NATIONAL ASSEMBLY

SECOND SESSION THIRTY-SIXTH LEGISLATURE

Bill 110

(2002, chapter 70)

An Act to amend the Act respecting insurance and other legislative provisions

Introduced 6 June 2002
Passage in principle 13 June 2002
Passage 19 December 2002
Assented to 19 December 2002

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EXPLANATORY NOTES

This bill amends the Act respecting insurance to introduce new rules concerning management practices of insurers. The Inspector General of Financial Institutions will have the authority to issue guidelines to insurers and to impose administrative sanctions. The rules that apply to capital and asset adequacy, conflicts of interest and transactions between insurers and restricted parties are also modified.

The bill amends the rules concerning the constitution of insurance companies and allows existing companies to elect to be governed by Part IA of the Companies Act. It broadens the field of activities insurance companies may carry on, the objects they may have and the investments they may make. The bill introduces new rules making it possible for shares of an insurance company to be attributed to a holding company, and authorizes the conversion of mutual insurance companies into capital stock insurance companies. It will not be possible, however, to constitute new mutual benefit associations.

The bill amends the Civil Code as regards a clause of exclusion stipulated in an insurance contract that applies in the case of suicide-related death. It confirms that a stipulation allowing the withdrawal of the capital may be made in an annuity contract entered into with an insurer or a trust company.

The bill amends the Companies Act to allow shareholders including those of insurance companies and the members of mutual insurance companies to submit proposals and speak at the general meetings of the company.

Lastly, the bill contains transitional and consequential amendments.

LEGISLATION AMENDED BY THIS BILL :

– Civil Code of Québec ;

– Deposit Insurance Act (R.S.Q., chapter A-26) ;

– Act respecting insurance (R.S.Q., chapter A-32) ;

– Act respecting the caisses d'entraide économique (R.S.Q., chapter C-3);

– Cities and Towns Act (R.S.Q., chapter C-19);

– Municipal Code of Québec (R.S.Q., chapter C-27.1);

– Companies Act (R.S.Q., chapter C-38);

– Act respecting financial services cooperatives (R.S.Q., chapter C-67.3);

– Deposit Act (R.S.Q., chapter D-5);

– Act respecting the distribution of financial products and services (R.S.Q., chapter D-9.2);

– Act to establish Fondaction, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi (R.S.Q., chapter F-3.1.2);

– Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.) (R.S.Q., chapter F-3.2.1);

– Taxation Act (R.S.Q., chapter I-3);

– Act respecting the Institut de la statistique du Québec (R.S.Q., chapter I-13.011);

– Act respecting the Société des loteries du Québec (R.S.Q., chapter S-13.1);

– Act respecting the sociétés d'entraide économique (R.S.Q., chapter S-25.1);

– Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01);

– Securities Act (R.S.Q., chapter V-1.1);

– Act respecting "Québec Health Services" "Les Services de Santé du Québec" (1991, chapter 102);

– Act respecting Mutuelle des Fonctionnaires du Québec (1991, chapter 103);

– Act constituting Capital régional et coopératif Desjardins (2001, chapter 36);

– Act respecting the Agence nationale d'encadrement du secteur financier (2002, chapter 45).

Bill 110

AN ACT TO AMEND THE ACT RESPECTING INSURANCE AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 1.1 of the Act respecting insurance (R.S.Q., chapter A-32) is amended by adding the following paragraph at the end:

"A partnership is controlled by a person where the latter holds, directly or through legal persons controlled by the person, more than 50% of the interests in the partnership. A limited partnership is controlled by a person where the person or a legal person controlled by the person is the general partner of the partnership."

2. Section 1.5 of the said Act is replaced by the following section:

"**1.5.** A federation and the mutual insurance associations that are members thereof, the guarantee fund of which the mutual insurance associations are members, and any other legal person or partnership controlled by one or more of the mutual insurance associations or the federation constitute a group."

3. Section 10 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended

(1) by inserting ", the establishment of a holding company directly controlling an insurance company or controlled by an insurance company" after "insurer" in subparagraph 1 of the first paragraph;

(2) by replacing "to insurance" in subparagraph 2 of the first paragraph by "to the activities of an insurer or those of a holding company directly controlling an insurance company or controlled by an insurance company".

4. Section 16 of the said Act, amended by section 202 of chapter 45 of the statutes of 2002, is again amended

(1) by replacing "or authorized by the Agency" in the first and second lines by "or the Agency or authorized by the Agency";

(2) by inserting the following sentence at the end of the first paragraph: "The same applies to any information or document relating to the application of guidelines and provided voluntarily to the Agency."

5. Section 17 of the said Act is amended by replacing "the premium or assessment income of the insurer" in subparagraph *b* of the second paragraph by "the insurer's total direct premium income".

6. Section 18 of the said Act is replaced by the following section:

"**18.** For the purposes of section 17, "total direct premium income" means,

(1) in insurance of persons, the total direct premium income received from insured persons or members resident in Québec, less all participation in the profits or rebates paid to them;

(2) in damage insurance, the total direct premium income received in respect of property situated in Québec, less all participation in the profits and related rebates."

7. Section 19 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing "33.2" in subparagraph *c* of the first paragraph by "33.2.2".

8. Sections 20 to 24 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, are replaced by the following sections:

"**20.** Seven persons or more may constitute an insurance company.

No insurance company may be constituted after (*insert here the date that is one day before the date of coming into force of this section*) otherwise than under Part IA of the Companies Act (chapter C-38).

"**21.** The founders shall transmit to the enterprise registrar a notice signed by them indicating their wish to be constituted as a legal person, together with the fees prescribed by regulation of the Government under the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (chapter P-45). The founders shall transmit a copy of the notice to the Agency. The enterprise registrar shall deposit the notice in the register. The application for constitution as an insurance company must be presented to the Minister within six months following the date of the deposit.

The notice must mention:

(1) the name of the company;

(2) the name and address of each founder;

(3) the proposed classes of insurance;

(4) the place in Québec where the company will have its head office;

(5) the proposed capital stock and the projected contributed surplus.

"**22.** The application for constitution as an insurance company shall be signed by each founder and filed with the Minister.

The application shall be filed together with the information prescribed by regulation, the proposed articles and the other documents prescribed by regulation. The Minister may also request any document or information the Minister considers relevant for the evaluation of the application.

The founders shall transmit a copy of the application and other documents referred to in the second paragraph to the Agency.

"**23.** The Minister may, if the Minister considers it advisable and after obtaining the advice of the Agency, authorize the filing of the articles in the register in accordance with Part IA of the Companies Act.

If the authorization is granted, the founders may transmit the articles, the required documents and the prescribed fees to the enterprise registrar. On receiving the articles, documents and fees, the entreprise registrar shall complete the formalities required by section 123.15 of that Act for the constitution of the company and transmit a certified copy of the articles and the certificate to the Agency.

If the Agency refuses to issue a licence to the company, its registration is cancelled by the enterprise registrar on his or her own initiative, and the fees paid for the constitution of the company are refunded.

"**24.** The articles specify the classes of insurance the company is authorized to transact.

In addition, the articles are deemed to include a provision limiting the activities of the company to those insurance companies are permitted to carry on."

9. Section 27 of the said Act is replaced by the following section:

"**27.** The paid-up capital combined, where applicable, with the contributed surplus of an insurance company must be at least $3,000,000.

A government regulation, applicable to insurance companies constituted after (*insert here the date that is one day before the date of coming into force of this section*) or after any later date indicated in the regulation, may however prescribe a different amount."

10. Section 28 of the said Act is amended by replacing in the French text "l'excédent" by "le surplus".

11. Section 29 of the said Act, amended by section 625 of chapter 29 of the statutes of 2000 and by section 243 of chapter 45 of the statutes of 2002, is again amended by inserting "appearing in Schedules I and II to the Bank Act (Statutes of Canada, 1991, chapter 46) and registered with the Canada Deposit Insurance Corporation" after "bank" in the first line of the second paragraph.

12. Section 30 of the said Act is amended by replacing "applicants" in the third line by "founders".

13. Section 31 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing "applicants" in the third line of the second paragraph by "founders".

14. The heading of Chapter I.1 of Title III of the said Act is replaced by the following heading:

"OBJECTS AND POWERS".

15. Sections 33.1 and 33.2 of the said Act are replaced by the following sections:

"**33.1.** In addition to carrying on insurance activities, the object of an insurance company is to offer financial products and services in accordance with the law.

The provisions of this section prevail over any provision of an insurance company's charter, letters patent or articles.

"**33.2.** For the purposes of section 33.1, credit includes all forms of financing or suretyship.

"**33.2.1.** An insurance company may also carry on the activities that only a trust company may carry on under the Act respecting trust companies and savings companies (chapter S-29.01) that are authorized by a government regulation.

The regulation may also determine the cases and conditions in and on which the activities may be carried on.

"**33.2.2.** The Government may authorize an insurance company to carry on an activity not related to the pursuit of its objects that the company is not prohibited by law from carrying on and that the Government considers in the interest of the public.

The Government may prohibit an insurance company from carrying on an activity related to the pursuit of its objects but not expressly authorized by law."

16. Section 35 of the said Act is amended

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

"**35.** Part I of the Companies Act remains applicable, with the necessary modifications, to any insurance company to which this Part applied before (*insert here the date of coming into force of this section*), subject to the contrary provisions of this Act.";

(2) by striking out the third paragraph.

17. The said Act is amended by inserting the following sections after section 35:

"**35.1.** Part IA of the Companies Act applies, subject to the provisions of this Act and with the necessary modifications, to any insurance company constituted after (*insert here the date that is one day before the date of coming into force of this section*) or continued, converted or amalgamated after that date.

"**35.2.** The directors of an insurance company who have adopted a by-law to amend the articles of the insurance company in accordance with the provisions of Part IA of the Companies Act must apply for the authorization of the Minister to file the articles of amendment with the enterprise registrar.

The application shall be filed together with the information prescribed by regulation, the proposed articles of amendment and the other documents prescribed by regulation. The Minister may also request any document or information the Minister considers relevant for the examination of the application.

The directors shall transmit a copy of the application and the other documents referred to in the second paragraph to the Agency.

The Minister may, if the Minister deems it advisable and after obtaining the advice of the Agency, grant the authorization.

When the articles of amendment are filed in the register, the enterprise registrar shall transmit a certified copy thereof to the Agency.

"**35.3.** Where it relates to a mutual insurance company, the word "shareholder" used in this Act or Part I, IA or II of the Companies Act means "member". In addition, where a provision of one of those Acts requires the vote of shareholders representing a fixed proportion of the capital stock of a company, the provision is considered to require the vote of a number of members equal to the proportion determined in value."

18. Section 36 of the said Act is amended by inserting "constituted under a special Act" after "insurance company".

19. Section 37 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is replaced by the following section:

"**37.** Any insurance company constituted by a special Act and subject to Part IA or Part II of the Companies Act may apply to the Minister for authorization to file articles of amendment for the following purposes:

(1) to replace the provisions of its charter by corresponding provisions of this Act;

(2) to replace the provisions of its charter by provisions of Part IA of the Companies Act, to the extent that those provisions are not contrary to the provisions of this Act;

(3) to strike from its charter any provision for which there is no corresponding provision in this Act or in Part IA of the Companies Act.

The articles of amendment must indicate the classes of insurance that the company is authorized to transact.

