



NATIONAL ASSEMBLY

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Bill 78

(2004, chapter 33)

An Act to amend the Act respecting the Caisse de dépôt et placement du Québec

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EXPLANATORY NOTES

This bill amends the Act respecting the Caisse de dépôt et placement du Québec to define the objectives to be pursued by the Fund in performing its mission.

It establishes new governance rules, particularly as regards the composition and functioning of the board of directors and the criteria for selecting its members. It provides for the creation of three committees by the board of directors — an audit committee, a governance and ethics committee and a human resources committee — and defines the role of each.

The bill also establishes that the offices of chair of the board and president and chief executive officer are to be two separate functions. It requires that the Fund adopt an investment policy for each specialized portfolio it holds and introduces new rules of ethics for the Fund, its officers and employees, and its wholly-owned subsidiaries.

Lastly, the bill contains transitional measures and concordance amendments.

Bill 78

AN ACT TO AMEND THE ACT RESPECTING THE CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The heading of Division I of the Act respecting the Caisse de dépôt et placement du Québec (R.S.Q., chapter C-2) is replaced by the following heading:

“CONSTITUTION AND MISSION OF THE FUND”.

2. Section 4 of the said Act is amended

(1) by replacing “Legal persons all of whose shares are held directly or indirectly by the Fund” in the fourth paragraph by “The Fund’s wholly-owned subsidiaries”;

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

“In this Act, “wholly-owned subsidiary” means a legal person all of whose common shares are held directly or indirectly by the Fund.”

3. The said Act is amended by inserting the following section after section 4:

“**4.1.** The mission of the Fund is to receive moneys on deposit as provided by law and manage them with a view to achieving optimal return on capital within the framework of depositors’ investment policies while at the same time contributing to Québec’s economic development.”

4. Section 5 of the said Act is amended

(1) by replacing “The Fund shall be administered by a board of directors consisting of the general manager of the Fund, the president of the Régie des rentes du Québec and nine other members appointed for three years by the Government which shall fix” in the first paragraph by “The affairs of the Fund shall be administered by a board of directors consisting of no fewer than 9 and no more than 15 members including a chair and the president and chief executive officer, who is a member of the board by virtue of office. Board members other than the chair and the president and chief executive officer are appointed by the Government for a term of up to five years, after consultation with the board. The Government shall fix”;

(2) by replacing “each of them” in the fifth line of the first paragraph by “all board members but the president and chief executive officer”;

(3) by replacing the second and third paragraphs by the following paragraph:

“The term of a board member, with the exception of the chair and the president and chief executive officer, may be renewed for up to a combined total of ten years.”

5. The said Act is amended by inserting the following sections after section 5:

“5.1. The Government shall appoint the chair of the board of directors.

The chair is appointed for a renewable term of up to five years.

“5.2. The office of chair of the board of directors is a part-time position.

The offices of chair of the board of directors and president and chief executive officer may not be held concurrently.

“5.3. The board of directors shall appoint the president and chief executive officer taking into account the expertise and experience profile established by the Fund and with the approval of the Government.

The president and chief executive officer is appointed for a term of up to five years, which may be renewed.

The board of directors shall determine the remuneration and other conditions of employment of the president and chief executive officer in keeping with parameters set by the Government after consultation with the board.

“5.4. At least three quarters of the members of the board of directors must reside in Québec.

“5.5. At least two thirds of the members of the board of directors, including the chair, must be independent. They must have no relationships or interests likely to affect the quality of their decisions with regard to the interests of the Fund.

An independent member must not, on pain of removal from office,

(1) be in the employ of the Fund or one of its wholly-owned subsidiaries or have been so in the three years preceding appointment to office or be related to a person, within the meaning of the third paragraph of section 40, who has such an employment status;

(2) be in the employ of the Government or a government agency or enterprise within the meaning of sections 4 and 5 of the Auditor General Act (chapter V-5.01);

(3) have other ties as determined by the Government by regulation.

“5.6. Independent members are chosen in light of the expertise and experience profile established by the board of directors, if any.

“5.7. The chair of the board of directors shall preside at the meetings of the board and see to its proper operation. The chair shall also see to the proper operation of the board committees.

