Report on the Application of the Act respecting insurance and the Act respecting trust companies and savings companies

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Québec

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Québec City, March 2013

Mr. Jacques Chagnon
President of the National Assembly
Parliament Building
Québec (Québec) G1A 1A4

Dear Sir,

In accordance with section 425.1 of the Act respecting insurance (CQLR, chapter A-32) and section 397 of the Act respecting trust companies and savings companies (CQLR, chapter S-29.01), I have the honour of tabling this Report on the Application of the Act respecting insurance and the Act respecting trust companies and savings companies.

Yours truly,

Nicolas Marceau
Minister of Finance and the Economy

A WORD FROM THE MINISTER

The Report on the Application of the Act respecting insurance and the Act respecting trust companies and savings companies concerns two important pieces of legislation for Québec's economy and its financial sector. The insurance, trust companies and savings companies sectors play key roles in Québec's economy because of the tens of thousands of jobs they generate and the increasingly numerous and varied needs they fill for Quebecers and Québec businesses regarding saving, financing and various types of insurance protection. These financial institutions manage hundreds of billions of dollars in assets and play a prime role in the Québec's economy.

A constantly evolving financial sector

The insurance, trust companies and savings companies sectors have undergone a profound change in recent years. Major changes have occurred in things are done and in corporate structures while consumers' needs were being transformed and diversified. Multiple factors, including those of a technological or economic nature, explain the current changes – changes that affect the financial services industry in all industrialized economies. In dealing with these changes, Québec was able to quickly – and often in a ground-breaking way – adapt the legal and regulatory framework applicable to insurers, trust companies and savings companies in a context of market globalization and increasingly intense competition both at the national and international levels.

These changes are far from over: the recent financial crisis, the increasingly extensive globalization of markets, the introduction of new technologies and legislative harmonization constitute major challenges that Québec's insurers, trust companies and savings companies must be in a position to meet. Considering the upheaval caused by the recent financial crisis, the Autorité des marchés financiers, the body responsible for enforcing the legislation of the financial sector, must have the best means to maintain the confidence of the public. The protection of consumers must be at the heart of legislative amendments while maintaining the necessary balance between such public confidence and the industry's development.

Revision of the Act respecting insurance and the Act respecting trust companies and savings companies

Bearing in mind the objectives that the statutes pursue, i.e. to protect the public while ensuring the industry's development, it is apparent that they have, overall, fulfilled their missions to date, ensured sufficiently strict oversight to protect consumers and ensured the institutions' financial soundness without impairing the industries' development. However, the statutes that regulate these changing industries must also evolve and be updated.

This report proposes amendments to these two statutes to keep them up to date in this context of global turbulence. It is part of the development and modernization that have characterized the legislative and regulatory advances applicable to financial institutions generally in Québec.

The proposals it contains have been formulated after consultations with insurers and the organizations that represent them as well as with trust companies and savings companies. The Authority also contributed actively to our deliberations. Concerns about increased protection of consumers were present throughout the exercise.

The proposed legislative amendments are designed to provide the Authority with additional powers to monitor the solvency of these financial institutions by giving them, where possible, more leeway to operate. The proposals that have been tabled also imply greater responsibilities for directors.

I am convinced that these changes can reinforce Québec's financial sector.

Nicolas Marceau
Minister of Finance and the Economy

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INTRODUCTION

The legal framework of insurers, trust companies and savings companies

The Act respecting insurance (CQLR, chapter A-32) (AI) and its regulation (CQLR, chapter A-32) set out the rules governing the constitution of Québec-chartered insurers and their corporate life. They also define the main legislative and regulatory provisions relating to solvency rules and business practices that insurers are required to comply with when doing business in Québec. These requirements apply equally to insurers with a Québec charter and to insurers with a charter of another province, Canada or another country, since regulation of the insurance industry falls within the constitutional jurisdiction of the provinces.

Thus, an insurer that wishes to do business in Québec is required to have an insurer's licence issued by the Autorité des marchés financiers (Authority). Moreover, its main product, the insurance contract, is governed by the Civil Code of Québec.

Similarly, the Act respecting trust companies and savings companies (CQLR, chapter S-29.01) (ATCSC) and its regulations (CQLR, chapter S-29.01) lay down the rules governing the constitution of Québec trust companies and savings companies and their corporate life. They also define the main legislative and regulatory provisions relating to solvency and business practices with which trust companies and savings companies are required to comply when they do business in Québec. Regulation of the activities of these companies in Québec is also constitutionally a field of provincial jurisdiction.

The purpose of this report

The Report on the Application of the Act respecting insurance and the Act respecting trust companies and savings companies (Report) seeks to assess the degree to which these two statutes meet the needs of the public and the industry, and to propose improvements if need be.

The Report has ten chapters.

Chapters 1, 2 and 3 provide statistical data on the insurance sector and the trust companies and savings companies sector, as well as describing the major changes these sectors have undergone. They also review the main amendments to the legislation in recent years.

Chapter 4 deals with the harmonization of the statutes with the Business Corporations Act (BCA) adopted in 2009.

Chapters 5 and 6 deal with corporate provisions, including constitution, organization, administration, conversion, continuation, amalgamation, and winding-up.

Chapter 7 deals more specifically with investment powers.

Chapter 8 covers new measures for the protection of the public and enhancements to the powers of the Authority to carry out its mission.

Chapter 9 deals more specifically with amendments to be made to the AI and the ATCSC to eliminate certain irritants and modernize certain provisions.

Chapter 10 concerns the reorganization of the AI and the ATCSC for easier reference.

CHAPTER 1

THE INSURANCE AND THE TRUST COMPANIES AND SAVINGS COMPANIES SECTORS, MARKETS THAT ARE CONSTANTILY CHANGING

THE INSURANCE SECTOR

Decompartmentalization of the financial sector: greater competition

Many financial companies are owned by conglomerates in which the full range of financial services is available. By forming conglomerates and entering into strategic alliances, financial institutions can become more competitive and extend the scope of their operations.

In Canada, such conglomerates have developed most commonly at the instigation of the banks. Indeed, most trust companies and securities brokerage firms have been acquired by the large Canadian banks. It should be pointed out that these conglomerates include provincially-chartered legal persons as well as federally-chartered legal persons.

Today, insurers also face competition from other sectors. Accordingly, the most popular insurance products combined with segregated funds place insurers in direct competition with firms specialized in mutual funds. Banks and financial services cooperatives offer annuity products, often as part of registered retirement savings plans.

For some of these products, the large Canadian banks have entered into strategic alliances to reduce their production costs and be more competitive. In many cases, common subsidiaries have even been set up to carry out day-to-day administrative support activities.

Consumers' preferences with respect to insurance have also changed substantially in recent years. Traditional policies, including so-called "whole" life insurance policies, which were very popular twenty years ago, are now much less so. Instead, consumers prefer universal insurance products that provide both insurance protection and a return on the money invested.

Market globalization

In the financial sector, market globalization has led to the internationalization of business, in response to two objectives:

- maintaining or growing market share;
- achieving economies of scale.

Introduction of new technologies

In addition to the decompartmentalization of the financial sector and globalization, the introduction of new information and communications technologies is another important factor of change for the insurance sector. Very specifically, the development of remote transactions together with the deployment of the internet have transformed how financial institutions do business.

Services offered to customers have rapidly undergone a profound transformation. It is possible to obtain a loan from a financial institution in a few hours. With the development of e-commerce, individuals can carry out more transactions remotely. Claims processing can also be done much more quickly than before.

Consumers can now obtain on their own all the information needed on the various financial products that interest them.

New technologies in the financial sector thus make it possible to achieve significant productivity gains. At the same time, they make the market more competitive by enabling customers to obtain information and make decisions in ways not available to them even ten years ago.

The financial crisis and natural disasters

Financial institutions considered very sound up to then did not survive the last global financial crisis.

As for natural disasters, they have affected many countries in recent years and are increasing in frequency. The floods in Europe and recently in Australia, the earthquakes in Haiti and Japan, and tsunamis are but a few examples. The growing numbers of such phenomena directly affect insurers, and particular damage insurers.

A FEW STATISTICS

Insurance industry

Description of insurers doing business in Québec

There are two types of business in the insurance sector:

- insurance of persons, which covers life, annuities as well as accidents and illness.
- damage insurance, which protects the person insured against the consequences of an event that may impair his property. Damage insurance is also referred to as property and casualty insurance. Damage insurers provide insurance products in several categories, including auto, property, liability, credit, credit protection, title, surety and mortgage.

Insurers generally specialize in one type of insurance or the other. However, some are licensed by the Authority to do business in both insurance of persons and damage insurance. They also take different forms, i.e. mutual companies or stock companies, whether listed on the stock exchange or not. In addition, there fraternal benefit societies in insurance of persons and mutual insurance groups in damage insurance.

In 2008, 30 000 people worked full time in each of the two insurance sectors in Québec.[1]

Some insurers are:

- stock insurance companies and mutual insurance companies that can do business in insurance of persons, damage insurance or both at once. Since 2002, an insurance company can be constituted only under the Companies Act, which was replaced in 2011 by the Business Corporations Act (BCA);
- fraternal benefit societies that offer insurance of persons benefits to their members. The formation of such societies has been prohibited since 2002 (S.Q. 2002, chapter 70);
- mutual insurance groups for damage that offer damage insurance products to their members and must be part of a federation of mutual groups;
- funeral insurance companies that offer funeral insurance products whose sale of new business has been prohibited since 1974 and which are limited to administering policies in force.

[1] Results of the most recent surveys carried out by the Canadian Life and Health Insurance Association (CLHIA) and the Insurance Bureau of Canada (IBC).

- professional orders that have created professional liability insurance funds. These insurance funds have no legal personality separate from their professional order, which holds the insurance licence.

The figures given below illustrate the size of the insurance industry in Québec as well as the changes it has undergone over the last ten years.

Table 1 below shows that as at December 31, 2010, 289 insurers were licensed to do business in insurance in Québec. Of this total, 104 licences were in insurance of persons, 180 in damage insurance, and five licences authorized both insurance of persons and damage insurance.

The total number of Québec-chartered insurers fell from 86 to 74 between 2000 and 2010 while the number of federally-chartered insurers rose from 113 to 114 and insurers with a foreign charter went from 110 to 101. The number of licensed insurers in Québec decreased by almost 9% in ten years, from 322 in 2000 to 289 in 2010; this reduction is more marked among insurers of persons.

This decrease in the number of insurers does not mean a decline in business; it is attributable to growing concentration in this sector. Some insurers have preferred to amalgamate to achieve economies of scale.

TABLE 1

NUMBER OF INSURERS LICENSED IN QUEBEC - 2000-2010, ACCORDING TO CHARTER

	Insurance of persons		Property and casualty insurance		Insurance of persons and property and casualty insurance		Total		Difference
	2000	2010	2000	2010	2000	2010	2000	2010	2000-2010
Insurance companies									
Québec charter	15	13	21	20	1	3	37	36	-1
Charter of another province	7	6	6	5			13	11	-2
Federal charter	44	38	60	60			104	98	-6
Charter of a foreign state or country	44	31	55	61	4	2	103	94	- 9
Subtotal	**110**	**88**	**142**	**146**	**5**	**5**	**257**	**239**	**-18**
Fraternal benefit societies									
Québec charter	7	2					7	2	- 5
Charter of another province									
Federal charter	9	5					9	5	- 4
Charter of a foreign state or country	7	7					7	7	-
Subtotal	**23**	**14**					**23**	**14**	**-9**
Funeral insurance companies	2	2					2	2	0
Mutual insurance groups	0	0	35	27			35	27	-8
Professional orders	0	0	5	7			5	7	2
Subtotal	**2**	**2**	**40**	**34**			**42**	**36**	**-6**
TOTAL	**135**	**104**	**182**	**180**	**5**	**5**	**322**	**289**	**-33**

Sources: Inspector General of Financial Institutions, Rapport sur les assurances 2000, June 2001, and Autorité des marchés financiers, Rapport sur les assurances 2010, June 2011.

