



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 431
(1998, chapter 17)

An Act respecting Investissement-Québec and Garantie-Québec

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EXPLANATORY NOTES

This bill allows the Société de développement industriel du Québec to be continued as a legal person to be known as “Investissement-Québec”. The bill also establishes a wholly-owned subsidiary of Investissement-Québec to be designated as “Garantie-Québec”.

The mission of the Investissement-Québec agency is to facilitate the growth of investment in Québec. It will be responsible for promoting Québec as a propitious location for investment. It will facilitate research and development as well as export activities. The agency will also work to retain current investment in Québec.

The main function of its subsidiary Garantie-Québec is to facilitate the financing of small and medium-sized businesses.

Investissement-Québec and Garantie-Québec will administer the financial assistance programs developed by the Government under the new Act, the programs envisaged in their business plans and any other program whose administration is entrusted to them by the Government. Moreover, they will perform any mandate assigned to them by the Government in connection with projects of major economic significance for Québec.

This bill contains financial provisions providing a framework for the financial commitments which the agency and its subsidiaries are authorized to make. It also contains transitional provisions.

LEGISLATION AMENDED BY THIS BILL :

- Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10);
- Act respecting the Civil Service Superannuation Plan (R.S.Q., chapter R-12).

LEGISLATION REPLACED BY THIS BILL :

- Act respecting the Société de développement industriel du Québec (R.S.Q., chapter S-11.01).

Bill 431

AN ACT RESPECTING INVESTISSEMENT-QUÉBEC AND GARANTIE-QUÉBEC

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

CHAPTER I INVESTISSEMENT-QUÉBEC

DIVISION I ESTABLISHMENT AND ORGANIZATION

1. The Société de développement industriel du Québec, constituted as a legal person by chapter 64 of the statutes of 1971, shall become the agency “Investissement-Québec”.

2. The agency is a mandatary of the State. The property of the agency forms part of the domain of the State, but the execution of the obligations of the agency may be levied against its property.

The agency binds none but itself when it acts in its own name.

3. The head office of the agency shall be located in the territory of the Communauté urbaine de Québec. The agency may, however, move its head office to any other place with the approval of the Government. Notice of the location of the head office shall be published in the *Gazette officielle du Québec*.

The agency may hold its meetings at any place in Québec.

4. The affairs of the agency shall be administered by a board of directors composed of eleven members, including a chief executive officer, appointed by the Government.

The chief executive officer shall be appointed for a term of not more than five years, and the remaining members of the board of directors shall be appointed for a term of not more than three years.

5. The Government shall designate the chair and vice-chair of the board of directors from among the members of the board.

The positions of chief executive officer and chair of the board of directors may be held concurrently.

6. The chief executive officer is responsible for the administration and direction of the agency within the scope of its regulations and policies. The office of chief executive officer is a full-time position.

The chair of the board of directors shall call and preside the meetings of the board and see to the proper operation of the board. The chair shall exercise any other functions assigned to the chair by the board.

The vice-chair shall exercise the functions of the chair when the latter is absent or unable to act.

7. On the expiry of their term, the members of the board of directors shall remain in office until replaced or reappointed.

8. Every vacant position on the board of directors, other than that of the chief executive officer, shall be filled for the unexpired portion of the term of the member to be replaced.

Absence from the number of board meetings determined in the internal by-laws of the agency, in the cases and circumstances specified, constitutes a vacancy.

9. The Government shall determine the remuneration, employment benefits and other conditions of employment of the chief executive officer.

The other board members shall receive no remuneration except in the cases, on the conditions and to the extent determined by the Government. They are, however, entitled to the reimbursement of expenses incurred in the exercise of their functions, on the conditions and to the extent determined by the Government.

10. The quorum at meetings of the board is the majority of its members, including the chief executive officer or the chair.

Decisions of the board are made by a majority vote of the members present. In the case of a tie-vote, the chair of the meeting has a casting vote.

11. The members of the board of directors may waive notice of a meeting. The attendance of a member at a meeting of the board constitutes a waiver of notice, unless the member is present to contest the legality of the calling of the meeting.

12. The board members may, if they all agree, take part in a meeting using means which allow them to communicate with each other orally, such as the telephone.

13. A written resolution, signed by all the members entitled to vote, has the same value as if adopted during a meeting of the board of directors.

A copy of all such resolutions shall be kept with the minutes of the proceedings or other equivalent record book.

14. The minutes of a meeting of the board of directors, approved by the board and certified by the chair of the board, the secretary or any other person so authorized by the agency, are authentic, as are documents and copies emanating from the agency or forming part of its records if signed or certified by any such person.