In the case of a tie vote, the chair has a casting vote.

The chair shall also assume such other responsibilities as are assigned by the board but may not act as an officer.

“5.8. On the recommendation of a majority of the members of the board of directors, the chair may ask the Government to dismiss a member of the board.

“5.9. If the chair of the board of directors is absent or unable to act, the Government may appoint a substitute, who must be an independent person. The board may designate an independent member to exercise the functions of the chair until a substitute is appointed.

“5.10. If the board of directors has not appointed a president and chief executive officer as required in section 5.3 within a reasonable time, the Government may appoint a president and chief executive officer after notifying the board members.

“5.11. If the president and chief executive officer is absent or unable to act, the board of directors may designate a member of the Fund’s personnel to exercise the functions of that office.

“5.12. The president and chief executive officer shall be responsible for the direction and management of the Fund within the scope of its regulations and policies. The president and chief executive officer represents the Fund and is its most senior officer. The president and chief executive officer shall assume such other responsibilities as are assigned by the board of directors.

The office of president and chief executive officer is a full-time position.

“5.13. The president and chief executive officer shall see that the board of directors, on its request, has adequate human, material and financial resources, particularly as regards external experts, to perform its functions and for its committees to perform their functions.

“5.14. The president and chief executive officer may be removed from office by a vote of two thirds of the members of the board of directors, with the approval of the Government.”

6. Sections 6, 7 and 8 of the said Act are repealed.

7. Section 9 of the said Act is amended by replacing “general manager” by “president and chief executive officer”.

8. Section 10 of the said Act is replaced by the following section:

“10. Any vacancy on the board of directors shall be filled in accordance with the rules of appointment set out in this Act.

Absence from the number of board meetings determined by the board by resolution constitutes a vacancy in the cases and circumstances indicated in the resolution.”

9. Section 12 of the said Act is repealed.

10. Section 13 of the said Act is amended by replacing “section 15” in the second paragraph by “paragraph *a* of section 23 and section 33.1”.

11. The said Act is amended by inserting the following sections after section 13:

“13.1. The board of directors shall by resolution

(1) establish risk management guidelines and policies;

(2) determine delegations of authority;

(3) approve the Fund’s strategic plan, business plan, budgets, financial statements and annual report;

(4) approve human resources policies as well as the standards and scales of remuneration and other conditions of employment of officers other than the president and chief executive officer, of employees of the Fund, and of the most senior officer of each of its wholly-owned subsidiaries;

(5) approve the appointment and remuneration of officers reporting directly to the president and chief executive officer and of the most senior officer of each wholly-owned subsidiary, on the recommendation of the president and chief executive officer;

(6) approve investment policies, standards and procedures;

(7) adopt a socially-responsible investment policy;

(8) approve rules of ethics and professional conduct applicable to members of the boards of directors of the Fund and its wholly-owned subsidiaries, and to the officers and employees of the Fund and its wholly-owned subsidiaries;

(9) assign a mandate to any auditor, subject to section 48; and

(10) designate the members of board committees.

“13.2. The board of directors shall appraise the integrity of internal controls, information disclosure controls and information systems, and approve a financial disclosure policy.

The board of directors shall hear the Auditor General at the latter’s request.

The board of directors shall also see that the audit committee exercises its functions properly.

“13.3. The board of directors must provide for the establishment of the following committees:

(1) an audit committee;

(2) a human resources committee; and

(3) a governance and ethics committee.

“13.4. The audit committee, the human resources committee and the governance and ethics committee must be composed solely of independent members.

The audit committee must include members with accounting or financial expertise.

“13.5. The board of directors may establish other board committees to examine specific issues or facilitate the proper functioning of the Fund, and may define their mandates.

“13.6. Each board committee shall submit to the board of directors a summary of its proceedings to be included in the Fund’s annual report.

“13.7. The chair of the board of directors may take part in any meeting of a board committee.

