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chapter A-32.1

INSURERS ACT

LE PARLEMENT DU QUÉBEC DÉCRÈTE CE QUI SUIT :

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TITLE I

PURPOSE, DEFINITIONS AND OTHER INTRODUCTORY PROVISIONS

2018, c. 23, s. 3.

1. This Act applies to the supervision and control of insurance business and of the activities of authorized insurers, in particular, their insurer activities and their other financial institution activities.

In addition, it establishes or supplements, through appropriate specific rules, the constitution, operation, dissolution and liquidation regime applicable to Québec insurers regulated by its Title III and, if they have an insurance fund, to that fund, as well as that applicable to federations of mutual companies.

2018, c. 23, s. 3.

2. Insurer activities consist in undertaking to make a payment under an insurance contract if a risk covered by the insurance occurs.

Insurer activities include acting as surety or, for the purposes of a life or fixed-term annuity contract, as debtor.

2018, c. 23, s. 3.

3. For the purposes of this Act, financial institution activities are, in addition to insurer activities and credit, the activities that a legal person may not carry on without being an authorized financial institution or a bank within the meaning of the Bank Act (S.C. 1991, c. 46).

2018, c. 23, s. 3.

4. The following are authorized financial institutions:

(1) insurers authorized to carry on insurer activities under this Act;

(2) deposit institutions authorized under the Deposit Institutions and Deposit Protection Act (chapter I-13.2.2);

(3) financial services cooperatives within the meaning of the Act respecting financial services cooperatives (chapter C-67.3);

(4) trust companies authorized under the Trust Companies and Savings Companies Act (chapter S-29.02); and

(5) legal persons registered as dealers or advisers under the Derivatives Act (chapter I-14.01) or the Securities Act (chapter V-1.1) or registered as investment fund managers under the latter Act.

2018, c. 23, s. 3.

5. For the purposes of this Act, an insurance contract is said to be underwritten by an insurer if it is a party to the contract as insurer.

A suretyship contract is said to be underwritten by an insurer if it is a party to the contract as surety.

2018, c. 23, s. 3.

6. The following are Québec insurers:

(1) insurance companies and associations regulated by Title III and any legal person that the law considers to be such a company;

(2) if they establish an insurance fund, self-regulatory organizations governed by an Act of Québec, including the professional orders; and

(3) legal persons constituted under a private Act of Québec that authorizes them to carry on insurer activities;

(4) *(paragraph repealed).*

2018, c. 23, s. 3; 2024, c. 15, s. 1.

7. A group of parties that join together, under the contract by which the reciprocal union is constituted, in order to pool sums enabling them to be reciprocally bound by damage insurance contracts is a reciprocal union.

2018, c. 23, s. 3; 2021, c. 34, s. 5; 2024, c. 15, s. 2.

8. In the case of a legal person or a reciprocal union constituted under the laws of a jurisdiction other than Québec, the organ on which the powers usually conferred on a board of directors are conferred is considered such a board. In that context, "director" means a member of that organ.

A legal person constituted under the laws of a jurisdiction other than Québec that, in a manner similar to that of a business corporation, confers voting rights otherwise than on a one member, one vote basis is considered a business corporation. If such rights are conferred through securities that it issues, the securities are considered shares.

2018, c. 23, s. 3; 2024, c. 15, s. 3.

9. For the purposes of this Act, "holder of control" of the following groups means,

(1) in the case of a business corporation, the holder of shares conferring more than 50% of the voting rights or whoever can otherwise choose the majority of its directors;

(2) in the case of a federation of mutual companies, its member mutual companies;

(3) in the case of a partnership that is a limited partnership, the general partner, and in the case of any other partnership, the partner who can determine the outcome of collective decisions, if applicable;

(4) in the case of a trust, the trustee;

(5) in the case of co-owners in indivision, the manager or, in the absence of a manager, if one of the co-owners can determine the outcome of collective decisions made by majority vote, that co-owner; and

(6) in the case of the legal person constituted by the Act respecting Promutuel réassurance (1985, chapter 62), amended by chapter 86 of the statutes of 1995 and by chapter 23 of the statutes of 2018, the federation that appoints its board of directors.

No one is the holder of control of a financial services cooperative, of a mutual company or of any other group that confers voting rights on a one member, one vote basis.

2018, c. 23, s. 3.

10. Each of the following is the holder of a significant interest in a business corporation:

(1) the holder of a significant interest in the decisions of the corporation, that is, whoever can exercise 10% or more of the voting rights attached to the shares issued by the corporation; and

(2) the holder of a significant interest in the corporation's equity capital, that is, the holder of shares issued by the corporation representing 10% or more of its equity capital.

2018, c. 23, s. 3.

11. Control, in cases which allow it, also results from participation in the concerted and ongoing exercise of rights within the group controlled or of powers over that group, even though none of the participants in the exercise of such rights or powers would alone be the holder of control; in such cases, each of the participants is deemed to be the holder of control.

The same is true for a significant interest in the decisions of a business corporation; each of the participants in the concerted and ongoing exercise of the voting rights attached to the shares issued by the corporation is deemed to be a holder of a significant interest.

2018, c. 23, s. 3.

12. The following are deemed to participate in the concerted and ongoing exercise of their rights or powers and, consequently, to be the holders of control of a group:

(1) the participants that are controlled by a same holder of control as well as that holder, if the holder is a participant;

(2) the trustees of a same trust;

(3) the member mutual companies of a same federation; and

(4) the natural persons between whom family ties are considered to exist.

The participants described in the first paragraph are deemed to participate in the concerted and ongoing exercise of their voting rights or of their rights in shares with a view to being the holders of a significant interest in a business corporation.

The presumptions under the first and second paragraphs regarding member mutual companies of a same federation also apply to the other member mutual companies of that federation that neither have rights within or powers over the group.

2018, c. 23, s. 3.

13. The holder of control of a group is also, if that group is the holder of control of another group, the holder of control of that other group.

2018, c. 23, s. 3.

14. For the purposes of this Act, the holder of control of a group is deemed

(1) to hold any significant interest that is held by the group;

(2) to hold such rights to acquire shares or other securities as are held by the group itself; and

(3) to exercise the voting rights that the group may exercise.

2018, c. 23, s. 3.

15. For the purposes of this Act, a security entitlement to a share or to another security is considered such a share or security, unless the holder of the security entitlement is a securities intermediary acting in that capacity.

"Securities intermediary" and "security entitlement" have the meaning assigned by the Act respecting the transfer of securities and the establishment of security entitlements (chapter T-11.002).

2018, c. 23, s. 3.

16. Groups that have a common holder of control are affiliates, as is the holder of control, unless the latter is a natural person.

If one group among an aggregate of affiliated groups is an authorized insurer, the aggregate of affiliated groups is a financial group.

2018, c. 23, s. 3.

17. Economic ties are considered to exist only between

(1) natural persons between whom family ties are considered to exist;

(2) the holder of a significant interest in a business corporation and the business corporation itself;

(3) a partner in a partnership and the partnership;

(4) each of the partners in a same partnership;

(5) a legal person and its directors and officers; and

(6) a person and a succession or trust in which the person has a substantial interest similar to that of a beneficiary or in respect of which the person serves as liquidator of the succession, trustee or other administrator of the property of others, mandatary or depositary.

Economic ties include any other ties between persons or groups that the Autorité des marchés financiers may determine by regulation.

2018, c. 23, s. 3.

18. Family ties are considered to exist only between a person and

(1) his or her spouse;

(2) his or her children or spouse's children; and

(3) his or her parents or spouse's parents.

2018, c. 23, s. 3.

19. The contributed capital of a legal person is composed of the consideration paid to the legal person for,

(1) in the case of a business corporation, the shares of its share capital;

(2) in the case of a joint-stock company, the shares of its capital stock; and

(3) in the case of a cooperative, a financial services cooperative or a mutual company, the shares of its capital stock or share capital.

The contributed capital of a partnership is composed,

(1) in the case of a general partnership, of the contribution made by each partner to obtain a share in the partnership; and

(2) in the case of a limited partnership, of the contribution made by the special partners to the partnership's common stock.

2018, c. 23, s. 3.

TITLE II

SUPERVISION AND CONTROL OF INSURER ACTIVITIES AND OTHER INSURANCE BUSINESS

2018, c. 23, s. 3.

CHAPTER I

SUPERVISION AND CONTROL OF INSURANCE BUSINESS

2018, c. 23, s. 3.

20. The Autorité des marchés financiers (the Authority) supervises and controls insurance business in Québec.

2018, c. 23, s. 3.

CHAPTER II

AUTHORIZATION OF THE AUTHORITY

2018, c. 23, s. 3.

DIVISION I

OBLIGATION TO BE AUTHORIZED

2018, c. 23, s. 3.

21. Unless otherwise provided by this Act, the Authority's authorization is required to carry on insurer activities in Québec if such activities constitute the operation of an enterprise, regardless of any other activities that may be carried on by the operator.

2018, c. 23, s. 3; 2021, c. 34, s. 5; 2024, c. 15, s. 4.

22. With regard to non-marine insurance, an insurer carries on its insurer activities in Québec if it underwrites a contract governed by an Act of Québec or if its offer or invitation is made with a view to underwriting such a contract, unless that Act applies only by reason of the parties' consent.

With regard to marine insurance contracts or suretyship contracts, the insurer carries on its insurer activities in Québec if its offer or invitation is accepted in Québec by a person resident there, or if it signs or delivers a contract in Québec.

2018, c. 23, s. 3.

23. Only Québec insurers and legal persons or reciprocal unions constituted under the laws of a jurisdiction other than Québec that have the capacity to carry on insurer activities may obtain the Authority's authorization, if they have at least $5,000,000 in capital.

Despite the first paragraph, a self-regulatory organization or a reciprocal union need not have such capital.

2018, c. 23, s. 3; 2024, c. 15, s. 5.

24. The authorization granted by the Authority is for the activities included in the classes established by regulation of the Authority that the Authority specifies.

2018, c. 23, s. 3.

25. Lloyd's may obtain the Authority's authorization; for the purposes of this Act, it is considered a legal person constituted under the laws of a jurisdiction other than Québec.

The attorney designated by Lloyd's under section 26 of the Act respecting the legal publicity of enterprises (chapter P-44.1) may, in that capacity and in his or her own name, despite any inconsistent provision of an Act of Québec, exercise before the courts, as plaintiff or defendant, the rights of Lloyd's members that have underwritten an insurance contract.

2018, c. 23, s. 3.

26. *(Repealed).*

2018, c. 23, s. 3; 2024, c. 15, s. 6.

27. The following do not require the Authority's authorization under this Act:

(1) a professional syndicate which, in order to carry on insurer activities, establishes and administers a special fund in accordance with subparagraph 1 of the second paragraph of section 9 of the Professional Syndicates Act (chapter S-40);

(2) anyone who, in terms of insurance, enters only into contracts of additional warranty under which it gives an undertaking to another party to directly or indirectly assume any portion of the cost of repairing or replacing property or any part of the property in case of defect;

(3) an insurer that, in Québec, delivers only damage insurance contracts through a firm acting through a special broker governed by the Act respecting the distribution of financial products and services (chapter D-9.2), if the insurer has no establishment in Québec and does not publicize its business in Québec; and

(4) an employer that establishes an uninsured employee benefit plan for the benefit of its employees;

(5) *(subparagraph repealed).*

An uninsured employee benefit plan is a plan that is accessory to a contract of employment and by which an employer undertakes to pay a benefit to an employee or a beneficiary designated by the employee if a risk of the nature of risks covered by insurance of persons occurs.

2018, c. 23, s. 3; 2021, c. 34, s. 6; 2024, c. 15, s. 7.

28. The following persons are not required to obtain the Authority's authorization to carry on insurer activities:

(1) a person constituted under the laws of a jurisdiction other than Québec who carries on only reinsurer activities in Québec; and

(2) a person who, without being a Québec insurer, carries on insurer activities in Québec only as surety or as debtor of an annuity.

Such an authorization may nevertheless be granted to a legal person that applies for it, as if it were required.

2018, c. 23, s. 3.

29. The provisions of this Title, other than Chapter I and this chapter, apply to a self-regulatory organization and an authorized reciprocal union only to the extent provided for in Chapter XIII of this Title or Chapter XVI of Title III.

2018, c. 23, s. 3.

DIVISION II

APPLICATION FOR AUTHORIZATION

2018, c. 23, s. 3.

30. A legal person or association that intends to carry on insurer activities, when such activities require the Authority's authorization, is responsible for filing an application with the Authority for its authorization.

An applicant must, in its application, show that it is able to comply with the applicable provisions of this Act.

The applicant must also include the following information:

(1) its name, the name it intends to use in Québec if different, the address of its head office and, if the latter is not in Québec, the proposed address of its principal establishment in Québec, if any;

(2) the classes of activities for which it is applying for the Authority's authorization and, if applicable, the conditions and restrictions it wishes to have attached to the authorization;

(3) the name and address of the actuary and the auditor charged with the functions provided for in Chapter VII;

(4) except if the applicant is a self-regulatory organization or an association,

(a) a description of its financial structure; and

(b) if applicable, the name and address of each holder of a significant interest in its decisions, as well as a description of that interest;

(5) if the applicant is not a Québec insurer, the name of the regulatory authority of its domicile (home regulator);

(6) if applicable, the name and address of the attorney designated under section 26 of the Act respecting the legal publicity of enterprises (chapter P-44.1);

(7) if it belongs to a financial group, the name under which the group is known, if any, and, if applicable, the names of the other financial institutions that belong to the group; and

(8) the other information prescribed by regulation of the Authority.

2018, c. 23, s. 3; 2024, c. 15, s. 8.

31. The home regulator of an insurer is the competent authority with respect to the insurer's insurer activities, under the laws of the jurisdiction whose legislation governs the insurer's constituting act.

However, in the case of a reciprocal union constituted under the laws of a jurisdiction other than Québec, the union's home regulator is the Authority, unless the contract by which the union is constituted designates another competent authority as such and the latter authority has issued a licence to the union or granted it an authorization similar to that granted by the Authority under this Act.

2018, c. 23, s. 3; 2021, c. 34, s. 7; 2024, c. 15, s. 9.

32. For the purpose of applying subparagraph 1 of the third paragraph of section 30 to a reciprocal union, the name of the representative referred to in subparagraph 3 of the first paragraph of section 188 must be specified in the application, in addition to that of the union; the address of the reciprocal union's principal establishment may be the representative's address.

2018, c. 23, s. 3; 2024, c. 15, s. 10.

33. If the applicant is already an authorized insurer, only the following information is required:

(1) the information required under subparagraph 2 of the third paragraph of section 30;

(2) if applicable, the information required under subparagraph 6 of that paragraph; and

(3) the information required to update the other information contained in the register provided for in section 176.

2018, c. 23, s. 3; 2024, c. 15, s. 11.

34. The following must be filed with the application for authorization:

(1) a list of the applicant's directors and officers, including their names and domiciliary addresses;

(2) the résumé of each director and officer;

(3) a copy of the applicant's constituting act and by-laws or of any other document established for the same purposes;

(4) if applicable, a copy of the applicant's audited financial statements for its most recent fiscal year ended and the financial statements it is required to file with its home regulator, to the extent and in the manner that may be determined by regulation of the Authority;

(5) a three-year business plan that specifies, in particular, the means by which the applicant will deal with clients for the insurance contracts it intends to underwrite, the activities it will carry on and, if applicable, those it carries on or will carry on outside Québec;

(6) the other documents prescribed by regulation of the Authority; and

(7) the fees and charges prescribed by government regulation.

2018, c. 23, s. 3.

35. If the applicant is a self-regulatory organization, the documents required under paragraphs 1, 2 and 3 of section 34 need not be filed with the application. However, the following documents must be filed with it:

(1) the organization's plan of operation in relation to its insurer activities;

(2) the act that imposes on persons who are governed by the organization, certain classes of such persons and, if applicable, such persons who carry on their activities within a partnership or company the obligation to be a party to an insurance contract underwritten by the organization;

(3) if applicable, the contract entered into with the manager to whom the organization has entrusted the day-to-day operation of its insurance fund; and

(4) the résumé of each member of the professional liability insurance decision-making committee referred to in section 361.

If the applicant is a professional order, the act described in subparagraph 2 of the first paragraph may be a draft regulation pending approval under the Professional Code (chapter C-26) and the partnership or company referred to in that subparagraph is the organization referred to in Chapter VI.3 of that Code.

2018, c. 23, s. 3; 2022, c. 26, s. 9; 2024, c. 31, s. 38.

36. If the applicant is a reciprocal union, a list of its members must also be filed with the application.

2018, c. 23, s. 3; 2021, c. 34, s. 8; 2024, c. 15, s. 12.

37. If the applicant is already an authorized insurer, the only documents required are those referred to in paragraphs 4 and, if applicable, 5 and 6 of section 34. If the authorized insurer is a self-regulatory organization, the financial statements described in paragraph 4 of section 34 are those of its insurance fund, and the required documents must be filed together with the act described in subparagraph 2 of the first paragraph of section 35.

2018, c. 23, s. 3; 2024, c. 15, s. 13.

38. If an insurer is constituted under the laws of a jurisdiction other than Québec and requests that the authorization it is applying for be restricted to reinsurer activities, the Authority may exempt the insurer from providing the information and documents required under sections 30 and 34 that the Authority determines.

2018, c. 23, s. 3.

DIVISION III

GRANTING OF AUTHORIZATION

2018, c. 23, s. 3.

39. The Authority grants its authorization to an applicant that meets the following conditions:

(1) the applicant has provided the information and documents required under this Act and has paid the fees and charges payable; and

(2) in the Authority's opinion,

(a) the applicant has shown that it is able to comply with the applicable provisions of this Act,

(b) there are no serious reasons to believe that a holder of a significant interest in the applicant's decisions is likely to interfere with the applicant's adherence to sound commercial practices or sound and prudent management practices, and

(c) the applicant's name is not misleading.

2018, c. 23, s. 3.

40. The Authority may, in granting its authorization, require any undertaking it considers necessary to ensure compliance with this Act.

The Authority may also, in granting its authorization, attach the conditions and restrictions it considers necessary for that purpose.

2018, c. 23, s. 3.

41. The authorization granted by the Authority to a self-regulatory organization is limited to professional liability insurance covering persons governed by the organization at the time of the injurious act or omission, unless the Authority authorizes the organization, on its application, to provide the following services:

(1) insuring those persons against misappropriations of funds required to be deposited in a trust account, committed without complicity on the insured's part, and for the legal costs arising out of such misappropriations; or

(2) insuring a partnership or a company against liability the partnership or company may incur as a result of professional misconduct by persons who are authorized to engage in their professional activities within the partnership or company and who are governed by the organization.

If the self-regulatory organization is a professional order, the partnership or company referred to in subparagraph 2 of the first paragraph is the organization referred to in Chapter VI.3 of the Professional Code (chapter C-26).

2018, c. 23, s. 3; 2022, c. 26, s. 10; 2024, c. 31, s. 39.

42. The authorization granted by the Authority to a reciprocal union allows it only to insure its members.

2018, c. 23, s. 3; 2021, c. 34, s. 9; 2024, c. 15, s. 14.

43. The authorization granted by the Authority entails, for the authorized insurer, the obligation to maintain its existence until the full and final revocation of that authorization.

2018, c. 23, s. 3; 2024, c. 15, s. 15.

44. The Authority notifies the applicant in writing of its decision.

Before refusing to grant its authorization or granting an authorization with conditions or restrictions attached, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the applicant in writing and grant the latter at least 10 days to submit observations, unless the conditions or restrictions are attached at the applicant's request.

2018, c. 23, s. 3.

CHAPTER III

APPLICATION OF CERTAIN PROVISIONS TO FINANCIAL GROUPS AND THIRD PERSONS ACTING ON BEHALF OF AN AUTHORIZED INSURER

2018, c. 23, s. 3; 2021, c. 34, s. 10.

45. The obligations of an authorized insurer under the provisions of this Act remain unchanged by the mere fact that the insurer entrusts a third person to carry on any part of an activity governed by those provisions.

2018, c. 23, s. 3.

46. An authorized insurer must ensure that any group in respect of which the insurer is the holder of control complies with the prohibitions imposed on the insurer by this Act.

A prohibition imposed on such an insurer applies to the groups in respect of which it is the holder of control not only when each of them is acting alone, but also when the acts or omissions of all or some of them would have contravened that prohibition had they been done or made by only one of them.

This section does not prohibit a group in respect of which an authorized insurer is the holder of control from carrying on activities the group is permitted to carry on by the Act governing it even though the insurer is not permitted to carry on those activities, provided the group is a financial institution or a federation of mutual companies subject to the supervision of a regulatory authority.

2018, c. 23, s. 3.

47. An authorized insurer is liable for failures to comply with this Act by a group in respect of which the insurer is the holder of control or by whoever is the holder of control of the group and performs an obligation of the insurer on the insurer's behalf, as if those failures to comply were the insurer's own.

2018, c. 23, s. 3.

48. The Authority's inspection functions and powers, provided for by the Act respecting the regulation of the financial sector (chapter E-6.1), that may be exercised in relation to an authorized insurer extend to any affiliated group if the person authorized to inspect the insurer considers it necessary to inspect the group in order to complete the verification of the insurer's compliance with this Act, even though the group does not carry on activities governed by an Act referred to in section 7 of that Act.

2018, c. 23, s. 3.

49. The Authority may prohibit that an authorized insurer's obligations under this Act be performed by a third person on the insurer's behalf if, in the Authority's opinion, such performance would render the application of this Act difficult or ineffective.

Before rendering its decision, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the insurer in writing and grant the latter at least 15 days to submit observations.

2018, c. 23, s. 3.

CHAPTER IV

COMMERCIAL PRACTICES

2018, c. 23, s. 3.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 3.

50. An authorized insurer must adhere to sound commercial practices.

In carrying on its financial institution activities, such practices include providing fair treatment to its clientele, in particular by

(1) providing appropriate information;

(2) adopting a policy for processing complaints filed by members of that clientele and resolving disputes with them; and

(3) keeping a complaints register.

2018, c. 23, s. 3.

51. An authorized insurer must be able to show to the Authority that it adheres to sound commercial practices.

2018, c. 23, s. 3.

DIVISION II

COMPLAINT PROCESSING AND DISPUTE RESOLUTION POLICY AND EXAMINATION OF COMPLAINT RECORDS BY THE AUTHORITY

2018, c. 23, s. 3.

52. The complaint processing and dispute resolution policy adopted under subparagraph 2 of the second paragraph of section 50 must, in particular,

(1) set out the characteristics that make a communication to the insurer a complaint that must be registered in the complaints register kept under subparagraph 3 of the second paragraph of section 50; and

(2) provide for a record to be opened for each complaint and prescribe rules for keeping such records.

The insurer must make a summary of the policy, including the elements specified in subparagraphs 1 and 2 of the first paragraph, publicly available on its website and disseminate it by any appropriate means to reach the clientele concerned.

2018, c. 23, s. 3.

53. Within 10 days after a complaint is registered in the complaints register, the authorized insurer must send the complainant a notice stating the complaint registration date and the complainant's right, under section 54, to have the complaint record examined.

2018, c. 23, s. 3.

54. A complainant whose complaint has been registered in the complaints register may, if dissatisfied with the insurer's processing of the complaint or the outcome, request the insurer to have the complaint record examined by the Authority.

If the insurer is a mutual company that is a member of a federation, the record is examined by the federation rather than the Authority.

The authorized insurer is required to comply with the complainant's request and send the record to the Authority or, in the case of a mutual company that is a member of a federation, to the federation.

2018, c. 23, s. 3.

55. The Authority examines the complaint records that are sent to it.

It may, with the parties' consent, act as conciliator or mediator or designate a person to act as such.

Conciliation or mediation may not, alone or in combination, continue for more than 60 days after the date of the first conciliation or mediation session, as the case may be, unless the parties consent to it.

Conciliation and mediation are free of charge.

2018, c. 23, s. 3.

56. Unless the parties agree otherwise, nothing that is said or written in the course of a conciliation or mediation session may be admitted into evidence before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

A conciliator or mediator may not be compelled to disclose anything revealed or learned in the exercise of conciliation or mediation functions or to produce a document prepared or obtained in the course of such functions before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no one has a right of access to a document contained in the conciliation or mediation record.

2018, c. 23, s. 3.

57. Despite sections 9 and 83 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Authority may not communicate a complaint record without the authorization of the insurer that has sent it.

2018, c. 23, s. 3.

58. On the date set by the Authority, an authorized insurer must send it a report on the complaint processing and dispute resolution policy adopted under subparagraph 2 of the second paragraph of section 50 stating the number of complaints that the insurer has registered in the complaints register and their nature.

The report must cover the period determined by the Authority.

2018, c. 23, s. 3.

DIVISION III

UNDERWRITING OF NON-MARINE INSURANCE CONTRACTS AND ENROLLMENT IN GROUP INSURANCE CONTRACTS

2018, c. 23, s. 3.

§ 1. — *Underwriting of non-marine insurance contracts*

2018, c. 23, s. 3.

59. To underwrite an insurance contract, an authorized insurer must deal with the client concerned either through a natural person, whether employed by the insurer or not, or without the intermediary of such a person. If the insurer deals with the client through a natural person, that person must be an insurance representative holding a certificate issued by the Authority in accordance with the Act respecting the distribution of financial products and services (chapter D-9.2) and must be authorized to act with respect to the contract.

However, the insurer may deal with the client for a damage insurance contract or an individual insurance of persons contract through a natural person who is not an insurance representative if

(1) the natural person is a distributor within the meaning of the second paragraph of section 408 of the Act respecting the distribution of financial products and services or has been assigned that task by such a distributor; and

(2) the insurance contract is an insurance product subject to Title VIII of that Act.

This section does not apply to the renewal of an insurance contract the only amendment to which is the premium.

2018, c. 23, s. 3.

60. For the purposes of this division, a natural person is considered an insurance representative holding a certificate issued by the Authority under the Act respecting the distribution of financial products and services (chapter D-9.2) if any of the following provisions of that Act apply to him or her:

(1) subparagraph 1 or 2 of the third paragraph of section 3;

(2) the second paragraph of section 4; and

(3) section 7.

2018, c. 23, s. 3.

61. This division does not apply to maritime insurance contracts or suretyship contracts, even if, in the latter case, they are designated as surety insurance contracts.

2018, c. 23, s. 3.

§ 2. — *Obligations of authorized insurers with respect to certain clients or certain participants and rights of the latter*

2018, c. 23, s. 3.

I. — *General provisions*

2018, c. 23, s. 3.

62. An authorized insurer must see that the client or the participant, as the case may be, is provided in sufficient time with the information necessary to make an enlightened decision and for contract performance purposes

(1) if the insurer deals with the client otherwise than through a firm, independent representative or independent partnership registered for an insurance sector; or

(2) if the insurer has underwritten a group insurance of persons contract in which a person may enroll as a participant without interacting with an insurance representative at the time of enrollment.

Such information includes

(1) the extent of the coverage considered and the exclusions;

(2) the time limits, in accordance with the Civil Code, within which a loss must be reported and within which the insurer is required to pay the sums insured or the indemnity provided for; and

(3) the information required to communicate to the insurer a complaint to be registered in the complaints register provided for in subparagraph 3 of the second paragraph of section 50, including the time limit within which a complaint must be communicated.

