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# NATIONAL ASSEMBLY

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FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

**Bill 73**

(2008, chapter 9)

## **Real Estate Brokerage Act**

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**Introduced 18 December 2007**

**Passed in principle 30 April 2008**

**Passed 27 May 2008**

**Assented to 28 May 2008**

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## EXPLANATORY NOTES

*This Act replaces the Real Estate Brokerage Act to reform the supervision of real estate brokerage in Québec. To that end, it replaces the Association des courtiers et agents immobiliers du Québec by a self-regulatory organization, the Organisme d'autoréglementation du courtage immobilier du Québec, whose sole mission is to protect the public. It also substitutes the self-regulatory organization for the industry compensation fund, whose rights it acquires and obligations it assumes.*

*This Act provides for the appointment of a syndic and, if necessary, of assistant syndics. To protect the public, it further provides for the establishment of an inspection committee, a syndic decision review committee and a discipline committee within the self-regulatory organization. It introduces licences in replacement of certificates, and stipulates that a real estate or mortgage broker's licence may be held by a natural person only while a real estate or mortgage broker agency licence may be held by any person or partnership.*

*Moreover, this Act gives the board of directors of the self-regulatory organization full regulatory powers, except the power to make regulations applicable to persons who carry on real estate leasing brokerage activities on behalf of senior citizens or physically or mentally vulnerable persons, and makes the organization's regulations subject to government approval.*

*As well, it provides that persons who carry on real estate leasing brokerage activities on behalf of senior citizens or physically or mentally vulnerable persons are exempted from the application of the new Act and ensuing regulations to the extent and on the conditions determined by government regulation.*

*This Act sets rules pertaining to the brokerage of loans secured by immovable hypothec and repeals the provisions of the Act respecting the distribution of financial products and services relating to mortgage brokers.*

*Lastly, this Act makes consequential amendments and contains transitional provisions.*

**LEGISLATION AMENDED BY THIS ACT:**

- Act respecting the distribution of financial products and services (R.S.Q., chapter D-9.2);
- Act respecting the Agence nationale d’encadrement du secteur financier (2002, chapter 45).

**LEGISLATION REPLACED BY THIS ACT:**

- Real Estate Brokerage Act (R.S.Q., chapter C-73.1).



## Bill 73

### REAL ESTATE BROKERAGE ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

#### CHAPTER I

##### SCOPE

**1.** This Act applies to any person or partnership that, for others and in return for remuneration, engages in a brokerage transaction relating to

(1) the purchase or sale of immovable property, a promise to purchase or sell immovable property, or the purchase or sale of such a promise;

(2) the lease of immovable property, when the person or partnership acting as an intermediary carries on an enterprise in that field;

(3) the exchange of immovable property;

(4) a loan secured by immovable hypothec; or

(5) the purchase or sale of an enterprise, a promise to purchase or sell an enterprise, or the purchase or sale of such a promise, under a single contract, if the enterprise's property, according to its market value, consists mainly of immovable property.

However, this Act does not apply to a transaction of securities within the meaning of the Securities Act (R.S.Q., chapter V-1.1).

**2.** Unless they use a title that is restricted under this Act, the following persons are not subject to this Act when engaging in a brokerage transaction described in section 1 in the course of their functions:

(1) advocates and notaries;

(2) liquidators, sequestrators, trustees in bankruptcy, sheriffs and bailiffs;

(3) tutors, curators, liquidators of a succession and trustees;

(4) provisional administrators appointed under the Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2); and

(5) chartered appraisers engaging in activities mentioned in paragraph *j* of section 37 of the Professional Code (R.S.Q., chapter C-26).

**3.** Unless they use a title that is restricted under the law, the following persons and partnerships are not subject to this Act with regard to the brokerage transactions specified:

(1) banks, financial services cooperatives, insurance companies, mutual insurance associations, mutual benefit associations, savings companies and trust companies, and their employees and exclusive representatives when acting on behalf of their financial institution, in the context of a brokerage transaction relating to a loan secured by immovable hypothec;

(2) a member in good standing of a professional order or a person or partnership governed by an Act administered by the Autorité des marchés financiers who only gives a client the name and contact information of a person or partnership offering loans secured by immovable hypothec or otherwise merely puts them in contact with each other, provided the member, person or partnership does so as an ancillary activity;

(3) an employee who, in the course of the employee's principal occupation, engages in a brokerage transaction described in section 1 for the employer's account, provided the latter is not a broker or an agency;

(4) forest engineers who engage in a brokerage transaction relating to forest property;

(5) members in good standing of a professional order of accountants mentioned in Schedule I to the Professional Code who engage in a brokerage transaction relating to a loan secured by immovable hypothec, the purchase or sale of an enterprise, a promise to purchase or sell an enterprise, or the purchase or sale of such a promise;

(6) chartered administrators who lease out an immovable they manage, or engage in a brokerage transaction relating to a loan secured by immovable hypothec with regard to an immovable they manage;

(7) trust companies that engage in a brokerage transaction described in section 1 with regard to immovable property they hold or administer for others;

(8) a superintendent or manager of property held in divided co-ownership who acts as an intermediary to lease out a fraction of the property for and on behalf of the owner or syndicate, gives a co-owner the name and contact information of a potential buyer or lessee of the co-owner's fraction or otherwise merely puts them in contact with each other;

(9) a superintendent of a rental residential immovable who leases out the property for and on behalf of the owner;

(10) a property manager who acts exclusively for a property owner and who, for the benefit of that owner, engages in a brokerage transaction relating to the leasing out of an immovable;

(11) an employee or property manager who works for a subsidiary enterprise that is at least 90% controlled by the property owner, and who engages in a brokerage transaction relating to the leasing out of an immovable, provided the employee or manager acts exclusively for the property owner;

(12) the spouse, child, father, mother, brother or sister of the owner of an immovable who engages in a brokerage transaction described in section 1;

(13) the sole shareholder of a legal person who engages in a brokerage transaction described in section 1 for that legal person; and

(14) a person or partnership that operates a brokerage enterprise to lease out immovable property and that, in accordance with the rules determined by government regulation, engages in a brokerage transaction exclusively on behalf of senior citizens or persons who are physically or mentally vulnerable.

