



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SIXTH LEGISLATURE

Bill 78
(1999, chapter 69)

An Act to again amend the James Bay Region Development Act

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EXPLANATORY NOTES

This bill amends the James Bay Region Development Act so as to clarify the mission of the Société de développement de la Baie James and to revise the rules concerning the composition of the board of directors of the Société and its operating procedures.

The bill also proposes amendments concerning the administration and financing of the Société, in particular as regards the governmental authorizations required in respect of certain financial commitments or other forms of intervention by the Société.

Bill 78

AN ACT TO AGAIN AMEND THE JAMES BAY REGION DEVELOPMENT ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. Section 2 of the James Bay Region Development Act (R.S.Q., chapter D-8) is replaced by the following section :

“2. The Société shall have its head office in the territory of the James Bay region described in the schedule and hereinafter called the “Territory”, at the place determined by the Government. Notice of the location of the head office shall be published in the *Gazette officielle du Québec*.

The Société may have offices or hold meetings at any place in Québec.”

2. Sections 4 and 5 of the said Act are replaced by the following sections :

“4. The mission of the Société is to promote economic development and the development and exploitation of natural resources, other than hydro-electric resources, in the Territory with a view to sustainable development. The Société may in particular generate, support and take part in the carrying out of projects in the pursuit of those objects.

A further mission of the Société is to administer and develop the Territory.

“4.1. In the pursuit of its mission, the Société shall promote coordinated action with the other intervenors both from the public and the private sectors.

“4.2. The Société may carry out any mandate entrusted to it by the Government or any of its departments, bodies or agencies in any field related to its objects and the costs of which are borne in whole or in part by the mandator.

“4.3. The Minister may, within the scope of the Minister’s responsibilities, issue directives concerning the Société’s objectives and general policy. The directives must first be submitted to the Government for approval.

Every directive is binding on the Société and shall be tabled in the National Assembly within 15 days of being approved or, if the Assembly is not sitting, within 15 days of resumption.

“5. The Société may enter into an agreement in accordance with law with a government other than the Government of Québec, with any of its departments, with an international organization or with an agency or body of such government or organization.”

3. Section 6 of the said Act is amended

(1) by replacing “To attain its objects” in the first line by “In the pursuit of its mission”;

(2) by adding the following paragraph at the end:

“The powers set out in subparagraphs *a*, *b* and *c* of the first paragraph shall be exercised by the Société in accordance with section 7.”

4. Section 7 of the said Act is replaced by the following sections:

“7. Except in the cases and on the conditions the Government may determine, the Société and each of its subsidiaries must obtain the authorization of the Government to

(1) acquire, hold or transfer shares in a legal person or an interest in a partnership;

(2) contract a loan that causes the total of their outstanding borrowings to exceed the amount determined by the Government;

(3) grant loans or make any other financial commitment for an amount exceeding the amount determined by the Government;

(4) acquire or transfer the assets of a legal person or a partnership;

(5) accept a gift or legacy to which a condition or charge is attached;

(6) acquire by agreement or by expropriation, alienate, transfer by way of lease or otherwise give as security an immovable or other real right;

(7) construct an immovable.

The Government may make its authorization subject to the conditions it determines. The cases and conditions determined under the first paragraph may concern the Société and its subsidiaries or one or more of their number.

This section does not apply to operations carried out between the Société and its subsidiaries or between subsidiaries.

“7.1. For the purposes of this Act, a legal person or a partnership is a subsidiary of the Société if the Société holds more than 50 % of the voting

rights attached to all the issued and outstanding shares of the legal person or more than 50 % of the interests in the partnership, or may elect or appoint a majority of the directors.

“7.2. The Société may make by-laws concerning the exercise of its powers and its internal management.

Such by-laws need not be ratified by the shareholder ; however, they must be approved by the Government. The by-laws come into force on the date of their approval or on any later date determined by the Government.”

5. Sections 8 to 15 of the said Act are replaced by the following sections :

“8. The affairs of the Société shall be administered by a board of directors composed of not more than seven members including the chief executive officer, appointed by the Government.

“9. The Government shall designate a chair and a vice-chair of the board of directors from among the members of the board other than the chief executive officer.

“10. The chief executive officer is responsible for the administration and direction of the Société within the scope of its by-laws and policies.

The chair of the board of directors shall call and preside at 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.

“11. 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.

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

“12. Any vacant position on the board of directors, other than that of 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 Société, in the cases and circumstances specified, constitutes a vacancy.

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

The other members of the board of directors 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.

“14. The quorum at meetings of the board is a majority of its members, including the chief executive officer of the Société, except when the chief executive officer is absent or unable to act.

Decisions are made by a majority vote of the members present. In case of a tie vote, the person presiding has a casting vote.

“15. The directors of the Société may, if they all agree, take part in a board meeting using means which allow immediate communication, such as the telephone. They are, in such a case, deemed to have attended the meeting.

