



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 194

(2001, chapter 36)

An Act constituting Capital régional et coopératif Desjardins

Introduced 15 May 2001

Passage in principle 8 June 2001

Passage 21 June 2001

Assented to 21 June 2001

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EXPLANATORY NOTES

This bill gives effect to the Budget Speech of 29 March 2001.

The object of this bill is to constitute Capital régional et coopératif Desjardins, called the Société, whose main objective is to raise venture capital for the resource regions of Québec and the cooperative sector.

It provides for the organization of the Société and defines its main functions.

The Société may invest in any enterprise, although 60% of its assets must be made available, with no form of guarantee or security required, to small and medium-sized businesses and to cooperatives. A portion equal to 35% of that percentage must be invested in cooperatives or in enterprises operating in the resource regions of Québec.

Lastly, the bill provides that the Commission des valeurs mobilières du Québec is to monitor the carrying out by the Société of the obligations imposed on it under this Act.

LEGISLATION AMENDED BY THIS BILL :

- Cooperatives Act (R.S.Q., chapter C-67.2);
- Act respecting financial services cooperatives (2000, chapter 29).

Bill 194

AN ACT CONSTITUTING CAPITAL RÉGIONAL ET COOPÉRATIF DESJARDINS

WHEREAS Mouvement des caisses Desjardins has proposed the constitution of an investment entity devoted mainly to fostering investment in the resource regions of Québec and meeting the capital needs of cooperatives ;

Whereas, to achieve those objectives, a share offering will be made to the Québec public ;

Whereas it is expedient to accede to the request of Mouvement des caisses Desjardins ;

Whereas the establishment of an entity of this type requires the enactment of special legislation as regards both its organization and the protection of investors ;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

CHAPTER I

CONSTITUTION AND ORGANIZATION

1. “Capital régional et coopératif Desjardins” is hereby constituted, hereinafter called “the Société”.

The Société is a legal person with share capital.

2. The Société is deemed to have been constituted by the filing of articles on 1 July 2001.

3. The head office of the Société shall be established in the territory of Ville de Lévis.

4. The affairs of the Société are managed by a board of directors consisting of

(1) eight persons appointed by the president of Mouvement des caisses Desjardins ;

(2) two persons elected by the general meeting of shareholders ;

(3) two persons appointed by the members referred to in paragraphs 1 and 2 from among the persons considered by those members to be representative of the eligible entities described in subparagraph 1 of the first paragraph of section 18 in the case of one of those persons, and in subparagraph 2 of that paragraph for the other person; and

(4) the chief executive officer of the Société.

5. The members of the board of directors shall appoint the chief executive officer of the Société.

The Société may, by by-law, designate the chief executive officer by a different title.

6. If a vacancy occurs among the members of the board of directors referred to in paragraph 1 of section 4, the president of the Mouvement des caisses Desjardins may appoint a person for the unexpired portion of the term.

7. Any director having an interest in an economic activity causing the director's personal interest to conflict with that of the Société shall, under pain of forfeiture of office, disclose the interest and abstain from voting on any decision involving the activity in which the director has an interest.

A director is deemed to have an interest in any economic activity in which the director's spouse or child has an interest.

8. The main functions of the Société are

(1) to raise venture capital for the benefit of the resource regions and the cooperative sector;

(2) to promote the economic development of the resource regions through investment in eligible entities operating in those regions;

(3) to support the cooperative movement throughout Québec by investing in eligible cooperatives;

(4) to support eligible entities in their start-up phase and in their development;

(5) to stimulate the Québec economy through investments in all parts of the territory of Québec.

CHAPTER II

SHARE CAPITAL

9. Subject to section 10, the Société is authorized to issue shares without par value, carrying the rights defined in section 123.40 of the Companies Act (R.S.Q., chapter C-38), the right to elect two directors and the right of redemption defined in sections 12 and 14.

The Société is also authorized, subject to section 10, to issue fractional shares without par value, carrying proportionately the same rights as shares, except the voting rights attached to such shares.

10. The total amount of the subscription for the issued and outstanding shares and fractional shares of the Société may not increase by more than 150 million dollars per year or exceed 1,500 million dollars.