15. No document binds the agency or may be attributed to it unless it is signed by the chief executive officer, the chair or vice-chair of the board of directors or the secretary or, to the extent determined in the internal by-laws of the agency, by another member of the agency's personnel.

The rules governing the delegation of signing authority may provide for sub-delegation and the mechanics thereof.

16. An intelligible print-out of a decision or of any other data stored by the agency in computerized or other electronic form is a document of the agency and constitutes proof of its contents if certified by a person referred to in section 15.

17. The agency may allow, subject to the conditions and on the documents it determines in its internal by-laws, that a signature be affixed by means of an automatic device, that a signature be electronic, or that a facsimile of a signature be engraved, lithographed or printed. However, the facsimile shall have the same force as the signature itself only if the document is countersigned by a person referred to in section 15.

18. The agency may, in its internal by-laws, fix any other operating procedure of the board of directors, establish an executive committee or any other committee, and delegate the exercise of its powers to such a committee.

The by-laws may provide for the powers of the board of directors to be delegated to a member of the personnel of the agency.

19. No member of the board of directors exercising functions on a full-time basis with the agency may, on pain of forfeiture of office, have a direct or indirect interest in an enterprise causing the member's personal interest to conflict with that of the agency. However, forfeiture of office is not incurred where the interest devolves by succession or gift, provided it is renounced or disposed of with dispatch.

Any member of the board of directors, other than a member exercising functions on a full-time basis, who has a direct or indirect interest in an enterprise causing the member's personal interest to conflict with that of the

agency must, on pain of forfeiture of office, disclose the interest in writing to the board of directors, abstain from voting on any matter relating to the enterprise, and avoid influencing any decision relating to the enterprise. The member must also withdraw from a meeting during any discussion or vote on such a matter.

Any member of the personnel of the agency who has a direct or indirect interest in an enterprise causing the personnel member's personal interest to conflict with that of the agency must, on pain of dismissal, disclose the interest in writing to the chief executive officer.

20. The agency shall assume the defence of any director or member of the personnel of the agency prosecuted by a third person for an act done in the exercise of the director's or member's functions and shall pay the damages, if any, occasioned by that act, unless the director or member has committed a gross fault or a personal fault separable from the exercise of the director's or member's functions.

Notwithstanding the foregoing, in a penal or criminal proceeding, the agency shall assume the payment of the expenses of a director or member of the personnel of the agency only if the director or member had reasonable grounds to believe that the director's or member's conduct was in conformity with the law or if the director or member has been discharged or acquitted.

21. The agency shall assume the expenses of a director of the agency if, having prosecuted the director for an act done in the exercise of the director's functions, it loses its case and the court so decides.

If the agency wins its case only in part, the court may determine the amount of the expenses to be assumed by the agency.

22. The agency shall fulfil the obligations provided for in sections 20 and 21 in respect of any person who acted at its request as a director for a legal person of which the agency is a shareholder or creditor.

23. The secretary and the other members of the personnel of the agency shall be appointed in accordance with the staffing plan established by regulation of the agency. The regulations shall, in addition, determine the mode of appointment of the members of the personnel, and the pay scales and rates, employment benefits and other conditions of employment of the personnel members.

The regulations must be submitted to the Government for approval.

24. The Minister may issue directives concerning the policy and general objectives to be pursued by the agency.

The directives must be approved by the Government, and come into force on the day of their approval. Once approved, they are binding on the agency and the agency must comply with them.

Every directive shall be laid before the National Assembly within fifteen days of being approved by the Government or, if the Assembly is not sitting, within fifteen days of resumption.

DIVISION II

MISSION AND POWERS

25. The mission of the agency is to facilitate the growth of investment in Québec and thus contribute to the economic development of Québec and the creation of employment opportunities.

The agency shall centralize and consolidate the actions of the State to seek out, promote and support investment, and shall become the main channel for communications with the enterprises concerned.

The agency shall strive to stimulate domestic investment and to attract investors from outside Québec. It shall promote Québec among investors as a propitious location for investment, offer investors orientation services to guide them in their dealings with the Government, and provide them with financial and technical support.

The agency shall participate in the growth of enterprises, in particular by facilitating research and development and export activities.

The agency shall also work to retain current investment in Québec by providing support to enterprises established in Québec that show particular dynamism or potential.

26. The agency shall advise the Minister on any matter the latter submits to it in connection with business investment, development and financing.