Insurers' assets

As at December 31, 2010, the 289 insurers licensed to business in Québec held assets of just over $495.8 billion in Canada. Assets held in Canada by insurers of persons amounted to $379.6 billion, i.e. almost 77% of overall

assets. Again as at December 31, 2010, damage insurers licensed to operate in Québec had total assets in Canada of $116.2 billion.

The assets of insurers of persons chartered in Québec, excluding segregated funds, amounted to $40.4 billion as at December 31, 2010, while those of damage insurance companies stood, at $8.7 billion,[2] i.e. 21.5% of the assets concerned, as at the same date.

A significant and growing fraction of the assets held by insurers of persons consists of what are called segregated funds.[3] Statutes relating to insurance of persons, in particular the Act respecting insurance (the AI), allow insurers to enter into commitments whose value varies according to the market value of a specific group of assets. Segregated fund assets are separated from the other funds of the insurer. They consist of a variety of financial instruments whose allocation depends on the performance objectives and degree of risk of each specific fund.

At December 31, 2010, segregated funds held in Canada by insurers of persons licensed in Québec amounted to $393.4 billion. They have increased more than 423% in ten years. This explosive growth is attributable to consumers' preferences shifting more towards insurance products backed by savings products. When interest rates are low, as is currently the case, deposits yield very little, another reason for the popularity of mutual funds and segregated funds.

The total assets of insurers licensed in Québec, including segregated funds, accordingly amounted to $889.2 billion at the end of 2010.

Premiums and contributions written in Québec

Data for insurance companies' assets do not fully measure the activity of these companies in the Québec market. To properly assess this activity, the amount of premiums and contributions written by these companies with Québec consumers must be analyzed. Tables 2 and 3 below and the charts accompanying them show the growth in premiums and contributions written between 2000 and 2010, broken down by insurers' charter and activities concerned.

[2] The assets of insurers of persons include, in particular, investments in bonds, unsecured obligations, mortgage loans, real estate, equities, subsidiaries, other loans and deposits. Damage insurers hold more short-term assets because of the very nature of their financial commitments, which tend to be more short-term.

[3] Segregated funds do not exist in the damage insurance sector.

Change in premiums and contributions by insurers' charter

In 2010, in Québec, almost $19.1 billion in premiums and contributions were written, including nearly $11.5 billion (60.3%) in insurance of persons and $7.6 billion (39.7%) in damage insurance.

Table 2 below shows the following phenomena:

TABLE 2

DIRECT PREMIUMS AND CONTRIBUTIONS WRITTEN IN QUÉBEC, BY INSURERS' CHARTER – 2000-2010
(thousands of dollars)

	2000	%	2010	%
Insurers of persons				
Québec charter	2 867 948	43.1	5 797 834	49.3
Federal charter or charter of another province	3 251 437	48.8	5 669 741	48.2
Charter of a foreign state or country	537 287	8.1	293 686	2.5
Subtotal	**6 656 672**	**100.0**	**11 761 261**	**100.0**
Damage insurers				
Québec charter	2 035 503	41.5	4 053 647	52.1
Federal charter or charter of another province	2 247 485	45.9	2 926 655	37.6
Charter of a foreign state or country	616 779	12.6	801 552	10.3
Subtotal	**4 899 767**	**100.0**	**7 781 854**	**100.0**
TOTAL	**11 556 439**		**19 061 733**	

Sources: Inspector General of Financial Institutions, Rapport sur les assurances 2000, June 2001, and Autorité des marchés financiers, Rapport sur les assurances 2010, June 2011.

Overall, the amount of premiums and contributions written in the Québec market rose by close to 77% in ten years, from $11.6 billion in 2000 to $19.1 billion in 2010. Premiums and contributions written in the insurance of persons sector were up substantially. They rose from $6.7 billion in 2000 to almost $11.8 billion in 2010, an increase of more than 76.7% compared with a gain of 54.4% in damage insurance, for which direct written premiums and contributions rose from nearly $4.9 billion in 2000 to $7.8 billion in 2010. The increases in insurance of persons are attributable to changes in consumers' needs in recent years. Insurers have also developed new accident and health insurance products, such as those for critical illnesses, which are increasingly popular.

In 2010, Québec-chartered insurers accounted for 49.3% of premiums written in insurance of persons and 52.1% of damage insurance premiums. This development is noteworthy compared to the situation prevailing in 2000, when these same insurers controlled just over 43.1% of the market in insurance of persons and 41.5% in damage insurance.

Foreign-chartered insurers of persons are in steady decline, since their market share has fallen from 8.1% of total direct premiums and contributions in 2000 to 2.5% in 2010. Federally-chartered insurers and those chartered in other provinces lost a small amount of market share, dipping from 48.8% in 2000 to 48.2% in 2010. Six Québec-chartered insurers were among the fifteen largest insurers of persons in Québec, in terms of market share, with cumulative premiums accounting for more than 44.7% of all premiums and contributions written in Québec in 2010.

Damage insurance premiums and contributions written by Québec-chartered insurers accounted for 52.1% of premiums and contributions written in 2010, compared with 41.5% in 2000.

Table 3 below shows direct premiums and contributions written in Québec grouped this time by activity.

TABLE 3

DIRECT PREMIUMS AND CONTRIBUTIONS WRITTEN IN QUÉBEC, BY ACTIVITY – 2000-2010
(thousands of dollars)

	2000	%	2010	%
Insurance of persons				
Life				
Individual	2 280 998	34.4	3 156 830	26.8
Group	754 251	11.3	1 235 476	10. 5
Subtotal	**3 035 249**	**45.7**	**4 392 306**	**37.3**
Annuity				
Individual	569 505	8.5	1 039396	8.8
Group	344 413	5.1	600 037	5.1
Subtotal	**913 918**	**13.6**	**1 639 433**	**13.9**
Accident and health	2 707 505	40.7	5 729 522	48.8
Subtotal	**2 107 155**	**40.7**	**5 729 522**	**48.8**
TOTAL	**6 656 672**	**100.0**	**11 761 261**	**100.0**
Damage insurance				
Automobile	2 362 361	48 2	3 132 678	41.3
Personal property	1 112 840	22.7	1 955 153	24.6
Commercial property	769 436	15.7	1 267 279	16.1
Aircraft	31 654	0.7	107 695	1.2
Surety	43 313	0.9	80 354	1.3
Boiler and machinery	50 815	1.0	66 674	0.9
Marine	32 392	0.7	60 658	0.8
Liability	436 468	8.9	894 278	11.3
Other	60 488	1.2	217 085	2.5
TOTAL	**4 899 767**	**100.0**	**7 781 854**	**100.0**

Source: Inspector general of the financial institutions, Rapport sur les assurances 2000, June 2001, and Autorité des marchés financiers, Rapport sur les assurances 2010, June 2011.

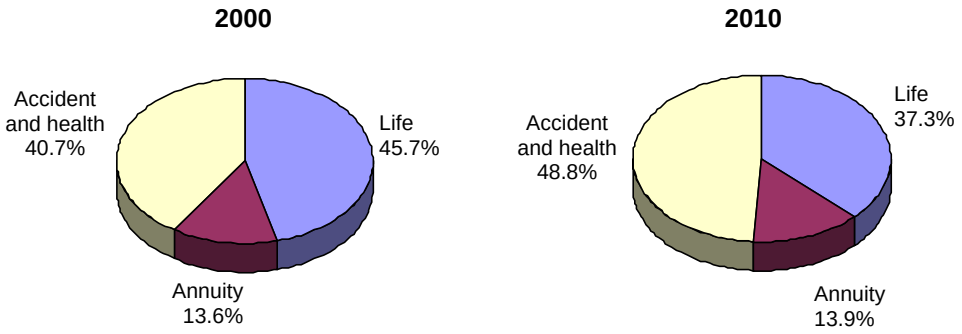
Another observation is evident. The market continues to develop as premiums and contributions written have risen over ten years by varying but very significant proportions.

As we have seen, in insurance of persons, the volume of direct premiums and contributions written rose from nearly $6.7 billion to nearly $11.8 billion from 2000 to 2010, an increase of 76.7% in 10 years. However, the increases vary depending on whether premiums and contributions written in life, annuity, or accident and health are compared. Indeed, direct premiums and contributions written in life insurance rose from a little more than $3 billion in 2000 to $4.4 billion in 2010, an increase of 44.7%, compared with annuities where contributions over the same period increased from $0.9 billion in 2000 to slightly more than $1.6 billion in 2010, a gain of 78.1%.

Accident and health insurance posted the largest gain, with direct premiums and contributions written rising from $2.1 billion in 2000 to just under $5.7 billion in 2010, an increase of 178%. This is reflected in the percentages of premiums and contributions written since life insurance premiums and contributions written, which, in 2000, accounted for 45.7% of the total represented no more than 37.3% in 2010, while premiums and contributions written for accident and health insurance, with relatively equivalent percentage gains, rose from 40.7% in 2000 to 48.8% in 2010. The relative importance of annuities remained relatively unchanged, with 13.9% of premiums and contributions written in 2010 compared with 13.6% in 2000. Chart 1 shows these changes.

CHART 1

DIRECT PREMIUMS AND CONTRIBUTIONS WRITTEN IN QUÉBEC, BY ACTIVITY – INSURANCE OF PERSONS, 2000-2010



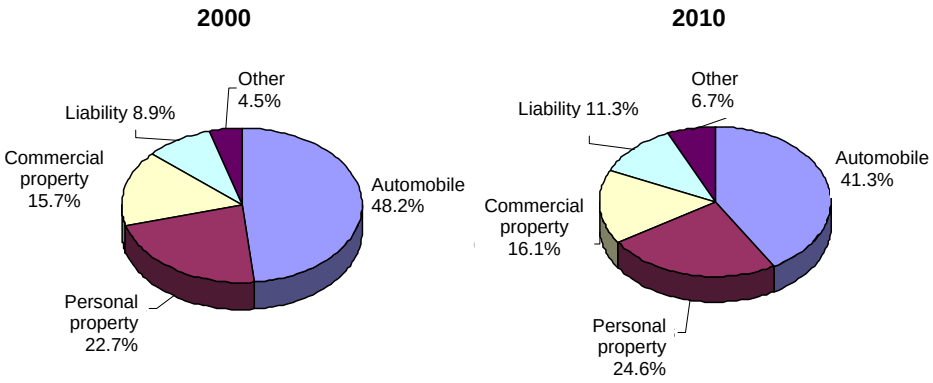
Sources: Inspector General of Financial Institutions, Rapport sur les assurances 2000, June 2001, and Autorité des marchés financiers, Rapport sur les assurances 2010, June 2011.

It should be pointed out that in 2010, over 99% of insurance of persons premiums and contributions were written with businesses that had the status of companies (stock insurance companies and mutual insurance companies). Fraternal benefit societies, with less than 1% of premiums and contributions written, are but marginal players in the insurance of persons sector.

In damage insurance, a comparison of premiums and contributions written shows that the largest increases are in personal property, commercial property and liability. Chart 2 shows these changes.

CHART 2

DIRECT PREMIUMS AND CONTRIBUTIONS WRITTEN IN QUÉBEC, BY ACTIVITY – DAMAGE INSURANCE, 2000-2010



Sources: Inspector General of Financial Institutions, Rapport sur les assurances 2000, June 2001, and Autorité des marchés financiers, Rapport sur les assurances 2010, June 2011.