2018, c. 23, s. 3.

63. If, for the purpose of underwriting an individual insurance of persons contract, an authorized insurer receives a proposal that was completed without an insurance representative interacting with the client at the time it was completed, the insurer must see that the client can be temporarily insured until a final contract is made or until one of the parties is informed of the other party's decision not to make a contract. The temporary insurance contract must provide the broadest coverage in return for which the client agrees to pay the premium for that contract.

The client is required to reply within 30 days after receiving a request for information from the insurer for the purpose of making the final contract. If the client fails to reply within that time limit, the insurer may cancel the temporary contract.

2018, c. 23, s. 3.

64. The client for an insurance contract may, if no insurance representative interacted with the client at the time the latter consented to the contract, cancel the contract within 10 days after receiving the policy, unless the contract has already expired at that time or, in the case of a travel insurance contract, unless a trip that falls under the coverage has already started.

A participant may also, if no insurance representative interacted with the participant at the time he or she enrolled, cancel his or her enrollment on the same condition and within the same time limit after receiving the insurance certificate.

In the case of an individual insurance of persons contract, the policy referred to in the first paragraph is the one that evidences the existence of the final contract.

If an insurance contract is made or a participant enrolls under that contract at the same time another contract is entered into, the other contract retains all its effects despite the cancellation of the insurance contract or of the enrollment, as the case may be.

The first and second paragraphs do not apply to insurance expiring within 10 days after the client's consent or the participant's enrollment, as the case may be.

2018, c. 23, s. 3; 2021, c. 34, s. 11.

64.1. Despite section 64, no one may cancel an insurance contract if doing so causes the client or an insured to be in default of being covered by such a contract where the law requires it.

2021, c. 34, s. 12.

II. — *Liability of an insurer with respect to distributors*

2018, c. 23, s. 3.

65. An authorized insurer is liable for the acts done by distributors, or natural persons to whom the latter have assigned the task of dealing with clients or participants, toward underwriting an insurance contract or enrolling a participant.

2018, c. 23, s. 3.

66. An authorized insurer must, without delay, send the Authority a list of the contracts with respect to which a distributor will be dealing with clients or participants and a list of such distributors. The list of

distributors must include the names and addresses of the distributors and the insurance contracts for which the insurer is doing business with them. The list of contracts must include a description of the insurance coverage provided by those contracts.

The insurer must, without delay, inform the Authority of any change to either list.

2018, c. 23, s. 3.

III. — *Absence of intermediation by a natural person or a firm*

2018, c. 23, s. 3.

67. If a means of formulating and submitting a proposal without the intermediary of a natural person or a firm and otherwise than by an application in writing referred to in article 2400 of the Civil Code is made available to a client, the insurer must deliver to the client, together with the policy, a document describing any proposal submitted by such means.

The document delivered by the insurer is equivalent to an application in writing referred to in article 2400 of the Civil Code.

2018, c. 23, s. 3.

68. The Authority may issue an order provided for in section 465 or 467 to require an authorized insurer to cease dealing, without the intermediary of a representative, with clients for the contracts it determines.

2018, c. 23, s. 3.

DIVISION IV

SPECIAL PROVISIONS RESPECTING ANNUITIES AND CERTAIN OTHER CONTRACTS

2018, c. 23, s. 3.

69. In an annuity contract, the fact that an authorized insurer offers a choice of investments does not preclude the insurer from controlling the capital accumulated for the payment of the annuity.

The right to withdraw all or part of the capital accumulated for the payment of an annuity may be stipulated, but the exercise of that right reduces the insurer's obligations correlatively.

In addition, the amount of the annuity to be paid periodically must, at the time the contract is entered into, be determinate, or at least determinable according to variables and a computation method specified in the contract.

2018, c. 23, s. 3.

70. For the capital accumulated for the payment of an annuity to be exempt from seizure, a person must be designated, in accordance with article 2457 or 2458 of the Civil Code, as qualified to receive the capital or the related annuity following the death of the annuitant or of the person who furnishes the capital.

2018, c. 23, s. 3.

71. The form and terms of insurance policies relating to the ownership or use of motor vehicles must be determined by the Authority. The same is true for any riders that may be attached to those policies. If those policies concern a contract to be entered into by an operator or enterprise referred to in the second or third paragraph of section 84 of the Automobile Insurance Act (chapter A-25) or if those riders are attached to such a contract, the Authority must send them to the Minister 15 days before they are determined.

An authorized insurer may attach a rider whose form and terms are not determined by the Authority to such a policy if the rider

(1) provides for terms stipulated solely for the benefit of the insureds; and

(2) has been sent to the Authority and, in the case of a rider attached to a contract to be entered into by an operator or enterprise referred to in the second or third paragraph of section 84 of the Automobile Insurance Act, to the Minister.

The Authority may attach conditions or restrictions to a rider attached to a contract to be entered into by an operator or enterprise referred to in the second or third paragraph of section 84 of the Automobile Insurance Act. It must send the conditions or restrictions to the Minister 15 days before attaching them to such a rider.

2018, c. 23, s. 3; 2021, c. 34, s. 13.

72. The conditions applicable to group insurance contracts underwritten by an authorized insurer are prescribed by government regulation.

2018, c. 23, s. 3.

DIVISION V

SPECIAL PROVISIONS RESPECTING ACTIVITIES BETWEEN FINANCIAL INSTITUTIONS

2018, c. 23, s. 3.

73. Except for the first paragraph of section 50 and Division IV, this chapter does not apply if the authorized insurer's client is a bank or another financial institution.

Nor does this chapter apply to reinsurer activities.

2018, c. 23, s. 3.

CHAPTER V

PRUDENTIAL RULES

2018, c. 23, s. 3.

DIVISION I

MANAGEMENT PRACTICES

2018, c. 23, s. 3.

74. An authorized insurer must adhere to sound and prudent management practices ensuring, in particular, good governance and compliance with the laws governing its activities.

With respect to the insurer's financial management, such practices must, in particular, provide that the insurer maintain

(1) adequate assets to meet its liabilities, as and when they become due; and

(2) adequate capital to ensure its sustainability.

2018, c. 23, s. 3.

75. An authorized insurer must be able to show to the Authority that it adheres to sound and prudent management practices.

2018, c. 23, s. 3.

76. No authorized insurer may contract liabilities that vary according to the market value of property that, through those liabilities, it binds itself to hold, unless

(1) it is an insurer authorized to carry on life insurance activities; and

(2) the property constitutes a segregated fund to be used to meet the liabilities for which the property is held before any of the insurer's other liabilities.

Except for this division, the provisions of this chapter do not apply to segregated funds.

2018, c. 23, s. 3.

77. The Authority may, if it considers that an authorized insurer's capital is not adequate to ensure the insurer's sustainability, order the insurer to adopt a compliance program within the time it prescribes and for the reasons it specifies.

Before exercising the power provided for in the first paragraph, the Authority must notify the insurer and give it at least 10 days to submit observations.

The Authority may not order an authorized insurer other than a Québec insurer to adopt such a program if it may hinder measures taken by the insurer's home regulator.

2018, c. 23, s. 3.

78. The compliance program describes the measures that must be implemented by the authorized insurer within the time limits specified in it.

2018, c. 23, s. 3.

79. The compliance program adopted by the authorized insurer is submitted for approval to the Authority.

2018, c. 23, s. 3.

80. The authorized insurer is required to implement the compliance program approved by the Authority.

2018, c. 23, s. 3.

81. An authorized insurer that is required to implement a compliance program must provide the Authority with any report the Authority may require on the implementation of the program at such intervals, in such form and with such content as the Authority determines.

2018, c. 23, s. 3.

DIVISION II

INVESTMENTS

2018, c. 23, s. 3.

§ 1. — *Provisions applicable to all authorized insurers*

2018, c. 23, s. 3.

82. An authorized insurer must adopt an investment policy approved by its board of directors.

The investment policy must, in particular,

(1) provide for the matching of the respective maturities of the insurer's investments with the insurer's liabilities;

(2) provide for the appropriate diversification of those investments; and

(3) include a description of the types of investments and other financial transactions that it authorizes and the limits applicable to them.

The insurer must send its investment policy to the Authority at the Authority's request.

2018, c. 23, s. 3.

83. An authorized insurer must follow the investment policy approved by its board of directors.

2018, c. 23, s. 3.

§ 2. — *Provisions applicable to authorized Québec insurers*

2018, c. 23, s. 3.

I. — *Acquisition of participations and co-ownership*

2018, c. 23, s. 3.

84. No authorized Québec insurer may acquire or hold contributed capital securities issued by a legal person or a partnership or participations in a trust in excess of

(1) 30% of the value of those securities or participations; or

(2) the number of those securities or participations allowing it to exercise more than 30% of the voting rights.

Nor may an authorized Québec insurer be the co-owner of property if its share of the right of ownership is greater than 30% without exceeding 50%, alone or together with the shares of groups affiliated with it.

2018, c. 23, s. 3.

85. Despite section 84, an authorized Québec insurer may acquire and hold up to all the contributed capital securities issued by a legal person or a partnership, up to all the participations in a trust or a share of a right of ownership in cases where the insurer will be the holder of control of the person, partnership, trust or property after the acquisition or, in the case of a share of a right of ownership in an immovable, at least 50% of that right, and in the cases determined by government regulation.

Similarly, section 84 does not apply where an authorized Québec insurer acquires and holds contributed capital securities in a firm registered for the damage insurance sector to the extent that the insurer, its financial group or the legal persons that are related to the insurer or financial group comply with the limits prescribed by section 150 of the Act respecting the distribution of financial products and services (chapter D-9.2).

Neither a mutual company that is a member of a federation nor a business corporation of which such a mutual company is the holder of control and which is authorized to carry on activities in the same class as that mutual company may make an acquisition under this section without the federation's authorization.

2018, c. 23, s. 3; 2021, c. 34, s. 14.

II. — *Accessory guarantees for certain investments*

2018, c. 23, s. 3.

86. An authorized Québec insurer may become the owner or holder of property in contravention of section 84 only if it does so to obtain or preserve an accessory guarantee for one of its investments or for any other financial transaction.

2018, c. 23, s. 3.

III. — *Penalties*

2018, c. 23, s. 3.

87. If an authorized Québec insurer holds or owns property, as the case may be, in contravention of section 84, it must dispose of that property as soon as market conditions permit.

2018, c. 23, s. 3.

88. Directors of an authorized Québec insurer who agree to a contravention of section 84 are held solidarily liable for any resulting losses to the insurer.

A director cannot be held liable under the first paragraph if the director acted with a reasonable degree of prudence and diligence in the circumstances.

Furthermore, for the purposes of the first paragraph, the court may, after considering all the circumstances and on the terms the court considers appropriate, relieve a director, either wholly or partly, from the liability the director would otherwise incur if it appears to the court that the director has acted reasonably, honestly and loyally, and ought fairly to be excused.

2018, c. 23, s. 3.

DIVISION III

COMPENSATION BODIES

2018, c. 23, s. 3.

89. An authorized insurer must be a member, for the classes for which it is authorized to carry on an activity, of a compensation body recognized by the Authority for that class.

The first paragraph does not apply to the activities carried on by a mutual company that is a member of a federation for which the federation stands surety. Neither does that paragraph apply to reinsurer activities.

For the purposes of this Act, a compensation body is a body whose members are insurers and whose purpose is to protect the holders of insurance contracts underwritten by one of those insurers from excessive financial loss in the event of that insurer's insolvency.

2018, c. 23, s. 3.

90. The Authority may recognize a compensation body if it considers that the body offers sufficient protection to the insureds and is able to assume its obligations.

The Authority may, by regulation, determine the conditions that a body must meet in order to be recognized.

2018, c. 23, s. 3.

91. The Authority must post a list of the recognized compensation bodies on its website.

2018, c. 23, s. 3.

CHAPTER VI

GOVERNANCE

2018, c. 23, s. 3.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 3.

92. An authorized insurer must have a board of directors composed of at least seven members.

2018, c. 23, s. 3.

93. A director of an authorized insurer who resigns must declare his or her reasons to the insurer and to the Authority in writing.

2018, c. 23, s. 3.

94. The board of directors must ensure that the authorized insurer adheres to sound commercial practices and sound and prudent management practices.

To that end, it must entrust certain directors it designates or a committee of such directors with the responsibility of seeing that such practices are adhered to and situations contrary to such practices are detected.

Within three months after the closing date of the insurer's fiscal year, the directors or the committee, as the case may be, report to the board of directors on the performance of the responsibility entrusted to them or it and, if applicable, on the other activities they or it carries on for the insurer.

2018, c. 23, s. 3.

95. A director designated in accordance with section 94 or the committee provided for in that section, as the case may be, must, on becoming aware of a situation that is likely to appreciably deteriorate the authorized insurer's financial position, of another situation that is contrary to sound and prudent management practices or of a situation that is contrary to sound commercial practices, notify the board of directors in writing.

The board of directors must then see to it that the situation is promptly remedied.

2018, c. 23, s. 3.

96. The director or committee that notified the board of directors in accordance with section 95 must, on finding that the situation mentioned in the notice has not been corrected, send the Authority a copy of the notice given under that section.

A description of any relevant events that have occurred since the notice was drafted and any other information the director or committee considers relevant must be sent with the notice.

2018, c. 23, s. 3.

97. A director designated in accordance with section 94 or a director on the committee provided for in that section, as the case may be, who, in good faith, notifies the board of directors or the Authority in accordance with section 95 or 96 incurs no civil liability for doing so.

The same is true for any person who, in good faith, provides information or documents to one or more of those directors and for a director who makes a declaration under section 93.

2018, c. 23, s. 3.

DIVISION II

PROVISIONS SPECIFIC TO AUTHORIZED QUÉBEC INSURERS

2018, c. 23, s. 3.

§ 1. — *Composition of the board of directors*

2018, c. 23, s. 3.

98. More than half of the board of directors of an authorized Québec insurer must be composed of persons other than employees of that insurer or of a group of which it is the holder of control.

2018, c. 23, s. 3.

99. An authorized Québec insurer must implement a policy aimed at fostering, in particular, the independence, competence and diversity of the members of its board of directors and of the members of the committees of the board.

2018, c. 23, s. 3.

§ 2. — *Establishment and composition of the audit committee and ethics committee*

2018, c. 23, s. 3.

100. The board of directors of an authorized Québec insurer must establish an audit committee and an ethics committee from among its members.

2018, c. 23, s. 3.

101. The audit committee and the ethics committee of an authorized Québec insurer are each composed of at least three directors, a majority of whom are not

(1) officers or employees of the insurer;

(2) members of both the ethics committee and the audit committee;

(3) directors, officers or other mandataries or employees of a group of which the insurer is the holder of control; or

(4) holders of a significant interest in the insurer or in a business corporation affiliated with the insurer.

2018, c. 23, s. 3.

102. The Authority may, if an authorized Québec insurer shows that the exercise of the committee's functions will not be adversely affected, authorize

(1) the establishment of a committee whose composition does not comply with section 101; or

(2) the exercise by one of the committees mentioned in that section of the functions usually assigned to the other committee, in addition to its own functions.

The Authority may, in granting such an authorization, require any undertaking it considers necessary to ensure compliance with this Act.

2018, c. 23, s. 3.

§ 3. — *Functions of the audit committee*

2018, c. 23, s. 3.

103. The audit committee must examine all financial statements intended for the board of directors before they are submitted to the board.

The audit committee may be convened by one of its members or by the auditor. The auditor must be notified of every committee meeting and attend every meeting to which he or she is convened. The committee must give the auditor an opportunity to be heard.

The committee must cause any error or misstatement in financial statements to be corrected and, if the financial statements were sent to the shareholders or mutual members, as the case may be, inform the meeting of shareholders or mutual members accordingly.

2018, c. 23, s. 3.

§ 4. — *Functions of the ethics committee*

2018, c. 23, s. 3.

104. An authorized Québec insurer must have rules of ethics; they must be adopted by its ethics committee and be sent to the Authority.

Those rules must pertain to such subjects as

(1) the conduct of the insurer's directors and officers;

(2) the conduct of the insurer with natural persons or groups that are restricted parties with respect to it; and

(3) the formalities and conditions governing contracts with such persons or groups.

2018, c. 23, s. 3.

105. An authorized Québec insurer must follow the rules of ethics adopted by its ethics committee; they are binding on the board of directors.

2018, c. 23, s. 3.

106. The ethics committee of an authorized Québec insurer must see that the rules of ethics are complied with and notify the board of directors, in writing and without delay, of any violation of those rules.

2018, c. 23, s. 3.

107. Each year, the ethics committee of an authorized Québec insurer must send the Authority, within two months after the closing date of the insurer's fiscal year, a report on the committee's activities in that fiscal year.

The report must include or describe

(1) the committee members' names and addresses;

(2) any change among the committee members;

(3) the list of conflict of interest situations and contracts with natural persons or groups that are restricted parties with respect to the insurer which have come to the committee's notice;

(4) the measures taken to see that the rules of ethics are complied with; and

(5) violations of the rules of ethics.

2018, c. 23, s. 3.

108. An authorized Québec insurer must, when doing business with natural persons or groups that are restricted parties with respect to it, act in the same manner as it would when dealing at arm's length.

Consequently, a contract entered into between the insurer and a natural person or group that is a restricted party with respect to it may not be less advantageous for the insurer than if it had been entered into at arm's length.

2018, c. 23, s. 3.

109. Section 108 does not apply to the remuneration of directors or any other matter connected with a contract of employment.

2018, c. 23, s. 3.

110. The following natural persons and groups are restricted parties with respect to an authorized Québec insurer:

(1) the insurer's directors and officers;

(2) the directors and officers of the group that is the holder of control of the insurer or, if the insurer is a mutual company that is a member of a federation, the federation's directors and officers;

(3) the holder of a significant interest in the insurer;

(4) natural persons and groups having economic ties with the persons described in subparagraphs 1 to 3, except a group of which the insurer is the holder of control;

(5) a group whose board of directors is composed, in the majority, of members of the insurer's board of directors; and

(6) any other person or group designated under section 112.

An authorized financial institution is not a group that is a restricted party with respect to an insurer if the financial institution is the holder of exclusive control of the insurer, or if it is the holder of control of the insurer and both the authorized financial institution and the insurer have the same holder of exclusive control.

2018, c. 23, s. 3.

111. For the purposes of section 110, the holder of control of a business corporation has exclusive control of the corporation if that holder alone can choose all the directors and exercise the voting rights attached to all the shares issued by the corporation, provided that, if applicable, the holder holds all the securities that are convertible into such shares carrying voting rights and all the rights to acquire such shares.

Similarly, the member mutual companies of a federation are considered to have exclusive control of a business corporation if only member mutual companies of the federation can choose all the directors of the corporation and exercise the voting rights attached to all the shares issued by the corporation, provided that, if applicable, they hold all the securities that are convertible into such shares carrying voting rights and all the rights to acquire such shares.

2018, c. 23, s. 3.

112. The Authority may designate a natural person or a group as a restricted party if, in its opinion, that person or group is likely to receive preferential treatment to the detriment of the authorized insurer.

The Authority may review a designation at the request of the person or group designated or the insurer concerned.

Before making or refusing to review a designation, the Authority must give the natural person or group and the insurer concerned an opportunity to submit observations.

The Authority notifies the person or group designated and the insurer concerned of its decision on the designation or the review request, as applicable.

2018, c. 23, s. 3.

113. Unless the obligations of an authorized Québec insurer under the following contracts are minimal, such contracts must be submitted to its board of directors for approval:

(1) a contract for the acquisition, by the insurer, of securities issued by a natural person or group that is a restricted party with respect to the insurer or for the transfer of assets between them; and

(2) a service contract between the insurer and a natural person or group that is a restricted party with respect to the insurer.

Before approving such contracts, the board of directors must obtain the opinion of the ethics committee.

2018, c. 23, s. 3.

114. Except to the extent authorized by its rules of ethics, no authorized Québec insurer may extend credit to its directors or officers, to natural persons or groups having economic ties with them or to the directors or officers of a legal person affiliated with the insurer.

2018, c. 23, s. 3.

CHAPTER VII

ACTUARY AND AUDITOR

2018, c. 23, s. 3.

DIVISION I

QUALIFICATIONS AND BEGINNING AND END OF TERM

2018, c. 23, s. 3.

115. An actuary and an auditor must, for each authorized insurer, be charged with the functions provided for in this chapter.

A mutual company may not charge an actuary or auditor with such functions if the company is a member of a federation that provides it with the services of persons charged with those functions.

2018, c. 23, s. 3.

116. An actuary charged with the functions provided for in this chapter must be a Fellow of the Canadian Institute of Actuaries.

An auditor charged with the functions provided for in this chapter must be a member of the Ordre professionnel des comptables professionnels agréés du Québec and hold a public accountancy permit.

However, in the case of an authorized insurer, other than a Québec insurer, that carries on its activities in Québec and elsewhere in Canada, the auditor is not required to be a member of that order or to hold that permit if he or she holds an authorization of the same nature issued elsewhere in Canada.

2018, c. 23, s. 3.

117. The auditor charged with the functions provided for in this chapter is the auditor elected, appointed or otherwise determined by the authorized insurer in accordance with the Act under which it is constituted or, in the case of an authorized reciprocal union, in accordance with a contract referred to in section 188. If the auditor does not meet the conditions set out in section 116, another auditor must be charged with those functions.

2018, c. 23, s. 3.

118. The term of an actuary or auditor ends on the appointment of his or her successor, unless it ends as a result of his or her death, resignation, dismissal or bankruptcy or tutorship to a person of full age being instituted or a protection mandate homologated for him or her or if he or she no longer has the qualifications required under this division.

2018, c. 23, s. 3; 2020, c. 11, s. 173.

119. The authorized insurer must, within 10 days after the actuary's or auditor's term has ended, notify the Authority of the fact.

2018, c. 23, s. 3.

120. If an authorized insurer fails to charge an actuary or an auditor with the functions provided for in this chapter within the time specified by the Authority, the Authority may appoint one and determine the remuneration that the insurer must pay him or her.

2018, c. 23, s. 3.

121. An authorized insurer must, before dismissing an actuary or auditor from office, give him or her at least 10 days' prior notice in writing and send a copy of the notice to the Authority, unless the latter authorizes it to proceed earlier.

The prior notice must give the reasons for the dismissal.

2018, c. 23, s. 3.

122. An actuary or auditor who resigns or who believes he or she was dismissed for reasons connected with his or her functions or with the conduct of the authorized insurer's business or the business of a member of its financial group must declare those reasons to the Authority in writing.

The author of the declaration must send a copy of it to the authorized insurer's secretary or, in the case of an authorized reciprocal union, its representative.

The author must send those documents within 10 days after tendering his or her letter of resignation or learning of his or her dismissal, as the case may be.

2018, c. 23, s. 3; 2024, c. 15, s. 16.

123. Before accepting the office of actuary or auditor provided for by this chapter, a person must ask the authorized insurer's secretary whether the former actuary or auditor made the declaration required under section 122. In the case of an authorized reciprocal union, the question is directed to its representative.

The secretary or representative, as the case may be, must provide the person with a copy of the declaration, if applicable.

2018, c. 23, s. 3; 2024, c. 15, s. 17.

DIVISION II

DUTIES, POWERS AND FUNCTIONS OF THE ACTUARY AND AUDITOR

2018, c. 23, s. 3.

§ 1. — *Duties and powers*

2018, c. 23, s. 3.

124. An authorized insurer is required to see that its directors, officers and employees send the actuary or auditor the information or documents regarding the insurer, the groups of which the insurer is the holder of control and any other group whose financial information is consolidated with its own that the actuary or auditor requests in the course of his or her functions.

The insurer is also required to see that persons having custody of such documents do so as well.

2018, c. 23, s. 3.

125. An actuary who, in the course of his or her functions, becomes aware of a situation that, in his or her opinion, has or is likely to have material adverse effects on the authorized insurer's financial condition must draft a detailed report on the situation.

An auditor who becomes aware of a situation that is likely to appreciably limit the insurer's ability to fulfill its obligations must report on the situation in the ordinary course of his or her audit.

The same is true for an actuary or auditor who believes that a refusal or failure to provide information or a document requested by him or her is hindering the exercise of his or her functions.

The author of the report must send the report to the board of directors. If applicable, he or she must also send a copy of it to the attorney designated under section 26 of the Act respecting the legal publicity of enterprises (chapter P-44.1). If the author of the report is the actuary, he or she must send a copy of it to the auditor, and vice versa. The board of directors must then see to it that the situation is remedied.

2018, c. 23, s. 3.

126. If the author of the report submitted under section 125 finds that the situation that justified its being drafted has not been corrected, he or she must send a copy of it to the Authority.

A description of any relevant events that have occurred since the report was drafted and any other information the author considers relevant must be sent with the report.

2018, c. 23, s. 3.

127. An actuary or auditor who, in good faith, makes a declaration under section 122, submits a report under section 125 or sends a copy of the latter to the Authority under section 126 incurs no civil liability for doing so.

The same is true for a person who, in good faith, provides information or documents under section 124.

2018, c. 23, s. 3.

§ 2. — *Functions of the actuary*

2018, c. 23, s. 3.

128. The actuary must prepare, on the dates determined by the Authority, a study concerning the authorized insurer's financial position, a report on the state of the actuarial reserves and a certificate attesting that state.

The study must also include a forecast of the authorized insurer's financial position and must describe the potential financial repercussions of the insurer's activities. The report must also include any other information determined by the Authority.

The actuary must send a copy of the study and the report to the board of directors and the auditor.

The actuary must present the study and the report to the board of directors, unless the board asks him or her to present them to the audit committee.

2018, c. 23, s. 3.

129. In exercising his or her functions, the actuary must apply generally accepted actuarial standards or any other standard established by the Authority.

2018, c. 23, s. 3.

§ 3. — *Functions of the auditor*

2018, c. 23, s. 3.

130. The auditor is to audit the authorized insurer's books and accounts for the purposes of this Act.

If the authorized insurer is neither an authorized Québec insurer nor another insurer constituted under an Act of another jurisdiction in Canada, the scope of the audit is limited to the activities carried on in Québec. However, the audit may, at the insurer's choice, examine the insurer's activities across Canada.

2018, c. 23, s. 3.

§ 4. — *Supervisory and control measures*

2018, c. 23, s. 3.

131. If it considers it necessary, the Authority may

(1) order the preparation, in the manner and within the time it specifies, of an actuarial study regarding any matter, in particular, an assessment of an authorized insurer's actuarial reserves and financial position; or

(2) order that the annual audit of an authorized insurer's books and accounts be continued, that its scope be broadened or that a special audit be conducted.

The Authority may designate an actuary or an auditor, other than the one appointed by the insurer, to be charged with the study or audit.

The expenses incurred in such a case are payable by the insurer after approval by the Authority.

2018, c. 23, s. 3.

CHAPTER VIII

ANNUAL STATEMENTS AND OTHER COMMUNICATIONS WITH THE AUTHORITY

2018, c. 23, s. 3.

132. An authorized insurer must prepare an annual statement of the position of its affairs as at the date determined by the Authority and include financial statements audited under section 130.

The annual statement must be certified by two of the insurer's directors; its form and content and the date on which it must be sent to the Authority are determined by the Authority.