The Minister shall obtain the opinion of the Agency before giving authorization."

20. Section 38 of the said Act, amended by section 204 of chapter 45 of the statutes of 2002, is replaced by the following section:

"**38.** The application for authorization addressed to the Minister must be signed by the president or vice-president and by the secretary of the company. The application may not be presented unless

(1) it is supported by a by-law approved by the vote of at least two-thirds in value of the shares represented by the shareholders present at a special meeting and by two-thirds of the insured participating in the profits and who are present;

(2) a notice summarizing the contents of the by-law has been transmitted to the Minister for deposit in the register, accompanied with the fees prescribed by regulation of the Government."

21. Section 39 of the said Act, amended by section 205 of chapter 45 of the statutes of 2002, is replaced by the following:

"**39.** The enterprise registrar shall draw up a certificate of amendment in accordance with the procedure provided for in section 123.15 of the Companies Act.

The certificate of amendment attests the amendments authorized as at the date indicated. It specifies any legislative amendments repealed by the articles of amendment.

The Québec Official Publisher must insert in each annual volume of the Statutes of Québec a table indicating the date of the coming into force of the articles of amendment deposited in the register prior to the printing of the volume and the legislative provisions they repeal.

The amendments contained in the articles have the same effect as if they had been made by special Act. The enterprise registrar shall transmit a certified copy of the certificate of amendment to the Agency."

22. Section 41 of the said Act, amended by section 206 of chapter 45 of the statutes of 2002, is again amended

(1) by replacing "the charter of any insurance company may be annulled" in the first and second lines of the first paragraph by "the charter or articles of an insurance company may be annulled";

(2) by replacing "it is not renewed" in subparagraph *c* of the first paragraph by "a new licence is not issued".

23. Section 44 of the said Act is repealed.

24. Section 46 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended

(1) by replacing "section 43 or 44" in the first line of the first paragraph by "section 43";

(2) by striking out the second and third paragraphs.

25. Section 47 of the said Act is repealed.

26. Section 48 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing "sections 43 and 44" in the first line by "section 43".

27. Section 49 of the said Act is amended by replacing "43, 44 and 48" in the first line by "43 and 48".

28. Section 50.3 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing "43, 44 and 50.1" in the first paragraph by "43 and 50.1".

29. Section 50.4 of the said Act is amended by replacing "section 43 or 44" in the second line by "section 43".

30. Section 50.5 of the said Act is amended by replacing "section 43 or 44" in the first line of the first paragraph by "section 43".

31. The said Act is amended by inserting the following after section 50.5 :

"**DIVISION I.1**

"NAME OF THE COMPANY

"**50.6.** The name of an insurance company constituted or continued under the laws of Québec must include the word "insurance", "insurer", "reinsurance" or "reinsurer".

"**50.7.** Only an insurance company may include the word or expression "insurance company", "reinsurance company", "insurer" or "reinsurer" in its name.

No other legal person may use those words or expressions in a way that could lead the public to believe that the legal person is an insurance company.

"**50.8.** The first paragraph of section 50.7 does not apply to a legal person whose name includes the words "insurance company", "reinsurance company", "insurer" or "reinsurer" on (*insert here the date of coming into force of this section*).

"**50.9.** Notwithstanding sections 50.7 and 50.8, the name of a holding company that controls an insurance company and the name of the subsidiary of an insurance company may include all or part of the name of that company.

"**50.10.** The enterprise registrar shall refuse to file in the register articles containing a name that does not comply with the provisions of sections 50.6 to 50.9.

The enterprise registrar shall inform the person concerned of the reasons for the refusal.

"**50.11.** The provisions of this division shall apply without prejudice to the provisions of the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons."

32. Section 52.2 of the said Act is amended

(1) by inserting "or, as the case may be, an application for authorization to file articles" after "patent" in the first line ;

(2) by inserting "or, as the case may be, the certificate were issued" after "granted" in the second line of paragraph 1 ;

(3) by inserting "or, as the case may be, the certificate were issued" after "granted" in the second line of paragraph 2.

33. Section 54 of the said Act is amended

(1) by replacing "spéciale" in the French text of the second paragraph by "extraordinaire";

(2) by replacing the third paragraph by the following paragraph:

"A majority of directors must be resident in Québec."

34. Section 57 of the said Act is amended by replacing "section 43 or 44" in the third line of the second paragraph by "section 43" and by striking out "44" in the seventh line of that paragraph.

35. Section 59 of the said Act is amended by striking out "or the executive committee" in the first and second lines.

36. Section 62 of the said Act is replaced by the following section:

"**62.** No insurer may grant a hypothec or other security on its property, except

(1) to secure a loan contracted to meet short term requirements for liquid funds;

(2) on an immovable;

(3) if the insurer is a registered institution within the meaning of the Deposit Insurance Act (chapter A-26), to obtain an advance of money under section 40 of that Act, or if the insurer receives deposits outside Québec, to obtain an advance of money from a federal or provincial body that guarantees or insures deposits;

(4) to subscribe for savings bonds in favour of the Government of Québec or of Canada;

(5) to become a member of a securities clearing-house recognized by the Commission des valeurs mobilières du Québec as a self-regulatory organization or of any association the object of which is to organize a clearing and settlement system for instruments of payment or securities transactions, and to provide the necessary guarantees; or

(6) for any other purpose provided for in a policy adopted by the board of directors of the insurer and approved by the Agency."

37. Section 63 of the said Act is amended

(1) by striking out ", and published in three daily newspapers at least one of which circulates in the locality where the company has its head office" in the third, fourth and fifth lines of the first paragraph;

(2) by inserting the following sentence at the end of the first paragraph : "If the number of shareholders of the insurance company is greater than 25, the notice is also published in three daily newspapers at least one of which is circulated in the locality where the company has its head office."

38. The said Act is amended by inserting the following after section 66 :

"**66.1.** An insurance company that issues participating policies must establish a policy for determining the dividend and the bonuses payable to the holders of such policies.

The company may distribute any form of benefit to such policyholders, including a dividend or a bonus, in compliance with the policy established in that regard.

In so doing, the company must take into account the opinion of its actuary, set out in a report to the board of directors, on the compliance of the distribution with the policy established in that regard.

"**CHAPTER II.1**

"RESTRUCTURING INTO A HOLDING COMPANY

"**66.2.** The transfer of all the shares of an insurance company constituted under the laws of Québec to a holding company, in return for shares of the holding company, must be ordered by way of a by-law approved by two-thirds of the votes cast by the shareholders of the insurance company at a special meeting, pursuant to the procedure provided for in the by-law.

To achieve such restructuring, the holding company must be constituted under the Companies Act for the sole purposes of

(1) holding all the shares of the insurance company ;

(2) holding all or part of the shares of subsidiaries that are legal persons the control of which by an insurer is authorized under this Act ;

(3) holding all or part of the interests in a partnership which an insurer may control pursuant to section 244.1 ; and

(4) holding all or part of the shares of subsidiaries that provide services to the insurance company and to other subsidiaries.

The transfer of shares must, on pain of nullity, be authorized by the Minister, who shall obtain the opinion of the Agency on the restructuring.

The application for authorization must be filed with the documents and information prescribed by government regulation.

"**66.3.** Notwithstanding any contrary legislative provision, where the Minister has authorized the transfer of the shares of an insurance company for the purposes of a restructuring, the transfer does not require authorization under section 43 and the transfer of the shares of any legal person affiliated with the insurance company to the holding company requires no authorization provided for by law, if the shares are transferred as part of the restructuring."

39. Section 88.1 of the said Act, amended by section 204 of chapter 45 of the statutes of 2002, is replaced by the following sections:

"**88.1.** The member who has received the support of the minimum number or percentage of members entitled to vote prescribed by regulation of the Government may give notice to the company of the proposals that the member intends to submit to the annual meeting.

The provisions of sections 98.2 to 98.12 or, as the case may be, of sections 191.2 to 191.12 of the Companies Act apply to those proposals, with the necessary modifications. In these provisions, the word "shareholder" means, notwithstanding section 35.3, the member who represents the group.

"**88.2.** One per cent of the total number of members or 500 members, whichever is the lesser, may requisition the calling of a special meeting."

40. Section 91 of the said Act is amended

(1) by replacing "spéciale" in the French text of the second paragraph by "extraordinaire";

(2) by replacing the third paragraph by the following paragraph:

"A majority of directors must be resident in Québec."

41. The heading of Division II of Chapter III.1 of Title III of the said Act is amended by replacing "OBJECT" by "OBJECTS".

42. Section 93.4 of the said Act is replaced by the following section:

"**93.4.** A further object of a mutual insurance association is to provide other financial products and services to its members according to law. However, it may carry on such activities only with the autorization of its federation."

43. Section 93.36 of the said Act is amended by replacing "by filing" in the second line of the second paragraph by "to the Agency and file".

44. The said Act is amended by inserting the following sections after section 93.4:

"**93.4.1.** A mutual insurance association may, with the authorization of its federation, carry on activities that only a trust company may carry on pursuant to the Act respecting trust companies and savings companies and that are authorized by a government regulation.

The regulation may also determine the cases and conditions in and on which the activities may be carried on.

"**93.4.2.** For the purposes of section 93.4, credit includes all forms of financing or suretyship."

45. Section 93.46 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing the first paragraph by the following paragraph:

"**93.46.** No mutual insurance association may repay a common share if the repayment would, contrary to section 275 or 275.3, cause its capital base or liquid assets to become inadequate."

46. Section 93.53 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing the first paragraph by the following paragraph:

"**93.53.** No mutual insurance association may redeem or repay a preferred share if the redemption or repayment would, contrary to section 275 or 275.3, cause its capital base or liquid assets to become inadequate."

47. Section 93.78 of the said Act is amended by replacing "five" in the first paragraph by "seven".

48. Section 93.88 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing "between 31 December and 1 March of each year, rule" in paragraph 6 by "rule annually".

49. Section 93.122 of the said Act is replaced by the following section:

"**93.122.** The objects of a federation are

(1) to protect the interests of its members, foster the attainment of their objects and promote their development;

(2) to act as a control and supervisory body over its members and over partnerships and legal persons controlled by its members, to the extent provided for in this Act;

(3) to provide services to mutual insurance associations that are members of the federation, members of the mutual insurance associations, members of the group and, as an ancillary activity, to any other person or partnership;

(4) to define common objectives for the group and to coordinate its activities ; and

(5) to propagate and promote the principles of mutualism in insurance."

50. The said Act is amended by inserting the following section after the heading of Division VIII of Chapter III.2 of Title III :

"**93.159.1.** A federation must adhere to sound and prudent management practices."

51. Section 93.161 of the said Act is replaced by the following section :

"**93.161.** A federation may, by a resolution of its board of directors, designate from among its members those who may

(1) provide financial products and services other than insurance to their members ;

(2) carry on any other activity authorized by the Government in accordance with section 93.162.

A federation shall also determine the terms and conditions governing the exercise of the powers provided for in the first paragraph."

52. The said Act is amended by inserting the following sections after section 93.161 :

"**93.161.1.** A federation may, alone or jointly with a partnership or a legal person of its group, control a legal person or a partnership carrying on activities that may be carried on by a mutual insurance association pursuant to this Act or pursuant to an order in council made by the Government under section 93.162.

However, a federation may not, alone or jointly with a partnership or a legal person of its group, control a legal person that carries on damage insurance activities, except if that legal person is a reinsurer.