THE TRUST COMPANIES AND SAVINGS COMPANIES SECTOR

Description of trust companies and savings companies doing business in Québec

Trust companies are financial institutions that are expressly authorized by their instrument of incorporation to act as tutor or curator for property, liquidator, syndic, sequestrator, advisor to a person of full age, or trustee and that hold a license for such purpose from the Authority.

Savings companies are financial institutions that borrow money from the public in the form of deposits for the purpose of loans and investments. Savings companies must obtain a licence under the Act respecting trust companies and savings companies (ATCSC) to carry out their savings activities and, subsequently, a licence as a registered institution within the meaning of the Deposit Insurance Act (CQLR, chapter A-26).

The main activity of trust companies and savings companies remains the management of the property of others.

The number of trust companies and savings companies chartered in Québec or other provinces in 2010 is down substantially compared to 2000, while the

number of federally chartered companies has risen. There are two reasons for this. The large Canadian banks acquired several Québec-chartered trust companies and turned them into federally chartered subsidiaries. Furthermore, Québec-chartered trust companies wishing to do business in Ontario were obliged to comply with that province's requirements, i.e. to be federally chartered.

TABLE 4

COMPARISON OF THE NUMBER OF TRUST COMPANIES AND SAVINGS COMPANIES HOLDING A QUÉBEC LICENCE - 2000–2010, BY CHARTER

	Authorized to receive deposits from the public		Not authorized to receive deposits from the public		Total		Difference 2000-2010
	2000	2010	2000	2010	2000	2010	
Trust companies							
Québec charter	5	2	2	1	7	3	-4
Charter of another province	2	0	0		2	0	-2
Federal charter	22	28	5	8	27	36	+9
Charter of a foreign state or country	0	0	0	0	0	0	0
Subtotal	**29**	**30**	**7**	**9**	**36**	**39**	**+3**
Savings companies							
Québec charter	0	0	0	0	0	0	0
Charter of another province	0	0	0	0	0	0	0
Federal charter	10	7	0	0	10	7	-3
Subtotal	10	7	0	0	10	7	-3
TOTAL	**39**	**37**	**7**	**9**	**46**	**46**	**0**

Source: Inspector general of the financial institutions, Rapport sur les sociétés de fiducie et les sociétés d'épargne 2000, June 2001, and Autorité des marchés financiers, Rapport sur les sociétés de fiducie et les sociétés d'épargne 2010, June 2011.

Assets of trust companies and savings companies

Table 5 below shows the size of trust companies, which had assets of nearly $119.8 billion as at December 31, 2010, compared with $42.6 billion in 2000, a gain of 281.6% in ten years. As at December 31, 2010, trust companies managed $3 023 billion in total assets, compared with $749.3 billion in 2000.

TABLE 5

BALANCE SHEET OF TRUST COMPANIES
2000-2010
(thousands of dollars)

	2000	%	2010	%
ASSETS				
Cash, deposits and securities	15 526 613	36.5	62 864 385	52.5
Loans	25 727 546	60.4	41 757 452	34.9
Other assets	1 307 830	3.1	15 158 411	12.6
TOTAL	**42 561 989**	**100.0**	**119 781 248**	**100.0**
LIABILITIES AND EQUITY				
Deposits	36 193 432	85.0	106 613 338	89. 1
Borrowings and subordinated debt	1 997 809	4.7	1 144 496	0.9
Other liabilities	1 062 653	2.5	3 399 166	2.8
EQUITY	3 308 095	7.8	8 624 248	7.2
TOTAL	**42 561 989**	**100.0**	**119 781 248**	**100.0**
Assets under management	**749 275 762**		**3 023 062 384**	

Source: Inspector general of the financial institutions, Rapport sur les sociétés de fiducie et les sociétés d'épargne 2000, June 2001, and Autorité des marchés financiers, Rapport sur les sociétés de fiducie et les sociétés d'épargne 2010, June 2011.

Concerning savings companies, which are all federally chartered, Table 6 below shows that they had total assets of close to $127.3 billion as at December 31, 2010 compared with $141.6 billion in 2000. This decline is attributable to the fact that many of them are owned by the large Canadian banks that regularly reorganize their operations. Just as with trust companies, loans and deposits are the main asset and liability items of these companies.

TABLE 6

BALANCE SHEET OF SAVINGS COMPANIES 2000-2010

(thousands of dollars)

	2000	%	2010	%
ASSETS				
Cash, deposits and securities	25 885 462	18.3	28 362 168	34.2
Loans	109 737 303	77.5	77 970 421	57.7
Other assets	5 960 832	4.2	21023 540	8.1
TOTAL	**141 583 597**	**100.0**	**127 356 129**	**100.0**
LIABILITIES AND EQUITY				
Deposits	126 876 969	89.6	115 971 565	91.5
Borrowings and subordinated debt	6 974 808	4.9	471 846	0.1
Other liabilities	1 504 571	1.1	2 094 261	1.6
EQUITY	6 227 249	4.4	8 818 457	6.8
TOTAL	**141 583 597**	**100.0**	**127 356 129**	**100.0**

Source: Inspector general of the financial institutions, Rapport sur les sociétés de fiducie et les sociétés d'épargne 2000, June 2001, and Autorité des marchés financiers, Rapport sur les sociétés de fiducie et les sociétés d'épargne 2010, June 2011.

CHAPTER 2

THE ACT RESPECTING INSURANCE SUBSTANTIALLY CHANGED SINCE THE 1980s

Before addressing each of the proposals of this report, it is important to recall the major amendments that have been made to the Act respecting insurance (AI) and the Act respecting trust companies and savings companies (ATCSC) over the past 25 years.

The AI has been amended many times in recent years. The most significant amendments to the legislation on insurance were made in 1984 and 2002.

The 1984 reform

In 1984, the National Assembly of Québec passed Bill 75 amending the insurance legislation and other legislative provisions (S.Q. 1984, chapter 22), which overhauled the legislative framework applicable to the insurance sector. The legislation introduced a number of major and leading-edge innovations.

- Québec-chartered insurers were given the power to enter new lines of business not related to insurance.
- The concept of “investment that a prudent and reasonable person would make” replaced the quantitative limitations previously imposed for some types of investments.
- Investments and loans of insurers other than fraternal benefit societies were subject to specific quantitative criteria. However, these insurers could hold shares of any type of subsidiaries, more specifically financial institutions and holding companies.
- The powers of the Inspector General of Financial Institutions to intervene were bolstered to enhance oversight of insurers.
- The government had the power to establish by regulation standards concerning the required surplus of assets over liabilities.

Professional liability insurance legislation

This legislation, passed in 1987 (S.Q. 1987, chapter 54) amended the legislation respecting insurance to enable a professional order to insure the professional liability of its members under certain terms and conditions.

The 2002 reform

The Act amending the Act respecting insurance and other legislative provisions (S.Q. 2002, chapter 70), was intended to modernize the AI, adapt it to the realities of the time and to remove a number of obsolete requirements. Accordingly, surety bonds, the issuing of an insurer's licence on an annual basis, certain quantitative investment ratios and filing of certain documents and information with the oversight authority were eliminated.

Moreover, the field of activity of insurers was broadened, as was their ownership structure. Under the 2002 reform, control of insurers could be transferred to asset management companies, which had to meet certain requirements of the Autorité des marchés financiers.

A complaints process was established and provisions were added to the AI to allow the Authority to establish guidelines for capital and liquidity adequacy. In 2002, the Authority's order powers were strengthened and its powers to impose administrative penalties were enhanced.

The ownership rules of insurers were reviewed. In particular, the specific quantitative limits for non-residents were eliminated. Certain restrictions on the composition of the board of directors were introduced, in particular the obligation to be a Canadian citizen. Provisions concerning self-dealing and conflicts of interest were clarified and enhanced.

S.Q. 2003, c. 1, Act amending the Act respecting insurance

This legislation amended the AI to revise the rules relating to the issuing of bonds and other debt securities by an insurer. Henceforth, an insurer could borrow in the short term to satisfy liquidity needs if, as a result of such borrowing, the totality of the bonds or other debt securities did not exceed the limits set by regulation.

In addition, this legislation confirmed that authorization of the Minister of Finance is required when changes are made to the instrument of incorporation of an insurance company as part of a continuation under the Companies Act.

In addition, this legislation allowed the Authority, at the request of a professional order holding a licence authorizing it to insure the professional liability of its members, to extend its activities to insurance of its members against the misappropriation of funds having to be deposited in a trust account and to insurance covering the legal expenses caused by such misappropriation.

S.Q. 2005, c. 51 Act amending the Act respecting insurance and the Act respecting trust companies and savings companies

This legislation amended the AI and the ATCSC to clarify the rules applicable, effective March 1, 2006, to the annuity contracts offered by insurance companies and trust companies. The amendments to the AI and the ATCSC confirmed in particular the conditions under which the capital accumulated to service the annuity cannot be seized.

CHAPTER 3

THE ACT RESPECTING TRUST COMPANIES AND SAVINGS COMPANIES

Unlike the Act respecting insurance, the Act respecting trust companies and savings companies has not undergone a major reform for more than twenty years. However, it has been amended more than twenty times since 1987, thus following in many respects developments in the legislation relating to Québec's financial institutions. Notice should be taken of the major amendments brought by the Act amending the Act respecting the Autorité des marchés financiers and other legislative provisions, adopted in 2008 (S.Q., chapter 7). Some of these provisions, covering in particular the ratios relating to capital and liquidity adequacy, have been replaced by the obligation to maintain sufficient capital and sufficient liquidity to ensure sound and prudent management. Similarly, quantitative ratios for certain categories of investments were also repealed. Administrative and penal sanctions were also reviewed and increased.

CHAPTER 4

EFFICACY OF THE STATUTES

Each of the statutes governing insurers, trust companies and savings companies have two separate objectives, i.e. to structure the exercising of the financial institutions' activities in Québec in order to protect consumers who do business with them and to govern the corporate life of the institutions established pursuant to Québec law. The statutes therefore encompass, on the one hand, an array of norms intended primarily to maintain creditworthiness and, to a lesser extent, acceptable commercial practices and, on the other hand, a series of rules pertaining to their corporate life.

The statutes must provide a sufficiently strict framework to ensure consumers' best interests and enable the industry to prosper and advance, since the financial sector plays a leading role in Québec's economic development.The statutes seek to strike a balance between the protection of the public and the industry's development. Overly strict rules will hinder the industry's development and, *ipso facto,* will limit public access to the financial products and services that satisfy their needs. Overly lax rules risk creating a fragile industry and undermining the public's trust in it.

Implementation of the statutes

Pursuant to the Act respecting insurance and the Act respecting trust companies and savings companies, it is the Autorité des marchés financiers that is responsible for administering the statutes. The AMF must ensure that the financial institutions in question comply with the obligations set by the statutes. It must also monitor and control all corporations covered by the statutes that operate in Québec to anticipate and prevent possible problems of creditworthiness and ensure the adoption of remedial measures.

To this end, the AMF exercises powers stipulated in the statutes. Accordingly, it plays an oversight role, in particular by issuing permits, conducting investigations and inspections, evaluating the financial position and quality of the management of institutions, making recommendations, and developing tools to guide the financial institutions in question in the conduct of their operations.

Overview of the industry

The statistics presented in the first chapter show that

- The insurance industry has experienced robust growth over the past 10 years in Québec. In 2012, insurance companies employ nearly

42 000 people in Québec, a figure which has risen over the past 10 years. The market is continuing to develop and the premiums and contributions written are rising. This means that the oversight of financial institutions operating in Québec is enabling them to change and develop in order to keep pace with trends in the sector.

- The number of insurers with a charter from Québec has declined slightly, their market share in Québec has increased, to over 52% of the premiums or contributions written in 2010. The reduction in the number of Québec companies with a charter from Québec is partly attributable to mergers of existing companies.