If the authorized insurer is neither an authorized Québec insurer nor an insurer constituted under an Act applicable in Canada, the additional financial statements referred to in the first paragraph may include only the information relating to the activities examined by the audit conducted under the second paragraph of section 130.

2018, c. 23, s. 3.

133. Each year, on the dates determined by the Authority, an authorized insurer must send the Authority

(1) the financial statements prepared for the purposes of the Act under which the insurer is constituted;

(2) the auditors' reports;

(3) the study of the insurer's financial position, the report on the state of the actuarial reserves and the certificate attesting that state prepared under section 128; and

(4) the résumé of each director and officer if it has not already been sent to the Authority.

If the authorized insurer is a self-regulatory organization, the résumé of each member of the decision-making committee referred to in section 361 is substituted for the résumé referred to in subparagraph 4 of the first paragraph.

2018, c. 23, s. 3.

134. If the Authority is of the opinion that an asset considered in the financial statements sent to it by an authorized insurer is overvalued, it may either require the insurer to cause an appraiser the choice of whom is approved by it to appraise that asset or appraise the asset itself. If the asset is a loan the repayment of which is guaranteed by property, the property is appraised.

If the results of the appraisal justify it, the Authority may require the insurer to modify its books and accounts as well as the financial statements referred to in the first paragraph to reflect the market value of the asset or, in the case of a loan, the value of the realization of the property guaranteeing the repayment. If a loan or another asset is that of a group of which the insurer is the holder of control, the Authority may, for those same purposes, require that the value of the insurer's investment in the group be modified. The Authority notifies the auditor charged with the functions provided for in Chapter VII of the modification requested.

2018, c. 23, s. 3.

135. Before exercising a power conferred on it by section 134, the Authority must give the authorized insurer concerned at least 10 days to submit observations.

2018, c. 23, s. 3.

136. The cost of the appraisal of an overvalued asset further to a decision of the Authority under section 134 is to be borne by the authorized insurer concerned, unless the Authority decides otherwise.

2018, c. 23, s. 3.

136.1. An authorized insurer must, on the date prescribed in the second paragraph of section 132 for sending the statement of the position of its affairs and on the date that is six months after that date, notify the Authority of the names and addresses of the groups of which it has become the holder of control in accordance with subparagraph 1, if the operation does not have a significant effect on the authorized insurer, and subparagraphs 2 to 6 of the first paragraph of section 9 during the last six months of the period covered by that statement or, as the case may be, during the six months following the period covered by that statement.

2024, c. 15, s. 76.

137. An authorized insurer must send the Authority, according to the content and form and at the time or intervals it determines, the documents it considers useful to determine whether the insurer is complying with this Act.

Lloyd's must send the Authority a list of its underwriters in Québec and see that it is kept up-to-date. The same is true for an authorized reciprocal union with regard to the list of its members.

2018, c. 23, s. 3; 2021, c. 34, s. 15; 2024, c. 15, s. 18.

138. The Authority may require an authorized insurer, the holder of control of the authorized insurer or a member of the authorized insurer's financial group to provide the documents or information the Authority considers useful for the purposes of this Act or that it or he or she otherwise provide access to those documents and information. In the case of an authorized reciprocal union, the Authority may require the union's attorney, its representative or each of its members to do the same.

The Authority may likewise require the actuary or auditor of an authorized insurer to provide the documents or information he or she holds regarding the insurer.

The person to whom such a request is made is required to reply by not later than the date determined by the Authority.

2018, c. 23, s. 3; 2021, c. 34, s. 16; 2024, c. 15, s. 19.

139. An authorized insurer must notify the Authority of the name and address of whoever has become or intends to become the holder of its control within 10 days from the time it becomes aware of either situation.

If the authorized insurer is a business corporation, it must also, within the same time, send such a notice to the Authority regarding whoever has become or intends to become the holder of a significant interest in its decisions.

The insurer must, within the same time, notify the Authority whenever the holder of control or of a significant interest ceases to be so.

2018, c. 23, s. 3.

CHAPTER IX

REVIEW OF AN AUTHORIZATION

2018, c. 23, s. 3.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 3.

140. The Authority, on its own initiative, on the authorized insurer's application in the cases provided for in Division III or when it is informed of certain operations described in Division IV, reviews the authorization it has granted to an authorized insurer.

2018, c. 23, s. 3.

141. After reviewing an authorization, the Authority may maintain it as is, attach certain conditions or restrictions to it, withdraw existing conditions or restrictions, or revoke or suspend it.

2018, c. 23, s. 3.

DIVISION II

REVIEW ON THE AUTHORITY'S INITIATIVE

2018, c. 23, s. 3.

142. The Authority may, on its own initiative, review an authorization it has granted whenever it considers it necessary to do so in order to ensure compliance with this Act.

Unless the authorization is maintained as is, the Authority, in accordance with Chapter X, revokes or suspends it or attaches conditions or restrictions to it.

2018, c. 23, s. 3.

DIVISION III

REVIEW ON AN INSURER'S APPLICATION

2018, c. 23, s. 3.

143. The Authority is required to review the authorization it has granted to an insurer if the latter applies for such a review to have an attached condition or restriction withdrawn.

2018, c. 23, s. 3.

144. The application for review must specify the condition or restriction the insurer wishes to have withdrawn and the reasons for the withdrawal.

The application must also include any other information prescribed by regulation of the Authority. The costs and fees prescribed by government regulation must be filed with the application.

2018, c. 23, s. 3.

145. On receipt of the application and the required information, costs and fees, the Authority reviews the authorization to determine whether or not it may grant the application.

The Authority may, in withdrawing a condition or restriction, require any undertaking it considers necessary to ensure compliance with this Act.

When the Authority rules on an application for review filed by an authorized insurer, it sends the insurer a document justifying its decision.

2018, c. 23, s. 3.

DIVISION IV

REVIEW IN LIGHT OF CERTAIN OPERATIONS

2018, c. 23, s. 3.

146. The Authority is required to review an authorization on being notified of any of the following operations:

(1) the amalgamation of the authorized insurer with another legal person;

(2) a change as to the authorized insurer's home regulator, in particular as a result of a continuance or another operation of the same nature;

(3) an operation not referred to in subparagraph 1 or 2 where the authorized insurer changes its juridical form or transmits its patrimony or part of it due to its division;

(4) a change of name of the authorized insurer; and

(5) in the case of an authorized Québec insurer, where the following operations have a significant effect on it:

(a) an acquisition of assets by the insurer or by a group of which it is the holder of control,

(b) the transfer of any part of the insurer's assets or of the assets of such a group, or

(c) its becoming the holder of control of a group in accordance with subparagraph 1 of the first paragraph of section 9; and

(6) in the case of a mutual company that is a member of a federation, the mutual company's withdrawal from the federation.

An authorized Québec insurer's ceasing to be the holder of control of a group is deemed to be a transfer, by the group, of all its assets.

2018, c. 23, s. 3; 2024, c. 15, s. 77.

147. For the purposes of section 136.1 and subparagraph 5 of the first paragraph of section 146, an insurer's becoming the holder of control of a group or an acquisition or transfer of assets is deemed to not have a significant effect on the insurer if the variation that the operation entails in the value of its assets does not exceed 5%.

The variation in the value of the insurer's assets is established in relation to the value of those assets at the end of the fiscal year preceding any of the operations referred to in the first paragraph.

2018, c. 23, s. 3; 2024, c. 15, s. 78.

148. An authorized insurer must inform the Authority of its intention to carry out one or more operations giving rise to a review not later than the 30th day before the operation or, in the case of more than one operation, before the first operation, by filing a notice with the Authority in the form determined by the Authority.

The costs and fees prescribed by government regulation must be filed with the notice.

2018, c. 23, s. 3.

149. A notice of intention to amalgamate must include

(1) the name and address of each of the legal persons proposing to amalgamate;

(2) the proposed name of the legal person resulting from the amalgamation;

(3) the juridical form of the legal person resulting from the amalgamation;

(4) the classes of activities carried on by all the authorized insurers proposing to amalgamate;

(5) a statement specifying that the legal person resulting from the amalgamation will carry on activities in the same classes as the authorized insurers proposing to amalgamate or specifying the classes of activities for which the legal person resulting from the amalgamation intends to apply for the Authority's authorization or those for which it intends to apply to have the authorization revoked;

(6) the location of the proposed head office of the legal person resulting from the amalgamation; and

(7) any other information required by the Authority.

A document including the same information as that required to be included in an initial application for authorization and the documents that must be filed with such an application must be filed with the notice of intention to amalgamate for the legal person resulting from the amalgamation.

In the case of an amalgamation involving more than one authorized insurer, a joint notice may be filed.

2018, c. 23, s. 3.

150. A notice of intention to change the authorized insurer's home regulator must include

(1) a description of the operation from which the change results;

(2) the insurer's name and address;

(3) the title of and exact reference to the Act of the jurisdiction of the home regulator that will govern the insurer's insurance activities following the change and the title of and exact reference to the Act of the jurisdiction that will govern the insurer's affairs, if different;

(4) the location of the insurer's proposed head office following the change, if different from that of its head office at the time the notice is sent; and

(5) any other information required by the Authority.

2018, c. 23, s. 3.

151. A notice of intention to carry out an operation described in subparagraph 3 of the first paragraph of section 146 must include

(1) a description of the proposed operation;

(2) if applicable, the authorized insurer's new juridical form following the operation as well as the title of and exact reference to the Act that will govern its affairs;

(3) if applicable, the names and addresses of all the groups, other than the authorized insurer, involved in the operation;

(4) the location of the authorized insurer's proposed head office following the operation, if different from that of its head office at the time the notice is sent; and

(5) any other information required by the Authority.

A document including the same information as that required to be included in an initial application for authorization and, if required by the Authority, the documents that must be filed with such an application must be filed with the notice of intention for each legal person resulting from the operation that will carry on insurer activities in Québec.

2018, c. 23, s. 3.

152. A notice of intention to change names must include the name and address of the authorized insurer, in addition to its proposed name.

2018, c. 23, s. 3.

153. A notice of intention to carry out an operation referred to in subparagraph 5 of the first paragraph of section 146 must include

(1) a description of the proposed acquisition or transfer, in particular, a description of the assets to be acquired or transferred by the insurer or the group of which it is the holder of control;

(2) the names and addresses of the parties to the acquisition or transfer; and

(3) any other information required by the Authority.

2018, c. 23, s. 3; 2024, c. 15, s. 79.

154. A notice of intention to withdraw from a federation must include, in addition to the name and address of the mutual company that wishes to withdraw from the federation, the name of the federation and the address of its head office as well as any other information required by the Authority.

2018, c. 23, s. 3.

155. On receipt of a notice referred to in the first paragraph of section 148 or, if the Authority receives it before the expiry of the time limit specified in that section, not later than the 30th day before an operation provided for in the first paragraph of that section, the Authority publishes the notice in its bulletin and reviews the authorization it has granted to the insurer to determine whether it can be maintained.

The Authority may, to maintain its authorization, require any undertaking it considers necessary to ensure compliance with this Act.

A notice of intention to carry out an operation referred to in subparagraph 5 of the first paragraph of section 146 is not published.

2018, c. 23, s. 3; 2021, c. 34, s. 17; 2024, c. 15, s. 80.

156. Unless the Authority considers that it must revoke or suspend an insurer's authorization, that authorization becomes the authorization of the insurer resulting from the operation, with any conditions and restrictions the Authority may attach to it.

2018, c. 23, s. 3.

157. The sending of a notice by an authorized insurer in accordance with this chapter does not relieve the insurer of its obligation to file an application for revocation if the operation giving rise to a review involves the voluntary revocation of an authorization, nor does it relieve the insurer of its obligation to file an application for authorization, if the operation involves the carrying on of an activity requiring the Authority's authorization, when the insurer does not have it.

2018, c. 23, s. 3.

158. The granting of the Authority's authorization is governed by Chapter II; the revocation or suspension of, and the attachment of conditions or restrictions to, the authorization are governed by Chapter X.

2018, c. 23, s. 3.

CHAPTER X

REVOCATION AND SUSPENSION OF, AND CONDITIONS OR RESTRICTIONS THAT MAY BE ATTACHED TO, AN AUTHORIZATION

2018, c. 23, s. 3.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 3.

159. The authorization granted by the Authority to an insurer is revoked by operation of law, by the Authority acting on its own initiative or on an application by the authorized insurer.

Revocation is said to be voluntary if it is ordered by the Authority on an application by an insurer; it is said to be forced in all other cases.

The Authority may also, where provided for by law, suspend an authorization or attach the conditions and restrictions it considers necessary to ensure compliance with this Act.

2018, c. 23, s. 3.

160. Revocation by operation of law is full, that is, it has effect with regard to all the classes authorized.

The same is true for a revocation ordered by the Authority, unless it is partial, that is, unless it applies to only some of the classes authorized.

2018, c. 23, s. 3.

161. The revocation of an authorization, even a partial revocation, becomes final when the insurer concerned ceases to be bound by the contracts entered into in accordance with the authorization.

2018, c. 23, s. 3.

162. An insurer continues to be an authorized insurer as long as a revocation is not final. However, it may not bind itself under a contract included in a class to which the revocation applies if the contract is entered into after the revocation date, or offer to enter into a contract or invite a proposal with a view to so binding itself, except to honour a right conferred on a policyholder or participant under a contract in force on that date.

Suspension produces the same effects for its duration.

2018, c. 23, s. 3.

DIVISION II

FORCED REVOCATION, SUSPENSION AND CONDITIONS OR RESTRICTIONS

2018, c. 23, s. 3.

163. The authorization granted by the Authority to an insurer is revoked by operation of law if the insurer is dissolved or liquidated due to any external cause.

The insurer must notify the Authority, without delay, of its dissolution or liquidation.

2018, c. 23, s. 3.

164. The Authority may, if it considers that it is in the public interest, revoke or suspend the authorization it has granted to an authorized insurer if,

(1) in its opinion,

(a) the insurer is failing or is about to fail to comply with its obligations under an Act administered by the Authority,

(b) the insurer often fails to perform, in full, properly and without delay, its obligations under an insurance contract, or

(c) there are serious reasons to believe that the holder of control of the insurer or of another significant interest in the insurer's decisions is likely to interfere with the insurer's adherence to sound commercial practices or sound and prudent management practices;

(2) the insurer has not carried on an authorized activity in Québec for at least three years, whether as an insurer or a reinsurer;

(3) the Authority is informed by a competent authority that the insurer has failed to comply with an Act that is not administered by the Authority and is of the opinion that the failure is contrary to sound and prudent management practices; or

(4) the insurer fails to adopt or implement a compliance program or to provide the Authority with any report the latter requires on the implementation of such a program.

2018, c. 23, s. 3.

165. In the cases described in section 164, instead of revoking or suspending the authorization granted to the authorized insurer and in order to allow the insurer to remedy the situation, the Authority may attach such conditions or restrictions to the authorization as it considers necessary to ensure compliance with this Act.

2018, c. 23, s. 3.

166. Before ordering the forced revocation or the suspension of an authorization or attaching a condition or restriction to it, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the authorized insurer in writing and grant the latter at least 10 days to submit observations.

2018, c. 23, s. 3.

167. A decision under section 164 or 165 may, within 30 days of its notification, be contested before the Financial Markets Administrative Tribunal.

The Tribunal may only confirm or quash a contested decision.

2018, c. 23, s. 3.

168. The Authority publishes in its bulletin a notice of any revocation of the authorization granted to an insurer on the expiry of the time within which the latter was entitled, under section 167, to contest the revocation. The Authority publishes the notice without delay in the case of a revocation by operation of law.

2018, c. 23, s. 3.

DIVISION III

VOLUNTARY REVOCATION

2018, c. 23, s. 3.

169. The Authority may not revoke the authorization of an authorized insurer that applies for its revocation and that, at the time of the application, is bound by contracts underwritten in accordance with the authorization, unless the insurer

(1) continues to be bound by those contracts; or

(2) has made the necessary arrangements to have at least one other authorized financial institution or a bank succeed it in its financial institution activities as of the date on which it plans to cease to be bound by those contracts.

2018, c. 23, s. 3.

170. The voluntary revocation of an authorization requires the filing of an application with the Authority for that purpose.

In addition, a written notice concerning the application, the documents prescribed by regulation of the Authority and the costs and fees prescribed by government regulation must be filed with the application.

2018, c. 23, s. 3.

171. An application for revocation must specify whether the revocation is to be full or partial; if a partial revocation is being sought, the application must list the classes to which it would apply.

The application must also describe any arrangements made to have an authorized financial institution or a bank succeed the applicant.

The application must include any other information determined by regulation of the Authority.

2018, c. 23, s. 3.

172. A notice concerning an application for revocation must state the authorized activities the insurer intends to cease, the date on which it intends to do so, and the names and addresses of the authorized financial institutions or banks that will succeed it, if applicable.

2018, c. 23, s. 3.

173. The Authority publishes a notice concerning an application for revocation in its bulletin.

If an authorized financial institution or a bank is to succeed the applicant, the latter must send the published notice to each holder of an insurance contract and to each participant in a group insurance contract as well as to each holder of rights relating to an investment in a segregated fund for which there will be a successor insurer.

2018, c. 23, s. 3.

174. The Authority grants an application for revocation only if the applicant shows that

(1) it is not bound by any contract underwritten in accordance with the authorization whose revocation it is applying for;

(2) it can continue to be bound, until the date of maturity, by the contracts entered into in accordance with the authorization whose revocation it is applying for, while complying with this Act; or

(3) the arrangements made to have an authorized financial institution or a bank succeed the applicant are adequate and ensure the protection of holders of contracts or rights, and that it has sent the latter the notice of application required under the second paragraph of section 173.

The Authority refuses to grant the application for revocation of a mutual company that is a member of a federation if, in its opinion, the federation would thereby become unable to meet its obligations, in particular, with respect to compliance with guarantee fund capital requirements. Sections 166 and 167 apply to that decision, whether the Authority grants or denies the application.

2018, c. 23, s. 3.

175. The Authority must send the insurer a document attesting its decision and publish the document in its bulletin.

2018, c. 23, s. 3.

CHAPTER XI

REGISTER OF AUTHORIZED INSURERS

2018, c. 23, s. 3.

176. The Authority must establish and keep up to date a register of authorized insurers that contains the following information for each of them:

(1) its name, the name it uses in Québec if different, the address of its head office and, if its head office is not in Québec, the address of its principal establishment in Québec, or, in the case of an authorized reciprocal union, its name and the name and address of the representative referred to in subparagraph 3 of the first paragraph of section 188;

(2) if applicable, the name and address of the attorney designated under section 26 of the Act respecting the legal publicity of enterprises (chapter P-44.1);

(3) the classes of activities to which the authorization granted to it by the Authority pertains, as well as the restrictions attached, if any;

(4) the recognized compensation bodies, referred to in section 89, of which it is a member;

(5) the name and address of the actuary and the auditor charged with the functions provided for in Chapter VII;

(6) the name of the financial group it belongs to or, if the group does not have a name, the names of the financial institutions that are members of it; and

(7) any other information considered by the Authority to be useful to the public.

The information contained in the register of authorized insurers is public information; it may be set up against third persons as of the date it is entered and is proof of its contents for the benefit of third persons in good faith.

2018, c. 23, s. 3; 2024, c. 15, s. 20.

177. An authorized insurer must declare to the Authority any change required to be made to the information concerning itself that is contained in the register, unless the Authority was otherwise informed by a notice or other document sent in accordance with this Act.

The declaration must be filed within 30 days of the date of the event giving rise to the change.

2018, c. 23, s. 3.

CHAPTER XII

CONFIDENTIALITY OF SUPERVISORY INFORMATION

2018, c. 23, s. 3.

178. Such information as is determined by the Minister by regulation that is held by an authorized insurer in relation to the Authority's supervision of the insurer is confidential. It may not be used as evidence in any civil or administrative proceedings and is privileged for that purpose.

No one may be compelled, in any civil or administrative proceedings, to testify or to produce a document relating to that information.

2018, c. 23, s. 3.

179. Despite section 178,

(1) the Attorney General, the Minister, the Authority or, if the authorized insurer is a professional order, the Office des professions du Québec may use the information made confidential by that section as evidence;

(2) the authorized insurer concerned may, in accordance with the regulation made by the Minister, use that information as evidence in any proceedings concerning the administration or enforcement of this Act or the Business Corporations Act (chapter S-31.1) that are brought by the insurer, the Minister, the Authority or the Attorney General; and

(3) anyone who may be compelled to testify or to produce a document relating to that information in any proceedings regarding the application of this Act or any other Act administered by the Authority to an authorized insurer or of the Business Corporations Act may use that information provided the proceedings are brought by the insurer concerned, the Attorney General, the Minister or the Authority.

2018, c. 23, s. 3; 2021, c. 34, s. 18.

180. The communication of information referred to in this chapter otherwise than in the cases provided for by its provisions does not entail a waiver of the confidentiality conferred by those provisions.

Likewise, the communication to the Authority of information protected by professional secrecy, by litigation privilege or by another communication restriction under the rules of evidence does not entail a waiver of the protection conferred on that information.

2018, c. 23, s. 3; 2021, c. 34, s. 19.

181. This chapter does not apply to information that must be made public by law. Nor does it apply to information held by an authorized insurer if the information is contained in a document that was sent in accordance with another Act.

2018, c. 23, s. 3.

CHAPTER XIII

PROVISIONS SPECIFIC TO THE SUPERVISION OF THE INSURER ACTIVITIES OF AUTHORIZED SELF-REGULATORY ORGANIZATIONS AND RECIPROCAL UNIONS

2018, c. 23, s. 3.

DIVISION I

SELF-REGULATORY ORGANIZATIONS

2018, c. 23, s. 3.

182. A self-regulatory organization must, in the financial management of its insurance business, adhere to sound and prudent management practices to ensure that its insurance fund maintains

(1) adequate assets to meet the liabilities charged against the fund, as and when they become due; and

(2) adequate capital to guarantee the sustainability of the organization’s insurance business.

2018, c. 23, s. 3.

183. A self-regulatory organization must be able to show to the Authority that it adheres to sound and prudent management practices in the financial management of its insurance business.

2018, c. 23, s. 3.

184. If the Authority anticipates that the sums payable by holders of insurance contracts underwritten by a self-regulatory organization will no longer be sufficient to maintain adequate assets in its insurance fund to meet the liabilities charged against the fund, as and when they become due, or adequate capital to guarantee the sustainability of the organization's insurance business, the Authority may order the organization, after giving it at least 10 days to submit observations, to increase, by the amount and for the period the Authority determines, the premiums and other sums collected in the course of its insurer activities.

2018, c. 23, s. 3.

185. An order placing an authorized self-regulatory organization under receivership, issued under the Act respecting the regulation of the financial sector (chapter E-6.1), may only apply to its insurance business.

Despite section 19.2 of that Act, the receivership order only empowers the receiver to take possession of the fund and of any other property held for the organization's insurance business and to liquidate the fund.

2018, c. 23, s. 3.

186. Chapter III, Division II of Chapter V, section 112, Chapters VII and VIII, Divisions I to III of Chapter IX and Chapters X to XII apply to the insurance business of authorized self-regulatory organizations.

2018, c. 23, s. 3.

187. The only regulations and guidelines applicable to authorized selfregulatory organizations are those established to be applicable to those organizations only and pertaining only to the maintenance of sound and prudent management practices in the financial management of their insurance business.

2018, c. 23, s. 3.

DIVISION II

AUTHORIZED RECIPROCAL UNIONS

2018, c. 23, s. 3.

188. The contract by which a reciprocal union is constituted must, in particular, contain provisions for

(1) determining the union's name;

(2) constituting the union's organs, such as a board of directors or a meeting of its members, and providing for their mode of operation;

(3) establishing the procedure for designating a person for the purpose of representing the union;

(4) determining rules

(a) governing how members may join or quit the union or be excluded from it, and

(b) governing the dissolution and liquidation of the union;

(5) providing for the appointment of an auditor and an actuary;

(6) providing for the pooling by its members of the sums necessary to carry out its insurer activities and establishing a procedure for determining and collecting the contribution, the assessments and the additional assessments payable by those members; and

(7) *(subparagraph replaced);*

(8) providing for any other measure determined by regulation of the Authority.

2018, c. 23, s. 3; 2021, c. 34, s. 20; 2024, c. 15, s. 21.

189. The sums pooled by the authorized reciprocal union's members must enable it to meet its liabilities, as and when they become due.

2018, c. 23, s. 3; 2021, c. 34, s. 21; 2024, c. 15, s. 22.

190. An amendment to the contract referred to in section 188 entails a review of the authorization granted by the Authority to the authorized reciprocal union.

The union must, without delay, send the amended contract to the Authority.

The contract sent to the Authority is substituted for the notice of intention required under sections 146 to 158, but is not published by the Authority in its bulletin.

2018, c. 23, s. 3; 2024, c. 15, s. 23.

191. The representative or the attorney designated under section 26 of the Act respecting the legal publicity of enterprises (chapter P-44.1) may, in that capacity and in the representative's or attorney's own name, despite any inconsistent provision of an Act of Québec, exercise before the courts, as plaintiff or defendant, the rights of the reciprocal union.

2018, c. 23, s. 3; 2021, c. 34, s. 21; 2024, c. 15, s. 24.

192. If the Authority anticipates that the sums that must be pooled by the members of the authorized reciprocal union will not be sufficient to enable the union to meet its liabilities, as and when they become due, the Authority may order the union, after giving the latter at least 10 days to submit observations, to increase, by the amount and for the period the Authority determines, the sums collected from its members.

2018, c. 23, s. 3; 2021, c. 34, s. 21; 2024, c. 15, s. 25.

193. An order placing an authorized reciprocal union under receivership, issued under the Act respecting the regulation of the financial sector (chapter E-6.1), may only apply to that union, its directors, its representative, its organs and its members. The order has effect only in relation to the union's insurer activities.

Despite section 19.2 of that Act, the receivership order only empowers the receiver to take possession of the union's property and to liquidate it.

2018, c. 23, s. 3; 2021, c. 34, s. 21; 2024, c. 15, s. 26.

194. Chapters I to III and Chapters VII to XII apply to authorized reciprocal unions.

2018, c. 23, s. 3; 2024, c. 15, s. 27.

195. The only regulations and guidelines applicable to authorized reciprocal unions are those established to be applicable to those unions only and relating only to the maintenance, by the unions, of sufficient sums to enable them to meet their liabilities, as and when they become due.

2018, c. 23, s. 3; 2021, c. 34, s. 21; 2024, c. 15, s. 28.

TITLE III

INSURANCE COMPANIES AND ASSOCIATIONS AND CERTAIN OTHER QUÉBEC INSURERS

2018, c. 23, s. 3; 2024, c. 15, s. 29.

CHAPTER I

CORPORATIONS AND COMPANIES CONCERNED

2018, c. 23, s. 3.

196. Insurance companies are either business corporations constituted, continued or amalgamated under the Business Corporations Act (chapter S-31.1) or mutual companies.

Insurance associations are associations whose contracts binding each of their members are established in writing under the provisions of the Civil Code concerning contracts of association.

The other Québec insurers to which this Title applies are self-regulatory organizations, to which only Chapter XVI applies, and authorized insurers constituted under a private Act of Québec, to which Chapter XIII applies for the purpose of entitling them to apply for continuance as an insurance company and to which the other provisions of this Title apply to the extent provided for in section 535.