## **CHAPTER II**

### **REAL ESTATE BROKERAGE AND MORTGAGE BROKERAGE**

#### **DIVISION I**

##### **REAL ESTATE BROKER AND MORTGAGE BROKER**

**4.** Subject to sections 2 and 3 and special authorizations from the real estate self-regulatory organization known as the Organisme d'autoréglementation du courtage immobilier du Québec (the "Organization"), no person except the holder of a broker's licence issued by the Organization may act as or purport to be a real estate or mortgage broker.

A real estate broker is a natural person who engages in a brokerage transaction described in section 1.

A mortgage broker is a natural person who engages exclusively in brokerage transactions relating to loans secured by immovable hypothec.

A person who contravenes this section may not claim or receive remuneration for services rendered.

**5.** A broker's licence is issued to applicants who meet the requirements set out in this Act.

**6.** A broker must have an establishment in Québec. In the case of a broker who acts on behalf of an agency, the broker's establishment is the agency's establishment.

A notice of the address of the establishment and any change of address must be sent to the Organization.

**7.** A broker, when new to the occupation, must carry on brokerage activities for an agency for the period set out in the Organization's regulations before the broker may work for the broker's own account or become an executive officer of an agency.

**8.** A broker must pay into the insurance fund the civil liability insurance premium determined by resolution of the Organization.

If no insurance fund has been established, the broker must take out civil liability insurance as specified in the Organization's regulations or, in the cases prescribed in the Organization's regulations, give security or a guarantee in lieu of security.

**9.** The licence of a broker who fails to comply with section 8 is suspended by operation of law.

The broker may, subject to the conditions prescribed in the Organization's regulations, have the suspension lifted as soon as the broker is in compliance with section 8.

**10.** All money received by a broker in the course of the broker's functions that does not belong to the broker must be deposited in a trust account as specified in the Organization's regulations.

The interest earned on money held in trust that is not claimed by the person who is entitled to the interest must be paid into the financing fund established under section 47, as specified in the Organization's regulations.

**11.** A broker may not, while acting on behalf of an agency, act on behalf of another agency or work on the broker's own account.

A broker who acts on behalf of an agency must present himself or herself as such to the public.

**12.** A broker who represents an agency is solidarily liable for any prejudice caused by the breach of a brokerage contract.



**DIVISION II****REAL ESTATE AND MORTGAGE BROKER AGENCIES**

**13.** Subject to sections 2 and 3 and special authorizations from the Organization, no person or partnership except the holder of an agency licence issued by the Organization may act as or purport to be a real estate or mortgage broker agency.

A real estate agency is a person or partnership that engages in brokerage transactions described in section 1 through the intermediary of one or more brokers licensed by the Organization.

A mortgage broker agency is a person or partnership that, through the intermediary of one or more mortgage brokers, engages exclusively in brokerage transactions relating to loans secured by immovable hypothec.

**14.** An agency licence is issued to the persons and partnerships that meet the requirements set out in this Act.

**15.** An agency must have an establishment in Québec.

A notice of the address of the agency's principal establishment in Québec and any change of address must be sent to the Organization.

**16.** An agency must disclose the names of its brokers to the Organization and inform the Organization of any changes in this regard.

**17.** An agency must pay into the insurance fund the civil liability insurance premium determined by resolution of the Organization.

If no insurance fund has been established, the agency must take out civil liability insurance as specified in the Organization's regulations or give security or a guarantee in lieu of security in the cases prescribed in the Organization's regulations.

**18.** An agency is liable for any injury caused to a person or partnership by the fault of one of its brokers in the performance of the broker's functions.

The agency nevertheless has a right of action against the broker concerned.

**19.** An agency and its directors and executive officers must oversee the conduct of the brokers who represent the agency and ensure that they comply with this Act.

**20.** An agency must ensure that its directors, executive officers and employees comply with this Act.

### DIVISION III

#### DISCLOSURE, REPRESENTATION AND PUBLICITY

**21.** Brokers, agencies and the directors and executive officers of agencies must act with honesty, loyalty and competence. They must also disclose any conflict of interest.

The rules governing the disclosure of conflicts of interest are set out in the Organization's regulations.

**22.** Representations made by brokers and agencies, and the real estate advertising and information they disseminate to the public for promotional purposes, must comply with the rules set out in the Organization's regulations.

Those rules also apply to franchisers and to any person or partnership that promotes real estate or mortgage brokerage services.

The Organization may also, by regulation, set out specific or supplementary rules to govern advertising by franchisers, franchisees and sub-franchisees.

### CHAPTER III

#### CONTRACTS CONCERNING CERTAIN RESIDENTIAL IMMOVABLES

**23.** This chapter applies to contracts between a person or partnership and a broker or agency under which the broker or agency undertakes to act as an intermediary for the purchase, sale, lease or exchange of

(1) part or all of a chiefly residential immovable comprising less than five dwellings; or

(2) a fraction of a chiefly residential immovable that is subject to an agreement or declaration under articles 1009 to 1109 of the Civil Code of Québec (1991, chapter 64).

**24.** The contract is formed when both parties have signed it.

**25.** The broker or agency must give a duplicate of the contract to the client.

The client is not bound to perform the client's obligations under the contract before being in possession of a duplicate of the contract.

The contract may be a paper document or it may be on any medium that allows it to be printed and ensures its integrity.

**26.** The rules governing the contract are set out in the Organization's regulations.

The contract cannot be invalidated on the sole grounds that one of its provisions contravenes this chapter or that it does not include all the information or particulars required by regulation.

**27.** An agreement requiring a client, for a specified period after a contract expires, to remunerate a broker even if the purchase, sale, lease or exchange of an immovable occurs after the contract expires, is without effect.

However, the first paragraph does not apply if the agreement provides for the remuneration of the broker when

(1) the contract is stipulated as exclusive;

(2) the purchase, sale, lease or exchange involves a person who became interested in the immovable while the contract was in force; and

(3) the transaction occurs not more than 180 days after the contract expiry date and, during that period, the client did not enter into a contract stipulated as exclusive with another broker for the purchase, sale, lease or exchange of the immovable.

**28.** Despite any stipulation to the contrary, the client may terminate the contract at the client's discretion within three days after receiving a duplicate of the contract signed by the two parties, unless the client has written in its entirety and signed a waiver.

The contract is terminated by operation of law as of the sending or delivery of a written notice to the broker or to the agency.

