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chapter S-29.02

TRUST COMPANIES AND SAVINGS COMPANIES 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. 395.

1. This Act applies to the supervision and control of the business of trust companies and authorized trust companies and of their financial institution activities in particular.

In addition, it supplements, through appropriate specific rules, the operation, dissolution and liquidation regime applicable to business corporations that, because they are regulated by its Title III, may be authorized either

(1) to carry on trust company activities and therefore be authorized Québec trust companies; or

(2) to carry on only deposit institution activities under the Deposit Institutions and Deposit Protection Act (chapter I-13.2.2) and therefore be Québec savings companies.

2018, c. 23, s. 395.

2. Trust company activities, for a legal person, consist in being a trustee, a tutor to property, a sequestrator or the liquidator of a succession, legal person or partnership.

2018, c. 23, s. 395; 2020, c. 11, s. 214.

3. For the purposes of this Act, financial institution activities are, in addition to trust company 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. 395.

4. The following are authorized financial institutions:

(1) trust companies authorized to carry on trust company activities under this Act;

(2) deposit institutions authorized under the Deposit Institutions and Deposit Protection Act (chapter I-13.2.2), except a company referred to in paragraph 1;

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

(4) insurers authorized under the Insurers Act (chapter A-32.1); 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. 395.

5. In the case of a legal person 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 those rights are conferred through securities that it issues, the securities are considered shares.

2018, c. 23, s. 395.

6. 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 type of partnership, the partner who can determine the outcome of collective decisions, if applicable;

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

(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.

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. 395.

7. 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. 395.

8. 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. 395.

9. The following are deemed to participate in the concerted and ongoing exercise of their rights or powers and, consequently, to be the holder 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 ongoing and concerted 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 that group.

2018, c. 23, s. 395.

10. 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. 395.

11. 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. 395.

12. 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.

"Security entitlement" and "securities intermediary" 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. 395.

13. 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 trust company, the aggregate of affiliated groups is a financial group.

2018, c. 23, s. 395.

14. 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. 395.

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

(1) his or her spouse;

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

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

2018, c. 23, s. 395.

TITLE II

SUPERVISION AND CONTROL OF TRUST COMPANY ACTIVITIES AND OTHER TRUST COMPANY BUSINESS

2018, c. 23, s. 395.

CHAPTER I

SUPERVISION AND CONTROL

2018, c. 23, s. 395.

16. The Autorité des marchés financiers (the Authority) supervises and controls trust company business in Québec.

2018, c. 23, s. 395.

CHAPTER II

AUTHORIZATION OF THE AUTHORITY

2018, c. 23, s. 395.

DIVISION I

OBLIGATION TO BE AUTHORIZED

2018, c. 23, s. 395.

17. Unless otherwise provided by this Act, the Authority's authorization is required to carry on trust company 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. 395.

18. Trust company activities are carried on in Québec in the following cases:

(1) if they consist in being a trustee, when the settlor or another person who transfers some of his or her property to a trust patrimony is domiciled in Québec;

(2) if they consist in being tutor to the property of a minor person or of a person of full age when that person is domiciled in Québec;

(3) if they consist in being the liquidator

(a) of a succession, when the last domicile of the deceased is in Québec; or

(b) of a legal person or a partnership, when the liquidation is governed by the laws of Québec; and

(4) if they consist in being sequestrator, when the contract is governed by the laws of Québec or the sequestration is ordered under the Code of Civil Procedure (chapter C-25.01).

2018, c. 23, s. 395; 2020, c. 11, s. 215.

19. Only the following legal persons may obtain the Authority's authorization if they have at least $5,000,000 in capital:

(1) business corporations regulated by Title III; and

(2) legal persons constituted under the laws of a Canadian jurisdiction other than Québec and having the capacity to carry on trust company activities.

For the purposes of this Act,

"authorized Québec trust company" means a business corporation regulated by Title III that has been authorized by the Authority to carry on trust company activities;

"authorized trust company" means a legal person referred to in the first paragraph who has been authorized by the Authority to carry on trust company activities.

2018, c. 23, s. 395.

20. Insurers authorized under the Insurers Act and financial services cooperatives governed by the Act respecting financial services cooperatives (chapter C-67.3) are not required to obtain the Authority's authorization to carry on trust company activities to the extent provided by government regulation.

2018, c. 23, s. 395.

21. Financial institutions that carry on trust company activities in accordance with section 20 and legal persons authorized by the Authority in accordance with section 109.6 of the Securities Act (chapter V-1.1) are subject to Division II of Chapter V as if they were authorized trust companies.

2018, c. 23, s. 395.

DIVISION II

APPLICATION FOR AUTHORIZATION

2018, c. 23, s. 395.

22. A legal person that intends to carry on trust company activities requiring 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.

It 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) if applicable, the conditions and restrictions it wishes to have attached to the authorization;

(3) a description of its financial structure;

(4) 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 business corporation regulated by Title III, 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. 395.

23. The home regulator of a trust company is the competent authority with respect to the company's trust company activities, under the laws of the jurisdiction whose legislation governs the company's constituting act.

2018, c. 23, s. 395.

24. 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 documents 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 determined by regulation of the Authority;

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

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

2018, c. 23, s. 395.

DIVISION III

GRANTING OF AUTHORIZATION

2018, c. 23, s. 395.

25. 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 paid the fees and charges payable;

(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. 395.

26. 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. 395.

27. The authorization granted by the Authority entails, for the authorized trust company, the obligation to maintain its existence until the final revocation of that authorization.

2018, c. 23, s. 395.

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

Before refusing to grant its authorization or issuing 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. 395.

CHAPTER III

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

2018, c. 23, s. 395; 2021, c. 34, s. 126.

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

2018, c. 23, s. 395.

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

A prohibition imposed on such a trust company 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 trust company is the holder of control from carrying on activities the group is permitted to carry on by the Act governing it even though the company is not permitted to carry on those activities, provided the group is a financial institution.

2018, c. 23, s. 395.

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

2018, c. 23, s. 395.

32. 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 trust company extend to any affiliated group if the person authorized to inspect the company considers it necessary to inspect the group in order to complete the verification of the company'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. 395.

33. The Authority may prohibit that an authorized trust company's obligations under this Act be performed by a third person on the company'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 to the company in writing and grant the latter at least 15 days to submit observations.

2018, c. 23, s. 395.

CHAPTER IV

COMMERCIAL PRACTICES

2018, c. 23, s. 395.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 395.

34. An authorized trust company 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 any disputes with them; and

(3) keeping a complaints register.

2018, c. 23, s. 395.

35. An authorized trust company must be able to show to the Authority that it adheres to sound commercial practices.

2018, c. 23, s. 395.

DIVISION II

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

2018, c. 23, s. 395.

36. The complaint processing and dispute resolution policy adopted under subparagraph 2 of the second paragraph of section 34 must, in particular,

(1) set out the characteristics that make a communication to the authorized trust company a complaint that must be registered in the complaints register kept under subparagraph 3 of the second paragraph of section 34; and

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

The authorized trust company 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. 395.

37. Within 10 days after a complaint is registered in the complaints register, the authorized trust company must send the complainant a notice stating the complaint registration date and the complainant's right, under section 38, to have the complaint record examined.

2018, c. 23, s. 395.

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

The company is required to comply with the complainant's request and send the record to the Authority.

2018, c. 23, s. 395.

39. 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. 395.

40. Unless the parties agree otherwise, nothing that is said or written in the course of a conciliation or mediation session may be admitted as 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 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 conciliation or mediation records.

2018, c. 23, s. 395.

41. 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 authorized trust company that has sent it.

2018, c. 23, s. 395.

