

chapter F-3.2.1

ACT TO ESTABLISH THE FONDS DE SOLIDARITÉ DES TRAVAILLEURS DU QUÉBEC (F.T.Q.)



The Minister of Finance is responsible for the administration of this Act. Order in Council 412-2016 dated 25 May 2016, (2016) 148 G.O. 2 (French), 2923.

WHEREAS the Fédération des travailleurs du Québec has proposed the establishment of an investment fund for the objectives, mainly, of promoting job maintenance and job creation, stimulating the economy and training workers in economic matters;

Whereas, to achieve those objectives, an appeal will be made to the solidarity of the working men and women of Québec;

Whereas it is expedient to accede to the request of the Fédération des travailleurs du Québec;

Whereas the establishment of such a fund requires the enactment of special legislation regarding both its organization and the protection of the investors concerned;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

TABLE OF CONTENTS

DIVISION I

ARTICLES

§ 1. — <i>Constitution and head office</i>	1
§ 2. — <i>Management</i>	4
§ 3. — <i>Share capital</i>	7

DIVISION II

INVESTMENTS

§ 1. — <i>Functions and interpretation</i>	13
§ 2. — <i>Prior approval of investments</i>	14.2
§ 3. — <i>Investments</i>	15

DIVISION II.1

LOANS.....	17.1
------------	------

DIVISION III

CONFLICT OF INTEREST.....	18
---------------------------	----

DIVISION IV

PURCHASE OF CLASS “A” SHARES OR FRACTIONAL SHARES BY PAYROLL DEDUCTIONS.....	24
---------------------------------------------------------------------------------	----

DIVISION V

MISCELLANEOUS AND FINAL PROVISIONS.....	30
-----------------------------------------	----

DIVISION I

ARTICLES

§ 1. — *Constitution and head office*

1999, c. 40, s. 139.

1. A joint-stock company is hereby constituted under the name of “Fonds de solidarité des travailleurs du Québec (F.T.Q.)”, hereinafter called “the Fund”.

1983, c. 58, s. 1; 1999, c. 40, s. 139.

2. Notwithstanding section 125 of the Companies Act (chapter C-38), the provisions of that Act which are applicable to companies constituted by the filing of articles apply to the Fund, with the necessary modifications, where they are not inconsistent with this Act, except the second paragraph of section 46, subsection 1 of section 53, section 54, sections 123.9 to 123.11, 123.21 to 123.27, 123.55, 123.72, 123.82, 123.91 to 123.93, 123.95, 123.96, 123.98 to 123.100, the second paragraph of section 123.114 and sections 123.115 to 123.139.

The Fund is deemed to have been constituted by the filing of articles on 23 June 1983.

The articles may be amended, but no filing of articles may result in the amendment of any provision of this Act.

1983, c. 58, s. 2; 1993, c. 48, s. 421; 1999, c. 40, s. 139.

3. The head office of the Fund is established in the territory of Ville de Montréal.

1983, c. 58, s. 3; 2000, c. 56, s. 219.

§ 2. — *Management*

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

(1) seven persons appointed by the Conseil général of the Fédération des travailleurs et travailleuses du Québec;

(2) eleven persons, elected by the general meeting of holders of class “A” shares, of whom

(a) seven qualify as independent persons and their candidacy is recommended to the board by the governance and ethics committee;

(b) four are elected from among the candidates selected following an invitation for applications;

(3) (*subparagraph repealed*);

(4) the president and chief executive officer of the Fund, for the duration of his term of office.

The members of the board of directors, other than the president and chief executive officer of the Fund, may not hold office for more than 12 years. However, this time limit does not apply to the president or secretary general of the Fédération des travailleurs et travailleuses du Québec.

1983, c. 58, s. 4; 1993, c. 47, s. 1; 2007, c. 12, s. 10; 2015, c. 8, s. 321.

4.1. Persons qualify as independent persons if, in the opinion of the board of directors, they have no direct or indirect relation or interest, for example of a financial, commercial, professional or philanthropic nature, that might compromise their judgment as regards the interests of the Fund.

A person is deemed not to be independent if that person

(1) is, or was in the three years prior to being elected or appointed,

(a) an employee or officer of the Fund or one of its subsidiaries, except if the person is an officer solely because the person is a member of the Fund's or subsidiary's board of directors; or

(b) an employee, officer or director of the Fédération des travailleurs et travailleuses du Québec or of a union or other body that, under its articles, is affiliated with it; or

(2) has an immediate family member who is an officer of the Fund or of an employer referred to in subparagraph 1.

The board shall adopt a policy to determine whether a person in a situation submitted to it qualifies as an independent person.

“Officer” and “subsidiary” have the meanings assigned to them by the Securities Act (chapter V-1.1). In addition, a person's immediate family members are the person's spouse, father, mother, child, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, or any other person who shares that person's dwelling, except an employee of that person.

2015, c. 8, s. 322; 2016, c. 7, s. 182

4.2. The members of the board of directors shall elect, from those among them who qualify as independent persons, the chair of the board.

2015, c. 8, s. 322.

5. If a vacancy occurs among the members of the board of directors contemplated in subparagraph 1 of the first paragraph of section 4, the Conseil général of the Fédération des travailleurs et travailleuses du Québec may appoint a person for the unexpired portion of the term.

1983, c. 58, s. 5; 2015, c. 8, s. 323.

6. *(Repealed).*

1983, c. 58, s. 6; 2002, c. 45, s. 513; 2015, c. 8, s. 324.