2018, c. 23, s. 3; 2024, c. 15, s. 30.

197. For the purposes of this Title, a regulated business corporation or any other authorized Québec insurer is said to be a "mutual-interest" regulated business corporation or authorized Québec insurer if it is governed by a private Act that constitutes a mutual legal person required, by that same Act, to be the holder of control of the corporation or insurer or the holder of any other interest in its capital.

2018, c. 23, s. 3.

CHAPTER II

APPLICATION OF THE BUSINESS CORPORATIONS ACT

2018, c. 23, s. 3.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 3.

198. Subject to the other provisions of this Title that may limit or exclude its application in specific matters, the provisions of the Business Corporations Act (chapter S-31.1) apply, with the necessary modifications, to insurance companies, except sections 3 to 6, 8 to 10 and 126, Division III of Chapter VII, section 239 and Chapters X, XIV, XVI and XVII.

For the purpose of applying the provisions of that Act to insurance companies, the elements relating to a unanimous shareholder agreement are deemed not written.

2018, c. 23, s. 3.

DIVISION II

MODIFICATIONS SPECIFIC TO MUTUAL COMPANIES

2018, c. 23, s. 3.

199. In addition to the provisions specified in section 198, the following provisions of the Business Corporations Act (chapter S-31.1) do not apply to mutual companies: sections 11 and 40 to 42, Chapter V, sections 106 and 111, the third paragraph of section 113, paragraphs 12 to 15 of section 118, sections 155, 156, 176 to 179 and 182, subdivisions 4 and 6 of Division I of Chapter VII, Division IV of Chapter VII, the second paragraph of section 224, the third paragraph of section 308, sections 309 to 311, subdivisions 3, 4 and 5 of Division I of Chapter XIII, sections 324 and 341 to 346, subdivision 6 of Division II of Chapter XIII, Division III of Chapter XIII and Chapter XV.

In addition, Division II of Chapter VIII of that Act does not apply to a mutual company if it is a member of a federation that provides it with the services of an auditor.

2018, c. 23, s. 3.

200. For the purpose of applying the provisions of the Business Corporations Act (chapter S-31.1) to mutual companies, the following modifications must be made:

(1) the Authority is substituted for the enterprise registrar, except as regards maintaining an enterprise register; the Authority must send the enterprise registrar the documents relating to a corporation that must be filed with the enterprise register under the Business Corporations Act and this Act;

(2) "mutual member" must be substituted for "shareholder", except in the first paragraph of section 224, where "mutual members and shareholders" must be substituted for "shareholders";

(3) "part" in the French text must be substituted for "action" and "interest" must be substituted for "dividend"; and

(4) a reference to articles of constitution is a reference to articles of constitution under this Act.

2018, c. 23, s. 3.

CHAPTER III

REGULATION BY THIS TITLE AND CONSTITUTION OF MUTUAL COMPANIES

2018, c. 23, s. 3.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 3.

201. Business corporations constituted, continued or amalgamated under the Business Corporations Act (chapter S-31.1) and associations constituted by written contract under the provisions of the Civil Code concerning contracts of association become regulated by this Title as a result of a decision to that effect by the Minister, following the filing of an application for that purpose with the Authority and the publication of a notice of intention to apply to become regulated by this Title. The same is true for the constitution of a mutual company.

2018, c. 23, s. 3; 2024, c. 15, s. 32.

DIVISION II

BECOMING REGULATED BY THIS TITLE

2018, c. 23, s. 3.

§ 1. — *Provisions applicable to business corporations*

2018, c. 23, s. 3.

202. A business corporation may apply to become regulated by this Title only if it is authorized to do so by its shareholders.

2018, c. 23, s. 3.

203. Shareholder authorization is given by special resolution.

By that resolution, the shareholders also authorize a director or an officer of the business corporation to see to the preparation of the documents necessary for it to become regulated by this Title and of those necessary for its change of name, and to sign those documents.

2018, c. 23, s. 3.

204. The adoption of the special resolution authorizing a business corporation to apply to become regulated by this Title and change its name confers on shareholders the right to demand the repurchase of their shares.

That right is exercised in accordance with Chapter XIV of the Business Corporations Act (chapter S-31.1) as if it were provided for in section 372 of that Act.

The adoption of such a resolution confers on shareholders who do not own shares with voting rights the right to demand, in the same manner, that the corporation repurchase all their shares.

2018, c. 23, s. 3.

§ 2. — *Provisions applicable to mutual companies*

2018, c. 23, s. 3.

205. The constitution of a mutual company and its becoming regulated by this Title are the outcome of a same decision by the Minister and cannot be dissociated.

A decision by the Minister to make a mutual company subject to regulation by this Title entails the order to constitute the company. Conversely, an order by the Minister to constitute a mutual company entails the company's being subject to regulation by this Title. The same applies to the Minister's refusal to make a mutual company subject to regulation by this Title or to order the constitution of a mutual company.

2018, c. 23, s. 3.

206. An application for the constitution of a mutual company may be filed on the initiative of one or more promoters, if at least 200 persons have undertaken to enter, within the year after the Authority's authorization is obtained, into an insurance contract or to enroll in a group insurance contract underwritten by the company.

The promoters must be qualified to serve as directors of the mutual company.

The Act respecting the distribution of financial products and services (chapter D-9.2) does not apply to the obtaining of an undertaking referred to in the first paragraph.

2018, c. 23, s. 3.

207. The promoters must designate a provisional secretary, see to the preparation of the documents necessary for the constitution of the mutual company, in particular the articles of constitution, and sign the documents.

They must also see that an organization meeting is called within 60 days after the date on which the mutual company is constituted.

If the proposed mutual company will be a member of a federation, the promoters must obtain a resolution attesting the federation's undertaking to admit the company as a member.

2018, c. 23, s. 3.

208. The articles of constitution of a mutual company must state its name. They may set out any provision permitted by this Act to be set out in the by-laws of a mutual company. In case of conflict, the articles of constitution prevail over the by-laws.

2018, c. 23, s. 3.

§ 3. — *Provisions applicable to insurance associations*

2024, c. 15, s. 33.

208.1. An insurance association may apply to become regulated by this Title only if the contract by which it is constituted was entered into by at least five parties for the sole purpose of carrying on insurer activities and if the contract contains the measures provided for in section 188.

The five parties must be qualified to serve as directors of the association, unless the directors have already been designated.

2024, c. 15, s. 33.

DIVISION III

NOTICE OF INTENTION AND APPLICATION TO BECOME REGULATED BY THIS TITLE

2018, c. 23, s. 3.

§ 1. — *Notice of intention*

2018, c. 23, s. 3.

209. A notice of intention to apply to become regulated by this Title must state

(1) the proposed name of the insurance company or association and, in the case of a business corporation, its name at the time the notice is sent, if different;

(2) in the case of a corporation or company, its juridical form, namely, whether it is a business corporation or a mutual company;

(3) in the case of a mutual company, the name and address of its promoters;

(4) the classes of activities for which the corporation, company or association is applying for the Authority's authorization; and

(5) the location of the insurance company's proposed head office or of the insurance association's principal establishment and, in the case of a business corporation, the location of its head office at the time the notice is sent, if different.

The notice of intention must accompany the application to become regulated by this Title filed with the Authority.

2018, c. 23, s. 3; 2024, c. 15, s. 34.

§ 2. — *Application*

2018, c. 23, s. 3.

210. An application to become regulated by this Title must include the information prescribed by regulation of the Minister in addition to the information stated in the notice of intention.

It may also include the date and, if applicable, the time as of which the applicant wishes to become regulated by this Title, if later than the date and time of the Minister's decision.

2018, c. 23, s. 3.

211. An application to become regulated by this Title filed by a business corporation must, in addition, state the name and address of each holder of a significant interest in the corporation.

2018, c. 23, s. 3.

212. An application to become regulated by this Title filed by a mutual company must, in addition, include

(1) the names and addresses of the persons who have undertaken to enter into or enroll in an insurance contract to be underwritten by the mutual company and the names and addresses of the promoters;

(2) the name and address of the person designated, if applicable, as provisional secretary of the mutual company; and

(3) a description of the manner in which the organization meeting will be called and the time limit for doing so.

2018, c. 23, s. 3.

212.1. An application to become regulated by this Title filed by an association must, in addition, include

(1) the name and address of the director or member of the association charged with seeing to the preparation and signing of the documents necessary for it to become regulated by this Title;

(2) the list of the association's members and the sums that each intends to pay into the pool; and

(3) any other information prescribed by regulation of the Minister.

2024, c. 15, s. 36.

213. In addition to the notice of intention, the following must be filed with the application:

(1) the articles of the business corporation, the contract by which the association is constituted or the articles of constitution of the mutual company;

(2) in the case of an insurance company, a description of the projected capital structure and, for a three-year period, a business plan and financial forecasts;

(2.1) in the case of an insurance association, business planning and financial forecasts for a three-year period;

(3) in the case of a mutual company that intends to become a member of a federation, a certified copy of the resolution of the federation attesting that it has undertaken to admit the company as a member;

(4) in the case of a business corporation, a certified copy of the special resolution authorizing it to file an application to become regulated by this Title;

(5) the other documents prescribed by regulation of the Minister; and

(6) the fees prescribed by government regulation.

2018, c. 23, s. 3; 2024, c. 15, s. 37.

214. An application to become regulated by this Title must be filed with the Authority together with the required documents and fees.

2018, c. 23, s. 3.

215. On receipt of the application to become regulated by this Title and the required documents and fees, the Authority publishes the notice of intention in its bulletin.

2018, c. 23, s. 3.

216. The Authority must prepare a report on the reasons for granting or denying the application to become regulated by this Title in which it assesses consumer interest and the impact of the decision on the insurance market in Québec.

In the case of a business corporation or a mutual company, the report must cover such matters as

(1) the nature and scope of the financial means gathered for the ongoing financial support of the insurance company;

(2) if applicable, the grounds for disqualification for office as director of an insurance company that exist

(a) if the applicant is a business corporation, with respect to a director of, or a holder of a significant interest in, the business corporation, and

(b) if the applicant is a mutual company, with respect to a promoter of the mutual company;

(3) the quality and feasibility of the business plan and the financial forecasts for the carrying on and development of the insurance company's activities; and

(4) the compliance of the insurance company's proposed name with this Act.

In the case of a business corporation, the report must also assess the competency and experience of its directors and officers.

In the case of an association, the report must cover such matters as:

(1) if applicable, the grounds for disqualification of its directors;

(2) the compliance of the insurance association's proposed name with this Act;

(3) the sufficiency of the sums pooled by its members; and

(4) the quality and feasibility of the planning and the financial forecasts for the carrying on and development of the insurance association's activities.

2018, c. 23, s. 3; 2024, c. 15, s. 38.

217. To the extent that the insurance company's or insurance association's proposed name is compliant with the requirements of this Act, the Authority sends its report to the Minister together with the application to become regulated by this Title and the accompanying documents.

2018, c. 23, s. 3; 2024, c. 15, s. 39.

DIVISION IV

MINISTER'S DECISION

2018, c. 23, s. 3.

218. The Minister may, if the Minister considers it advisable, make a business corporation, mutual company or association subject to regulation by this Title.

2018, c. 23, s. 3; 2024, c. 15, s. 40.

219. When the Minister makes a business corporation, mutual company or association subject to regulation by this Title, the Minister sends a document attesting that decision to the corporation, company or association and to the Authority.

The document must include the date and time of the Minister's decision and, if different, the date and time specified in the application for becoming regulated by this Title.

2018, c. 23, s. 3; 2024, c. 15, s. 41.

220. On receipt of a document attesting that a mutual company is regulated by this Title, the Authority processes the articles of constitution, issues the certificate of constitution in accordance with Chapter XVIII of the Business Corporations Act (chapter S-31.1) then sends a copy of the certificate and the articles to the enterprise registrar, who deposits them in the enterprise register.

The Authority enters on the certificate the date and, if applicable, time shown on the document as of which the mutual company is regulated by this Title.

2018, c. 23, s. 3.

221. A mutual company is constituted as of the effective date and, if applicable, time shown on the certificate of constitution issued by the Authority. It is a legal person as of that time.

2018, c. 23, s. 3.

CHAPTER IV

ORGANIZATION OF AN INSURANCE COMPANY OR ASSOCIATION

2018, c. 23, s. 3; 2024, c. 15, s. 42.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 3.

222. "Organization", in relation to an insurance company or association, means the actions that must be taken, as of the time the company or association becomes regulated by this Title, in order to obtain the Authority's authorization.

According to the context, "organization" also means the period after the insurance company or association becomes regulated by this Title during which those actions must be taken.

2018, c. 23, s. 3; 2024, c. 15, s. 43.

DIVISION II

PROVISION SPECIFIC TO BUSINESS CORPORATIONS OR TO ASSOCIATIONS

2018, c. 23, s. 3; 2024, c. 15, s. 44.

223. The consideration paid in money for which shares of a regulated business corporation are issued or the sums pooled by the members of a regulated association during the organization of that corporation or association must be deposited with a bank or with a deposit institution authorized under the Deposit Institutions and Deposit Protection Act (chapter I-13.2.2).

2018, c. 23, s. 3; 2024, c. 15, s. 45.

DIVISION III

PROVISIONS SPECIFIC TO MUTUAL COMPANIES

2018, c. 23, s. 3.

224. The provisional secretary of a mutual company must call an organization meeting in the manner described in the application to become regulated by this Title and within the specified time limit.

The Minister may extend that time limit or, if it has expired, set a new one.

2018, c. 23, s. 3.

225. The persons who, on the date the organization meeting is called, have undertaken to enter into an insurance contract or enroll in a group insurance contract underwritten by the mutual company must be called to the meeting.

2018, c. 23, s. 3.

226. If the provisional secretary is absent or unable to act, the organization meeting may be called by a promoter or by two other persons among those who must be called to the meeting.

The mutual company must reimburse the expenses reasonably incurred to call and hold the meeting.

2018, c. 23, s. 3.

227. The persons attending the organization meeting must adopt by-laws and elect the directors.

They may take any other measure relating to the affairs of the mutual company.

2018, c. 23, s. 3.

228. The directors elected at the organization meeting must hold a subsequent organization meeting during which they must, in particular,

(1) issue the shares of the share capital of the mutual company that, if applicable, were subscribed and paid; and

(2) take any other measure toward organizing the company that is not reserved to the mutual members' meeting.

2018, c. 23, s. 3.

DIVISION IV

CONCLUSION OF THE ORGANIZATION OF AN INSURANCE COMPANY OR ASSOCIATION

2018, c. 23, s. 3; 2024, c. 15, s. 46.

229. The organization of an insurance company or association concludes when the Authority grants or refuses to grant its authorization or when such authorization has not been obtained on the expiry of a one-year period after the company or association became regulated by this Title without there having been a refusal to grant it.

The Minister may, on the company's or association's application, extend its organization for a period not exceeding one year.

2018, c. 23, s. 3; 2024, c. 15, s. 47.

230. A business corporation whose organization ends without its having obtained the Authority's authorization must repurchase the shares it issued for consideration paid in money, unless the shareholder who holds them refuses.

The repurchase price of a share corresponds to that consideration, less, if applicable, an aliquot share corresponding to the proportion that the sums incurred for the corporation to become regulated by this Title and for its organization are of the total number of shares in circulation at the time the organization ended.

A corporation that is unable to pay the full repurchase price because there are reasonable grounds for believing that it is, or would after the payment be, unable to pay its liabilities as they become due is only required to pay the maximum amount it may legally pay. In that case, the shareholders remain creditors of the corporation for the unpaid balance of the repurchase price and are entitled to be paid as soon as the corporation is legally able to do so or, in the event of liquidation, are entitled to be collocated after the other creditors but by preference over the other shareholders.

2018, c. 23, s. 3.

230.1. An association whose contract ends without its having obtained the Authority's authorization must subtract from its property its debts and, in accordance with article 2279 of the Civil Code, share among its

members the sums pooled that were not committed for the association to become regulated by this Title and for the association's organization.

2024, c. 15, s. 48.

231. A business corporation ceases to be regulated by this Title, except the third paragraph of section 230, once it has repurchased all the shares for which a shareholder has not refused the repurchase.

An association ceases to be regulated by this Title once it has remitted to each of its members the sums they had pooled.

2018, c. 23, s. 3; 2024, c. 15, s. 49.

232. A mutual company whose organization ends without its having obtained the Authority's authorization must liquidate and dissolve.

2018, c. 23, s. 3.

CHAPTER V

NAME

2018, c. 23, s. 3.

233. For the purpose of applying Division I of Chapter IV of the Business Corporations Act (chapter S-31.1), which pertains to a corporation's name, to an insurance company, the Authority exercises the functions and powers conferred on the enterprise registrar.

Section 23 of that Act, and the provisions of section 27 of the same Act allowing the enterprise registrar to replace a name by a designating number, do not apply to insurance companies. In addition, section 20 of that Act does not apply to a mutual company and section 21 of the same Act applies to a mutual company that is a member of a federation only to the extent and on the conditions provided in the federation's by-laws.

2018, c. 23, s. 3.

234. The expressions "mutual company" and "reciprocal union" are reserved for mutual companies and reciprocal unions, respectively.

2018, c. 23, s. 3; 2024, c. 15, s. 50.

235. A change of name of an insurance company does not affect its rights and obligations and any proceedings to which it is a party may be continued under its new name without continuance of suit.

2018, c. 23, s. 3.

236. This chapter applies despite the Act respecting the legal publicity of enterprises (chapter P-44.1).

2018, c. 23, s. 3.

CHAPTER VI

SPECIAL POWERS OF AN INSURANCE COMPANY AND RESTRICTIONS ON ITS ACTIVITIES

2018, c. 23, s. 3.

DIVISION I

SPECIAL POWERS

2018, c. 23, s. 3.

237. An insurance company authorized to carry on life insurance activities may, by resolution of its board of directors, establish segregated funds to comply with section 76.

Such funds are each a division of the insurance company's patrimony. Each of them is to be used to meet the liabilities for which the corporation is required to hold the property constituting them, before any of the corporation's other liabilities.

2018, c. 23, s. 3.

DIVISION II

RESTRICTION ON ACTIVITIES

2018, c. 23, s. 3.

238. The Authority may require an insurance company to establish a legal person of which the company will be the holder of control in order to carry on an activity other than insurer activities,

(1) if it constitutes the operation of an enterprise, regardless of the insurance company's other activities; and

(2) if, in the Authority's opinion, it renders the application of this Act difficult or ineffective.

For the purposes of the first paragraph, an activity is deemed not to constitute the operation of an enterprise if it generates less than 2% of an insurance company's gross income.

2018, c. 23, s. 3.

239. Mutual companies may not establish a federation otherwise than under this Act.

2018, c. 23, s. 3.

240. A mutual company may be the holder of control of a business corporation authorized to carry on activities in the same class only if the business corporation is regulated by this Title.

The Minister may however authorize, for a period the Minister determines, a mutual company to become the holder of control of a business corporation constituted under the laws of a jurisdiction other than Québec, provided the mutual company undertakes to continue that business corporation as an insurance company before the end of that period.

2018, c. 23, s. 3.

241. No mutual company that is a member of a federation may, without the federation's authorization, carry on financial institution activities other than those of an insurer.

2018, c. 23, s. 3.

CHAPTER VII

LOANS, HYPOTHECS AND OTHER SECURITIES

2018, c. 23, s. 3.

242. Except in the case of a short-term loan to meet liquidity requirements, no insurance company may borrow by issuing debt obligations unless the loan is unsecured.

In addition, the total unsecured loans for which debt obligations were issued by an insurance company may not exceed the limits determined by regulation of the Authority. The regulation may prescribe the terms of the debt obligations.

Each issue of debt obligations must be the subject of a resolution by the board of directors which must set the terms of the issue. The Authority may, by regulation, determine the terms required to be set by that resolution.

However, a mutual company that is a member of a federation may only issue such debt obligations if it is authorized to do so by the federation.

2018, c. 23, s. 3.

243. No insurance company may, without the Authority's authorization, grant a hypothec or other security on its movable property, except

(1) to secure a short-term loan contracted to meet liquidity requirements;

(2) to obtain an advance under section 40.5 of the Deposit Institutions and Deposit Protection Act (chapter I-13.2.2), or if it receives deposits outside Québec, to obtain an advance from a federal or provincial body that guarantees or insures deposits; or

(3) to become a member of a securities clearing house recognized by the Authority as a self-regulatory organization or of any association the object of which is to organize a clearing and settlement system for payment instruments or securities transactions, and to provide the necessary guarantees.

The Authority may, in granting its authorization, require any undertaking it considers necessary to ensure compliance with this Act.

2018, c. 23, s. 3.

CHAPTER VIII

CONTRIBUTED CAPITAL

2018, c. 23, s. 3.

DIVISION I

SHARE CAPITAL OF A REGULATED BUSINESS CORPORATION

2018, c. 23, s. 3.

§ 1. — *Issue*

2018, c. 23, s. 3.

244. Despite section 53 of the Business Corporations Act (chapter S-31.1), the shares of a regulated business corporation are issued only when they are fully paid.

2018, c. 23, s. 3.

§ 2. — *Maintenance of share capital*

2018, c. 23, s. 3.

245. A regulated business corporation may not make a payment to purchase or redeem shares if, in addition to the grounds referred to in section 95 of the Business Corporations Act (chapter S-31.1), there are reasonable grounds for believing that the corporation is, or would after the payment be, unable to maintain, in accordance with section 74, adequate assets to meet its liabilities, as and when they become due, and adequate capital to ensure its sustainability.

The reference to section 95 of the Business Corporations Act in sections 97 and 98 of that Act is replaced by a reference to the first paragraph when those sections apply to a regulated business corporation.

2018, c. 23, s. 3.

246. A regulated business corporation may not reduce the amount of its issued share capital if, in addition to the grounds referred to in section 101 of the Business Corporations Act (chapter S-31.1), there are reasonable grounds for believing that the corporation is, or would after the reduction be, unable to maintain, in accordance with section 74, adequate assets to meet its liabilities, as and when they become due, and adequate capital to ensure its sustainability.

2018, c. 23, s. 3.

247. A regulated business corporation may not declare or pay a dividend, except by issuing shares or options or rights to acquire shares, if, in addition to the grounds referred to in section 104 of the Business Corporations Act (chapter S-31.1), there are reasonable grounds for believing that the corporation is, or would after the payment be, unable to maintain, in accordance with section 74, adequate assets to meet its liabilities, as and when they become due, and adequate capital to ensure its sustainability.

2018, c. 23, s. 3.

§ 3. — *Disclosure of certain interests and restrictions concerning the exercise of the voting rights carried by the shares issued by a regulated business corporation*

2018, c. 23, s. 3.

248. Anyone who intends to become the holder of a significant interest in a regulated business corporation's decisions must send a notice of intention to the Authority not later than the 30th day before the day on which the person will become the holder of that interest.

The same is true for whoever is already the holder of such an interest but not the holder of control of the corporation and intends to become the holder of control.

2018, c. 23, s. 3.

249. A notice of intention under section 248 must include

(1) the name and address of the person or group that intends to become the holder of the interest referred to in that section and, in the case of a natural person, his or her résumé, or, in the case of a group, its juridical form and, if applicable, the identity of the holder of control of the group; and

(2) a description of the shares issued by an insurance company the voting rights attached to which would make the person or group the holder of the interest referred to in section 248.

2018, c. 23, s. 3.

250. On receipt of the notice of intention, the Authority must prepare a report on the effect of the transaction on the regulated business corporation and on its development as well as on the insurance industry in Québec.

The Authority must send the report to the Minister.

2018, c. 23, s. 3.

251. The Minister may, if the Minister considers it advisable, approve the acquisition of control or the acquisition of another significant interest referred to in section 248.

2018, c. 23, s. 3.

252. The Authority may order that the voting rights conferred by the shares issued by a regulated business corporation on the holder of an interest referred to in section 248 be exercised by an administrator of the property of others appointed by the Authority if the holder of that interest has not obtained the Minister's approval.

2018, c. 23, s. 3.

253. Instead of revoking or suspending the authorization granted to a regulated business corporation under subparagraph *c* of subparagraph 1 of the first paragraph of section 164, or attaching a condition or restriction to the authorization under section 165, the Authority may order that the voting rights conferred by the shares issued by the corporation on the holder of control of the corporation or the holder of a significant interest in the decisions of the corporation be exercised by an administrator of the property of others appointed by the Authority.

The order may not be effective for more than five years from the day it was made.

2018, c. 23, s. 3.

254. An order under section 252 or 253 may, within 30 days of its notification, be contested before the Financial Markets Administrative Tribunal.

The Tribunal may only confirm or quash a contested order.

2018, c. 23, s. 3.

§ 4. — *Interest in the profits of certain business corporations*

2018, c. 23, s. 3.

255. A regulated business corporation of which a mutual company is the holder of control and which is authorized to carry on activities in the same class as the latter may declare and pay, for a particular year, a portion of its profits to its members, other than shareholders.

2018, c. 23, s. 3.

DIVISION II

SHARE CAPITAL OF A MUTUAL COMPANY

2018, c. 23, s. 3.

§ 1. — *General provisions*

2018, c. 23, s. 3.

256. A mutual company's share capital is unlimited.

It may consist of one or more classes of shares.

2018, c. 23, s. 3.

257. A share may be issued only if the contribution required for its issue is fully paid, unless it is issued in accordance with an amalgamation agreement.

The contribution must be paid in money.

2018, c. 23, s. 3.

258. Shares must be in registered form. No share may entitle its holder to be called to, to attend or to vote at a meeting, or to be eligible for any office in the mutual company.

2018, c. 23, s. 3.

259. Shares entitle their holder, in the event of liquidation or dissolution, to the reimbursement of the contribution paid for their issue, if the liquidator has performed the mutual company's other obligations, obtained forgiveness of those obligations or otherwise made provision for them.

Unless otherwise provided in the by-laws,

(1) shares are not redeemable; or

(2) if shares are redeemable, the redemption price of a share is the amount of the contribution paid for its issue and the interest declared but not yet paid.

2018, c. 23, s. 3.

260. The rights of holders of shares of the same class are equal in all respects.

2018, c. 23, s. 3.

261. A mutual company attests the existence of shares by making an entry in its securities register.

2018, c. 23, s. 3.

262. Shares may be transferred only in accordance with the conditions and in the manner prescribed in the mutual company's by-laws.

They are however transmissible to their holder's heirs or legatees by particular title, unless the by-laws provide for redemption on the holder's death.

2018, c. 23, s. 3.

263. A mutual company must, in its by-laws, determine, for each class of shares prescribed in the by-laws,

(1) the contribution required per share for its issue;

(2) the maximum interest that may be paid on the shares;

(3) the conditions on which and manner in which shares may be transferred;

(4) the redemption terms, if applicable;

(5) the order in which shares are repaid in the event of liquidation or dissolution; and

(6) other rights, privileges and restrictions attached to the shares.

The mutual company must send the Authority a copy of its by-laws.

2018, c. 23, s. 3.

§ 2. — *Maintenance of share capital*

2018, c. 23, s. 3.

264. A mutual company may not declare or pay any interest if there are reasonable grounds for believing that the company is, or would after the payment be, unable to maintain, in accordance with section 74, adequate assets to meet its liabilities, as and when they become due, and adequate capital to ensure its sustainability.