"**93.161.2.** A federation may also acquire all or part of the shares of a legal person in the cases determined by government regulation."

53. Section 93.162 of the said Act is replaced by the following section :

"**93.162.** The Government may give a federation the power to authorize a mutual insurance association that is a member of the federation to carry on an activity not related to the pursuit of its objects that the association is not prohibited by law from carrying on and that the Government considers in the interest of the public.

The Government may prohibit a mutual association from carrying on an activity relating to the pursuit of its objects that is not expressly authorized by law."

54. Section 93.167 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing "and the written directives" in the sixth and seventh lines by "and the guidelines and written instructions".

55. Section 93.186 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing ", transmit to the Agency" by "or on any other date the Agency may determine, file with the Agency".

56. Section 93.224 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing "the capital" in the third paragraph by "the amount of the capital determined by the Agency".

57. Section 93.227 of the said Act is amended

(1) by replacing "31 December of the current year" in the third paragraph by "the end of the current fiscal year";

(2) by replacing "following 1 January" in the fourth paragraph by "beginning of the following fiscal year".

58. Section 93.253 of the said Act is amended by inserting "specified in Schedules I and II of the Bank Act and registered with the Canada Deposit Insurance Corporation" after "bank" in the first line.

59. Section 98.263 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing ", file with the Agency" by "or on any other date the Agency may determine, file with the Agency".

60. Section 94 of the said Act is replaced by the following:

"**94.** No legal person may, after 6 June 2002, be constituted in Québec to engage in mutual benefit insurance activities."

61. Sections 95, 96 and 98 to 105 of the said Act are repealed.

62. Section 174.3 of the said Act, amended by section 13 of chapter 34 of the statutes of 2001, is again amended by replacing "budgeted statement of the balance sheet, operating account and surplus account" in paragraph 1 by "financial statements".

63. Section 174.6 of the said Act is amended by replacing "5" in the first paragraph by "7".

64. The heading of Chapter V of Title III of the said Act is replaced by the following heading:

"AMALGAMATION, CONVERSION AND DEMUTUALIZATION".

65. Section 176 of the said Act is amended by striking out the third paragraph.

66. The said Act is amended by inserting the following section after section 178:

"**178.1.** A mutual damage-insurance company may be converted into a mutual insurance association."

67. Section 179 of the said Act is replaced by the following section:

"**179.** A mutual insurance association may, with the authorization of its federation and of the Minister, be converted into a mutual damage-insurance company.

The company resulting from the conversion may be converted into a capital stock company transacting damage insurance.

Before granting an authorization referred to under this section, the Minister shall obtain the advice of the Agency."

68. Section 184 of the said Act is amended by striking out "or conversion".

69. The said Act is amended by inserting the following section after the heading of Division II of Chapter V of Title III:

"**184.1.** Insurance companies, governed by Part I, IA or II of the Companies Act, may amalgamate.

Subject to the provisions of this division, sections 123.116 to 123.130 of the Companies Act apply to the amalgamation of insurance companies.

Amalgamation effects continuance under Part IA of the aid Act without it being necessary for an insurance company to be continued in accordance with sections 123.131 to 123.139 of that Act."

70. Section 189 of the said Act is replaced by the following section:

"**189.** The amalgamating legal persons shall file a joint application requesting the Minister to confirm the agreement and, in the case of companies, to confirm the agreement and authorize the enterprise registrar to draw up a certificate of amalgamation and deposit a copy of the articles of amalgamation in the register.

The legal persons shall transmit one copy of the amalgamation agreement to the Minister and two copies to the Agency."

71. Section 190 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing "petition" by "application".

72. Section 191 of the said Act, amended by section 227 of chapter 45 of the statutes of 2002, is replaced by the following section:

"**191.** If the Minister accepts the application, the Agency shall confirm such acceptance on the copies of the amalgamation agreement.

If the applicant is a company, the Agency shall transmit a copy of the amalgamation agreement to the enterprise registrar, who shall deposit it in the register. The enterprise registrar shall then draw up the certificate of amalgamation and deposit it in the register with a copy of the articles of amalgamation. The enterprise registrar shall transmit a certified copy of the articles of amalgamation and amalgamation agreement to the Agency.

The articles of amalgamation must specify the classes of insurance the company is authorized to transact.

If the applicant is not a company, the Agency shall transmit a copy of the amalgamation agreement to the enterprise registrar, who shall deposit it in the register."

73. Section 192 of the said Act is amended by replacing "upon the date of the letters patent but subject to their deposit in the register, the amalgamation" in the second paragraph by "on the date shown on the certificate of amalgamation, the amalgamation".

74. Section 194 of the said Act is amended

(1) by striking out "or a mutual benefit association" in subparagraph *g* of the second paragraph;

(2) by adding the following paragraph at the end:

"No legal person may be converted into a mutual benefit association."

75. Section 195 of the said Act is amended by replacing "general meeting of the interested legal person specially called for that purpose" by "special meeting of the interested legal person".

76. Section 196 of the said Act is amended by striking out the second paragraph.

77. Section 198 of the said Act is replaced by the following section:

"**198.** The legal person shall file an application requesting the Minister to confirm the conversion by-law and, in the case of companies, to confirm the by-law and authorize the enterprise registrar to draw up a certificate evidencing the conversion.

The application must be filed with the conversion by-law.

Before confirming the by-law, the Minister shall obtain the advice of the Agency."

78. Section 199 of the said Act, replaced by section 229 of chapter 45 of the statutes of 2002, is replaced by the following section:

"**199.** If the Minister accepts the application, the Minister shall transmit the conversion by-law to the Agency. The Agency shall transmit the conversion by-law to the enterprise registrar, who shall deposit it in the register."

79. Section 200 of the said Act is replaced by the following:

"**200.** Unless the applicant is a company, the legal person that applied for conversion shall cease to exist on the date the conversion by-law referred to in section 199 is deposited in the register.

The rights, obligations and acts of the legal person shall not be affected by the conversion.

"**200.0.1.** If the legal person resulting from the conversion is a company, two copies of the articles of conversion signed by a director shall be filed with the enterprise registrar.

The articles of conversion must specify the classes of insurance the company is authorized to transact.

"**200.0.2.** If the Minister accepts the application filed by a company under section 198, the enterprise registrar shall, on receiving the articles of conversion, the accompanying documents and the fees prescribed by government regulation, draw up a certificate evidencing the conversion in accordance with the procedure set out in section 123.15 of the Companies Act. The enterprise registrar shall transmit a certified copy of the articles and certificate of conversion to the Agency.

"**200.0.3.** The legal person that applied for conversion shall cease to exist on the date appearing on the certificate of conversion.

The company resulting from the conversion shall have the rights and assume the obligations of the legal person that applied for conversion.

"**DIVISION III.1**

"DEMUTUALIZATION

"**200.0.4.** Notwithstanding any special Act that is applicable to it, a mutual insurance company may, with the authorization of the Minister, be converted into a capital stock insurance company in accordance with the regulations of the Government and be continued under Part IA of the Companies Act.

A mutual insurance company wishing to be so authorized shall submit to the Minister a proposal for its conversion into a capital stock company. The proposal must be consistent with the regulations of the Government.

Before granting an authorization, the Minister shall obtain the advice of the Agency.

"**200.0.5.** After a decision in favour of demutualization is made by the board of directors, a demutualization plan must be approved by at least two-thirds of the votes cast by the members and at least two-thirds of the votes cast by participating policyholders, at a special meeting pertaining to

(1) the demutualization proposal to be submitted to the Minister;

(2) the articles of demutualization;

(3) the proposed by-laws of the company resulting from the demutualization.

"**200.0.6.** The company must send to the members

(1) a document explaining the demutualization plan in sufficient detail to permit a member to form an informed judgment on the terms of the proposal and its impact;

(2) the information prescribed by regulation of the Government.

"**200.0.7.** Demutualization is effected, subject to the authorization of the Minister, by a by-law of the company.

The by-law must authorize one of the directors to sign the articles of demutualization, which must specify the classes of insurance the company is authorized to transact.

The board of directors may, before the certificate is drawn up, revoke the by-law if the by-law gives the board of directors the power to do so.

"**200.0.8.** The board of directors of the company deciding to apply for the authorization referred to in section 200.0.4 shall adopt the first by-laws of the converted company.

"**200.0.9.** The articles of demutualization shall include the provisions of section 123.12 of the Companies Act except paragraph 3, as well as those allowed by section 123.13 of that Act.

The articles of demutualization must be filed with the documents prescribed by regulation of the Government and the other documents provided for in section 123.14 of that Act.

"**200.0.10.** Two copies of the articles of demutualization signed by the director authorized under the by-law referred to in section 200.0.7 must be filed with the enterprise registrar.

"**200.0.11.** If the Minister authorizes the demutualization, the enterprise registrar shall, on receiving the articles of demutualization, the accompanying documents and the fees prescribed by government regulation, draw up a certificate evidencing the demutualization of the company and its continuance in accordance with the procedure set out in section 123.15 of the Companies Act. The enterprise registrar shall transmit a certified copy of the certificate and articles of demutualization to the Agency.

"**200.0.12.** As of the date appearing on the certificate of demutualization,

(1) the certificate of demutualization attests the existence of the mutual insurance company and its continuance as a company governed by Part IA of the Companies Act and subject to this Act;

(2) the articles of demutualization are deemed to be the articles of the continued company.

From that date, the company is converted into a capital stock company.

"**200.0.13.** Subject to the provisions of this division and the regulations of the Government, the rights and obligations of the mutual insurance company and those of its members shall not be affected by the demutualization."

80. The said Act is amended by inserting the following after the heading of Chapter V.1 of Title III:

"**DIVISION I**

"CONTINUANCE OF A COMPANY GOVERNED BY PART I OF THE COMPANIES ACT

"**200.0.14.** The directors of an insurance company to which Part I of the Companies Act applies may adopt a by-law authorizing the company to be continued under Part IA of that Act.

The by-law must be ratified by a two-thirds majority of the votes cast by the shareholders at a special meeting.

"**200.0.15.** Subject to the provisions of this Act, sections 123.133 to 123.139 of the Companies Act apply to the continuance.

The articles of continuance must specify the classes of insurance the company is authorized to transact.

"**200.0.16.** At the request of a company constituted by special Act, the enterprise registrar shall, with the authorization of the Minister, draw up a certificate of continuance so that the provisions of Part IA of the Companies Act may apply to it, to the extent that they are not inconsistent with the provisions of this Act or of its charter. Before granting the authorization, the Minister shall obtain the advice of the Agency.

The articles of amendment must specify the classes of insurance the company is authorized to transact.

The enterprise registrar shall transmit a certified copy of the articles and certificate of continuance to the Agency."

81. The said Act is amended by inserting the following heading before section 200.1:

"**DIVISION II**

"CONTINUANCE OF OTHER COMPANIES CONSTITUTED OUTSIDE QUÉBEC".

82. Section 200.5 of the said Act is replaced by the following section:

"**200.5.** The company shall request the Minister to confirm the continuance by-law.

Before confirming the by-law, the Minister shall obtain the advice of the Agency."

83. Section 200.6 of the said Act, replaced by section 230 of chapter 45 of the statutes of 2002, is again replaced by the following section:

"**200.6.** If the Minister confirms the by-law, the enterprise registrar shall, on receiving the articles of continuance, the accompanying documents and the fees prescribed by government regulation, draw up a certificate evidencing the continuance of the company in accordance with the procedure set out in section 123.15 of the Companies Act.