42. On the date set by the Authority, an authorized trust company must submit a report on the complaint processing and dispute resolution policy adopted under subparagraph 2 of the second paragraph of section 34 stating the number of complaints that the company has registered in the register and their nature.

The report must cover the period determined by the Authority.

2018, c. 23, s. 395.

DIVISION III

SPECIAL PROVISIONS RESPECTING FIXED TERM ANNUITIES AND CERTAIN INVESTMENT FUNDS

2018, c. 23, s. 395.

43. In a fixed term annuity contract, the fact that an authorized trust company offers a choice of investments does not preclude it 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 company'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. 395.

44. The capital accumulated for the payment of a fixed term annuity is unseizable in the hands of the authorized trust company as if it were a fixed term annuity transacted by an authorized insurer.

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. 395.

DIVISION IV

SPECIAL PROVISIONS RESPECTING ACTIVITIES BETWEEN FINANCIAL INSTITUTIONS

2018, c. 23, s. 395.

45. Except for the first paragraph of section 34 and Division III, this chapter does not apply if the authorized trust company's client is a bank or another financial institution.

2018, c. 23, s. 395.

CHAPTER V

PRUDENTIAL RULES

2018, c. 23, s. 395.

DIVISION I

MANAGEMENT PRACTICES

2018, c. 23, s. 395.

46. An authorized trust company 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 company's financial management, such practices must, in particular, provide that the company 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. 395.

47. An authorized trust company must be able to show to the Authority that it adheres to sound and prudent management practices.

2018, c. 23, s. 395.

48. An authorized trust company must hold a fidelity insurance policy for an amount considered sufficient by the Authority according to generally accepted practices and to the volume of the company's activities.

2018, c. 23, s. 395.

49. An authorized trust company may establish and manage an investment fund governed by the Securities Act (chapter V-1.1) and offer units of participation in the fund to the public.

2018, c. 23, s. 395.

50. The Authority may, if it considers that an authorized trust company's capital is not adequate to ensure the company's sustainability, order the company 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 company and give it at least 10 days to submit observations.

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

2018, c. 23, s. 395.

51. The compliance program describes the measures that must be implemented by the authorized trust company within the time limits specified in it.

2018, c. 23, s. 395.

52. The compliance program adopted by the authorized trust company is submitted for approval to the Authority.

2018, c. 23, s. 395.

53. The authorized trust company is required to implement the compliance program approved by the Authority.

2018, c. 23, s. 395.

54. An authorized trust company 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. 395.

DIVISION II

ADMINISTRATION OF THE PROPERTY OF OTHERS

2018, c. 23, s. 395.

55. An authorized trust company must keep a separate account in its books for each administration.

2018, c. 23, s. 395.

56. Despite article 1262 of the Civil Code, an authorized trust company may establish a trust by resolution or by any other unilateral act.

Despite article 1275 of the Civil Code, a trust company that, further to such an act, is the settlor and trustee of the trust is not required to act jointly with a trustee who is neither the settlor nor a beneficiary.

2018, c. 23, s. 395.

57. Despite article 1344 of the Civil Code, an authorized trust company may make investments in its sole name without indicating its quality.

2018, c. 23, s. 395.

58. An authorized trust company that carries on securities brokerage activities may not acquire, on behalf of the beneficiary of the administration of the property of others entrusted to the company, acquire securities held by it or held by a group affiliated with it as broker, except with the consent of the beneficiary after disclosing its interest to the latter.

2018, c. 23, s. 395.

59. Unless the act constituting the administration expressly provides otherwise, an authorized trust company may not invest funds administered by it for others in the following securities or lend such funds on the security of such securities:

(1) the shares it issues;

(2) the debt securities it issues that confer on their holders a claim ranking lower than the company's unsecured claims; or

(3) contributed capital securities, participations and debt obligations issued by a group affiliated with it.

2018, c. 23, s. 395.

60. If an authorized trust company holds, on behalf of another, its own shares or those of a legal person affiliated with it and may exercise voting rights in respect of those shares or may dispose of them at its discretion, any decision regarding the vote, the disposition or an offer to acquire the shares must be approved by the company's board of directors if the aggregate of the shares it holds is equal to or greater than 10% of the shares of any class of shares or of all the shares of the company or affiliated legal person.

The reasons for the decision must be entered in the minutes of the meeting of the board of directors.

2018, c. 23, s. 395.

61. An authorized trust company must keep an up-to-date register of the shares referred to in section 60 describing the shares and giving the reasons for which they were retained.

2018, c. 23, s. 395.

62. 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; or

(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; or

(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. 395.

DIVISION III

INVESTMENTS

2018, c. 23, s. 395.

§ 1. — *General provisions*

2018, c. 23, s. 395.

63. This division does not apply to an authorized trust company acting as an administrator of the property of others.

However, it does apply to such a company in its administration of the deposits it receives if it is authorized to carry on deposit institution activities, even if it receives them as the administrator of the property of others; the rules for the administration of the property of others set out in the Civil Code and those set out in Division II of this chapter, other than in section 59, do not apply to the administration of such deposits.

2018, c. 23, s. 395.

64. For the purposes of this Act, "deposit" means a deposit of money within the meaning of the Deposit Institutions and Deposit Protection Act (chapter I-13.2.2).

2018, c. 23, s. 395.

§ 2. — *Provisions applicable to all authorized trust companies*

2018, c. 23, s. 395.

65. An authorized trust company 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 company's investments with the company'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 it authorizes and the limits applicable to them.

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

2018, c. 23, s. 395.

66. An authorized trust company must follow the investment policy approved by its board of directors.

2018, c. 23, s. 395.

67. An authorized trust company must identify and keep in a separate account assets in an amount equal to the aggregate of the money received as deposits.

Such assets may be used only for the repayment of deposits received by the company. The balance, if any, must be used to pay the company's other obligations.

2018, c. 23, s. 395.

§ 3. — *Provisions specific to authorized Québec trust companies*

2018, c. 23, s. 395.

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

2018, c. 23, s. 395.

68. No authorized Québec trust company 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 trust company 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. 395.

69. Despite section 68, an authorized Québec trust company 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 company will be the holder of control of the person, partnership, trust or property after the acquisition and in the cases determined by government regulation.

2018, c. 23, s. 395.

II. — *Accessory guarantees for certain investments*

2018, c. 23, s. 395.

70. An authorized Québec trust company may become the owner or holder of property in contravention of section 68 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. 395.

III. — *Penalties*

2018, c. 23, s. 395.

71. If an authorized Québec trust company holds or owns property, as the case may be, in contravention of section 68, it must dispose of that property as soon as market conditions permit.

2018, c. 23, s. 395.

72. Directors of an authorized Québec trust company who agree to a contravention of section 68 are held solidarily liable for any resulting losses to the company.

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. 395.

CHAPTER VI

GOVERNANCE

2018, c. 23, s. 395.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 395.

73. An authorized trust company must have a board of directors composed of at least seven members.

2018, c. 23, s. 395.

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

2018, c. 23, s. 395.

75. The board of directors must ensure that the authorized trust company 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 sound commercial practices and sound and prudent management practices are adhered to and situations contrary to such practices are detected.

Within three months after the closing date of the company's fiscal year, the directors or the committee, as the case may be, report to the board of directors on the carrying out of the responsibility entrusted to them and it, if applicable, on the other activities carried on by them or it for the company.

2018, c. 23, s. 395.

76. A director designated in accordance with section 75 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 trust company'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 remedied.

2018, c. 23, s. 395.

77. The director or committee that notified the board of directors in accordance with section 76 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. 395.

78. A director designated in accordance with section 75 or a director on the committee provided for in that section who, in good faith, notifies the board of directors or the Authority in accordance with section 76 or 77 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 74.

2018, c. 23, s. 395.