**29.** The broker or agency may not claim any remuneration with regard to a contract terminated under section 28, unless a purchase, sale, lease or exchange meeting the conditions specified in section 27 occurs.

**30.** The client may not, by special agreement, waive the rights conferred by this chapter.

## CHAPTER IV

### ORGANISME D'AUTORÉGLÉMENTATION DU COURTAGE IMMOBILIER DU QUÉBEC

#### DIVISION I

##### ESTABLISHMENT, MISSION AND POWERS

**31.** The Organisme d'autoréglementation du courtage immobilier du Québec is established.

The Organization is a legal person.

**32.** The Organization's mission is to protect the public in real estate and mortgage brokerage dealings by enforcing rules of professional conduct and by inspecting the affairs of brokers and agencies. It is to ensure, among other things, that the transactions engaged in by brokers and agencies are compliant with the law.

It may also dispense training courses for brokers and agency executive officers, with the exception of basic training courses, and award the titles referred to in section 48.

**33.** The Minister may ask the Organization to take specified guidelines and objectives into account in the pursuit of its mission.

The Minister may require the Organization to give its opinion on any question the Minister submits to it concerning matters under its jurisdiction.

The Minister may also require the Organization to amend its internal by-laws as directed by the Minister.

**34.** The Organization acts as conciliator or mediator in disputes between a broker or an agency and a client, if the parties so request. The same holds for disputes between brokers, between agencies, or between brokers and agencies; if all the parties are members of a real estate board, the Organization may only take on this role to protect the public.

The Organization may also arbitrate accounts between a broker or an agency and a client.

**35.** The Organization may, by motion, apply to a judge of the Superior Court for an injunction in respect of any matter relating to this Act, including an injunction to stop the dissemination of non-compliant advertising and compel the advertiser to rectify it, within the time and in the manner determined by the Court.

A motion for an injunction constitutes a proceeding in itself.

The rules set out in the Code of Civil Procedure (R.S.Q., chapter C-25) apply to such a proceeding, except that the Organization is not required to give security.

**36.** The Organization may make a search in accordance with the Code of Penal Procedure (R.S.Q., chapter C-25.1).

**37.** The Organization may refuse to issue a licence or may impose restrictions or conditions on a licence

(1) if the applicant's licence has previously been revoked, suspended or made subject to restrictions or conditions by the discipline committee, by a

body in Québec responsible for overseeing and monitoring real estate brokerage, or by such a body in another province or State;

(2) if the applicant has made an assignment of property or been placed under a receiving order pursuant to the Bankruptcy and Insolvency Act (Revised Statutes of Canada, 1985, chapter B-3);

(3) if the applicant has previously been convicted, by a court, of an offence or act which, in the Organization's opinion, is brokerage-related, or has pleaded guilty to such an offence or act; or

(4) if the applicant has been assigned a tutor, curator or adviser.

**38.** The Organization may suspend, revoke, or impose restrictions or conditions on a licence

(1) if the holder's licence has previously been revoked, suspended or made subject to restrictions or conditions by the discipline committee, by a body in Québec responsible for overseeing and monitoring real estate brokerage, or by such a body in another province or State;

(2) if the holder has made an assignment of property or been placed under a receiving order pursuant to the Bankruptcy and Insolvency Act;

(3) if the holder has previously been convicted by a court of law of an offence or act which, in the Organization's opinion, is brokerage-related, or has pleaded guilty to such an offence or act; or

(4) if the holder has been assigned a tutor, curator or adviser.

**39.** The Organization informs the syndic of any decision under section 38 and the decision serves as a notice under section 84. A decision made under paragraph 3 of section 38 is valid

(1) until the syndic or assistant syndic decides not to file a complaint; or

(2) until the discipline committee renders a final, enforceable decision on a complaint filed by the syndic or assistant syndic.

A decision of the Organization under section 38 must be served immediately on the broker or the agency in accordance with the Code of Civil Procedure.

**40.** The Organization may, according to the terms set out in its regulations, suspend, revoke, impose restrictions or conditions on or refuse to issue a licence, provided this does not impair the authority of the discipline committee.

**41.** For the purposes of sections 37, 38 and 40, the Organization serves notice on the applicant or the licence holder, at least 15 days in advance of the date on which the applicant or the licence holder may submit its observations.

The allegations against the applicant or the licence holder are set out in the notice.

**42.** The Organization may delegate its functions and powers under sections 37 to 39 and 41 to a committee.

The operating rules of such a committee, including those concerning its composition and decision-making, are to be determined by regulation of the Organization.

**43.** Any appeal from a decision made by the Organization under section 37, 38 or 40 is brought before the Court of Québec.

An appeal does not suspend the contested decision unless a judge of the Court of Québec decides otherwise.

The appeal is brought by filing a notice of appeal with the Organization within 30 days after the date of service of the contested decision.

**44.** The Organization sends the record to the Court of Québec.

**45.** The Organization may, after informing the Minister, negotiate and enter into an agreement in connection with its mission with any person or body, including a government or a government department or body.

However, if the person or body is outside Québec, the agreement is subject to the Act respecting the Ministère du Conseil exécutif (R.S.Q., chapter M-30) or the Act respecting the Ministère des Relations internationales (R.S.Q., chapter M-25.1.1), as the case may be.

The Minister or the Government, as the case may be, may terminate, or require the modification of, any agreement entered into by the Organization, after giving the Organization an opportunity to submit observations.