The articles of continuance must specify the classes of insurance the company is authorized to transact.

The enterprise registrar shall transmit a certified copy of the articles and certificate of continuance to the Agency."

84. Section 200.7 of the said Act is replaced by the following section:

"**200.7.** As of the date appearing on the certificate of continuance,

(1) the certificate of continuance attests the existence of the company and its continuance under this Act;

(2) the articles of continuance are deemed to be the articles of the continued company;

(3) the continued insurance company is deemed to be an insurance company constituted under the statutes of Québec."

85. Section 203 of the said Act is repealed.

86. Section 205 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended

(1) by striking out ", with a certificate of any deposit the legal person has with any such authority" in subparagraph *h* of the first paragraph;

(2) by replacing subparagraph *i* of the first paragraph by the following subparagraph:

"(*i*) to the extent and in the manner prescribed by regulation, the financial statements of the legal person or, where applicable, of its insurance fund, as they stood at the close of the last fiscal year preceding its application for a licence; if the legal person is required to file financial statements with a superintendent, insurance commissioner or other federal, provincial or foreign authority of a province, state or country in which it was constituted, it shall, to the same extent and in the same manner, file a copy of those financial statements;";

(3) by striking out subparagraphs *j* and *k* of the first paragraph.

87. The said Act is amended by inserting the following section after section 206:

"**206.1.** No legal person constituted as or converted into a mutual benefit association after 6 June 2002 under any Act or statute other than an Act or statute of Québec may obtain a licence."

88. Section 207 of the said Act is amended

(1) by inserting the following paragraph after the second paragraph:

"The legal person must facilitate access, at its head office and each of its establishments, to any information and documents the representative considers necessary for the carrying out of his or her functions.";

(2) by replacing "Il" in the French text of the first line of the third paragraph by "Le représentant".

89. Section 209 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by striking out ", and a copy of the resolution authorizing them".

90. Section 211 of the said Act, amended by section 231 of chapter 45 of the statutes of 2002, is again amended by adding the following paragraphs at the end:

"(*g*) deposits an undertaking made by the holding company directly controlling the legal person and by any holding company controlled by the legal person, enabling the Agency or the representative designated by the Agency to enter, at any reasonable time, the head office of the legal person and its other establishments situated outside Québec and permitting the application of subparagraphs 2 and 3 of the first and second paragraphs of section 10, for the purposes of the inspection of the legal person's internal affairs and activities;

"(*h*) causes any holding company controlled by the legal person to furnish all the documents and information enabling the Agency to ensure that the legal person adheres to sound and prudent management practices."

91. Section 212 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by striking out "be issued for a period of less than one year and".

92. Section 219.1 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by striking out subparagraph *a* of the first paragraph.

93. Section 220 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by striking out the second paragraph.

94. Section 221 of the said Act is replaced by the following section:

"**221.** Licences are issued for an indeterminate period."

95. Section 222 of the said Act is replaced by the following section:

"**222.** The Agency shall, on issuing a licence, publish a notice in the *Gazette officielle du Québec* indicating the name and address of the head office or chief establishment of the legal person to which the licence is issued and the classes of insurance covered by the licence.

The Agency shall also publish, each year, in the *Gazette officielle du Québec*, a list of the insurers holding a licence and the address of their head offices or business establishments."

96. The said Act is amended by inserting the following after section 222:

"CHAPTER I.1

"MANAGEMENT PRACTICES

"**222.1.** Every insurer and every holding company controlled by an insurer must adhere to sound and prudent management practices."

97. Sections 223 to 242 of the said Act are repealed.

98. Section 244 of the said Act is replaced by the following section:

"**244.** Every insurer must exercise its investment powers with prudence and care and in accordance with any government regulation.

Every insurer must adhere to sound and prudent investment management practices.

In addition, every insurer must act with honesty and loyalty in the best interests of its insureds, shareholders or members."

99. The said Act is amended by inserting the following sections after section 244:

"**244.1.** An insurer other than a mutual insurance association may not acquire directly or through a partnership or legal person it controls more than 30% of the assets or the voting rights attached to the shares of a legal person, or more than 30% of the assets or the voting rights attached to the shares of a cooperative or other similar legal person whose head office is situated outside Québec. The voting rights may not enable the insurer to elect more than one-third of the directors of the legal person.

A mutual insurance association may not acquire directly or through a partnership or legal person it controls, alone or jointly with a legal person of its group, more than 30% of the assets or the voting rights attached to the shares of a legal person, or more than 30% of the assets or the voting rights attached to the shares of a cooperative or other similar legal person whose head office is situated outside Québec. The voting rights attached to the shares may not enable the association to elect more than one-third of the directors of the legal person.

"**244.2.** Notwithstanding section 244.1, an insurer may

(1) acquire directly all or part of the shares of a legal person that only carries on activities similar to those the insurer is authorized to carry on; and

(2) acquire all or part of the shares of a legal person in such cases as are determined by government regulation.

Except in the case of a professional order, an insurer may acquire shares of a legal person through a holding company.

"**244.3.** A mutual insurance association must obtain the authorization of its federation before acquiring directly or through a holding company all or part of the shares of a legal person pursuant to section 244.2."

100. Section 245 of the said Act is replaced by the following section:

"**245.** The provisions of section 244.2 allow the acquisition of shares of a legal person only where the legal person is or becomes, as a result of that acquisition, a legal person controlled by the acquirer.

The first paragraph does not apply in the cases determined by regulation of the Government."

101. Section 245.0.1 of the said Act is replaced by the following section:

"**245.0.1.** No voting right may be exercised in relation to any investment or, as the case may be, the portion of any investment that exceeds the limits authorized under this Act or the regulations."

102. Section 245.1 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended

(1) by striking out "provided the investment does not cause the book value of the aggregate of its investments in that fund to exceed 25% of its assets" in the first sentence of the first paragraph;

(2) by striking out the second paragraph.

103. The said Act is amended by inserting the following section after section 246:

"**246.1.** This Act shall not operate to limit the powers of an insurer to realize on a security by acquiring property or otherwise. The insurer must, where the case arises, take the measures required to comply with the provisions that govern such investments, within a reasonable time having regard to market conditions."

104. Sections 247, 257 and 274 of the said Act are repealed.

105. Section 275 of the said Act is replaced by the following section:

"**275.** Every insurer must maintain an adequate capital base consistent with sound and prudent management."

106. The said Act is amended by inserting the following section after section 275:

"**275.0.0.1.** The Agency may, where it considers it advisable, give written instructions to an insurer concerning the adequacy of and the elements which compose its capital base, and the proportion represented by each element.

Before exercising the power set out in the first paragraph, the Agency must notify the insurer and give it an opportunity to present observations."

107. Section 275.3 of the said Act is replaced by the following section:

"**275.3.** Every insurer must, in view of its operations, maintain such liquid assets as are adequate to ensure sound and prudent management."

108. The said Act is amended by inserting the following section after section 275.3:

"**275.3.1.** The Agency may, where it considers it advisable, give written instructions to an insurer concerning the adequacy of its liquid assets.

Before exercising the power set out in the first paragraph, the Agency must notify the insurer and give it an opportunity to present observations."

109. Section 275.4 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing "all or part of its enterprise" in the first line by ", in the course of a twelve-month period, all or part of its enterprise if the amount of the sale represents more than 5% of its assets".

110. The said Act is amended by inserting the following section after section 280:

"**280.1.** The provisions of Division II of this chapter do not apply to the separate groups of assets maintained by an insurer under this division."

111. Section 281 of the said Act is amended

(1) by striking out "for payment of dividends";

(2) by adding the following paragraphs at the end:

"For the purposes of the first paragraph, any surplus shall be that shown in the last annual statement of the insurer.

The first paragraph has effect from 20 October 1976 in respect of mutual insurance companies."

112. Sections 282 to 285 of the said Act are repealed.

113. Sections 285.4, 285.5 and 285.12 of the said Act are repealed.

114. Section 285.14 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended

(1) by inserting "rules of ethics and" after "adopt" in the first line of the first paragraph;

(2) by inserting "the conduct of the directors and officers," after "in particular," in the first line of the second paragraph.

115. Section 285.17 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing the first, second and third paragraphs by the following paragraphs:

"**285.17.** An insurer, a holding company that controls an insurer and any subsidiary of an insurer must, when doing business with restricted parties with respect to the insurer, act in their regard in the same manner as when they are dealing at arm's length. In addition, any federation of mutual insurance associations must, when doing business with restricted parties with respect to a mutual insurance association that is a member of the federation, act in their regard in the same manner as when it is dealing at arm's length.

The same applies where an insurer, a holding company that controls an insurer and any subsidiary of the insurer do business with associates of directors or officers of the insurer or, in the case of a federation of mutual insurance associations, where it does business with associates of directors or officers of the mutual insurance association that is a member of the federation.

In cases of contestation, the onus is on the insurer, the holding company that controls an insurer, the subsidiary of an insurer or, as the case may be, the federation of mutual insurance associations to show that they were dealing at arm's length.

However, notwithstanding the first paragraph, a contract may be entered into, where the parties include an insurer, a holding company that controls an insurer, the subsidiary of an insurer and a legal person in which the insurer or its subsidiary holds more than 30% of the shares provided such a contract is authorized by the Agency. The same applies to a contract between a mutual insurance association and a legal person belonging to the same group as its federation."

116. Section 285.18 of the said Act is replaced by the following section:

"**285.18.** The following are restricted parties with respect to an insurer:

(1) the directors and officers of the insurer;

(2) in the case of a capital stock company, the directors and officers of the legal person that controls it;

(3) in the case of a mutual insurance association, the directors and officers of its federation;

(4) in the case of a professional order, the members of its Bureau and the administrators of the manager entrusted with the day-to-day operation of the fund;

(5) any person who holds, directly or indirectly, 10% or more of the voting rights attached to the shares issued by the insurer, or 10% or more of such shares;

(6) a shareholder of the insurer, the shareholder's spouse and their minor children, if they jointly hold, directly or indirectly, 10% or more of the voting rights attached to the shares issued by the insurer, or 10% or more of such shares;

(7) the associates of the persons referred to in paragraphs 1 to 6, except in the case of a subsidiary of the insurer;

(8) any other person who, in the opinion of the Agency, may receive preferential treatment to the detriment of the interests of the insurer or its insureds."

117. Section 285.19 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing "subparagraph 15 of the first paragraph" in the first paragraph by "paragraph 8".

118. Sections 285.20 to 285.26 of the said Act are replaced by the following sections:

"**285.20.** Every insurer shall, in respect of restricted parties with whom it does business, act in the same manner as when it is dealing at arm's length.

"**285.21.** Where the Agency designates a person as being a restricted party, the Agency shall so notify the person and the insurer concerned by that decision.

The Agency may revise the decision at the request of the person so designated or the insurer concerned.

Before rendering a decision or refusing to revise it, the Agency shall give the person and the insurer concerned an opportunity to present observations.

"**285.22.** All contracts and operations of an insurer with restricted parties must comply with the rules adopted by the ethics committee and the provisions of this Act.

"**285.23.** Every transaction by an insurer to acquire securities issued by a restricted party or to transfer assets between them must, in addition, be approved by the board of directors of the insurer, which shall obtain the opinion of the ethics committee.