- Assets under management by trust companies experienced a meteoric increase between 2000 and 2010 and this niche appears to be the key to the future for such companies.

- As for trust companies and savings companies, while the assets of savings companies, now mostly owned by the big banks, fell between 2000 and 2010, the assets of trust companies rose significantly, to $119.8 billion in 2010.

The institutions governed by the Act respecting insurance and the Act respecting trust companies and savings companies have not experienced major financial problems. These industries have continued to develop and have tabled on their financial soundness, despite the crises that affected many financial institutions all over the world.

Quebecers have access to a varied array of financial products and services at reasonable cost. In light of the current situation and the situation that has prevailed for several years, we therefore believe that the two statutes have achieved their objectives. The statutes give the Autorité des marchés financiers tools to oversee the protection of consumers while promoting the industry's development.

That being said, there is a considerable need to modernize the statutes to adapt them to current conditions and enable these constantly changing industries to pursue their development. Against the backdrop of economic turbulence in which public trust is being sorely tested, we must also ensure that the AMF has at its disposal all of the tools necessary to protect consumers. It is in this perspective that the proposals in the subsequent chapters have been put forward.

CHAPTER 5

HARMONIZATION OF THE ACT RESPECTING INSURANCE WITH THE ACT RESPECTING TRUST COMPANIES AND SAVINGS COMPANIES

Harmonization and coordination with Québec's body of legislation

The laws governing insurers, trust companies and savings companies contain provisions dealing with common topics, such investments, examination of complaints, ethics, self-dealing and the powers of the Authority to require, in particular, certain information and documents, issue guidelines and impose sanctions for non-compliance with the legislation in question. In the interests of legislative consistency, we propose harmonizing similar provisions found in both statutes.

Moreover, the Business Corporations Act (BCA), passed in December 2009, has been in force since February 14, 2011. Many rules governing corporations can be applied as is to financial institutions, while others require various adaptations. It is thus appropriate to stipulate the set of relevant provisions in the statutes.

The proposal is as follows:

PROPOSAL 1

- It is proposed to harmonize the wording of the provisions of the statutes that deal with the same subjects and to integrate in the statutes the provisions of the Business Corporations Act that require adaptations or that it would be useful to reproduce.

CHAPTER 6

CONSTITUTION, ORGANIZATION, TRANSFER OF SHARES, AMALGAMATION, CONTINUATION AND WINDING-UP

6.1 Minimum capitalization for the constitution of an insurance company, a trust company or a savings company

Under section 27 of the Act respecting insurance (AI), the paid-up capital combined, where applicable, with the contributed surplus of an insurance company must be at least $3 000 000 for the constitution of an insurance company in Québec. This amount has not been changed in 25 years, though it has been raised in the federal legislation as well as in many provinces and American states, because of an insurance company's growing financial obligations.

A similar provision exists in section 15 of the Act respecting trust companies and savings companies (ATCSC).

These amounts are necessary to enable the financial institution to cover its primary operating expenditures.

However, the expenses relating to setting up a financial institution have risen. The expenditures relating to the acquisition and development of computer systems, setting up a sales force and for product development are increasingly high.

The proposal is as follows:

PROPOSAL 2

- It is proposed that the capital required to constitute an insurance company, a trust company or a savings company, including the required capital stock and contributed surplus, be raised to $5 million. However, the Autorité des marchés financiers may require more where justified by the risks identified in the business plan.

6.2 Factors to consider for the constitution of an insurance company, a trust company or a savings company

The legislation does not stipulate the factors that should be considered to authorize the constitution of an insurance company, a trust company or a savings company. If applicants knew these factors in advance, they would know what to expect.

Moreover, Canadian regulatory authorities agreed a number of years ago on the information and documents required with an application to form an insurance company. Accordingly, the factors considered by the constituting authority should also be known in advance. These factors include:

- the financial situation of the applicants;
- their reputation regarding their operations according to high standards of probity and integrity;
- the competence and experience of the persons who will run the company to determine whether they are suitable to participate in the operation of a financial institution and operate the company in a responsible manner, as well as the probity of the directors as far as operating a financial institution is concerned;
- the business plan and financial projections of the applicants for the conduct and future development of the financial institution's activities;
- the interest of consumers, of the insurance market, of trust companies and of savings companies.

The proposal is as follows:

PROPOSAL 3

- It is proposed that the legislation specify the factors to be taken into consideration to authorize the constitution of an insurance company, a trust company or a savings company.

6.3 Protection of third parties

The other statutes concerning insurance, trust companies and savings companies in Canada stipulate provisions for the protection of third parties. The latter enjoy presumptions in their favour. Provisions should be stipulated, as in the Business Corporations Act (BCA), to the effect in particular that third parties may assume:

1° that the insurance company, trust company or savings company exercises its powers according to its statutes, its bylaws and any unanimous agreement of its shareholders;

2° that the information contain in the documents filed in the business registry concerning the insurance company, trust company or savings company is true;

3° that the directors and senior management of the insurance company, the trust company or the savings company validly hold their positions and legally exercise the powers associated with them;

4° that documents of the insurance company, the trust company or the savings company obtained from one of its directors or one of its senior managers or other mandataries are valid.

The proposal is as follows:

PROPOSAL 4

- It is proposed that the statues stipulate provisions regarding the protection of third parties after the constitution of an insurer, trust company or savings company.

6.4 First meeting

The statutes contain no provisions concerning the steps the applicants must take after having obtained constitution authorization. Instead, these provisions are found in the BCA and they should be imported into the statutes with the necessary adaptations. Insurance companies have obligations specific to them, such as appointing an actuary and forming an ethics committee and an audit committee. The same is true of trust companies and savings companies, which must form ethics and audit committees.

The proposal is as follows:

PROPOSAL 5

- It is proposed that provisions relating to first meetings be incorporated into the statutes with adaptations reflecting the specific situations of the financial institutions concerned.

6.5 Articles, issuing of a certificate and amendments

In Québec, the process of constitution of insurers depends on the legal form adopted: mutual insurance company, stock insurance company or mutual society. The constitution of a trust company or a savings company also has its own system. In the case of an insurance company, the Minister authorizes the filing of the articles in the registry (sec. 23 of the AI). Concerning a mutual damage insurance association, (sec. 93.20 of the AI), the articles are issued by the Autorité des marchés financiers. The same is true for a trust company or a savings company (sec. 16 of the ATCSC). Accordingly, there is reason to standardize the process so that it is the responsibility of the Authority in every case.

The proposal is as follows:

PROPOSAL 6

- It is proposed that the Autorité des marchés financiers be given responsibility for establishing the appropriate certificate upon an application for constitution or amendment of the articles presented by a financial institution. The Authority must send a copy to the Registraire des entreprises to be entered in the registry.

6.6 Share transfers

Section 43 of the Act respecting insurance stipulates as follows:

> Except with the written authorization of the Minister, no insurance company may allot its voting shares or register a transfer of its voting shares where the allotment or transfer would:
>
> 1° directly or indirectly give to a person and his associates 10% or more of the voting rights attached to the shares if they do not already control the company;

2° directly or indirectly increase the voting rights attached to the shares already held by a person and his associates to at least 10% or at least a multiple of 10% if they do not already control the company;

3° give to a person and his associates control of the company.

Where an allotment of voting shares or registration of a transfer of shares by a legal person that controls an insurance company has, in respect of such shares, an effect described in subparagraphs 1 to 3 of the first paragraph, the legal person shall cease to be entitled to exercise the voting rights attached to the shares of the insurance company, unless it obtains written authorization from the Minister.

However, the authorization of the Minister is not required where the voting shares of the insurance company or of the legal person that controls it, as the case may be, are listed on a recognized stock exchange and the allotment or transfer would not give control to a person and his associates.

Section 69 of the ATCSC is similar to section 43 of the AI.

Over the years, these provisions have given rise to various problems of interpretation.

The provisions of subparagraphs 1° and 2° of the first paragraph of section 43 of the AI and of section 69 of the ATCSC refer to persons, which could give the impression that a limited partnership that is an unincorporated body cannot hold voting shares of an insurance company, a trust company or a savings company. However, it could be argued that the ambiguity of the AI and the ATCSC in this regard may be interpreted as allowing them to do so, without having to seek authorization, whereas that is required of a legal person.

The second paragraph of section 43 refers to the person who holds effective control without specifying at what level. Some insurance companies are part of multi-tiered financial conglomerates. Changes in ownership may thus have an important impact if the new shareholder does not have the resources to give the insurer the required financial support if needed.

The proposal is as follows:

PROPOSAL 7

It is proposed:

- that what constitutes a transaction within the meaning of sections 43 of the Act respecting insurance and section 69 of the Act respecting trust companies and savings companies be stipulated in the statutes;
- that it be expressly stipulated that a limited partnership may hold shares of an insurance company, a trust company or a savings company.

6.7 Nature of the transfer authorization applicant

Other problems may affect transfer applications since they may involve not only the insurer, but also a legal person who directly or indirectly controls it and whose shares may also be transferred. In the latter case, the legislation does not specify who must submit the application and what documents and information must accompany it. This situation should be clarified. This also applies to Act respecting trust companies and savings companies.

Failure to apply for authorization to transfer shares of an insurance company or a trust company or savings company has significant consequences since the holder cannot exercise the voting rights attached to the shares, which may render the company inoperative.

The proposal is as follows:

PROPOSAL 8

- It is proposed that it be specified that the authorization application must be submitted by the financial institution governed by the law and what information and documents must accompany the application.

6.8 Transfers of shares of a financial institution whose shares are listed in Canada

Sections 43 of the IA and 69 of the ATCSC also stipulate that the restrictions on transfers of shares do not apply where the voting shares of the corporation or the legal person that directly or indirectly controls it are listed on a Canadian stock exchange. However, it appears there is no reason to exempt these financial institutions from the obligation to seek authorization in the event of transfers within the meaning of sections 43 of the IA and 69 of the ATCSC, in view of the extent of the financial capacity of the shareholders to provide them with the financial support they might need.

The proposal is as follows:

PROPOSAL 9

- It is proposed that the exemption for shares listed on a Canadian stock exchange be eliminated.

6.9 Continuation

The statutes do not allow continuation under another jurisdiction, the purpose of the prohibition being to prevent a financial institution from moving to a legislative regime that may not protect customers as well as Québec's regime.

In practice, this constraint has not prevented continuations, but instead has forced the companies in question to proceed by way of a private interest bill, a procedure that in some cases can be very onerous and expensive since the documentation and information requirements are the same as for the constitution of a company. This is an irritant for the financial institution because it already holds a licence issued by the authority of its place of constitution. In addition, it must already satisfy capital and liquidity adequacy requirements.

The legislation should specify that continuation under the regime of a statute of legislation other than Québec's may be allowed with the Minister's authorization. The list of documents and information to be filed should also be revised to avoid duplication.

In addition, to foster continuation of financial institutions under Québec jurisdiction, the process should also be streamlined. Some statutes of incorporation of other jurisdictions allow an insurance company, a trust company or a savings company to continue doing business under Québec's jurisdiction. However, the statutes, such as the BCA, require such financial institutions to satisfy the same requirements as those imposed on applicants in their constitution, even when such financial institutions are already subject to a regulatory regime. The process to be followed by a financial institution that already exists and that already complies with certain requirements, in particular that it follow prudent and sound management practices and have sufficient capital, should be streamlined.

The proposal is as follows:

PROPOSAL 10

- It is proposed that a streamlined continuation mechanism under Québec jurisdiction or to another jurisdiction be stipulated.

6.10 Factors to consider in the amalgamation or conversion of insurers as well as trust companies and savings companies

Some companies constituted under Part I of the Companies Act have continued doing business under Part IA in recent years. In addition, there have also been a few amalgamations of insurance companies or mutual insurance groups. Currently, transactions such as these require the Minister's authorization, after considering a number of factors not necessarily known to the industry.