27. The Government may develop financial investment assistance programs to be administered by the agency. The Government may also assign the administration of any other investment support program it specifies to the agency.

28. The Government may, where a project is of major economic significance for Québec, mandate the agency to grant and administer the assistance determined by the Government to facilitate the realization of the project. The mandate may authorize the agency to fix the terms and conditions of the assistance.

29. The agency shall exercise any other power assigned to it by the Government.

30. The financial intervention of the agency may consist in

- (1) a suretyship;

(2) a loan ;

(3) any other form of intervention provided for in its business plan.

31. The agency may make its financial intervention dependent on certain prior conditions, or on compliance with contractual obligations relating to the ability of the enterprise to realize its project or the economic spinoff generated by its project.

The agency may also require compensation for the risk associated with a project.

32. If an enterprise fails to comply with the conditions on which assistance is granted or to fulfil its obligations, the agency may either suspend the financial support or terminate it.

For the same reasons, the agency may increase or reduce the amount of the assistance, change the terms and conditions of the assistance, or take any other step it considers necessary to preserve its rights or those of its mandator. The agency may not, however, change the amount of the assistance granted under a mandate referred to in section 28, or change the terms and conditions of the assistance in such a way as to increase the costs borne by the Government.

33. Where the agency takes possession of property from a defaulting enterprise, it may dispose of the property only by auction or following a call for tenders.

34. The agency may provide technical services to an enterprise, a government department or body or a state-owned enterprise, in particular in the field of financial analysis, credit arrangement and portfolio management.

35. The agency may, on the conditions determined by the Government, invest in an investment company whose object is to finance enterprises, grant loans to that company, and guarantee the payment of the capital of and interest on its loans and the performance of its obligations.

36. The agency may establish any subsidiary that may be useful in the pursuit of its mission. The establishment of subsidiaries for purposes other than to make investments in order to realize specific projects must be approved by the Government, on the conditions and in the manner determined by the Government.

DIVISION III

FINANCIAL PROVISIONS

37. The agency may not, without the authorization of the Government,

(1) contract a loan that causes the total of its current outstanding loans to exceed the amount determined by the Government ;

(2) make a financial commitment in excess of the limits or in contravention of the terms and conditions determined by the Government ;

(3) acquire or hold shares in a legal person or an interest in a partnership in excess of the limits or in contravention of the terms and conditions determined by the Government ;

(4) transfer shares in a legal person or an interest in a partnership in excess of the limits or in contravention of the terms and conditions determined by the Government ;

(5) acquire or transfer other assets in excess of the limits or in contravention of the terms and conditions determined by the Government ;

(6) accept a gift or legacy to which a charge or condition is attached.

The amounts, limits and terms and conditions determined under this section may apply to the group formed by the agency and its subsidiaries or to one or more members of that group.

38. The Government may, subject to the terms and conditions it determines,

(1) guarantee the payment of the capital of and interest on any loan contracted by the agency and the performance of its obligations ;

(2) make any commitment in relation to the realization or financing of a project of the agency ;

(3) authorize the Minister of Finance to advance to the agency any amount considered necessary for the pursuit of its mission.

The sums required for the purposes of this section shall be taken out of the consolidated revenue fund.

39. Subject to section 46, the agency may determine a tariff of administrative, commitment and professional fees for the services it provides.

40. The agency shall finance its operations out of the revenue it derives from its financial intervention, the fees it charges and the other monies it receives.

41. The monies received by the agency must be allocated to the payment of its obligations. Any surplus shall be retained by the agency, unless the Government decides otherwise.

42. The Government shall, to the extent and in accordance with the terms and conditions determined in the agency's business plan, pay the costs borne by the agency for the administration of the programs that form part of the plan,

the programs entrusted to the agency by the Government under section 27, and the performance of the mandates assigned to the agency by the Government under section 28.

Any loss incurred by the agency in administering such programs and performing such mandates shall, in accordance with the business plan, be reimbursed by the Government.

DIVISION IV

ACCOUNTS AND REPORTS

43. The fiscal year of the agency shall end on 31 March.

44. The agency shall, not later than 31 July each year, file with the Minister its financial statements and a report of its operations for the preceding fiscal year.

The financial statements and report must contain all the information required by the Minister.

45. The Minister shall lay the report and financial statements of the agency before the National Assembly within 15 days of receiving them or, if the Assembly is not sitting, within 15 days of resumption.

46. The agency shall formulate, according to the form, content and intervals fixed by the Government, a business plan which must include the operations of its subsidiaries. The plan must be submitted to the Government for approval.