“15.1. 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.

“15.2. 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.

“15.3. No document binds the Société 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 Société, by another member of the Société’s personnel.

“15.4. The internal by-laws of the Société may allow, subject to the conditions and on the documents determined therein, 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 15.3.

“15.5. The minutes of a meeting of the board of directors, approved by the board and certified by the chair of the board, the chief executive officer or the secretary, are authentic, as are documents and copies emanating from the Société or forming part of its records where so certified.

“15.6. An intelligible transcription of a decision or other data stored by the Société on a computer or any other computer storage medium is a document of the Société and is proof of its contents where certified by a person referred to in section 15.5.

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

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

“15.8. The expenses of a director shall be borne by the Société if, having prosecuted the director for an act done in the exercise of the director’s functions, the Société loses its case and the court so directs.

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

“15.9. The Société shall fulfil the obligations provided for in sections 15.7 and 15.8 in respect of any person who acted at its request as a director for a legal person of which the Société is a shareholder or creditor.”

6. Division III of the said Act is repealed.

7. The said Act is amended by replacing sections 24 and 25 by the following sections :

“24. The authorized share capital of the Société shall be \$100,000,000, divided into 10,000,000 shares with a par value of \$10.

The shares of the Société shall form part of the domain of the State and shall be allotted to the Minister of Finance.

“25. The Minister of Finance may, with the authorization of the Government, pay to the Société, out of the consolidated revenue fund, the sum of \$100,000,000 for 10,000,000 fully paid shares of its share capital for which certificates shall be issued to the Minister.

The payment may be made in one or more instalments ; if it is made in more than one instalment, each must be authorized by the Government.

“25.1. After a reduction in the share capital of the Société and an equivalent repayment of capital to the Minister of Finance under the Act respecting the reduction of the share capital of legal persons established in the public interest and of their subsidiaries (chapter R-2.2.1), the Minister of Finance may, with the authorization of the Government and on the conditions it determines, subscribe for shares of the Société for an amount that shall not

exceed the amount of the repayment. The shares shall be paid out of the consolidated revenue fund. Certificates shall be issued when the shares are fully paid.

“25.2. The dividends payable by the Société shall be fixed by the Government.”

8. Section 26 of the said Act is amended

(1) by replacing “of a subsidiary contemplated in paragraphs *a* to *c* of section 18, or in which it holds at least ninety per cent of the shares” in the second and third lines of subparagraph *a* of the first paragraph by “any of its subsidiaries” and by replacing “of any such subsidiary” in the fourth and fifth lines by “any of its subsidiaries”;

(2) by replacing subparagraph *b* of the first paragraph by the following subparagraphs:

“(b) make any commitment in relation to the carrying out or financing of an initiative in which the Société or any of its subsidiaries is participating;

“(c) authorize the Minister of Finance to advance to the Société or any of its subsidiaries any amount considered necessary for the fulfilment of their obligations or the pursuit of their mission.”;

(3) by replacing the second paragraph by the following paragraph:

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

9. Section 30 of the said Act is amended by replacing “or to any subsidiary contemplated in paragraphs *a* to *c* of section 18, or to a subsidiary in which it holds at least ninety per cent of the shares, on such conditions as he shall determine,” in the second, third and fourth lines by “, on such conditions as it determines,” and by striking out “or of such subsidiaries” in the sixth line.

10. Section 31 of the said Act is repealed.

11. The heading of Division VI of the said Act is amended by inserting “DEVELOPMENT PLAN,” before “ACCOUNTS”.

12. Section 32 of the said Act is replaced by the following sections:

“32. The Société shall establish, in the form, at the intervals and according to the other terms and conditions determined by the Government, a development plan that includes the operations of its subsidiaries. The plan must be submitted to the Government for approval.

“32.1. The fiscal year of the Société shall end on 31 December.

“32.2. The books and accounts of the Société shall be audited by the Auditor General each year and whenever so ordered by the Government.

The auditor’s report must accompany the Société’s report of operations and financial statements.”

13. Section 33 of the said Act is replaced by the following sections :

“33. The Société shall, not later than 30 April 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 of operations must contain all the information required by the Minister.

“33.1. The Minister shall table the financial statements and report of operations of the Société in the National Assembly within 30 days of receiving them or, if the Assembly is not sitting, within 30 days of resumption.

“33.2. The Société shall communicate to the Minister any information required by the Minister concerning its operations and the operations of its subsidiaries.”

14. Section 42 of the said Act is repealed.

15. The said Act is amended by inserting the following section after section 43:

“43.1. Sections 159 to 162 of the Companies Act (chapter C-38) do not apply to the Société.”

TRANSITIONAL AND FINAL PROVISIONS

16. The provisions of this Act shall take effect, for the application of the reference in section 4 of the Act respecting the James Bay Native Development Corporation (R.S.Q., chapter S-9.1), only on the date or dates to be fixed by the Government.

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