DIVISION II

PROVISIONS SPECIFIC TO AUTHORIZED QUÉBEC TRUST COMPANIES

2018, c. 23, s. 395.

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

2018, c. 23, s. 395.

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

2018, c. 23, s. 395.

80. An authorized Québec trust company must implement a policy to foster, 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. 395.

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

2018, c. 23, s. 395.

81. The board of directors of an authorized Québec trust company must establish an audit committee and an ethics committee from among its members.

2018, c. 23, s. 395.

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

(1) officers or employees of the company;

(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 company is the holder of control; or

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

2018, c. 23, s. 395.

83. The Authority may, if an authorized Québec trust company 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 82; 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. 395.

§ 3. — *Functions of the audit committee*

2018, c. 23, s. 395.

84. 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 the financial statements to be corrected and, if the financial statements were sent to the shareholders, inform the shareholders' meeting accordingly.

2018, c. 23, s. 395.

§ 4. — *Functions of the ethics committee*

2018, c. 23, s. 395.

85. An authorized Québec trust company 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 company's directors and officers;

(2) the conduct of the company 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. 395.

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

2018, c. 23, s. 395.

87. The ethics committee of an authorized Québec trust company 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. 395.

88. Each year, the ethics committee of an authorized Québec trust company must send the Authority, within two months after the closing date of the company'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) a list of conflict of interest situations and contracts with natural persons or groups that are restricted parties with respect to the company 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. 395.

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

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

2018, c. 23, s. 395.

90. Section 89 does not apply to the remuneration of directors or any other matter connected with a contract of employment.

2018, c. 23, s. 395.

91. The following natural persons and groups are restricted parties with respect to an authorized Québec trust company:

(1) the company's directors and officers;

(2) the directors and officers of the group that is the holder of control of the company;

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

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

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

(6) any other person or group designated under section 93.

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

2018, c. 23, s. 395.

92. For the purposes of section 91, 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.

2018, c. 23, s. 395.

93. 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 trust company.

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

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

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

2018, c. 23, s. 395.

94. Unless the obligations of an authorized Québec trust company 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 company, of securities issued by a natural person or group that is a restricted party with respect to the company or for the transfer of assets between them; and

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

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

2018, c. 23, s. 395.

95. Except to the extent authorized by its rules of ethics, no authorized Québec trust company 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 company.

2018, c. 23, s. 395.

CHAPTER VII

AUDITOR

2018, c. 23, s. 395.

DIVISION I

QUALIFICATIONS AND BEGINNING AND END OF TERM

2018, c. 23, s. 395.

96. An auditor must be charged with auditing the books and accounts of an authorized trust company.

2018, c. 23, s. 395.

97. An auditor charged with the audit provided for in section 96 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 trust company, other than an authorized Québec trust company, that carries on its activities in Québec and elsewhere in Canada, the auditor is not required to be a member of that order or hold that permit if he or she holds an authorization of the same nature issued elsewhere in Canada.

2018, c. 23, s. 395.

98. An auditor charged with conducting the audit referred to in section 97 is the auditor elected, appointed or otherwise determined by the authorized trust company in accordance with the Act under which the company is constituted. If the auditor does not meet the conditions set out in section 97, another auditor must be charged with conducting that audit.

2018, c. 23, s. 395.

99. The term of an 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. 395; 2020, c. 11, s. 216.

100. The authorized trust company must, within 10 days after an auditor's term has ended, inform the Authority of the fact.

2018, c. 23, s. 395.

101. If an authorized trust company fails to charge an auditor with the audit provided for in section 96 within the time specified by the Authority, the Authority may appoint one and determine the remuneration that the company must pay him or her.

2018, c. 23, s. 395.

102. An authorized trust company must, before dismissing an auditor, 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. 395.

103. An 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 trust company's business or the business of a member of its financial group must declare those reasons to the Authority in writing.

The auditor must send a copy of the declaration to the secretary of the authorized trust company.

The auditor 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. 395.

104. Before accepting the office of auditor provided for in this chapter, a person must ask the authorized trust company's secretary whether the former auditor made the declaration required under section 103.

The secretary must provide the person with a copy of the declaration, if applicable.

2018, c. 23, s. 395.

DIVISION II

DUTIES AND POWERS

2018, c. 23, s. 395.

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

The company must also see that persons having custody of such documents do so as well.

2018, c. 23, s. 395.

106. An auditor who becomes aware of a situation that is likely to appreciably limit the authorized trust company'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 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 auditor must send the report to the board of directors, and, if applicable, a copy of it to the attorney designated under section 26 of the Act respecting the legal publicity of enterprises (chapter P-44.1). The board of directors must then see to it that the situation is remedied.

2018, c. 23, s. 395.

107. If the auditor becomes aware or is informed of an error or misstatement in financial statements that he or she has audited and, if in his or her opinion, the error or misstatement is material, the auditor must inform the board of directors.

On receiving the auditor's report, the board of directors must send a copy of it to the shareholders within 15 days.

2018, c. 23, s. 395.

108. If the auditor finds that the situation that justified the drafting of the report submitted under section 106 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. 395.

109. An auditor who, in good faith, makes a declaration under section 103, submits a report under section 106 or sends a copy of the latter to the Authority under section 108 incurs no civil liability for doing so. The same is true for a person who, in good faith, provides information or documents under section 105.

2018, c. 23, s. 395.

DIVISION III

CONTINUATION OR BROADENING OF AN AUDIT, AND SPECIAL AUDIT

2018, c. 23, s. 395.

110. If it considers it necessary, the Authority may order that the annual audit of an authorized trust company's books and accounts be continued, that its scope be broadened or that a special audit be conducted.

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

2018, c. 23, s. 395.

CHAPTER VIII

ANNUAL STATEMENTS AND OTHER COMMUNICATIONS WITH THE AUTHORITY

2018, c. 23, s. 395.

111. An authorized trust company must prepare an annual statement of the position of its affairs as at the date determined by the Authority and include financial statements audited by the auditor described in section 98.

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

2018, c. 23, s. 395.

112. Each year, on the dates determined by the Authority, an authorized trust company must send

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

(2) the auditors' reports; and

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

An authorized Québec trust company must, in addition, send a statement of its overdue loans and unproductive investments as at the closing date of its fiscal year.

The Authority may, by regulation, define the expressions "overdue loans" and "unproductive investments" for the purposes of the second paragraph.

2018, c. 23, s. 395.

113. If the Authority is of the opinion that an asset considered in the financial statements sent to it by an authorized trust company is overvalued, it may either require the company to cause an appraiser the choice of whom is approved by it to appraise the asset or to appraise that 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 company 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 company is the holder of control, the Authority may, for those same purposes, require that the value of the company's investment in the group be modified. The Authority notifies the auditor described in section 98 of the modification requested.

2018, c. 23, s. 395.

114. Before exercising a power conferred on it by section 113, the Authority must give the authorized trust company at least 10 days to submit observations.

2018, c. 23, s. 395.

115. The cost of the appraisal of an overvalued asset further to a decision of the Authority under section 113 is to be borne by the authorized trust company concerned, unless the Authority decides otherwise.

2018, c. 23, s. 395.

115.1. An authorized trust company must, on the date prescribed in the second paragraph of section 111 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 company, and subparagraphs 2 to 5 of the first paragraph of section 6 during the last six months of the period covered by that statement or, as applicable, during the six months following the period covered by that statement.

2024, c. 15, s. 86.

116. Semi-annually, on the dates determined by the Authority, an authorized trust company must file statements showing the changes in its investments and loans during the preceding half year. The statements must be certified by two of the company's directors.

2018, c. 23, s. 395.

117. An authorized trust company 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 company is complying with this Act.

2018, c. 23, s. 395.

118. The Authority may require an authorized trust company, the holder of control of the authorized trust company or a member of the authorized trust company'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.

