member of the personnel of the Société designated by the chief executive officer and, in the latter case, only to the extent determined by an internal by-law of the Société.

Such a by-law may, on the conditions fixed therein, allow the signature to be affixed by means of an automatic device to the documents mentioned in the by-law. It may also allow a facsimile of the signature to be engraved, lithographed or printed on the documents mentioned therein. The facsimile has the same value as the signature itself only if the document is countersigned by a person referred to in the first paragraph.

13. The minutes of the meetings of the board of directors, approved by it and certified by the chair of the board, the secretary or by any other person authorized to do so by the Société, are authentic. The documents or copies emanating from the Société or forming part of its records are authentic if they are so certified.

An intelligible print-out of a decision or of any other data stored by the Société in computerized or other electronic form is a document of the Société and constitutes proof of its contents if certified by a person referred to in the first paragraph of section 12.

14. No member of the board of directors holding a full-time office with the Société or one of its subsidiaries may, under pain of forfeiture of office, have any direct or indirect interest in an enterprise putting the member's personal interest in conflict with that of the Société or one of its subsidiaries. However, such forfeiture is not incurred if the interest devolves to the member by succession or gift, provided it is renounced or disposed of with dispatch.

Every member of the board of directors other than a member holding a full-time office with the Société or one of its subsidiaries who has a direct or indirect interest in an enterprise putting the member's personal interest in conflict with that of the Société or one of its subsidiaries must, on pain of forfeiture of office, disclose such interest and withdraw from the meeting for the duration of the debate and of the making of a decision bearing upon any question relating to the enterprise in which the member has such an interest.

Every personnel member of the Société or one of its subsidiaries who has a direct or indirect interest in an enterprise putting the member's personal interest in conflict with that of the Société or one of its subsidiaries must, on pain of forfeiture of office, disclose such interest in writing to the chair of the board of directors of the Société or, as the case may be, its subsidiary.

15. The Société shall take up the defence of its directors prosecuted by a third person for an act done in the exercise of their functions and shall pay damages, if any, resulting from that act, unless they have committed a gross fault or a personal fault separable from the exercise of their functions.

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

16. The Société shall assume the expenses of its directors if, having prosecuted them for an act done in the exercise of their functions, it loses its case and the court so decides. If the Société wins its case only in part, the court may determine the amount of the expenses the Société shall assume.

17. The Société shall assume the obligations referred to in sections 15 and 16 in respect of any person who acted at its request as director for a legal person of which it is a shareholder or creditor.

18. The secretary and the other members of the personnel of the Société shall be appointed and remunerated according to the standards, scales and staffing plan established by by-law of the Société. The by-law shall be submitted to the Government for approval.

CHAPTER II

MISSION AND POWERS

19. The mission of the Société is to promote and support initiatives likely to increase the capacity for technological innovation in the territory described in Schedule A and thus to improve the competitiveness and economic growth of Québec.

20. In the pursuit of its mission, the Société may, in particular,

(1) solicit, receive and evaluate initiatives designed to develop technological innovation capabilities in the territory described in Schedule A;

(2) associate partners from the private and public sectors with the initiatives and foster concerted action between them;

(3) participate financially in the pursuit of such initiatives;

(4) promote the financial participation of individuals, partnerships and legal persons in the initiatives;

(5) heighten public awareness in the territory described in Schedule A of the importance of the initiatives supported by the Société by keeping the public informed of the achievements made possible through such initiatives;

(6) advise the Minister on the technological innovation policies and strategies in the territory described in Schedule A and propose means of implementing them.

21. The Minister may within the scope of the responsibilities vested in the Minister issue directives on the objectives and orientations of the Société. The directives must be submitted to the Government for approval.

Every directive is binding on the Société and must be tabled in the National Assembly within 15 days of its approval or, if it is not sitting, within 15 days of resumption.

22. The Société may, according to law, make any agreement with a government in Canada or elsewhere, any of its departments or agencies, an international organization or an agency of such an organization.

23. The by-laws of the Société are not subject to ratification by the shareholder.

24. The provisions of Part II of the Companies Act (R.S.Q., chapter C-38), except those of sections 159 to 162, 179, 184, 189 and subsection 3 of section 196 and the provisions of sections 89.1 to 89.4 of Part I of that Act apply to the Société.

CHAPTER III

FINANCIAL PROVISIONS

25. The authorized capital of the Société is \$50,000,000, divided into 500,000 shares of a par value of \$100 each.

26. The shares of the capital of the Société form part of the domain of the State and shall be allotted to the Minister of Finance.

27. The Minister of Finance may, with the authorization of the Government, pay to the Société out of the consolidated revenue fund an amount of \$50,000,000 for 500,000 fully paid shares of its capital for which a certificate shall be issued to the Minister of Finance.

The payment may be made in one or more instalments; if it is made in several instalments, each of them must be authorized by the Government.

28. After a reduction of the share capital of the Société and an equivalent repayment of capital to the Minister of Finance are effected under the Act respecting the reduction of the share capital of legal persons established in the public interest and of their subsidiaries (R.S.Q., chapter R-2.2.1), the Minister of Finance may, with the authorization of the Government and on the conditions it determines, subscribe shares of the Société the value of which shall not exceed the amount of the repayment. Such shares shall be paid out of the consolidated revenue fund. Certificates shall be issued when the shares are fully paid.