However, if the increase in the total amount of the subscription for the issued and outstanding shares and fractional shares of the Société, for a particular year, is less than 150 million dollars, the amount of the difference for that year may be carried forward to a subsequent year without, however, the total amount of the subscription for the issued and outstanding shares and fractional shares exceeding the amount indicated for each of the years listed in Schedule 1.

11. Only a natural person may acquire or hold shares or fractional shares of the Société. The holder of shares or fractional shares may not alienate them and such shares or fractional shares, subject to section 123.56 of the Companies Act, may not be purchased by agreement by the Société, except with the authorization of the board of directors or a committee composed of persons designated by the board for that purpose.

The Société may purchase by agreement shares or fractional shares only in the cases and to the extent provided in a policy adopted by the board of directors and approved by the Minister of Finance and only at a price not exceeding the redemption price determined in accordance with section 15.

12. A share or fractional share is redeemable by the Société only in the following cases:

(1) at the request of a person who acquired the share or fractional share from the Société at least 7 years prior to redemption;

(2) at the request of a person to whom the share or fractional share has devolved by succession;

(3) at the request of a person who acquired the share or fractional share from the Société, if the person applies to the Société therefor in writing within 30 days after subscribing for the share or fractional share;

(4) at the request of a person who acquired the share or fractional share from the Société, if the person is declared, in the manner prescribed by by-law of the board of directors, to be suffering from a severe and permanent mental or physical disability which prevents the person from working.

13. For the purposes of paragraph 4 of section 12, a disability is severe only if by reason thereof the person is regularly incapable of holding any substantially gainful occupation.

However, in the case of a person 60 years of age or over, a disability is severe if by reason thereof the person is regularly incapable of carrying on the substantially gainful occupation the person held at the time he or she ceased to work owing to the disability.

A disability is permanent only if it is likely to result in death or to be of indefinite duration.

14. Subject to the second paragraph of section 123.54 of the Companies Act, the Société is bound to redeem any share or fractional share at the request of a person pursuant to section 12 of this Act.

15. The price of redemption of the shares or fractional shares shall be fixed by the board of directors twice a year, on dates six months apart, on the basis of the value of the Société as established by experts under the responsibility of an independent firm of chartered accountants and according to generally accepted accounting principles.

The board of directors may also fix the price of redemption referred to in the first paragraph at any other time in the year, on the basis of an internal valuation which, in each case, must be the subject of a special report of independent chartered accountants confirming continued adherence to the generally accepted accounting principles and methods used to value the Société.

The Société may, however, accept the offer of a shareholder to receive the last price of redemption so determined rather than the subsequent one. The redemption shall be made within a reasonable time after the date of the request therefor.

However, in the case described in paragraph 3 of section 12, the Société is bound to redeem the share or fractional share at the price at which it was acquired from the Société and to make the payment not later than 30 days after the date of receipt of the request.

16. Each shareholder is entitled to receive written confirmation of the number of shares or fractional shares he or she holds and of the amount paid thereon.

The confirmation shall be provided annually to the shareholder free of charge in the form and according to the procedure prescribed by by-law of the Société.

Where a mode of confirmation other than a share certificate is prescribed, the document sent to the shareholder stands in lieu of a certificate issued pursuant to section 53 of the Companies Act.

Moreover, at the request of the holder of fractional shares, the Société shall exchange the fractional share certificates, or documents standing in lieu thereof, for certificates, or documents standing in lieu thereof, representing the corresponding whole shares.

CHAPTER III

INVESTMENTS

17. For the purposes of this Act, an “investment” includes any financial assistance granted in the form of a loan, guarantee, security, the acquisition of bonds or other debt securities, an interest in share capital, capital stock or any other form.

18. For the purposes of this Act, “eligible entity” means

(1) an eligible cooperative;

(2) a partnership or a legal person actively operating an enterprise, the majority of whose employees are resident in Québec and whose assets are less than \$50,000,000 or whose net equity is not over \$20,000,000, other than an eligible cooperative or a partnership or legal person whose activities consist mainly in investing.