2018, c. 23, s. 3.

265. Except for shares redeemed on their holder's death or when the holder otherwise ceases to be a member of a mutual company, the company may not redeem shares if there are reasonable grounds for believing that the company is, or would after the payment be, unable to maintain, in accordance with section 74, adequate assets to meet its liabilities, as and when they become due, and adequate capital to ensure its sustainability.

A mutual company that redeems shares on their holder's death or when the holder otherwise ceases to be a member of the mutual company may not pay the redemption price of the shares if the company would, after the payment, be unable to maintain such assets and such capital.

The former holder of those shares becomes a creditor of the company and is entitled to be paid as soon as the company may legally do so or, in the event of liquidation, is entitled to be collocated after the other creditors but ahead of the shareholders.

The company must provide an evidence of indebtedness to the former shareholder.

2018, c. 23, s. 3.

CHAPTER IX

DIRECTORS AND OFFICERS

2018, c. 23, s. 3.

DIVISION I

BOARD OF DIRECTORS

2018, c. 23, s. 3.

266. A majority of an insurance company's or association's directors must be resident in Québec.

2018, c. 23, s. 3; 2024, c. 15, s. 51.

267. The fixed number of directors or the minimum and maximum number of directors of an insurance company constituted under a private Act of Québec may, despite any provision to the contrary, be prescribed by the insurer's by-laws.

A decision concerning the number of directors must be made by special resolution.

2018, c. 23, s. 3; 2024, c. 15, s. 52.

268. The board of directors of a regulated business corporation of which a mutual company is the holder of control and which is authorized to carry on activities in the same class as the latter must include at least one director elected exclusively by its members, other than shareholders, present at the meeting during which the other directors are elected.

The number of directors that must be elected by those members is determined by the business corporation's by-laws. It may not exceed one-third of the board of directors.

2018, c. 23, s. 3.

DIVISION II

DISQUALIFICATION

2018, c. 23, s. 3.

§ 1. — *General provisions*

2018, c. 23, s. 3.

269. In addition to persons disqualified for office as directors under the Civil Code, a person found guilty of an indictable or other offence involving fraud or dishonesty cannot be a director of an insurance company or association, unless the person has obtained a pardon.

2018, c. 23, s. 3; 2024, c. 15, s. 53.

270. The Authority may remove a director holding office in an insurance company or association if the person is disqualified for office as such.

2018, c. 23, s. 3; 2024, c. 15, s. 54.

271. Before removing a director of an insurance company or association, the Authority notifies the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the director and the company or association, as the case may be, in writing and grants them at least 10 days to submit observations.

2018, c. 23, s. 3; 2024, c. 15, s. 55.

272. A decision under section 270 may, within 30 days of its notification, be contested before the Financial Markets Administrative Tribunal.

The Tribunal may only confirm or quash a contested decision.

2018, c. 23, s. 3.

§ 2. — *Provision specific to business corporations*

2018, c. 23, s. 3.

273. In addition to persons who cannot be directors of an insurance company, a person who, by reason of an order issued by the Authority under section 252 or 253, cannot exercise the voting rights conferred on the person by shares issued by such a company cannot be a director of a regulated business corporation.

2018, c. 23, s. 3.

§ 3. — *Provisions specific to mutual companies*

2018, c. 23, s. 3.

274. At least half of the board of directors of a mutual company must consist of mutual members.

2018, c. 23, s. 3.

275. A mutual member's eligibility and the nomination by a mutual member of another person as a candidate for office as director may be subject to the mutual member having had that status for the minimum period determined by the mutual company's by-laws, which may not exceed 90 days.

2018, c. 23, s. 3.

276. An employee of a mutual company that is a member of a federation may not be a director of that company, even if the employee is a mutual member.

The same is true for an employee of a group affiliated with the company.

2018, c. 23, s. 3.

DIVISION III

QUORUM

2018, c. 23, s. 3.

277. Despite section 138 of the Business Corporations Act (chapter S-31.1), the quorum at a meeting of the board of directors of an insurance company may not be less than the majority of the directors in office. Similarly, the quorum at a meeting of the board of directors of an insurance association may not be less than that majority.

2018, c. 23, s. 3; 2024, c. 15, s. 56.

DIVISION IV

FUNCTIONS AND POWERS OF THE BOARD OF DIRECTORS

2018, c. 23, s. 3.

278. Other than the powers of a board of directors which, in accordance with section 118 of the Business Corporations Act (chapter S-31.1), may not be delegated, the board of directors of an insurance company may not delegate the power to appoint and dismiss the actuary charged with the functions provided for in Chapter VII of Title II, or the power to determine the actuary's remuneration. Similarly, the board of directors of an insurance association may not delegate the power to appoint, the power to dismiss or the power to determine the remuneration of the actuary referred to in that chapter.

2018, c. 23, s. 3; 2024, c. 15, s. 57.

279. The restriction set out in section 278 is applicable to a mutual company only to the extent that the federation of which it is a member does not provide it with the services of an actuary.

2018, c. 23, s. 3.

DIVISION V

PROHIBITED ACTS AND LIABILITY

2018, c. 23, s. 3.

§ 1. — *Provisions specific to business corporations*

2018, c. 23, s. 3.

280. For the purpose of applying section 156 of the Business Corporations Act (chapter S-31.1) to a regulated business corporation, the following modifications must be made:

(1) the reference to section 95 of that Act in paragraph 3 of that section 156 is replaced by a reference to section 245 of this Act; and

(2) the reference to section 104 of that Act in paragraph 4 of that section 156 is replaced by a reference to section 247 of this Act.

2018, c. 23, s. 3.

§ 2. — *Provisions specific to mutual companies*

2018, c. 23, s. 3.

281. Directors of a mutual company who vote for or consent to a resolution authorizing any of the following are solidarily liable to restore to the mutual company any amounts involved and not otherwise recovered by the company:

(1) the payment of an unreasonable commission to a person in consideration of the person's purchasing or agreeing to purchase shares or other securities of the mutual company from the company, or agreeing to procure purchasers for any such shares or securities;

(2) the payment of interest contrary to section 264;

(3) the redemption of a share contrary to the first paragraph of section 265 or the payment of a share contrary to the second paragraph of that section; or

(4) the payment of an indemnity contrary to section 160 of the Business Corporations Act (chapter S-31.1).

2018, c. 23, s. 3.

282. For the purpose of applying sections 157 and 158 of the Business Corporations Act (chapter S-31.1) to a mutual company, a reference to section 155 is deemed not written, and a reference to section 156 is replaced by a reference to section 281 of this Act.

2018, c. 23, s. 3.

CHAPTER X

MEMBERS AND MEETINGS

2018, c. 23, s. 3.

DIVISION I

MEMBERS

2018, c. 23, s. 3.

283. The members of an insurance company or association are

(1) in the case of a business corporation,

(a) its shareholders, and

(b) if the holder of control of the corporation is a mutual company and the corporation is authorized to carry on activities in the same class as the latter, the persons who, if the corporation were a mutual company, would be mutual members; and

(2) in the case of a mutual company, the mutual members, that is,

(a) each of the holders of an insurance contract underwritten by the company, except a subrogated holder, if any, and

(b) if applicable, the client for a group insurance contract underwritten by the company and each of the participants; and

(3) in the case of an association, the parties to the contract that constitutes the association.

Until they become mutual members or terminate their undertaking, the persons referred to in section 206 who undertook to enter into an insurance contract underwritten by a mutual company or to enroll in such an insurance contract within the year after the Authority grants its authorization to that mutual company are deemed, for the year, to be mutual members.

2018, c. 23, s. 3; 2024, c. 15, s. 58.

DIVISION II

REGISTER

2018, c. 23, s. 3.

284. A mutual company must keep in its books a register of mutual members containing their names and addresses.

A regulated business corporation of which a mutual company is the holder of control and which is authorized to carry on activities in the same class as the latter must keep in its books a register of its members, other than shareholders, containing the name and address of each member.

An insurance association must keep in its books a register of its members containing their names and addresses.

2018, c. 23, s. 3; 2024, c. 15, s. 59.

DIVISION III

MUTUAL MEMBERS' MEETINGS

2018, c. 23, s. 3.

285. Each mutual member is entitled to one vote at a meeting.

2018, c. 23, s. 3.

286. Unless otherwise prescribed by the company's by-laws, the mutual members present at a meeting constitute a quorum.

If the quorum prescribed by by-law is not reached, the meeting may be called a second time. If the quorum is still not reached, the meeting may be validly held and must deal with the same matters as those stated in the first notice of meeting.

2018, c. 23, s. 3.

287. Mutual members may be represented at a meeting by a proxyholder, in accordance with the Business Corporations Act (chapter S-31.1), to the extent that the mutual company's by-laws allow it.

The proxyholder may not represent more than one person.

2018, c. 23, s. 3.

288. For the purpose of applying the Business Corporations Act (chapter S-31.1) to a mutual company, the following modifications must be made:

(1) the first paragraph of section 163 of that Act is to be read without reference to "not later than 18 months after the corporation is constituted and, subsequently,";

(2) if a mutual company is a member of a federation, section 165 of that Act applies subject to the mutual company's by-laws.

2018, c. 23, s. 3.

DIVISION IV

MEETINGS OF THE PARTIES IN AN INSURANCE ASSOCIATION

2024, c. 15, s. 60.

288.1. Unless otherwise prescribed by the contract by which the insurance association is constituted, each member of the insurance association is entitled to one vote at a meeting.

2024, c. 15, s. 60.

288.2. Unless otherwise prescribed by the contract by which the insurance association is constituted, the members present at a meeting constitute a quorum.

If the quorum prescribed by the contract is not reached, the meeting may be called a second time. If the quorum is still not reached, the meeting may be validly held and must deal with the same matters as those stated in the first notice of meeting.

2024, c. 15, s. 60.

288.3. Members of the insurance association may be represented at a meeting by mandataries to the extent that the contract by which the insurance association is constituted allows it.

A mandatary may not represent more than one member.

2024, c. 15, s. 60.

CHAPTER XI

FINANCIAL STATEMENTS AND CALLS TO MEETINGS FOR ACTUARY OR AUDITOR

2018, c. 23, s. 3.

289. A member may call an auditor or actuary to a meeting.

In the case of an insurance company, section 166 of the Business Corporations Act (chapter S-31.1) applies to the calling of an actuary or an auditor to a meeting.

If a mutual company is a member of a federation that provides the company with an actuary's or auditor's services, and one of the two is called to a meeting, the federation must assume the costs.

2018, c. 23, s. 3; 2024, c. 15, s. 61.

290. The members, other than shareholders, of a regulated business corporation of which a mutual company is the holder of control and which is authorized to carry on activities in the same class as the latter have the same rights as the shareholders in respect of financial statements of the business corporation.

2018, c. 23, s. 3.

CHAPTER XII

AMENDMENT, CONSOLIDATION, CORRECTION AND CANCELLATION OF ARTICLES

2018, c. 23, s. 3.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 3.

291. The amendment of the articles of an insurance company requires the Authority's permission. The same is true for the consolidation and correction of the articles, the only exception being the correction of an obvious error.

The amendment of the articles of an insurance company requires the Minister's permission when it affects entrenched provisions, within the meaning of section 316, included in the articles following the continuance of an authorized insurer constituted under a private Act of Québec.

The cancellation of articles also requires the Authority's permission, except the cancellation of articles of amalgamation or continuance, which requires the Minister's permission.

2018, c. 23, s. 3.

292. To obtain the Authority's or the Minister's permission, an insurance company must file an application for permission with the Authority.

2018, c. 23, s. 3.

293. The information that an application for permission must include is determined by regulation of the Minister or of the Authority, depending on whose permission must be requested.

2018, c. 23, s. 3.

294. The following must be filed with the application:

(1) the proposed articles of amendment, if the application is for permission to amend or correct the insurance company's articles;

(2) the proposed consolidated articles, if the application is for permission to consolidate the company's articles;

(3) the other documents prescribed by regulation of the Minister or the Authority, as the case may be; and

(4) the fees prescribed by government regulation.

2018, c. 23, s. 3.

295. On receipt of an application for permission and the required documents and fees, the Authority,

(1) when the permission that must be requested is the Minister's, prepares a report for the Minister on the reasons for granting or denying the application; or

(2) when the permission that must be requested is its own, grants the application if it considers it advisable.

2018, c. 23, s. 3.

296. The Minister may, if the Minister considers it advisable, grant an insurance company permission to cancel its articles of amalgamation or continuance.

2018, c. 23, s. 3.

297. The Authority may order an insurance company to consolidate its articles.

2018, c. 23, s. 3.

DIVISION II

PROVISIONS SPECIFIC TO REGULATED BUSINESS CORPORATIONS

2018, c. 23, s. 3.

298. When ruling on an application filed by a regulated business corporation, the Minister or the Authority must send the corporation a document justifying the decision.

2018, c. 23, s. 3.

299. A regulated business corporation may, from the receipt of the document granting the permission requested, send the enterprise registrar, as applicable,

(1) the articles of amendment that were filed with the application for permission to amend or correct the corporation's articles;

(2) the consolidated articles that were filed with the application for permission to consolidate the corporation's articles; or

(3) the application for cancellation of the articles.

In all cases, the document granting the permission requested must be filed with the application or the articles sent to the enterprise registrar.

2018, c. 23, s. 3.

300. When a regulated business corporation's articles of amendment or consolidated articles are deposited in the enterprise register, the enterprise registrar must send a certified copy of them to the Authority.

2018, c. 23, s. 3.

301. In addition to the amendments it may make to its articles under the Business Corporations Act (chapter S-31.1), a mutual-interest regulated business corporation may, subject to the second paragraph, amend its articles to add any provision departing from the applicable sections of the private Act governing it, or provide that all or some of those sections cease to have effect and replace them by any other provision not contrary to the Business Corporations Act or this Act.

Any amendment to the articles of a mutual-interest regulated business corporation that affects the rights in the corporation conferred on the mutual legal person and its members by the private Act governing the corporation, or that affects the obligation imposed on that legal person to be the holder of control of the corporation or the holder of any other interest in its capital, is without effect.

The same applies to the cancellation of articles requested by such a corporation.

2018, c. 23, s. 3.

DIVISION III

PROVISIONS SPECIFIC TO MUTUAL COMPANIES

2018, c. 23, s. 3.

302. When ruling on an application filed by a mutual company, the Minister must send the Authority a document attesting the Minister's decision. When the Authority receives the document or when it grants an application filed by a mutual company, the Authority processes the articles or the cancellation application received, issues the appropriate certificate in accordance with Chapter XVIII of the Business Corporations Act (chapter S-31.1) then sends a copy of the certificate and of the articles to the enterprise registrar, who deposits them in the enterprise register.

2018, c. 23, s. 3.

CHAPTER XIII

CONTINUANCE

2018, c. 23, s. 3.

DIVISION I

CONTINUANCE AS AN INSURANCE COMPANY

2018, c. 23, s. 3.

§ 1. — *General provisions*

2018, c. 23, s. 3.

303. The following legal persons may be continued as insurance companies:

(1) a legal person constituted under the laws of a jurisdiction other than Québec, if the Act governing the legal person confers on it the capacity to carry on insurer activities; and

(2) an authorized insurer constituted under a private Act of Québec.

An insurer is continued as a business corporation if it is of the nature of such a corporation; otherwise, it is continued as a mutual company.

2018, c. 23, s. 3.

§ 2. — *Application for continuance*

2018, c. 23, s. 3.

304. In addition to the articles of continuance required to be filed under section 289 of the Business Corporations Act (chapter S-31.1), continuance as an insurance company requires a permission granted by the Minister following the filing of an application for continuance with the Authority.

An application for continuance by an authorized insurer that is of the nature of a business corporation must include the name and address of each of the holders of a significant interest in the insurer.

2018, c. 23, s. 3.

305. The following must be filed with the application for continuance:

(1) the articles of continuance and other documents that, under section 292 of the Business Corporations Act (chapter S-31.1), must be sent to the enterprise registrar;

(2) the other documents prescribed by regulation of the Minister; and

(3) the fees prescribed by government regulation for processing the application for continuance.

2018, c. 23, s. 3.

306. A legal person constituted under the laws of a jurisdiction other than Québec that files an application for continuance but that is not an authorized insurer is required, when filing that application, to also file an application for authorization with the Authority.

2018, c. 23, s. 3.

307. On receipt of the application for continuance and the required documents and fees, the Authority processes, if applicable, the application for authorization and prepares a report on the reasons for granting or denying the application for continuance.

The report must also include the information from the report it must prepare in accordance with section 216 when processing an application to become regulated by this Title.

2018, c. 23, s. 3.

308. The Authority sends its report to the Minister, together with the application for continuance and the accompanying documents, unless the Authority denies the application for authorization made, if applicable, in accordance with section 306.

2018, c. 23, s. 3.

§ 3. — *Minister's decision*

2018, c. 23, s. 3.

309. The Minister may, if the Minister considers it advisable, allow the continuance of the authorized insurer.

2018, c. 23, s. 3.

310. When ruling on an application filed by an authorized insurer, the Minister must send the insurer and the Authority a document attesting the decision.

2018, c. 23, s. 3.

§ 4. — *Provisions applicable to continuance as a business corporation*

2018, c. 23, s. 3.

311. An authorized insurer that is continued as a regulated business corporation may, from receipt of the document attesting the Minister's permission, send the enterprise registrar the articles of continuance that were filed with the application for continuance.

The document attesting the Minister's permission must be filed with the articles sent to the enterprise registrar.

2018, c. 23, s. 3.

312. An authorized insurer becomes, as of the date and, if applicable, the time shown on the certificate of continuance issued by the enterprise registrar, a regulated business corporation.

In addition, in the case of an authorized Québec insurer constituted under a private Act, the articles of continuance are, as of that time, substituted for that Act, which ceases to have effect. However, in the case of a mutual-interest insurer, the private Act remains in force and any reference in it to the insurer is replaced by a reference to the mutual-interest regulated business corporation resulting from the continuance. Subject to the third paragraph, the articles of continuance may contain any provision departing from the sections of the private Act that apply to the regulated business corporation, or provide that all or some of those sections cease to have effect and replace them by any other provision not contrary to the Business Corporations Act (chapter S-31.1) or this Act.

The rights in the mutual-interest insurer conferred on the mutual legal person and its members by the private Act governing the insurer, and the obligation imposed on that legal person to be the holder of control of the insurer or the holder of any other interest in its capital, are unaffected by the continuance. Any provision to the contrary in the articles of continuance is deemed unwritten.

2018, c. 23, s. 3.

313. When the articles of continuance of an authorized insurer continued as a business corporation are deposited in the enterprise register, the enterprise registrar sends a certified copy of them to the Authority.

2018, c. 23, s. 3.

§ 5. — *Provisions applicable to continuance as a mutual company*

2018, c. 23, s. 3.

314. On receipt of a document attesting the permission granted by the Minister for the continuance of an authorized insurer as a mutual company, the Authority processes the articles of continuance received, issues the appropriate certificate in accordance with Chapter XVIII of the Business Corporations Act (chapter S-31.1) then sends a copy of the certificate and of the articles to the enterprise registrar, who deposits them in the enterprise register.

In addition, in the case of an authorized Québec insurer constituted under a private Act, the articles of continuance are, as of that time, substituted for that Act, which ceases to have effect.

2018, c. 23, s. 3.

§ 6. — *Provisions applicable to the continuance of authorized insurers constituted under a private Act of Québec*

2018, c. 23, s. 3.

315. Despite any provision to the contrary, an authorized insurer constituted under a private Act of Québec may apply for the Minister's permission under section 309 provided the insurer has been authorized to do so by a special resolution of its members.

2018, c. 23, s. 3.

316. The Minister may require that the articles of continuance of an authorized insurer constituted under a private Act of Québec include the conditions or restrictions prescribed by that Act if they are not prescribed by this Act.

Those conditions and restrictions are called “entrenched provisions”.

2018, c. 23, s. 3.

DIVISION II

CONTINUANCE UNDER THE LAWS OF A JURISDICTION OTHER THAN QUÉBEC

2018, c. 23, s. 3.

§ 1. — *General provisions*

2018, c. 23, s. 3.

317. An insurance company may not, without the Minister’s permission, apply for continuance under the laws of a jurisdiction other than Québec under section 297 of the Business Corporations Act (chapter S-31.1).

A mutual company that is a member of a federation may not apply for the Minister’s permission without being authorized to do so by the federation.

A mutual-interest regulated business corporation may not be continued under the laws of a jurisdiction other than Québec.

2018, c. 23, s. 3.

318. To obtain the Minister’s permission, an insurance company must file an application for permission with the Authority.

The company must, in the application, show that the holders of insurance contracts it has underwritten, its other creditors and its members will not suffer injury as a result of the continuance.

2018, c. 23, s. 3.

319. The following must be filed with the application for permission:

(1) the notice of intention to change the corporation’s home regulator described in section 150;

(2) if applicable, a certified copy of the federation’s resolution authorizing the mutual company that is a member of the federation to apply for the Minister’s permission;

(3) the other documents prescribed by regulation of the Minister; and

(4) the fees prescribed by government regulation.

2018, c. 23, s. 3.

§ 2. — *Application and Authority's report*

2018, c. 23, s. 3.

320. On receipt of the application and the required documents and fees, in addition to publishing the notice of intention and reviewing the authorization under section 155, the Authority must prepare a report on the reasons for granting or denying the application.

Among other things, the Authority indicates in the report whether, in its opinion, the holders of insurance contracts underwritten by the insurance company, its other creditors and its members will not suffer injury as a result of the continuance.

2018, c. 23, s. 3.

321. The Authority sends its report to the Minister, together with the application for permission and the accompanying documents.

2018, c. 23, s. 3.

§ 3. — *Minister's decision*

2018, c. 23, s. 3.

322. The Minister may, if the Minister considers it advisable, grant the insurance company the permission to apply for continuance under the laws of a jurisdiction other than Québec under section 297 of the Business Corporations Act (chapter S-31.1).

The Minister does not grant permission if the continuance entails the demutualization of the mutual company or is likely to allow mutual members to appropriate the company's surplus.

2018, c. 23, s. 3.

323. When ruling on an application by an insurance company, the Minister must send the company and the Authority a document attesting the decision.

The company must include the document with the application it sends to the enterprise registrar in accordance with section 297 of the Business Corporations Act (chapter S-31.1).

2018, c. 23, s. 3.

324. An insurance company ceases to be regulated by this Title as of the date and, if applicable, the time shown on the certificate of discontinuance issued under section 302 of the Business Corporations Act (chapter S-31.1).

The enterprise registrar sends the Authority a certified copy of the certificate of discontinuance that the registrar issued in respect of a regulated business corporation.

2018, c. 23, s. 3.

CHAPTER XIV

AMALGAMATION

2018, c. 23, s. 3.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 3.

325. In addition to the articles of amalgamation and, as applicable, the amalgamation agreement required to be filed under the Business Corporations Act (chapter S-31.1), an amalgamation involving an insurance company requires the Minister's permission and the filing of an application for that purpose with the Authority, together with a notice of intention to amalgamate under section 149.

2018, c. 230, s. 325.

326. The amalgamation of a regulated business corporation with one or more other business corporations, regardless of whether the latter are regulated business corporations, is allowed only if the amalgamated corporation is an authorized insurer.

2018, c. 23, s. 3.

327. Only a mutual company may amalgamate with another mutual company.

Despite section 281 of the Business Corporations Act (chapter S-31.1), the short-form amalgamation of mutual companies is not allowed.

2018, c. 23, s. 3.

328. An amalgamation agreement entered into by mutual companies must contain, rather than the elements set out in section 277 of the Business Corporations Act (chapter S-31.1), the following elements:

(1) in respect of the amalgamated mutual company, the provisions that are required to be included in such a company's articles of constitution;

(2) the name and domicile of each director of the amalgamated mutual company;

(3) the members' rights and obligations referred to in the certificates of participation issued to the members, if applicable;

(4) the number of shares issued by each of the amalgamating mutual companies, and the amount of the contribution required for their issue, the maximum interest that may be paid on such shares and, if applicable, the manner in which they may be converted;

(5) the by-laws proposed for the amalgamated mutual company, or a statement that the by-laws of the amalgamated mutual company are to be those of one of the amalgamating mutual companies;

(6) if applicable, the name of the federation of which the amalgamated mutual company will be a member; and

(7) details of any arrangements necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated mutual company.

2018, c. 23, s. 3.

DIVISION II

APPLICATION FOR PERMISSION TO AMALGAMATE

2018, c. 23, s. 3.

329. An application for permission to amalgamate must include, in addition to the information required to be included in a notice of intention to amalgamate under section 149, the information prescribed by regulation of the Authority.

The application must also include the name and address of each holder of a significant interest in the amalgamated business corporation, if any.

In the case of an amalgamation involving more than one insurance company, the application must be a joint one.

2018, c. 23, s. 3.

330. In addition to the notice of intention, the following must be filed with the application:

(1) the articles of amalgamation;

(2) the amalgamation agreement, except in the case of a short-form amalgamation, within the meaning of the Business Corporations Act (chapter S-31.1), where one of the amalgamating business corporations is a regulated business corporation;

(3) the special resolutions of the shareholders or, as applicable, the mutual members authorizing the amalgamation of each amalgamating company or, in the case of a short-form amalgamation within the meaning of the Business Corporations Act, the resolutions of the boards of directors of the amalgamating companies authorizing such an amalgamation;

(4) the resolution of the federation that has undertaken to admit the amalgamated mutual company, if applicable;

(5) the other documents prescribed by regulation of the Minister; and

(6) the fees prescribed by government regulation.

2018, c. 23, s. 3; 2021, c. 34, s. 22.

331. On receipt of the application and the required documents and fees, in addition to publishing the notice of intention and reviewing the authorization under section 155, the Authority must prepare a report for the Minister on the reasons for granting or denying the application for permission to amalgamate.

The report must include, in particular, the information from the report the Authority must prepare in accordance with section 216 when processing an application to become regulated by this Title.

2018, c. 23, s. 3.

332. The Authority sends the Minister its report, together with the application for permission to amalgamate and the documents filed with it, unless it determines that the amalgamated company would not be an authorized insurer.

2018, c. 23, s. 3.

DIVISION III

MINISTER'S DECISION

2018, c. 23, s. 3.

§ 1. — *General provisions*

2018, c. 23, s. 3.

333. The Minister may, if the Minister considers it advisable, allow the amalgamation of an insurance company.

2018, c. 23, s. 3.

334. The Minister may require that the amalgamated insurance company's articles of amalgamation include any entrenched provision, within the meaning of section 316, contained in the articles of any of the amalgamating companies.

2018, c. 23, s. 3.

335. When ruling on an application for permission to amalgamate, the Minister must send the Authority and the amalgamating companies a document attesting the decision.

2018, c. 23, s. 3.

§ 2. — *Provisions applicable to the amalgamation of business corporations*

2018, c. 23, s. 3.

336. Amalgamating business corporations may, from receipt of the document by which the Minister grants permission, send the enterprise registrar the articles of amalgamation that were filed with the application for permission to amalgamate.

The document by which the Minister grants permission must be filed with the articles of amalgamation sent to the enterprise registrar.

2018, c. 23, s. 3.

337. The amalgamated corporation is, as of the date and, if applicable, the time shown on the certificate of amalgamation issued by the enterprise registrar, a regulated business corporation.