"**285.24.** Every service contract between an insurer and a restricted party must be made on favourable terms for the insurer, or at least on competitive terms.

Every such contract must also be approved by the board of directors of the insurer, which shall obtain the opinion of the ethics committee, except where the amounts involved are minimal.

In cases of contestation, the onus is on the insurer to show that the service contract to which it is a party meets the prescribed requirements.

"**285.25.** The Agency or any person having a sufficient interest may apply to the court for the cancellation of a transaction made with a restricted party in contravention of the provisions of this Act which may seriously prejudice the interests of the insurer.

"**285.26.** No insurer may extend credit to a restricted party on more favourable terms than those applicable in the ordinary course of its business.

"**285.27.** No insurer may extend credit to any of its directors or officers or to any person who is an associate of any of its directors or officers except to the extent determined by the rules of ethics applicable to the insurer.

No insurer may extend credit to any of the officers of an affiliated legal person belonging to its group except to the extent determined by the rules of ethics applicable to the insurer.

"**285.28.** The provisions of section 285.27 do not apply

(1) to credit extended by way of a credit card or credit not exceeding the limits usually granted to credit card holders;

(2) to credit extended to an officer or an associate of an officer where the officer has no authority over the person extending credit on behalf of the insurer."

119. Sections 285.27 to 285.34 of the said Act, enacted by section 233 of chapter 45 of the statutes of 2002, are renumbered as sections 285.29 to 285.36.

Section 285.28 of the said Act, enacted by section 233 of chapter 45 of the statutes of 2002, is amended by replacing "285.27" in the first paragraph by "285.29".

Section 285.29 of the said Act, enacted by section 233 of chapter 45 of the statutes of 2002, is amended by replacing "285.27" in the first paragraph by "285.29".

120. Section 289 of the said Act is amended by replacing "its surplus" in subparagraph *c* of the first paragraph by "its equity capital".

121. Section 293 of the said Act is amended by replacing "accountant" in the first line of the first paragraph by "accountant qualified to practise public accounting".

122. Section 297 of the said Act is amended by replacing the first paragraph by the following paragraphs:

"**297.** The auditor shall indicate, in the auditor's report,

(1) whether the audit was carried out in accordance with generally accepted auditing standards;

(2) whether, in the auditor's opinion, the financial statements of the insurer included in the report submitted to the general meeting present fairly the financial position of the insurer and the results of its operations, in accordance with generally accepted accounting principles.

The auditor shall include in the report sufficient explanations in respect of any reservations expressed."

123. The said Act is amended by inserting the following section after section 298.2:

"**298.2.1.** The auditing committee shall verify that each insurer adheres to sound and prudent management practices.

The auditing committee shall notify the board of directors in writing on becoming aware of management practices that may adversely affect the financial position of the insurer.

In addition, if it considers that the board of directors has failed to take appropriate and timely measures to remedy the situation identified in the notice, the auditing committee shall so inform the Agency."

124. Section 298.14 of the said Act is replaced by the following section:

"**298.14.** The actuary shall prepare, at the end of each fiscal year, a report establishing and presenting the provisions and reserves considered sufficient to ensure sound and prudent management. The report must include any information required by the Agency.

The insurer must, on request, forward a copy of the report to the Agency.

The report must be accompanied by the actuary's provisions and reserves valuation certificate. The certificate must be appended to the annual statement of the insurer."

125. Section 298.15 of the said Act is replaced by the following section:

"**298.15.** The Agency may, at any time, require that a study of any question, such as the valuation of the provisions and reserves and the financial position of the insurer, be conducted in the manner and within the time limit it indicates. The actuary shall transmit the results of the review to the Agency within the allotted time.

The Agency may designate another actuary to conduct such a review. All expenses incurred for the purposes of the review and approved by the Agency shall be paid by the insurer."

126. The said Act is amended by inserting the following sections after section 298.16:

"**298.17.** The actuary designated by an insurance company that transacts participating insurance shall prepare, before the end of each fiscal year, a review of the method of allocating income and expenses to participating and non-participating business.

The actuary shall indicate in the review whether, in his or her opinion, the allocation method is fair and equitable for participating and other policyholders.

The actuary shall send a copy of the review to the board of directors.

"**298.18.** The actuary designated by an insurance company that transacts participating insurance shall prepare a report on the benefits granted to holders of such policies, in particular in the form of dividends or bonuses.

The actuary shall indicate in the report whether, in his or her opinion, the granting of such benefits is in conformity with the policy established pursuant to section 66.1.

The actuary shall send a copy of the report to the board of directors."

127. Section 299 of the said Act is amended by replacing "the operating account and the surplus account" in paragraph *b* by "the income statement and the statement of retained earnings".

128. Section 305 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended

(1) by replacing "a statement of operations" in the first paragraph by "an income statement";

(2) by adding the following paragraph at the end:

"The Agency may determine, with respect to any insurer it designates and with the insurer's consent, dates that are different from those provided for in this section."

129. Section 307 of the said Act is amended

(1) by replacing "The statement of the assets and liabilities" in the first line by "The balance sheet";

(2) by striking out "recognized as investments authorized under this Act" in paragraph *a*;

(3) by replacing paragraph *h* by the following paragraph:

"(*h*) the premiums and assessments collected in advance;";

(4) by striking out paragraph *i*.

130. Sections 313 and 314 of the said Act are repealed.

131. Section 317 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing the first and second paragraphs by the following paragraph:

"**317.** The Agency may, if it considers it advisable, conduct or commission any inspection into the internal affairs and activities of any insurer."

132. The said Act is amended by inserting the following sections after section 317:

"**317.1.** The Agency may, if it believes on reasonable grounds that an insurer committed an offence under this Act or that the financial position of an insurer is deteriorating, inspect the internal affairs and activities of the insurer, the holding company directly controlling the insurer and any holding company controlled by the insurer.

"**317.2.** Any holding company directly controlling an insurer and any holding company controlled by an insurer must make an undertaking enabling the Agency or the representative designated by the Agency to enter, at any reasonable time, their head office and other establishments situated outside Québec and permitting the application of subparagaphs 2 and 3 of the first and second paragraphs of section 10, for the purposes of an inspection of their internal affairs and activities."

133. Section 319 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by striking out "also" in the first line of the first paragraph.

134. Section 320 of the said Act is replaced by the following section:

"**320.** The Agency may, whenever it considers it advisable, cause the provisions and reserves for all outstanding contracts of every insurer doing business in Québec to be valued in accordance with the provisions of this Act."

135. Section 321 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing "inquiries and inspections made by him, on the affairs of all insurers" by "inquiries, inspections and evaluations made by him, on the affairs of all the insurers doing business".

136. Section 322 of the said Act is repealed.

137. Section 325.0.1 of the said Act, enacted by section 236 of chapter 45 of the statutes of 2002, is amended

(1) by replacing paragraph 3 by the following paragraph:

"(3) holding companies controlled by an insurer;";

(2) by adding the following paragraph at the end:

"Before issuing guidelines to mutual insurance companies, the Agency shall consult the federation of which they are members."

138. Section 325.0.2 of the said Act, enacted by section 236 of chapter 45 of the statutes of 2002, is replaced by the following section:

"**325.0.2.** The guidelines may pertain to

(1) the adequacy of the capital;

(2) the adequacy of the liquid assets;

(3) the policy insurers must adopt in accordance with section 285.29;

(4) any other sound and prudent management practices, in particular those concerning commercial practices in relation to the marketing of insurance products.

Guidelines are not regulations."

139. Section 325.1 of the said Act, amended by section 237 of chapter 45 of the statutes of 2002, is replaced by the following section:

"**325.1.** The Agency may order a legal person or partnership referred to in subparagraphs 1 to 8 of the first paragraph of section 325.0.1 to cease a course of action or to implement specified measures if the Agency is of the opinion that the legal person or partnership

(1) is not adhering to sound and prudent management practices, in particular concerning any of the objects referred to in subparagraphs 1 to 4 of the first paragraph of section 325.0.2;

(2) is not complying with a provision of this Act, a regulation, an order made pursuant to section 33.2.2 or 93.162 or a written instruction; or

(3) is not complying with an undertaking under this Act.

The Agency may also order a legal person or a partnership controlled by an insurer to cease a course of action or to implement specified measures if the Agency is of the opinion that the legal person or partnership is not complying with a provision of this Act, a regulation or a written instruction or is not complying with an undertaking under this Act.

At least 15 days before issuing an order, the Agency shall notify the contravener as prescribed in section 5 of the Act respecting administrative justice, stating the grounds which appear to justify the order, the date on which the order is to take effect and the right of the contravener to present observations.

"**325.1.1.** The Agency may make an order under section 325.1 if it is of the opinion that the legal person or partnership is not adhering to sound and prudent management practices, even if the guidelines are being complied with."

140. Section 358 of the said Act, amended by section 238 of chapter 45 of the statutes of 2002, is again amended

(1) by striking out paragraphs *d* and *e*;

(2) by inserting the following paragraphs after paragraph *g*:

"(*g*.1) where a holding company controlled by the insurer does not, in the opinion of the Agency, adhere to sound and prudent management practices;

"(*g*.2) where the holding company that controls the insurer directly or a holding company controlled by the insurer has not deposited an undertaking enabling the Agency or the representatives designated by the Agency to enter, at any reasonable time, the head office of the holding company and its other establishments situated outside Québec and permitting the application of subparagraphs 2 and 3 of the first and second paragraphs of section 10, for the purposes of the inspection of the holding company's internal affairs and activities, or has failed to fulfil such an undertaking;";

(3) by adding the following paragraph after the first paragraph:

"The Agency may also modify the licence of an insurer coming under the first paragraph so as to withdraw authorization to transact classes of insurance."

141. Section 361 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by replacing "ordering the cancellation or suspension of a licence" in the first and second lines by "exercising a power under section 358".

142. Section 362 of the said Act is replaced by the following section:

"**362.** The Agency shall also give notice in the *Gazette officielle du Québec* of

(1) any cancellation or suspension of a licence; or

(2) any modification to a licence made by the Agency under section 358."

143. Section 363 of the said Act is replaced by the following section:

"**363.** The licence of an insurer is suspended by operation of law if its powers as a legal person are suspended."

144. Section 364 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by striking out "and the indication of its term" in the third and fourth lines.

145. Section 365 of the said Act is amended by adding "or its articles are cancelled" at the end of paragraph *a*.

146. Section 366 of the said Act is amended

(1) by replacing "Any refusal, suspension or cancellation of a licence may, within 30 days of notification of the decision" by "Any decision to refuse, suspend or cancel a licence or to modify a licence under section 358 may, within 30 days of its notification";

(2) by adding the following paragraph after the first paragraph:

"The same applies in respect of a decision rendered pursuant to the provisions of Chapter XI.1."

147. Section 367 of the said Act is amended by replacing "contested decision" by "decision contested under the first paragraph of section 366".

148. The said Act is amended by inserting the following chapter after section 405:

"CHAPTER XI.1

"ADMINISTRATIVE SANCTIONS

"**405.1.** Following the establishment of facts brought to the attention of the Agency showing that a person or partnership has failed to comply with a provision of this Act or a regulation thereunder, the Agency may impose an administrative sanction on that person or partnership and collect payment thereof.

The amount of the sanction shall be proportionate to the seriousness of the violation and may, in no case, exceed $1,000,000.