“13.8. The functions of the audit committee include

(1) seeing that internal control mechanisms are put in place and ensuring that they are sufficient and effective;

- (2) ensuring that a risk management process is put in place;
- (3) monitoring the quality and functioning of the systems and processes put in place by the Fund and its wholly-owned subsidiaries to ensure that resources are acquired and utilized with appropriate emphasis on the economy, efficiency and effectiveness of these resources, and ensuring that a plan is prepared for that purpose;
- (4) following up its recommendations and the implementation of measures taken under paragraph 3;
- (5) hearing the internal auditor on the application of paragraphs 1 to 4;
- (6) reviewing any activity likely to be detrimental to the Fund's financial health that is brought to its attention by the auditor or an officer;
- (7) approving the internal audit plan;
- (8) examining the financial statements with the Auditor General;
- (9) submitting the financial statements to the board of directors and recommending their approval.

“13.9. The audit committee shall notify the board of directors in writing on finding operations or management practices that are unsound or not in compliance with law, regulation or the policies of the Fund or its wholly-owned subsidiaries.

“13.10. The functions of the human resources committee include

- (1) seeing that human resources policies are put in place;
- (2) establishing expertise and experience profiles for the purposes of the appointment of the president and chief executive officer and independent members; and
- (3) evaluate the performance of the president and chief executive officer.

“13.11. The functions of the governance and ethics committee include

- (1) establishing governance rules;
- (2) developing structures and procedures to ensure that the board of directors acts independently from the Fund's management;
- (3) defining the mandates of the board committees; and

(4) establishing rules of ethics and professional conduct applicable to members of the board of directors and to officers and employees of the Fund and of its wholly-owned subsidiaries.”

12. Section 14 of the said Act is repealed.

13. Section 15 of the said Act is replaced by the following section:

“**15.** The Fund shall, by a resolution of its board of directors, determine the standards and scales of remuneration and other conditions of employment of its officers and other employees and of the officers and other employees of its wholly-owned subsidiaries in accordance with the conditions defined by the Government.”

14. Section 16 of the said Act is amended

(1) by replacing “general manager” in the first line by “president and chief executive officer”;

(2) by replacing “and the officers and employees thereof,” in the second line by “the officers and employees of the Fund and the members of the boards of directors and the officers and employees of wholly-owned subsidiaries of the Fund”.

15. Section 17 of the said Act is replaced by the following section:

“**17.** Except on a question of jurisdiction, no recourse under article 33 of the Code of Civil Procedure (chapter C-25) or extraordinary recourse within the meaning of that Code may be exercised, nor any injunction granted against the Fund, the members of its board of directors acting in their official capacity, its wholly-owned subsidiaries or the members of their respective boards of directors acting in their official capacity.

A judge of the Court of Appeal may, upon a motion, annul by a summary proceeding any decision made or order or injunction issued contrary to the first paragraph.”

16. Section 21 of the said Act is amended by striking out the first and third paragraphs.

17. Section 22 of the said Act is amended

(1) by inserting “a cash flow fund and” after “general fund,” in the third line of the first paragraph;

(2) by striking out the second paragraph;

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

“The Fund receives demand deposits, terms deposits and participation deposits.”;

(4) by striking out the sixth paragraph.

18. The said Act is amended by inserting the following section after section 22:

“22.1. The Fund shall advise its depositors on investment matters. It may enter with each of its depositors into a service agreement stating the services it offers, the functions and responsibilities it assumes, the information and communication channels it agrees to use and the accountability measures to which it commits itself.”

19. Section 31 of the said Act is amended by striking out the second paragraph.

20. The said Act is amended by inserting the following section after section 31.1:

“31.2. The Fund may acquire and hold units of indexed funds.

The Fund may also acquire shares in a limited partnership or a diversified real estate fund provided the number of shares subscribed does not exceed 2% of the Fund’s total assets.”

21. Section 33.1 of the said Act is amended by inserting the following subparagraphs after subparagraph *c* of the first paragraph:

“(c.1) credit derivative contracts;

“(c.2) equity derivative contracts;”.

22. Section 34 of the said Act is amended by replacing “section 32” in paragraph *c* by “sections 31.2 and 32”.

23. The said Act is amended by inserting the following section after section 34:

“34.1. For the purposes of sections 31.2 and 34, the Fund shall include in its own investments the proportion attributable to it of the common shares and other securities held by a legal person more than 30% of whose common shares are held by the Fund.”