47. The business plan shall, on expiry, continue in force until a new plan is approved.

48. The books and accounts of the agency shall be audited by the Auditor General each year and whenever so ordered by the Government.

The auditor's report must accompany the agency's report of operations and financial statements.

49. The agency shall in addition communicate to the Minister any information required by the Minister concerning its operations and the operations of its subsidiaries.

CHAPTER II

GARANTIE-QUÉBEC

50. A legal person with share capital is hereby established under the name "Garantie-Québec".

51. The function of Garantie-Québec is to facilitate the financing of Québec enterprises, mainly by guaranteeing the financial commitments they contract with financial institutions.

Garantie-Québec may also grant any other form of financial assistance, in particular in order to promote investment in small and medium-sized businesses or to provide support for their projects in the area of research and development or exports.

52. The head office of Garantie-Québec shall be located in the territory of the Communauté urbaine de Québec. Garantie-Québec may, however, move its head office to any other place with the approval of the Government. Notice of the location of the head office shall be published in the *Gazette officielle du Québec*.

53. The authorized share capital of Garantie-Québec shall be \$70,000,000, divided into 700,000 shares with a par value of \$100.

The shares of Garantie-Québec may only be issued to Investissement-Québec.

54. Investissement-Québec may not transfer the shares of Garantie-Québec without the approval of the Government.

55. The Government may, subject to the terms and conditions determined by the Government, authorize Investissement-Québec to transfer ownership of any property it possesses to Garantie-Québec and to receive any property in return, including Garantie-Québec shares.

56. A transfer pursuant to section 55 shall be registered in the land register on presentation of the order in council authorizing the transfer, containing a description of the immovable property transferred and the effective date of the transfer.

57. The provisions of the Act respecting duties on transfers of immovables (R.S.Q., chapter D-15.1) do not apply to a transfer under section 55.

58. The provisions of Part II of the Companies Act (R.S.Q., chapter C-38), except those of sections 159 to 162, 179 and 189 and paragraph 3 of section 196, and the provisions of sections 89.1 to 89.4 of Part I of that Act apply to Garantie-Québec.

59. Sections 19 to 24 and 48 apply to Garantie-Québec and sections 27, 28, 30 to 35, 37 to 39 and 42 apply to all subsidiaries of Investissement-Québec, including Garantie-Québec, with the necessary modifications.

60. The fiscal year of Garantie-Québec shall end on 31 March.

CHAPTER III

AMENDING, TRANSITIONAL AND FINAL PROVISIONS

61. Schedule I to the Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10), amended by orders in council 1493-96 dated 4 December 1996, 629-97 dated 13 May 1997, 788-97 dated 18 June 1997, 1105-97 dated 28 August 1997, 1652-97 dated 17 December 1997 and 296-98 and 297-98 dated 18 March 1998, and by sections 35 of chapter 26, 33 of chapter 27, 13 of chapter 36, 631 of chapter 43, 57 of chapter 50, 121 of chapter 63, 52 of chapter 79 and 37 of chapter 83 of the statutes of 1997, is again amended by inserting, in paragraph 1, at the place determined by the alphabetical order of the French text,

- “Garantie-Québec”;
- “Investissement-Québec”.

62. Schedule II to the Act respecting the Civil Service Superannuation Plan (R.S.Q., chapter R-12), amended by sections 14 of chapter 36 and 38 of chapter 83 of the statutes of 1997, is again amended by inserting, in paragraph 1, at the place determined by the alphabetical order of the French text,

- “Garantie-Québec”;
- “Investissement-Québec”.

63. The Act respecting the Société de développement industriel du Québec (R.S.Q., chapter S-11.01) is replaced by this Act.

64. Unless otherwise indicated by context, in any text or document, regardless of its nature or form,

(1) a reference to the Act respecting the Société de développement industriel du Québec or to any of its provisions is a reference to the Act respecting Investissement-Québec and Garantie-Québec or to the corresponding provision of that Act, if any;

(2) a reference to the Société de développement industriel du Québec is a reference either to Investissement-Québec or to Garantie-Québec, according to their respective responsibilities as determined by the Government.

65. The programs implemented under the Act respecting the Société de développement industriel du Québec and the regulations, and the funds allocated for their realization, shall continue to apply until replaced or revoked by the authority henceforth responsible for such programs and funds.

However, sections 31 and 32 shall apply to any financial assistance already granted under such programs.

66. Garantie-Québec shall replace the Société de développement industriel du Québec with regard to the responsibilities assigned to Garantie-Québec under section 64 and shall acquire its rights and assume its obligations.