**46.** In addition to its regulatory powers under this Act, the Organization may determine, by regulation,

(1) rules governing the training required to become a broker and the examination to be taken by prospective brokers;

(2) additional training and the specific circumstances under which such training is compulsory for all or some of an agency's brokers or executive officers;

(3) the terms and conditions governing the issue, suspension or revocation of a licence, and the cases in which restrictions or conditions may be imposed on a licence;

(4) the licence fees to be paid;

(5) the rules of professional conduct applicable to brokers and to executive officers of an agency;

(6) the information and documents to be provided by a prospective broker, a broker or an agency;

(7) the particulars a licence must contain;

(8) the requirements to be met in order to engage in a brokerage transaction described in section 1;

(9) the nature, form and tenor of the books and registers that must be kept by brokers and agencies, as well as rules for the preservation, use and destruction of records, books and registers;

(10) rules for opening and maintaining a trust account, as well as the terms and conditions governing deposits and withdrawals;

(11) the brokerage transactions that, with special authorization, may be engaged in occasionally or from time to time, the persons, partnerships or groups of persons or partnerships, other than brokers and agencies, that may engage in such transactions and the terms and conditions governing and the fees chargeable for such transactions;

(12) the qualifications required of executive officers of an agency;

(13) the form of contracts or forms, other than a contract referred to in section 26, how and when they may be used, the particulars and stipulations which must or must not appear in certain contracts or forms and those that supplement intention;

(14) the activities that brokers and agencies may not engage in;

(15) the terms and conditions governing the eligibility of claims submitted to the indemnity committee and the payment of indemnities;

(16) the maximum amount of indemnities that may be paid with regard to the same claim; and

(17) the fee that must be paid by brokers and agencies to the Organization for payment into the Real Estate Indemnity Fund, according to the licence they hold and the date of their registration with the Organization, as well as the terms of payment for that fee.

**47.** The Organization must, by regulation, establish a financing fund made up of the interest earned on the money held in trust, and determine rules for the administration of the fund and the terms of payment of interest into the fund.

**48.** The Organization may determine, by regulation, the specialist titles a broker may use and the terms and conditions governing the conferral and withdrawal of those titles.

**49.** The Organization may, for the purposes of any regulation, establish special or supplementary rules for real estate brokers, mortgage brokers, real estate agencies or mortgage broker agencies.

**50.** Sixty days after serving on the Organization a formal notice enjoining it to adopt regulations as provided in this Act, the Government may exercise that regulatory power itself.

Such regulations are deemed to be regulations of the Organization.

**51.** The Organization must consult the *Chambre des notaires* before approving a brokerage contract or form.

**52.** The Organization may establish an insurance fund and require licence holders to subscribe to it.

The Organization determines, by resolution, the premium a broker or an agency must pay according to any criteria determined by regulation of the Organization.

Sections 174.1 to 174.11 and 174.13 to 174.18 of the Act respecting insurance (R.S.Q., chapter A-32) apply, with the necessary modifications, to the insurance fund established by the Organization.

If it establishes an insurance fund, the Organization is an insurer within the meaning of the Act respecting insurance.

**53.** The insurance fund established by the Organization is authorized to provide liability insurance to any person whose activities are governed by this Act.

The Organization may not communicate information about an insured person except for the purposes for which the fund was established.

## **DIVISION II**

### **OPERATION**

**54.** The Organization adopts and brings into force internal by-laws establishing its operating rules.

The internal by-laws are ratified at the following general meeting.

**55.** The Organization has its head office in Québec at the place specified in its internal by-laws.



A notice of the address of the Organization's head office and any change of address is published in the *Gazette officielle du Québec*.

**56.** The Organization calls a general meeting of licence holders every year, as specified in its internal by-laws.

Licence holders may take part in the general meeting from separate locations, in the cases and on the conditions set out in the internal by-laws.

**57.** The affairs of the Organization are administered by a board consisting of 11 directors appointed or elected for a term of three years.

**58.** After consulting the Organization and various groups in the socioeconomic sector, the Minister appoints three directors who are neither brokers nor directors or executive officers of an agency.

The licence holders elect from their number the other members of the board of directors, in the manner set out in the Organization's internal by-laws.

A person may not be appointed or elected a director or remain a director if the person is or becomes a director or executive officer of an association or enterprise whose purpose is to defend the interests of real estate brokers, agencies or franchisers.

A director may not hold any other remunerated position with the Organization.

**59.** At the end of their term, directors remain in office until they are replaced, re-appointed or re-elected.

**60.** A director who has a direct or indirect interest in an enterprise that places the director's personal interest in conflict with the Organization's interest must, on pain of forfeiture of office, disclose that personal interest and abstain from participating in any decision involving the enterprise. The director must also withdraw from a meeting for the duration of discussions on the matter.

**61.** The Organization is subject to the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1).

### **DIVISION III**

#### **FINANCIAL PROVISIONS AND DOCUMENTS**

**62.** The Organization's activities are financed out of the licence fees paid by licence holders under paragraph 4 of section 46 and the other amounts payable to the Organization under this Act.

**63.** The Organization keeps a register of licence holders.

The register must contain each broker's name, the titles the broker may use, the address where the broker carries on brokerage activities and, if applicable, the name of the agency the broker represents and any restrictions or conditions on the broker's licence.

The register must contain each agency's name, the address of the agency's head office, the restrictions or conditions on the agency's licence, and the names of the brokers through whose intermediary the agency carries on its activities.

The register must also contain any other information the Organization considers appropriate.

**64.** The Organization must have its books and accounts audited by an auditor every year.

If the Organization fails to do so, the Minister may have the audit conducted and may, for that purpose, designate an auditor whose remuneration is borne by the Organization.

**65.** The auditor has access to all the Organization's books, registers, accounts, other accounting records and vouchers. Any person having custody of such documents must facilitate their examination by the auditor.

The auditor may require the information and documents needed to conduct the audit from the Organization's directors, executive officers, mandataries or employees.

**66.** The auditor may require a meeting of the board of directors on any matter related to the audit.

**67.** The fiscal year of the Organization ends on 31 December.

**68.** Within four months after the end of its fiscal year, the Organization sends the Minister its audited annual report showing its financial position and activities for the preceding fiscal year.

The report must contain any other information required by the Minister.

The report is laid before the National Assembly by the Minister within 30 days after receiving it or, if the Assembly is not sitting, within 30 days after resumption.

**69.** The Organization must send the Minister, on request, any statements, statistical data, reports, documents or other information the Minister considers appropriate for the purposes of this Act, in the form and on the dates specified by the Minister.

## CHAPTER V

### ASSISTANCE, INSPECTION, DISCIPLINE AND COMPENSATION

#### DIVISION I

##### ASSISTANCE SERVICE

**70.** An assistance service is set up within the Organization.

The role of the assistance service is, among other things, to provide a first examination of any request addressed to the Organization, to decide how requests should be handled and to assist anyone in presenting a request.

The service exercises the Organization's power under the second paragraph of section 34.

**71.** The assistance service must notify the syndic immediately if it has reasonable grounds to believe that an offence under this Act has been committed.

**72.** The assistance service must inform the initiator of a request that, if not satisfied with how the request has been settled, the initiator may request that the assistance service forward the request to the syndic.

