NATIONAL ASSEMBLY

FIRST SESSION THIRTY-EIGHTH LEGISLATURE

Bill 64

(2008, chapter 7)

An Act to amend the Act respecting the Autorité des marchés financiers and other legislative provisions

Introduced 14 December 2007
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EXPLANATORY NOTES

The purpose of this Act is first of all to harmonize the different control measures that may be used by the Autorité des marchés financiers. To that end, the Act respecting the Autorité des marchés financiers is amended to consolidate the provisions concerning receivership that are necessary for the purposes of the different Acts administered by the Authority. Second, this Act introduces new investigation powers, and allows the communication of information by auditors.

This Act further amends the Act respecting the Autorité des marchés financiers to provide for the establishment of the Education and Good Governance Fund, into which part of the proceeds of fines will be paid. The Fund will be dedicated to, among other things, educating consumers of financial products and services, protecting the public and promoting good governance.

This Act also amends different Acts governing the financial sector in order to harmonize the sanction system, in particular as regards fines, administrative penalties and prescription periods.

As well, the Act respecting insurance is amended so that the Authority may exempt a foreign insurer from provisions of that Act if the insurer is not governed by any other insurance legislation in Canada and is issued a licence to act exclusively in surety insurance in Québec.

In addition, the Securities Act is amended to enable the Bureau de décision et de révision en valeurs mobilières to issue orders to rectify a situation, require defaulting persons to comply with the law or deprive such persons of the profit realized as a result of their non-compliance.

This Act also contains consequential amendments to several Acts as well as transitional provisions.

LEGISLATION AMENDED BY THIS ACT:

– Automobile Insurance Act (R.S.Q., chapter A-25);

– Deposit Insurance Act (R.S.Q., chapter A-26);

– Act respecting insurance (R.S.Q., chapter A-32);

– Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2);

– Cities and Towns Act (R.S.Q., chapter C-19);

– Professional Code (R.S.Q., chapter C-26);

_ Municipal Code of Québec (R.S.Q., chapter C-27.1);

– Act respecting financial services cooperatives (R.S.Q., chapter C-67.3);

– Act respecting the distribution of financial products and services (R.S.Q., chapter D-9.2);

– Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (R.S.Q., chapter P-45);

– Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01);

– Securities Act (R.S.Q., chapter V-1.1).

Bill 64

AN ACT TO AMEND THE ACT RESPECTING THE AUTORITÉ DES MARCHÉS FINANCIERS AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 12 of the Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2) is amended by adding the following paragraph:

"The investigation is held *in camera*."

2. The Act is amended by inserting the following sections after section 14:

"**14.1.** The Authority may prohibit a person from communicating information related to an investigation to anyone except the person's lawyer.

"**14.2.** A person called on to testify during an investigation or an examination may be assisted by a lawyer of the person's choice."

3. The Act is amended by inserting the following sections after section 15:

"**15.1.** No chartered accountant, certified management accountant or certified general accountant may refuse to communicate to the Authority or to a person authorized by the Authority any information or document relating to a legal person, partnership or other entity that is under an investigation conducted under section 12 of this Act, section 15 of the Act respecting insurance (chapter A-32), section 312 of the Act respecting trust companies and savings companies (chapter S-29.01) or section 239 of the Securities Act (chapter V-1.1) that was obtained or prepared by the accountant for the purposes of an audit or for the purposes of the examination of interim financial statements of the legal person, partnership or entity, on the grounds that the communication would result in the disclosure of information protected by professional secrecy.

Nor may such an accountant refuse to allow a document described in the first paragraph to be examined, copied or seized by the Authority, or a person authorized to investigate by the Authority, in the course of a search under the Code of Penal Procedure (chapter C-25.1).

This section shall not operate to allow the communication, examination, copying or seizure of a document or information protected by the professional secrecy binding a member of a professional order other than a chartered accountant, a certified management accountant or a certified general accountant.

"**15.2.** Despite any other provision of this Act or of an Act referred to in section 7, information or a document obtained under section 15.1 is confidential and may not be used or communicated otherwise than in accordance with sections 15.3 to 15.7.

The disclosure of such information or such a document, and its use or communication pursuant to any of sections 15.3 to 15.7, may not operate to otherwise affect the right to professional secrecy.

"**15.3.** Information or a document obtained under section 15.1 may only be used within the Authority for the purposes of the investigation or the search.

It may be accessed by persons whose functions within the Authority require that they be informed of the substance of the investigation or the search.

"**15.4.** The Authority may communicate information or a document obtained under section 15.1 to a person authorized to exercise all or part of its powers of investigation or to a person providing expert support in the course of the investigation or the search, but solely for such purposes and only insofar as the Authority has obtained the person's undertaking to uphold the same confidentiality obligations as are incumbent on the Authority and the persons referred to in section 15.3.

"**15.5.** The president and director general of the Authority, a member of the personnel of the Authority, a person authorized to investigate by the Authority or a person providing expert support may not testify in relation to or produce information or a document obtained under section 15.1 except insofar as the disclosure is necessary for the purposes of a proceeding to which the Authority is a party following the investigation or the search.

Information or a document obtained under section 15.1 may not be used or communicated for the purposes of a civil suit.

It may be used or communicated for the purposes of section 19.1.

The first paragraph also applies to persons who no longer exercise the functions described in that paragraph.

"**15.6.** Information or a document obtained under section 15.1 may be communicated by the Authority

(1) to a police force having jurisdiction in Québec, if there are reasonable grounds to believe that the legal person, partnership or other entity has committed or is about to commit a criminal or penal offence against the Authority or one of its employees or under this Act, an Act referred to in section 7 or another securities provision, and the communication is necessary for the investigation of that offence or any prosecution resulting from the investigation;

(2) to a Canadian securities authority, if the communication is needed by that authority in the exercise of its powers of investigation or necessary for any prosecution resulting from the investigation;

(3) to a regulatory body, other than an authority referred to in paragraph 2, which, at the time of the communication, is a signatory to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information published in the Authority's bulletin, if the communication is needed by that regulatory body in the exercise of its powers of investigation or necessary for any prosecution resulting from the investigation; or

(4) to the Ordre des comptables agréés du Québec, within the scope of an agreement under section 22.1 of the Chartered Accountants Act (chapter C-48) or to the Ordre des comptables généraux licenciés du Québec or the Ordre des comptables en management accrédités du Québec, within the scope of an agreement under section 187.10.5 of the Professional Code (chapter C-26).

"**15.7.** Before communicating information or a document in accordance with paragraph 2 or 3 of section 15.6, the Authority must obtain an undertaking from the recipient that it will use the information or document solely for the purposes stated in that paragraph and that it will uphold the same confidentiality obligations with respect to the information or document as are incumbent on the Authority under this section and sections 15.2 to 15.6.

If the Authority is of the opinion that the information or document will not, with a recipient referred to in paragraph 3 of section 15.6, benefit from the same level of protection as is provided by this section and sections 15.2 to 15.6, it must refuse to communicate the information or document."

4. The Act is amended by inserting the following section after section 16:

"**16.1.** The president and director general of the Authority, a member of the personnel of the Authority or any other person who exercised functions in the course of an investigation under section 12 or under an Act referred to in section 7 may not testify in relation to information or a document obtained in the course of the investigation or produce such a document, except insofar as the disclosure is necessary for the purposes of a proceeding to which the Authority is a party.

Information or a document described in the first paragraph may be used or communicated for the purposes of section 19.1.

The first paragraph also applies to persons who no longer exercise the functions described in that paragraph."

5. The Act is amended by inserting the following chapter after section 19:

"**CHAPTER III.1**

"RECEIVERSHIP

"**19.1.** The Superior Court may order the appointment of a receiver if the Authority shows that it has reasonable grounds to believe

(1) that the assets of the person, partnership or other entity are insufficient to meet the obligations of the person, partnership or other entity or were used for a purpose other than the purpose for which they were intended, or that there is an inexplicable deficiency in the assets;

(2) that an officer or director of the person, partnership or other entity has committed embezzlement, a breach of trust or another offence;

(3) that the management exercised by the officers and directors is unacceptable in view of generally accepted principles and could endanger the rights of the investors or members of the person, partnership or other entity or the persons insured by the person, partnership or other entity, or cause the depreciation of securities or titles issued by the person, partnership or other entity; or

(4) that the appointment is necessary to protect the public in the context of an investigation ordered under section 239 of the Securities Act (chapter V-1.1).