The sums collected under the first paragraph shall be paid into a fund established by the Agency for the benefit of consumers and allocated in particular to information provided to consumers concerning the products and services offered by insurers.

"**405.2.** The Agency may require a person or partnership referred to in section 405.1 to repay, in addition to an administrative sanction, the costs incurred in connection with the inspection or inquiry which established proof of the facts showing non-compliance with the provision concerned, according to the tariff established by regulation.

"**405.3.** At least 15 days before rendering a decision under this chapter, the Agency shall notify the interested party as prescribed by section 5 of the Act respecting administrative justice, stating the grounds which appear to justify the decision, the date on which the decision is to take effect and the right of the interested party to present observations."

149. Section 406 of the said Act, amended by section 243 of chapter 45 of the statutes of 2002, is again amended by striking out ", 44" in paragraph *r*.

150. Section 420 of the said Act, amended by section 242 of chapter 45 of the statutes of 2002, is again amended

(1) by striking out "or for its renewal" in paragraph *a*;

(2) by replacing "suspends or cancels" in paragraph *h* by "suspends, cancels or, under section 358, modifies";

(3) by replacing paragraph *k* by the following paragraph:

"(*k*) establish a tariff of fees payable for the constitution of insurance companies and associations into legal persons, the issuance of letters patent, the filing, examination and certification of articles and other documents, the issuance and reinstatement of licences as well as for inspections;";

(4) by striking out ", and of the deposits required under this Act" in paragraph *l*;

(5) by striking out "or renewal" in the second line of paragraph *aa*;

(6) by replacing paragraph *ac* by the following paragraph:

"(*ac*) prescribe the documents and information that must be furnished to the Minister and the Agency in relation to the constitution of an insurance company or a mutual insurance association or in relation to any modification to their letters patent, charter or articles;";

(7) by striking out paragraphs *al* and *an*;

(8) by replacing "285.27" in paragraph *av* by "285.29".

151. The said Act is amended by inserting the following sections after section 420:

"**420.1.** In addition, the Government may, by regulation,

(1) fix the minimum amount of the combined paid-up capital and contributed surplus for the purposes of the second paragraph of section 27;

(2) prescribe the documents and information that must be provided to the Minister in support of an application for authorization to restructure under section 66.2;

(3) determine the number or percentage of members required for the purposes of the first paragraph of section 88.1;

(4) determine the activities of a trust company which may be exercised by an insurance company and specify the cases and conditions in and on which the insurance company may exercise them;

(5) determine the activities of a trust company which may be exercised by a mutual insurance association and specify the cases and conditions in and on which the mutual insurance association may exercise them;

(6) prescribe standards respecting the adequacy of the capital of an insurer, of a holding company controlled by an insurer and of a federation of mutual insurance associations, the assets that make up such capital as well as the proportion of those assets to each other;

(7) prescribe standards respecting the adequacy of the liquid assets of an insurer, of a holding company controlled by an insurer and of a federation of mutual insurance associations;

(8) determine the limits applicable to the investments which an insurer, a holding company controlled by an insurer and a federation of mutual insurance associations may make;

(9) determine the cases in which an insurer may, notwithstanding the first paragraph of section 244.1, acquire all or part of the shares of any legal person;

(10) determine the cases in which a federation may acquire all or part of the shares of any legal person, in accordance with section 93.161.2;

(11) determine the cases in which the first paragraph of section 245 does not apply;

(12) determine the limits applicable to investments relating to separate groups of assets maintained by an insurer in accordance with section 280;

(13) prescribe the conditions governing the transfer of assets from one separate group of assets to another and those governing the return of such assets to their original group, including the requirement to obtain the Agency's authorization to effect such a transfer or return;

(14) determine, in respect of an insurance company that transacts participating insurance, the method for allocating income and expenses to participating and non-participating business;

(15) establish a tariff of fees payable for the purposes of section 405.2;

(16) enact, notwithstanding the provisions of the Companies Act, any other provision necessary for the application of Part IA of that Act to insurance companies.

The standards prescribed under subparagraphs 6 and 7 of the first paragraph may indicate expectations with regard to insurers and provide a framework for their management. The Regulations Act (chapter R-18.1) does not apply to regulations or draft regulations made under those provisions.

"**420.2.** The Government may, by regulation and notwithstanding any provision of any special Act applicable to a mutual insurance company, prescribe the conditions subject to which a mutual insurance company may convert into a capital stock company and in particular prescribe any measure concerning

(1) the estimation and distribution of the value of the mutual insurance company and any participating business surplus;

(2) the conversion of shares, other securities, rights or property belonging to or beneficially owned by the members;

(3) the fair and equitable treatment of the members of the mutual insurance company under a demutualization proposal;

(4) the description of the capital stock and the amount of contributed surplus which must be paid;

(5) the ownership of shares issued by a mutual insurance company that has been converted into a capital stock company;

(6) the term of office of the members of the first board of directors of the company resulting from the demutualization;

(7) the application for authorization referred to in section 200.0.4;

(8) the documents that must be filed with the articles of demutualization under section 200.0.9;

(9) the necessary or transitional provisions to complete the conversion and ensure the organization or management of the company resulting from the demutualization.

"**420.3.** In exercising the regulatory powers under this Act, various classes of persons, associations, contracts, activities or operations may be established and rules appropriate for each class may be prescribed."

152. The said Act is amended by inserting the following section after section 422:

"**422.0.1.** Notwithstanding the second paragraph of section 422, a rider may be added to an insurance policy that relates to the ownership or use of a motor vehicle to provide for conditions that are not approved by the Agency, to the extent that they are stipulated solely for the benefit of the policyholder.

The insurer shall transmit the text of the rider to the Agency before offering it."

153. The said Act is amended by replacing "statement of operations" and "operating statement" wherever those expressions occur in the heading of Division XI of Chapter III.2 of Title III, sections 93.186 to 93.188, the heading of Division X of Chapter III.3 of Title III and in sections 93.263 to 93.265, 305 and 308 by "income statement", and making the necessary modifications.

154. The said Act is amended by replacing "operating account" in sections 299 and 300 by "income statement", and making the necessary modifications.

155. The said Act is amended by replacing "assemblée spéciale" wherever that expression occurs in the French text of sections 56.1, 93.1, 93.7 and 93.63, the heading of subdivision 3 of Division XI of Chapter III.1 of Title III, sections 93.72, 93.73, 93.74, 93.75, 93.77, 93.81, 93.99, 93.107, 93.109 and 93.124, the heading of subdivision 3 of Division V of Chapter III.2 of Title III, sections 93.141 to 93.144, 93.146, 93.151, 93.169, 93.194 and 93.200 by "assemblée extraordinaire", and making the necessary modifications.

CIVIL CODE OF QUÉBEC

156. Article 2441 of the Civil Code of Québec (1991, chapter 64) is amended by adding the following paragraph at the end:

"Any change made to a contract to increase the insurance coverage is, in respect of the additional coverage, subject to the clause of exclusion initially stipulated for a period of two years of uninterrupted insurance beginning on the effective date of the increase."

DEPOSIT INSURANCE ACT

157. Section 57 of the Deposit Insurance Act (R.S.Q., chapter A-26), amended by section 198 of chapter 45 of the statutes of 2002, is again amended by inserting the following sentence after the first sentence of the first paragraph: "The Board may also, with the approval of the Government, make such agreements with any body which, in its opinion, administers a similar plan."

COMPANIES ACT

158. Section 23 of the Companies Act (R.S.Q., chapter C-38), amended by section 278 of chapter 45 of the statutes of 2002, is again amended by inserting the following paragraphs after paragraph 2 of subsection 4:

"(2.1) determine, for the purposes of section 98.1, the period during which the proponent of a proposal must be a shareholder and the minimum number or percentage of shares that must be held;

"(2.2) determine, for the purposes of the second paragraph of section 98.2, the maximum number of proposals that may be submitted by a shareholder;

"(2.3) determine a time limit to replace the time limit provided for in the third paragraph of section 98.2;

"(2.4) determine, for the purposes of section 98.5, the maximum number of words that may be contained in a proposal and statement made by a shareholder;

"(2.5) determine, for the purposes of paragraph 5 of section 98.6, the period preceding the receipt of a proposal during which no other similar proposal is to have been submitted and defeated;

"(2.6) determine the time limits referred to in section 98.4, paragraph 4 of section 98.6 and section 98.9;".

159. Section 98 of the said Act is amended by adding the following subsection at the end:

"(4) The person presiding at an annual meeting must permit the members of the meeting, provided they are entitled to speak by reason of their shareholder status, to discuss, for a reasonable time, any matter

(1) the primary purpose of which does not enforce a personal claim or redress a personal grievance against the company, its directors or security holders; and

(2) the primary purpose of which is related to the business or affairs of the company, including the adoption or amendment of a by-law, the amendment of the constituting act or the liquidation or dissolution of the company."

160. The said Act is amended by inserting the following sections after section 98:

"**98.1.** In sections 98.2 to 98.12, "shareholder" means a person who is entitled to vote at the annual meeting and who

(1) has owned, according to the records of the company, not less than the minimum number or percentage of voting shares determined by regulation of the Government, during the period determined by the regulation;

(2) has, during that period, received support from enough shareholders to attain the number or percentage of voting shares required under paragraph 1.

"**98.2.** A shareholder who wishes to have sections 98.1 to 98.12 apply shall submit to the company notice of the proposals the shareholder intends to present at the annual meeting.

The number of proposals submitted by a shareholder may not exceed the number determined by regulation of the Government.

Notice of the proposal shall be transmitted to the secretary not less than 90 days before the anniversary date of the sending of the previous notice of annual meeting to the shareholders, or within any other time determined by regulation of the Government.

"**98.3.** A proposal referred to in section 98.2 shall be attached to the proxy circular or, if the directors of the company do not solicit proxies, to the notice of annual meeting.

The proposal must be sent with the following information:

(1) the name of the proponent, which cannot be that of a proxy and, where applicable, the names of the persons supporting the proponent in accordance with paragraph 2 of section 98.1;

(2) the number or percentage of shares held by the proponent and, where applicable, the shareholders supporting the proposal, according to the records of the company.

"**98.4.** Where the proponent of the proposal is no longer a shareholder on the day of the annual meeting and later submits another proposal for presentation at a subsequent annual meeting, the company may refuse to include the latter proposal in the proxy circular or notice of any subsequent annual meeting held within the time determined by regulation of the Government.

"**98.5.** If so requested by a shareholder who is the proponent of one or more proposals, the company shall attach to the proxy circular or, as the case may be, the notice of annual meeting, a statement by the shareholder in support of the proposals and the shareholder's name. The statement and proposals together shall contain no more than the maximum number of words determined by regulation of the Government.

"**98.6.** The provisions of sections 98.3 and 98.5 apply only if

(1) the proposal is submitted within the prescribed time;

(2) the primary purpose of the proposal does not enforce a personal claim or redress a personal grievance against the company, its directors or security holders;

(3) the primary purpose of the proposal is significantly related to the business or affairs of the company, including the adoption or amendment of a by-law, the amendment of the constituting act or the liquidation or dissolution of the company;

(4) within the time determined by regulation of the Government preceding the receipt of a proposal from a shareholder, the shareholder did not fail to present at a meeting an earlier proposal which the company had at the shareholder's request attached to the proxy circular or notice of meeting;

(5) no proposal similar to a proposal included in the notice referred to in section 98.2 was submitted and defeated in the period determined by regulation of the Government preceding the receipt of the proposal; and

(6) the right to submit a proposal is not being abused to secure publicity.

