

**ACT TO ESTABLISH FONDACTION, LE FONDS DE DÉVELOPPEMENT DE LA CONFÉDÉRATION DES SYNDICATS NATIONAUX POUR LA COOPÉRATION ET L'EMPLOI****NOTE**

*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 it is expedient to foster the development of collective worker-controlled projects with a view to the reinforcement of community resources, the development of effective solidarity within local communities and greater participation in economic activity by working men and women;

Whereas, while allowing for reasonable profitability and judicious accumulation of retirement savings, it is expedient to foster and support the active involvement of working men and women in the determination, organization and control of their work;

Whereas it is expedient to foster the maintenance and creation of high-quality permanent and socially useful employment by ensuring that working men and women wishing to organize their own employment have access to financial resources capable of adequately supporting their endeavours, and by making such resources available to young working men and women wishing to generate their own employment;

Whereas it is expedient to ensure that the initiators of collective projects have access to financial resources equivalent to the resources available to other types of enterprises;

Whereas it is expedient to provide individuals wishing to support working men and women in their efforts towards worker-organized employment with an incentive and a specific instrument of assistance as a means of collectively meeting the employment challenge;

Whereas it is expedient to foster the training of working men and women in economic matters and in the development and management of worker-controlled enterprises;

Whereas it is expedient to promote investment in environment-conscious enterprises whose commitments, conduct and activities contribute to preserving or improving the quality of the environment;

Whereas it is appropriate to accede to the request of the Confédération des syndicats nationaux;

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

**THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:****DIVISION I****ARTICLES****CONSTITUTION AND HEAD OFFICE**

**1.** A legal person is hereby constituted under the name of “Fondaction, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l’emploi”, hereinafter called the “Fund”.

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1995, c. 48, s. 1; 1999, c. 40, s. 136.

**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, with the necessary modifications, to the Fund where they are not inconsistent with this Act, except the second paragraph of section 46, paragraph 1 of section 53, section 54, sections 123.9 to 123.11, section 123.22, sections 123.23 and 123.24, sections 123.26 and 123.27, sections 123.27.1 to 123.27.7, sections 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, sections 123.115 to 123.136 and sections 123.138 and 123.139.

The Fund is deemed to have been constituted by the filing of articles on 22 June 1995.

The articles may be amended but the filing of articles shall not operate to amend any provision of this Act.

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1995, c. 48, s. 2; 1999, c. 40, s. 136.

**3.** The head office of the Fund shall be established in the territory of Ville de Montréal.

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1995, c. 48, s. 3; 2000, c. 56, s. 219.

## ADMINISTRATION

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

- (1) five persons appointed by the executive committee of the Confédération des syndicats nationaux;
- (2) two persons appointed by the board of directors of the Fédération des caisses Desjardins du Québec;
- (3) four persons elected by the general meeting of holders of class “A” and class “B” shares;
- (4) three persons appointed by the members referred to in paragraphs 1, 2 and 3;
- (5) the chief executive officer of the Fund, for the duration of his term of office.

At least a majority of the board members, including three appointed by the executive committee of the Confédération des syndicats nationaux, must qualify as independent persons.

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1995, c. 48, s. 4; 1999, c. 55, s. 1; 2000, c. 29, s. 705; 2015, c. 8, s. 307.

**4.1.** The members of the board of directors, other than the chief executive officer of the Fund, may not hold office for more than 12 years. However, this time limit does not apply to members appointed by the executive committee of the Confédération des syndicats nationaux who are not required to qualify as independent persons.

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2015, c. 8, s. 308.

**4.2.** 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;
  - (b) an employee, officer or director of the Confédération des syndicats nationaux or of a federation or central council 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.

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2015, c. 8, s. 308; 2016, c. 7, s. 181

**4.3.** The members of the board of directors shall elect one of their number as chair of the board.

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

- (1) ensure that the composition of the board and its committees reflects the desired expertise and experience profile; and
- (2) ensure that the board members, except the chief executive officer, exercise their functions and powers at some remove from the daily activities of the Fund, including activities relating to investment recommendations.

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2015, c. 8, s. 308.

**4.4.** 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 may only deliberate and make decisions in the presence of a majority of independent persons.

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2015, c. 8, s. 308.