24. Section 36.2 of the said Act is replaced by the following section:

“36.2. The Fund shall adopt an investment policy for each specialized portfolio. The investment policy for a specialized portfolio must establish

- (1) return on investment targets;
- (2) benchmark indices;
- (3) risk tolerance limits; and
- (4) qualifying securities.”

25. Section 37.1 of the said Act is amended

(1) by replacing “or in offering, managing or distributing securitized assets” at the end of subparagraph *c* of the first paragraph by “, in offering, managing or distributing securitized assets or in issuing debt securities”;

(2) by replacing “5 to 14.1” in the sixth line of the second paragraph by “5 to 13.11”.

26. Section 40 of the said Act is replaced by the following section:

“40. The Fund shall not make any financial transaction with a legal person or a partnership operating an enterprise in which any member of its board of directors or the board of directors of one of its wholly-owned subsidiaries, any of its officers or employees or any officer or employee of such a subsidiary or any Member of the National Assembly has an interest, as determined by government regulation.

This prohibition also applies when the interest in an enterprise referred to in the first paragraph is held by a person related to a member of the board of directors, to an officer or an employee of the Fund or of such a subsidiary, or to a Member of the National Assembly.

For the purposes of this section, “related persons” means persons connected by blood relationship, marriage, civil union, *de facto* union, adoption or any other tie determined by regulation of the Government.”

27. Section 42 of the said Act is amended by replacing “General Manager” in the second paragraph by “president and chief executive officer”.

28. The said Act is amended by inserting the following section after section 42:

“42.1. An officer or employee of the Fund or of one of its wholly-owned subsidiaries who has a direct or indirect interest in any matter that puts that person’s personal interest in conflict with the interest of the Fund or such a subsidiary must disclose that personal interest in writing to the chair of the board of directors of the Fund or of the subsidiary, under pain of dismissal.”

29. Section 46 of the said Act is amended by adding the following paragraphs at the end:

“(j) the report of the audit committee on the performance of its mandate;

“(k) the report of the human resources committee on the remuneration of the chief executive officer and the five most highly remunerated officers reporting directly to the chief executive officer of the Fund and its wholly-owned subsidiaries; and

“(l) the report of the governance and ethics committee on the activities carried out during the fiscal year, including its assessment of the structures and procedures put in place to ensure the independence of the board of directors.”

30. Section 48 of the said Act is amended by adding the following paragraphs at the end:

“The Auditor General shall make sure that the obligations set out in paragraphs 3 and 4 of section 13.8 are met and, for that purpose, may request that the audit committee provide all documents and information that he considers necessary.

The Auditor General shall send his findings and recommendations to the audit committee.

The Auditor General shall indicate in the report any subject or case arising from the application of this section that, in his opinion, should be brought to the attention of the National Assembly.”

31. Section 49 of the said Act is amended by replacing “respecting its operations which he may require” by “that the Minister may require on its operations and activities and those of its wholly-owned subsidiaries.”

32. Section 50 of the said Act is amended by replacing “42” by “42.1”.

33. The said Act is amended by inserting the following sections after section 51:

“51.1. No later than every ten years, the Minister shall report to the Government on the carrying out of this Act and make recommendations on the advisability of maintaining it in force or amending it.

The report shall be tabled in the National Assembly within 30 days or, if the Assembly is not sitting, within 30 days of resumption.

“51.2. The Minister of Finance is responsible for the administration of this Act.”

TRANSITIONAL AND FINAL PROVISIONS

34. The general manager is continued in office as president and chief executive officer of the Caisse de dépôt et placement du Québec for the remainder of the general manager's term.

The vice-chair of the board of directors and other members appointed under section 5 of the Act respecting the Caisse de dépôt et placement du Québec as it read on (*insert the date preceding the date of coming into force of this section*) remain on the board until reappointed or replaced. Section 5.5 and the first paragraph of section 13.4 of that Act, enacted by sections 5 and 11, respectively, do not apply to them.

35. The president and chief executive officer of the Caisse de dépôt et placement du Québec shall exercise the office of chair of the board of directors until that office is filled in accordance with section 5.1 of the Act respecting the Caisse de dépôt et placement du Québec.

36. This Act comes into force on 15 January 2005 or any earlier date to be set by the Government.