To clarify the rules, the factors to consider for the authorization of an amalgamation or conversion should be specified in the statutes. As with continuation, the list of documents and information could be revised, considering that these financial institutions already exist, are licensed to do business and are members of a compensation organization. That would facilitate the process while adequately protecting the interests of policy-holders. Jurisdictions outside Québec have legislation on insurance and trust companies with similar provisions. With respect to amalgamations, these factors could be as follows:

1° the nature and financial resources of the applicant(s) for ensuring the viability of the amalgamated legal person;

2° the experience of the directors and their professional history;

3° the integrity of the directors, their reputation with respect to the operation of a financial institution;

4° the competence and experience of the persons who will run the amalgamated legal person, to determine whether they are suitable to participate in the operation of a financial institution in a responsible manner;

5° the soundness of the business plan and financial projections of the applicants for the conduct and development of the activities of the amalgamated legal person.

Equivalent and adapted provisions could also be stipulated for conversions of insurers, trust companies or savings companies with the necessary adaptations depending on the specific character of these financial institutions.

The proposal is as follows:

PROPOSAL 11

- It is proposed that the statutes specify the factors to be taken into consideration to authorize the amalgamation or conversion of insurers, trust companies or savings companies.

6.11 Documents and information regarding the amalgamation and conversion of insurers as well as the amalgamation of trust and savings companies

Under provisions of the BCA (sec. 276 to 287), business corporations that plan to amalgamate must enter into an amalgamation agreement containing a number of points, including:

- the terms and conditions of conversion of the shares of the amalgamating corporations into shares of the amalgamated corporation;
- if the shares of one of the amalgamating corporations are not to be wholly converted into shares of the amalgamated corporation, the amount of money or other form of payment the shareholders holding those shares are to receive in addition to or instead of shares of the amalgamated corporation;
- if applicable, the amount of money or other form of payment that is to be received instead of fractional shares of the amalgamated corporation;
- if applicable, a provision stating that any shares of an amalgamating corporation that are held by another amalgamating corporation are to be cancelled when the amalgamation becomes effective without any repayment of capital in respect of the shares, and that such shares are not to be converted into shares of the amalgamated corporation;
- the by-laws proposed for the amalgamated corporation, or a statement that the by-laws of the amalgamated corporation are to be those of one of the amalgamating corporations;
- the date of the amalgamation;
- details of any arrangements necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated insurance company or amalgamated trust or savings company.

Because of the particular nature of financial institutions, the provisions of the BCA could be incorporated into the statutes with the changes required to make it easier to apply them, in particular regarding actuarial forecast

documents or financial projections that may be useful for the analysis of the authorization application.

The proposal is as follows:

PROPOSAL 12

- It is proposed that the statutes specify the process for the amalgamation or conversion of insurers, and for the amalgamation or conversion of trust companies or savings companies.

6.12 Opinion of an independent external actuary

Assessing the financial obligations and, in particular, the actuarial reserves in the case of an insurer is a complex undertaking. This assessment is crucial as part of an amalgamation process. To adequately protect those insured, an assessment by an independent external actuary of the actuarial liabilities before and after the amalgamation of the two insurers should be mandatory.

The proposal is as follows:

PROPOSAL 13

- It is proposed that the Act respecting insurance stipulate the mandatory assessment by an independent external actuary of the actuarial liabilities of each of the insurance companies that want to amalgamate as well as those of the amalgamated company.

6.13 Corporate reorganizations

Section 175 of the Act respecting insurance stipulates as follows:

> The following may amalgamate with an insurance company constituted under this Act:
>
> *a)* any other company so constituted;
>
> *b)* any insurance company constituted by an Act of Québec;
>
> *c)* any insurance company constituted under Division I of the Insurance Act (Revised Statutes, 1964, chapter 295) replaced by chapter 70 of the statutes of 1974.

The main reason of this provision is to ensure that the amalgamated company carries on an insurance business exclusively. However, the

amalgamation of insurance companies with companies that are not insurers might facilitate corporate reorganizations. Such transactions could be acceptable insofar as the amalgamated company can carry on only those activities that are authorized for an insurance company.

The proposal is as follows:

PROPOSAL 14

- It is proposed that section 175 of the Act respecting insurance be amended to allow the Minister to authorize, in corporate reorganizations, the amalgamation of an insurance company with another company if the amalgamated company is an insurance company.

6.14 The transfer of blocks of shares to non-residents

In 2002, the AI was amended to repeal the provisions prohibiting non-residents from holding more than 30% of the voting rights attached to the shares of an insurance company (repeal of section 44 of the AI) in the context of market globalization. Similar provisions still exist in the ATCSC (sec. 72 to 81) and are inconsistent with the principle of free movement of capital to which Québec adheres.

The proposal is as follows:

PROPOSAL 15

- It is proposed that the existing ownership restrictions on non-residents regarding a Québec-chartered trust company or savings company or the person who controls it be repealed.

6.15 The winding-up process

The current winding-up process seems too cumbersome and in some cases can be very costly. Section 395 of the AI specifies that winding-up can only begin one month after the winding-up notice given to the Authority. In addition, some notices must be published and require yet more time, which may result in additional costs.

In addition, the expenditures of the liquidator are currently approved by the Minister, although in fact the Authority monitors the winding-up.

Accordingly, there is reason to implement a simplified winding-up process that the Authority could monitor.

The proposal is as follows:

PROPOSAL 16

- It is proposed that the applicable provisions of the statutes regarding winding-up be modernized to streamline the process and that responsibility for monitoring it be given to the Autorité des marchés financiers.

CHAPTER 7

ADMINISTRATION OF AN INSURER,[4] A TRUST COMPANY OR A SAVINGS COMPANY

7.1 Books, accounts and records

Unlike what is found in the Business Corporations Act (BCA) Act, the statutes contain only a few provisions concerning the nature and content of certain basic documents (books, accounts and records) that must be retained. There is reason to incorporate, in the Act respecting insurance (AI) and the Act respecting trust companies and savings companies (ATCSC), certain general provisions of the BCA (sec. 31 to 39) with the necessary adaptations to reflect the specific features of an insurance company, a trust company or a savings company. The federal government and certain provinces have legislation with similar provisions. Accordingly, provisions could be stipulated in the statutes specifying the books and documents to be kept, such as:

- the instrument of incorporation, by-laws, other rules and special resolutions with their amendments;
- the minutes of meetings and resolutions of shareholders and participating policy-holders for insurance companies and those of the board of directors and the audit and ethics committees;
- a record of securities including a list of voting shareholders as well as a record of participating policy-holders for an insurance for an insurance company and a record of members for a mutual society;
- rectification plans as well as written instructions and orders from the Autorité des marchés financiers, if any;
- authorizations with regard to certain specific activities;
- the financial statements and those of subsidiaries.

The proposal is as follows:

PROPOSAL 17

- It is proposed that the books, accounts and records that must be kept at the head office of the financial institution be specified.

[4] A federation of mutual associations.

7.2 Content of certain books and documents

The existing statutes do not specify the contents of certain records. The information that must be recorded in the share register and the register of participating and non-participating policy-holders should be specified, to ensure that the information found therein is sufficient for users. That may be particularly important for determining who is entitled to attend certain meetings and there exercise their voting rights.

The proposal is as follows:

PROPOSAL 18

- It is proposed that the content of certain records that must be kept, such as the register of securities, shareholders, participating policy-holders or that of the members of a mutual insurance company, be specified.

In recent years, some consumers, policy-holders, shareholders and members have sought access to certain books and documents of financial institutions. However, the statutes contain no provisions to that effect, unlike the situation with other statutes concerning financial institutions in Canada. Access to certain information, particularly of a financial nature, contained in the books and documents should be reserved in some cases to members of the board of directors, members of certain committees of the board, the auditor and directors or, in other cases, to participating policy-holders or to members or shareholders of the insurance company. Conditions and restrictions could also be stipulated for the use of this information.

The proposal is as follows:

PROPOSAL 19

- It is proposed to specify to whom access to certain books or documents is reserved and the conditions that may apply for the use of their content.

7.3 Retention periods for certain financial documents

It goes without saying that financial institutions keep a copy of insurance contracts until the expiry of their commitments. However, it may be necessary to keep records of insurance claims already settled for some time. As regards financial documents, the statutes currently do not specify retention periods concerning, for example, financial statements and annual reports, which pushes institutions to keep everything indefinitely.

It would therefore be appropriate to set a period of time beyond which documents of this nature need no longer be kept for the purposes of the statutes. Similar provisions exist in other Canadian legislation applying to the banks, insurance companies and trust companies.

The proposal is as follows:

PROPOSAL 20

- It is proposed, for financial statements and annual reports, that a retention period of six years after the end of the fiscal year to which they relate be set. The same applies for records of insurance claims already settled.

7.4 Composition of the board of directors – citizenship and residency requirements

The existing AI stipulates (sec. 54, third paragraph) that a majority of directors must be resident in Québec, while the ATCSC stipulates that three quarters of the directors must be Canadian citizens and a majority of directors must be resident in Québec. These obligations may be serious irritants for foreign financial institutions that control Québec-chartered insurance companies and some of whose directors are residents of other provinces and have the skills to be directors of the Québec company. For some insurers that are part of conglomerates, this is a major irritant and some of them may be tempted, if the existing rules remain in place, to consolidate their subsidiaries outside Québec.

The proposal is as follows:

PROPOSAL 21

- It is proposed that the existing rules regarding the composition of the board of directors of an insurance company, trust company or savings company be replaced with the requirement that a majority of the directors reside in Canada.

7.5 Composition of the board of directors – proportion of officers and employees

The statutes stipulate that the paid officers and employees of the financial institution or a legal person with which it is affiliated may not account for more than one third of the members of the board of directors. Accordingly, officers of the parent company cannot account for more than one third of a

subsidiary's board of directors. The rule limiting the number of employees and officers on the board of directors is designed essentially to maintain distance between the board of directors and the persons whose work it oversees. This rule could be relaxed when the subsidiary of an insurance company or of a trust or savings company is 100% owned by a single shareholder which itself is a financial institution. When a shareholder owns 100% of the voting rights, it is reasonable to think that it has a certain influence on the policies guiding the decisions of its subsidiary.

Such provisions exist elsewhere in Canada, but limit the proportion that officers and employees may represent to less than 50%.

The proposal is as follows:

PROPOSAL 22

- It is proposed that where a subsidiary is wholly owned by the parent company, the employees and officers of the parent company and the subsidiary may sit to the latter's board of directors, but may not represent 50% or more of the directors.

7.6 Constitution of the audit committee

The existing statutes stipulate that a majority of the members of the ethics and audit committees of the board of directors of an insurer, a trust company or a savings company may not be directors or officers of a legal person to whom it is related. This can result, in the case of a financial institution whose single shareholder is also a financial institution, in the two entities having to form separate committees, which represents needless costs, considering that the parent company's financial statements are shown on a consolidated basis. In general, it is desirable that the members of these two committees be as independent as possible. The Authority currently has the power to approve membership of these committees that departs from the AI in certain circumstances. The ATCSC is silent on this matter. However, clarifications should be made so that the same persons may sit on the audit committees of a financial institution and of its single shareholder that is also a financial institution. The situation of the ethics committee is different, in view of the potentially divergent interests between the financial institutions in question.

The proposal is as follows:

PROPOSAL 23

- It is proposed that the statutes specify that the same persons can sit on the audit committees of a financial institution and of its single shareholder that is also a financial institution.