6.1. The board of directors shall set up a governance and ethics committee and a human resources committee.

These committees are composed exclusively of board members. They are chaired by a member who qualifies as an independent person, and may only deliberate and make decisions in the presence of a majority of independent members.

The chair of the board shall see to the proper operation of the committees.

2015, c. 8, s. 325.

6.2. The functions of the governance and ethics committee include

(1) for the election of board members by the general meeting of holders of class “A” shares:

(a) ensuring that the board represents a diversity of expertise and experience;

(b) examining candidates' past experience;

(c) recommending to the board, for the purposes of subparagraph *a* of subparagraph 2 of the first paragraph of section 4, the candidacy of persons who, in light of the committee's examination, qualify as independent persons; and

(d) determining the conditions governing the invitation for applications under subparagraph *b* of subparagraph 2 of the first paragraph of section 4, as well as the applicant eligibility criteria;

(2) developing a policy to determine whether a person in a situation submitted to the board qualifies as an independent person; and

(3) giving the board its assessment as to whether a person, in light of the committee's examination, qualifies as an independent person, except in the case of board members whose candidacy the committee has recommended.

2015, c. 8, s. 325.

6.3. The functions of the human resources committee include

(1) developing and proposing to the board an expertise and experience profile for the appointment of the president and chief executive officer; and

(2) developing and proposing criteria for evaluating the performance of the president and chief executive officer, and making recommendations to the board as regards his terms of employment, including remuneration.

2015, c. 8, s. 325.

6.4. The president and chief executive officer is appointed by the board members mentioned in subparagraphs 1 and 2 of section 4.

The term of office of the president and chief executive officer may not exceed five years. A person appointed to that office may be reappointed each time the appointing members consider such reappointment to be appropriate in light of the president and chief executive officer's performance evaluation.

The president and chief executive officer may not be an employee, officer or director of the Fédération des travailleurs et travailleuses du Québec or of a union or other body that, under its articles, is affiliated with it.

2015, c. 8, s. 325.

§ 3. — *Share capital*

7. Subject to section 15.1, the Fund is authorized to issue class "A" shares without par value, giving the rights provided for in section 123.40 of the Companies Act (chapter C-38), the right to elect 11 directors and the right of redemption provided for in sections 10 and 11.

The Fund is also authorized, subject to section 15.1, to issue class "A" fractional shares without par value, giving proportionately the same rights as class "A" shares, except the voting rights attached to such shares.

The Fund may, by articles of amendment,

(1) create one or more series of class "A" shares that include, in addition to the rights set out in the first paragraph, either the right to be exchanged for shares of another series or any other characteristic not inconsistent with this Act;

(2) convert in whole or in part the class "A" shares held by the shareholders or certain shareholders into one or more series of shares created under subparagraph 1, on terms and conditions which may, where

expedient and with the authorization of the Minister of Finance, depart from subsections 6 and 7 of section 48 or from section 49 of the Companies Act (chapter C-38).

The directors may also, by articles of amendment according to sections 123.101 and 123.103 of the Companies Act, create any other class of shares which does not give the right to vote at meetings of the shareholders. The articles of amendment determine the other rights, privileges, conditions and restrictions attached to the shares of each class.

1983, c. 58, s. 7; 1989, c. 78, s. 1; 1997, c. 62, s. 1; 2015, c. 8, s. 326.

8. Subject to section 123.56 of the Companies Act (chapter C-38), only a natural person may acquire or hold class “A” shares or fractional shares. No holder of class “A” shares or fractional shares may alienate them and no such shares or fractional shares may be purchased by agreement by the Fund, except with the authorization of the board of directors or a committee composed of persons designated by it for that purpose.

The Fund may purchase class “A” shares or fractional shares by agreement only where and so far as provided by a policy adopted by the board of directors and approved by the Minister of Finance and only at a price not in excess of the price of redemption fixed in accordance with the second or third paragraph of section 11.

1983, c. 58, s. 8; 1986, c. 69, s. 1; 1989, c. 78, s. 2; 1993, c. 47, s. 2.

9. Notwithstanding section 8, class “A” shares or fractional shares may be transferred to a trustee within the scope of a registered retirement savings plan under which the shareholder or the spouse of the shareholder is the beneficiary. The beneficiary of the plan is deemed, however, to keep the voting rights attached to the shares thus transferred. For the purposes of the second paragraph of section 8 and section 10, the spouse is deemed to be the person who acquired the transferred share or fractional share from the Fund.

Subject to section 9.1, the trustee is, however, subject to section 8 in respect of any transfer to a person other than the beneficiary of the plan.

1983, c. 58, s. 9; 1989, c. 78, s. 3; 2001, c. 51, s. 11.

9.1. Notwithstanding section 8, class “A”, share or fractional share, held within the scope of a registered retirement savings plan under which the shareholder or the spouse of the shareholder is the beneficiary, may be transferred to a trustee within the scope of another registered retirement savings plan or a registered retirement income fund under which the shareholder or the spouse of the shareholder is the beneficiary. The beneficiary of that other plan or of that fund is deemed, however, to keep the voting rights attached to the share thus transferred. For the purposes of the second paragraph of section 8 and section 10, the spouse is deemed to be the person who acquired the transferred share or fractional share from the Fund.

Subject to the first paragraph and section 9.2, the trustee is, however, subject to section 8 in respect of any transfer to a person other than the beneficiary of that other plan or of that fund.

2001, c. 51, s. 12.