For the purposes of subparagraph 1 of the first paragraph, an “eligible cooperative” is a legal person governed by the Cooperatives Act (R.S.Q., chapter C-67.2) or a legal person governed by the Canada Cooperatives Act (Statutes of Canada, 1998, chapter 1) having its head office in Québec, or in respect of which half of the salaries paid to its employees, during its fiscal year ended before the date on which the investment is made, was paid to the employees of an establishment situated in Québec, and the legal persons controlled by one or several cooperatives or controlled by one or several cooperatives and the Société.

For the purposes of subparagraph 2 of the first paragraph, the assets or net equity of an eligible entity are the assets or net equity shown in its financial statements for the fiscal year ended before the date on which the investment is made, minus the write-up surplus of its property and intangible assets. In the case of an entity which has not completed its first fiscal year, the fact that the assets or net equity, as the case may be, of the entity are, immediately before the investment, under the limits prescribed in this section must be confirmed in writing to the Société by a chartered accountant.

19. The Société may make investments, with or without a guarantee or security.

However, in the course of each fiscal year, the proportion of the Société's investments in eligible entities, entailing no security or hypothec, must represent, on the average, at least 60% of the average net assets of the Société for the preceding year, and of which a part representing at least 35% of that percentage must be invested in entities situated in the resource regions of Québec referred to in Schedule 2 or in eligible cooperatives.

For the purposes of this section, the average net assets for the preceding fiscal year and the average investments for the current fiscal year shall be determined by adding the net assets or, as the case may be, the investments at the beginning of the years concerned, to the net assets or, as the case may be, to the investments at the end of the years concerned and by dividing each of the sums thus obtained by 2. Furthermore, net assets do not include the movable or immovable property used by the Société to carry on its operations.

For the application of the above requirement, the following investments are also eligible investments :

(1) investments made otherwise than as first purchaser for the acquisition of securities issued by an eligible entity, except to the extent where they represent more than one third of the total investments made as first purchaser in that entity ;

(2) investments made in addition to an investment already made in an entity where the investment is eligible under the second paragraph and where the entity would be an eligible entity under subparagraph 2 of the first paragraph of section 18 if the amounts "\$50,000,000" and "\$20,000,000" mentioned in that subparagraph were replaced by "\$100,000,000" and "\$40,000,000" respectively.

The total investments permitted under the fourth paragraph may not exceed 20% of the net assets of the Société at the end of the preceding fiscal year. For the purposes of subparagraph 1 of the fourth paragraph, a broker acting as an intermediary or underwriter is not considered to be a first purchaser.

The investments the Société has agreed to make and for which sums have been committed but not yet disbursed at the end of a fiscal year shall be taken into account in computing investments eligible for the purposes of the requirements set out in this section, up to an overall sum not exceeding 12% of the net assets of the Société at the end of the preceding fiscal year.

The requirement set out in the second paragraph applies from the fiscal year beginning on 1 January 2006.

20. The Société may not make an investment in an entity that would cause the total amount of its investment in the entity and any other entity associated with it at that time to exceed 5% of the assets of the Société, as established on

the basis of the latest valuation by the chartered accountants referred to in the first paragraph of section 15.

The percentage may be increased up to 10% to enable the Société to acquire securities in an entity carrying on business in Québec but that is not an eligible entity within the meaning of section 18. In such a case, the Société may not, directly or indirectly, acquire or hold shares carrying more than 30% of the voting rights attached to the shares of the entity that may be exercised under any circumstances.

Where the Société avails itself of the second paragraph as regards an entity in which it already holds, directly or indirectly, shares carrying more than 30% of the voting rights attached to the shares of the entity that may be exercised under any circumstances, the Société has five years from the date of the investment to bring its shareholding in the entity into conformity with that paragraph.

These restrictions do not apply, however, where the Société makes an investment in

(1) securities guaranteed by the Government of Québec or of Canada or a Canadian province or territory ;

(2) securities guaranteed by an undertaking made to a trustee by Québec to pay sufficient subsidies to pay the interest and principal on their respective maturity dates ;

(3) bills of exchange accepted or certified by a bank or financial institution registered with the Régie de l'assurance-dépôts du Québec.