7.7 Obligations of the board of directors

A financial institution's board of directors must fulfill several specific tasks. The BCA contains a number of general provisions on this subject (sec. 112 to 118). It states that the board of directors exercises all the powers necessary to manage, or supervise the management of, the business and affairs of the corporation.

Moreover, responsibilities, which go beyond those of a regular business corporation, are incumbent on the directors of an insurance company, a trust company or a savings company. Indeed, they have been specified in many statutes in Canada concerning financial institutions in recent years. There is reason to harmonize these provisions.

It would therefore be relevant to consolidate in the statutes the powers of the board of directors of financial institutions covered by the AI and the ATCSC, in particular:

- to constitute an audit committee;
- to constitute an ethics committee;
- to institute conflict of interest resolution mechanisms, in particular measures to detect potential sources of such conflicts and restrict the use of confidential information;
- to designate one of the committees of the board of directors to oversee the application of the mechanisms mentioned in the preceding paragraph;
- in the case of a company that issues participating policies, to formulate a policy for setting participation in profits and bonuses payable to participating policyholders;
- to establish, for the clients of the insurance company, mechanisms for communication of information that must be disclosed and procedures to be instituted for the review of claims of its customers;
- to designate a committee of the board of directors to oversee the application of the mechanisms and procedures referred to in the previous paragraph and to ensure that the company adheres to these mechanisms and procedures;
- to develop policies, standards and procedures for investments.

The proposal is as follows:

PROPOSAL 24

- It is proposed that all the obligations of the board of directors be consolidated in a single provision of the statutes.

7.8 Powers of the board of directors that cannot be delegated

The statutes contain no provision forbidding the board of directors to delegate certain powers. However, the BCA (sec. 118) does contain such prohibitions. Although the provisions of the BCA apply, it may be difficult in the case of a financial institution to make the necessary adaptations. Many statutes concerning financial institutions outside Québec have been amended in recent years to ensure that the board of directors cannot delegate certain powers because of their importance. Delegation of the following powers should be prohibited:

- submission to shareholders and members of any question or matter requiring their approval;
- filling vacancies among the directors or the office of auditor;
- appointment of additional directors;
- appointment of the president of the company, the chief executive officer, the chief operating officer or the chief financial officer, and determination of their remuneration;
- authorization to issue shares;
- declaration of dividends;
- approval of the acquisition, including by purchase, redemption or exchange, of issued shares;
- splitting, consolidation or conversion of shares;
- authorization of payments of a commission to a person who purchases shares or other securities of the financial institution or who undertakes to purchase such shares or securities or have them purchased;
- approval of the annual report and the financial statements presented to shareholders and participating policy-holders, if any;
- adoption, amendment or repeal of by-laws;
- approval of an amendment to the articles allowing a class of unissued shares to be divided into series and the designation of the rights and restrictions attaching to such shares;

- approval of amendments to the articles, approval of the amalgamation, continuation or conversion to be ratified by the shareholders or members;
- constitution of the audit committee and the audit committee;
- appointment of the actuary for insurance companies.

The proposal is as follows:

PROPOSAL 25

- It is proposed that the statutes specify the powers of the board of directors that cannot be delegated.

7.9 Duties of a director

Under section 285.3 of the AI, a director or officer is presumed to have exercised the care, prudence, diligence and skill that a reasonable person would have exercised if he acted in good faith and based his decisions on an expert's opinion or report. This presumption is far less extensive than that of the BCA, which provides that a director is presumed to have satisfied his obligation to act with prudence and diligence if, in good faith and based on reasonable grounds, he relies on the report, information or opinion provided by:

1° an officer of the corporation whom the director believes to be trustworthy and competent in the performance of his duties;

2° a legal advisor, chartered accountant or other person engaged as an expert by the corporation to deal with issues that the director believes to be within the field of professional competence of such person or his area of expertise and regarding which he believes this person worthy of trust;

3° a committee of the board of directors of which the director is not a member and that he believes worthy of trust.

The directors of financial institutions should enjoy the same presumptions.

The proposal is as follows:

PROPOSAL 26

- It is proposed that a provision similar to the one of the Business Corporations Act broadening the circumstances in which a director is presumed to have fulfilled his obligation to act with prudence and diligence be stipulated.

7.10 Defence of directors and officers

In the normal course of business, directors of a financial institution may be the subject of lawsuits even if they act in good faith. The BCA stipulates that the corporation will defend its directors. In view of the importance of the matter, it would be advisable that such provisions be added to the statutes.

The proposal is as follows:

PROPOSAL 27

- It is proposed that provisions similar to those of the Business Corporations Act regarding the defence of directors be added to the statutes.

7.11 Policy regarding directors' remuneration

The AI stipulates that an insurance company must adopt a by-law setting the overall amount of remuneration that can be paid to members of the board of directors for a given period. A director cannot receive any remuneration on this account until such a by-law is passed. The term "remuneration" is open to interpretation. Some may argue that it consists only of salary, while others would add benefits arising from participation in other committees of the board of directors or remuneration in other forms, such as the granting of stock or stock options.

It has been widely reported in the media that certain shareholders or members of financial institutions are concerned regarding their directors' remuneration policy.

Some organizations dedicated to the defence of small shareholders also want more transparency.

The proposal is as follows:

PROPOSAL 28

- It is proposed that it should be specified that the special resolution or by-law concerning remuneration must include all the sums paid to a director, regardless of why they are paid.

7.12 Sound governance and compliance

The AI does not contain provisions specifying that the directors and officers of an insurance company are required to ensure compliance with the statutes applicable to the company. It could be argued that this goes without saying, but some statutes spell it out. Accordingly, such provisions exist in the ATCSC (sec. 109) and in the Act respecting financial services cooperatives (CQLR, chapter C-67.3, sec. 101) (AFSC). In particular, an officer of the financial services cooperative must comply with the AFSC, the regulations made by the government for its application, the by-laws and regulations of the financial services cooperative, as well as the rules of ethics and professional practice, standards, orders, written instructions made under the AFSC and, in the case of an officer of a caisse, the by-laws of the federation.

In its report published in January 2011, the National Commission on the Causes of the Financial and Economic Crisis in the United States concluded that there was a correlation between governance, integrated risk management and compliance.

Moreover, guidelines published by the Basel Committee on Banking Supervision[5] clearly lay out the need and importance for financial institutions to ensure compliance with the laws, regulations and guidelines of the supervisory authority to which they report. The main role of ensuring compliance with these rules lies with the board of directors, which must have overall responsibility.

Accordingly, the statutes need to be clarified in that sense.

The proposal is as follows:

PROPOSAL 29

- It is proposed that the members of the board of directors be explicitly required to see to compliance with the applicable laws.

7.13 Meetings of shareholders, participating policy-holders and members

The AI and the ATCSC contain a number of provisions relating to meetings. These provisions are not very detailed. That is why most rules (method for convening shareholders or members and time period for convening annual or extraordinary meetings of shareholders or members) are found in the general by-laws (by-laws) of Québec-chartered insurance companies.

[5] BASEL COMMITTEE ON BANKING SUPERVISION, *Compliance and the Compliance Functions in Banks*, Bank for International Settlements, April 2005.

The rules regarding meetings vary depending on whether a mutual company, a stock company, a fraternal benefit society, a mutual society, a professional liability insurance fund or a trust or savings company is concerned. Certain clarifications should be made to these rules and they should be harmonized among themselves where possible.

The proposal is as follows:

PROPOSAL 30

- It is proposed that special provisions be added to the Act respecting insurance regarding meetings of shareholders or of members regarding the method of convening participating policy-holders and members, if need be, notification deadlines, number of shareholders or members as well as participating policy-holders required to hold a meeting and the dates set to be entitled to participate in the meetings.

7.14 Topics that can be discussed at annual meetings

The statutes contain no specific provision on the topics that may be discussed at annual meetings. It is reasonable to believe that certain topics could be discussed at annual meetings without being entered on the agenda because of their importance, including:

- examination of the financial statements;
- the auditor's report;
- the actuary's report;
- election of directors;
- remuneration of directors;
- the renewal of the auditor's mandate;
- the description of the duties of the actuary and the auditor in the preparation and audit of the financial statements.

The proposal is as follows:

PROPOSAL 31

- It is proposed that the topics that may be discussed at an annual meeting of shareholders, participating policy-holders or members without being mentioned in the notice of meeting be specified.

7.15 Impossibility to make decisions

It can happen that there are not enough members of the board of directors to form a quorum or that the shareholders are unable to exercise their voting rights or do not want to hold a meeting. The members of the board of directors or the shareholders, as the case may be, might then not be able to make decisions and the operation of the business would accordingly be compromised. There is no provision in the IA or the ATCSC to deal with this type of problem and section 146 of the BCA that applies does not cover every situation that may occur, in particular in the case of a mutual company.

The proposal is as follows:

PROPOSAL 32

- It is proposed that a director or a shareholder be allowed to apply to a court to resolve an impasse resulting from an inability to hold a vote, with the financial institution in question bearing the cost.

7.16 Vacancies

The statutes require that the board of directors have a minimum of seven directors. However, it may be that, following the annual meeting, fewer than seven directors are in position, putting the financial institution in breach of the law. There is no provision in the legislation to correct the situation. In such a situation, the BCA allows the sitting directors, if they form a quorum, to fill the vacancies (sec. 146). Nonetheless, it appears advisable to specify this in the other statutes.

The proposal is as follows:

PROPOSAL 33

- It is proposed that the directors, if they form a quorum, be allowed to fill vacancies where the number of directors falls below the required minimum of seven. The Autorité des marchés financiers should be informed of the situation when it occurs.

CHAPTER 8

INVESTMENTS

8.1 Real estate investments

The Act respecting insurance (AI) allows an insurance company to acquire directly or through a corporation or a legal person up to 30% of the equity or voting rights of a legal person. Insurance companies can also control legal persons whose activities are similar to theirs. The Act respecting trust companies and savings companies (ATCSC) prohibits a company from holding between 10% and 50% of the voting rights of a legal person. These limits are designed to prohibit the company from holding an investment in a business that it could not dispose of easily if it did not control the business. However, there can be situations where certain perfectly justifiable investments require too large an outlay and whose risks could be shared among companies of the same financial group. Real estate is particularly well-suited to this type of joint investment.

Therefore, an exception to the investment limits appears justified where control would be exercised at the level of the group formed by the financial institution and the affiliated persons for better management of investment risks.

The proposal is as follows:

PROPOSAL 34

- It is proposed to allow a financial institution to hold directly any proportion of the equity or voting rights of a legal person that operates exclusively in the real estate sector as long as this financial institution and the legal persons it controls control it jointly.

8.2 Elimination of investment ratios for trust companies and savings companies

Most quantitative ratios that limited insurers' investments were removed from the AI in 2002. They were replaced by an obligation to adopt an investment policy (sec. 248) and to comply with sound and prudent management practices including adequacy of capital and liquidity. These ratios were eliminated because they prevented insurers from reacting to changing economic conditions However, many ratios remain in the ATCSC (in particular, sec. 204 and 208).

The proposal is as follows:

PROPOSAL 35

- It is proposed that the prescriptive constraints on investments of the Act respecting trust companies and savings companies be replaced by obligations similar to those set out in the Act respecting insurance.

8.3 Investments in a limited partnership

A limited partnership may prove useful as a vehicle for large-scale investment projects, such as real estate projects, for financial institutions that are members of the same financial group. However, the AI does not deal clearly with the ability of insurers to invest in such partnerships.

The proposal is as follows:

PROPOSAL 36

- It is proposed that the Act respecting insurance include a provision that would allow one or more financial institutions that are members of a financial group to invest in varying proportions in a limited partnership whose limited partner and general partner are also members of the same financial group.