The Authority may also request that the Court issue a receivership order if the licence that was issued under the Act respecting insurance (chapter A-32) or the Act respecting trust companies and savings companies (chapter S-29.01) was cancelled or suspended and the causes for the suspension were not remedied within 30 days after the suspension took effect, or if a person is exercising activities without holding such a licence.

The Authority recommends to the Court the names of persons who could act as receiver.

"**19.2.** The receivership order may empower the receiver to

(1) take possession of all the property belonging to the person, partnership or other entity, or held by the person, partnership or other entity for another person, in any place where it is being kept, even if it is in the possession of a bailiff, a creditor or another person claiming it;

(2) exercise, in the case of a natural person, the powers relating to the person's affairs and, in other cases, the powers of the shareholders, associates, directors, officers and members, as applicable, of the person, partnership or other entity;

(3) pursue all or part of the affairs of the person, partnership or other entity or take any conservatory measure related to those affairs;

(4) terminate or cancel any contract to which the person, partnership or other entity is a party;

(5) institute or continue, without continuance of suit, or take part in any proceedings relating to the affairs or property of a person, partnership or other entity to which the person, partnership or other entity was or would have been a party;

(6) investigate the activities of the person, partnership or other entity;

(7) retain the services of accountants, lawyers or other persons to assist in receivership functions;

(8) assign, on behalf of the person, partnership or other entity, all of the property of the person, partnership or other entity for the benefit of the creditors or act as trustee under any federal statute applicable to bankruptcy or insolvency matters;

(9) wind up the person, partnership or other entity in accordance with the Winding-up Act (chapter L-4) or any special provision of an Act referred to in section 7 applicable to the person, partnership or other entity or in the manner determined by the Superior Court; and

(10) exercise any other power or function the Court considers appropriate to enable the receiver to carry out receivership functions.

"**19.3.** Any person exercising powers relating to the affairs or property of the person, partnership or other entity that are covered by the receivership order must immediately cease to do so, to the extent specified in the order, unless otherwise requested by the receiver.

"**19.4.** No judicial proceedings may be brought against the receiver, or any person the receiver designates to assist in the exercise of receivership functions, for an act done in good faith in the exercise of their functions.

"**19.5.** For the purposes of their investigation, the receiver and any person the receiver designates to assist in the investigation have the powers and immunity provided for in the first paragraph of section 6 and sections 9 to 13 and 16 of the Act respecting public inquiry commissions (chapter C-37).

For the purposes of the investigation, they have all the powers of a judge of the Superior Court, except the power to order imprisonment.

"**19.6.** At the request of the Authority, if it is imperative to do so, the Superior Court may hear the motion in the absence of the defendant, on the condition that the Court give the defendant the opportunity to be heard within 10 days.

At the Authority's request, the motion may be heard *in camera*.

"**19.7.** The Superior Court may prohibit a person from communicating any information related to the receivership order or disclosed during the hearing.

"**19.8.** Receivership with respect to the property of a federation of mutual insurance associations governed by the Act respecting insurance (chapter A-32) includes receivership with respect to its investment fund and the guarantee fund related to the federation, and, inversely, receivership with respect to the guarantee fund includes receivership with respect to the property of the federation to which it is related and receivership with respect to its investment fund.

"**19.9.** The directors, officers, personnel members, associates or mandataries of the person, partnership or other entity subject to the receivership order must cooperate with the receiver and provide the receiver with any information related to the affairs and property of the person, partnership or other entity.

"**19.10.** At the request of the Authority, the receiver shall inform the Authority of the receiver's findings, management and investigation conclusions, and communicate any information collected within the scope of the receivership mandate to the Authority.

"**19.11.** At the request of the Authority, the receiver or any interested person, the Superior Court may modify the receiver's powers.

The Court may also terminate the receivership, in particular if it considers

(1) that the receivership may not reasonably be expected to benefit the creditors of the person, partnership or other entity, the persons who have property in the possession or under the control of the person, partnership or other entity, or the investors, members or insured persons of the person, partnership or other entity; or

(2) that the financial situation of the person, partnership or other entity subject to the receivership order will not allow payment of the costs associated with the receivership.

The Court may then order the winding-up of the person, partnership or other entity and appoint a liquidator, or assign, on behalf of the person, partnership or other entity, all of the property of the person, partnership or other entity for the benefit of its creditors and appoint a trustee.

"**19.12.** In the case of an insurance company within the meaning of the Act respecting insurance (chapter A-32), any decision of the Superior Court ordering its winding-up must be made public by means of a notice in the *Gazette officielle du Québec*. Chapter XI of Title IV of that Act applies to the winding-up.

Within 10 days after a decision ordering the winding-up of a federation or a guarantee fund within the meaning of that Act is rendered by the Court, the liquidator shall notify the members of the federation and the guarantee fund related to it.

The decision of the Court to wind up a federation takes effect 60 days after the notice provided for in the first paragraph is filed in the register of sole proprietorships, partnerships and legal persons instituted by section 58 of the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (chapter P-45).

The winding-up of a federation entails that of its investment fund and of the guarantee fund related to the federation, and, inversely, the winding-up of a guarantee fund entails that of the federation to which it is related and of the federation's investment fund.

The liquidator of the federation shall also assume the winding-up of the investment fund and of the guarantee fund according to the same rules. Likewise, the liquidator of a guarantee fund shall also assume the winding-up of the federation related to the guarantee fund and of the federation's investment fund according to the same rules.

"**19.13.** In the case of a security fund within the meaning of the Act respecting financial services cooperatives (chapter C-67.3), the liquidator shall first pay the debts of the fund and the costs of winding it up, and the balance from the winding-up devolves to the federation within the meaning of that Act.

"**19.14.** No appeal lies from an order made under this chapter.

"**19.15.** The receiver's fees and expenses are taken out of the mass of assets, after approval by the Superior Court.

The receiver's fees and expenses are deemed to constitute a prior claim and to have the same rank as expenses incurred in the common interest. The prior claim establishes a real right and confers on the receiver the right to follow the property that is subject to the claim into whosever hands it may be."

6. Section 33 of the Act is amended

(1) by replacing "a person or an organization, from" in the second paragraph by "the Government or one of its departments or bodies, or with a person or an organization in" and by replacing "an Act" in that paragraph by "one or more Acts";

(2) by adding the following paragraph after the second paragraph:

"The agreement may allow the communication of any personal information to facilitate the application of any Act referred to in section 7 or of any similar legislation outside Québec."

7. The Act is amended by inserting the following section after section 33:

"**33.1.** After receiving authorization from the Minister, the Authority may enter into an agreement with a person, partnership or other organization in Québec or, after receiving authorization from the Government, with a person, partnership or other organization outside Québec to examine complaints filed, within the scope of the complaint examination and dispute resolution policy provided for in an Act referred to in section 7 by persons dissatisfied with the complaint examination procedure or its outcome.

Such an agreement may also include provisions allowing the person, partnership or organization, when the person, partnership or organization considers it appropriate, to act as a mediator if the parties agree.

The Authority may also retain the services of any natural person or any group of mediators to act as mediator or, with the authorization of the Government, enter into an agreement for that purpose with a body, partnership or a legal person other than a group of mediators."

8. The Act is amended by inserting the following sections after section 38:

"**38.1.** The Authority shall establish a fund to be known as the Education and Good Governance Fund.

The Fund is to be dedicated to educating consumers of financial products and services, protecting the public, promoting good governance and enhancing knowledge in the fields related to the mission of the Authority, according to the conditions established by the Authority.

"**38.2.** Half the sums collected by the Authority from fines or administrative sanctions or penalties are paid into the Fund. However, the sums collected from sanctions under section 405.1 of the Act respecting insurance (chapter A-32), section 115 of the Act respecting the distribution of financial products and services (chapter D-9.2) and section 349.1 of the Act respecting trust companies and savings companies (chapter S-29.01), except sums collected in a case determined by regulation, are paid in full into the Fund.

The interest and investment income earned on the assets of the Fund, the sums collected under paragraph 9 of section 262.1 of the Securities Act (chapter V-1.1) and any contributions received by the Authority are also paid into the Fund.

"**38.3.** The Authority may also set up a contingency reserve in the pursuit of its mission.

"**38.4.** The sums received by the Authority within the scope of the Acts it administers are deposited as and when they are received in an authorized bank or foreign bank listed in Schedule I, II or III to the Bank Act (Statutes of Canada, 1991, chapter 46) or in a financial services cooperative within the meaning of the Act respecting financial services cooperatives (chapter C-67.3).