21. For the purposes of the first paragraph of section 20, an entity is associated with another entity at any time where those entities are, at that time, corporations associated with each other in accordance with the provisions of Chapter IX of Title II of Book I of Part I of the Taxation Act (R.S.Q., chapter I-3) and, for that purpose,

(1) an entity that is an individual carrying on an enterprise is deemed to carry on the enterprise through a corporation all of whose shares of the capital stock carrying voting rights belong to the individual at that time ;

(2) an entity that is a partnership is deemed to be a corporation all of whose shares of the capital stock carrying voting rights belong to each member of the partnership, at that time, in the proportion represented by the ratio between the share of the member in the income or loss of the partnership for the fiscal period ending on or before that time and the income or loss of the partnership for that fiscal period, assuming that if the income and loss of the partnership for that fiscal period are nil, the income of the partnership for that fiscal period is equal to \$1,000,000 ;

(3) an entity that is a trust, within the meaning of section 1 of the Taxation Act, is deemed to be a corporation all of whose shares of the capital stock carrying voting rights belong to each beneficiary of the income, at that time, in the proportion represented by the ratio between the share of the beneficiary in the income or loss of the trust for its fiscal period ending on or before that time and the income or loss of the trust for that fiscal period, assuming, if the income and loss of the trust for that fiscal period are nil, that the income of the trust for that fiscal period is equal to \$1,000,000.

22. Where the Société makes an investment in the form of a guarantee or security, it shall establish and maintain for the term of the guarantee or security a reserve equivalent to not less than 50% of the amount of the guarantee or security.

The Société may invest the money deposited in the reserve in the manner provided in paragraphs 2, 3, 4, 5 and 10 of article 1339 of the Civil Code.

CHAPTER IV

LOANS

23. The Société may not contract any loan that will cause the current principal of its total debt to exceed 100% of the total consideration paid for its shares or fractional shares.

For the purposes of this section, “total debt” means the amount obtained by applying the following equation :

$$x = \text{the debt of the Société} + y^1 [\text{debt of any subsidiary of the Société} + y^2 (\text{debt of any subsidiary of the particular subsidiary of the Société})]$$

where

x = the total debt of the Société; and

y^1 = the percentage of the shares carrying voting rights held, directly or indirectly, by the Société in the capital stock of its particular subsidiary; and

y^2 = the percentage of the shares carrying voting rights held, directly or indirectly, by the particular subsidiary of the Société in the capital stock of the particular subsidiary of that subsidiary of the Société.

Furthermore, the debt of a subsidiary does not include the principal of a loan granted to the subsidiary by the parent legal person, either directly or by subscription for any evidence of indebtedness.

This equation, with the necessary modifications, applies to any subsidiary of a subsidiary, in descending line.

CHAPTER V

CONFLICTS OF INTEREST

24. The Société may not make an investment for the benefit of one of its senior executives, his or her spouse or a child of either.

“Senior executive” has the meaning assigned by the Securities Act (R.S.Q., chapter V-1.1).

25. The Société may not invest in an entity in which a director referred to in paragraph 1, 2 or 4 of section 4 or a senior executive other than a director has a major or controlling interest.

26. A person is considered to have a major interest in an entity if the person holds more than 10% of the stock or shares of the entity.

Such person is deemed to control an entity if the person holds securities enabling the person under all circumstances to elect a majority of its directors.

27. Any contract made in contravention of section 24 or 25 may be cancelled within one year of the date on which it is made.

The senior executives of the Société who made the contract or consented thereto are solidarily liable for the resulting losses to the Société.

28. A contract in contravention of section 24 or 25 is not subject to cancellation and the second paragraph of section 27 does not apply if the contravention results from the opening of a succession or from a gift and if the beneficiary renounces the property concerned or disposes of it with dispatch.

CHAPTER VI

MISCELLANEOUS PROVISIONS

29. Notwithstanding section 125 of the Companies Act, the provisions of that Act which are applicable to legal persons constituted by the filing of articles, with the necessary modifications, apply to the Société where they are not inconsistent with this Act, except the second paragraph of section 46, paragraph 1 of section 53, sections 54, 123.9 to 123.11, 123.22 to 123.24, 123.26, 123.27, 123.27.1 to 123.27.6, 123.55, 123.72, 123.82, 123.91 to 123.93, 123.95, 123.96, 123.98 to 123.100, the second paragraph of section 123.114 and sections 123.115 to 123.136, 123.138 and 123.139.