29. The Government may, subject to the terms and conditions it determines, transfer to the Société the ownership of any property forming part of the domain of the State and may receive in return any property, including shares of the capital of the Société.

30. A transfer pursuant to section 29 shall be registered in the land register on presentation of the order in council authorizing the transfer, containing a description of the immovable property transferred and the effective date of the transfer.

The provisions of the Act respecting duties on transfers of immovables (R.S.Q., chapter D-15.1) do not apply to such a transfer.

31. The Government may, subject to the terms and conditions it determines,

(1) guarantee the payment of the capital of or interest on any loan contracted by the Société or any of its subsidiaries and the performance of its obligations;

(2) make any commitment in respect of the pursuit or financing of an initiative in which the Société or any of its subsidiaries is a participant;

(3) authorize the Minister of Finance to advance to the Société or any of its subsidiaries any amount considered necessary for the pursuit of their objects.

The sums required for the purposes of this section shall be taken out of the consolidated revenue fund.

32. Neither the Société nor any of its subsidiaries may, except with the authorization of the Government,

(1) acquire or hold shares issued by a legal person or shares in a partnership in excess of the limits or in contravention of the terms and conditions determined by the Government ;

(2) transfer shares of a legal person or shares in a partnership in excess of the limits or in contravention of the terms and conditions determined by the Government ;

(3) contract a loan that increases its total outstanding borrowings to an amount greater than the amount determined by the Government ;

(4) grant loans or make any other financial commitment in excess of the limits or in contravention of the terms and conditions determined by the Government ;

(5) acquire or transfer other assets in excess of the limits or in contravention of the terms and conditions determined by the Government ;

(6) accept a gift or bequest to which a charge or condition is attached.

The amounts, limits and terms and conditions determined under this section may apply to the group formed by the Société and its subsidiaries or to one or more members of the group.

This section does not apply to transactions between the Société and its subsidiaries or between the subsidiaries.

33. The Société must obtain the approval of the Minister of Industry, Trade, Science and Technology and the Minister of Finance where the amount of its financial participation in an initiative is greater than \$5,000,000, or the approval of the Government where that amount is greater than \$10,000,000.

34. For the purposes of this Act, a legal person or a partnership is a subsidiary of the Société if the latter holds more than 50% of the voting rights attached to all the issued and outstanding shares of the legal person or more than 50% of the shares in the partnership, or may elect or appoint a majority of the directors.

35. The dividends payable by the Société shall be fixed by the Government.

CHAPTER IV

ACCOUNTS AND REPORTS

36. The fiscal year of the Société ends on 31 March.

37. The Société shall, not later than 31 July each year, file with the Minister its financial statements and a report of its operations for the preceding fiscal year.

The financial statements and report of operations shall contain all the information required by the Minister.

38. The Minister shall table the report of operations and the financial statements of the Société in the National Assembly within 15 days of receiving them or, if it is not sitting, within 15 days of resumption.

39. The Société shall formulate according to the form, content and intervals fixed by the Government, a development plan that includes the operations of its subsidiaries. The plan must be submitted to the Government for approval.

40. Each year, and whenever so ordered by the Government, the books and accounts of the Société shall be audited by the Auditor General or, with the authorization of the Government, by an auditor designated by the Société.

The auditor's report must be submitted with the report of operations and the financial statements of the Société.

41. The Société shall in addition communicate to the Minister any information required by the Minister concerning its operations.

CHAPTER V

MISCELLANEOUS PROVISIONS

42. The Société shall remit to the Minister of Finance, according to the terms and conditions determined by the Minister of Finance, an amount equal to its equity as at 31 March 1998 and to the advances paid by the Government up to the date of coming into force of this Act. The Minister shall subscribe and pay for shares of the Société for an amount corresponding to that amount and shall be issued a certificate therefor.

43. The members of the board of directors and the chief executive officer of the Société, in office on (*insert here the date preceding the date of coming into force of this section*), remain in office until the end of their terms of office.

44. This Act replaces the Act respecting Société Innovatech du sud du Québec (R.S.Q., chapter S-17.2.1).

Every reference to that Act or to any of its provisions is a reference to this Act or to the corresponding provision thereof.

45. The Minister of Industry, Trade, Science and Technology is responsible for the administration of this Act.

46. This Act comes into force on the date to be fixed by the Government.

SCHEDULE A

The aggregate of the territories of the following municipal bodies :

Municipalité régionale de comté d'Acton
Municipalité régionale de comté de Brome-Missisquoi
Municipalité régionale de comté de La Haute-Yamaska
Municipalité régionale de comté d'Arthabaska
Municipalité régionale de comté de Drummond
Municipalité régionale de comté d'Asbestos
Municipalité régionale de comté de Coaticook
Municipalité régionale de comté du Granit
Municipalité régionale de comté du Haut-Saint-François
Municipalité régionale de comté de Memphrémagog
Municipalité régionale de comté de Sherbrooke
Municipalité régionale de comté du Val-Saint-François