"**38.5.** The sums received by the Authority form part of its revenue, except contributions to an insurance fund or to the Fonds d'indemnisation des services financiers established by section 258 of the Act respecting the distribution of financial products and services (chapter D-9.2) and premiums paid into a deposit insurance fund maintained under section 52 of the Deposit Insurance Act (chapter A-26). Those revenues are used to pay expenditures related to the administration of the Acts referred to in section 7.

For the purposes of this Act, the sums paid into the Fund or the contingency reserve provided for in sections 38.1 and 38.3 are considered to be expenditures.

"**38.6.** The Authority may, in accordance with its investment policy, invest any part of its revenue that is not needed to pay its expenditures, as well as the sums making up the Fund and the contingency reserve provided for in sections 38.1 and 38.3 of this Act, the deposit insurance fund maintained under section 52 of the Deposit Insurance Act (chapter A-26) and the Fonds d'indemnisation des services financiers established by section 258 of the Act respecting the distribution of financial products and services (chapter D-9.2)

(1) in securities issued or guaranteed by the Government of Canada, the Gouvernement du Québec, or the government of a Canadian province or territory;

(2) in the form of a deposit with financial institutions authorized to operate in Québec, or in certificates, notes or other securities issued or guaranteed by those financial institutions; or

(3) in the form of a deposit with the Caisse de dépôt et placement du Québec, to be administered by the Caisse in accordance with the investment policy determined by the Authority."

9. Section 39 of the Act is amended by replacing the second paragraph by the following paragraph:

"The Authority may not accept any gift or legacy. Nor may it receive any financial contribution except

(1) a financial contribution from the Gouvernement du Québec or from another government in Canada, a department or agency of such a government, a municipality or an agency of a municipality in order to participate in projects related to the Authority's mission within the framework of an agreement under section 33 between that government, department, municipality or agency and the Authority; or

(2) a financial contribution referred to in the second paragraph of section 38.2."

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

"**43.1.** The Authority shall provide the Minister with any information and any other report required by the Minister concerning its activities."

11. Section 93 of the Act is amended by replacing subparagraph 4 of the first paragraph by the following subparagraph:

"(4) an order under section 262.1 of that Act;".

AUTOMOBILE INSURANCE ACT

12. Section 180 of the Automobile Insurance Act (R.S.Q., chapter A-25) is amended by replacing "three copies" in the first paragraph by "one copy".

13. Section 182 of the Act is amended by replacing "Before the last day of March" in the second paragraph by "Not later than 30 June".

14. The Act is amended by inserting the following sections after section 193:

"**193.1.** Penal proceedings for an offence under Title VII may be instituted by the Autorité des marchés financiers.

"**193.2.** The fine imposed by the court is remitted to the Autorité des marchés financiers if it has taken charge of the prosecution.

"**193.3.** Penal proceedings for an offence under any of sections 177 to 181 of Title VII are prescribed three years from the date the investigation record relating to the offence was opened. However, no proceedings may be instituted if more than five years have elapsed since the date of the offence.

The certificate of the secretary of the Autorité des marchés financiers indicating the date on which the investigation record was opened constitutes conclusive proof of the date, in the absence of any evidence to the contrary."

15. Section 204 of the Act is amended by inserting "and sections 193.1 to 193.3" after "Titles VI and VII".

DEPOSIT INSURANCE ACT

16. Section 48 of the Deposit Insurance Act (R.S.Q., chapter A-26) is replaced by the following sections:

"**48.** Every person convicted of an offence under this Act or the regulations is liable to a minimum fine of $1,000 for a natural person and $3,000 for a legal person, double the profit realized or one fifth of the sums entrusted to or collected by the person, whichever is the greatest amount.

However, in the case of an offence under subparagraph *a*, *b* or *d* of the first paragraph of section 46, the minimum fine is $5,000, double the profit realized or one fifth of the sums entrusted to or collected by the person, whichever is the greatest amount.

In all cases, the maximum fine is $50,000 for a natural person and $200,000 for a legal person, four times the profit realized or half the sums entrusted to or collected by the person, whichever is the greatest amount.

In the case of a second or subsequent conviction, the minimum and maximum fines are doubled.

"**48.1.** Penal proceedings may be instituted by the Authority for an offence under this Act.

"**48.2.** The fine imposed by the court is remitted to the Authority if it has taken charge of the prosecution.

"**48.3.** Penal proceedings for an offence under section 46 are prescribed three years from the date the investigation record relating to the offence was opened. However, no proceedings may be instituted if more than five years have elapsed since the date of the offence.

The certificate of the secretary of the Authority indicating the date on which the investigation record was opened constitutes conclusive proof of the date, in the absence of any evidence to the contrary."

17. Section 56 of the Act is replaced by the following section:

"**56.** The Authority shall invest the sums making up the deposit insurance fund in accordance with section 38.6 of the Act respecting the Autorité des marchés financiers (chapter A-33.2)."

ACT RESPECTING INSURANCE

18. Section 33.1 of the Act respecting insurance (R.S.Q., chapter A-32) is amended by inserting the following paragraph after the first paragraph:

"An insurance company may receive deposits of money from a minor or a person who does not have legal capacity to contract, without the authorization or intervention of any other person."

19. Section 35.2 of the Act is amended

(1) by replacing "of the Minister" in the first paragraph by "of the Authority";

(2) by replacing "The Minister may also request any document or information the Minister considers" in the second paragraph by "The Authority may also request any document or information it considers";

(3) by striking out the third paragraph;

(4) by replacing "The Minister may, if the Minister deems it advisable and after obtaining the advice of the Authority," in the fourth paragraph by "If the Authority considers it advisable, it may".

20. Section 36 of the Act is amended by replacing "the Minister is substituted" by "the Authority is substituted".

21. Section 37 of the Act is amended

(1) by replacing "to the Minister" in the first paragraph by "to the Authority";

(2) by striking out the third paragraph.

22. Section 38 of the Act is amended by replacing "to the Minister" in the first paragraph by "to the Authority".

23. Section 93.121 of the Act is amended by replacing ", sections 93.92, 93.94 to 93.102, 93.107 to 93.113 and 298.1, and sections 379 to 386, in which any reference to section 378 shall be read as a reference to section 93.192" by "and sections 93.92, 93.94 to 93.102, 93.107 to 93.113 and 298.1".

24. The Act is amended by inserting the following section after section 93.159.1:

"**93.159.2.** A federation must adhere to sound commercial practices. These practices include properly informing persons being offered a product or service and acting fairly in dealings with them."

25. Section 93.160 of the Act is amended by replacing "the provisional administrator of a member for the purposes of Chapter X of Title IV" in paragraph 9 by "receiver in accordance with Chapter III.1 of Title I of the Act respecting the Autorité des marchés financiers (chapter A-33.2)".

26. The heading of Division XII of Chapter III.2 of Title III of the Act is amended by striking out "PROVISIONAL ADMINISTRATION AND".

27. Subdivision 1 of Division XII of Chapter III.2 of Title III of the Act, comprising sections 93.192 to 93.198, is repealed.

28. The heading of subdivision 2 of Division XII of Chapter III.2 of Title III of the Act is repealed.

29. Section 93.218 of the Act is amended by replacing ", sections 93.21, 93.22, 93.25 to 93.27.4, 93.35 to 93.37, 93.92 to 93.98, 93.108 to 93.113 and 93.156 to 93.159 and sections 379 to 386, in which every reference to section 378 shall be read as a reference to section 93.269" by "and sections 93.21, 93.22, 93.25 to 93.27.4, 93.35 to 93.37, 93.92 to 93.98, 93.108 to 93.113 and 93.156 to 93.159".

30. Division XI of Chapter III.3 of Title III of the Act, comprising sections 93.269 to 93.273, is repealed.

31. Section 205 of the Act is amended by inserting the following paragraph after the first paragraph:

"However, when an insurer that is not constituted under an Act applicable in Canada, does not hold a licence under an Act of the Parliament of Canada relating to insurance and intends to act only in surety insurance in Québec, requests an exemption from the Authority under section 211.1, the request must be accompanied by any document or information proving that the insurer qualifies for the exemption. The Authority may also require the insurer to provide any other document or information."

32. Section 211 of the Act is amended

(1) by replacing "confirmée" in paragraph *c* in the French text by "conformée";

(2) by replacing paragraph *d* by the following paragraphs:

"(*d*) adheres to sound and prudent management practices;

"(*d*.1) adheres to sound commercial practices;".