9.2. Notwithstanding section 8, class “A” share or fractional share, held within the scope of a registered retirement income fund under which the shareholder or the spouse of the shareholder is the beneficiary, may be transferred to a trustee within the scope of another registered retirement income fund or registered retirement savings plan, as the case may be, under which the shareholder or the spouse of the shareholder is the beneficiary. The beneficiary of that other fund or plan is deemed, however, to keep the voting rights attached to the share thus transferred. For the purposes of the second paragraph of section 8 and section 10, the spouse is deemed to be the person who acquired the transferred share or fractional share from the Fund.

Subject to the first paragraph, the trustee is, however, subject to section 8 in respect of any transfer to a person other than the beneficiary of that other fund or plan.

2001, c. 51, s. 12.

10. A class “A” share or fractional share is redeemable by the Fund only in the following cases:

(1) at the request of the person who acquired the share or fractional share from the Fund at least 730 days prior to redemption if, after reaching 45 years of age, he has availed himself of his right to early retirement or retirement or if he has reached 65 years of age;

(2) at the request of the shareholder, who did not acquire the share or fractional share from the Fund, if the person who had acquired it from the Fund has reached 65 years of age or, if deceased, would have reached that age had he lived provided that, in either case, the share or fractional share was issued by the Fund at least 730 days prior to the date of redemption;

(3) at the request of the person on whom the share or fractional share has devolved by succession;

(3.1) at the request of the person who is a beneficiary under a registered retirement savings plan within the scope of which the share or fractional share has been transferred to the plan’s trustee by an individual who was the person’s spouse at the time of the transfer, if the individual is deceased;

(4) at the request of the person who acquired the share or fractional share from the Fund, if he applies to it therefor in writing within 60 days of subscribing the share or fractional share or, in the case provided for in section 26, within 60 days of the first deduction from his salary or wages;

(5) at the request of the person who acquired the share or fractional share from the Fund, if he is declared, in the manner prescribed by a resolution adopted by the board of directors of the Fund, to be suffering from a severe and prolonged physical or mental disability which prevents him from working.

1983, c. 58, s. 10; 1989, c. 5, s. 6; 1989, c. 78, s. 4; 1997, c. 14, s. 6; 2011, c. 6, s. 91.

10.0.1. For the purposes of paragraph 1 of section 10, a person is considered to have availed himself of his right to early retirement or retirement if, at the time of the request for redemption referred to in that paragraph,

(1) the person has reached 45 years of age and is taking or will, within three months after the day of the request, be taking an early retirement under a registered pension plan and his estimated work income for the 12 months following the beginning of the early retirement does not exceed 25% of the Maximum Pensionable Earnings established for the year of the request under the Act respecting the Québec Pension Plan (chapter R-9);

(2) the person has reached 60 years of age and receives or will, within three months after the day of the request, receive a retirement pension under the Act respecting the Québec Pension Plan or under a similar plan within the meaning of that Act;

(3) the person has reached 50 years of age and has stopped working or has entered into an agreement with the person’s employer to reduce regular working time by 20% or more until retirement;

(4) the person has reached 55 years of age and receives or will, within three months after the day of the request, receive a life annuity under a pension plan, an annuity under a registered retirement savings plan or a deferred profit sharing plan or a payment under a registered retirement income fund, unless the annuity or payment is received because of the death of his spouse;

(5) the person has reached 45 years of age, is an annuitant under a registered retirement savings plan or a registered retirement income fund and did not hold any remunerated employment or carry on any business in the 730 days preceding the day of the request, and the person who is his spouse at the time, other than a person who has not reached 60 years of age and who has entered into an agreement with his employer to

reduce his regular working time by 20% or more until retirement, meets the conditions set out in any of paragraphs 1 to 4; or

(6) the person meets the conditions set out in a resolution adopted by the board of directors of the Fund and approved by the Minister of Finance.

For the purposes of subparagraph 3 of the first paragraph, a person is deemed to have stopped working where the person's estimated work income for the 12 months following the day of the request for redemption referred to in that paragraph does not exceed 25% of the Maximum Pensionable Earnings established for the year of the request under the Act respecting the Québec Pension Plan.

2011, c. 6, s. 92; 2015, c. 21, s. 36.

10.0.2. If a request for redemption is made under paragraph 1 of section 10 by a person who has not reached 60 years of age and the request is based on the grounds that the person has entered into an agreement with his employer to reduce his regular working time by 20% or more until retirement, the amount to be redeemed may not exceed, for a year, the lesser of

(1) the salary reduction incurred by the person for the year; and

(2) the quotient obtained by dividing the balance of the person's share or fractional share account at the time of his first request for redemption based on those grounds by the number of years, not exceeding 11, that the agreement is to cover.

2011, c. 6, s. 92.

10.1. For the purposes of paragraph 5 of section 10, a disability is severe only if by reason thereof the person is incapable regularly of pursuing any substantially gainful occupation.

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

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

1989, c. 5, s. 7; 1997, c. 14, s. 7.

11. Subject to the second paragraph of section 123.54 of the Companies Act (chapter C-38), the Fund is bound to redeem any class "A" share or fractional share at the request of a person contemplated in paragraph 1, 2, 3 or 5 of section 10.

The price of redemption of the shares and fractional shares shall be fixed twice a year at dates six months apart, by the board of directors, on the basis of the value of the Fund as established by experts under the responsibility of a firm of chartered accountants according to generally accepted accounting principles and adjusted, if necessary, to reflect the fair value of investments in enterprises the Fund controls, in joint ventures and in enterprises on which it has significant influence or in which it holds variable interests.

The board of directors may also fix the price of redemption contemplated in the second paragraph at any other time in the year, on the basis of an internal valuation that, in each case, is presented in an accounting expert's report confirming continued adherence to the principles and methods used to value the Fund and referred to in the second paragraph.