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

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

2018, c. 23, s. 395.

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

The company 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. 395.

CHAPTER IX

REVIEW OF AN AUTHORIZATION

2018, c. 23, s. 395.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 395.

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

2018, c. 23, s. 395.

121. 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. 395.

DIVISION II

REVIEW ON THE AUTHORITY'S INITIATIVE

2018, c. 23, s. 395.

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

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

2018, c. 23, s. 395.

DIVISION III

REVIEW ON AN AUTHORIZED TRUST COMPANY'S APPLICATION

2018, c. 23, s. 395.

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

2018, c. 23, s. 395.

124. The application for review must specify the condition or restriction the trust company 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. 395.

125. 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 trust company, it sends the company a document justifying its decision.

2018, c. 23, s. 395.

DIVISION IV

REVIEW IN LIGHT OF CERTAIN OPERATIONS

2018, c. 23, s. 395.

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

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

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

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

(4) a change of name of the authorized trust company; and

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

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

(b) the transfer of any part of the company'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 6.

An authorized Québec trust company'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. 395; 2024, c. 15, s. 87.

127. For the purposes of section 115.1 and of subparagraph 5 of the first paragraph of section 126, a trust company's becoming the holder of control of a group or an acquisition or transfer of assets is deemed not to have a significant effect on the trust company if the variation that the operation entails in the value of its assets does not exceed 5%.

The variation in the value of the company'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. 395; 2024, c. 15, s. 88.

128. An authorized trust company 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. 395.

129. 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 location of the proposed head office of the legal person resulting from the amalgamation; 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 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 trust company, a joint notice may be filed.

2018, c. 23, s. 395.

130. A notice of intention to change the authorized trust company's home regulator must include

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

(2) the trust company'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 company's trust company activities following the change and the title of and exact reference to the Act of the jurisdiction that will govern the company's affairs, if different;

(4) the location of the company'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. 395.

131. A notice of intention to carry out an operation referred to in subparagraph 3 of the first paragraph of section 126 must include

(1) a description of the proposed operation;

(2) if applicable, the authorized trust company'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 trust company, involved in the operation;

(4) the location of the authorized trust company'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 for each legal person resulting from the operation that will carry on trust company activities in Québec.

2018, c. 23, s. 395.

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

2018, c. 23, s. 395.

133. A notice of intention to carry out an operation referred to in subparagraph 5 of the first paragraph of section 126 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 company 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. 395; 2024, c. 15, s. 89.

134. On receipt of a notice referred to in the first paragraph of section 128 or, if the Authority receives it before the expiry of the period specified in that section, not later than 30 days before an operation provided for in that paragraph, the Authority publishes the notice in its bulletin and reviews the authorization it has granted to the company 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 126 is not published.

2018, c. 23, s. 395; 2021, c. 34, s. 127; 2024, c. 15, s. 90.

135. Unless the Authority considers that it must revoke or suspend a trust company's authorization, that authorization becomes the authorization of the company resulting from the operation, with the conditions and restrictions the Authority may attach to it.

2018, c. 23, s. 395.

136. The sending of a notice by an authorized trust company in accordance with this chapter does not relieve the company 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 company 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 company does not have it.

2018, c. 23, s. 395.

137. 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. 395.

CHAPTER X

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

2018, c. 23, s. 395.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 395.

138. The authorization granted by the Authority to a trust company is revoked by operation of law, by the Authority acting on its own initiative or on an application by the authorized trust company.

Revocation is said to be voluntary if it is ordered by the Authority on an application by a trust company; 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. 395.

139. The revocation of an authorization becomes final when the trust company concerned ceases to be bound by the contracts and other acts made under the authorization.

2018, c. 23, s. 395.

140. A trust company continues to be an authorized trust company as long as a revocation is not final. However, it may not bind itself under a contract or other act made in accordance with the authorization to which the revocation applies if the contract or act is made after the revocation date, or offer to make a contract, except to honour a right conferred on the other party under a contract in force on that date.

Suspension produces the same effects for its duration.

2018, c. 23, s. 395.

DIVISION II

FORCED REVOCATION, SUSPENSION AND CONDITIONS OR RESTRICTIONS

2018, c. 23, s. 395.

141. The authorization granted by the Authority to a trust company is revoked by operation of law if the company is dissolved or liquidated due to any external cause.

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

2018, c. 23, s. 395.

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

(1) in its opinion

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

(b) the company often fails to perform, in full, properly and without delay, its obligations under the contracts and other acts it has made in accordance with the authorization granted to it by the Authority, or

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

(2) the company has not carried on trust company activities in Québec for at least three years;

(3) the Authority is informed by a competent authority that the company 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 company 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. 395.

143. In the cases described in section 142, instead of revoking or suspending the authorization granted to the authorized trust company and in order to allow the company to remedy the situation, the Authority may attach such conditions and restrictions to the authorization as it considers necessary to ensure compliance with this Act.

2018, c. 23, s. 395.

144. 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 trust company in writing and grant the latter at least 10 days to submit observations.

2018, c. 23, s. 395.

145. A decision under section 142 or 143 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. 395.

146. The Authority publishes in its bulletin a notice of any revocation of an authorization granted to a trust company on the expiry of the time within which the latter was entitled, under section 145, 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. 395.

DIVISION III

VOLUNTARY REVOCATION

2018, c. 23, s. 395.

147. The Authority may not revoke the authorization of an authorized trust company that applies for its revocation and, at the time of the application, is bound by contracts or other acts made in accordance with the authorization, unless the company

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

2018, c. 23, s. 395.

148. 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. 395.

149. An application for revocation must 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. 395.

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

2018, c. 23, s. 395.

151. 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 authorized trust company, the latter must send the published notice to each party to a contract it entered into in accordance with the authorization whose revocation it is applying for, and to every other person on whom rights are conferred by another act made in accordance with that authorization.

2018, c. 23, s. 395.

152. The Authority grants an application for revocation only if the authorized trust company shows that

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

(2) it can continue to be bound, until the date of maturity, by contracts and other acts made 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 it are adequate and ensure the protection of the parties to a contract it has entered into in accordance with the authorization whose revocation it is applying for and of other persons on whom rights are conferred by another act made in accordance with that authorization, and it has sent those parties and persons the notice of application required under the second paragraph of section 151.

2018, c. 23, s. 395.

153. The Authority must send the trust company a document attesting its decision and publish the document in its bulletin.

2018, c. 23, s. 395.

CHAPTER XI

REGISTER OF AUTHORIZED TRUST COMPANIES

2018, c. 23, s. 395.

154. The Authority must establish and keep up to date a register of authorized trust companies 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;

(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) if applicable, the restrictions attached to the authorization granted to it by the Authority;

(4) the name and address of the auditor designated under section 98;

(5) 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

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

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

2018, c. 23, s. 395.

155. An authorized trust company must declare to the Authority any change 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 after the date of the event giving rise to the change.

2018, c. 23, s. 395.

CHAPTER XII

CONFIDENTIALITY OF SUPERVISORY INFORMATION

2018, c. 23, s. 395.

156. Such information as is determined by the Minister by regulation that is held by an authorized trust company in relation to the Authority's supervision of the trust company 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 produce a document relating to that information.

2018, c. 23, s. 395.

157. Despite section 156,

(1) the Attorney General, the Minister or the Authority may use the information made confidential by that section as evidence;

(2) the authorized trust company 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 company, the Attorney General, the Minister or the Authority; 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 trust company or of the Business Corporations Act may use that information provided the proceedings are brought by the trust company concerned, the Attorney General, the Minister or the Authority.

2018, c. 23, s. 395; 2021, c. 34, s. 128.

158. 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.

Similarly, 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 by those contexts or rules.

2018, c. 23, s. 395; 2021, c. 34, s. 129.