#### DIVISION II

##### INSPECTION COMMITTEE

**73.** An inspection committee is appointed within the Organization.

**74.** The role of the inspection committee is to oversee the activities of brokers and agencies, in particular by auditing their records, accounts, books and registers.

**75.** The inspection committee may make any recommendation it considers appropriate to a broker or agency that has been inspected.

If the committee notes that an offence under this Act has been committed, it must notify the syndic.

The committee may also require a broker or an executive officer of an agency to successfully complete a course or to take any other training program. The broker or executive officer may request that this decision be reviewed by the Organization's board of directors.

**76.** The inspection committee's operating rules, including those applicable to its composition, are set out in the Organization's regulations.

**77.** An inspection may be conducted on the Organization's request or on the inspection committee's own initiative.

**78.** A person conducting an inspection under this division may

(1) enter the establishment of the broker or agency concerned at any reasonable hour;

(2) examine and make copies of the books, registers, accounts, records and other documents relating to the activities of the broker or agency; and

(3) require any information or document relating to the carrying out of this Act.

A person having custody, possession or control of the books, registers, accounts, records and other documents must, on request, make them available to the person conducting the inspection and facilitate their examination, regardless of the storage medium and the means by which they may be accessed.

**79.** A person conducting an inspection must, on request, provide identification and produce a certificate of authority signed by the secretary of the Organization.

**80.** No one may hinder the work of or mislead a person conducting an inspection.

**81.** The inspection committee must submit an annual report to the Organization, on the date and in the form the Organization determines.

### **DIVISION III**

#### **SYNDIC**

**82.** The Organization appoints a syndic and, if necessary, one or more assistant syndics.

The rules for appointing the syndic and assistant syndics and any replacements are set out in the Organization's regulations.

**83.** Assistant syndics exercise their functions under the direction of the syndic and have all the powers of the syndic.

**84.** The role of the syndic is to investigate any alleged contravention of this Act by a broker or an agency, including a director or executive officer of an agency, following notification by the assistance service.

A syndic who has grounds to believe that an offence under this Act has been committed by a broker or an agency, including a director or executive officer of an agency, investigates the matter and, if warranted, files a complaint with the discipline committee.

**85.** When a person has requested an investigation into the conduct of a broker, the syndic informs the person in writing, within a reasonable time, of the syndic's decision to file or not to file a complaint with the discipline committee as a result of the request; if the decision is not to file a complaint, the syndic must include reasons.

If a complaint is filed, the syndic must, on request, send the discipline committee's decision to the person or inform the person of the decision; the person is bound by any order banning publication or release that may be included in the decision.

**86.** A complaint may be filed against a person or partnership that no longer holds a broker's or agency licence if, at the time of the alleged offence, the person or partnership did hold such a licence.

**87.** The syndic submits an annual report to the Organization, on the date and in the form the Organization determines.

**88.** The syndic or an assistant syndic may, by way of a complaint, seize the discipline committee of any decision of a Canadian court finding a broker or an agency guilty of a criminal or indictable offence which, in the opinion of the syndic or assistant syndic, is brokerage-related. The syndic or assistant syndic may also seize the discipline committee, by the same means, of any guilty plea in relation to such an offence. A duly certified copy of the judicial decision is proof before the discipline committee that the offence was committed and that any facts reported in the decision are true. If the discipline committee considers that a penalty is warranted, the discipline committee imposes on the broker or the agency one of the penalties prescribed by section 98.

**89.** Sections 78 to 80 apply to the syndic and to assistant syndics when conducting an investigation.

The syndic and assistant syndics have the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (R.S.Q., chapter C-37), except the power to order imprisonment.

#### **DIVISION IV**

##### **SYNDIC DECISION REVIEW COMMITTEE**

**90.** A syndic decision review committee is appointed within the Organization.

The review committee's operating rules, including those applicable to its decision-making process, are set out in the Organization's regulations.

**91.** A person who requested an investigation by the syndic may, within 30 days after being informed in writing of the syndic's decision not to file a complaint with the discipline committee, request a ruling from the review committee.

Within 90 days after receiving a request under the first paragraph, the review committee makes its ruling in writing after considering the entire record and all the evidence, which must be forwarded by the syndic, and after hearing both the syndic and the person who requested the investigation.

**92.** The review committee may, in its ruling,

(1) conclude that there is no cause to file a complaint with the discipline committee;

(2) recommend that the syndic complete the investigation;

(3) recommend that the syndic refer the record to the inspection committee;  
or

(4) conclude that there is cause to file a complaint with the discipline committee and suggest the name of a person who, acting in the capacity of *ad hoc* syndic, may file the complaint.

If the review committee recommends that the syndic complete the investigation or concludes that there is cause to file a complaint with the discipline committee, the Organization must reimburse any fees charged to the person who requested the investigation.

## **DIVISION V**

### **DISCIPLINE COMMITTEE**

**93.** A discipline committee is appointed within the Organization.

The discipline committee is seized of any complaint filed by the syndic against a broker or an agency, including a director or an executive officer of an agency, for an offence under this Act. A complaint may include two or more counts.

**94.** The discipline committee is composed of three or more members appointed for a term of three years.

The chair and vice-chairs are appointed by the Minister, after consultation with the Barreau du Québec, from among advocates who have been practising for at least 10 years.

The other committee members are appointed by the board of directors from among brokers.

**95.** The discipline committee's operating rules, including those applicable to the filing and hearing of complaints, and, in particular, those providing for the committee's sitting in divisions, and those to be applied when a committee member must be replaced or becomes disqualified, are set out in the Organization's regulations.

A person who, by act or omission, infringes an in-camera, no-access, non-publication or non-release order made by the discipline committee is guilty of contempt of court.

**96.** When a broker or an agency has ceased to hold a licence issued by the Organization, the disciplinary process may nevertheless be initiated; if it has already been initiated, it is not interrupted.

**97.** The members of the discipline committee have the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions, except the power to order imprisonment.

They have all the powers of the Superior Court to compel witnesses to appear and answer, and to punish them if they refuse; for such purposes, the respondent is deemed to be a witness.