The Fund may, however, accept the offer of a shareholder to receive the last price of redemption so fixed rather than the subsequent one. The redemption contemplated in the first paragraph shall be made within a reasonable time after the date on which the request therefor is made.

However, in the case provided for in paragraph 4 of section 10, the Fund is bound to redeem the share or fractional share at the price at which it was acquired from the Fund and to pay the price thereof not later than 30 days after the date of receipt of the request.

1983, c. 58, s. 11; 1989, c. 5, s. 8; 1989, c. 78, s. 5; 1993, c. 47, s. 3; 1997, c. 14, s. 8; 2009, c. 13, s. 3.

11.1. A request for purchase by agreement made under section 8 and a request for redemption made under section 10 must be filed with the Fund in the form prescribed by the Fund and accompanied by the information and documents required by a resolution adopted by the board of directors of the Fund.

2011, c. 6, s. 93.

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

The confirmation is provided to the shareholder free of charge once yearly under the form and modalities prescribed by by-law of the Fund.

Where a mode of confirmation other than a share certificate is prescribed, the document sent to the shareholder serves as a certificate issued under section 53 of the Companies Act (chapter C-38).

Moreover, the Fund, at the request of a shareholder of fractional shares, must exchange the fractional share certificates or the documents serving as such for certificates or documents serving as such representing corresponding whole shares.

1983, c. 58, s. 12; 1989, c. 78, s. 6.

DIVISION II

INVESTMENTS

§ 1. — *Functions and interpretation*

2015, c. 8, s. 327.

13. The main functions of the Fund are

(1) to invest in eligible enterprises and provide them with services in order to create, maintain and protect jobs;

(2) to promote the training of workers in economic matters and enable them to increase their influence on Québec's economic development;

(3) to stimulate the Québec economy by making strategic investments that will be of benefit to Québec workers and enterprises;

(4) to promote the development of eligible enterprises by inviting workers to participate in that development by subscribing shares of the Fund.

1983, c. 58, s. 13; 1997, c. 62, s. 2; 2007, c. 12, s. 11.

14. For the purposes of this Act, an enterprise is a partnership or legal person pursuing economic objects; investment includes any financial assistance granted to an enterprise in the form of a loan, security, guarantee, purchase of capital stock of any other form.

1983, c. 58, s. 14; 1983, c. 54, s. 114; 1999, c. 40, s. 139; 2007, c. 12, s. 12.

14.1. For the purposes of this Act, “eligible enterprise” means an enterprise in active operation the majority of whose employees are resident in Québec and whose assets are less than \$100,000,000 or whose net equity is less than \$50,000,000.

For the purposes of this Act, the assets or net equity of an enterprise in which the Fund makes an investment are the assets or net equity shown in its financial statements for the fiscal year ended before the date on which the investment is made, minus the write-up surplus of its property and the incorporeal assets. In the case of an enterprise which has not completed its first fiscal year, the fact that the assets or net equity, as the case may be, of the enterprise are, immediately before the investment, under the limits prescribed in this division in relation to such an investment must be confirmed in writing to the Fund by a chartered accountant.

1983, c. 54, s. 114; 1989, c. 78, s. 7; 1997, c. 62, s. 3; 2005, c. 1, s. 8; 2005, c. 38, s. 34; 2007, c. 12, s. 13; 2012, c. 8, s. 30.

§ 2. — *Prior approval of investments*

2015, c. 8, s. 328.

14.2. Each investment must be approved in advance by the board of directors after being favourably recommended by the investment committee charged with examining it.

However, to the extent it determines, the board may delegate the power to approve an investment to such a committee or, in cases it considers exceptional or urgent, to a committee composed of officers of the Fund or to the president and chief executive officer.

2015, c. 8, s. 328.

14.3. The board of directors must set up at least one investment committee.

If it sets up more than one investment committee, the board must specify the economic sector in which the investments each committee is responsible for are to be made, and one committee must have jurisdiction over investments not covered by the other committees.

2015, c. 8, s. 328.

14.4. An investment committee may be composed of persons who are not members of the board of directors. It must be chaired by one of its members who qualifies as an independent person, and may only deliberate and make decisions in the presence of a majority of independent persons.

2015, c. 8, s. 328.

§ 3. — *Investments*

2015, c. 8, s. 328.

15. The Fund may make investments with or without a guarantee or security.

However, for each fiscal year, the Fund’s eligible investments must represent, on the average, at least 60% of the Fund’s average net assets for the preceding year.

For the purposes of this section and section 15.1, the following rules apply:

(1) the average net assets for a fiscal year must be determined by adding the net assets at the beginning of that year to the net assets at the end of that year and by dividing the sum so obtained by 2;

(2) the net assets do not include the movable or immovable property used by the Fund to carry on its operations; and

(3) the average eligible investments for a fiscal year must be determined by the formula

$$[(A + B + C + D)/2] + E.$$

In the formula in subparagraph 3 of the third paragraph,

(1) A is the Fund's eligible investments at the beginning of the fiscal year;

(2) B is the Fund's eligible investments at the end of the fiscal year;

(3) C is the amount by which an amount that is the total of the eligible investments already made by the Fund that were disinvested in the fiscal year, exceeds an amount equal to 2% of the Fund's average net assets for the preceding fiscal year;

(4) D is the amount determined under subparagraph 3 for the preceding fiscal year; and

(5) E is any of the following amounts:

(a) if the fiscal year ends on 31 May 2008, \$500,000,000;

(b) if the fiscal year ends on 31 May 2009, \$450,000,000;

(c) if the fiscal year ends on 31 May 2010, \$400,000,000;