8.4 Mandatory constitution of a subsidiary

The AI stipulates that where an activity other than insurance generates more than 2% of the gross revenue of an insurance company, the Minister may require the company to form a subsidiary to carry on such activity. No criterion is mentioned to guide the Minister in making his decision. The 2% threshold can be reached very quickly. Forming a subsidiary may also involve substantial expenditures.

With regard to the ATCSC, there is no minimum quantitative ratio for the constitution of a subsidiary. Rather, there is a principle under which the Minister may require a Québec corporation to constitute a subsidiary to carry on a specific activity where in his opinion the carrying on of such activity, because of its nature or its scope compared with that of the corporation's other activities, makes the application of oversight and control standards ineffective.

Moreover, in the context in which the Autorité des marchés financiers is in a position to judge the effectiveness of its oversight and control standards, it

would be more advisable that henceforth it impose the constitution of a subsidiary if need be. The provisions of the statutes on this matter should be harmonized.

The proposal is as follows:

PROPOSAL 37

- It is proposed that the Autorité des marchés financiers be allowed to require a financial institution to constitute a subsidiary where in its opinion the carrying on of such activity, because of its nature or its scope compared with the corporation's other activities, makes the application of oversight and control standards ineffective.

8.5 Broadening of the investment powers of a federation's guarantee fund

Section 93.219 of the AI specifies that the mutual insurance associations that found a federation must request the formation of a guarantee fund for the following purposes:

1° establish and administer a guarantee, liquidity or mutual assistance fund for the benefit of the members of the federation;

2° assist with the payment of losses suffered by the members of a mutual insurance association that is a member of the guarantee fund, upon the winding-up or dissolution of the association.

Among the investments allowed, section 93.250 specifies that a guarantee fund may acquire and hold fully paid common shares issued by a legal person constituted in Canada and carrying on business in Québec if the shares are listed on a recognized Canadian stock exchange and if the legal person which issued the shares has, in each of the five years preceding the acquisition, earned and paid on its common shares a dividend of at least 4% of their book value.

In the current economic context, such a provision limits the possibilities for a guarantee fund to acquire common shares of companies, since it is possible that many shares of listed companies do not meet the existing criteria of the AI, although they may prove to be appropriate investments.

The proposal is as follows:

PROPOSAL 38

- It is proposed to amend the Act respecting insurance to give more flexibility to a guarantee fund of a federation of mutual associations in the acquisition of its investments that must follow sound and prudent management practices in relation to its investments.

8.6 Optimum management of investment and securitization, hedging transactions on derivatives

The statutes impose limits on the capacity of financial institutions to pledge property as collateral. These limits may conflict with a widely used funding method: securitization.

Indeed, financial institutions already make extensive use of securitization. Many large Canadian banks and insurance companies use this funding method. Accordingly, an insurer may package a number of mortgage loans (maturing in five years) and assign them to another financial institution by issuing a security that will earn a specified return. The insurance company obtains funds it can use to meet its short and medium-term obligations or to make other types of investments. The acquirer obtains a yield on the mortgages without having to develop expertise in mortgage investment. For the borrower, there is no change.

Moreover, the existing limits may prevent financial institutions from acquiring certain products where transactions require collateral.

The provisions of the statutes should be modernized to clarify the rules on property pledged as collateral for securitization purposes or for derivative contracts.

The proposal is as follows:

PROPOSAL 39

It is proposed that the statutes specify that institutions may pledge property as collateral:

- for the needs of securitization programs;
- for derivatives contracts.

Quantitative and qualitative limits on the property that may be pledged as collateral for these purposes could be imposed by regulation if need be.

CHAPTER 9

MEASURES TO PROTECT THE PUBLIC AND POWERS OF THE AUTORITÉ DES MARCHÉS FINANCIERS

9.1 Oversight of institutions

Role and powers of the Authority

Both the Act respecting insurance (IA) and the Act respecting trust companies and savings companies (ATCSC) include a part dealing with the constitution and the corporate life of financial institutions. Another part deals with regulation, mainly of solvency, but also, to a lesser degree, of activities, of institutions that do business in Québec, whether or not they were constituted there.

Some requirements of the statutes are very prescriptive, others, not at all, since they only set performance requirements that allow the companies to decide how to achieve the required results.

Each of these statutes makes the government responsible for passing regulations.

The statutes make the Autorité des marchés financiers responsible for administering the enforcement of all their provisions.

In addition to its duties at the time of constitution of institutions, the Authority controls access to Québec's market by the issuing of a licence. The statutes impose certain requirements in relation to the issuing of a licence, many of which require the exercise of a certain degree of discretion.

Once the licence is issued, the institution can do business in accordance with the law. For instance, the institution must follow sound business practices. It must in this regard adequately inform the persons to whom it offers a product or service and act fairly in its dealings with them.

Furthermore, companies can make commitments with Québec consumers. Maintaining their solvency is essential to keeping their commitments. The statutes impose various obligations whose purpose is to avoid situations of insolvency and they also stipulate intervention processes if a company's financial situation deteriorates to the point where consumers' interests are threatened.

Oversight of institutions

The Authority controls access to the market. It issues the licence only if the institution satisfies the requirements of the law. These requirements are designed to ensure that the institution will be able to carry on its activities in compliance with the law and that it will be adequately overseen.

The Authority must then oversee the institution's ongoing financial situation. To do so, it receives at regular intervals various documents that by law must be filed. The Authority may also demand any information it considers relevant.

Moreover, the Authority must inspect institutions to check that the requirements of the law are satisfied. To do so, it has the requisite powers to enter the establishments of institutions and obtain the documents necessary for its work.

In addition to regular inspections, the Authority has the power to investigate and can exercise it where it considers it in the public interest to do so. The Authority's investigator is invested with the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment. However, it may call witnesses. The Authority may enter into agreements that vary according to the statutes and require certain commitments on the part of the financial institutions concerned or their subsidiaries in relation to the enforcement of the law.

The Authority has a number of powers. It has the power, in particular, to:

- give written instructions;
- require commitments;
- adopt guidelines on certain issues;
- issue orders;
- take recourse, such as an injunction.

There is a gradation in the above-mentioned powers that are briefly described below.

Written instruction

This is an order of the Authority to act or not to act or make corrections to a situation. A written instruction is further to discussions between the Authority and the financial institution and is not public.

Commitment

A commitment, for an institution, is an action by which it binds itself by a promise to file certain documents or information with the Authority. A concrete example is that of section 247.1 of the AI and section 40 of the Regulation respecting the application of the Act respecting insurance according to which a newly acquired subsidiary of an insurance company undertakes to file its annual financial statements.

Guideline

The statutes impose certain performance requirements whose assessment involves the exercise of a high level of discretion by the Authority. For instance, institutions must follow sound and prudent management practices and sound business practices, including maintenance of sufficient liquidity and capital.

While how these objectives are to be achieved is left up to the institutions, they prefer to know the Authority's expectations in these matters. The guideline is intended to make known these expectations.

Accordingly, guidelines are not prescriptive, since the legislation acknowledges that the institution decides how the goals are to be achieved. They are however a guide that an institution generally follows to the letter because in so doing it is sure to comply with the law as it is applied by the Authority.

An order

This is an order from the Authority to a person to do or not do something. The chief difference from the written instruction is that it is public and may be published in the *Bulletin de l'Autorité des marchés financiers* or by other means available to the Authority.

An injunction

An application for an injunction in Québec is a legal remedy before the Superior Court. It is a remedy under which the Authority may apply to the court to render an order to charge an institution not to do something or cease doing something immediately. A financial institution's failure to comply with guidelines means that it is assumed not to follow sound and prudent management practices for the purposes of an application to the court for an injunction by the Authority.

When the institution fails to observe the law

There are four broad categories of failures, i.e. failures to comply with requirements:

- relating to the operation of the institution (rules for holding a meeting, election of directors, shareholders' rights, amalgamation, continuation, amendments to the articles, constitution, etc.);
- relating to the oversight of the institution (failure to file reports, false information, failure to cooperate with inspectors, etc.);
- regarding business practices (practices that affect clients);
- concerning the ongoing solvency of the institution (sound and prudent management practices, capital and liquidity, investments).

Corporate affairs

Regarding corporate affairs, institutions are not subject to any specific control, except with respect to:

- their articles;
- constitution, amalgamation, continuation, conversion or amendments to their instrument of incorporation;
- change in significant shareholders;
- capital stock;
- name.

Generally, failure to comply with the requirements relating to the items directly controlled by the Authority or the Minister results in the inability of the institution to carry out the proposed transaction. In the case of a transfer of shares without the required authorizations, the new shareholders lose their voting rights as long as authorization has not been given. As far as other failures are concerned, for instance a breach of the rules regarding the election of directors, they are not subject to specific oversight by the Authority, unless they have an impact on consumer protection and the financial institution's obligations to them. It is up to the Authority to decide to intervene or not.

Administrative requirements

An institution may fail to satisfy administrative requirements. These breaches do not necessarily result in consequences. They are generally sanctioned by an administrative penalty.

Business practices

An institution may also fail to comply with the requirements of the law relating to its activities. These failings are more serious since consumers could be harmed. More severe sanctions are then necessary, and the Authority must be able to order the institution to cease its practices (order, written instructions, injunction, cancellation of a transaction).

Solvency

Failures relating to insolvency consist of situations where the institution fails to comply with the requirement to follow sound and prudent management practices. Indeed, such a failure will eventually result in a deterioration of the institution's financial situation and therefore threaten its solvency sooner or later.

Various stages can be identified in such a case:

- stage one: the institution's financial situation is not affected yet;
- stage two: the institution's financial situation is deteriorating, but can still be restored;
- stage three: the institution is heading unavoidably towards insolvency.

Stage one

It is not up to the Authority to manage the institution. That is the responsibility of the institution's directors. Accordingly, once it observes that the institution is following unsound or imprudent practices, the Authority's role at this stage is to advise the institution (officers and directors) of this observation and demand that the situation be corrected.

Stage two

When the financial situation of the institution deteriorates and is no longer satisfactory, the Authority must be able to agree with the officers of the institution on a clear action plan (voluntary compliance program) that it will closely monitor. Adoption of a voluntary compliance program is a procedure stipulated in the ATCSC (sec. 324) and in other statutes concerning financial institutions in Canada, but not stipulated in the AI.

Stage three

Where the situation has worsened to the point where insolvency seems inevitable, the Authority must take control of the financial institution concerned to minimize losses and set up a rescue plan. Under the ATCSC, the Authority may issue a freeze order under which no person may dispose of

certain property (sec. 329 et sec.). Such an order is not stipulated in the AI, which could be an additional measure to protect policy-holders.

Interim administration is a measure of last resort. The Superior Court may order the appointment of an interim administrator if the Authority demonstrates in particular that the assets of the financial institution are insufficient to meet its obligations.

Comparative analysis of the powers of the Authority to issue guidelines, give written instructions or require financial institutions to make commitments to it shows that there are differences between the two statutes. The Authority's powers of intervention, as well as the circumstances where these powers may be exercised, should be clarified.

The proposal is as follows:

PROPOSAL 40

It is proposed:

- that the Authority's powers of intervention, as well as the circumstances under which these powers may be exercised, be clarified;
- to stipulate that where a financial institution experiences financial difficulties likely to endanger its solvency, it must implement the voluntary compliance program required and approved by the Authority;
- that the Act respecting insurance stipulate provisions concerning a freeze operation similar to those stipulated in section 329 and following of the Act respecting trust companies and savings companies.

9.2 Broader powers of intervention of the Authority when a trust company, a savings company or an insurer are part of a financial conglomerate

Some insurers, trust companies and savings companies belong to financial conglomerates that, in some cases, encompass many financial institutions.

The financial solvency of a subsidiary or of the parent financial institution can have a significant impact on the financial situation of an insurer, a trust company or a savings company. Breaches of the AI and the ATCSC can also occur in subsidiaries of financial institutions.