Sections 123.77 to 123.79 of the said Act apply only in the case of the directors elected under paragraph 2 of section 4.

30. The articles of the Société may be amended but the filing of articles shall not operate to amend any provision of this Act.

31. A shareholder may, on payment of the fee prescribed by by-law of the board of directors, obtain a copy of the articles and by-laws of the Société.

32. Notwithstanding section 472 of the Act respecting financial services cooperatives (2000, chapter 29), the Société is deemed to be a legal person that is not controlled by the Fédération des caisses Desjardins du Québec for the purposes of sections 473 to 486, section 556 and sections 567 and 688 of the said Act.

33. In addition to the other statutory functions it may exercise regarding the operations of the Société, the Commission des valeurs mobilières du Québec shall be charged with inspecting the internal affairs and the operations of the Société annually to ascertain whether this Act is being complied with.

For the purposes of the inspection, the Commission has the powers vested in it by Chapters I and II of Title IX of the Securities Act.

The Commission shall make a report upon each inspection to the Minister of Finance and shall include therein any other information or document the Minister determines.

CHAPTER VII

AMENDING PROVISIONS

COOPERATIVES ACT

34. Section 49.4 of the Cooperatives Act (R.S.Q., chapter C-67.2) is amended by striking out the following sentence in the first paragraph: "Such participation shall be determined by the annual meeting."

35. Section 76 of the said Act is amended by striking out paragraph 1.1.

36. Section 143 of the said Act is amended

(1) by inserting "including interest allocated as participation in the operating surplus or surplus earnings" after "deducted" in the fifth line of the first paragraph;

(2) by striking out subparagraph 4 of the first paragraph.

37. Section 144 of the said Act is amended by replacing ", allotted as rebates, or allocated to the payment of interest on the participating preferred shares" in the second and third lines by "or allotted as rebates".

38. Section 146 of the said Act is amended by replacing "other than" in the fourth line of the second paragraph by "including".

39. Section 163 of the said Act is amended by striking out “, to the payment of interest on participating preferred shares as participation in the operating surplus or surplus earnings,” in the fifth and sixth lines of the third paragraph.

40. Section 172 of the said Act is amended by striking out “, to the payment of interest on participating preferred shares as participation in the operating surplus or surplus earnings,” in the fifth and sixth lines of the second paragraph.

ACT RESPECTING FINANCIAL SERVICES COOPERATIVES

41. The Act respecting financial services cooperatives (2000, chapter 29) is amended by replacing “DIVISION IV” by “DIVISION V” after section 270.

CHAPTER VIII

TRANSITIONAL AND FINAL PROVISIONS

42. The first persons appointed under paragraph 1 of section 4 shall appoint two persons for a period not exceeding one year to act as directors until the election of persons under paragraph 2 of the said section.

43. Upon the appointment of the directors under paragraphs 1 and 2 of section 4, two copies of a list of their full names and addresses shall be filed with the Inspector General of Financial Institutions. The directors come into office on the date of the filing of the list.

44. This Act shall come into force on 1 July 2001, except section 32, which will come into force on the date of coming into force of section 689 of the Act respecting financial services cooperatives.

SCHEDULE 1
(Section 10)

TOTAL AMOUNT OF THE SUBSCRIPTION FOR THE ISSUED AND
OUTSTANDING SHARES AND FRACTIONAL SHARES

- 150 millions on 31 December 2001 ;
- 300 millions on 31 December 2002 ;
- 450 millions on 31 December 2003 ;
- 600 millions on 31 December 2004 ;
- 750 millions on 31 December 2005 ;
- 900 millions on 31 December 2006 ;
- 1,050 millions on 31 December 2007 ;
- 1,200 millions on 31 December 2008 ;
- 1,350 millions on 31 December 2009 ;
- 1,500 millions on 31 December 2010.

SCHEDULE 2
(Section 19)

RESOURCE REGIONS OF QUÉBEC

The regions of Abitibi-Témiscamingue, Bas-Saint-Laurent, Côte-Nord, Gaspésie-Îles-de-la-Madeleine, Mauricie, Nord-du-Québec and Saguenay-Lac-Saint-Jean as described in Order in Council 2000-87 (1987, G.O. 2, 120).