(d) if the fiscal year ends on 31 May 2011, \$300,000,000;

(e) if the fiscal year ends on 31 May 2012, \$200,000,000; or

(f) if the fiscal year ends after 31 May 2012, the amount designated by the Fund for the fiscal year, which amount may not exceed the lesser of \$500,000,000 and the amount determined for the fiscal year by the formula

$$(F_{A-1} - G_{A-2}) + \{(F_{A-2} - G_{A-3}) - [E_{A-1} - (F_{A-3} - G_{A-4})]\}.$$

In the formula in subparagraph *f* of subparagraph 5 of the fourth paragraph,

(1) E_{A-1} is the amount designated by the Fund under subparagraph *f* of subparagraph 5 of the fourth paragraph for the preceding fiscal year or, in the absence of such a designation, an amount equal to zero;

(2) F_{A-1} is the amount of the Fund's average eligible investments for the preceding fiscal year, which amount is determined as if the formula in subparagraph 3 of the third paragraph were read without reference to "+ E";

(3) F_{A-2} is the amount of the Fund's average eligible investments for the second preceding fiscal year, which amount is determined as if the formula in subparagraph 3 of the third paragraph were read without reference to "+ E";

(4) F_{A-3} is the amount of the Fund's average eligible investments for the third preceding fiscal year, which amount is determined as if the formula in subparagraph 3 of the third paragraph were read without reference to "+ E";

(5) G_{A-2} is 60% of the Fund's average net assets for the second preceding fiscal year;

(6) G_{A-3} is 60% of the Fund's average net assets for the third preceding fiscal year;

(7) G_{A-4} is 60% of the Fund's average net assets for the fourth preceding fiscal year; and

(8) where the result of a subtraction is less than zero, it is deemed to be equal to zero.

For the purposes of this section, investments that entail no security or hypothec and consist in any of the following investments are eligible investments:

- (1) investments made by the Fund in eligible enterprises;
- (2) investments made by the Fund otherwise than as first purchaser for the acquisition of securities issued by eligible enterprises;
- (3) investments in new or substantially renovated income-producing immovables situated in Québec, up to 5% of the Fund's net assets at the end of the preceding fiscal year;
- (4) investments that are made by the Fund in addition to an investment entailing no security or hypothec already made in an enterprise that was, at the time of the investment, an eligible enterprise, and that are made in an enterprise that would be an eligible enterprise under the first paragraph of section 14.1 if the amounts of "\$100,000,000" and "\$50,000,000" mentioned in that paragraph were replaced by the amounts of "\$350,000,000" and "\$150,000,000", respectively;
- (5) strategic investments made by the Fund after 11 March 2003, in accordance with an investment policy adopted by the board of directors of the Fund and approved by the Minister of Finance, in an enterprise whose assets are less than \$500,000,000 or whose net equity is not over \$200,000,000;
- (6) investments described in section 15.0.0.1, provided that they are not otherwise eligible investments;
- (7) investments described in section 15.0.1, provided that they are made in accordance with a policy for investment outside Québec adopted by the board of directors of the Fund and approved by the Minister of Finance;
- (8) investments made by the Fund in the period beginning on 22 April 2005 and ending on 31 May 2016 in a local venture capital fund established and managed in Québec or in a local fund recognized by the Minister of Finance, provided that the investments are made with the expectation that the local fund invest an amount at least equal to 150% of the aggregate of the sums received from the Fund, from Fondation, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi and from Capital régional et coopératif Desjardins, in Québec enterprises whose assets are less than \$100,000,000 or whose net equity is less than \$50,000,000 and the investments are not already taken into account as eligible investments for the purposes of the second paragraph;
- (9) investments made by the Fund after 21 March 2005 in FIER Partenaires, s.e.c.;
- (10) investments made by the Fund after 19 March 2009 in the Fonds Élan d'entreprises, société en commandite;
- (11) investments made by the Fund after 19 March 2009 in the Fonds Envol, société en commandite, that the Fund acquired from the Fonds Élan d'entreprises, société en commandite;
- (12) investments made by the Fund after 19 March 2009 in Teralys Capital Fund of Funds, L.P.;
- (13) investments made by the Fund after 10 November 2011 in Fonds Relève Québec, s.e.c.;
- (14) investments made by the Fund after 20 March 2012 in Fonds Valorisation Bois, s.e.c.;
- (15) investments made by the Fund in Teralys Capital Fonds d'Innovation, S.E.C.

For the purposes of this section, investments entailing a security that are made by the Fund in an enterprise whose assets are less than \$100,000,000 or whose net equity is less than \$50,000,000 are also eligible

investments, provided those investments are part of a financing package, in which Fonds Relève Québec, s.e.c. participates, for the succession of the enterprise.

For the purposes of the sixth and seventh paragraphs, the investments that the Fund has agreed to make, for which it has committed but not yet disbursed sums at the end of a fiscal year, and that would have been described in any of subparagraphs 1 to 7 and 14 of the sixth paragraph or in the seventh paragraph had they been made by the Fund, are deemed to have been made by the Fund. However, for a particular fiscal year, the aggregate of those deemed investments may not exceed 12% of the Fund's net assets at the end of the preceding fiscal year.

For the purposes of the sixth paragraph, the investments that the Fund has agreed to make, for which it has committed but not yet disbursed sums at the end of a fiscal year, and that would have been described in any of subparagraphs 8 to 10, 12, 13 and 15 of that paragraph had they been made by the Fund, are deemed to have been made by the Fund.