**98.** The discipline committee renders a decision on each count contained in the complaint. If it finds the broker or the agency, including a director or executive officer of the agency, guilty of an offence under this Act, the discipline committee imposes one or more of the following penalties:

- (1) a reprimand;
- (2) suspension or revocation of the broker's or the agency's licence, or the imposition of restrictions or conditions on the licence;
- (3) a fine of not less than \$1,000 nor more than \$12,500 for each count, which maximum and minimum amounts are doubled for a second or subsequent offence;
- (4) remittal to any person or partnership of a sum of money the broker or agency is holding for that person or partnership;
- (5) the surrender of any document or information;
- (6) the obligation to complete, destroy or delete, update or rectify any document or information; or
- (7) the obligation to successfully complete a course or to take any other training program.

When a broker or an agency is found guilty of having appropriated, without entitlement, sums of money or other assets held by the broker or agency for others, or of having used such sums of money or assets for purposes other than those for which they were entrusted to the broker or agency, the discipline committee imposes on the broker or agency at least the licence suspension prescribed by subparagraph 2 of the first paragraph.

Each day during which the offence continues constitutes a separate offence, and the discipline committee may impose for each of those separate offences the fine prescribed by subparagraph 3 of the first paragraph.

The discipline committee's decision to impose one or more penalties may include terms and conditions. The decision may also prescribe that penalties apply consecutively.

The discipline committee must, on rendering a decision to suspend, revoke or impose restrictions or conditions on a licence, decide whether or not it will publish a notice of the decision in a newspaper distributed in the place where the broker's or agency's establishment is located. If the discipline committee orders the publication of such a notice, it must, in addition, decide whether the publication costs are to be paid by the broker or agency, by the Organization, or divided as specified between the broker or agency and the Organization.

The notice must include the name of the broker or agency found guilty, the location of the establishment, the date and nature of the offence, and the date and summary of the decision.

A decision of the discipline committee ordering the broker or agency to pay costs, imposing a fine on the broker or agency, or ordering the broker, the agency or the Organization to pay the publication costs referred to in the fifth paragraph may, if not complied with, be homologated by the Superior Court or the Court of Québec, according to their respective jurisdiction, and becomes enforceable as a judgment of that Court.

**99.** The discipline committee has its decisions served on the parties in accordance with the Code of Civil Procedure within 10 days.

However, a decision rendered in the presence of one of the parties is deemed to be served on that party in accordance with the first paragraph as soon as it is rendered.

**100.** Any appeal from a decision made by the discipline committee is brought before the Court of Québec in accordance with subdivision 5 of Division VII of Chapter IV of the Professional Code, with the necessary modifications.

**101.** A decision of the discipline committee to impose one or more penalties prescribed by the first paragraph of section 98 is enforceable, as specified in the decision, on expiry of the appeal period, unless the discipline committee



orders provisional enforcement of the decision on its being served on the broker or agency concerned.

However, a decision of the discipline committee to revoke a licence is enforceable on being served on the broker or agency concerned.

A decision of the discipline committee under the fifth paragraph of section 98 is enforceable on expiry of the appeal period or, in the case of an appeal from a decision to suspend a licence under subparagraph 2 of the first paragraph of that section, on service of the final decision of the Court of Québec imposing one or more penalties.

The discipline committee may order that a decision referred to in the first or third paragraph be enforceable at a time other than that specified in those paragraphs.

**102.** A broker or agency fined by the discipline committee must pay the fine to the Organization.

**103.** If a decision of the discipline committee orders a broker or an agency to remit a sum of money in accordance with subparagraph 4 of the first paragraph of section 98, the discipline committee must inform the person or partnership concerned within six days.

The broker's or agency's licence is automatically suspended from the date on which the sum of money determined by the discipline committee is due to the time the broker or agency remits the amount to the person or partnership, including principal, interest and costs.

**104.** A broker or agency whose licence has been suspended or made subject to restrictions or conditions by the discipline committee may petition the discipline committee, before the expiry of the penalty, to have the suspension or the restrictions or conditions lifted.

If the discipline committee is of the opinion that the petition should be granted, it makes a recommendation to that effect to the Organization. If the discipline committee dismisses the petition, no new petition may be submitted before the expiry of the penalty unless the discipline committee so authorizes. A decision of the discipline committee under this section may not be appealed.

## **DIVISION VI**

### **INDEMNITY COMMITTEE**

**105.** An indemnity committee is appointed within the Organization.

**106.** The indemnity committee rules on the eligibility of claims submitted to it and decides the amount of the indemnities to be paid, in accordance with the rules set out in the Organization's regulations.

It may rule on the eligibility of a claim whether or not the broker or agency responsible has been prosecuted or convicted.

**107.** The operating rules of the indemnity committee, including those applicable to its composition, are set out in the Organization's regulations.

## **DIVISION VII**

### **REAL ESTATE INDEMNITY FUND**

**108.** The Real Estate Indemnity Fund is established.

The Fund is dedicated to the payment of indemnities to victims of fraud, fraudulent tactics or misappropriation of funds for which a broker or agency is responsible.

**109.** The Real Estate Indemnity Fund is made up of the fees paid by licence holders in accordance with the Organization's regulations, the fines imposed by the discipline committee less the costs relating to the disciplinary process, the money recovered by way of subrogation from a broker or agency, the interest earned on the money in the Fund and any increase in the assets of the Fund.

Any insufficiency of assets is to be offset by a loan contracted by the Organization. The loan must be repaid out of the Fund.

Moreover, the Organization may determine the amount of fees so as to offset an insufficiency.

**110.** The Real Estate Indemnity Fund is managed by the Organization. The Organization keeps separate books for the money in the Fund; the costs incurred for the administration and operation of the Fund are paid out of that money.

The assets of the Fund are not part of the Organization's assets and may not be used to perform the Organization's obligations.

**111.** The Organization compensates victims in accordance with the decisions of the indemnity committee.

**112.** The Organization is subrogated in all the rights of a victim it compensates, up to the amount of the indemnities paid. Any money recovered is paid into the Fund.

## CHAPTER VI

### INSPECTION OF THE ORGANIZATION

**113.** The Minister conducts or orders an inspection of the affairs of the Organization whenever the Minister considers it appropriate for the carrying out of this Act, but at least once every five years.

**114.** A person conducting an inspection may, for the purposes of the inspection,

- (1) enter the head office of the Organization at any reasonable hour;
- (2) examine and make copies of the books, registers, accounts, records and other documents relating to the activities of the Organization; and
- (3) require any information or document relating to the carrying out of this Act.

