



NATIONAL ASSEMBLY

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Bill 216

(Private)

An Act respecting Desjardins Trust Inc. and Desjardins Specialized Financial Services Management Inc.

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Assented to 17 December 2004**

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(Private)

AN ACT RESPECTING DESJARDINS TRUST INC. AND DESJARDINS SPECIALIZED FINANCIAL SERVICES MANAGEMENT INC.

AS Desjardins Trust Inc. was incorporated as a trust company by letters patent issued on 27 September 1962 and registered on 24 October 1962 under the Trust Companies Act (R.S.Q. 1977, chapter C-41), under the company name Société de fiducie du Québec;

As supplementary letters patent were issued on 5 December 1974 under the Trust Companies Act in order to change the company name to Fiducie du Québec;

As supplementary letters patent were issued on 28 September 1988, under the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01), which replaced the Trust Companies Act, in order to again change the company name, to Desjardins Trust Inc.;

As Desjardins Trust Inc. is a wholly-owned subsidiary of Desjardins Specialized Financial Services Management Inc., itself a wholly-owned subsidiary of Desjardins Financial Corporation Inc., which is a wholly-owned subsidiary of the Fédération des caisses Desjardins du Québec;

As it is expedient for Desjardins Trust Inc. to be continued as a federal trust company governed by the Trust and Loan Companies Act (Statutes of Canada, 1991, chapter 45);

As there is no legislation in Québec authorizing the continuance of a provincial trust company as a federal trust company governed by the Trust and Loan Companies Act;

As, before the continuance, Desjardins Trust Inc. and Desjardins Specialized Financial Services Management Inc. wish to transfer the shares they hold in the capital stock of their subsidiaries and other movable and immovable property to the Fédération des caisses Desjardins du Québec through one or more holding companies controlled by the federation, and as they must also at that time acquire securities issued by the federation or by such a holding company;

As the provisions of the Act respecting trust companies and savings companies governing the operations a Québec trust company carries on with restricted parties and those pertaining to the transfer of property do not allow Desjardins Trust Inc. to be party with a holding company controlled by the Fédération des caisses Desjardins du Québec or another restricted party to a contract for the transfer of certain property, nor to acquire certain securities from the federation or from such a holding company;

As section 474 of the Act respecting financial services cooperatives (R.S.Q., chapter C-67.3) does not allow a holding company controlled by the Fédération des caisses Desjardins du Québec and established under the laws of Québec for the sole purpose of holding the shares of a legal person that only carries on activities similar to those the federation is authorized to carry on to hold property other than the shares of that legal person;

As Desjardins Trust Inc. and Desjardins Specialized Financial Services Management Inc. also wish to transfer movable and immovable property they own to one or more legal persons belonging to the Fédération des caisses Desjardins du Québec group and as it is expedient to facilitate such transfers, particularly as regards their opposability;

As it is expedient to grant Desjardins Trust Inc. and the Fédération des caisses Desjardins du Québec all the powers connected with the property surrendered by Desjardins Specialized Financial Services Management Inc. and the three legal persons successively known as Desjardins Industrial Credit Inc. and now dissolved which, at the time of their dissolution, were part of the Fédération des caisses Desjardins du Québec group;

As it is expedient to pass an Act to protect the interests of the persons who do business with Desjardins Trust Inc., taking into consideration the fact that rights and obligations of Desjardins Trust Inc. will eventually be assumed by one or more of the holding companies controlled by the Fédération des caisses Desjardins du Québec and ultimately by the Fédération des caisses Desjardins du Québec itself;

As the directors and shareholders of Desjardins Trust Inc. and the directors and shareholder of Desjardins Specialized Financial Services Management Inc. have adopted a resolution agreeing to the passing of this Act and the implementation of each and every action and provision provided for in it;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. In this Act,

“Desjardins group” means the group made up of the Federation, the legal persons or partnerships referred to in section 3 of the Act respecting financial services cooperatives (R.S.Q., chapter C-67.3) and Desjardins Credit Union Inc.;

“Desjardins Industrial Credit” means any of the following three legal persons formerly known as Desjardins Industrial Credit Inc., namely,

(1) Desjardins Industrial Credit Inc., a legal person constituted on 17 September 1975 under the Companies Act (R.S.Q., chapter C-38), whose name was changed on 30 December 1994 to 9012-8190 Québec Inc., and that was dissolved on 17 May 1995;

(2) 9010-4852 Québec Inc., a legal person constituted on 14 October 1994 under the Companies Act, whose name was changed on 30 December 1994 to Desjardins Industrial Credit Inc. and again on 30 December 1997 to 9058-1141 Québec Inc., and that was dissolved on 17 January 2001; and

(3) 9054-1384 Québec Inc., a legal person constituted on 5 September 1997 under the Companies Act, whose name was changed on 30 December 1997 to Desjardins Industrial Credit Inc., and that was dissolved on 29 December 2003;

“Desjardins Management” means Desjardins Specialized Financial Services Management Inc.;

“Desjardins Trust” means Desjardins Trust Inc.; and

“Federation” means the Fédération des caisses Desjardins du Québec.