For the purposes of subparagraph 2 of the sixth paragraph, a dealer acting as an intermediary or firm underwriter is not considered to be a first purchaser of securities.

For the application of the sixth paragraph to a particular fiscal year, the following rules apply:

(1) the aggregate of the investments described in subparagraphs 2 and 4 of that paragraph may not exceed 20% of the Fund's net assets at the end of the preceding fiscal year;

(2) the aggregate of the investments described in subparagraph 5 of that paragraph may not exceed 7.5% of the Fund's net assets at the end of the preceding fiscal year;

(3) neither the aggregate of the investments described in subparagraph 6 of that paragraph nor the aggregate of the investments described in subparagraph 7 of that paragraph may exceed 10% of the Fund's net assets at the end of the preceding fiscal year;

(4) if the particular fiscal year ends before 1 January 2017, the investments described in subparagraph 8 of that paragraph, up to 5% of the Fund's net assets at the end of the preceding fiscal year, are deemed to be increased by 50%;

(5) *(subparagraph repealed)*;

(6) if the particular fiscal year ends before 1 January 2012, the portion of the investments described in subparagraph 9 of that paragraph that, taking into account the Fund's interest in FIER Partenaires, s.e.c., is dedicated to the creation of seed investment funds after 21 September 2006 is deemed to be increased by 50%;

(7) the aggregate of the investments described in subparagraphs 10 and 11 of that paragraph may not exceed \$250,000,000 for the particular fiscal year; and

(8) the investments described in subparagraph 13 of that paragraph are deemed to be increased by 50%.

Investments in immovables situated in Québec and intended mainly for the operation of shopping centres are not permitted under subparagraph 3 of the sixth paragraph otherwise than as part of a project in the recreation and tourism sector.

The second paragraph of section 14.1 applies, with the necessary modifications, in relation to the determination of the assets or net equity of a Québec enterprise referred to in subparagraph 8 of the sixth paragraph.

The requirement set out in the second paragraph applies from the fiscal year that began on 1 November 1986.

1983, c. 58, s. 15; 1989, c. 78, s. 8; 1992, c. 57, s. 585; 1997, c. 62, s. 4; 2004, c. 21, s. 34; 2005, c. 23, s. 28; 2005, c. 38, s. 35; 2006, c. 36, s. 15; 2007, c. 12, s. 14; 2011, c. 6, s. 94; 2012, c. 8, s. 31; 2013, c. 10, s. 8; 2015, c. 21, s. 37.

15.0.0.1. The investments to which subparagraph 6 of the sixth paragraph of section 15 refers are, for a particular fiscal year, the following:

(1) the investments made by the Fund in a partnership or legal person that consist of an initial capital outlay of at least \$25,000,000 or an additional capital outlay, provided that the strategic value of the initial capital outlay and, if applicable, of the additional capital outlay has been recognized, after 22 December 2004, by the Minister of Finance; and

(2) the investments made by the Fund otherwise than as first purchaser for the acquisition of securities issued by a partnership or a legal person for which the strategic value of the acquisition has been recognized, after 31 May 2011, by the Minister of Finance, provided, where the particular fiscal year is subsequent to the fiscal year in which the Fund so first acquired such securities of the partnership or legal person, that the Fund has paid an amount of at least \$25,000,000 for the acquisition of the securities at or before the end of the fiscal year following the fiscal year in which the strategic value of the acquisition of the securities has been recognized by the Minister of Finance.

For the purposes of subparagraph 2 of the first paragraph, a dealer acting as an intermediary or firm underwriter is not considered to be a first purchaser of securities.

2012, c. 8, s. 32; 2013, c. 10, s. 9.

15.0.1. The investments to which subparagraph 7 of the sixth paragraph of section 15 refers are, for a particular fiscal year and in the cases and to the extent determined by the investment policy referred to in that subparagraph, in this section referred to as the “investment policy”,

(1) any investment in a private fund outside Québec, up to, if the particular fiscal year is subsequent to the second fiscal year following the fiscal year in which a particular investment was made in the private fund in accordance with the investment policy, the amount invested, after that particular investment, by the private fund in a Québec enterprise whose assets are less than \$100,000,000 or whose net equity is less than \$50,000,000;

(2) any investment made after 21 April 2005 in a partnership or legal person outside Québec whose assets are less than \$500,000,000 or whose net equity is less than \$200,000,000, up to the amount that, after the first investment made, after that date, in the partnership or legal person in accordance with the investment policy, is invested by the partnership or legal person in any of its subsidiaries actively operating an enterprise the majority of whose employees are resident in Québec or in a major investment project it carries out in Québec;

(3) any investment in an enterprise whose activity outside Québec has or will likely have an impact on the increase or maintenance of the level of employment or economic activity in Québec; and

(4) any investment in new or substantially renovated income-producing immovables situated outside Québec, provided that the investment has or could have an impact on the increase or maintenance of the level of employment or economic activity in Québec, up to the amount by which 5% of the net assets of the Fund at the end of the preceding fiscal year exceeds the total of the investments that are made in immovables situated in Québec and that are otherwise eligible for the purposes of the requirement set out in the second paragraph of section 15.

For the purposes of subparagraph 1 of the first paragraph, an investment agreed to by the Fund, at any time in a particular fiscal year, with a private fund outside Québec and for which the Fund has committed but not yet disbursed sums at the end of the particular fiscal year is considered to be a particular investment made in the particular fiscal year, unless such an investment is not taken into account in computing eligible

investments for the purposes of the requirement set out in the second paragraph of section 15 for the particular fiscal year, in which case each of the sums later disbursed by the Fund because of that investment is considered to be a particular investment.