If one of the amalgamating corporations is a mutual-interest regulated business corporation, the amalgamated corporation is also a mutual-interest regulated business corporation. Any reference to such an amalgamating corporation in the private Act governing it is replaced by a reference to the amalgamated mutual-interest regulated business corporation. Subject to the third paragraph, the articles of amalgamation may contain any provision departing from the sections of that private Act that apply to the regulated business corporation, or provide that all or some of those sections cease to have effect and replace them by any other provision not contrary to the Business Corporations Act (chapter S-31.1) or this Act.

The rights in the mutual-interest regulated business corporation conferred on the mutual legal person and its members by the private Act, and the obligation imposed on that legal person to be the holder of control of the corporation or the holder of any other interest in its capital, are unaffected by the amalgamation. Any provision to the contrary in the articles of amalgamation is deemed unwritten.

2018, c. 23, s. 3.

338. When the articles of amalgamation of a regulated business corporation are deposited in the enterprise register, the enterprise registrar sends a certified copy of them to the Authority.

2018, c. 23, s. 3.

§ 3. — *Provisions applicable to the amalgamation of mutual companies*

2018, c. 23, s. 3.

339. On receipt of a document attesting the permission granted by the Minister for the amalgamation of mutual companies, the Authority processes the articles of amalgamation, issues the certificate of amalgamation in accordance with Chapter XVIII of the Business Corporations Act (chapter S-31.1) then sends a copy of the certificate and of the articles to the enterprise registrar, who deposits them in the enterprise register.

2018, c. 23, s. 3.

CHAPTER XV

TERMINATION OF REGULATION BY THIS TITLE

2018, c. 23, s. 3.

DIVISION I

GENERAL PROVISION

2018, c. 23, s. 3.

340. Unless it is continued under the laws of a jurisdiction other than Québec, an insurance company or association may cease to be regulated by this Title only if the revocation of the authorization granted to it by the Authority is full and final.

2018, c. 23, s. 3; 2024, c. 15, s. 62.

DIVISION II

PROVISIONS SPECIFIC TO REGULATED BUSINESS CORPORATIONS

2018, c. 23, s. 3.

341. A business corporation ceases to be regulated by this Title when the full revocation of the authorization granted to it by the Authority becomes final.

2018, c. 23, s. 3.

342. A regulated business corporation may apply for a full revocation of the authorization only if it is authorized to do so by its shareholders and the latter have authorized it to change its name for one that does not include a word or expression reserved under section 489.

2018, c. 23, s. 3.

343. Shareholder authorization is given by special resolution.

By that resolution, the shareholders also authorize a director or an officer of the business corporation to see to the preparation of the documents necessary for the revocation and of those necessary for the corporation's change of name, and to sign those documents.

2018, c. 23, s. 3.

344. A consent, declaration or decision referred to in section 304 of the Business Corporations Act (chapter S-31.1) and whose object is the dissolution of a regulated business corporation has no effect other than granting the authorizations referred to in section 342, until the corporation ceases to be regulated by this Title.

2018, c. 23, s. 3.

DIVISION III

PROVISIONS SPECIFIC TO MUTUAL COMPANIES

2018, c. 23, s. 3.

345. A mutual company the revocation of whose authorization is full and final may continue to carry on its activities only in order to liquidate and dissolve. Its dissolution terminates its being regulated by this Title.

As a result, a mutual company may apply for a full revocation of the authorization granted to it by the Authority only if the mutual members have consented to its dissolution and appointed a liquidator.

2018, c. 23, s. 3.

346. Despite section 304 of the Business Corporations Act (chapter S-31.1), a mutual company may not be dissolved otherwise than by the consent of the mutual members or the closure of the liquidation ordered within the scope of a receivership ordered under Chapter III.1 of Title I of the Act respecting the regulation of the financial sector (chapter E-6.1).

2018, c. 23, s. 3.

347. A mutual company must be liquidated before it is dissolved.

The liquidation of a mutual company may begin only once the full revocation of the authorization granted to it by the Authority becomes final.

2018, c. 23, s. 3.

348. All proceedings against the property of a mutual company, in particular by seizure in the hands of a third person, seizure before judgment or seizure in execution, are to be suspended as soon as notice of the mutual company's intention to apply for the full revocation of the authorization is published in accordance with section 173.

The costs incurred by a creditor after being informed of the liquidation must not be collocated out of the proceeds of the property of the mutual company that are distributed as a result of the liquidation.

A judge of the Superior Court of the district in which the mutual company's head office is located may however, on the conditions the judge considers appropriate, authorize the institution of, or put an end to the stay of, a proceeding.

2018, c. 23, s. 3.

349. The liquidation of a mutual company is carried out under the Authority's supervision and control.

2018, c. 23, s. 3.

350. Any application made to the court under the Business Corporations Act (chapter S-31.1) must be notified to the Authority.

2018, c. 23, s. 3.

351. The liquidator must send the summary accounts rendered and the final account produced in accordance with sections 336 and 339 of the Business Corporations Act (chapter S-31.1) to the Authority at the time those accounts are sent to the mutual members.

2018, c. 23, s. 3.

352. Despite section 323 of the Business Corporations Act (chapter S-31.1), the remaining property of a mutual company may not be distributed among the mutual members; it must be remitted to the federation of which the mutual company is a member for the federation to pay into its guarantee fund or, if the mutual company is not a member of a federation, to a mutual company designated by the mutual members. In the absence of such a designation, the remaining property is remitted to the Minister of Finance.

2018, c. 23, s. 3.

353. Section 305 of the Business Corporations Act (chapter S-31.1) and paragraphs 6, 7 and 8 of section 354 of that Act apply, with the necessary modifications, to the legal person that receives the remaining property of a mutual company.

2018, c. 23, s. 3.

DIVISION IV

PROVISIONS SPECIFIC TO INSURANCE ASSOCIATIONS

2024, c. 15, s. 63.

353.1. An insurance association may apply for a full revocation of the authorization granted to it by the Authority only if its members have consented to its liquidation and a liquidator is appointed by its directors or, failing that, by the court.

In addition to the cases provided for in article 2277 of the Civil Code, the contract of association is terminated at the closure of the liquidation ordered within the scope of a receivership ordered under Chapter III.1 of Title I of the Act respecting the regulation of the financial sector (chapter E-6.1).

2024, c. 15, s. 63.

353.2. An insurance association may begin its liquidation only once the full revocation of the authorization granted to it by the Authority becomes final. It may continue to carry on its activities only in order to liquidate. The closure of its liquidation terminates its being regulated by this Title.

2024, c. 15, s. 63.

353.3. All proceedings against the property of an insurance association, in particular by seizure in the hands of a third person, seizure before judgment or seizure in execution, are to be suspended as soon as notice of the insurance association's intention to apply for the full revocation of the authorization is published in accordance with section 173.

The costs incurred by a creditor after being informed of the liquidation must not be collocated out of the proceeds of the property of the insurance association that are distributed as a result of the liquidation.

A judge of the Superior Court of the district in which the association's principal establishment is located may, however, on the conditions the judge considers appropriate, authorize the institution of, or put an end to the stay of, a proceeding.

2024, c. 15, s. 63.

353.4. The liquidation of an insurance association is carried out under the Authority's supervision and control.

2024, c. 15, s. 63.

353.5. The liquidator must send the final account to the Authority at the time that account is sent to the parties in the insurance association.

2024, c. 15, s. 63.

CHAPTER XVI

SELF-REGULATORY ORGANIZATIONS

2018, c. 23, s. 3.

DIVISION I

GOVERNANCE

2018, c. 23, s. 3.

§ 1. — *Board of directors*

2018, c. 23, s. 3.

354. The board of directors of a self-regulatory organization exercises functions and powers relating to the organization's insurance business; the board must establish a professional liability insurance decision-making committee.

Within the limits provided by law, the board may delegate the exercise of some of those functions and powers. However, it must delegate exclusively to the professional liability insurance decision-making committee all functions and powers relating to the processing of notices of loss likely to fall under the coverage of the insurance contracts underwritten by the organization.

2018, c. 23, s. 3.

355. The board of directors of a self-regulatory organization may not delegate the exercise of the following functions and powers:

(1) appointing the members of the decision-making committee;

(2) approving an investment policy for the insurance fund established by the organization;

(3) determining the extent of the coverage offered and the tariff of rates and amounts of premiums;

(4) imposing a special assessment in order to maintain in the insurance fund adequate assets to meet the liabilities charged against it, as and when they become due, and adequate capital to guarantee that it can serve its purpose; and

(5) appointing the auditor and the actuary of the insurance fund.

2018, c. 23, s. 3.

356. A member of the decision-making committee of a self-regulatory organization who resigns must declare his or her reasons in writing to the organization and the Authority.

The same is true for a member of the board of directors who, while not a member of the decision-making committee, resigns for reasons relating to the organization's insurance business.

2018, c. 23, s. 3.

357. The asset investment activities of the insurance fund and its other financial transactions with natural persons or groups that are restricted parties with respect to the fund must be carried on in the same manner as they would when carried on at arm's length.

Consequently, a contract affecting the insurance fund entered into with a natural person or group that is a restricted party with respect to the fund must be as advantageous for the fund than if it had been entered into at arm's length.

2018, c. 23, s. 3.

358. For the purposes of section 357, the following natural persons and groups are restricted parties with respect to a self-regulatory organization:

(1) the self-regulatory organization, its directors and officers and the members of its decision-making committee;

(2) the manager of the fund's day-to-day operations referred to in section 359 and, if applicable, that manager's directors and officers;

(3) the natural persons and groups having economic ties with the persons described in paragraphs 1 and 2; and

(4) any other person or group designated under section 112.

2018, c. 23, s. 3.

§ 2. — *Manager of the insurance fund's day-to-day operations*

2018, c. 23, s. 3.

359. A self-regulatory organization may, in addition, entrust a manager with the day-to-day operations of its insurance fund, including the collection of premiums, the delivery of policies, the payment of indemnities, reinsurance transfers, fund asset investment activities and its other financial transactions.

2018, c. 23, s. 3.

360. Sections 45 to 49 apply to a self-regulatory organization and the manager of the insurance fund's day-to-day operations as if the organization were the holder of control of the manager.

2018, c. 23, s. 3.

§ 3. — *Professional liability insurance decision-making committee*

2018, c. 23, s. 3.

361. The professional liability insurance decision-making committee to be established under section 354 must be composed of at least three members, only one of whom is also on the board of directors of the self-regulatory organization.

2018, c. 23, s. 3.

362. A person need not be governed by the self-regulatory organization to be part of its decision-making committee, except for the committee member who is also on the organization's board of directors.

2018, c. 23, s. 3.

363. In addition to persons disqualified for office under the Civil Code, the following cannot be members of the decision-making committee:

(1) insurance representatives and claims adjusters, within the meaning assigned to those expressions by the Act respecting the distribution of financial products and services (chapter D-9.2), and directors or officers of another legal person dealing with the self-regulatory organization in a similar capacity; or

(2) a director, officer or employee of the manager that has been entrusted with the fund's day-to-day operations.

2018, c. 23, s. 3.

364. If members of the decision-making committee of a self-regulatory organization are sued by a third person for an act done in the exercise of their functions, the self-regulatory organization assumes their defence and pays any damages awarded as compensation for the injury resulting from that act, unless they committed a gross fault or a personal fault separable from their functions.

In penal or criminal proceedings, however, the organization pays the defence costs of the committee members only if they had reasonable grounds for believing that their conduct was lawful or if they have been discharged or acquitted.

If the organization sues a committee member for an act done in the exercise of his or her functions and loses its case, it pays the committee member's defence costs if the court so decides.

If the organization wins its case only in part, the court may determine the amount of the defence costs the organization must pay.

2018, c. 23, s. 3.

DIVISION II

INSURANCE FUND

2018, c. 23, s. 3.

§ 1. — *Composition and administration*

2018, c. 23, s. 3.

365. The insurance fund of an authorized self-regulatory organization consists of premiums and other sums generated by the organization's insurer activities.

The organization's board of directors must approve the investment policy of the fund.

The organization must send the investment policy to the Authority at the Authority's request.

2018, c. 23, s. 3.

366. The assets of the insurance fund constitute a division of the authorized self-regulatory organization's patrimony to be used exclusively for the organization's insurance business. The liabilities contracted by the organization as part of such business are charged against the fund.

The fund's assets must be reported as separate items in the organization's books, registers and accounts.

2018, c. 23, s. 3.

367. No creditor of the self-regulatory organization has any right in the assets of the insurance fund except under a claim resulting from the organization's insurance business.

Conversely, no creditor of the insurance fund has any right in the organization's other assets.

2018, c. 23, s. 3.

368. An authorized self-regulatory organization must maintain in the insurance fund adequate assets to meet the liabilities charged against the fund, as and when they become due, and adequate capital to guarantee that the fund can serve its purpose.

2018, c. 23, s. 3.

369. All costs relating to the self-regulatory organization's insurance business are charged against the insurance fund.

2018, c. 23, s. 3.

370. An authorized self-regulatory organization must send holders of an insurance contract underwritten by the organization an annual report that includes

(1) the names of the members of its decision-making committee and, if applicable, the name and address of the manager of the insurance fund's day-to-day operations;

(2) the number of persons governed by the organization that it insures;

(3) the fund's audited financial statements, accompanied by the auditor's report; and

(4) any other information required by regulation of the Authority.

The report appears in a document setting out the organization's activities and financial position that the organization is otherwise required to send annually to the persons governed by it.

The fund's fiscal year ends on the same date as the organization's fiscal year.

2018, c. 23, s. 3.

§ 2. — *Liquidation*

2018, c. 23, s. 3.

371. The insurance fund of a self-regulatory organization may not be liquidated before the full and final revocation of the authorization granted to the organization by the Authority.

2018, c. 23, s. 3.

372. The liquidation of an insurance fund arises from a resolution of the board of directors of the self-regulatory organization that established the fund or from an order made within the scope of a receivership ordered under Chapter III.1 of the Act respecting the regulation of the financial sector (chapter E-6.1).

2018, c. 23, s. 3.

373. In order to liquidate the insurance fund, a liquidator must be appointed by the board of directors or the Superior Court, depending on whether the liquidation arises from a decision of the board or of the Court. On being appointed, the liquidator has the seisin of the insurance fund, and the decision-making committee ceases to exist.

2018, c. 23, s. 3.

374. Sections 347 to 351 apply, with the necessary modifications, to the liquidation of the insurance fund, except any reference made to the Business Corporations Act (chapter S-31.1).

2018, c. 23, s. 3.

375. After performing or obtaining forgiveness of the self-regulatory organization's obligations in relation to its insurance business or otherwise making provision for them, the liquidator sends a final account to the organization's board of directors and to the Authority.

The remaining property of the insurance fund, if any, is remitted to the organization.

2018, c. 23, s. 3.

CHAPTER XVII

MINISTER'S POWERS

2018, c. 23, s. 3.

376. The Minister may request the Authority to provide the documents and information the Minister considers useful in assessing the applications on which the Minister is to rule in accordance with this Title.

2018, c. 23, s. 3.

TITLE IV

FEDERATION OF MUTUAL COMPANIES

2018, c. 23, s. 3.

CHAPTER I

GENERAL PROVISIONS

2018, c. 23, s. 3.

377. A federation of mutual companies is a legal person. The constitution, organization, operation, dissolution and liquidation regime applicable to a federation under this Title is supplemented by the one applicable to a mutual company, except Division IV of Chapter IV, Chapters VI to VIII, subdivision 3 of Division II and Divisions III and IV of Chapter IX and Chapters X, XI, XIII and XIV.

2018, c. 23, s. 3.

378. A federation has no share capital.

2018, c. 23, s. 3.

378.1. Chapter XII of Title II applies to federations, with the necessary modifications.

2021, c. 34, s. 23.

CHAPTER II

CONSTITUTION, ORGANIZATION AND NAME

2018, c. 23, s. 3.

379. A federation may be constituted if at least nine mutual companies that are authorized insurers undertake to become members of the federation and the sums that the companies must pay into the guarantee fund are available.

The guarantee fund is a distinct autonomous patrimony.

The companies are the federation's promoters. The constitution of a federation entails the creation of its guarantee fund.

2018, c. 23, s. 3.

380. The mutual members of a promoting mutual company authorize, by special resolution, a director of the company to represent it for the purpose of constituting and organizing the federation.

2018, c. 23, s. 3.

381. A mutual company that is a member of a federation may promote another federation. The company must notify the federation of which it is a member of the meeting to be held at which the special resolution referred to in section 380 is to be discussed.

A representative of the federation may attend the meeting and be heard.

2018, c. 23, s. 3.

382. On receiving the application for the constitution of a federation, the Authority must, if applicable, send the federations of which the promoting mutual companies are members a notice specifying the time limit for submitting their observations to the Authority.

The federations' observations are attached to the report the Authority must make to the Minister in accordance with section 216.

2018, c. 23, s. 3.

383. The promoting mutual companies are, by operation of law, members of the federation as soon as it is constituted.

2018, c. 23, s. 3.

384. The representatives authorized by the promoting mutual companies under section 380 must be called to the federation's organization meeting.

2018, c. 23, s. 3.

385. The name of a federation must include the words "federation of mutual companies" as well as an expression to be included in the name of every member mutual company.

2018, c. 23, s. 3.

CHAPTER III

MISSION

2018, c. 23, s. 3.

386. A federation promotes the development of its member mutual companies and supports them in their insurer activities, thereby facilitating their compliance with their obligations.

For that purpose, the federation

(1) defines the objectives of the financial group and coordinates its activities;

(2) to the extent provided by this Act, supervises and controls the member companies and the partnerships and legal persons that are controlled by them;

(3) administers a guarantee fund; and

(4) provides services to the member companies and their mutual members as well as to the partnerships or legal persons belonging to the financial group.

In addition, a federation promotes mutuality.

2018, c. 23, s. 3.

387. A federation is, by operation of law, surety for the member companies toward their insureds and toward the holders of insurance contracts that the member companies underwrite.

The suretyship is limited by the assets in the guarantee fund.

2018, c. 23, s. 3.

388. A federation may be the holder of control of any group, unless the group carries on the same insurer activities as the mutual companies that are members of the federation.

However, a federation may be the holder of control of a reinsurer even if the reinsurer carries on such activities.

2018, c. 23, s. 3.

CHAPTER IV

EXAMINATION OF COMPLAINT RECORDS AND MANAGEMENT PRACTICES

2018, c. 23, s. 3.

DIVISION I

EXAMINATION OF COMPLAINT RECORDS

2018, c. 23, s. 3.

389. A federation must adopt a policy on the examination of complaint records for complaints filed by complainants who are clients of its members.

2018, c. 23, s. 3.

390. The federation must also keep a register of the complaint records submitted for its examination.

2018, c. 23, s. 3.

391. Within 10 days after receiving a complaint record, the federation must send the complainant a notice stating the date of receipt and the complainant's right under section 392 to have the record reviewed by the Authority.

2018, c. 23, s. 3.

392. A complainant whose complaint record has been sent to the federation may, if dissatisfied with the examination carried out by the federation or its outcome, request the federation to have the record reviewed by the Authority.

The federation is required to comply with the request and send the record to the Authority.

2018, c. 23, s. 3.

393. Sections 55 to 57 apply, with the necessary modifications, to the review of the record or to conciliation or mediation to which the federation is party.

2018, c. 23, s. 3.

394. On the date set by the Authority, the federation must send it a report on the complaint record examination policy adopted in accordance with section 389 stating in particular the number of complaint records that the federation has registered in the register of complaint records submitted for its examination and their nature.

The report must cover the period determined by the Authority.

2018, c. 23, s. 3.

DIVISION II

MANAGEMENT PRACTICES

2018, c. 23, s. 3.

395. A federation must adhere to sound and prudent management practices.

Such practices must, in particular, conduce to good governance and compliance with the laws governing the federation's activities.

2018, c. 23, s. 3.

396. The federation must be able to show to the Authority that it adheres to sound and prudent management practices.

2018, c. 23, s. 3.

CHAPTER V

DIRECTORS AND OFFICERS

2018, c. 23, s. 3.

397. A majority of the directors of a federation must be elected from among the directors of its member mutual companies who are mutual members.

The federation's by-laws prescribe the manner in which all members of the board of directors are to be elected. They may provide that the general managers of the member companies may be elected as federation directors. However, such managers may not make up more than one-third of the federation's board of directors.

2018, c. 23, s. 3.

398. The term of office of a federation director is not more than three years.

2018, c. 23, s. 3.

399. A federation must establish, within its board of directors, an audit committee whose functions are the same as those, under section 103, of the audit committee of an authorized Québec insurer.

2018, c. 23, s. 3.

400. The general manager of a federation or of a mutual company that is a member of the federation may not be the president or the vice-president of the federation or the chair or vice-chair of its board of directors.

2018, c. 23, s. 3.

CHAPTER VI

MEMBERS

2018, c. 23, s. 3.

DIVISION I

ADMISSION, WITHDRAWAL AND EXPULSION

2018, c. 23, s. 3.

§ 1. — *Admission*

2018, c. 23, s. 3.

401. Only mutual companies that are Québec insurers may be members of a federation.

Only mutual companies that all carry on insurer activities either only in insurance of persons or only in damage insurance may be members of a same federation.

2018, c. 23, s. 3.

402. A federation's by-laws establish the conditions on which mutual companies may be admitted as members and members may withdraw or be expelled as well as members' rights and obligations.

Those conditions, rights and obligations are submitted to the Authority for approval.

2018, c. 23, s. 3.

403. To be a member of a federation, a mutual company must apply for membership after being authorized to do so by a special resolution of its mutual members.

2018, c. 23, s. 3.

404. A federation may give an undertaking to the promoters of a mutual company, before its constitution, to admit the mutual company as a member.

Despite section 403, the mutual company is, by operation of law, a member of the federation as soon as the latter is constituted.

2018, c. 23, s. 3.

405. The federation must send its decision on the admission application of a mutual company to the company or, if applicable, the company's promoters.

The federation must send a copy of the decision to the Authority.

2018, c. 23, s. 3.

406. A mutual company may, within 15 days after receiving the federation's decision on its admission application, apply to the Authority for a review of the decision.

The mutual company and the federation must have access to the record relating to the application for review. The Authority must give them an opportunity to submit observations.

The company's application for review suspends the federation's decision.

2018, c. 23, s. 3.

407. The Authority's decision must include reasons and be sent to the mutual company and the federation. The Authority's decision is final.

2018, c. 23, s. 3.

§ 2. — *Withdrawal*

2018, c. 23, s. 3.

408. A mutual company that is a member of a federation may withdraw from the federation only if, in the Authority's opinion, the federation does not as a result become unable to fulfill its obligations, in particular as regards maintaining the required capital in the guarantee fund.

The Authority rules on the mutual company's withdrawal at the same time as it conducts a review, in accordance with subparagraph 6 of the first paragraph of section 146, of the authorization granted to the mutual company. Before ruling on the withdrawal, the Authority sends to the federation and the company the notice prescribed under section 166. Sections 167 and 168 apply to the contestation of the Authority's decision, with the necessary modifications.

2018, c. 23, s. 3.

§ 3. — *Expulsion*

2018, c. 23, s. 3.

409. The federation must, at least 30 days before expelling a member company, send the company and the Authority a notice of the decision.

2018, c. 23, s. 3.

410. Sections 406 and 407 apply to a federation's decision to expel a member company, with the necessary modifications.

2018, c. 23, s. 3.

DIVISION II

MEETINGS

2018, c. 23, s. 3.

411. The meeting of the member companies of a federation is composed of those of their directors that represent them. The federation's by-laws prescribe the number of directors that the member companies may designate in order to represent them at the meeting.

Each representative is entitled to only one vote.

2018, c. 23, s. 3.

412. A federation's board of directors must call a special meeting to make any decision requiring the vote of at least two-thirds of the member company representatives present.

Any amendment to the by-laws requires confirmation by the vote of at least two-thirds of the representatives present.

2018, c. 23, s. 3.

413. Quorum at a meeting may not be less than 20% of all the representatives who make up the meeting of the member companies of the federation.

2018, c. 23, s. 3.

414. One-third of the member companies of the federation may, by means of a notice, requisition the board of directors to call a special meeting for the purposes stated in the requisition.

2018, c. 23, s. 3.

DIVISION III

ASSESSMENTS AND FEES

2018, c. 23, s. 3.

415. A federation may require that its member companies pay the assessments it considers necessary for its operation.

A federation may also impose fees on a member company that avails itself of services that the federation offers.

2018, c. 23, s. 3.

CHAPTER VII

GUARANTEE FUND

2018, c. 23, s. 3.

DIVISION I

INTRODUCTORY PROVISIONS

2018, c. 23, s. 3.

416. The guarantee fund of a federation is to be used to provide financial support to its member companies in order to protect the rights of their insureds and of the holders of insurance contracts that they underwrite.

The fund consists of capital made up of the contributions of the member companies and, if applicable, the remaining property from the liquidation of a member company.

2018, c. 23, s. 3.

417. The federation determines the amount of capital that must be maintained in the guarantee fund.

It informs the Authority of the amount as well as the reasons that led to that amount being determined and, if applicable, the circumstances justifying its modification.

2018, c. 23, s. 3.

418. The creditors of the federation have no right to the assets of the guarantee fund.

2018, c. 23, s. 3.

DIVISION II

CONTRIBUTION

2018, c. 23, s. 3.

419. The federation must require its member companies to pay a contribution whenever this is necessary to maintain the capital of the guarantee fund.

2018, c. 23, s. 3.

420. The federation must send each member company an annual statement showing

(1) the sum of the contributions the member company has paid into the capital of the guarantee fund since its admission; and

(2) the proportion that that sum is of the total contributions of the member companies.

2018, c. 23, s. 3.

421. A member company resigning or expelled from the federation may, by sending a written notice at least 90 days before the end of the guarantee fund's fiscal year, request the repayment of its contributions.

The repayment corresponds to the lesser of

(1) the total contributions the member company paid; and

(2) the amount obtained by multiplying the surplus of the assets of the guarantee fund over its liabilities by the proportion referred to in paragraph 2 of section 420.

The repayment may not be made before the following fiscal year.

2018, c. 23, s. 3.

DIVISION III

SUPPORT TO MEMBER COMPANIES

2018, c. 23, s. 3.

422. A federation may pay rebates to its member companies out of the revenue generated by the guarantee fund, in the proportion referred to in paragraph 2 of section 420.

2018, c. 23, s. 3.

423. In addition to using the guarantee fund for the purposes of the suretyship under section 387, a federation may use it to

(1) make loans and grants to its member companies;

(2) guarantee the repayment of an advance or loan granted to a member company;

(3) acquire all or some of a member company's assets; and

(4) acquire shares of a member company.

2018, c. 23, s. 3.

424. The federation may, when providing support to a member company, impose measures on it to correct its management practices.

2018, c. 23, s. 3.

425. If the federation exercises the right to request the redemption of the shares that it has acquired in compliance with this division, the amount of the shares for which it requests redemption in a year must be limited to the lesser of

(1) the balance of the non-redeemed shares;

(2) 50% of the net profit realized by the member company in the fiscal year; and

(3) the sum whose payment would decrease a member company's capital below the amount necessary to ensure its sustainability.

2018, c. 23, s. 3.