"**98.7.** A proposal may include nominations for the election of directors if it is signed by one or more shareholders representing not less than 5% of the shares or not less than 5% of a class of shares entitled to vote at the meeting to which the proposal is to be presented.

This section does not prevent other nominations from being made at the meeting.

"**98.8.** No company or any of its mandataries shall incur any liability by reason of circulating a proposal or statement by a shareholder submitted in accordance with sections 98.3 to 98.7.

"**98.9.** Where a company intends to refuse to attach a proposal by a shareholder to the proxy circular or notice of annual meeting, the company shall, within the time determined by regulation of the Government, send a notice, with reasons, to the shareholder submitting the proposal.

"**98.10.** Where a company refuses to attach the proposal or statement to the proxy circular or notice of meeting, the shareholder may apply to the court for an order requiring the company to take any measure enabling the shareholder's right to be exercised, in particular an order restraining the company from holding the meeting to which the proposal is sought to be presented.

"**98.11.** A person claiming to be aggrieved by a proposal or statement by a shareholder may apply to the court for an order permitting the company to omit the proposal and the statement from the proxy circular or notice of meeting.

A shareholder who establishes that one of the conditions set out in section 98.6 is not met may apply to the court for an order restraining the company from attaching the proposal to the proxy circular or notice of meeting.

The court may make any order it considers appropriate.

"**98.12.** A person presiding at an annual meeting shall allow a shareholder submitting a proposal to discuss the proposal for a reasonable time."

161. Section 99 of the said Act is amended by adding the following sentence at the end of subsection 1 : "The directors are not required to convene such a meeting if each of the conditions set out in paragraphs 2 to 6 of section 98.6, with the necessary modifications, has not been met in respect of the matter referred to in the requisition."

162. Section 123.169 of the said Act, amended by section 278 of chapter 45 of the statutes of 2002, is again amended by inserting the following paragraphs after paragraph 3.3 :

"(3.4) determine, for the purposes of section 98.1, the period during which the proponent of a proposal must be a shareholder and the minimum number or percentage of shares that must be held ;

"(3.5) determine, for the purposes of the second paragraph of section 98.2, the maximum number of proposals that may be submitted by a shareholder ;

"(3.6) determine the time limits to replace those provided for in the third paragraph of section 98.2;

"(3.7) determine, for the purposes of section 98.5, the maximum number of words that may be contained in a proposal and statement by a shareholder;

"(3.8) determine, for the purposes of paragraph 5 of section 98.6, the period preceding the receipt of a proposal during which no other similar proposal is to have been submitted and defeated;

"(3.9) determine the time limits referred to in section 98.4, paragraph 4 of section 98.6 and section 98.9;".

163. Section 123.170 of the said Act is amended by striking out "those contemplated in paragraph 5 of section 123.169 and" in the first and second lines of the second paragraph.

164. Section 125 of the said Act is amended by adding the following paragraph at the end:

"However, this Part shall not apply to insurance companies constituted by a special Act after (*insert here the date of coming into force of this section*) or where the amending articles of such a company provide that Part IA of the Companies Act is applicable."

165. Section 191 of the said Act is amended by adding the following subsection at the end:

"(4) The person presiding at an annual meeting must permit the members of the meeting, provided they are entitled to speak by reason of their shareholder status, to discuss, for a reasonable time, any matter

(1) the primary purpose of which does not enforce a personal claim or redress a personal grievance against the company, its directors or security holders; and

(2) the primary purpose of which is related to the business or affairs of the company, including the adoption or amendment of a by-law, the amendment of the constituting act or the liquidation or dissolution of the company."

166. The said Act is amended by inserting the following sections after section 191:

"**191.1.** In sections 191.2 to 191.12, "shareholder" means a person who is entitled to vote at the annual meeting and who

(1) has owned, according to the records of the company, not less than the minimum number or percentage of voting shares determined by regulation of the Government, during the period determined by the regulation;

(2) has, during that period, received support from enough shareholders to attain the number or percentage of voting shares required under paragraph 1.

"**191.2.** A shareholder who wishes to have sections 191.1 to 191.12 apply shall submit to the company notice of the proposals the shareholder intends to present at the annual meeting.

The number of proposals submitted by a shareholder may not exceed the number determined by regulation of the Government.

Notice of the proposal shall be transmitted to the secretary not less than 90 days before the anniversary date of the sending of the previous notice of annual meeting to the shareholders, or within any other time determined by regulation of the Government.

"**191.3.** A proposal referred to in section 191.2 shall be attached to the proxy circular or, if the directors of the company do not solicit proxies, to the notice of annual meeting.

The proposal must be sent with the following information:

(1) the name of the proponent, which cannot be that of a proxy and, where applicable, the names of the persons supporting the proponent in accordance with paragraph 2 of section 191.1;

(2) the number or percentage of shares held by the proponent and, where applicable, the shareholders supporting the proposal, according to the records of the company.

"**191.4.** Where the proponent of the proposal is no longer a shareholder on the day of the annual meeting and later submits another proposal for presentation at a subsequent annual meeting, the company may refuse to include the latter proposal in the proxy circular or notice of any subsequent annual meeting held within the time determined by regulation of the Government.

"**191.5.** If so requested by a shareholder who is the proponent of one or more proposals, the company shall attach to the proxy circular or, as the case may be, the notice of annual meeting, a statement by the shareholder in support of the proposals and the shareholder's name. The statement and proposals together shall contain no more than the maximum number of words determined by regulation of the Government.

"**191.6.** The provisions of sections 191.3 and 191.5 apply only if

(1) the proposal is submitted within the prescribed time;

(2) the primary purpose of the proposal does not enforce a personal claim or redress a personal grievance against the company, its directors or security holders;

(3) the primary purpose of the proposal is significantly related to the business or affairs of the company, including the adoption or amendment of a by-law, the amendment of the constituting Act or the liquidation or dissolution of the company;

(4) within the time determined by regulation of the Government preceding the receipt of a proposal from a shareholder, the shareholder did not fail to present at a meeting an earlier proposal which the company had at the shareholder's request attached to the proxy circular or notice of meeting;

(5) no proposal similar to a proposal included in the notice referred to in section 191.2 was submitted and defeated in the period determined by regulation of the Government preceding the receipt of the proposal; and

(6) the right to submit a proposal is not being abused to secure publicity.

"**191.7.** A proposal may include nominations for the election of directors if it is signed by one or more shareholders representing not less than 5% of the shares or not less than 5% of a class of shares entitled to vote at the meeting to which the proposal is to be presented.

This section does not prevent other nominations from being made at the meeting.

"**191.8.** No company or any of its mandataries shall incur any liability by reason of circulating a proposal or statement by a shareholder submitted in accordance with sections 191.3 to 191.7.

"**191.9.** Where a company intends to refuse to attach a proposal by a shareholder to the proxy circular or notice of annual meeting, the company shall, within the time determined by regulation of the Government, send a notice, with reasons, to the shareholder submitting the proposal.

"**191.10.** Where a company refuses to attach the proposal or statement to the proxy circular or notice of meeting, the shareholder may apply to the court for an order requiring the company to take any measure enabling the shareholder's right to be exercised, in particular an order restraining the company from holding the meeting to which the proposal is sought to be presented.

"**191.11.** A person claiming to be aggrieved by a proposal or statement by a shareholder may apply to the court for an order permitting the company to omit the proposal and the statement from the proxy circular or notice of meeting.

A shareholder who establishes that one of the conditions set out in section 191.6 is not met may apply to the court for an order restraining the company from attaching the proposal to the proxy circular or notice of meeting.

The court may make any order it considers appropriate.

"**191.12.** A person presiding at an annual meeting shall allow a shareholder submitting a proposal to discuss the proposal for a reasonable time during the meeting."

167. Section 192 of the said Act is amended by adding the following sentence at the end of subsection 1 : "The directors are not required to convene such a meeting if each of the conditions set out in paragraphs 2 to 6 of section 191.6, with the necessary modifications, has not been met in respect of the matter referred to in the requisition."

168. Section 224 of the said Act is amended by replacing "and 18.2" in the fourth line of the first paragraph by ", 18.2 and paragraphs 2.1 to 2.6 of subsection 4 of 23" and by inserting "98.1 to 98.12 ; the second sentence of subsection 1 of 99 ;" after "98 ;" in the fifth line of that paragraph.

ACT RESPECTING FINANCIAL SERVICES COOPERATIVES

169. Section 68 of the Act respecting financial services cooperatives (R.S.Q., chapter C-67.3) is amended by replacing "that a" in the first line of the first paragraph by "that only a".

170. Section 473 of the said Act is amended

(1) by inserting ", or more than 30% of the assets or the voting rights attached to the shares of a cooperative or other similar legal person whose head office is situated outside Québec" after "legal person" in the fourth line of the first paragraph ;

(2) by inserting "ou les parts" after "actions" in the second line of the second paragraph of the French text.

171. Section 474 of the said Act is amended

(1) by replacing "of a legal person carrying on activities that are similar to those of the cooperative" in the third and fourth lines by "of a legal person that only carries on activities similar to those the financial services cooperative is authorized to carry on" ;

(2) by inserting "ou parts" after "actions" in the fifth line of the French text ;

(3) by adding "ou ces parts" at the end of the French text.

172. Section 475 of the French text of the said Act is amended by inserting "ou de parts" after "actions" in the second line of the first paragraph.

173. Section 599 of the French text of the said Act is amended by inserting "ou les parts" after "actions" in the third line of subparagraph 13 of the first paragraph.

174. Section 721 of the said Act is amended by replacing "fund corporations" in the English text of the second line by "funds".

ACT RESPECTING TRUST COMPANIES AND SAVINGS COMPANIES

175. Section 395 of the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01), amended by section 611 of chapter 45 of the statutes of 2002, is again amended

(1) by inserting the following sentence at the end of the first paragraph: "The same applies to any information or document relating to the application of guidelines and provided voluntarily to the Agency.";

(2) by adding the following paragraph a the end:

"No person may be prosecuted on the basis of information transmitted in good faith to the Agency in accordance with this Act."

SECURITIES ACT

176. Section 208.1 of the Securities Act (R.S.Q., chapter V-1.1), enacted by section 635 of chapter 45 of the statutes of 2002, is amended

(1) by inserting "less one day" after "five years";

(2) by replacing "article 231" by "articles 231 and 348".

ACT RESPECTING THE AGENCE NATIONALE D'ENCADREMENT DU SECTEUR FINANCIER

177. Section 16 of the Act respecting the Agence nationale d'encadrement du secteur financier (2002, chapter 45) is amended

(1) by inserting the following sentence at the end of the first paragraph: "The same applies to any information or document relating to the application of guidelines and provided voluntarily to the Agency.";

(2) by adding the following paragraph at the end:

"No person may be prosecuted on the basis of information transmitted in good faith to the Agency in accordance with this Act."

178. Section 750 of the said Act is amended by replacing "733" by "732".

OTHER AMENDING PROVISIONS

179. Section 465.10 of the Cities and Towns Act (R.S.Q., chapter C-19) is amended

(1) by replacing "175 to 200, 210, 223 to 242, 245, 245.0.1, 246 to 247.1 and 406.2" in the fourth line of the first paragraph by "175 to 200.0.14, 210, 244.1 to 245.0.1, 246, 247.1 and 406.2";

(2) by replacing "The second and third paragraphs of section 35" in the second paragraph by "The second paragraph of section 35 and section 35.3".