33. The Act is amended by inserting the following section after section 211:

"**211.1.** When issuing a licence to an insurer described in the second paragraph of section 205, the Authority may, on the conditions it determines, exempt the insurer from any provision of this Act, except section 201, if the Authority considers that such an exemption does not undermine the protection of the insured.

A decision under the first paragraph must be published in the Authority's bulletin and in the *Gazette officielle du Québec*."

34. The heading of Chapter I.1 of Title IV of the Act is amended by adding "AND COMMERCIAL PRACTICES".

35. The Act is amended by inserting the following section after section 222.1:

"**222.2.** Every insurer and every holding company controlled by an insurer must adhere to sound commercial practices. These practices include properly informing persons being offered a product or service and acting fairly in dealings with them."

36. Section 285.31 of the Act is amended by striking out "each year, within two months of the closing date of its fiscal year or" and "other" in the first paragraph.

37. Section 285.33 of the Act is amended by striking out the last sentence of the third paragraph.

38. Section 285.35 of the Act is repealed.

39. Section 325.0.2 of the Act is amended

(1) by replacing subparagraphs 3 and 4 of the first paragraph by the following subparagraphs:

"(3) any other sound and prudent management practices, in particular as regards investments;

"(4) any commercial practice referred to in section 222.2;

"(5) any requirement under section 285.29.";

(2) by adding the following sentence at the end of the second paragraph: "They may pertain to the carrying out, interpretation or application of the subject matter of any of subparagraphs 1 to 5 of the first paragraph whether or not it is dealt with in a regulation made under this Act."

40. Section 325.0.3 of the Act is amended by replacing "of sections 325.5 and 378 to 389" by "of section 325.5".

41. Section 325.1 of the Act is amended

(1) by replacing "in subparagraphs 1 to 4" in subparagraph 1 of the first paragraph by "in subparagraphs 1 to 3";

(2) by inserting the following subparagraphs after subparagraph 1 of the first paragraph:

"(1.1) is not adhering to the commercial practices referred to in section 222.2;

"(1.2) is not complying with the requirements under section 285.29;".

42. Section 325.1.1 of the Act is amended by inserting ", is not adhering to the commercial practices referred to in section 222.2 or is not complying with the requirements under section 285.29" after "sound and prudent management practices".

43. Section 358 of the Act is amended by replacing subparagraph *g* of the first paragraph by the following subparagraph:

"(*g*) which does not, in the opinion of the Authority, adhere to sound and prudent management practices, adhere to the commercial practices referred to in section 222.2 or comply with the requirements under section 285.29;".

44. Chapter X of Title IV of the Act, comprising sections 378 to 389, is repealed.

45. The Act is amended by inserting the following section after section 391:

"**391.1.** This chapter applies with the necessary modifications to a winding-up carried out within the scope of a receivership ordered under Chapter III.1 of Title I of the Act respecting the Autorité des marchés financiers (chapter A-33.2), to the extent that it is not inconsistent with this Act.

The winding-up must, as soon as practicable, be made public by means of a notice in the *Gazette officielle du Québec*."

46. Section 405.1 of the Act is amended by striking out the last paragraph.

47. The Act is amended by inserting the following section after section 405.3:

"**405.4.** For the purposes of section 405.1, the Government may determine by regulation the amounts of, and the conditions for imposing, an administrative sanction for failure to file documents as required under this Act or a regulation under this Act."

48. Section 408 of the Act is amended

(1) by replacing the first paragraph by the following paragraphs:

"**408.** Every person convicted of an offence under a provision of this Act or the regulations is liable to a minimum fine of $1,000 for a natural person and $3,000 for a legal person, double the profit realized or one fifth of the sums entrusted to or collected by the person, whichever is the greatest amount.

However, in the case of an offence under paragraph *b*, *c*, *e* or *u* of section 406, the minimum fine is $5,000, double the profit realized or one fifth of the sums entrusted to or collected by the person, whichever is the greatest amount.

In all cases, the maximum fine is $50,000 for a natural person and $200,000 for a legal person, four times the profit realized or half the sums entrusted to or collected by the person, whichever is the greatest amount.

In the case of a second or subsequent conviction, the minimum and maximum fines are doubled.";

(2) by replacing "$50 000" in the second paragraph by "$200,000".

49. The Act is amended by inserting the following sections after section 408:

"**408.1.** Penal proceedings may be instituted by the Authority for an offence under this Act.

"**408.2.** The fine imposed by the court is remitted to the Authority if it has taken charge of the prosecution.

"**408.3.** Penal proceedings for an offence under any of sections 406 to 406.2 are prescribed three years from the date the investigation record relating to the offence was opened. However, no proceedings may be instituted if more than five years have elapsed since the date of the offence.

The certificate of the secretary of the Authority indicating the date on which the investigation record was opened constitutes conclusive proof of the date, in the absence of any evidence to the contrary."

50. Section 420.1 of the Act is amended by inserting the following subparagraph after subparagraph 7 of the first paragraph:

"(7.1) prescribe standards respecting the commercial practices of an insurer, of a holding company controlled by an insurer and of a federation of mutual insurance associations;".

CITIES AND TOWNS ACT

51. Section 465.8 of the Cities and Towns Act (R.S.Q., chapter C-19) is amended by replacing "The enterprise registrar" in the first paragraph by "The Autorité des marchés financiers".

52. Section 465.9 of the Act is amended

(1) by replacing "the enterprise registrar" in the first paragraph by "the Autorité des marchés financiers";

(2) by replacing the first sentence of the second paragraph by the following sentence: "The Autorité des marchés financiers shall send the corrected letters patent to the enterprise registrar who shall deposit them in the register."

PROFESSIONAL CODE

53. The Professional Code (R.S.Q., chapter C-26) is amended by inserting the following sections after section 187.10.4, enacted by chapter 3 of chapter 42 of the statutes of 2007:

"**187.10.5.** The Bureau of the Ordre professionnel des comptables généraux licenciés du Québec and the Bureau of the Ordre professionnel des comptables en management accrédités du Québec may enter into an agreement with the following bodies exercising complementary functions with respect to the protection of the public: the Autorité des marchés financiers and the Canadian Public Accountability Board incorporated under the Canada Business Corporations Act (Revised Statutes of Canada, 1970, chapter C-32). The term of the agreement may not exceed five years.

The agreement may, to the extent required for its implementation, derogate from the Acts and regulations governing the Ordre professionnel des comptables généraux licenciés du Québec or the Ordre professionnel des comptables en management accrédités du Québec that pertain to the confidentiality of the information it holds. The agreement must define the nature and scope of the information the professional order and the body may exchange concerning inspection, discipline or any inquiry conducted by the body or the professional order regarding a professional or a professional partnership or company within which members of the professional order practise, specify the purpose of the exchange of information and the conditions of confidentiality to be observed, including those pertaining to professional secrecy, and determine how information so obtained may be used.

The information that may be communicated under the agreement must be necessary for the exercise of the functions of the party receiving it.

The information communicated under the agreement by the Ordre professionnel des comptables généraux licenciés du Québec or the Ordre professionnel des comptables en management accrédités du Québec must be treated by the body receiving it with as much confidentiality as if it had been obtained or was held by the professional order in the exercise of the powers granted by this Code. That obligation does not, however, restrict the powers granted by an Act of Québec to the Autorité des marchés financiers as regards the communication of information.

The agreement is published in the *Gazette officielle du Québec*. On the expiry of at least 45 days after the publication, it is submitted to the Government for approval, with or without amendments. The agreement comes into force after approval, on the date it is published again in the *Gazette officielle du Québec* or on any later date stated in the agreement.

The Ordre professionnel des comptables généraux licenciés du Québec and the Ordre professionnel des comptables en management accrédités du Québec shall report on the implementation of the agreements entered into in the report they must produce under section 104.

"**187.10.6.** As long as an agreement under section 187.10.5 is in force, members of the Ordre professionnel des comptables généraux licenciés du Québec or the Ordre professionnel des comptables en management accrédités du Québec are authorized, despite being bound by professional secrecy, to provide, to the extent specified in the agreement entered into by their professional order, information relating to their professional activities or clients to a representative of the body acting within the scope of its activities in Québec.

The information communicated under the agreement by a member of the Ordre professionnel des comptables généraux licenciés du Québec or the Ordre professionnel des comptables en management accrédités du Québec must be treated by the body receiving it with as much confidentiality as if it had been obtained or was held by the professional order in the exercise of the powers granted by this Code. That obligation does not, however, restrict the powers granted by an Act of Québec to the Autorité des marchés financiers as regards the communication of information.