A person having custody, possession or control of the books, registers, accounts, records and other documents must, on request, make them available to the person conducting the inspection and facilitate their examination by that person.

**115.** A person conducting an inspection must, on request, provide identification and produce a certificate of authority signed by the Minister.

**116.** No one may hinder the work of or mislead a person conducting an inspection.

**117.** If, in the Minister's opinion, it is necessary in the public interest, the Minister may order an investigation into any matter within the Minister's purview.

The Minister and any person the Minister authorizes in writing have the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions, except the power to order imprisonment.

**118.** If, in the Minister's opinion, the Organization is engaged in a course of action contrary to this Act, the Minister may order it to alter its course of action and remedy the situation.

**119.** The Minister's order must include reasons and be sent to the Organization with a prior notice of at least 15 days to allow it to submit observations. The order becomes enforceable on its date of service or on any later date specified in the order.

**120.** The Minister may, without prior notice, issue a provisional order valid for a period of not more than 15 days if, in the Minister's opinion, any time granted the Organization to submit observations may undermine the public interest.

The order must include reasons and becomes enforceable on its date of service. The Organization may submit observations to the Minister within six days after receiving the order.

**121.** The Minister may revoke an order issued under this chapter.

**122.** The Minister may, by motion, apply to a judge of the Superior Court for an injunction in respect of any matter relating to this Act.

A motion for injunction constitutes a proceeding in itself.

The rules set out in the Code of Civil Procedure apply to such a proceeding, except that the Minister is not required to give security.

**123.** If the Organization fails to exercise its responsibilities under this Act, or acts in such a manner that the public is not protected or the requirements set out in this Act are not met, the Minister may exercise all or part of the powers held by the Organization and prohibit the Organization from exercising those powers to the extent and for the period determined by the Minister.

Before making such a decision, the Minister must notify the Organization and give it an opportunity to submit observations. The Organization may appeal to the Superior Court from the Minister's decision within 30 days.

## CHAPTER VII

### PENAL PROVISIONS

**124.** Subject to sections 2 and 3 and to special authorizations granted by the Organization, any person who does not hold the licence required under this Act and in any manner claims to be a broker or an agency, uses a title that may lead others to believe that the person is a broker or an agency, engages in the activities of a broker or an agency, claims to have the right to engage in such activities or acts in such a way as to lead others to believe that the person is authorized to engage in such activities is guilty of an offence.

For the purposes of the first paragraph, if the prosecuting party proves that the defendant engaged in a brokerage transaction described in section 1, the transaction is deemed to have been engaged in in exchange for remuneration.

**125.** Any person found guilty of an offence under section 80, 116 or 124 is liable to a fine of not less than \$1,500 nor more than \$20,000 in the case of a natural person and to a fine of not less than \$3,000 nor more than \$40,000 in the case of a legal person.

A director, executive officer, mandatary or representative of a legal person referred to in the first paragraph who knowingly authorizes, encourages, recommends, or allows the commission of the offence is liable to a fine of not less than \$1,500 nor more than \$20,000. In determining the amount of a fine, the court considers such factors as the injury suffered as a result of and the benefits derived from the offence.

The minimum and maximum fines are doubled for a second or subsequent offence.

**126.** Proceedings for an offence under section 80 or 124 may be instituted by the Organization.

When the Organization takes charge of the prosecution, the fine imposed to punish the offence belongs to the Organization.

**127.** Penal proceedings for an offence under section 124 are prescribed two years from the date on which the investigation record relating to the offence was opened by the syndic. However, no proceedings may be instituted if more than five years have elapsed since the date of the offence.

A certificate of the secretary of the Organization stating the date on which the investigation record was opened constitutes conclusive proof of that date in the absence of any evidence to the contrary.

**128.** If the respondent continues to commit or again commits the offence during the proceedings, the Attorney General, or the Organization with the Attorney General's authorization, may apply to the Superior Court for an interlocutory injunction enjoining the person and, if applicable, its directors, executive officers, mandataries or representatives to cease committing the alleged offence until final judgment is pronounced in the penal proceedings.

After pronouncing the judgment in the penal proceedings, the Superior Court itself renders final judgment on the application for the interlocutory injunction.

The Attorney General or the Organization is dispensed from the obligation to give security. In every other respect, the provisions of the Code of Civil Procedure concerning interlocutory injunctions apply.

## CHAPTER VIII

### MISCELLANEOUS PROVISIONS

**129.** The Government may, by regulation, determine rules governing the activities of a person or partnership that operates a brokerage enterprise to lease out immovable property and that engages in brokerage transactions exclusively on behalf of senior citizens or persons who are physically or mentally vulnerable.

**130.** All regulations of the Organization, except internal by-laws, must be submitted to the Government for approval with or without amendments.

**131.** This Act applies to a broker or an agency with regard to any brokerage transaction relating to a mobile home placed on a chassis, with or without a permanent foundation.

**132.** The Government determines the amount that the Organization must pay annually to the Minister for the carrying out of this Act.

**133.** No judicial proceedings may be brought against the Organization, its directors, or executive officers, the syndic or any assistant syndics, the persons the Organization authorizes to act on its behalf, the committees established under this Act or the members of those committees for acts in good faith in the exercise of their functions.

**134.** The answers given or statements made by the person who requested an investigation or by a broker or a director or executive officer of an agency, and the documents prepared or obtained in the course of conciliation or mediation may not be used nor are they admissible as evidence against a broker or a director or executive officer of an agency in judicial or quasi-judicial proceedings other than a hearing before the discipline committee into an allegation that the broker, director or executive officer knowingly gave a false answer or made a false statement with the intent to mislead.

The members of the committees appointed under this Act, the syndic and the assistant syndics may not be compelled to disclose anything learned by them in the exercise of their functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information, no person may have access to a document in a conciliation or mediation record.

**135.** A sworn declaration filed by a member of the Organization's personnel is proof, before a court of justice, of the signature and authority of the signatory.

**136.** The Minister and the Organization may, on their own initiative and without notice, intervene in any civil proceedings relating to a provision of this Act to take part in the proof and hearing as if they were a party.