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

2018, c. 23, s. 395.

TITLE III

QUÉBEC TRUST COMPANIES AND QUÉBEC SAVINGS COMPANIES

2018, c. 23, s. 395.

CHAPTER I

REGULATION BY THIS TITLE

2018, c. 23, s. 395.

DIVISION I

COMPANIES CONCERNED

2018, c. 23, s. 395.

160. This Title applies to business corporations constituted, continued or amalgamated under the Business Corporations Act (chapter S-31.1) that elect to become regulated by it.

2018, c. 23, s. 395.

161. Business corporations 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.

2018, c. 23, s. 395.

DIVISION II

BECOMING REGULATED BY THIS TITLE

2018, c. 23, s. 395.

162. 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. 395.

163. 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. 395.

164. 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. 395.

DIVISION III

NOTICE OF INTENTION AND APPLICATION TO BECOME REGULATED BY THIS TITLE

2018, c. 23, s. 395.

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

(1) the proposed name of the business corporation once it becomes regulated by this Title and its name at the time the notice is sent if different;

(2) the trust company activities or the deposit institution activities, within the meaning of the Deposit Institutions and Deposit Protection Act (chapter I-13.2.2), for which the corporation is applying for the Authority's authorization; and

(3) the location of the proposed head office of the regulated corporation and, if different, the location of its head office at the time the notice is sent.

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

2018, c. 23, s. 395.

166. An application to become regulated by this Title filed by a business corporation 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. 395.

167. 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. 395.

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

(1) the articles of the business corporation;

(2) a description of the projected capital structure of the corporation and its business plan and financial forecasts for a three-year period;

(3) a certified copy of the special resolution authorizing the corporation to file an application to become regulated by this Title;

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

(5) the fees prescribed by government regulation.

2018, c. 23, s. 395.

169. 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. 395.

170. 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. 395.

171. 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 relevant markets in Québec.

The report must cover such matters as

(1) the nature and scope of the financial means gathered for the ongoing financial support of the business corporation;

(2) if applicable, the grounds for disqualification for office as director of a regulated corporation that exist with respect to a director of, or a holder of a significant interest in, the applicant;

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

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

The report must also assess the competency and experience of the corporation's directors and officers.

2018, c. 23, s. 395.

172. To the extent that the corporation'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. 395.

DIVISION IV

MINISTER'S DECISION

2018, c. 23, s. 395.

173. The Minister may, if the Minister considers it advisable, make a business corporation that has filed an application to that end subject to regulation by this Title.

2018, c. 23, s. 395.

174. When the Minister makes a business corporation subject to regulation by this Title, the Minister sends a document attesting that decision to the corporation 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 to become regulated by this Title.

2018, c. 23, s. 395.

CHAPTER II

APPLICATION OF THE BUSINESS CORPORATIONS ACT TO A REGULATED CORPORATION

2018, c. 23, s. 395.

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

2018, c. 23, s. 395.

CHAPTER III

ORGANIZATION OF A REGULATED CORPORATION

2018, c. 23, s. 395.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 395.

176. "Organization", in relation to a regulated corporation, means the actions that must be taken, as of the time the corporation becomes regulated by this Title, in order to obtain the Authority's authorization.

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

2018, c. 23, s. 395.

177. The consideration paid in money for which shares of a regulated corporation are issued during its organization 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. 395.

DIVISION II

CONCLUSION OF THE ORGANIZATION OF A REGULATED CORPORATION

2018, c. 23, s. 395.

178. The organization of a regulated corporation concludes when the Authority, in accordance this Act, grants its authorization to carry on trust company activities, when it grants its authorization, under the Deposit Institutions and Deposit Protection Act (chapter I-13.2.2), to carry on financial institution activities, or when it refuses to grant such authorizations or when such authorizations have not been obtained on the expiry of a one-year period after the corporation became regulated by this Title without there having been a refusal to grant it.

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

2018, c. 23, s. 395.

179. A regulated corporation that has obtained the Authority's authorization to carry on trust company activities is an authorized Québec trust company, regardless of whether it is authorized to carry on deposit institution activities.

2018, c. 23, s. 395.

180. A regulated 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 offered 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. 395.

181. A business corporation ceases to be regulated by this Title, except the third paragraph of section 180, once it has repurchased all the shares for which a shareholder has not refused the repurchase.

2018, c. 23, s. 395.

CHAPTER IV

NAME

2018, c. 23, s. 395.

182. Sections 23 and 27 of the Business Corporations Act (chapter S-31.1) do not apply to a regulated corporation's name.

For the purpose of applying the other provisions of Division I of Chapter IV of that Act to corporations, the Authority exercises the functions and powers conferred on the enterprise registrar.

2018, c. 23, s. 395.

183. A change of name of a regulated corporation 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. 395.

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

2018, c. 23, s. 395.

CHAPTER V

RESTRICTIONS ON ACTIVITIES

2018, c. 23, s. 395.

185. The Authority may require a regulated corporation to establish a legal person of which the corporation will be the holder of control in order to carry on an activity other than trust company activities or deposit institution activities,

(1) if it constitutes the operation of an enterprise, regardless of the regulated corporation'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 a corporation's gross income.

2018, c. 23, s. 395.

CHAPTER VI

LOANS, HYPOTHECS AND OTHER SECURITIES

2018, c. 23, s. 395.

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

In addition, the total unsecured loans for which debt obligations were issued by a corporation 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.

2018, c. 23, s. 395.

187. No regulated corporation may, without the Authority's authorization, grant a hypothec or other security on its movable property, except to secure a short-term loan contracted to meet liquidity requirements.

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

2018, c. 23, s. 395.

CHAPTER VII

SHARE CAPITAL

2018, c. 23, s. 395.

DIVISION I

ISSUE

2018, c. 23, s. 395.

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

2018, c. 23, s. 395.

DIVISION II

MAINTENANCE OF SHARE CAPITAL

2018, c. 23, s. 395.

189. A regulated 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 46, 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 corporation.

2018, c. 23, s. 395.

190. A regulated 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 46, adequate assets to meet its liabilities, as and when they become due, and adequate capital to ensure its sustainability.

2018, c. 23, s. 395.

191. A regulated 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 46, adequate assets to meet its liabilities, as and when they become due, and adequate capital to ensure its sustainability.

2018, c. 23, s. 395.

DIVISION III

DISCLOSURE OF CERTAIN INTERESTS AND RESTRICTIONS CONCERNING THE EXERCISE OF THE VOTING RIGHTS CARRIED BY THE SHARES ISSUED BY A REGULATED CORPORATION

2018, c. 23, s. 395.

192. 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 who intends to become the holder of such control.

2018, c. 23, s. 395.

193. A notice of intention under section 192 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 the corporation the voting rights attached to which would make the person or group the holder of the interest referred to in section 192.

2018, c. 23, s. 395.

194. 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 its development as well as on the relevant markets in Québec.

The Authority must send the report to the Minister.

2018, c. 23, s. 395.

195. 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 192.

2018, c. 23, s. 395.

196. 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 192 be exercised by an administrator of the property of others appointed by the Authority if the holder has not obtained the Minister's certification.

2018, c. 23, s. 395.

197. Instead of revoking or suspending the authorization granted to a regulated corporation under subparagraph *c* of subparagraph 1 of the first paragraph of section 142, or attaching a condition or restriction to the authorization under section 143, 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. 395.

198. An order under section 196 or 197 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. 395.

CHAPTER VIII

DIRECTORS AND OFFICERS

2018, c. 23, s. 395.

DIVISION I

BOARD OF DIRECTORS

2018, c. 23, s. 395.

199. A majority of a regulated corporation's directors must be resident in Québec.

2018, c. 23, s. 395.