**4.5.** The functions of the governance and ethics committee include

- (1) developing and recommending to the board:
  - (a) the overall expertise and experience profile sought for the board;
  - (b) the procedure for examining the past experience of persons who may be appointed or elected as board members;
  - (c) a policy to determine whether a person in a situation submitted to the board qualifies as an independent person;
  - (d) the candidate nomination process for the election of board members by the general meeting of holders of class "A" and class "B" shares; and

(2) giving its assessment to the board, in light of the committee's examination, as to whether a person qualifies as an independent person.

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2015, c. 8, s. 308.

**4.6.** 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 chief executive officer of the Fund; and

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

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2015, c. 8, s. 308.

**5.** The chief executive officer of the Fund is appointed by the members of the board of directors referred to in subparagraphs 1 to 4 of the first paragraph of section 4.

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

The chief executive officer of the Fund may not be an employee, officer or director of the Confédération des syndicats nationaux or a federation or central council affiliated with it.

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

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1995, c. 48, s. 5; 1999, c. 55, s. 2; 2015, c. 8, s. 309.

**6.** If a vacancy occurs among the members of the board of directors referred to in paragraph 1 of section 4, the executive committee of the Confédération des syndicats nationaux may fill the vacancy by appointing a person for the unexpired portion of the term.

If a vacancy occurs among the members of the board of directors referred to in paragraph 2 of section 4, the board of directors of the Fédération des caisses Desjardins du Québec may fill the vacancy by appointing a person for the unexpired portion of the term.

A vacancy that occurs among the board members who qualify as independent persons must be filled within 30 days. If the vacancy is among the members elected by the general meeting of holders of class "A" and class "B" shares, the other board members may appoint a person to fill the vacancy for the unexpired portion of the term.

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1995, c. 48, s. 6; 2000, c. 29, s. 705; 2015, c. 8, s. 310.

**7.** *(Repealed).*

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1995, c. 48, s. 7; 2002, c. 45, s. 510; 2015, c. 8, s. 311.

**8.** Subject to section 20, the Fund is authorized to issue class "A" shares without par value, and class "B" shares without par value, carrying the rights defined in section 123.40 of the Companies Act ([chapter C-38](#)), the right to elect four directors and the right of redemption defined in sections 11 and 13 of this Act.

The Fund is also authorized, subject to section 20, to issue class "A" and class "B" fractional shares without par value, carrying proportionately the same rights as class "A" and class "B" shares, except the voting rights attached to such shares.

Class “B” shares shall be issued by series, each series being related to the raising of specific funds for a specific project and bearing mention thereof. For that purpose, the directors of the Fund are authorized to determine the number and designation of each series of class “B” shares.

Class “B” shares shall not be redeemable. However, they may be exchanged at any time at the option of the Fund or of the holder for class “A” shares at the rate of one class “A” share for each class “B” share held by the shareholder.

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; and

(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.

Furthermore, the directors may, by articles of amendment, in accordance with sections 123.101 and 123.103 of the Companies Act, create any other class of non-participating shares not carrying the right to vote at meetings of the shareholders. The articles of amendment shall determine the other rights, privileges, conditions and restrictions attached to the shares of each such class.

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1995, c. 48, s. 8; 2005, c. 38, s. 28; 2015, c. 8, s. 312.

**9.** Only a natural person may acquire or hold a class “A” or class “B” share or fractional share. The holder of a class “A” or class “B” share or fractional share may not alienate it and a class “A” share or fractional share, subject to section 123.56 of the Companies Act ([chapter C-38](#)), may not be purchased by agreement by the Fund except with the authorization of the board of directors or a committee composed of persons designated by the board for that purpose.

The Fund may purchase by agreement a class “A” share or fractional share only in the cases and in the manner provided in a policy adopted by the board of directors and approved by the Minister of Finance and only at a price not exceeding the redemption price determined in accordance with section 14.

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1995, c. 48, s. 9.

**10.** Notwithstanding section 9, a class “A” or class “B” share or fractional share 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 share thus transferred. For the purposes of the second paragraph of section 9 and section 11, the spouse is deemed to be the person who acquired the transferred share or fractional share from the Fund.

Subject to section 10.1, the trustee is, however, subject to section 9 in respect of any transfer to a person other than the beneficiary of the plan.

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1995, c. 48, s. 10; 2001, c. 51, s. 9.