DIVISION IV

INVESTMENTS

2018, c. 23, s. 3.

426. An investment policy must be approved by the federation's board of directors for the guarantee fund.

The investment policy must, in particular,

(1) provide for the appropriate diversification of those investments; and

(2) include a description of the types of investments and other financial transactions that it authorizes and the limits applicable to those investments and transactions.

The federation must send its investment policy to the Authority at the Authority's request.

2018, c. 23, s. 3.

427. The federation must follow the investment policy approved by its board of directors.

2018, c. 23, s. 3.

CHAPTER VIII

SEGREGATED INVESTMENT FUNDS

2018, c. 23, s. 3.

428. A federation may, by resolution, establish and administer funds, segregated from its other assets, to grow the sums contributed to the funds by investing them for profit.

The federation may make a public offering of securities to establish or increase a segregated investment fund and may issue negotiable instruments.

2018, c. 23, s. 3.

429. A contribution to a segregated investment fund confers the right, in proportion to the contribution and according to the conditions and at the intervals determined by the federation's by-laws, to participate in the sharing of the fund's net revenue and in its capital. That right is a claim against the federation.

Such funds are each a division of the federation's patrimony to be used for the performance of that claim, to the exclusion of any other obligation of the federation.

2018, c. 23, s. 3.

430. A federation may designate any group of which it is the holder of control as an investment fund.

The sole purpose of such a group is then to grow the sums contributed to it as consideration for the securities it issues by investing those sums for profit.

The provisions of this Act that are applicable to a federation's segregated investment funds, except sections 428 and 429, apply to such an investment fund, with the necessary modifications.

2018, c. 23, s. 3.

431. The segregated investment funds are assessed annually.

The Authority determines, by regulation, standards for financial disclosure to participating members and, if applicable, to other holders of securities issued as consideration for a contribution to such a fund.

2018, c. 23, s. 3.

CHAPTER IX

SUPERVISION AND CONTROL OF MEMBER COMPANIES

2018, c. 23, s. 3.

DIVISION I

GENERAL POWERS

2018, c. 23, s. 3.

432. A federation may, in particular,

(1) develop policies on the carrying on by member companies of their activities;

(2) examine the books and accounts of member companies;

(3) whenever it considers it necessary, require member companies to provide any information and file any document;

(4) enter into agreements with member companies for the supervision, administration or management of their affairs for a specified period;

(5) designate the insurers with which member companies may enter into contracts of reinsurance;

(6) negotiate reinsurance agreements for member companies;

(7) act as receiver in accordance with Chapter III.1 of Title I of the Act respecting the regulation of the financial sector (chapter E-6.1); and

(8) act as the liquidator or sequestrator of a member company.

2018, c. 23, s. 3.

433. The federation is alone liable for a failure to comply for which one of its member companies is held liable under Chapter III of Title II.

In addition, the federation must ensure that each group in its financial group complies with a prohibition imposed on such a company by this Act not only when each of those groups is acting alone, but also when the acts or omissions of all or some of them would have contravened the prohibition had they been done or made by only one of them.

2018, c. 23, s. 3.

434. A federation must see to it that the services of an auditor and an actuary are provided to its member companies.

2018, c. 23, s. 3.

435. Only the board of directors may authorize, on the terms and conditions that it determines, one or more member companies of the federation

(1) to carry on, in accordance with the law, activities other than those of an insurer; or

(2) to be the holder of control of a business corporation that carries on insurer activities.

2018, c. 23, s. 3.

436. A federation may register a member company as a firm for an insurance sector in accordance with the Act respecting the distribution of financial products and services (chapter D-9.2).

2018, c. 23, s. 3.

437. A federation's by-laws may include

(1) the description of the territory in which each member company is to carry on its activities;

(2) the extent to and conditions under which a member company may avail itself of section 21 of the Business Corporations Act (chapter S-31.1);

(3) the standards applicable to member companies as regards any financial or administrative matter; and

(4) the content and form of the report that each member company must prepare so that the federation can determine the amount of its assessments and the procedure for sending it.

The description of the territory in which each member company is to carry on its activities must be approved by a resolution passed by at least three-quarters of the votes cast by the member companies.

2018, c. 23, s. 3.

438. The mutual members of a member company of a federation and third persons may presume that the member company is exercising its powers in accordance with the federation's policies and by-laws and the resolutions of the federation's board of directors.

2018, c. 23, s. 3.

DIVISION II

MEMBER COMPANIES' COMMON BY-LAWS

2018, c. 23, s. 3.

439. The meeting of member companies passes, by special resolution, the common by-laws that apply to all the member companies.

Each member company may, by special resolution, pass by-laws that apply to its own affairs and that diverge from the common by-laws to the extent that the common by-laws allow.

2018, c. 23, s. 3.

440. The meeting may, by special resolution, delegate to the federation's board of directors the power to adopt common by-laws.

2018, c. 23, s. 3.

441. The federation sends the common by-laws to the Authority. Each member company that passes by-laws applicable to its own affairs must send them to the federation, which sends them to the Authority.

2018, c. 23, s. 3.

DIVISION III

INSPECTION OF MEMBER COMPANIES

2018, c. 23, s. 3.

442. The affairs of the member companies of a federation are inspected by the federation at least once every other year or whenever it considers it necessary for the protection of the insureds and of the holders of insurance contracts that the member companies underwrite.

The inspection of the affairs of a member company must cover such matters as

(1) its administrative structure;

(2) whether it conducts its affairs in an orderly manner;

(3) the effectiveness of its board of directors;

(4) the availability of reliable financial information; and

(5) whether the obligations imposed on member companies under this Act have been satisfied.

The federation produces a report of its inspection and sends it to the Authority and to the member company's board of directors. If the federation calls a meeting or at the request of the member company's

board of directors, the report is presented to the member company's directors, and the federation is required to provide them with the explanations they request.

2018, c. 23, s. 3.

443. A federation may, by agreement with the Authority, inspect the member companies registered as firms under the Act respecting the distribution of financial products and services (chapter D-9.2).

An agreement may specify

(1) the content and form of the report that the federation must submit to the Authority and the procedure for sending it; and

(2) any other measure that the Authority considers appropriate.

Sections 107 and 113 of that Act apply, with the necessary modifications, to inspections performed under this section.

2018, c. 23, s. 3.

444. The federation may, following an inspection, order that a special meeting of mutual members of the inspected company be called to communicate to them the information the federation considers relevant and propose measures for adoption.

2018, c. 23, s. 3.

CHAPTER X

BOOKS AND ACCOUNTS

2018, c. 23, s. 3.

445. A federation must keep, in addition to its own books and accounts, separate books and accounts for its guarantee fund and, if applicable, for each of its segregated investment funds.

2018, c. 23, s. 3.

446. A federation's books and accounts must be audited annually.

2018, c. 23, s. 3.

447. The fiscal year of a federation's guarantee fund and, if applicable, segregated investment funds, is that of the federation.

2018, c. 23, s. 3.

448. Chapter VII of Title II applies, with the necessary modifications, to the federation's auditor.

2018, c. 23, s. 3.

CHAPTER XI

ANNUAL REPORT AND STATEMENTS

2018, c. 23, s. 3.

449. The annual report of a federation must include

(1) the names and addresses of its directors;

(2) its financial statements;

(3) the financial statements of its guarantee fund and, if applicable, of its segregated investment funds;

(4) a statement of each member company's contribution to the capital of the guarantee fund; and

(5) the auditors' reports.

The federation must send a copy of its annual report to the member companies.

2018, c. 23, s. 3.

450. A federation must prepare, in accordance with the content and form that the Authority determines, an annual statement as at the closing date of its most recent fiscal year.

The annual statement must separately show the financial positions of the federation and of the guarantee fund.

The annual statement must be certified by two of the federation's directors.

The federation's annual report and the résumé of each of the directors and officers must be filed with the annual statement, if they have not already been sent to the Authority.

2018, c. 23, s. 3.

451. The annual statement and documents filed with it must be sent to the Authority on the date it determines.

2018, c. 23, s. 3.

CHAPTER XII

DISSOLUTION AND LIQUIDATION

2018, c. 23, s. 3.

DIVISION I

DISSOLUTION

2018, c. 23, s. 3.

452. A federation may be liquidated then dissolved only by order of the Minister.

The order to dissolve a federation entails the liquidation of its guarantee fund and, if applicable, that of its segregated investment funds.

Unless the Authority is itself acting in that capacity, it must designate the liquidator of the federation and its funds.

2018, c. 23, s. 3.

453. The Minister may, if the Minister considers it advisable, order the Authority to dissolve a federation that has not remedied one of the following failures within the specified time limit:

(1) the organization meeting is not held within the time limit specified in its application for constitution;

(2) fewer than nine mutual companies are members of the federation; or

(3) an annual meeting has not been held for two consecutive years.

2018, c. 23, s. 3.

454. If the Authority finds that a federation is in default, the Authority must send it a notice stating

(1) the default noted;

(2) the possibility that the Minister may order the dissolution of the federation; and

(3) the time granted to the federation to remedy the default or submit observations.

The Authority publishes the notice in its bulletin.

2018, c. 23, s. 3.

455. If the default has not been remedied on the expiry of the time specified in the notice, the Authority prepares a report stating that fact and the reasons for dissolving or not dissolving the federation.

Any observations from the federation are filed with the report.

The report is sent to the Minister and the federation.

2018, c. 23, s. 3.

456. Any interested person may, within three years of the dissolution ordered by the Minister, ask the Minister to revoke the decision.

The Minister may, if the Minister considers it advisable, order the Authority to revive the federation on the conditions the Minister determines. Sections 367 to 371 of the Business Corporations Act (chapter S-31.1) apply to the revival, with the necessary modifications.

2018, c. 23, s. 3.

DIVISION II

LIQUIDATION

2018, c. 23, s. 3.

§ 1. — *General provisions*

2018, c. 23, s. 3.

457. The notice of liquidation must include a statement that the liquidation of the federation entails that of its guarantee fund and, if applicable, that of its segregated investment funds.

The notice must also state the address to which claims may be sent by interested persons and, if applicable, the name and address of the liquidator designated by the Authority.

2018, c. 23, s. 3.

458. The liquidator designated by the Authority must, within seven days after the end of every three-month period following the date of his or her appointment, make a summary report of his or her activities for that period to the Authority.

The report must show the receipts and expenses of the liquidation and include a statement of the federation's assets and liabilities, guarantee fund and, if applicable, segregated investment funds as at the end of that three-month period.

2018, c. 23, s. 3.

§ 2. — *Conduct of the liquidation*

2018, c. 23, s. 3.

459. The following claims are the prior claims, by preference over other claims, and are collocated in the following order:

(1) the costs and fees of the liquidation; and

(2) the salaries and wages of paid federation staff members, up to three months of unpaid salary.

2018, c. 23, s. 3.

460. The balance of the federation's assets, guarantee fund and, if applicable, segregated investment funds is shared between the member companies in proportion to their contribution.

2018, c. 23, s. 3.

TITLE V

MEASURES AND OTHER POWERS OF THE AUTHORITY

2018, c. 23, s. 3.

CHAPTER I

Repealed, 2024, c. 15, s. 64.

2018, c. 23, s. 3; 2024, c. 15, s. 64.

461. *(Repealed).*

2018, c. 23, s. 3; 2024, c. 15, s. 64.

CHAPTER II

INSTRUCTIONS, GUIDELINES AND ORDERS

2018, c. 23, s. 3.

462. The Authority may establish instructions for an authorized insurer or a federation of which such an insurer is a member.

Instructions must be in writing and must be specific to the addressee, but need not be published.

The Authority must, before sending instructions, notify the addressee and give it an opportunity to submit observations.

2018, c. 23, s. 3.

463. The Authority may establish guidelines for all authorized insurers, a single class of such insurers or a federation of which such insurers are members.

Guidelines must be general and impersonal; the Authority publishes them in its bulletin after sending a copy of them to the Minister.

2018, c. 23, s. 3.

464. A guideline informs its addressees of measures that, in the Authority's opinion, they may establish to satisfy their obligations under Titles II and IV.

Instructions inform their addressee of the obligations that, in the Authority's opinion, are incumbent on it under those titles.

2018, c. 23, s. 3.

465. The Authority may order an authorized insurer, or the federation of which it is a member, to cease a course of action or to implement specified measures if the Authority is of the opinion that the insurer or federation is failing to perform its obligations under this Act in full, properly and without delay.

The Authority may, for the same reasons, issue an order against a third person that, on behalf of an authorized insurer, carries on its activities or performs its obligations.

At least 15 days before issuing an order, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) in writing to the contravener and, if the contravener is a third person acting on behalf of an authorized insurer, to that insurer, stating the reasons which appear to justify the order, the date on which the order is to take effect and the contravener's right to submit observations.

2018, c. 23, s. 3; 2021, c. 34, s. 24.

466. The Authority's order must state the reasons for which it is issued. The order must be served on all those to whom it applies.

The order takes effect on the date it is served or on any later date specified in it.

2018, c. 23, s. 3; 2021, c. 34, s. 25.

467. The Authority may, without prior notice, issue a provisional order valid for up to 15 days if, in its opinion, any period of time granted to whoever the order concerns to submit observations may be detrimental.

The order must include reasons and takes effect on the date it is served on whoever it concerns. The latter may, within six days after receiving the order, submit observations to the Authority.

2018, c. 23, s. 3; 2021, c. 34, s. 26.

468. The Authority may revoke or amend an order it has issued under this Act.

2018, c. 23, s. 3.

CHAPTER III

CONSERVATORY MEASURES

2018, c. 23, s. 3.

469. The Authority, for the purposes or in the course of an investigation or when it is informed that an authorized insurer is voluntarily dissolving or liquidating in contravention of section 43 or intends to do so, may request the Financial Markets Administrative Tribunal

(1) to order a person or group not to dispose of funds, securities or other property in the person's or group's possession; or

(2) to order a person or group to refrain from withdrawing funds, securities or other property on deposit with or under the control or in the safekeeping of any other person or group.

Such an order takes effect from the time the person or group concerned is notified of it and, unless otherwise provided, remains binding for a 12-month period; the order may be revoked or otherwise amended during that period.

An order directed at an authorized self-regulatory organization may only apply to the organization's insurance business.

2018, c. 23, s. 3.

470. The person or group concerned must be notified at least 15 days before any hearing during which the Financial Markets Administrative Tribunal is to consider an application for the renewal of an order.

The Tribunal may renew the order if the person or group concerned has not requested to be heard or has failed to establish that the reasons for the initial order have ceased to exist.

2018, c. 23, s. 3.

471. A person or group named in an order issued under section 469 who has put a safety deposit box at the disposal of a third person or has allowed a third person to use a safety deposit box must immediately notify the Authority.

On the Authority's request, the person or the group's duly authorized representative must open the safety deposit box in the presence of an agent of the Authority, draw up an inventory of the contents in triplicate, and give one copy to the Authority and another to the person or group concerned.

2018, c. 23, s. 3.

472. An order that names a bank or another financial institution applies only to the agencies or branches specified.

2018, c. 23, s. 3.

473. A person or group directly affected by an order issued under section 469, if in doubt as to the application of the order to particular funds, securities or other property, may apply to the Financial Markets Administrative Tribunal for clarification; such a person or group may also apply for an amendment to or the revocation of the order.

A written notice setting out the reasons for the application for amendment or revocation must be filed with the Tribunal. The notice must be served on the Authority at least 15 days before the hearing set to hear the application.

2018, c. 23, s. 3.

474. An order issued under section 469 is admissible for publication in the same register as that in which rights in the funds, securities or other property covered by the order are required to be published or admissible for publication.

Likewise, the order may be published in a register kept outside Québec if such orders are admissible for publication under the Act governing that register.

2018, c. 23, s. 3.

475. In addition to any measure imposed in an order, the Financial Markets Administrative Tribunal may require a person or group named in the order to repay to the Authority the costs incurred in connection with the inspection or investigation that established non-compliance with the provision concerned, according to the tariff set by government regulation.

2018, c. 23, s. 3.

476. The Financial Markets Administrative Tribunal may prohibit a person from acting as a director or officer of an authorized insurer on the grounds set out in article 329 of the Civil Code or when a sanction has been imposed on the person under this Act.

The prohibition imposed by the Tribunal may not exceed five years.

The Tribunal may, at the request of the person concerned, lift the prohibition on such conditions as it considers appropriate.

2018, c. 23, s. 3.

CHAPTER IV

INJUNCTION AND PARTICIPATION IN PROCEEDINGS

2018, c. 23, s. 3.

477. The Authority may apply to a judge of the Superior Court for an injunction in respect of any matter relating to the carrying out of this Act.

The application for an injunction constitutes a proceeding in itself.

The procedure prescribed in the Code of Civil Procedure (chapter C-25.01) applies, except that the Authority cannot be required to give security.

2018, c. 23, s. 3.

478. The Authority may, on its own initiative and without notice, intervene in any proceeding relating to a provision of this Act or the Business Corporations Act (chapter S-31.1) that is applicable to an insurance company.

2018, c. 23, s. 3.

CHAPTER V

CANCELLATION OF A CONTRACT OR SUSPENSION OF ITS PERFORMANCE

2018, c. 23, s. 3.

479. The Authority may apply to a court to cancel or suspend the performance of a contract entered into by an insurer in contravention of this Act if the Authority shows that the cancellation or suspension is in the interest of the holders of insurance contracts underwritten by the insurer and that, under the circumstances, that interest must prevail over the legal security of parties to the contract and of other persons whose rights and obligations would be affected by the cancellation or suspension.

The cancellation or suspension may not be applied for after the end of the 10th year after the contract concerned came into effect.

The court may also order that directors who are party to such a contract, who have authorized it or who have facilitated its entering into, be solidarily required to pay the authorized insurer the amount of damages awarded as compensation for the injury suffered or the sum paid by the authorized insurer because of the contract.

2018, c. 23, s. 3.

CHAPTER VI

ADMINISTRATION OF THE ACT, REPORTS AND MISCELLANEOUS PROVISIONS

2018, c. 23, s. 3.

480. The Authority may require an authorized insurer or anyone who files an application under this Act to provide any document or information that is useful in assessing the applications on which the Authority or the Minister is to rule in accordance with this Act.

2018, c. 23, s. 3.

481. The costs that must be incurred by the Authority for the administration of this Act are to be borne by the authorized insurers; they are determined annually by the Government based on the forecasts provided to it by the Authority.

Such costs, for each insurer, correspond to the sum of the minimum contribution set by the Government and the proportion of those costs corresponding to the proportion that the insurer's total direct premium income for the preceding year in Québec is of the aggregate of the similar income of all the insurers for the same period.

The difference noted between the forecast of the costs that must be incurred for the administration of this Act for a year and those actually incurred for the same year must be carried over to similar costs determined by the Government for the year after the difference is noted.

The certificate of the Authority must definitively establish the amount payable by each insurer under this section.

2018, c. 23, s. 3.

482. For the purposes of section 481, "total direct premium income" means

(1) in insurance of persons, the total income from direct premiums paid by Québec residents, less policy dividends or rebates granted to them; and

(2) in damage insurance, the total income from direct premiums paid in respect of property situated in Québec, less policy dividends or related return premiums granted to the holders of insurance contracts relating to the property.

2018, c. 23, s. 3.

483. The Authority must, before 30 June each year, report to the Minister, on the basis of the information obtained from the authorized insurers and following the investigations, inspections and evaluations made by the Authority, on the affairs of all insurers carrying on business in Québec for the year ending on the preceding 31 December.

2018, c. 23, s. 3.

484. The Minister tables the Authority's report in the National Assembly within 30 days of its receipt or, if the Assembly is not sitting, within 15 days of resumption.

2018, c. 23, s. 3.

CHAPTER VII

REGULATIONS

2018, c. 23, s. 3.

485. In addition to other regulations that it may make under this Act, the Authority may, by regulation, determine the standards applicable

(1) to authorized insurers in relation to their commercial practices and their management practices; and

(2) to federations of mutual companies in relation to their management practices.

2018, c. 23, s. 3.

486. A regulation made under this Act by the Authority is approved by the Minister with or without amendment.

The Minister may make such a regulation if the Authority fails to do so within the time specified by the Minister.

A draft of a regulation must be published in the Authority's bulletin with the notice required under section 10 of the Regulations Act (chapter R-18.1).

The draft of the regulation may not be submitted for approval and the regulation may not be made before 30 days have elapsed since the publication of the draft.

A regulation under this section comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in it. It must also be published in the Authority's bulletin. If the regulation published in the Authority's bulletin differs from the one published in the *Gazette officielle du Québec*, the latter prevails.

Sections 4 to 8, 11 and 17 to 19 of the Regulations Act do not apply to a regulation of the Authority under this Act.

2018, c. 23, s. 3.

487. The fees payable for the formalities prescribed by regulation of the Authority or the Minister are prescribed by government regulation.

2018, c. 23, s. 3.

TITLE VI

PROHIBITIONS, MONETARY ADMINISTRATIVE PENALTIES AND PENAL PROVISIONS

2018, c. 23, s. 3.

CHAPTER I

PROHIBITIONS

2018, c. 23, s. 3.

488. No one may hold out a matter or contract that is not an insurance contract or a prestation that is not related to such a contract as being insurance, except an authorized insurer in respect of a suretyship contract that it underwrites.

2018, c. 23, s. 3.

489. No one may, if not covered by the second paragraph, hold themselves out as an insurer or use a name that includes one of the following words or combinations of words:

(1) "insurer" or "reinsurer"; or

(2) "insurance" or "reinsurance" with "company", "mutual company", "corporation", "reciprocal union" or any other word or expression indicating a juridical form.

The following may hold themselves out as an insurer or use a name that includes a word or combination of words listed in the first paragraph:

(1) an authorized insurer;

(2) a legal person constituted under the laws of a jurisdiction other than Québec and carrying on only reinsurer activities in Québec;

(3) an insurer that delivers only damage insurance policies in Québec through a firm acting through a special broker referred to in the Act respecting the distribution of financial products and services (chapter D-9.2), if the insurer does not have an establishment in Québec and does not advertise in Québec;

(4) a regulated company that is not an authorized insurer, during its organization; and

(5) a legal person constituted under the laws of a jurisdiction other than Québec that is authorized under those laws to carry on insurer activities and that exercises rights and performs obligations in Québec without such exercise and performance constituting insurer activities.

2018, c. 23, s. 3; 2024, c. 15, s. 65.

490. A member of a financial group that administers or establishes an uninsured employee benefit plan, offers such a plan to employees or signs employees up as members of such a plan may not address a communication to employees and other persons benefitting from the plan unless it mentions that the sums

intended for the payment of the benefits provided for by the plan are not under the Authority's supervision and control. The same is true for an authorized insurer that is not a member of a financial group.

2018, c. 23, s. 3.

CHAPTER II

MONETARY ADMINISTRATIVE PENALTIES

2018, c. 23, s. 3.

DIVISION I

FAILURES TO COMPLY

2018, c. 23, s. 3.

491. A monetary administrative penalty of $250 in the case of a natural person and $1,000 in any other case may be imposed on

(1) an authorized insurer

(a) that, in contravention of section 58, fails to send the Authority a report on its complaint processing and dispute resolution policy,

(b) that, in contravention of section 66, fails to notify the Authority of the fact that it has started or ceased doing business with a distributor or fails to send the Authority the list of the contracts with respect to which a distributor will be dealing with clients or participants or any change to that list,

(c) that, in contravention of the first paragraph of section 71, uses an insurance policy or a rider referred to in that paragraph whose form and terms have not been determined by the Authority or, in contravention of the second paragraph of that section, uses a rider that does not meet the conditions set out in that paragraph;

(d) whose ethics committee, in contravention of section 107, fails to send the Authority a report on its activities,

(e) that, in contravention of section 119, fails to notify the Authority of the end of the actuary's or auditor's term,

(f) that, in contravention of section 132, fails to send the Authority an annual statement of the position of its affairs,

(g) that, in contravention of section 133, fails to send the Authority the financial statements, an auditor's or actuary's report, or the certificate referred to in that section, or

(h) that, being Lloyd's, fails to send the Authority the list of its underwriters in Québec or, being a reciprocal union, the list of its members, or does not keep that list up to date in contravention of section 137;

(2) an insurance company that, in contravention of section 225 of the Business Corporations Act (chapter S-31.1), fails to send its financial statements to a member who requests them;

(3) a self-regulatory organization that, in contravention of section 370, fails to send holders of an insurance contract underwritten by the organization the annual report of its insurance fund;

(4) a federation of mutual companies that

(a) in contravention of section 394, fails to report to the Authority on the number of complaint records it has registered in the register of complaint records submitted for its examination and their nature,

(b) in contravention of section 449, fails to send its annual report to its members, or

(c) in contravention of section 451, fails to send the Authority an annual statement under section 450; or

(5) an authorized insurer, the holder of control of the insurer, a member of its financial group, its actuary or its auditor if it or he or she refuses to communicate or provide access to a document or information required by the Authority for the purposes of this Act.

The penalties prescribed by the first paragraph also apply if the information or documents concerned are incomplete, or are not sent before the specified time limit.

2018, c. 23, s. 3; 2021, c. 34, s. 27; 2024, c. 15, s. 66.

492. A monetary administrative penalty of $2,500 may be imposed on

(1) an authorized insurer

(a) that fails to perform its obligations under an undertaking given to the Authority under section 40, 102, 145 or 155,

(b) that, in contravention of section 50, fails to adopt a complaint processing policy or that, in contravention of section 82, fails to adopt an investment policy approved by its board of directors or whose ethics committee, in contravention of section 104, fails to adopt rules of ethics,

(c) that, in contravention of section 50, fails to keep the register of complaint records submitted for its examination prescribed by that section,

(d) if, in contravention of section 94, neither a director nor a committee has reported to the board of directors on the responsibility conferred on the director or committee of seeing that sound commercial practices and sound and prudent management practices are adhered to and situations contrary to such practices are detected, or

(e) that, without the Authority's authorization under section 102, has not, in contravention of section 100, established an audit committee or an ethics committee or has established one whose composition contravenes section 101;

(2) an insurance company that

(a) fails to perform its obligations under an undertaking given to the Authority under section 243, or

(b) is bound by insurance contracts conferring rights to policy dividends on its beneficiaries without having established, in contravention of section 543, a policy approved by its board of directors for determining the dividend and the bonuses payable to the holders of such contracts;

(3) a self-regulatory organization that, in contravention of section 365, fails to establish an investment policy approved by its board of directors for its insurance fund; or

(4) a federation of mutual companies that

(a) in contravention of section 389, fails to establish a policy on the examination of complaint records,

(b) in contravention of section 390, fails to keep the register of complaint records submitted for its examination prescribed by that section,

(c) in contravention of section 399, fails to establish an audit committee within its board of directors,

(d) in contravention of section 400, has as its president or vice-president or as the chair or vice-chair of its board of directors its general manager or the general manager of one of its member companies, or

(e) in contravention of section 426, fails to establish an investment policy approved by its board of directors for its guarantee fund.

2018, c. 23, s. 3.