2005, c. 38, s. 36; 2006, c. 36, s. 16; 2007, c. 12, s. 15; 2012, c. 8, s. 33; 2013, c. 10, s. 10.

15.0.2. The approval by the Minister of Finance of an investment policy referred to in the first paragraph of section 15.0.1 is valid for a maximum period of five years after the day on which the approval was given.

However, if the Minister of Finance finds that such a policy approved by the Minister of Finance in respect of the Fund is not complied with, the Minister of Finance may withdraw approval by sending a written notice to the Fund informing it of the withdrawal as of the date specified in the notice.

2005, c. 38, s. 36; 2006, c. 36, s. 17.

15.1. If the Fund fails to comply, in a fiscal year, with the requirement set out in the second paragraph of section 15, it shall not issue class “A” shares or fractional shares in the following fiscal year for a total consideration exceeding the amount determined as follows:

(1) 75% of the total consideration paid for class “A” shares and fractional shares issued in the preceding fiscal year, excluding the total consideration paid for class “A” shares or fractional shares acquired and paid by payroll deduction in accordance with the provisions of Division IV or acquired under a subscription agreement entered into with an employer in favour of the employer’s employees, if the portion of the average investments concerned that are eligible investments is equal to 50 to 59% of the average net assets of the Fund for the preceding year;

(2) 50% of such consideration, if the portion of such average investments is equal to 40 to 49% of the average net assets; and

(3) 25% of such consideration, if the portion of such average investments is equal to 30 to 39% of the average net assets.

If the portion of such average investments is equal to a percentage that is less than 30% of the average net assets, the Fund shall not issue any class “A” share or fractional share in that fiscal year.

Class “A” shares and fractional shares acquired and paid by payroll deduction in accordance with the provisions of Division IV or acquired under a subscription agreement entered into with an employer in favour of the employer’s employees are excluded from the application of this section.

This section does not limit the Fund’s capacity to issue class “A” shares or fractional shares in the fiscal year ending on 31 May 2008.

1989, c. 78, s. 9; 2007, c. 12, s. 16; 2011, c. 6, s. 95.

16. The Fund shall make no investment in an enterprise that would then make the total amount of its investment in the enterprise greater than 5% of the assets of the fund as established on the basis of the latest expert evaluation contemplated in the second paragraph of section 11.

The percentage may be increased to 10% where the investment

(1) enables the Fund to acquire securities from an enterprise doing business in Québec that is not an eligible enterprise; or

(2) is made after 20 March 2012 by the Fund in a financial institution that is registered with the Autorité des marchés financiers or the Office of the Superintendent of Financial Institutions established by the Office of the Superintendent of Financial Institutions Act (R.S.C. 1985, c. 18 (3rd Suppl.)) and that is part of a financial group recognized by the Minister of Finance.

However, in the case of an investment described in subparagraph 1 of the second paragraph and made in an enterprise referred to in that subparagraph 1, the Fund cannot, directly or indirectly, acquire or hold shares that include more than 30% of the voting rights attached to the shares of the enterprise and that can be exercised in any circumstances. Where, at the time of the investment, the Fund already holds, directly or indirectly, shares that include more than 30% of the voting rights attached to the shares of the enterprise and that can be exercised in any circumstances, it shall have a period of five years from the date of the investment to cause its interest in the capital stock of the enterprise to include 30% or less of the voting rights attached to the shares of the enterprise and that can be exercised in any circumstances.

These restrictions do not apply, however, where the Fund invests in the following securities:

- (1) securities guaranteed by the government of Québec or of Canada or of any Canadian province or territory;
- (2) securities the payment of which is guaranteed in capital and interest by the transfer of a grant from the Gouvernement du Québec, payable out of the appropriations to be voted each year for such purposes by the Parliament;
- (3) bills of exchange accepted or certified by a bank or an authorized foreign bank listed in Schedule I, II or III to the Bank Act (S.C. 1991, c. 46), or a financial institution registered with the Autorité des marchés financiers.

An enterprise that holds securities enabling it, under all circumstances, to elect a majority of the directors of another enterprise is deemed to form, together with the latter, one and the same enterprise for the purposes of this section.

1983, c. 58, s. 16; 1989, c. 78, s. 10; 2002, c. 45, s. 514; 2002, c. 70, s. 186; 2004, c. 37, s. 91; 2005, c. 38, s. 37; 2007, c. 12, s. 17; 2013, c. 10, s. 11.

17. Where the Fund makes an investment in the form of a security or guarantee, it must establish and maintain, for the duration of the security or guarantee, a reserve equivalent to not less than 50% of the amount of the security or guarantee.

The Fund may invest the money deposited in the reserve under this section in the manner provided in the rules relating to investments presumed sound prescribed by the Civil Code .

1983, c. 58, s. 17; 1999, c. 40, s. 139.

DIVISION II.1

LOANS

1989, c. 78, s. 11.

17.1. The Fund shall not contract any loan that would make the current total capital of its total debt greater than 100% of the total consideration paid for its class “A” shares and fractional shares.

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

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

where

x = the total debt of the Fund; and

y^1 = the percentage of voting shares held, directly or indirectly, by the Fund out of the capital stock of the particular subsidiary of the Fund; and

y^2 = the percentage of voting shares held, directly or indirectly, by the particular subsidiary of the Fund out of the capital stock of the particular subsidiary of the particular subsidiary of the Fund.

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

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

1989, c. 78, s. 11; 1999, c. 40, s. 139.