**10.1.** Notwithstanding section 9, a class “A” or class “B” 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 9 and section 11, 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 10.2, the trustee is, however, subject to section 9 in respect of any transfer to a person other than the beneficiary of that other plan or of that fund.

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2001, c. 51, s. 10.

**10.2.** Notwithstanding section 9, a class “A” or class “B” 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 9 and section 11, 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 10.2, the trustee is, however, subject to section 9 in respect of any transfer to a person other than the beneficiary of that other plan or of that fund.

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2001, c. 51, s. 10.

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

(1) at the request of a person who acquired the share or fractional share from the Fund at least 730 days prior to the request 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 a person who is the holder of the share or fractional share without being the person who acquired it from the Fund, if the person who acquired it from the Fund has reached 65 years of age or, if deceased, would have reached that age had he lived, provided that 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 a person to whom the share or fractional share has devolved by succession;

(3.1) at the request of a 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 a person who acquired the share or fractional share from the Fund, if he applies to the Fund therefor in writing within 60 days after subscribing for the share or fractional share or, in the cases described in section 32, within 60 days after the first deduction from his salary or wages or after the first debit from his account;

(5) at the request of a 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.

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1995, c. 48, s. 11; 1997, c. 14, s. 374; 2011, c. 6, s. 86.

**11.1.** For the purposes of paragraph 1 of section 11, 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 that time, other than a person who has not reached 60 years of age and 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.

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2011, c. 6, s. 87; 2015, c. 21, s. 34.

**11.2.** If a request for redemption is made, under paragraph 1 of section 11, 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 on those grounds by the number of years, not exceeding 11, that the agreement is to cover.

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2011, c. 6, s. 87.

**12.** For the purposes of paragraph 5 of section 11, a disability is severe only if by reason thereof the person is regularly incapable of holding 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 regularly incapable of carrying on the substantially gainful occupation he held at the time he ceased 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.

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1995, c. 48, s. 12.

**13.** 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 pursuant to section 11 of this Act.

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1995, c. 48, s. 13.

**14.** The price of redemption of the class “A” shares or fractional shares shall be fixed by the board of directors twice a year, on dates six months apart, on the basis of the value of the Fund as established by experts under the responsibility of independent 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 at any other time in the year, on the basis of an internal valuation which, in each case, must be the subject of a special report of independent chartered accountants confirming continued adherence to the principles and methods used to value the Fund.

The Fund may, however, accept the offer of a shareholder to receive the last price of redemption so determined rather than the subsequent one. The redemption shall be made within a reasonable time after the date of the request therefor.

However, in the case described in paragraph 4 of section 11, the Fund is bound to redeem the share or fractional share at the price at which it was acquired from the Fund and to make the payment not later than 30 days after the date of receipt of the request.

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1995, c. 48, s. 14; 2009, c. 13, s. 2.

**14.1.** A request for purchase by agreement made under section 9 and a request for redemption made under section 11 must be filed with the Fund in the form prescribed by the Fund and accompanied by the information and documents prescribed by a resolution adopted by the board of directors of the Fund.

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2011, c. 6, s. 88.

**15.** 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 shall be provided annually to the shareholder free of charge in the form and according to the procedure 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 stands in lieu of a certificate issued pursuant to section 53 of the Companies Act ([chapter C-38](#)).

Moreover, at the request of the holder of fractional shares, the Fund shall exchange the fractional share certificates, or the documents standing in lieu thereof, for certificates, or documents standing in lieu thereof, representing the corresponding whole shares.

1995, c. 48, s. 15.

## **DIVISION II**

### **INVESTMENTS**

#### **§ 1. — *Functions, actions and interpretation***

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2015, c. 8, s. 313.

#### **16. The main functions of the Fund are**

- (1) to promote investment in enterprises by guaranteeing or standing surety for any obligation contracted by them or by investing directly so as to allow the creation, maintenance and preservation of jobs;
- (2) to foster the development of the enterprises described in section 17 by inviting the working men and women and other community resources to participate in their development by subscribing for shares of the Fund;
- (3) to develop the management skills of the working men and women in worker-controlled enterprises and facilitate their active involvement in the economic development of Québec;
- (4) to help enterprises conform to environmental laws and regulations;
- (5) to foster the development of environmental policies within enterprises.

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1995, c. 48, s. 16; 1999, c. 55, s. 3.