493. A monetary administrative penalty of $1,000 in the case of a natural person and $5,000 in any other case may be imposed on

(1) an authorized insurer

(a) that holds contributed capital securities issued by a legal person or partnership, participations in a trust or a share in a co-ownership acquired in contravention of the limits prescribed by section 84 without such holdings being authorized by section 85,

(b) that, in contravention of section 89, is not a member, for the classes for which it is authorized to carry on an activity, of a compensation body recognized by the Authority for those classes,

(c) more than half of whose board of directors, in contravention of section 98, is not composed of persons other than its employees or employees of a group of which it is the holder of control,

(d) for which no actuary or auditor, in contravention of section 115, has been charged with the functions provided for in Chapter VII of Title II or for which an actuary or auditor has been charged with those functions but does not have the qualifications required under section 116,

(e) that, in contravention of any of sections 149 to 154, fails to notify the Authority of any of the operations described in section 146, sends the Authority an incomplete notice of intention or fails to comply with the time limit prescribed by section 148 for filing the notice of intention, or

(f) that, in contravention of section 21, carries on insurer activities in a class not covered by the authorization it has been granted by the Authority;

(2) an authorized reciprocal union that, in contravention of section 190, fails to send the Authority a contract referred to in section 188, when it is amended;

(3) an insurance company

(a) that has outstanding debt obligations issued in contravention of section 242 or whose movable property is charged with a hypothec or other security granted in contravention of section 243,

(b) that has outstanding shares that were issued without being fully paid, in contravention of section 244 or 257, as the case may be, or

(c) whose board of directors, in contravention of section 266, is not composed of a majority of directors who are resident in Québec;

(4) a self-regulatory organization whose board of directors has not, in contravention of section 354, established a professional liability insurance decision-making committee or has established one whose composition of contravenes section 361 or 363; or

(5) a federation of mutual companies

(a) more than one-third of whose board of directors, in contravention of section 397, is made up of general managers of member companies,

(b) for which no auditor, in contravention of sections 115 and 448, has been charged with the functions provided for in Chapter VII of Title II or for which an auditor has been charged with those functions but does not have the qualifications required under section 116,

(c) that, in contravention of section 417, has not determined the amount of the capital that must be maintained in its guarantee fund,

(d) that fails to inspect its member companies' affairs as required under section 442, or

(e) whose books and accounts are not audited annually in contravention of section 446.

2018, c. 23, s. 3; 2024, c. 15, s. 67.

494. A monetary administrative penalty of $2,000 in the case of a natural person and $10,000 in any other case may be imposed on anyone who fails to comply with an order or other decision of the Authority.

2018, c. 23, s. 3.

495. If a failure to comply for which a monetary administrative penalty may be imposed continues for more than one day, it constitutes a new failure for each day it continues.

2018, c. 23, s. 3.

496. The Minister or the Authority may, in a regulation made under this Act, specify that a failure to comply with the regulation may give rise to a monetary administrative penalty.

The regulation may define the conditions for applying the penalty and set forth the amounts or the methods for determining them. The amounts may vary according to the seriousness of the failure to comply, without exceeding the maximum amounts provided for in section 494.

2018, c. 23, s. 3.

DIVISION II

NOTICE OF NON-COMPLIANCE AND IMPOSITION

2018, c. 23, s. 3.

497. In the event of a failure to comply referred to in Division I, a notice of non-compliance may be notified to the party responsible for the failure urging that the necessary measures be taken immediately to remedy it.

Such a notice must mention that the failure may give rise to a monetary administrative penalty.

2018, c. 23, s. 3.

498. The imposition of a monetary administrative penalty is prescribed by two years from the date of the failure to comply.

2018, c. 23, s. 3.

499. The monetary administrative penalty for a failure to comply with a provision of this Act may not be imposed on the party responsible for the failure to comply if a statement of offence has already been served for a failure to comply with the same provision on the same day, based on the same facts.

For the purposes of this chapter, "party responsible for a failure to comply" means the person or group on whom or which a monetary administrative penalty is imposed or may be imposed, as the case may be, for a failure to comply referred to in Division I.

2018, c. 23, s. 3.

500. A monetary administrative penalty is imposed on the party responsible for a failure to comply by the notification of a notice of claim.

The notice must state

(1) the amount of the claim;

(2) the reasons for it;

(3) the time from which it bears interest;

(4) the right, under section 501, to obtain a review of the decision to impose the penalty and the time limit for exercising that right; and

(5) the right to contest the review decision before the Financial Markets Administrative Tribunal and the time limit for bringing such a proceeding.

The notice must also include information on the procedure for recovery of the amount claimed. The party responsible for the failure to comply must also be informed that failure to pay the amount owing may give rise to the amendment, suspension or revocation of any authorization granted under this Act or to a refusal to grant such an authorization and, if applicable, that the facts on which the claim is founded may result in penal proceedings.

Unless otherwise provided, the amount owing bears interest at the rate determined under the first paragraph of section 28 of the Tax Administration Act (chapter A-6.002), from the 31st day after notification of the notice.

2018, c. 23, s. 3.

DIVISION III

REVIEW

2018, c. 23, s. 3.

501. The party responsible for a failure to comply may apply in writing to the Authority for a review of the decision to impose a monetary administrative penalty within 30 days after notification of the notice of claim.

The persons responsible for the review are designated by the Authority; they must not come under the same administrative authority as the persons responsible for imposing such penalties.

2018, c. 23, s. 3.

502. The application for review must be dealt with promptly. After giving the applicant an opportunity to submit observations and produce any documents to complete the record, the person responsible for the review renders a decision on the basis of the record, unless the person deems it necessary to proceed in some other manner.

2018, c. 23, s. 3.

503. The review decision must be written in clear and concise terms, with reasons given, must be notified to the applicant and must state the applicant's right to contest the decision before the Financial Markets Administrative Tribunal and the time limit for bringing such a proceeding.

If the review decision is not rendered within 30 days after receipt of the application or, if applicable, within the time granted to the applicant to submit observations or documents, the interest provided for in the fourth paragraph of section 500 on the amount owing ceases to accrue until the decision is rendered.

2018, c. 23, s. 3.

504. A review decision that confirms the imposition of a monetary administrative penalty may be contested before the Financial Markets Administrative Tribunal by the party responsible for the failure to comply to which the decision pertains, within 60 days after notification of the review decision.

The Tribunal may only confirm or quash a contested decision.

When rendering its decision, the Tribunal may make a ruling with respect to interest accrued on the penalty while the matter was pending before it.

2018, c. 23, s. 3.

DIVISION IV

RECOVERY

2018, c. 23, s. 3.

505. If the party responsible for a failure to comply has defaulted on payment of a monetary administrative penalty, its directors and officers are solidarily liable with that party for the payment of the penalty, unless they establish that they exercised due care and diligence to prevent the failure.

2018, c. 23, s. 3.

506. The payment of a monetary administrative penalty is secured by a legal hypothec on the debtor's movable and immovable property.

For the purposes of this division, "debtor" means the party responsible for a failure to comply that is required to pay a monetary administrative penalty and, if applicable, each of its directors and officers who are solidarily liable with that party for the payment of the penalty.

2018, c. 23, s. 3.

507. The debtor and the Authority may enter into a payment agreement with regard to a monetary administrative penalty owing. Such an agreement, or the payment of the amount owing, does not constitute, for the purposes of any other administrative penalty under this Act, an acknowledgement of the facts giving rise to it.

2018, c. 23, s. 3.

508. If the monetary administrative penalty owing is not paid in its entirety or the payment agreement is not adhered to, the Authority may issue a recovery certificate on the expiry of the time for applying for a review of the decision to impose the penalty, on the expiry of the time for contesting the review decision before the Financial Markets Administrative Tribunal or on the expiry of 30 days after the final decision of the Tribunal confirming all or part of the decision to impose the penalty or the review decision, as applicable.

However, a recovery certificate may be issued before the expiry of the time referred to in the first paragraph if the Authority is of the opinion that the debtor is attempting to evade payment.

A recovery certificate must state the debtor's name and address and the amount of the debt.

2018, c. 23, s. 3.

509. Once a recovery certificate has been issued, any refund owed to a debtor by the Minister of Revenue may, in accordance with section 31 of the Tax Administration Act (chapter A-6.002), be withheld for payment of the amount due referred to in the certificate.

Such withholding interrupts the prescription provided for in the Civil Code with regard to the recovery of an amount owing.

2018, c. 23, s. 3.

510. On the filing of the recovery certificate at the office of the competent court, together with a copy of the final decision stating the amount of the debt, the decision becomes enforceable as if it were a final judgment of that court not subject to appeal, and has all the effects of such a judgment.

2018, c. 23, s. 3.

511. The debtor is required to pay a recovery charge in the cases, under the conditions and in the amount determined by regulation of the Minister.

2018, c. 23, s. 3.

DIVISION V

REGISTER

2018, c. 23, s. 3.

512. The Authority keeps a register relating to monetary administrative penalties.

The register must contain at least the following information:

(1) the date the penalty was imposed;

(2) the date and nature of the failure, and the legislative provisions under which the penalty was imposed;

(3) if the penalty was imposed on a legal person, its name and the address of its head office or that of one of its establishments or of the business establishment of one of its agents;

(4) if the penalty was imposed on a natural person, the person's name, the name of the municipality in whose territory the person resides and, if the failure occurred during the ordinary course of business of the person's enterprise, the enterprise's name and address;

(5) the amount of the penalty imposed;

(6) the date of receipt of an application for review and the date and conclusions of the decision;

(7) the date a proceeding is brought before the Financial Markets Administrative Tribunal and the date and conclusions of the decision rendered by the Tribunal, as soon as the Authority is made aware of the information;

(8) the date a proceeding is brought against the decision rendered by the Financial Markets Administrative Tribunal, the nature of the proceeding and the date and conclusions of the decision rendered by the court concerned, as soon as the Authority is made aware of the information; and

(9) any other information the Authority considers of public interest.

The information contained in the register is public information as of the time the decision imposing the penalty becomes final.

2018, c. 23, s. 3.

CHAPTER III

PENAL PROVISIONS

2018, c. 23, s. 3.

513. Anyone who contravenes section 488 or 490 commits an offence and is liable to a fine of $1,000 to $10,000 in the case of a natural person and $3,000 to $30,000 in any other case.

The secretary of an authorized insurer or the representative of an authorized reciprocal union who contravenes the second paragraph of section 123 by refusing or neglecting to provide the declaration sent to him or her by an actuary or auditor in accordance with section 122 or who destroys or falsifies the declaration commits an offence and is liable to the fine prescribed in the first paragraph.

2018, c. 23, s. 3; 2024, c. 15, s. 68.

514. Anyone who

(1) fails to comply with a request made under section 54,

(2) deals with clients in contravention of section 59,

(3) dismisses an actuary or auditor otherwise than in accordance with section 121, or

(4) fails to notify the Authority in accordance with section 139 or to notify it of an operation described to in subparagraph 5 or 6 of the first paragraph of section 146, in accordance with section 153 or, as the case may be, section 154,

commits an offence and is liable to a fine of $2,500 to $25,000 in the case of a natural person and $7,500 to $75,000 in any other case.

2018, c. 23, s. 3.

515. Anyone who

(1) contravenes the capital maintenance rules prescribed by any of sections 245 to 247, 264 and 265,

(2) holds themselves out as an insurer or uses a name that includes a word or combination of words listed in the first paragraph of section 489 without being permitted to do so by the second paragraph of that section,

(3) carries on insurer activities without the Authority's authorization although the authorization is required under this Act,

(4) provides a document or information that they know is false or inaccurate, or access to such a document or information, to the Minister or the Authority, a member of the Minister's or Authority's staff or a person appointed by the Minister or Authority in the course of activities governed by this Act, or

(5) hinders or attempts to hinder, in any manner, the exercise of a function by a member of the Authority's staff or by a person appointed by the Authority for the purposes of this Act,

commits an offence and is liable to a fine of $5,000 to $50,000 in the case of a natural person and $15,000 to $150,000 in any other case.

2018, c. 23, s. 3.

516. Anyone who

(1) contravenes an order, or

(2) carries on insurer activities although the authorization required under this Act has been refused or revoked, or carries on insurer activities beyond what this Act authorizes if the authorization is suspended,

commits an offence and is liable, in the case of a natural person, to a fine of $5,000 to $100,000 or, despite article 231 of the Code of Penal Procedure (chapter C-25.1), to a maximum term of imprisonment of 18 months, or to both the fine and imprisonment, and, in any other case, to a fine of $30,000 to $2,000,000.

An authorized insurer that, in contravention of section 43, decides to dissolve or liquidates voluntarily commits an offence and is liable to the fine prescribed in the first paragraph.

A director of such an insurer who gives his or her assent to the dissolution or liquidation in contravention of section 43 commits an offence and is liable to the fine and imprisonment prescribed in the first paragraph; the same is true of a liquidator who agrees to proceed with such a liquidation.

2018, c. 23, s. 3.

517. Despite sections 513 to 516, the Minister may determine the regulatory provisions made under this Act whose contravention constitutes an offence and renders the offender liable to a fine the minimum and maximum amounts of which are set by the Minister. The Government may also provide that, despite article 231 of the Code of Penal Procedure (chapter C-25.1), a contravention renders the offender liable to a term of imprisonment, or both the fine and imprisonment.

The maximum penalties under the first paragraph may vary according to the seriousness of the offence, without exceeding those prescribed in section 516.

2018, c. 23, s. 3.

518. The fines prescribed by sections 513 to 516 or by the regulations are doubled for a second offence and tripled for a subsequent offence. The maximum term of imprisonment is five years less a day for a second or subsequent offence.

If an offender commits an offence under this Act after having previously been found guilty of any such offence and if, without regard to the amounts prescribed for a second or subsequent offence, the minimum fine to which the offender was liable for the first offence was equal to or greater than the minimum fine prescribed for the second offence, the minimum and maximum fines and, if applicable, the term of imprisonment prescribed for the second offence become, if the prosecutor so requests, those prescribed in the case of a second or subsequent offence.

This section applies to prior findings of guilty pronounced in the two-year period preceding the second offence or, if the minimum fine to which the offender was liable for the prior offence is that prescribed in section 516, in the five-year period preceding the second offence. Fines for a third or subsequent offence apply if the penalty imposed for the prior offence was the penalty for a second or subsequent offence.

2018, c. 23, s. 3.

519. If an offence under this Act is committed by a director or officer of a legal person or of another group, regardless of its juridical form, the minimum and maximum fines that would apply in the case of a natural person are doubled.

2018, c. 23, s. 3.

520. If an offence under this Act continues for more than one day, it constitutes a separate offence for each day it continues.

2018, c. 23, s. 3.

521. Anyone who, by an act or an omission, helps or, by encouragement, advice, consent, authorization or order, induces another person to commit an offence under this Act commits an offence and is liable to the same penalty as that prescribed for the offence they helped or induced the person to commit.

2018, c. 23, s. 3.

522. In any penal proceedings relating to an offence under this Act, proof that the offence was committed by an agent, mandatary or employee of any party is sufficient to establish that it was committed by that party, unless the party establishes that it exercised due diligence, taking all necessary precautions to prevent the offence.

2018, c. 23, s. 3.

523. If a legal person or an agent, mandatary or employee of a legal person, of a partnership or of an association without legal personality commits an offence under this Act, the directors of the legal person, partnership or association are presumed to have committed the offence unless it is established that they exercised due diligence, taking all necessary precautions to prevent the offence.

For the purposes of this section, in the case of a partnership, all partners, except special partners, are presumed to be directors of the partnership unless there is evidence to the contrary appointing one or more of them, or a third person, to manage the affairs of the partnership.

2018, c. 23, s. 3.

524. In determining the penalty, the judge may take into account aggravating factors such as

(1) the intentional, negligent or reckless nature of the offence;

(2) the foreseeable character of the offence or the failure to follow recommendations or warnings to prevent it;

(3) the offender's attempts to cover up the offence or failure to try to mitigate its consequences;

(4) the increase in revenues or decrease in expenses that the offender intended to obtain by committing the offence or by omitting to take measures to prevent it; and

(5) the offender's failure to take reasonable measures to prevent the commission of the offence or mitigate its consequences despite the offender's ability to do so.

A judge who, despite the presence of an aggravating factor, decides to impose the minimum fine must give reasons for the decision.

2018, c. 23, s. 3.

525. On an application made by the prosecutor and submitted with the statement of offence, the judge may impose on the offender, in addition to any other penalty, a further fine not exceeding the financial benefit realized by the offender as a result of the offence, even if the maximum fine has also been imposed.

2018, c. 23, s. 3.

526. When determining a fine higher than the minimum fine prescribed by this Act, or when determining the time within which an amount must be paid, the judge may take into account the offender's inability to pay, provided the offender furnishes proof of assets and liabilities.

2018, c. 23, s. 3.

527. Penal proceedings for offences under this Act are prescribed by 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 that date, in the absence of any evidence to the contrary.

2018, c. 23, s. 3.

528. Penal proceedings for an offence under this Act may be instituted by the Authority.

2018, c. 23, s. 3.

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

2018, c. 23, s. 3.

TITLE VII

TRANSITIONAL PROVISIONS

2018, c. 23, s. 3.

CHAPTER I

GENERAL PROVISION

2018, c. 23, s. 3.

530. Juridical acts which may be annulled when the new legislation comes into force may not be annulled after that time for any reason which is no longer recognized under the new legislation.

2018, c. 23, s. 3.

CHAPTER II

SUPERVISION AND CONTROL

2018, c. 23, s. 3.

531. Insurers that, on 12 June 2019, hold a licence issued under the Act respecting insurance (chapter A-32) are, by operation of law, authorized insurers from 13 June 2019.

The conditions and restrictions imposed by the Authority in relation to the operations of an insurer authorized under the first paragraph become the conditions and restrictions attached to the authorization.

However, if the sole purpose of the conditions or restrictions is to prevent the insurer from underwriting a new insurance contract or suretyship contract except, if applicable, to honour a right that a contract in force confers on a client or participant, the insurer holding a licence becomes an insurer whose authorization has been revoked without the revocation having become final.

2018, c. 23, s. 3.

532. Despite any provision of Chapter VI of Title II, an insurance company that meets the following conditions is not required to establish an ethics committee:

(1) its authorization is revoked under the third paragraph of section 531; and

(2) on 12 June 2019, the company was a funeral insurance company.

2018, c. 23, s. 3.

533. Section 89 does not apply to

(1) the Sons of Scotland Benevolent Association, whose Québec business number is 1145106044;

(2) the Order of United Commercial Travelers of America, whose Québec business number is 1145703782;

(3) the Ukrainian National Association, Inc., whose Québec business number is 1144727709;

(4) the Knights of Columbus, whose Québec business number is 1145122561;

(5) the Supreme Council of the Royal Arcanum, whose Québec business number is 1148945158;

(6) the Grand Orange Lodge of British America Benefit Fund, whose Québec business number is 1149026875;

(7) the Independent Order of Foresters, whose Québec business number is 1145375250;

(8) the Teachers' Life Insurance Society (Fraternal), whose Québec business number is 1168335322; and

(9) the Croatian Fraternal Union of America, whose Québec business number is 1145293107.

Only insurers referred to in the first paragraph may use the words "mutual benefit association" in their names or in the course of their activities.

2018, c. 23, s. 3.

534. A proceeding brought before the Administrative Tribunal of Québec under section 366 of the Act respecting insurance (chapter A-32) prior to 13 June 2019 is continued before the Tribunal, unless the hearing has not commenced by then; in such a case, the proceeding is continued before the Financial Markets Administrative Tribunal.

2018, c. 23, s. 3.

CHAPTER III

INSURANCE COMPANIES AND OTHER QUÉBEC INSURERS

2018, c. 23, s. 3.

DIVISION I

CONTINUANCE

2018, c. 23, s. 3.

535. An insurance company within the meaning of the Act respecting insurance (chapter A-32), other than a mutual insurance company, becomes a business corporation regulated by Title III on 13 June 2019.

A mutual insurance company within the meaning of the Act respecting insurance becomes a mutual company regulated by Title III on that date. The same is true of a mutual insurance association within the meaning of the Act respecting insurance.

For the purposes of Title III, except Chapters XII to XV, and of the other provisions of this Act that refer to Title III, from 13 June 2019,

(1) the following Québec insurers are deemed to be business corporations regulated by that Title:

(a) Québec insurers to which a continuance certificate has been issued under section 200.0.16 of the Insurers Act;

(b) L'Alpha compagnie d'assurance inc., whose Québec business number is 1145104445; and

(c) La Capitale Civil Service Insurer Inc., whose Québec business number is 1141715509; and

(2) L'Assurance mutuelle des fabriques de Québec, whose Québec business number is 1142783258, is deemed to be a mutual company regulated by that Title.

In case of conflict, the provisions of the Acts constituting the insurers referred to in the third paragraph prevail over the provisions of Title III and over the provisions of the Business Corporations Act (chapter S-31.1) applicable to those insurers under this Act. However, the provisions of those constituting Acts may not depart from the following provisions of that Title: Chapter VII, section 244, subdivision 3 of Division I of Chapter VIII and sections 266, 267, 269 to 273, 277 and 278.

2018, c. 23, s. 3.

536. The patrimony of a guarantee fund constituted as a legal person under the Act respecting insurance (chapter A-32) becomes, as of 13 June 2019, the guarantee fund, described in the second paragraph of section 379, of the federation of mutual companies whose members are the same.

The extra-patrimonial rights and obligations of the guarantee fund constituted as a legal person become, as of that date, the extra-patrimonial rights and obligations of that federation of mutual companies.

That federation becomes, for the guarantee fund described in the second paragraph of section 379, a party to any act and to any judicial or administrative proceeding to which the guarantee fund constituted as a legal person was a party.

2018, c. 23, s. 3.

537. The first named insured in a contract designating several insureds underwritten before 13 June 2019 by a mutual insurance company governed on that date by Division III of Chapter III of Title III of the Act respecting insurance (chapter A-32) remains, while the contract is in force, a member of the mutual company resulting from the continuance provided for in the second paragraph of section 535.

2018, c. 23, s. 3.

538. An insurer's ethics committee appointed in accordance with the Act respecting insurance (chapter A-32) becomes by operation of law the ethics committee that the insurer must appoint in accordance with this Act.

2018, c. 23, s. 3.

DIVISION II

INSURANCE COMPANIES BOUND BY INSURANCE CONTRACTS CONFERRING RIGHTS TO POLICY DIVIDENDS

2018, c. 23, s. 3.

539. The provisions of this division apply to insurance companies that, before 13 June 2019, were bound by insurance contracts conferring rights to policy dividends arising from those contracts entered into before that date.

Such contracts are also called "participating policies".

2018, c. 23, s. 3.

540. At least one-third of the members of the board of directors of an insurance company bound by insurance contracts conferring rights to policy dividends must be elected exclusively by the holders of such contracts as soon as there are at least 100 such holders.

Such holders are entitled to vote in the election, each of them having one vote; in addition, they are entitled to attend all meetings of the company members.

2018, c. 23, s. 3.

541. Divisions I and II of Chapter VII of the Business Corporations Act (chapter S-31.1), except sections 177, 179, 180, 182, 191, 192 and 194 to 206, apply to holders of such contracts and members of the insurance company.

The agenda set out in the notice of meeting under section 167 of that Act must, if the notice is sent to the holder of an insurance contract conferring rights to policy dividends, expressly mention the election of directors that must be exclusively elected by such holders.

A statement in prominent and conspicuous type on the premium notices and premium receipts, specifying the date, time and place of the meetings, may be substituted for the notice of meeting that must be sent to holders of insurance contracts conferring rights to policy dividends.

2018, c. 23, s. 3.

542. Holders of insurance contracts conferring rights to policy dividends are entitled to share in that portion of the profits set apart that has been distinguished as having been derived from that class of contract in a proportion of at least

(1) 90% of such profits in any year in which the average of the participating fund does not exceed $250,000,000;

(2) 92.5% of such profits in any year in which the average of the participating fund exceeds $250,000,000 but does not exceed $500,000,000;

(3) 95% of such profits in any year in which the average of the participating fund exceeds $500,000,000 but does not exceed $1,000,000,000; and

(4) 97.5% of such profits in any year in which the average of the participating fund exceeds $1,000,000,000.

2018, c. 23, s. 3.

543. An insurance company bound by insurance contracts conferring rights to policy dividends must establish a policy for determining the dividends and bonuses payable to the holders of such contracts.

The policy must be approved by the board of directors. The board of directors may distribute any form of benefit to such holders of insurance contracts, including dividends or bonuses, in compliance with the policy established in that regard.

In so doing, the board of directors must take into account the opinion given by the actuary charged with the functions provided for in Chapter VII of Title II in a report to the board of directors on the compliance of the distribution with the policy established in that regard.

2018, c. 23, s. 3.

544. An insurance company bound by insurance contracts conferring rights to policy dividends may not make a transfer from its participating fund to a surplus account or a retained earnings account unless it has established a participating fund surplus management policy approved by the board of directors.

The policy must provide a method for calculating the surplus to be maintained in the participating fund, including for the purpose of guaranteeing the performance of the company's obligations toward holders of insurance contracts conferring rights to policy dividends.

The policy must be presented at a members' meeting.

2018, c. 23, s. 3.

545. A copy of any policy established under section 543 or section 544 must be sent to the Authority.

2018, c. 23, s. 3.

546. Before each and any transfer from the participating fund to a surplus account or a retained earnings account, the actuary charged with the functions provided for in Chapter VII of Title II must produce a report certifying that the transfer is in conformity with the participating fund surplus management policy.

The company must send the actuary's report to the Authority at least 30 days before the date of the transfer.

2018, c. 23, s. 3.

547. The Authority may forbid the transfer, or allow it subject to certain conditions, if the Authority considers it advisable in the interest of the holders of insurance contracts conferring rights to policy dividends.

2018, c. 23, s. 3.

548. The Authority may require any relevant information or document for the purposes of this division.

2018, c. 23, s. 3.

549. The Authority may, where it considers it advisable, give companies bound by insurance contracts conferring rights to policy dividends written instructions as to the management of participating fund surpluses.

Before exercising the power set out in the first paragraph, the Authority must notify the company and give it an opportunity to submit observations.

2018, c. 23, s. 3.

CHAPTER IV

PROVISIONS APPLICABLE TO A CONTRACT THAT INCLUDES AN OPTION TO PAY SUMS INTO A SIDE ACCOUNT

2021, c. 15, s. 97.

549.1. An individual life insurance contract entered into before 2 June 2021 that includes an option to pay sums into a side account determined by the contract is deemed to provide that the total amount of those sums may not exceed 125% of the total of the premiums payable throughout the term of the contract, including taxes, fees or other costs, and determined based on the information obtained from the insured in establishing the premiums for the purpose of entering into the contract. Where applicable, the total of the sums deposited on that date is deemed not to have exceeded that percentage.

2021, c. 15, s. 97.

TITLE VIII

FINAL PROVISIONS

2018, c. 23, s. 3.

550. The costs incurred by the Government for the administration of this Act, as determined each year by the Government, are borne by the Authority.

2018, c. 23, s. 3.

551. The Minister must, at least once every five years, report to the National Assembly on the carrying out of this Act and make recommendations on the advisability of maintaining or amending its provisions.

2018, c. 23, s. 3.

552. This Act replaces the Act respecting insurance (chapter A-32).

2018, c. 23, s. 3.

553. The Authority is responsible for the administration of this Act.

2018, c. 23, s. 3.

554. The Minister of Finance is responsible for the carrying out of this Act.

2018, c. 23, s. 3.