2. Despite sections 69, 120, 133 and 154 to 160 of the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01),

(1) Desjardins Trust and Desjardins Management may transfer property to the Federation directly or through one or more holding companies controlled by the Federation. The terms and conditions of a transfer of property under this section must first be set out in a transfer agreement and approved by the Agence nationale d’encadrement du secteur financier, which may set the terms, conditions and restrictions it deems appropriate; and

(2) Desjardins Trust may acquire securities issued by a restricted party. Such an acquisition requires the prior approval of the Agence nationale d’encadrement du secteur financier and the Agency may, for that purpose, impose the conditions and restrictions it considers appropriate.

(3) Desjardins Trust may acquire property from a restricted party. The terms and conditions of an acquisition of property under this section must first be set out in an acquisition agreement and approved by the Agence nationale d’encadrement du secteur financier, which may set the terms, conditions and restrictions it considers appropriate.

3. Property transferred by Desjardins Trust or Desjardins Management to a holding company controlled by the Federation under the terms of an agreement referred to in section 2 is deemed to have been acquired by that holding company under section 474 of the Act respecting financial services cooperatives.

4. When a transferee acquires property from Desjardins Trust or Desjardins Management, a suit, action, application, motion or other proceeding brought or a power or recourse exercised or that could be brought or exercised by or against Desjardins Trust or Desjardins Management in a court of justice, an administrative tribunal or a government body in Québec in respect of property or activities transferred may not be suspended, interrupted or cancelled, but may be continued, brought or exercised on behalf of or against the transferee without continuance of suit on written notice by the latter duly served on all restricted parties and filed of record.

5. In every notarial deed or deed under private signature, in every judgment or court order, or in any document involving or naming Desjardins Trust or Desjardins Management and pertaining to debts secured by movable or immovable securities, or to movable or immovable property acquired on realization of such securities or through the exercise of any other recourse, that were subsequently transferred in whole or in part by Desjardins Trust or Desjardins Management to one or more legal persons belonging to the Federation group, under the terms of one or more transfers that may have been successive, including a transfer by Desjardins Management to Desjardins Trust and then by Desjardins Trust to another legal person belonging to the Federation group, the name of the transferee is substituted by operation of law for the name of Desjardins Trust or Desjardins Management, from the effective date of the transfer, with the same effects as if it appeared in the document.

The substitution under this section is effected and may be set up against anyone without it being necessary to observe the formalities set out in articles 1641, 1642, 1645 and 3003 of the Civil Code or to publish or file this Act, the act of transfer or any other document evidencing the substitution with regard to those rights in any register in Québec. The registrar must accept for registration any act that mentions the substitution under this section although the act of transfer or this Act may not have been published.

6. Nothing in this Act affects the rights of a person with a claim against Desjardins Trust or Desjardins Management or diminishes, modifies or affects the liability of either one toward that person. However, all such rights may be exercised against the transferee of the property that is the subject of the claim.

7. Despite any provision to the contrary, Desjardins Trust and the Federation each have the power and capacity

(1) to grant total or partial acquittance for any loan made by Desjardins Industrial Credit and surrendered by it or transferred to Desjardins Trust or Desjardins Management, or to grant, with or without consideration, total or partial release of the registration of any security or other right of a movable or immovable nature registered in the name of Desjardins Industrial Credit that arises from a contract, judgment or Act;

(2) to grant total or partial acquittance for any loan acquired by Desjardins Management that may be surrendered by it or to grant, with or without consideration, total or partial release of the registration of a security or other right of a movable or immovable nature registered in the name of Desjardins Management that arises from a contract, judgment or Act;

(3) to transfer, with or without consideration, property of a movable or immovable nature that was surrendered by Desjardins Industrial Credit or may be surrendered by Desjardins Management; and

(4) to correct, for and on behalf of Desjardins Industrial Credit or Desjardins Management, any act, contract or proceedings to which Desjardins Industrial Credit or Desjardins Management is a party.

An act of acquittance, release, transfer or correction made by Desjardins Trust or the Federation under this section is registered by filing that act, which must refer to this Act and the acts constituting the rights cancelled, transferred or corrected, give their registration numbers and, if required by the Civil Code, include a description of the movable or immovable property concerned. The power and capacity of Desjardins Trust and the Federation to act on behalf and in the name of the holder of the rights affected by such a cancellation, transfer or correction result from this section. The registrar must accept for registration any act referred to in this section that mentions that Desjardins Trust or the Federation is acting on behalf of and in the name of the holder of the rights referred to in this Act and that is certified by an advocate or a notary. The capacity of Desjardins Trust or the Federation to act on behalf of and in the name of the holder of those rights is then held to have been verified within the meaning of article 3009 of the Civil Code.

8. Desjardins Trust is authorized to apply for letters patent of continuance under the Trust and Loan Companies Act (Statutes of Canada, 1991, chapter 45).

9. On the date stated in the letters patent of continuance, Desjardins Trust ceases to be a Québec company within the meaning of section 6 of the Act respecting trust companies and savings companies.

10. This Act comes into force on 17 December 2004.