#### **17. The Fund shall direct its action mainly toward**

- (1) worker-controlled enterprises, whether cooperative or not, operated on the basis of an equal apportionment of voting rights among all the shareholders or members;
- (2) enterprises whose work organization enables the men and women who work in the enterprise to participate in the determination, organization and control of their work;
- (3) environmentally-concerned enterprises whose commitments, conduct or activities contribute to the preservation or improvement of the quality of the environment.

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1995, c. 48, s. 17.

**18.** For the purposes of this Act, “enterprise” means a partnership or a legal person pursuing economic objects; “investment” includes any financial assistance granted to an enterprise in the form of a loan, a guarantee, security, an acquisition of bonds or other titles of indebtedness or an interest in share capital or capital stock, or in any other form

Except for the purposes of subparagraph 8 of the fifth paragraph of section 19, an investment in an entity that is not an enterprise within the meaning of the first paragraph and that is either a partnership (other than a partnership that is an investment fund) or a legal person is deemed to be an investment in a particular enterprise, if the investment was made with a view to investing in the particular enterprise.

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1995, c. 48, s. 18; 1999, c. 55, s. 4; 2017, c. 1, s. 45.

**18.1.** 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.

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1999, c. 55, s. 5; 2005, c. 1, s. 7; 2005, c. 38, s. 29; 2012, c. 8, s. 27.

## § 2. — *Investment decisions*

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2015, c. 8, s. 314.

**18.2.** A committee of the board of directors may authorize an investment if the committee is composed of a majority of independent persons.

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2015, c. 8, s. 314.

## § 3. — *Investments*

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2015, c. 8, s. 314.

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

However, for a particular fiscal year, the Fund's eligible investments must represent, on the average, at least the following percentage of the Fund's average net assets for the preceding year:

- (1) 60%, if the particular fiscal year ends on 31 May 2015;
- (2) 61%, if the particular fiscal year ends on 31 May 2016;
- (3) 62%, if the particular fiscal year ends on 31 May 2017;
- (4) 63%, if the particular fiscal year ends on 31 May 2018;
- (5) 64%, if the particular fiscal year ends on 31 May 2019; or
- (6) 65%, if the particular fiscal year begins after 31 May 2019.

For the purposes of this section and section 20, 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  
$$(A + B + C + D) / 2.$$

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; and

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

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 18.1 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 made by the Fund in a partnership or legal person that consist of an initial capital outlay of at least \$25,000,000 or of 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 that those investments are not otherwise eligible investments;

(7) investments described in section 19.1, 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 2021 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, the Fonds de solidarité des travailleurs du Québec (F.T.Q.) and 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 10 November 2011 in Fonds Relève Québec, s.e.c.;

(11) investments made by the Fund in Fonds Biomasse Énergie I, S.E.C.; and

(12) 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 fifth and sixth 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 11 of the fifth paragraph or in the sixth 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 fifth 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 subparagraph 8 to 10 and 12 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 fifth paragraph, a dealer acting as an intermediary or firm underwriter is not considered to be a first purchaser of securities.

For the purposes of subparagraph 2 of the fifth paragraph, an investment made by an entity that is neither an enterprise within the meaning of the first paragraph of section 18 nor an investment fund, otherwise than as first purchaser for the acquisition of securities issued by a partnership or a legal person, is deemed to have been made by the Fund in proportion to its share in the entity, if one of the main reasons for which the Fund holds an interest in the entity is to enable the financing of such an acquisition.

For the application of the fifth 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;
- (2.1) the aggregate of the investments described in subparagraph 6 of that paragraph may not exceed 10% of the Fund's net assets at the end of the preceding fiscal year;
- (3) the aggregate of the investments described in subparagraph 7 of that paragraph may not 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 2022, 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 participation of the Fund 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 investments described in subparagraph 10 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 fifth paragraph otherwise than as part of a project in the recreation and tourism sector.

The second paragraph of section 18.1 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 fifth paragraph.

The requirement set out in the second paragraph applies from the fiscal year that began on 1 June 2001.

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1995, c. 48, s. 19; 1999, c. 55, s. 6; 2003, c. 9, s. 5; 2004, c. 21, s. 33; 2005, c. 23, s. 27; 2005, c. 38, s. 30; 2006, c. 36, s. 12; 2011, c. 6, s. 89; 2012, c. 8, s. 28; 2015, c. 21, s. 35; 2017, c. 1, s. 46.