67. A declaration by Investissement-Québec or Garantie-Québec in an application for registration in the register of personal and movable real rights, stating that it is the holder of the rights which the application concerns and which were formerly registered in favour of the Société de développement industriel du Québec, shall be sufficient to establish its quality as the holder of those rights with the registrar.

68. The files, documents and records of the Société de développement industriel du Québec pertaining to the programs henceforth under the responsibility of Garantie-Québec are transferred to Garantie-Québec.

69. The proceedings to which the Société de développement industriel du Québec is a party are continued, without continuance of suit, by Garantie-Québec, according to the rights it acquires and the obligations it assumes.

70. The president and general manager of the Société de développement industriel du Québec in office on (*insert here the date immediately preceding the date of coming into force of this section*) shall remain in office as chief executive officer of Investissement-Québec until the expiry of his term. The terms of the members of the board of directors of the Société de développement industriel du Québec, other than the president and general manager, shall end on (*insert here the date of coming into force of this section*).

71. The affairs of Garantie-Québec shall be administered provisionally by a board of directors comprising the chief executive officer of Investissement-Québec and the chair of the board of directors of Investissement-Québec and, on their joint appointment, another member of the board of directors of Investissement-Québec or of its personnel.

72. Subject to the provisions concerning the applicable conditions of employment, every person in the employ of the Société de développement industriel du Québec on (*insert here the date of coming into force of this section*) shall become an employee of Investissement-Québec.

73. Section 45 of the Labour Code (R.S.Q., chapter C-27) applies to Investissement-Québec.

The provisions defining the conditions of employment of the members of the personnel of the Société de développement industriel du Québec not governed by a collective agreement continue to apply to the extent that the provisions are applicable, until they are amended according to the law.

74. Every employee of Investissement-Québec or Garantie-Québec who, when hired by Investissement-Québec or Garantie-Québec, was a public

servant with permanent tenure may apply for a transfer to a position in the public service or enter a competition for promotion to such a position in accordance with the Public Service Act (chapter F-3.1.1).

75. Section 35 of the Public Service Act applies to an employee referred to in section 74 who enters a competition for promotion to a position in the public service.

76. Every employee referred to in section 74 who applies for a transfer or enters a competition for promotion may apply to the chairman of the Conseil du trésor for an assessment of the classification that would be assigned to the employee in the public service. The assessment must take account of the classification that the employee had in the public service on the date on which the employee ceased to be a public servant, as well as the years of experience and the formal training acquired in the course of employment with Investissement-Québec or Garantie-Québec.

If the employee is transferred subsequent to the application of the first paragraph, the deputy minister of the department or chief executive officer of the body shall assign to the employee a classification in keeping with the assessment provided for in the first paragraph.

Where the employee is promoted pursuant to section 75, the employee's classification must take account of the criteria set out in the first paragraph.

77. Where some or all of the operations of Investissement-Québec or Garantie-Québec are discontinued or if there is a shortage of work, an employee referred to in section 74 is entitled to be placed on reserve in the public service with the classification the employee had on the date on which the employee left the public service.

In such a case, the chairman of the Conseil du trésor shall, where applicable, establish the employee's classification on the basis of the criteria set out in the first paragraph of section 76.

78. A person who, in accordance with the applicable conditions of employment, refuses to be transferred to Investissement-Québec shall be assigned to Investissement-Québec until the chairman of the Conseil du trésor is able to place the person in accordance with section 100 of the Public Service Act. The same applies to a person who is placed on reserve pursuant to section 77 and who remains in the employ of Investissement-Québec or Garantie-Québec, as the case may be.

79. Subject to any remedy available under a collective agreement, an employee referred to in section 74 who is terminated or dismissed may bring an appeal under section 33 of the Public Service Act.

80. Investissement-Québec shall pay to Garantie-Québec an amount equal to its equity as at 31 March 1998, to the nearest one hundred dollars, in return

for which Garantie-Québec shall issue to Investissement-Québec a certificate for an equivalent value in fully paid-up shares.

81. The appropriations granted for fiscal year 1998-99 to program 2 of the Ministère de l'Industrie, du Commerce, de la Science et de la Technologie for the Société de développement industriel du Québec shall, to the extent determined by the Government, be used for the purposes of this Act.

82. The other sums required for the purposes of this Act during the said fiscal year shall be taken out of the consolidated revenue fund, to the extent determined by the Government.

83. The minister designated by the Government is responsible for the administration of this Act.

84. The provisions of this Act come into force on the date or dates to be fixed by the Government.