DIVISION II

DISQUALIFICATION

2018, c. 23, s. 395.

200. In addition to persons disqualified for office as directors under the Civil Code, the following persons cannot be directors of a regulated corporation:

(1) a person found guilty of an indictable offence or other offence involving fraud or dishonesty, unless the person has obtained a pardon; and

(2) a person who, by reason of an order issued by the Authority under section 196 or 197, cannot exercise the voting rights conferred on the person by shares issued by the corporation.

2018, c. 23, s. 395.

201. The Authority may remove a director holding office in a regulated corporation if the director is disqualified for office as such.

2018, c. 23, s. 395.

202. Before removing a director of a regulated corporation, the Authority notifies the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the director and the corporation in writing and grants them at least 10 days to submit observations.

2018, c. 23, s. 395.

203. A decision under section 201 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. 395.

DIVISION III

QUORUM

2018, c. 23, s. 395.

204. Despite section 138 of the Business Corporations Act (chapter S-31.1), the quorum at a meeting of the board of directors of a regulated corporation may not be less than a majority of the directors in office.

2018, c. 23, s. 395.

DIVISION IV

DIRECTOR'S DUTY

2018, c. 23, s. 395.

205. Any director who, after the annual shareholders' meeting, becomes aware of facts that would have entailed material amendments to the corporation's financial statements must inform the auditor and the board of directors immediately; the latter must, without delay, send the auditor revised financial statements.

2018, c. 23, s. 395.

DIVISION V

PROHIBITED ACTS AND LIABILITY

2018, c. 23, s. 395.

206. For the purpose of applying section 156 of the Business Corporations Act (chapter S-31.1) to a regulated 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 189 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 191 of this Act.

2018, c. 23, s. 395.

CHAPTER IX

AMENDMENT, CONSOLIDATION, CORRECTION AND CANCELLATION OF ARTICLES

2018, c. 23, s. 395.

207. The amendment of the articles of a regulated corporation 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 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. 395.

208. The Authority may order a regulated corporation to consolidate its articles.

2018, c. 23, s. 395.

209. To obtain the Authority's or the Minister's permission, a regulated corporation must file an application for permission with the Authority.

2018, c. 23, s. 395.

210. 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. 395.

211. 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 regulated corporation's articles;

(2) the proposed consolidated articles, if the application is for permission to consolidate the regulated corporation'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. 395.

212. 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. 395.

213. The Minister may, if the Minister considers it advisable, grant a regulated corporation permission to cancel its articles of amalgamation or continuance.

2018, c. 23, s. 395.

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

2018, c. 23, s. 395.

215. A regulated 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. 395.

216. If a regulated 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. 395.

CHAPTER X

CONTINUANCE

2018, c. 23, s. 395.

DIVISION I

CONTINUANCE AS A REGULATED CORPORATION

2018, c. 23, s. 395.

217. The following legal persons may be continued as regulated corporations:

(1) a legal person of the nature of a business corporation constituted under the laws of a jurisdiction other than Québec, if the Act governing the corporation confers on it the capacity to carry on trust company activities or to solicit or receive deposits of money from the public; and

(2) legal persons forming part of a cooperative group in the case provided for in section 40.26 of the Deposit Institutions and Deposit Protection Act (chapter I-13.2.2).

The continuance of legal persons forming part of a cooperative group is governed by the Deposit Institutions and Deposit Protection Act.

2018, c. 23, s. 395.

218. 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 a regulated corporation requires a permission granted by the Minister following the filing of an application for continuance with the Authority.

An application for continuance must include the name and address of each of the holders of a significant interest in the corporation.

2018, c. 23, s. 395.

219. 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. 395.

220. A legal person that files an application for continuance but that is not an authorized trust company or an authorized deposit institution is required, when filing that application, to also file either an application with the Authority for authorization to carry on trust company activities or an application for authorization to carry on deposit institution activities in accordance with the Deposit Institutions and Deposit Protection Act (chapter I-13.2.2).

2018, c. 23, s. 395.

221. 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 include the information from the report it must prepare in accordance with section 171 when processing an application to become regulated by this Title.

2018, c. 23, s. 395.

222. 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 220.

2018, c. 23, s. 395.

223. The Minister may, if the Minister considers it advisable, allow the continuance of the authorized trust company or authorized deposit institution.

2018, c. 23, s. 395.

224. When ruling on an application filed by a legal person, the Minister must send the legal person and the Authority a document attesting the decision.

2018, c. 23, s. 395.

225. A legal person that is continued as a regulated 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. 395.

226. A legal person 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.

2018, c. 23, s. 395.

227. When the articles of continuance are deposited in the enterprise register, the enterprise registrar must send a certified copy of them to the Authority.

2018, c. 23, s. 395.

DIVISION II

CONTINUANCE UNDER THE LAWS OF A JURISDICTION OTHER THAN QUÉBEC

2018, c. 23, s. 395.

228. A regulated corporation 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).

2018, c. 23, s. 395.

229. To obtain the Minister's permission, a regulated corporation must file an application for permission with the Authority.

The corporation must, in the application, show that the parties to contracts it has entered into in accordance with the authorization granted to it by the Authority, the persons on whom rights are conferred by any other act made in accordance with that authorization, or its other creditors or its shareholders will not suffer injury as a result of the continuance.

2018, c. 23, s. 395.

230. 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 130;

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

(3) the fees prescribed by government regulation.

2018, c. 23, s. 395.

231. 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 134, the Authority must prepare a report on the reasons for granting or denying the application.

The Authority must indicate in the report whether, in its opinion, the parties to a contract the regulated corporation has entered into in accordance with the authorization granted to it by the Authority, its other creditors and its shareholders will not suffer injury as a result of the continuance.

2018, c. 23, s. 395.

232. The Authority sends its report to the Minister, together with the application for permission and the accompanying documents.

2018, c. 23, s. 395.

233. The Minister may, if the Minister considers it advisable, grant the regulated corporation 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).

2018, c. 23, s. 395.

234. When ruling on an application by a regulated corporation, the Minister must send the Authority a document attesting the decision.

The corporation 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. 395.

235. A corporation 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. 395.

CHAPTER XI

AMALGAMATION

2018, c. 23, s. 395.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 395.

236. 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 a regulated corporation 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 129.

2018, c. 23, s. 395.

237. The amalgamation of a regulated 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 authorized to carry on the same activities as each of the amalgamating regulated corporations.

2018, c. 23, s. 395.

DIVISION II

APPLICATION FOR PERMISSION TO AMALGAMATE

2018, c. 23, s. 395.

238. 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 129, 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 regulated corporation, the application must be a joint one.

2018, c. 23, s. 395.

239. 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 authorizing the amalgamation of each amalgamating corporation 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 corporations authorizing such an amalgamation;

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

(5) the fees prescribed by government regulation.

2018, c. 23, s. 395; 2021, c. 34, s. 130.

240. 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 134, 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 171 when processing an application to become regulated by this Title.

2018, c. 23, s. 395.

241. 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 corporation would not be authorized to carry on the same activities as each of the amalgamating regulated corporations.

2018, c. 23, s. 395.

DIVISION III

MINISTER'S DECISION

2018, c. 23, s. 395.

242. The Minister may, if the Minister considers it advisable, allow the amalgamation of a regulated corporation.

2018, c. 23, s. 395.

243. When ruling on an application for permission to amalgamate, the Minister must send the Authority and the amalgamating corporations a document attesting the decision.

2018, c. 23, s. 395.

244. Amalgamating 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. 395.

245. 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 corporation.

2018, c. 23, s. 395.

246. 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. 395.

CHAPTER XII

TERMINATION OF REGULATION BY THIS TITLE

2018, c. 23, s. 395.