**19.1.** The investments to which subparagraph 7 of the fifth paragraph of section 19 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 19.

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 it 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 19 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.

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2005, c. 38, s. 31; 2006, c. 36, s. 13; 2012, c. 8, s. 29.

**19.2.** The approval by the Minister of Finance of an investment policy referred to in the first paragraph of section 19.1 is valid for a maximum period of five fiscal years beginning on the first day of the fiscal year in which the investment policy became applicable.

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.

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2005, c. 38, s. 31; 2006, c. 36, s. 14; 2017, c. 1, s. 47.

**20.** If, for a particular fiscal year, the Fund fails to comply with the requirement of the second paragraph of section 19, the Fund may not issue class “A” or class “B” 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” and class “B” shares or fractional shares issued in the preceding fiscal year, excluding the total consideration paid for class “A” and class “B” shares or fractional shares acquired and paid by payroll deduction or account debit in accordance with Division V or acquired under a subscription agreement entered into with an employer in favour of the employer’s employees, if the percentage of the Fund’s eligible average investments for the particular fiscal year relative to the Fund’s average net assets for the preceding fiscal year is

- (a) less than 60%, but not less than 50%, if the particular fiscal year ends on 31 May 2015,
- (b) less than 61%, but not less than 51%, if the particular fiscal year ends on 31 May 2016,
- (c) less than 62%, but not less than 52%, if the particular fiscal year ends on 31 May 2017,
- (d) less than 63%, but not less than 53%, if the particular fiscal year ends on 31 May 2018,
- (e) less than 64%, but not less than 54%, if the particular fiscal year ends on 31 May 2019, or
- (f) less than 65%, but not less than 55%, if the particular fiscal year begins after 31 May 2019;

(2) 50% of the consideration referred to in subparagraph 1 if the percentage of the Fund’s eligible average investments for the particular fiscal year relative to the Fund’s average net assets for the preceding fiscal year is

- (a) less than 50%, but not less than 40%, if the particular fiscal year ends on 31 May 2015,
- (b) less than 51%, but not less than 41%, if the particular fiscal year ends on 31 May 2016,
- (c) less than 52%, but not less than 42%, if the particular fiscal year ends on 31 May 2017,
- (d) less than 53%, but not less than 43%, if the particular fiscal year ends on 31 May 2018,
- (e) less than 54%, but not less than 44%, if the particular fiscal year ends on 31 May 2019, or
- (f) less than 55%, but not less than 45%, if the particular fiscal year begins after 31 May 2019; or

(3) 25% of the consideration referred to in subparagraph 1 if the percentage of the Fund’s eligible average investments for the particular fiscal year relative to the Fund’s average net assets for the preceding fiscal year is

- (a) less than 40%, but not less than 30%, if the particular fiscal year ends on 31 May 2015,
- (b) less than 41%, but not less than 31%, if the particular fiscal year ends on 31 May 2016,
- (c) less than 42%, but not less than 32%, if the particular fiscal year ends on 31 May 2017,
- (d) less than 43%, but not less than 33%, if the particular fiscal year ends on 31 May 2018,

(e) less than 44%, but not less than 34%, if the particular fiscal year ends on 31 May 2019, or

(f) less than 45%, but not less than 35%, if the particular fiscal year begins after 31 May 2019.

The Fund may not issue any class “A” or class “B” shares or fractional shares in the fiscal year following the particular fiscal year if the percentage of the Fund’s eligible average investments for the particular fiscal year relative to the Fund’s average net assets for the preceding fiscal year is less than

- (1) 30%, if the particular fiscal year ends on 31 May 2015;
- (2) 31%, if the particular fiscal year ends on 31 May 2016;
- (3) 32%, if the particular fiscal year ends on 31 May 2017;
- (4) 33%, if the particular fiscal year ends on 31 May 2018;
- (5) 34%, if the particular fiscal year ends on 31 May 2019; or
- (6) 35%, if the particular fiscal year begins after 31 May 2019.

Class “A” and class “B” shares or fractional shares acquired and paid by payroll deduction or account debit in accordance with Division V or acquired under a subscription agreement entered into with an employer in favour of his employees are excluded from the application of this section.