"**187.10.7.** No proceedings may be instituted against a body having entered into an agreement under section 187.10.5, or any of its directors or representatives, by reason of any act performed in good faith in the exercise of their functions in Québec on the basis of information obtained in accordance with the agreement, unless an Act of Québec concerning the body provides otherwise."

MUNICIPAL CODE OF QUÉBEC

54. Article 711.10 of the Municipal Code of Québec (R.S.Q., chapter C-27.1) is amended by replacing the first sentence of the second paragraph by the following sentence: "The Autorité des marchés financiers shall send the corrected letters patent to the enterprise registrar who shall deposit them in the register."

ACT RESPECTING FINANCIAL SERVICES COOPERATIVES

55. The Act respecting financial services cooperatives (R.S.Q., chapter C-67.3) is amended by inserting the following section after section 66:

"**66.1.** Every financial services cooperative must adhere to sound commercial practices. These practices include properly informing persons being offered a product or service and acting fairly in dealings with them."

56. Section 131.2 of the Act is amended by striking out "each year, within two months of the closing date of its fiscal year or" and "other" in the first paragraph.

57. Section 131.4 of the Act is amended by striking out the last sentence of the fourth paragraph.

58. Section 131.6 of the Act is repealed.

59. Section 227 of the Act is amended by striking out "or paragraph 2 of section 581" in paragraph 9.

60. Section 328 of the Act is amended by striking out "or paragraph 2 of section 581" in paragraph 7.

61. Section 361 of the Act is amended by striking out "or paragraph 2 of section 581" in subparagraph 7 of the first paragraph.

62. The Act is amended by inserting the following section after section 372:

"**372.1.** The federation must adopt standards applicable to the credit unions with respect to the commercial practices referred to in section 66.1 and the requirements under section 131.1."

63. Section 377 of the Act is amended by replacing "practise sound and prudent management" in the first paragraph by "adhere to sound and prudent management practices or sound commercial practices".

64. The heading of Division IV of Chapter XIII of the Act is replaced by the following heading:

"REPORTING AND INSPECTION".

65. Sections 534 to 547 of the Act are repealed.

66. Section 565 of the Act is amended

(1) by adding the following subparagraphs after subparagraph 3 of the first paragraph:

"(4) any commercial practice referred to in section 66.1;

"(5) any requirement under section 131.1.";

(2) by adding the following sentence at the end of the second paragraph: "They may pertain to the carrying out, interpretation or application of the subject matter of any of subparagraphs 1 to 5 of the first paragraph whether or not it is dealt with in a regulation made under this Act."

67. Section 566 of the Act is replaced by the following section:

"**566.** For the purposes of section 573, a financial services cooperative that fails to comply with the guidelines referred to in section 565 is presumed to have failed to adhere to sound and prudent management practices as provided for in subparagraphs 1 to 3 of the first paragraph of that section, or to have failed to adhere to the commercial practices referred to in section 66.1 or comply with the requirements under section 131.1, as the case may be."

68. Section 567 of the Act is amended by inserting "or the commercial practices referred to in section 66.1, is not complying with the requirements under section 131.1," after "sound and prudent management practices" in the first paragraph.

69. Section 568 of the Act is amended by inserting "or the commercial practices referred to in section 66.1, or does not comply with the requirements under section 131.1" after "sound and prudent management practices".

70. Sections 574 to 583 of the Act are repealed.

71. Section 599 of the Act is amended by inserting the following subparagraph after subparagraph 11 of the first paragraph:

"(11.1) prescribe standards respecting the commercial practices of a financial services cooperative;".

72. Section 612 of the Act is replaced by the following section:

"**612.** A person convicted of an offence under section 602, 604, 606, 607, 610 or 611 or under a provision of a regulation the violation of which constitutes an offence under subparagraph 15 of the first paragraph of section 599 is liable to a fine of not less than $1,000 nor more than $25,000 in the case of a natural person and not less than $3,000 nor more than $200,000 in the case of a legal person.

In the case of an offence under section 603, 605, 608 or 609, the minimum fine is $5,000 and the maximum fine is $200,000."

73. The Act is amended by inserting the following sections after section 613:

"**613.1.** Penal proceedings may be instituted by the Authority for an offence under any of sections 602 to 611.

"**613.2.** The fine imposed by the court is remitted to the Authority if it has taken charge of the prosecution.

"**613.3.** Penal proceedings for an offence under any of sections 602 to 611 or under a provision of a regulation the violation of which constitutes an offence under subparagraph 15 of the first paragraph of section 599 are prescribed three years from the date the investigation record relating to the offence was opened. However, no proceedings may be instituted if more than five years have elapsed since the date of the offence.

The certificate of the secretary of the Authority indicating the date on which the investigation record was opened constitutes conclusive proof of the date, in the absence of any evidence to the contrary."

ACT RESPECTING THE DISTRIBUTION OF FINANCIAL PRODUCTS AND SERVICES

74. Section 103.1 of the Act respecting the distribution of financial products and services (R.S.Q., chapter D-9.2) is amended by striking out "each year, within two months after the closing date of its fiscal year or" and "other" in the first paragraph.

75. Section 103.2 of the Act is amended by striking out the last sentence of the third paragraph.

76. The Act is amended by inserting the following section after section 115:

"**115.1.** For the purposes of section 115, the Authority may determine by regulation the amounts of, and conditions for imposing, a penalty for failure to file documents as required under this Act or a regulation under this Act."

77. Section 119 of the Act is amended by adding the following paragraph:

"Sections 326 to 328 and 330 of the Securities Act (chapter V-1.1) apply with the necessary modifications to such an appeal."

78. Sections 189 and 189.1 of the Act are repealed.

79. Section 194 of the Act is amended

(1) by adding "and the draft regulation made by a Chamber under the fourth paragraph of section 312" at the end of the first paragraph;

(2) by adding ", and stating the fact that any interested person may, during that time, submit comments to the person designated in the notice" at the end of the second paragraph;

(3) by replacing "all the regulations approved by the Government in the information bulletin" in the third paragraph by "in the information bulletin all the regulations approved by the Minister or the Government under this Act".

80. Section 217 of the Act is replaced by the following section:

"**217.** A regulation made by the Authority under this Act or a regulation made by a Chamber under the fourth paragraph of section 312 must be submitted to the Minister for approval with or without amendment.

However, a regulation made by the Authority under any of sections 115.1 and 198, paragraph 2 of section 203, sections 225, 226, 228, 274.1, 278, 423 and 443, paragraph 6 of section 449 and section 452 of this Act must be submitted to the Government for approval with or without amendment.

A draft of a regulation referred to in the first paragraph may not be submitted for approval and the regulation may not be made before 30 days have elapsed since the publication of the draft. The regulation comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. Sections 4, 8, 11 and 17 to 19 of the Regulations Act (chapter R-18.1) do not apply to the regulation.

The Minister may make a regulation referred to in the first paragraph if the Authority or a Chamber fails to make such a regulation within the time determined by the Minister.

The Government may make a regulation referred to in the second paragraph if the Authority fails to make such a regulation within the time determined by the Government."

81. Section 248 of the Act is repealed.

82. Section 274.1 of the Act is replaced by the following sections:

"**274.1.** An indemnity committee is established within the Authority.

The function of the committee is to rule on the eligibility of claims submitted to the Authority and decide the amount of the indemnities to be paid, in accordance with the rules determined by regulation. To that end, the committee may require any necessary document or information. Any document or information provided for that purpose remains the property of the Authority.

The committee may rule on the eligibility of a claim whether or not the perpetrator of the offence has been prosecuted or convicted.

"**274.2.** The committee is composed of three members appointed for a three-year term by the Minister, who designates a chair from among them.

At the end of their term, the committee members remain in office until they are reappointed or replaced.

A member who is absent or unable to act is replaced by a person appointed by the Minister for as long as the committee member is absent or unable to act.

Any vacancy on the committee is filled by the Minister.

"**274.3.** The salary, fees or allowances, as the case may be, of each committee member are determined by the Minister and paid by the Authority out of the Fonds d'indemnisation des services financiers.

"**274.4.** Committee members may not be prosecuted for acts performed in good faith in the performance of their duties.

"**274.5.** Committee decisions are made by a majority vote of the members.

"**274.6.** Not later than 31 July each year, the committee must report to the Minister on its activities for the previous fiscal year. The committee report is included in the activity report of the Authority."

83. Section 276 of the Act is replaced by the following section:

"**276.** The Authority shall compensate a victim in accordance with the decision of the indemnity committee."