247. Unless it is continued under the laws of a jurisdiction other than Québec, a corporation may cease to be regulated by this Title only if the revocation of every authorization granted to it by the Authority under this Act to carry on trust company activities, or under the Deposit Institutions and Deposit Protection Act (chapter I-13.2.2) to carry on deposit institution activities, is final.

If two authorizations are being revoked, a business corporation ceases to be regulated by this Title when the revocation of the last authorization becomes final.

2018, c. 23, s. 395.

248. A business corporation ceases to be regulated by this Title when the full revocation of its authorization becomes final. If, in the situation referred to in section 247, two authorizations were granted to a same corporation, the corporation ceases to be regulated by this Title when the revocation of the last authorization becomes final.

2018, c. 23, s. 395.

249. A regulated business corporation may apply for the revocation of its authorization only if it is so authorized 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 280 of this Act or under section 45.3 of the Deposit Institutions and Deposit Protection Act (chapter I-13.2.2).

2018, c. 23, s. 395.

250. 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 its change of name, and to sign the documents.

2018, c. 23, s. 395.

251. A consent, declaration or decision referred to in section 304 of the Business Corporations Act (chapter S-31.1), whose object is the dissolution of a regulated business corporation has no effect other than granting the authorizations referred to in section 250, until the corporation ceases to be regulated under this Title.

2018, c. 23, s. 395.

CHAPTER XIII

MINISTER'S POWERS

2018, c. 23, s. 395.

252. 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. 395.

TITLE IV

ENFORCEMENT AND OTHER POWERS OF THE AUTHORITY

2018, c. 23, s. 395.

CHAPTER I

INSTRUCTIONS, GUIDELINES AND ORDERS

2018, c. 23, s. 395.

253. The Authority may establish instructions for an authorized trust company.

Instructions must be in writing and specific to the addressee, but need not be published.

The Authority must, before sending instructions, notify the addressee and give it the opportunity to submit observations.

2018, c. 23, s. 395.

254. The Authority may establish guidelines for all authorized trust companies or a single class of them.

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. 395.

255. A guideline informs its addressees of measures that, in the Authority's opinion, they may establish to satisfy their obligations under Title II.

Instructions inform their addressee of the obligations that, in the Authority's opinion, are incumbent on it under that title.

2018, c. 23, s. 395.

256. The Authority may order an authorized trust company to cease a course of action or to implement specified measures if the Authority is of the opinion that the company 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 trust company, 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) to the contravener and, if the contravener is a third person acting on behalf of an authorized trust company, to that company in writing, 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. 395; 2021, c. 34, s. 131.

257. 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. 395; 2021, c. 34, s. 132.

258. 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. 395; 2021, c. 34, s. 133.

259. The Authority may revoke or amend an order it has issued under this Act.

2018, c. 23, s. 395.

CHAPTER II

CONSERVATORY MEASURES

2018, c. 23, s. 395.

260. The Authority, for the purposes of or in the course of an investigation or when it is informed that an authorized trust company is voluntarily dissolving or liquidating in contravention of section 27 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, under the control of 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.

2018, c. 23, s. 395.

261. 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. 395.

262. A person or group named in an order issued under section 260 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. 395.

263. No order applies to funds or securities deposited with a clearing-house or a transfer agent, unless the order so provides.

2018, c. 23, s. 395.

264. An order also applies to funds, securities and other property received after the order becomes effective.

2018, c. 23, s. 395.

265. An order that names a bank or another financial institution applies only to the agencies or branches specified.

2018, c. 23, s. 395.

266. A person or group directly affected by an order issued under section 260, 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. 395.

267. An order issued under section 260 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. 395.

268. 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 the costs incurred in connection with the inspection or inquiry that established non-compliance with the provision concerned, according to the tariff set by government regulation.

2018, c. 23, s. 395.

269. The Financial Markets Administrative Tribunal may prohibit a person from acting as a director or officer of an authorized trust company 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. 395.

CHAPTER III

INJUNCTION AND PARTICIPATION IN PROCEEDINGS

2018, c. 23, s. 395.

270. 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. 395.

271. The Authority may, on its own initiative and without notice, intervene in any proceeding relating to a provision of this Act or of the Business Corporations Act (chapter S-31.1) that is applicable to a company governed by this Act.

2018, c. 23, s. 395.

CHAPTER IV

CANCELLATION OF A CONTRACT OR SUSPENSION OF ITS PERFORMANCE

2018, c. 23, s. 395.

272. The Authority may apply to a court to cancel or suspend the performance of a contract entered into by an authorized trust company in contravention of this Act if the Authority shows that the cancellation or suspension is in the interest of the company's co-contracting parties 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 trust company the amount of damages awarded as compensation for the injury suffered or the sum paid by the authorized trust company because of the contract.

2018, c. 23, s. 395.

CHAPTER V

ADMINISTRATION OF THE ACT, REPORTS AND MISCELLANEOUS PROVISIONS

2018, c. 23, s. 395.

273. The Authority may require an authorized trust company, a regulated corporation 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. 395.

274. The costs that must be incurred by the Authority for the administration of this Act are to be borne by the authorized trust companies; they are determined annually by the Government based on the forecasts provided to it by the Authority.

Such costs, for each company, correspond to the sum of the minimum contribution set by the Government and the proportion of those costs corresponding to the proportion that the company's gross income in Québec for the preceding year is of the aggregate of the similar income of all the companies 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 the similar costs determined by the Government for the year after the difference is noted.

A certificate of the Authority must definitively establish the amount payable by each company under this section.

2018, c. 23, s. 395.

275. The Authority must, before 30 June each year, report to the Minister, on the basis of the information obtained from the authorized trust companies and other regulated corporations and following the investigations, inspections and evaluations made by the Authority, on the affairs of all the companies and corporations carrying on business in Québec for the year ending on the preceding 31 December.

2018, c. 23, s. 395.

276. 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 the 15 days of resumption.

2018, c. 23, s. 395.

CHAPTER VI

REGULATIONS

2018, c. 23, s. 395.

277. In addition to other regulations that it may make under this Act, the Authority may, by regulation, determine the standards applicable to authorized trust companies in relation to their commercial and management practices.

2018, c. 23, s. 395.

278. 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 period 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. 395.

279. The fees payable for the formalities prescribed by regulation of the Authority or the Minister are prescribed by government regulation.

2018, c. 23, s. 395.

TITLE V

PROHIBITIONS, MONETARY ADMINISTRATIVE PENALTIES AND PENAL PROVISIONS

2018, c. 23, s. 395.

CHAPTER I

PROHIBITIONS

2018, c. 23, s. 395.

280. No one may, if not covered by the second paragraph, hold themselves out as a trust company or use a name that includes the word "fidéicommis" or, subject to article 1266 of the Civil Code, "fiducie" or "trust".

The following may hold themselves out as a trust company or use a name that includes a word specified in the first paragraph:

(1) an authorized trust company;

(2) a regulated corporation applying for the Authority's authorization to carry on trust company activities; and

(3) a legal person constituted under the laws of a jurisdiction other than Québec that is authorized under those laws to carry on trust company activities and that exercises rights and performs obligations in Québec without such exercise and performance constituting trust company activities.

2018, c. 23, s. 395.

CHAPTER II

MONETARY ADMINISTRATIVE PENALTIES

2018, c. 23, s. 395.

DIVISION I

FAILURES TO COMPLY

2018, c. 23, s. 395.