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1995, c. 48, s. 20; 2003, c. 9, s. 6; 2005, c. 38, s. 32; 2017, c. 1, s. 48.

**21.** The Fund may make no investment in an enterprise that would cause the total amount of its investments in the enterprise to exceed 5% of the assets of the Fund as established on the basis of the latest valuation by the experts referred to in section 14.

The percentage may be increased up to 10% to enable the Fund to acquire securities in an enterprise carrying on business in Québec other than an eligible enterprise. In such a case, the Fund may not, directly or indirectly, acquire or hold shares carrying more than 30% of the voting rights attached to the shares of the enterprise that may be exercised under any circumstances.

Where the Fund avails itself of the second paragraph as regards an enterprise in which it already holds, directly or indirectly, shares carrying more than 30% of the voting rights attached to the shares of the enterprise that may be exercised under any circumstances, the Fund has five years from the date of the investment to bring its shareholding into conformity with that paragraph.

These restrictions do not apply, however, where the Fund makes an investment in

- (1) securities guaranteed by Québec, Canada or a Canadian province or territory;
- (2) securities guaranteed by an undertaking made to a trustee by Québec to pay sufficient subsidies to pay the interest and principal on their respective maturity dates;
- (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 (Statutes of Canada, 1991, chapter 46) or 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 with that other enterprise one and the same enterprise for the purposes of this section.

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1995, c. 48, s. 21; 1999, c. 55, s. 7; 2002, c. 45, s. 511; 2002, c. 70, s. 186; 2004, c. 37, s. 91; 2005, c. 38, s. 33.

**22.** The Fund may make any investment, other than investments in eligible enterprises, through a separate investment fund the management of which may be entrusted to a third person, provided that the third person is accountable directly to the board of directors of the Fund for any funds entrusted to him.

Any investment made by the manager of such a fund must be made in conformity with this Act and the investment policy adopted by the Fund.

For the purposes of section 21, investments made by the manager of the fund are deemed to be made directly by the Fund.

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1995, c. 48, s. 22; 1999, c. 55, s. 8.

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

The Fund may invest, directly or indirectly, the money deposited in the reserve under this section in the manner provided in paragraphs 2, 3, 4, 5 and 10 of article 1339 of the Civil Code.

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1995, c. 48, s. 23.

### **DIVISION III**

#### **LOANS**

**24.** The Fund may not contract any loan that would cause the current principal of its total debt to exceed 100% of the total consideration paid for its class "A" and class "B" shares or fractional shares.

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

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

where

$x$  = the total debt of the Fund; and

$y^1$  = the percentage of the shares carrying voting rights held, directly or indirectly, by the Fund in the capital stock of its particular subsidiary; and

$y^2$  = the percentage of the shares carrying voting rights held, directly or indirectly, by the particular subsidiary of the Fund in the capital stock of the particular subsidiary of that 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 for any evidence of indebtedness.

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

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1995, c. 48, s. 24; 1999, c. 40, s. 136.

### **DIVISION IV**

## CONFLICTS OF INTEREST

**25.** 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 shall abstain from voting on any decision involving the activity in which he has an interest.

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

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1995, c. 48, s. 25; 2015, c. 8, s. 315.

**26.** The Fund may not make an investment for the benefit of one of its officers or directors, a member of their immediate families, or one of its major shareholders.

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1995, c. 48, s. 26; 2006, c. 50, s. 130, s. 131; 2015, c. 8, s. 316.

**27.** The Fund may not invest in an enterprise in which a director referred to in subparagraph 1, 2, 3 or 5 of the first paragraph of section 4 or an officer other than a director has a major or controlling interest.

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1995, c. 48, s. 27; 1999, c. 55, s. 9; 2006, c. 50, s. 131.

**28.** A director or a senior executive who is not a director is considered to have a major interest in an enterprise if he holds more than 10% of the stock or shares of the enterprise.

A director or a senior executive who is not a director is deemed to control an enterprise if he holds securities enabling him under all circumstances to elect a majority of its directors.

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1995, c. 48, s. 28.

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

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1995, c. 48, s. 29.

**30.** Any contract made in contravention of section 26 or 27 may be cancelled within one year of the date on which it is made.

The senior executives of the Fund who made the contract or consented thereto are solidarily liable for the resulting losses to the Fund, except in the case described in section 31.