180. Section 465.11 of the said Act is amended by striking out "or paragraph *d* of section 245.0.1 of the Act respecting insurance (chapter A-32)" in the fourth and fifth lines.

181. Section 465.13 of the said Act, amended by section 259 of chapter 45 of the statutes of 2002, is again amended by replacing "assets that exceed its liabilities for an amount equal to or greater than the minimum amount required under section 275 of" in the third, fourth and fifth lines of the first paragraph by "sufficient capital, in accordance with".

182. Article 711.11 of the Municipal Code of Québec (R.S.Q., chapter C-27.1) is amended

(1) by replacing "175 to 200, 210, 223 to 242, 245, 245.0.1, 246 to 247.1 and 406.2" in the fourth line of the first paragraph by "175 to 200.0.14, 210, 244.1 to 245.0.1, 246, 247.1 and 406.2";

(2) by replacing "The second and third paragraphs of section 35" in the second paragraph by "The second paragraph of section 35 and section 35.3".

183. Article 711.12 of the said Code is amended by striking out "or paragraph *d* of section 245.0.1 of the Act respecting insurance (chapter A-32)" in the fourth and fifth lines.

184. Article 711.14 of the said Code, amended by section 271 of chapter 45 of the statutes of 2002, is again amended by replacing "assets that exceed its liabilities for an amount equal to or greater than the minimum amount required under section 275 of" in the third, fourth and fifth lines of the first paragraph by "sufficient capital, in accordance with".

185. Section 965.6.10 of the Taxation Act (R.S.Q., chapter I-3) is amended by replacing "corporation which is a subsidiary referred to in section 247" in the first and second lines by "holding company which is a subsidiary of an insurer within the meaning of paragraph *a* of section 1".

186. The reference "(Revised Satutes of Canada, 1985, chapter B-1.01)" is replaced by the reference "(Statutes of Canada, 1991, chapter 46)", wherever it appears in the following provisions:

(1) paragraph *b* of section 1 of the Deposit Insurance Act (R.S.Q., chapter A-26), amended by section 618 of chapter 29 of the statutes of 2000 and by section 179 of chapter 45 of the statutes of 2002;

(2) the second paragraph of section 18 of the Act respecting the caisses d'entraide économique (R.S.Q., chapter C-3), amended by section 245 of chapter 45 of the statutes of 2002;

(3) the first paragraph of section 8 of the Deposit Act (R.S.Q., chapter D-5), amended by section 350 of chapter 45 of the statutes of 2002;

(4) the third line of the second paragraph of section 72 of the Act respecting the distribution of financial products and services (R.S.Q., chapter D-9.2), amended by section 637 of chapter 29 of the statutes of 2000 and by section 357 of chapter 45 of the statutes of 2002;

(5) subparagraph 3 of the fourth paragraph of section 21 of the Act to establish Fondaction, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi (R.S.Q., chapter F-3.1.2), amended by section 511 of chapter 45 of the statutes of 2002;

(6) subparagraph 3 of the fourth paragraph of section 16 of the Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.) (R.S.Q., chapter F-3.2.1), amended by section 514 of chapter 45 of the statutes of 2002;

(7) paragraph 1 of section 39 of the Act respecting the Institut de la statistique du Québec (R.S.Q., chapter I-13.011), amended by section 660 of chapter 29 of the statutes of 2000 and by section 541 of chapter 45 of the statutes of 2002;

(8) section 18 of the Act respecting the Société des loteries du Québec (R.S.Q., chapter S-13.1), amended by section 559 of chapter 45 of the statutes of 2002;

(9) paragraph 1 of section 112 of the Act respecting the sociétés d'entraide économique (R.S.Q., chapter S-25.1), amended by section 563 of chapter 45 of the statutes of 2002;

(10) the second paragraph of section 3 of the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01), amended by section 722 of chapter 29 of the statutes of 2000 and by section 567 of chapter 45 of the statutes of 2002;

(11) paragraph 9 of section 3 of the Securities Act (R.S.Q., chapter V-1.1), amended by section 674 of chapter 29 of the statutes of 2000, by section 3 of chapter 38 of the statutes of 2001 and by section 623 of chapter 45 of the statutes of 2002;

(12) subparagraph 3 of the fourth paragraph of section 20 of the Act constituting Capital régional et coopératif Desjardins (2001, chapter 36), amended by section 704 of chapter 45 of the statutes of 2002.

TRANSITIONAL AND FINAL PROVISIONS

187. Any stipulation in a contract for the constitution of an annuity which allows the total or partial withdrawal of the capital does not prevent the contract from being considered an annuity contract within the meaning of article 2367 of the Civil Code provided that the annuity is purchased from a trust company pursuant to section 178 of the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01) or from an insurer.

This section is declaratory but does not infringe upon the rights of the parties in cases pending before the courts on 16 December 2002. However, insurers and trust companies having entered into annuity contracts containing a stipulation allowing the total or partial withdrawal of the capital must compensate the contracting party or, as the case may be, the annuitant, the holder of the contract or the beneficiary under the contract, on request, for any seizure, within the scope of a proceeding commenced or ended before the above-mentioned date, of the annuity capital, up to the amounts seized.

188. Section 19 of the Act respecting "Québec Health Services" "Les Services de Santé du Québec" (1991, chapter 102), replaced by section 7 of chapter 107 of the statutes of 1993, is amended by replacing "in section 245.0.1 of the Act respecting insurance or referred to in the rules for investment of moneys belonging to other persons set out in the Civil Code of Lower Canada" in the second, third and fourth lines of the second paragraph by "in the rules regarding investments presumed sound contained in the Civil Code".

189. Section 19 of the Act respecting Mutuelle des Fonctionnaires du Québec (1991, chapter 103) is amended by replacing "in section 245.0.1 of the Act respecting insurance or referred to in the rules for investment of moneys belonging to other persons set out in the Civil Code of Lower Canada" in the second, third and fourth lines by "in the rules regarding investments presumed sound contained in the Civil Code".

190. The said Act is amended by inserting the following section after section 20:

"**20.1.** Notwithstanding section 191.3 of the Companies Act, enacted by section 166 of chapter 70 of the statutes of 2002, the mutual management corporation is not required to attach the proposals submitted by members to the notice of annual meeting published in the newspapers and sent to the members, provided that

(1) the mutual management corporation makes the proposals accessible to the members, by means of information technology, from the date of the sending of the notice of annual meeting, which must precede the meeting by at least ten days;

(2) the members of the mutual management corporation receive copies of the proposals on request;

(3) a notice stating the provisions of paragraphs 1 and 2 is published in the newspapers together with the notice of annual meeting."

191. Section 27 of the said Act is amended by replacing "25" in the second line of the first paragraph by "26".

192. Notwithstanding Chapters I and I.1 of Title III and Chapter I of Title IV of the Act respecting insurance, an insurance company may be constituted with a combined paid-up capital and contributed surplus of at least $1,500,000 if

(1) the founders of the company on 6 June 2002 were members of a non-profit association which offered life and health coverage to the members of the association;

(2) the application for authorization is made before (*insert here the date that is one year after the coming into force of this section*); and

(3) the constitution is authorized by the Government on such conditions as it may determine.

The Agency is required to issue the insurer's licence mentioning the conditions determined by the Government under subparagraph 3 of the first paragraph.

193. The activities that an insurance company was permitted to carry on under the Act respecting insurance as it read before (*insert here the date of coming into force of this section*) that are not expressly authorized under the Act respecting insurance as amended by this Act, are deemed to be activities authorized by the Government under section 33.2.2 of that Act.

194. Every licence issued under Chapter I of Title IV of the Act respecting insurance in force on (*insert here the date that is one day before the date of coming into force of section 94 of this Act*) is deemed to have been issued without expiry date, except if the licence was issued for a period of less than one year or the period of its validity has been reduced.

195. The activities that a mutual insurance association was permitted to carry on under the Act respecting insurance as it read before (*insert here the date of coming into force of this section*) that are not expressly authorized under the Act respecting insurance as amended by this Act, are deemed to be

activities authorized by the Government and the federation of which the mutual insurance association is a member under section 93.162 of that Act.

196. The investments that a federation of mutual insurance associations held in a subsidiary on (*insert here the date that is one day before the date of coming into force of this section*) are deemed to be valid investments.

197. Section 93.78 of the Act respecting insurance, as it read on (*insert here the date that is one day before the date of coming into force of this section*), continues to apply in respect of a mutual insurance association until the end of the fiscal year following the fiscal year in progress on (*insert here the date of coming into force of this section*).

198. Section 174.6 of the Act respecting insurance, as it read on (*insert here the date that is one day before the date of coming into force of this section*), continues to apply in respect of an insurance fund until the end of the fiscal year following the fiscal year in progress on (*insert here the date of coming into force of this section*).

199. The insurers that have deposited security with the Minister of Finance in accordance with section 224 of the Act respecting insurance as it read on (*insert here the date of coming into force of this section*) are entitled to a refund of the security so deposited.

200. Any insurer that, on 14 March 1991, held investments which complied with subparagraph *d* of the first paragraph of section 245 of the Act respecting insurance as it read before 15 March 1991 may continue to hold them notwithstanding sections 244.1 to 245 of that Act as they read as of (*insert here the date of coming into force of this section*). The insurer may continue to invest in a subsidiary or association other than those referred to in subparagraphs *d*.1 and *e* of the first paragraph of section 245 of the Act respecting insurance, as they read on (*insert here the date that is one day before the date of coming into force of this section*), provided that the insurer's total investment in that subsidiary or association does not exceed 4% of its assets.

201. Any insurer that, on (*insert here the date that is one day before the date of coming into force of this section*), held investments which complied with sections 244 to 274 of the Act respecting insurance as they read on that date may continue to hold them notwithstanding the provisions of those sections as they read as of (*insert here the date of coming into force of this section*). The insurer may continue to invest in a subsidiary or association other than those referred to in subparagraphs *d*.1 and *e* of the first paragraph of section 245 of the Act respecting insurance, as they read on (*insert here the date that is one day before the date of coming into force of this section*), provided that the insurer's total investment in that subsidiary or association does not exceed 4% of its assets.

202. The Government may, by order, adopt any other transitional or necessary measure to enable an insurance company to be governed by Part IA of the Companies Act.

203. Any regulation, order in council, order, authorization or directive, in force on (*insert here the date of coming into force of this section*), made or adopted under a provision that is repealed or amended by this Act, remains in force until it is repealed, so long as the regulation, order in council, order, authorization or directive is consistent with the provisions enacted or amended by this Act.

204. For the purposes of the Act respecting insurance as it reads on (*insert here the date of coming into force of this section*), "Agence nationale d'encadrement du secteur financier" or "Agency" and "entreprise registrar" mean the Inspector General of Financial Institutions until the date of coming into force of section 7 of the Act respecting the Agence nationale d'encadrement du secteur financier (2002, chapter 45).

205. Section 178 of this Act has effect from 11 December 2002.

206. The provisions of this Act come into force on the date or dates to be fixed by the Government, except the provisions of sections 176, 178, 187 and 205, which come into force on 19 December 2002.