**CHAPTER IX****AMENDING PROVISIONS**

**137.** Section 96 of the Act respecting the distribution of financial products and services (R.S.Q., chapter D-9.2) is repealed.

**138.** Section 100 of the Act is amended by replacing “a real estate broker governed by the Real Estate Brokerage Act (chapter C-73.1)” in the first paragraph by “a broker or agency governed by the Real Estate Brokerage Act (2008, chapter 9)”.

**139.** Section 141 of the Act is repealed.

**140.** Section 143 of the Act is amended by replacing “a real estate broker governed by the Real Estate Brokerage Act (chapter C-73.1)” in the first paragraph by “a broker or agency governed by the Real Estate Brokerage Act (2008, chapter 9)”.

**141.** Sections 206, 542, 549 and 553 of the Act are repealed.

**142.** Sections 361, 378, 400, 403, 418, 483, 484, 491, 727, 728 and 729 of the Act respecting the Agence nationale d’encadrement du secteur financier (2002, chapter 45) are repealed.

**CHAPTER X****TRANSITIONAL AND FINAL PROVISIONS**

**143.** The Association des courtiers et agents immobiliers du Québec becomes the Organisme d’autoréglementation du courtage immobilier du Québec on (*insert the date of coming into force of section 31*).

**144.** An investigation opened by the syndic of the Association des courtiers et agents immobiliers du Québec on or before (*insert the date preceding the date of coming into force of section 82*) is governed by the legislation in force on the date on which it was opened.

**145.** A complaint of which the discipline committee of the Association des courtiers et agents immobiliers du Québec was seized on or before (*insert the date preceding the date of coming into force of section 93*) is continued in accordance with the legislation in force on the date on which the discipline committee was seized of it.

**146.** A natural person who, on (*insert the date of coming into force of section 4*), holds a real estate agent’s certificate or a real estate broker’s certificate issued by the Association des courtiers et agents immobiliers du Québec under the Real Estate Brokerage Act (R.S.Q., chapter C-73.1) is deemed to hold a real estate broker’s licence. A person holding an affiliated

real estate agent's certificate may act on the person's own account only after meeting the qualification requirements set by the Organization.

However, a person who engages exclusively in brokerage activities relating to loans secured by immovable hypothec may request that the person's real estate broker's permit be replaced by a mortgage broker's licence.

**147.** A person or partnership that, on (*insert the date of coming into force of section 13*), holds a real estate broker's certificate issued by the Association des courtiers et agents immobiliers du Québec under the Real Estate Brokerage Act and acts through the intermediary of a natural person holding a real estate broker's or real estate agent's certificate is deemed to hold a real estate agency licence.

However, a person or partnership that engages exclusively in brokerage activities relating to loans secured by immovable hypothec may request that the real estate agency licence be replaced by a mortgage broker agency licence.

**148.** Firms, independent partnerships and their insurance or securities representatives and independent representatives governed by the Act respecting the distribution of financial products and services (R.S.Q., chapter D-9.2) that are authorized to engage in brokerage transactions relating to loans secured by immovable hypothec at the date of coming into force of sections 137 and 139 are entitled to be issued a mortgage broker's licence or a real estate agency's licence, as applicable, under this Act, provided the application is made within 12 months following that date.

**149.** The Organisme d'autoréglementation du courtage immobilier du Québec, established by section 31, may refuse to issue a licence or may suspend, revoke or impose restrictions or conditions on a licence if the applicant or licence holder, as applicable, contravened the Act respecting the distribution of financial products and services, prior to the date of coming into force of sections 137 and 139, in the course of brokerage transactions relating to loans secured by immovable hypothec.

Sections 41 to 44 apply for the purposes of the previous paragraph, with the necessary modifications.

**150.** The Organization is substituted for the Fonds d'indemnisation du courtage immobilier constituted by section 9.14 of the Real Estate Brokerage Act (R.S.Q., chapter C-73) and continued by section 44 of this Act. The Organization acquires the rights and assumes the obligations of that fund.

**151.** The employees of the Fonds d'indemnisation du courtage immobilier in office on (*insert the date of coming into force of section 108*) become, without further formality, employees of the Organization. They hold the position and exercise the functions assigned to them by the Organization.



**152.** The files, records and other documents of the Fonds d'indemnisation du courtage immobilier become files, records and documents of the Organization.

**153.** The current business of the Fonds d'indemnisation du courtage immobilier is continued by the Organization.

**154.** The Organization becomes, without continuance of suit, a party to any proceedings to which the Fonds d'indemnisation du courtage immobilier was a party.

**155.** Sections 105 to 107 apply with regard to the indemnification of victims of fraud, fraudulent tactics or embezzlement for which a mortgage broker is responsible, where the act was committed before the date of coming into force of sections 137 and 139 in the course of brokerage transactions relating to loans secured by immovable hypothec under the Act respecting the distribution of financial products and services.

The Organization may recover the amount from the Fonds d'indemnisation des services financiers, established by section 258 of that Act.

**156.** Unless the context indicates a different meaning, in any Act, statutory instrument or other document, the words "Association des courtiers et agents immobiliers du Québec" or the word "Association" when pertaining to the Association des courtiers et agents immobiliers du Québec refer to the Organization.

**157.** The Government may, by a regulation made within 12 months after the coming into force of this section, prescribe transitional measures for the purposes of this Act.

**158.** This Act replaces the Real Estate Brokerage Act (R.S.Q., chapter C-73.1).

**159.** The Minister may delegate to any person or body functions and powers relating to the administration of this Act, including those conferred by sections 64, 68, 69, 113, 115, 117 to 123 and 136.

The Minister may, in the instrument of delegation, authorize the subdelegation of specified functions and powers; in such a case, the Minister identifies the person or body to whom or which the subdelegation may be made.

**160.** Not later than (*insert the date that is five years after the date of coming into force of section 158*) and every five years after that, the Minister must report to the Government on the carrying out of this Act and on the advisability of maintaining it in force or amending it.

The report is laid before the National Assembly within the next 15 days or, if the Assembly is not sitting, within 15 days after resumption.

**161.** The Minister of Finance is responsible for the administration of this Act.

However, the Government designates the Minister responsible for the administration of paragraph 14 of section 3 and section 129. The designated Minister may delegate to any person or body powers relating to the administration of those provisions of this Act.

**162.** The provisions of this Act come into force on the date or dates to be set by the Government.