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1995, c. 48, s. 30.

**31.** A contract in contravention of section 26 or 27 is not subject to cancellation if the contravention results from the opening of a succession or from a gift and if the beneficiary renounces the property concerned or disposes of it with dispatch.

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1995, c. 48, s. 31.

## DIVISION V

### ACQUISITION OF CLASS "A" OR CLASS "B" SHARES OR FRACTIONAL SHARES BY PAYROLL DEDUCTION OR BY AGREEMENT WITH A SAVINGS UNION

**32.** An individual 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" or class "B" shares or fractional shares he has decided to acquire from the Fund.

An individual may request a savings union that is a member of the Fédération des caisses Desjardins du Québec, hereinafter called a “savings union”, if an agreement for deductions at source exists between his employer and the savings union, to debit his account, for the period he specifies, to pay for the class “A” or class “B” shares or fractional shares he has decided to acquire from the Fund.

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1995, c. 48, s. 32; 2000, c. 29, s. 654, s. 705.

**33.** The employer shall, within a reasonable time, make the deduction from the salary or wages of the individual requesting it if 50 employees, or 20% of the employees, whichever number is lesser, avail themselves of this section.

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1995, c. 48, s. 33.

**34.** An individual having requested a payroll deduction may at any time notify the employer of his decision to cease acquiring shares from the Fund by payroll deduction. The employer shall comply with the individual’s decision with reasonable dispatch.

An individual who has authorized a savings union to debit his account for the amounts required to acquire shares from the Fund may at any time notify the savings union of his decision to cease acquiring shares by account debit and the savings union shall comply with the individual’s decision with reasonable dispatch.

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1995, c. 48, s. 34.

**35.** The employer or savings union shall remit to the Fund or to the trustee designated by the Fund the deducted or debited amounts not later than the fifteenth day of the month following the month in which the deduction or debit is made. The remittance shall be accompanied with a statement indicating the amount deducted or debited and the name, address, date of birth and social insurance number of the investor.

A copy of the statement shall also be forwarded to the certified association, if any.

The amounts deducted by an employer remain due to the employee as salary or wages until they are remitted by the employer to the Fund or to the trustee designated by the Fund.

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1995, c. 48, s. 35.

**36.** An individual for the benefit of whom sums have been remitted is deemed to have subscribed for as many of the Fund’s class “A” or class “B” shares or fractional shares as the amounts remitted permit him to acquire.

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1995, c. 48, s. 36.

## **DIVISION VI**

### **MISCELLANEOUS AND FINAL PROVISIONS**

**37.** In addition to the other statutory functions it may exercise regarding the operations of the Fund, the Autorité des marchés financiers is charged with inspecting the internal affairs and the operations of the Fund annually to ascertain compliance with this Act.

For the purposes of 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 upon each inspection to the Minister of Finance and shall include therein any other information or document the Minister determines.

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1995, c. 48, s. 37; 1999, c. 55, s. 10; 2002, c. 45, s. 512; 2004, c. 37, s. 90.

**38. (Repealed).**

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1995, c. 48, s. 38; 1999, c. 55, s. 11.

**39.** Sections 123.77 to 123.79 of the Companies Act ([chapter C-38](#)) apply only in the case of the directors elected under paragraph 3 of section 4.

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1995, c. 48, s. 39.

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

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1995, c. 48, s. 40; 2011, c. 6, s. 90.

**41.** Subject to the provisions of the Securities Act ([chapter V-1.1](#)), a distribution of the shares of the Fund may be made only by the following persons:

- (1) an officer, a permanent or temporary employee of the Fund;
- (2) a permanent employee, a member or an officer of a union affiliated with the Confédération des syndicats nationaux;
- (3) a person who subscribes to the objectives of the Fund.

No remuneration representing a percentage of the sums raised in connection with a distribution of the shares of the Fund may be paid to those persons.

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1995, c. 48, s. 41.

**42. (Omitted).**

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1995, c. 48, s. 42.

**REPEAL SCHEDULE**

In accordance with section 9 of the Act respecting the consolidation of the statutes and regulations (chapter R-3), chapter 48 of the statutes of 1995, in force on 1 March 1996, is repealed, except section 42, effective from the coming into force of chapter F-3.1.2 of the Revised Statutes.