84. Section 279 of the Act is replaced by the following section:

"**279.** The Authority invests the sums making up the Fonds d'indemnisation des services financiers in accordance with section 38.6 of the Act respecting the Autorité des marchés financiers (chapter A-33.2)."

85. Section 309 of the Act is amended by striking out the third paragraph.

86. Section 310 of the Act is amended by striking out the second paragraph.

87. Section 310.1 of the Act is repealed.

88. Section 313 of the Act is amended by striking out the second paragraph.

89. Section 315 of the Act is amended by striking out the third paragraph.

90. Section 320 of the Act is amended by striking out the third paragraph.

91. Section 354 of the Act is amended by adding the following paragraph at the end:

"A complaint filed against a person referred to in the first or second paragraph who exercises a function provided for in this Act, including a syndic, a syndic's assistant, a person conducting an inquiry for a syndic or a member of a discipline committee, for acts engaged in in the exercise of that function is inadmissible."

92. Section 485 of the Act is replaced by the following section:

"**485.** A natural person convicted of an offence under any of sections 461, 462, 465 to 467 and 469 to 473 is liable to a minimum fine of $1,000, double the profit realized or one fifth of the sums entrusted to or collected by the person, whichever is the greatest amount.

In the case of an offence under section 468, the minimum fine is $5,000.

In all cases, the maximum fine is $50,000, four times the profit realized or half the sums entrusted to or collected by the person, whichever is the greatest amount.

In the case of a second or subsequent conviction, the minimum and maximum fines are doubled."

93. Section 486 of the Act is amended

(1) by replacing "fine of not less than $2,000 and not more than $20,000 and, for every subsequent offence, to a fine of not less than $4,000 and not more than $50,000" by "minimum fine of $2,000, double the profit realized or one fifth of the sums entrusted to or collected by the person, whichever is the greatest amount. The maximum fine is $150,000, four times the profit realized or half the sums entrusted to or collected by the person, whichever is the greatest amount";

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

"In the case of a second or subsequent conviction, the minimum and maximum fines are doubled."

94. Section 487 of the Act is replaced by the following section:

"**487.** A legal person convicted of an offence under any of sections 461, 462, 465 to 467 and 469 to 473 is liable to a minimum fine of $3,000, double the profit realized or one fifth of the sums entrusted to or collected by the person, whichever is the greatest amount. In the case of an offence under section 468, the minimum fine is $5,000.

The maximum fine is $200,000, four times the profit realized or half the sums entrusted to or collected by the person, whichever is the greatest amount.

In the case of a second or subsequent conviction, the minimum and maximum fines are doubled."

95. Section 488 of the Act is amended

(1) by replacing "fine of not less than $4,000 and not more than $40,000 and, for every subsequent offence, to a fine of not less than $8,000 and not more than $80,000" by "minimum fine of $4,000, double the profit realized or one fifth of the sums entrusted to or collected by the person, whichever is the greatest amount. The maximum fine is $200,000, four times the profit realized or half the sums entrusted to or collected by the person, whichever is the greatest amount.";

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

"In the case of a second or subsequent conviction, the minimum and maximum fines are doubled."

96. Section 489 of the Act is amended

(1) by replacing "fine of not less than $1,000 and not more than $25,000 and, for every subsequent offence, to a fine of not less than $2,000 and not more than $50,000" by "minimum fine of $3,000, double the profit realized or one fifth of the sums entrusted to or collected by the person, whichever is the greatest amount. The maximum fine is $200,000, four times the profit realized or half the sums entrusted to or collected by the person, whichever is the greatest amount.";

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

"In the case of a second or subsequent conviction, the minimum and maximum fines are doubled."

97. Section 490 of the Act is amended

(1) by replacing "fine of not less than $10,000 and not more than $50,000 and, for every subsequent offence, to a fine of not less than $20,000 and not more than $100,000" by "minimum fine of $10,000, double the profit realized or one fifth of the sums entrusted to or collected by the person, whichever is the greatest amount. The maximum fine is $200,000, four times the profit realized or half the sums entrusted to or collected by the person, whichever is the greatest amount.";

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

"In the case of a second or subsequent conviction, the minimum and maximum fines are doubled."

98. Section 494 of the Act is amended by replacing "one year" in the first paragraph by "three years".

ACT RESPECTING THE LEGAL PUBLICITY OF SOLE PROPRIETORSHIPS, PARTNERSHIPS AND LEGAL PERSONS

99. Section 531 of the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (R.S.Q., chapter P-45) is amended by striking out ", 93.269 to 93.273" wherever it appears.

ACT RESPECTING TRUST COMPANIES AND SAVINGS COMPANIES

100. Section 6 of the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01) is amended by striking out the definition of "capital base".

101. Section 104 of the Act is amended by replacing "287 or in sections 293, 299, 300 and 301" in subparagraph 8 of the first paragraph by "287 or in sections 293 and 299".

102. Section 111 of the Act is amended by replacing "where the effect of the payment of that amount has been to increase the debt ratio of the company to a higher limit than the limit authorized by this Act" in the second paragraph by "if, by paying the sum, the company contravenes the capital adequacy requirements of a government regulation or of a guideline issued by the Authority under section 314.1".

103. Section 153.2 of the Act is amended by striking out "each year, within two months of the closing date of its fiscal year or" and "other" in the first paragraph.

104. Section 153.4 of the Act is amended by striking out the last sentence of the third paragraph.

105. Section 153.6 of the Act is repealed.

106. Section 169 of the Act is amended by striking out "the renewal of its licence or, where such is the case, for" and ", if it expires after 30 June," in paragraph 3.

107. The Act is amended by inserting the following sections after section 177:

"**177.1.** Any company may receive deposits of money from a minor or a person who does not have legal capacity to contract, without the authorization or intervention of any other person.

"**177.2.** Every company must adhere to sound and prudent management practices.

"**177.3.** Every company must adhere to sound commercial practices. These practices include properly informing persons being offered a product or service and acting fairly in dealings with them."

108. The heading of Division IV of Chapter XV of the Act is amended by striking out "BASE".

109. Section 195 of the Act is replaced by the following section:

"**195.** A company must, in view of its operations, maintain an adequate level of capital and liquid assets to ensure sound and prudent management.

If the Authority considers it advisable, it may give written directions in that regard. The company shall comply with the directions within the time determined by the Authority."

110. Sections 197 to 199 of the Act are repealed.

111. Section 200 of the Act is amended by adding the following paragraph at the end:

"It must also adhere to sound and prudent management practices."

112. Section 203 of the Act is repealed.

113. Section 204 of the Act is amended by striking out "of securities contemplated in subparagraphs 2, 3, 5 and 6 of the first paragraph of section 203 nor" in the second paragraph.

114. Section 205 of the Act is amended by replacing "For the purposes of section 203, no" by "No".

115. Sections 207 and 209 to 211 of the Act are repealed.

116. Section 212 of the Act is amended by striking out the third paragraph.

117. Sections 213 and 214 of the Act are repealed.

118. Section 227 of the Act is amended, in the first paragraph,

(1) by replacing subparagraph 3 by the following subparagraphs:

"(3) adheres to sound and prudent management practices;

"(3.1) adheres to sound commercial practices;";

(2) by replacing "has a sufficient capital base, in the opinion of the Authority, to provide adequate protection of the depositors or to operate efficiently" in subparagraph 4 by "in the opinion of the Authority, has an adequate level of capital to provide effective protection for depositors or to ensure sound and prudent management".

119. Section 240 of the Act is amended

(1) by replacing "shall be valid until 30 June following its date of issue. It may be renewed each year upon application and on the conditions prescribed by this Act and the regulations of the Government thereunder" in the first paragraph by "is issued for an undetermined period";

(2) by replacing "The licence may be issued for a period of less than one year and" in the second paragraph by "It may".

120. Section 241 of the Act is amended by striking out subparagraph 1 of the first paragraph.

121. Section 242 of the Act is amended by replacing the second paragraph by the following paragraph:

"As well, the Authority must publish annually a list of the companies that hold a licence and the address of their head office or principal place of business in the *Gazette officielle du Québec*."

122. Section 244 of the Act is amended

(1) by replacing paragraph 2 by the following paragraph:

"(2) whose level of capital, in the opinion of the Authority, is not adequate to provide effective protection for depositors or to ensure sound and prudent management;";

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

"(3) which, in the opinion of the Authority, fails to adhere to sound and prudent management practices, to comply with the requirements under section 153.1 or to adhere to the commercial practices referred to in section 177.3;".