281. 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 trust company

(a) that, in contravention of section 42, fails to send the Authority a report on its complaint processing and dispute resolution policy,

(b) whose ethics committee, in contravention of section 88, fails to send the Authority a report on its activities,

(c) that, in contravention of section 100, fails to notify the Authority of the end of the auditor's term,

(d) that, in contravention of section 111, fails to send the Authority an annual statement of the position of its affairs,

(e) that, in contravention of the first paragraph of section 112, fails to send the Authority the financial statements or an auditor's report referred to in that section, or

(f) that, being a Québec company and in contravention of the second paragraph of section 112, fails to send the Authority a statement of its overdue loans and unproductive investments;

(2) a regulated corporation that, in contravention of section 225 of the Business Corporations Act (chapter S-31.1), fails to send its financial statements to a shareholder who requests them; or

(3) an authorized trust company, the holder of control of the company, a member of its financial group 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 documents or information concerned are incomplete, or are not sent before the specified time limit.

2018, c. 23, s. 395.

282. A monetary administrative penalty of $2,500 may be imposed on

(1) an authorized trust company

(a) that fails to perform its obligations under an undertaking given to the Authority under section 26, 83, 125 or 134,

(b) that, in contravention of section 34, fails to adopt a complaint processing policy or that, in contravention of section 65, fails to adopt an investment policy approved by its board of directors, or whose ethics committee, in contravention of section 85, fails to adopt rules of ethics,

(c) that, in contravention of section 34, fails to keep the complaints register prescribed by that section,

(d) if, in contravention of section 75, neither a director nor a committee has reported to the board of directors on the responsibility conferred on them 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 83 has not, in contravention of section 81, established an audit committee or an ethics committee or has established one whose composition contravenes section 82; or

(2) a regulated corporation that fails to perform its obligations under an undertaking given to the Authority under section 187.

2018, c. 23, s. 395.

283. 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 trust company

(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 in section 68 without such holdings being authorized by section 69,

(b) more than half of whose board of directors, in contravention of section 79, is not composed of persons other than its employees or employees of a group of which it is the holder of control,

(c) for which no auditor, in contravention of section 96, has been charged with the functions provided for in that section or for which an auditor has been charged with those functions but does not have the qualifications required under section 97, or

(d) that, in contravention of any of sections 129 to 133, fails to notify the Authority of any of the operations described in section 126, sends the Authority an incomplete notice of intention or fails to comply with the time limit prescribed by section 128 for filing the notice of intention; or

(2) a regulated corporation

(a) whose board of directors, in contravention of section 199, is not composed of a majority of directors who are resident in Québec,

(b) that has outstanding debt obligations issued in contravention of section 186 or whose movable property is charged with a hypothec or other security granted in contravention of section 187, or

(c) that has outstanding shares that were issued without being fully paid, in contravention of section 188.

2018, c. 23, s. 395.

284. 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 any person who fails to comply with an order or other decision of the Authority.

2018, c. 23, s. 395.

285. 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. 395.

286. 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 284.

2018, c. 23, s. 395.

DIVISION II

NOTICE OF NON-COMPLIANCE AND IMPOSITION

2018, c. 23, s. 395.

287. 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. 395.

288. The imposition of a monetary administrative penalty is prescribed by two years from the date of the failure to comply.

2018, c. 23, s. 395.

289. 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 if a statement of offence has already been served on the person 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. 395.

290. A monetary administrative penalty is imposed on the party responsible for a failure to comply by notification of a notice of claim.

The notice must include

(1) the amount of the claim;

(2) the reasons for it;

(3) the time from which it bears interest;

(4) the right, under section 291, 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 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. 395.

DIVISION III

REVIEW

2018, c. 23, s. 395.

291. 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. 395.

292. 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. 395.

293. 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 prescribed 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 290 on the amount owing ceases to accrue until the decision is rendered.

2018, c. 23, s. 395.

294. 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. 395.

DIVISION IV

RECOVERY

2018, c. 23, s. 395.

295. 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. 395.

296. 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, as applicable, each of its directors and officers are solidarily liable with that party for the payment of the penalty.

2018, c. 23, s. 395.

297. The debtor and the Authority may enter into a payment agreement with regard to the 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. 395.

298. 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. 395.

299. 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. 395.

300. On the filing of a 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. 395.

301. 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. 395.

DIVISION V

REGISTER

2018, c. 23, s. 395.

302. 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 one of its establishments or of the business establishment or 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. 395.

CHAPTER III

PENAL PROVISIONS

2018, c. 23, s. 395.

303. The secretary of an authorized trust company who contravenes the second paragraph of section 104 by refusing or neglecting to provide the declaration sent to him or her by an auditor in accordance with section 103 or who destroys or falsifies the declaration commits an offence and is liable to a fine of $1,000 to $10,000.

2018, c. 23, s. 395.

304. Anyone who

(1) fails to comply with a request made under section 38,

(2) removes an auditor from office otherwise than in accordance with section 102, or

(3) fails to notify the Authority in accordance with section 119 or to notify it of an operation described in subparagraph 5 of the first paragraph of section 126, in accordance with section 133,

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. 395.

305. Anyone who

(1) contravenes the capital maintenance rules prescribed by any of sections 189 to 191,

(2) holds themselves out as a trust company or uses a name that includes a word or a combination of words prohibited listed in section 280,

(3) carries on trust company 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,

(5) hinders or attempts to hinder, in any manner, the exercise of a function of 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. 395.

306. Anyone who

(1) contravenes an order, or

(2) carries on trust company activities although the authorization required under this Act has been refused or revoked, or carries on trust company activities beyond what this Act authorizes if the authorization is suspended,

commits an offence and is liable to a fine of $5,000 to $100,000 in the case of a natural person 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 trust company that, in contravention of section 27, decides to dissolve or liquidates voluntarily commits an offence and is liable to the fine prescribed in the first paragraph.

A director of such a company who gives his or her assent to the dissolution or liquidation in contravention of section 27 commits an offence and is liable to the fine and imprisonment prescribed in the first paragraph; the same is true for a liquidator who agrees to proceed with such a liquidation.

2018, c. 23, s. 395.

307. Despite sections 303 to 306, the Minister may determine the regulatory provisions made under this Act whose contravention constitutes an offence and renders the offender liable to a fine of which the minimum and maximum amounts 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 severity of the offence, without exceeding those prescribed in section 306.

2018, c. 23, s. 395.

308. The fines prescribed by sections 303 to 306 or 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 306, 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. 395.

309. 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. 395.

310. 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. 395.

311. 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. 395.

312. 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. 395.

313. 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. 395.

314. 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 his or her 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 measures to prevent the commission of the offence or to 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. 395.

315. 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. 395.

316. 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 ability to pay, provided the offender furnishes proof of assets and liabilities.

2018, c. 23, s. 395.

317. 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 the date, in the absence of any evidence to the contrary.

2018, c. 23, s. 395.

318. Penal proceedings for an offence under this Act may be instituted by the Authority.

2018, c. 23, s. 395.

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

2018, c. 23, s. 395.

TITLE VI

TRANSITIONAL PROVISIONS

2018, c. 23, s. 395.

320. Trust companies that, on 12 June 2019, hold a licence issued under the Act respecting trust companies and savings companies (chapter S-29.01) are, by operation of law, authorized trust companies as of 13 June 2019.

The conditions and restrictions imposed by the Authority in relation to the operations of a trust company that holds a licence referred to in 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 company from signing new contracts, the company holding the licence becomes a company whose authorization has been revoked without the revocation having become final.

2018, c. 23, s. 395.

321. A proceeding brought before the Administrative Tribunal of Québec under section 251 of the Act respecting trust companies and savings companies (chapter S-29.01) 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. 395.

TITLE VII

FINAL PROVISIONS

2018, c. 23, s. 395.

322. 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. 395.

323. 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. 395.

324. This Act replaces the Act respecting trust companies and savings companies (chapter S-29.01).

2018, c. 23, s. 395.

325. The Authority is responsible for the administration of this Act.

2018, c. 23, s. 395.

326. The Minister of Finance is responsible for the carrying out of this Act.

2018, c. 23, s. 395.