DIVISION III

CONFLICT OF INTEREST

18. Any director or officer having an interest in an economic activity causing his personal interest to conflict with that of the Fund shall, under pain of forfeiture of office, disclose his interest. In addition, a director must abstain from voting on any decision involving the activity in which he has an interest.

The director or officer is deemed to have an interest in any economic activity in which a member of his immediate family has an interest.

1983, c. 58, s. 18; 2015, c. 8, s. 329.

19. In no case may the Fund make an investment in favour of one of its officers or directors or of a member of his immediate family, nor of any of its major shareholders.

1983, c. 58, s. 19; 2006, c. 50, s. 132, s. 133; 2015, c. 8, s. 330.

20. The Fund may not invest in an enterprise in which a director referred to in any of subparagraphs 1, 2 and 4 of the first paragraph of section 4 or a senior executive other than a director has a major or controlling interest.

1983, c. 58, s. 20; 2006, c. 50, s. 133; 2007, c. 12, s. 18.

21. A person is considered to be a major shareholder in the Fund if he directly or indirectly holds more than 10% of the issued and paid-up capital stock.

A person is considered to have a major interest in an enterprise if he holds more than 10% of the stocks or shares of the enterprise.

A person is deemed to control an enterprise if he holds securities enabling him under all circumstances to elect a majority of its directors.

1983, c. 58, s. 21; 2007, c. 12, s. 19.

22. Any contract in contravention of section 19 or 20 may be cancelled within one year of the date of the contract.

The senior executives of the Fund who carried out the financial transaction or consented thereto are jointly and severally liable for the losses to the Fund resulting from the transaction.

1983, c. 58, s. 22.

23. No contract made in contravention of section 19 or 20 may be cancelled and the second paragraph of section 22 does not apply if the contravention results from the opening of a succession or a gift and if the beneficiary renounces the property concerned or disposes of it with dispatch.

1983, c. 58, s. 23.

DIVISION IV

PURCHASE OF CLASS “A” SHARES OR FRACTIONAL SHARES BY PAYROLL DEDUCTIONS

1989, c. 78, s. 12.

24. A person may request his employer to deduct the amount he determines from his salary or wages, for the period he specifies, to pay for the class “A” shares or fractional shares he has decided to purchase from the Fund.

The employer shall, within a reasonable time, make the deduction from the salary or wages of the person requesting it if 50 of his employees, or 20% of them if that is fewer, avail themselves of this section.

1983, c. 58, s. 24; 1989, c. 78, s. 13.

25. An employee whose salary is subject to a deduction under this division may, at any time, notify the employer of his decision to cease purchasing shares of the Fund by a deduction from his salary or wages.

The employer shall comply with the employee’s decision with reasonable dispatch.

1983, c. 58, s. 25.

26. An employee availing himself of section 25 may demand redemption of the shares he has subscribed provided he applies to the Fund in writing within 60 days of the payday when the first deduction was made from his salary or wages under this division.

1983, c. 58, s. 26.

27. An employer shall remit to the Fund or the trustee designated by the latter the amounts deducted under this division not later than the fifteenth day of the month following that in which he made the deduction. The remittance must be accompanied with a statement specifying the amount deducted from the salary or wages of each employee and the latter’s name, address, date of birth and social insurance number.

Copy of the statement is also forwarded, where applicable, to the certified association.

The amounts deducted under this division remain due to the employee as salary until they are remitted by the employer to the Fund or to the trustee designated by it.

1983, c. 58, s. 27; 1989, c. 78, s. 14; 1993, c. 47, s. 4.

28. An employee on behalf of whom sums have been remitted under section 27 is deemed to have subscribed for as many of the Fund’s class “A” shares and fractional shares as the amounts deducted from his salary permit him to purchase.

1983, c. 58, s. 28; 1989, c. 78, s. 15.

29. An employer required to make a deduction under this division shall at the request of the Fund transmit a notice once yearly to each employee concerned who receives remuneration advising him where he may examine the half-yearly financial statements of the Fund.

The form, tenor and mode of transmission of the notice are prescribed by the Autorité des marchés financiers.

1983, c. 58, s. 29; 2002, c. 45, s. 515; 2004, c. 37, s. 90.

DIVISION V

MISCELLANEOUS AND FINAL PROVISIONS

30. In addition to the other statutory duties it may have regarding the Fund, the Autorité des marchés financiers is responsible for inspecting once yearly the internal affairs and the activities of the Fund to see that this Act is complied with.

For the inspection, the Authority has the powers vested in it by Chapters I and II of Title IX of the Securities Act (chapter V-1.1).

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

1983, c. 58, s. 30; 1989, c. 78, s. 16; 2002, c. 45, s. 516; 2004, c. 37, s. 90.

31. Sections 123.77 to 123.79 of the Companies Act (chapter C-38) apply only in the case of the directors contemplated in subparagraph 2 of the first paragraph of section 4.

1983, c. 58, s. 31; 1986, c. 69, s. 2.

32. A shareholder may, on payment of the costs prescribed by a resolution adopted by the board of directors of the Fund, obtain copy of the articles and by-laws of the Fund.

1983, c. 58, s. 32; 2011, c. 6, s. 96.

33. *(This section ceased to have effect on 23 June 1988).*

1983, c. 58, s. 33; U. K., 1982, c. 11, Sch. B, Part I, s. 33.

34. *(Omitted).*

1983, c. 58, s. 34.

REPEAL SCHEDULE

In accordance with section 17 of the Act respecting the consolidation of the statutes and regulations (chapter R-3), chapter 58 of the statutes of 1983, in force on 1 July 1983, is repealed, except section 34, effective from the coming into force of chapter F-3.2.1 of the Revised Statutes.