123. Section 250 of the Act is amended by replacing "or cancelled or has not been renewed" by "or cancelled" and ", cancellation or non-renewal" by "or cancellation".

124. Section 251 of the Act is amended by adding the following paragraph at the end:

"The same applies to a decision made under Chapter XVI.1."

125. Section 261 of the Act is amended by replacing "293, 299, 300 and 301" in paragraph 1 by "293 and 299".

126. Section 299 of the Act is amended by adding the following sentence at the end: "The statements must be presented on the forms provided by the Authority."

127. Sections 300 to 302 of the Act are repealed.

128. Section 314.1 of the Act is replaced by the following section:

"**314.1.** The Authority may, after consulting with the Minister, issue guidelines applicable to companies pertaining to

(1) the adequacy of its capital;

(2) the adequacy of its liquid assets;

(3) any other sound and prudent management practices;

(4) any requirement under section 153.1;

(5) any commercial practice referred to in section 177.3.

The guidelines are not regulations. They may pertain to the carrying out, interpretation or application of the subject matter of any of subparagraphs 1 to 5 of the first paragraph whether or not it is dealt with in a regulation made under this Act."

129. Section 314.2 of the Act is replaced by the following section:

"**314.2.** For the purposes of section 328, a company that fails to comply with the guidelines referred to in section 314.1 is presumed to have failed to adhere to sound and prudent management practices as provided for in subparagraphs 1 to 3 of the second paragraph of that section, or to have failed to comply with the requirements under section 153.1 or adhere to the commercial practices referred to in section 177.3, as the case may be."

130. Division XII of Chapter XVI of the Act, comprising sections 337 to 349, is repealed.

131. The Act is amended by inserting the following chapter after section 349:

"**CHAPTER XVI.1**

"ADMINISTRATIVE SANCTIONS

"**349.1.** Following the establishment of facts brought to the attention of the Authority showing that a person or partnership has failed to comply with a provision of this Act or the regulations, the Authority may impose an administrative sanction on that person or partnership and collect payment of the sanction.

The amount of the sanction must be proportionate to the seriousness of the violation and may in no case exceed $1,000,000.

"**349.2.** In addition to imposing an administrative sanction, the Authority may require the person or partnership to repay the costs incurred in connection with the inspection or inquiry which established proof of the facts showing non-compliance with the provision concerned, according to the tariff established by regulation.

"**349.3.** For the purposes of section 349.1, the Government may determine, by regulation, the amounts of, and conditions for, imposing an administrative sanction for failure to file documents as required under this Act or a regulation under this Act."

132. Section 350 of the Act is amended by replacing ", by regulation, may for the purposes of this Act determine which assets or liabilities may be added to or subtracted from the shareholders' equity to determine the capital base of a company, what assets the capital base is composed of and their relative proportions, the conditions and restrictions attached to different assets and liabilities and to the other components of the capital base, and" by "may, by regulation,".

133. Section 351 of the Act is amended

(1) by replacing ", licences and licence renewals" in paragraph 1 by "and licences";

(2) by replacing "standards of adequacy of the capital base and liquidity of a company" in paragraph 17 by "standards with respect to the adequacy of a company's capital and liquid assets and to its commercial practices";

(3) by striking out paragraphs 18, 19 and 22;

(4) by striking out "and renewal" in paragraph 24;

(5) by inserting the following paragraph after paragraph 31:

"(31.1) a tariff of costs for the purposes of section 349.2;".

134. Section 363 of the Act is replaced by the following section:

"**363.** A person convicted of an offence under any of sections 352 to 355, 357 to 359 and 362 is liable to a fine of not less than $1,000 nor more than $25,000 in the case of a natural person, or a fine of not less than $3,000 nor more than $200,000 in the case of a legal person. However, the persons referred to in section 355 are liable to the fines prescribed for the legal person, whether or not it has been convicted.

In the case of an offence under section 356, 360 or 361, the minimum fine is $5,000.

In the case of a second or subsequent conviction, the minimum and maximum fines are doubled."

135. The Act is amended by inserting the following sections after section 367:

"**367.1.** Penal proceedings may be instituted by the Authority for an offence under this Act.

"**367.2.** The fine imposed by the court is remitted to the Authority if it has taken charge of the prosecution.

"**367.3.** Penal proceedings for an offence under any of sections 352 to 362 are prescribed three years from the date the investigation record relating to the offence was opened. However, no proceedings may be instituted if more than five years have elapsed since the date of the offence.

The certificate of the secretary of the Authority indicating the date on which the investigation record was opened constitutes conclusive proof of the date, in the absence of any evidence to the contrary."

136. Section 385 of the Act is repealed.

SECURITIES ACT

137. Section 1 of the Securities Act (R.S.Q., chapter V-1.1) is amended by replacing "an organized market" in subparagraph 8 of the first paragraph by "a published market".

138. Section 67 of the Act is amended by replacing "an organized market" in the first paragraph by "a published market".

139. Section 68 of the Act is amended by replacing subparagraph 4 of the second paragraph by the following subparagraph:

"(4) its securities have been exchanged for those of another issuer or those held by security-holders of another issuer pursuant to an agreement, merger, amalgamation or reorganization or a similar operation involving at least one reporting issuer;".

140. Section 94 of the Act is amended by replacing "a senior executive of the former issuer is deemed to have been an insider of the other reporting issuer for the previous 6 months or for such shorter period as he has been a senior executive" in the first paragraph by "the senior executives and the directors of the former issuer are deemed to have been insiders of the other reporting issuer for the previous 6 months or for such shorter period as they have been senior executives or directors", and by inserting "and the directors" after "senior executives" in the second paragraph.

141. Section 95 of the Act is amended by inserting "and directors" after "senior executives" in the first paragraph.

142. Section 98 of the Act is replaced by the following section:

"**98.** Senior executives and directors deemed to be insiders under section 94 or 95 shall, within the time fixed by regulation, file the report that sections 96 and 97 would have required for the period covered by the presumption."

143. Section 100 of the Act is amended

(1) by inserting "and directors" after "senior executives";

(2) by replacing "of a mutual fund or of an unincorporated mutual fund" by "of a mutual fund".

144. Sections 122 and 126 of the Act are amended by replacing "an organized market" wherever it appears by "a published market".

145. Section 168.1.2 of the Act is amended by striking out "each year, within two months of the end of its fiscal year or" and "other" in the first paragraph.

146. Section 168.1.3 of the Act is amended by striking out the last sentence of the third paragraph.

147. Section 195 of the Act is amended by inserting "or the Bureau de décision et de révision en valeurs mobilières" after "the Authority" in paragraphs 1 and 2.

148. Section 202 of the Act is amended by replacing the first paragraph by the following paragraph:

"**202.** Unless otherwise specially provided, every person that contravenes a provision of this Act commits an offence and is liable to a minimum fine of $2,000 in the case of a natural person and $3,000 in the case of a legal person or double the profit realized, whichever is the greatest amount. The maximum fine is $150,000 in the case of a natural person and $200,000 in the case of a legal person, or four times the profit realized, whichever is the greater amount."

149. Section 204 of the Act is amended by replacing the first paragraph by the following paragraph:

"**204.** In the case of an offence under any of sections 187 to 190, the minimum fine is $5,000, double the profit eventually realized or one fifth of the sums invested or, in the case of derivatives trading, the sums allocated to the transaction or series of transactions, whichever is the greatest amount. The maximum fine is $5,000,000, four times the profit eventually realized or half the sums invested or, in the case of derivatives trading, the sums allocated to the transaction or series of transactions, whichever is the greatest amount."

150. The Act is amended by inserting the following section after section 204:

"**204.1.** In the case of a distribution without a prospectus in contravention of section 11 or an offence under section 195.2, 196 or 197, the minimum fine is $5,000, double the profit realized or one fifth of the sums invested, whichever is the greatest amount. The maximum fine is $5,000,000, four times the profit realized or half the sums invested, whichever is the greatest amount."

151. Section 208.1 of the Act is amended by replacing "in addition to" by "regardless of".

152. Section 211 of the Act is amended by replacing "sections 11, 12, 25, 26, 73, 74, 94 to 103, 148, 149, 163.1, 187 to 190 and 192 to 201" by "sections 11, 12, 25 to 27, 29, 64, 67, 73, 75 to 78, 80 to 82.1, 89.3, 96 to 98, 102 to 103.1, 108, 109.2 to 109.5, 112, 113, 115, 148, 149, 151.4, 158 to 168.1.3, 169, 187 to 190, 192 to 197, 199 to 203 and 207".

153. Section 218 of the Act is amended by replacing "or directors, or from the dealer under contract to the issuer or holder whose securities were distributed" by "or directors, the dealer under contract to the issuer or holder whose securities were distributed and any person who is required to sign an attestation in the prospectus, in accordance with the conditions prescribed by regulation".

154. Section 223 of the Act is amended by adding ", and any person who is required to sign an attestation in the take-over bid circular, in accordance with the conditions prescribed by regulation" at the end.

155. Sections 225.28 and 225.29 of the Act, enacted by section 11 of chapter 15 of the statutes of 2007, are again amended by replacing "an organized market" wherever it appears by "a published market".

156. Section 237 of the Act is amended by inserting the following subparagraphs after subparagraph 2 of the first paragraph:

"(2.1) an authorized stock exchange or one of its participants;

"(2.2) an authorized securities clearing house or a person that holds an account in a clearing house;

"(2.3) a person that operates an authorized electronic securities trading system or is registered as a dealer or one of the dealer's participants;

"(2.4) an authorized securities information processor or one of its users;

"(2.5) an authorized matching service utility or one of its users;".

157. Section 239 of the Act is amended

(1) by replacing "entered into pursuant to section 295.1" in paragraph 4 by "entered into under the second paragraph of section 33 of the Act respecting the Autorité des marchés financiers (chapter A-33.2)";

(2) by replacing paragraph 5 by the following paragraph:

"(5) to ascertain whether it would be advisable to request the Superior Court to order the appointment of a receiver in accordance with section 19.1 of the Act respecting the Autorité des marchés financiers."

158. Division II of Chapter II of Title IX of the Act, comprising sections 257 to 262, is repealed.

159. The Act is amended by inserting the following division after section 262:

"**DIVISION II.1**

"PUBLIC INTEREST MEASURES AND REMEDIAL POWERS

"**262.1.** Following a failure to comply with a requirement under securities legislation, the Authority may request the Bureau de décision et de révision en valeurs mobilières to issue one or more of the following orders

against any person in order to remedy the situation or to deprive a person of the profit realized as a result of the non-compliance:

(1) an order requiring the person to comply with

(*a*) any provision of this Act or the regulations or any other Act or regulation governing securities;

(*b*) any decision of the Authority under this Act or the regulations;

(*c*) any regulation, rule or policy of a self-regulating organization or securities exchange, or any decision or order rendered by the Bureau on the basis of such a regulation, rule or policy;

(2) an order requiring the person to submit to a review by the Authority of the person's practices and procedures and to institute such changes as may be directed by the Authority;

(3) an order rescinding any transaction entered into by the person relating to trading in securities, and directing the person to repay to a security holder any part of the money paid by the security holder for securities;

(4) an order requiring the person to issue, purchase, exchange or dispose of securities;

(5) an order prohibiting the voting or exercise of any other right attaching to securities by the person;

(6) an order requiring the person to produce financial statements in the form required by securities legislation, or an accounting in such other form as may be determined by the Bureau;

(7) an order directing the person to hold a shareholders' meeting;

(8) an order directing rectification of the registers or other records of the person;

(9) an order requiring the person to disgorge to the Authority amounts obtained as a result of the non-compliance."

160. Section 273.1 of the Act is amended by striking out the fourth paragraph.

161. Section 274.1 of the Act is amended by inserting "or Title V" after "Title III".

162. Sections 276.4, 295.1, 295.2 and 297.6 of the Act are repealed.

163. Section 303 of the Act is repealed.

164. Section 318.1 of the Act is amended by replacing "under section 295.1" by "under the second paragraph of section 33 of the Act respecting the Autorité des marchés financiers (chapter A-33.2)".

165. The Act is amended by inserting the following section after section 318.1:

"**318.2.** Despite the first paragraph of section 318, the Authority may make a decision under the third paragraph of section 265 or section 271 or 272.2 based on a fact referred to in any of paragraphs 1 to 5, without allowing the person to present observations or submit documents to complete the file, unless they are in regard to the following facts:

(1) the person was convicted of an indictable offence related to a securities operation or activity or to conduct involving securities;

(2) the person was convicted of an offence under this Act or a regulation under this Act;

(3) the person was convicted of an offence under the securities legislation of another Canadian province or territory or another State;

(4) the person is the subject of a decision by a securities authority of another Canadian province or territory or of another State imposing obligations or sanctions on the person, which may also include conditions or restrictions;

(5) the person has reached an agreement with a securities authority of another Canadian province or territory or of another State to comply with obligations or sanctions, which may also include conditions or restrictions."

166. Section 323.8 of the Act is amended by replacing "under section 295.1" by "under the second paragraph of section 33 of the Act respecting the Autorité des marchés financiers (chapter A-33.2)".

167. The Act is amended by inserting the following section after section 323.8:

"**323.8.1.** Despite sections 323 to 323.8, the Bureau may make a decision under section 152, paragraph 1, 2 or 3 of section 262.1, section 264, the first or second paragraph of section 265 or section 266, 270 or 273.3, based on a fact referred to in any of paragraphs 1 to 5 of section 318.2, without hearing the insider again, unless it is in regard to one of those facts."

168. Sections 330.1, 330.5 and 330.6 of the Act are repealed.

169. Section 331 of the Act is amended by inserting "or Title V" after "Title III" in subparagraph 11.1 of the first paragraph.

170. Section 331.1 of the Act is amended by inserting the following paragraphs after paragraph 19.2:

"(19.3) prescribe the obligations of reporting issuers and their signing officers with respect to information release controls and procedures and to internal control of financial information, in particular concerning the design, implementation and maintenance of such controls, the assessment of their effectiveness and the disclosure of assessment results, their documentation, the monitoring of their modifications, any fraud related to them, and audit of internal control assessment;

"(19.4) establish rules relating to attestations that reporting issuers and their signing officers must provide concerning the internal control of financial information and information release controls and procedures;".

TRANSITIONAL AND FINAL PROVISIONS

171. Sections 7 to 10 of the Regulation under the Act respecting trust companies and savings companies, enacted by Order in Council 719-88 dated 18 May 1988 (1988, G.O. 2, 2124), are repealed.

172. Section 271.13 of the Securities Regulation, enacted by Order in Council 660-83 dated 30 March 1983 (1983, G.O. 2, 1269), is amended by replacing "Division II of Chapter II or Chapter III of Title III of the Act for failure to file a disclosed document" by "Title III of the Act for failure to file a periodic disclosure document".

173. The balance of the contingency reserve established by section 276.4 of the Securities Act (R.S.Q., chapter V-1.1) is paid into the contingency reserve provided for in section 38.3 of the Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2).

The balance of the assistance fund dedicated to developing, providing and delivering various services in the fields related to its mission and educating investors, established by Order in Council 1133-2002 dated 25 September 2002, as well as the sums collected since 1 February 2004 by the Autorité des marchés financiers under section 405.1 of the Act respecting insurance (R.S.Q., chapter A-32) are paid into the fund established under section 38.1 of the Act respecting the Autorité des marchés financiers.

Order in Council 1133-2002 dated 25 September 2002 is repealed.

174. A provisional administration instituted under the Act respecting insurance, the Act respecting financial services cooperatives (R.S.Q., chapter C-67.3), the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01) and the Securities Act before 27 May 2008 is governed by the law as it stands on the day it is instituted.

175. A licence issued under Division I of Chapter XVI of the Act respecting trust companies and savings companies, in force on 30 June 2008, is deemed to have been issued without an expiry date, unless it was issued for a period of less than one year or its period of validity was reduced to less than one year after it was issued.

176. A company governed by the Act respecting trust companies and savings companies whose application for a licence renewal was denied before 28 May 2008 continues to be prohibited from carrying on business in Québec except to wind up its business, and the non-renewal of the licence continues to have no effect on the company's obligations.

177. This Act comes into force on the date it is assented to, except section 8 insofar as it enacts sections 38.1 to 38.3 of the Act respecting the Autorité des marchés financiers, sections 46, 106 and 119 to 121, paragraphs 1 and 4 of section 133, section 162 insofar as it repeals section 276.4 of the Securities Act and sections 173, 175 and 176, which come into force on 1 July 2008, and sections 47, 76, 82, 83, 109 to 118, 122, 128 and 129, section 131 insofar as it enacts section 349.3, paragraph 3 of section 133, section 161, section 162 insofar as it repeals section 297.6, and sections 169 and 171, which come into force on the date or dates to be set by the Government.