The Authority must be in a position to demand from the insurer or the trust or savings company documents and information on its subsidiaries or on the company that controls them to ensure compliance with the statutes. In

addition, the Authority must be able to investigate when it has reason to believe that breaches of the law have been committed.

The proposal is as follows:

PROPOSAL 41

It is proposed:

- that the various powers of the Autorité des marchés financiers regarding a parent company and its subsidiaries be harmonized, both for insurers as well as for trust companies and savings companies;

- that it be clearly specified in the statutes that the subject financial institution must supply the Authority with the information concerning the various components of a conglomerate so it can ensure compliance with the statutes;

- that a provision be added to the statutes allowing the Authority to demand directly information or documents from a subsidiary or from the company that controls a financial institution that holds a licence issued by the Authority where the institution's solvency is at risk. In addition, the Authority should also be able to investigate when it has reason to believe that breaches of the law have been committed.

9.3 Adoption of regulatory provisions

The Authority is responsible for adopting most of the regulations made pursuant to the Act respecting the distribution of financial products and services (CQLR, chapter D-9.2) and the Securities Act (CQLR, chapter V-1.1). However, these regulations do not enter into force until the Minister of Finance has approved them. The advantage of this approach is that it draws on the Authority's skills and resources while maintaining government control in the form of ministerial approval.

The proposal is as follows:

PROPOSAL 42

- It is proposed that adoption of most regulations be entrusted to the Autorité des marchés financiers. These regulations would be approved by the Minister with or without modifications. Regulations concerning duties and rates as well as those having an impact on the scope of application of the laws would remain subject to government approval.

9.4 Powers to grant certain authorizations

Historically, most of the authorizations required under the statutes, in particular those with regard to constitution, amalgamation, continuation, winding-up, transfer of shares or constitution of a subsidiary, were the responsibility of the Minister, who thus had an active role in overseeing these institutions. To streamline the process, it is useful to review the distribution of responsibilities regarding these authorizations and to entrust those that are more administrative in nature to the Authority, in particular those relating to the constitution of a subsidiary, a name change, the continuation of an insurance company under the Business Corporations Act (BCA), changes to the capital stock and the winding-up of an insurer. The other authorizations stipulated in the statutes would continue to be given by the Minister of Finance considering the impacts that some of these authorizations may have on the financial sector and the economy as a whole.

The proposal is as follows:

PROPOSAL 43

- It is proposed to amend the statutes to give the Autorité des marchés financiers the responsibility for authorizing certain operations currently under the responsibility of the Minister that have no impact on the financial sector. However, the Minister will continue to be responsible for granting authorizations concerning constitution, conversion, continuation, amalgamation and winding-up.

9.5 Harmonization of provisions concerning the auditor

The external auditor and actuary in the case of an insurer play a key role in the ability of third parties, including shareholders and the Authority, to assess a financial institution's financial situation. The ATCSC includes a provision to allow the auditor to attend shareholders' meetings and be heard. There is no such provision in the AI.

The proposal is as follows:

PROPOSAL 44

- It is proposed to include a provision in the Act respecting insurance allowing the auditor to attend meetings of shareholders, members and participating policy-holders, if any, and to be heard.

Moreover, section 278 of the ATCSC stipulates that a director or a shareholder of the company may, by giving ten days' notice prior to the holding of a meeting, invite the auditor to attend. The auditor is then required to attend the meeting.

In addition, section 279 of the ATCSC stipulates that if, after the annual general meeting of shareholders, the directors become aware of facts that may have entailed important amendments to the company's financial statements, they must immediately inform the auditor and send him financial statements amended accordingly.

Similarly, the ATCSC contains provisions enabling the auditor to change his report if new facts are brought to his attention after filing his report. Section 280 of the ATCSC stipulates that if the auditor becomes aware or is notified of an error or misstatement in the financial statements on which he reported and if, in his opinion, the error or misstatement is material, he must inform the directors accordingly.

The directors thus informed must, within 60 days, either prepare and publish amended financial statements, or inform the shareholders and the Authority accordingly.

Where the auditor considers it necessary to amend his report, the board of directors shall also send the shareholders a copy of the amended report within 15 days of receiving it.

The proposal is as follows:

PROPOSAL 45

- It is proposed that the Act respecting insurance stipulate provisions similar to sections 278, 279 and 280 of the Act respecting trust companies and savings companies concerning the auditor.

CHAPTER 10

ELIMINATION OF IRRITANTS AND MISCELLANEOUS AMENDMENTS

10.1 The contribution of various funds to the development of an insurance company's business

Actuarial forecasts for certain participating policies have been established on the basis of mortality assumptions that have proven to be pessimistic. In fact, people are living much longer than initially anticipated. This is reflected in the financial results of with funds with participation in profits (participating funds), which have performed better than expected. Some insurance companies now have substantial surpluses identified in net equity as surplus allocated to participating funds.

The proposal is as follows:

PROPOSAL 46

- It is proposed that the Act respecting insurance include provisions to enable the transfer between participating funds and non-participating funds while ensuring that the insurer can continue to satisfy its financial obligations to its insured participants.

10.2 Reinsurance

Some foreign insurers, that only offer reinsurance services in Québec, generally do not do business directly with Quebecers. They only enter into contracts in Québec with insurers. However, they are subject to all the provisions of the Act respecting insurance (AI), a statute designed for insurers doing business with the public. Accordingly, these insurers are subject to an administrative burden that is difficult to justify.

Moreover, these insurers are already required to comply with the requirements of the oversight authority of the place where they were constituted and must satisfy certain capital requirements. The oversight regime for these insurers could therefore be eased.

The proposal is as follows:

PROPOSAL 47

- It is proposed that foreign insurers that do business in Québec only with insurers be subject to a simple obligation of certification by the Autorité des marchés financiers. Such certification would be given on the basis of the insurer's oversight and its financial situation as assessed by a rating agency.

10.3 Management of uninsured employee benefit plans

Uninsured employee benefit plans (UEBPs) are benefit plans offered by an employee to its employees that are very similar to insurance products. Apart from their insurer activities, not only can these plans offer insurance products, but they also manage certain uninsured employee benefit plans (generally set up by employers) against which complaints can be filed when claims are made.

However, participants in these plans do not always distinguish between insured and uninsured employee benefit plans and are unaware that their plan is not guaranteed. To dispel any ambiguity on this point, the AI should be clarified in this regard.

The proposal is as follows:

PROPOSAL 48

- It is proposed that the Act respecting insurance be amended so that an insurer, when it takes on the management of an uninsured employee benefit plan, inform the members of the plan to that effect, make the required clarifications regarding the guarantees that are or are not offered and advise participants that it is acting solely as plan manager.

10.4 Insurers and reciprocal insurance exchanges

Section 201 of the AI specifies that:

> Only the legal persons authorized for that purpose by law and holding licences issued by the Authority shall act as insurers in Québec.
>
> Lloyd's may obtain such a licence; this Act applies to them with the necessary modifications as if they were constituted as an insurance

> company. The same applies to insurers issuing reciprocal insurance contracts who are constituted under laws other than those of Québec.

A reciprocal insurer has no legal personality but operates like a mutual insurance company. Members' participations are variable. There is no compensation plan for this type of regime such as those of the Property and Casualty Insurance Compensation Corporation (PACICC) and Assuris.

Since these insurers are not subject to any capitalization requirement, they may have to solicit participants in the event of a major disaster. Problems arise when some members are not prepared or do not want to add capital.

This type of insurance allowed elsewhere in North America often causes problems in the other provinces and in the United States. In Québec, we have a public insurance plan in the farm sector, a sector that in many other jurisdictions is often covered by such reciprocal insurance.

It appears neither necessary nor truly appropriate to allow this type of system in Québec.

The proposal is as follows:

PROPOSAL 49

- It is proposed that the second paragraph of section 201 of the Act respecting insurance be amended so that it applies only to Lloyd's.

10.5 Oversight of indemnity funds of professional syndicates

Section 1 of the Act respecting insurance, which specifies its field of application, excludes indemnity funds set up under the Professional Syndicates Act. Section 10 of the AI accordingly restricts the powers of the Authority to inspect them.

Moreover, section 9 of the Professional Syndicates Act (CQLR, chapter S-40) specifies that:

> Professional syndicates may appear before the courts and acquire, by gratuitous or onerous title, any property suited to their particular objects.
>
> They shall, subject to existing laws, enjoy all necessary powers for the attainment of their object, and may, in particular:
>
> 1° establish and administer special indemnity funds for the heirs or beneficiaries of deceased members, or for the members on the decease of their spouses, special funds for assistance in case of illness or

> unemployment, or other funds of the same nature, which shall be governed exclusively by the by-laws approved by the Autorité des marchés financiers; […]

Accordingly, the Authority only approves the articles of such funds without being able to impose specific requirements or oversee them.

The proposal is as follows:

PROPOSAL 50

- The reference in subparagraph 1 of section 10 of the Act respecting insurance concerning syndicates should be removed and section 9 of the Professional Syndicates Act should be amended so that the Autorité des marchés financiers is no longer required to approve the articles of the funds mentioned therein.

10.6 Other provisions repealed or amended

The statutes could be amended to reflect the changes in financial terminology in Canada.

Some documents, like the investment slips of trust companies and savings companies, should no longer be required. The same should apply regarding certain requirements that the Authority publish certain information in the *Gazette officielle du Québec*, given that such information is available on the Authority's website.

The proposal is as follows:

PROPOSAL 51

It is proposed:

- that the statutes be amended to reflect the changes in financial terminology in Canada in recent years;

- that certain information no longer be published in the *Gazette officielle du Québec.*

CHAPTER 11

REORGANIZATION OF THE STATUTES

The Act respecting insurance (AI) has been amended many times since 1974, when it was revised. More than two hundred sections have been replaced or repealed since then and at least as many have been added. It would be appropriate as part of the quinquennial revision to re-examine the organization of the AI to make it more orderly.

In this regard, the content of the AI could be grouped under two specific themes.

Corporate provisions, in particular:

- the various corporate processes, such as:
  - constitution,
  - administration,
  - amalgamation,
  - continuation,
  - conversion,
  - dissolution,
  - winding-up,
  - share transfers,
  - reorganization.

Oversight:

- rules relating to business practices;
- rules relating to solvency;
- oversight by the Authority;
- the Authority's powers of intervention.

Lastly, the same exercise could be carried out for the Act respecting trust companies and savings companies (ATCSC) to harmonize the structure of the two statutes.

The proposal is as follows:

PROPOSAL 52

- It is proposed that the Act respecting insurance and the Act respecting trust companies and savings companies be reorganized to facilitate consultation and make them more user-friendly by separating administrative provisions from those dealing with the oversight and powers of intervention of the Autorité des marchés financiers.

CONCLUSION

This report contains a relatively large number of proposed amendments to the Act respecting insurance and the Act respecting trust companies and savings companies. The objective is to upgrade and modernize these statutes to make Quebec's legislation the most effective in terms of consumer protection in North America.

The proposals in this report essentially aim to bolster the protection of savers and policy-holders while minimizing the administrative burden on financial institutions. They particularly affect the corporate life of insurers, trust companies and savings companies as well as improving the means available to the Autorité des marchés financiers to carry out oversight.

It should be added that the report has not necessarily dealt in detail with the legislative changes of a purely technical nature or the adjustments arising from changes in legal and accounting terminology that it would be desirable to undertake.

SUMMARY OF PROPOSALS

Harmonization of the Act respecting insurance with the Act respecting trust companies and savings companies

PROPOSAL 1

- It is proposed to harmonize the wording of the provisions of the statutes that deal with the same subjects and to integrate in the statutes the provisions of the Business Corporations Act that require adaptations or that it would be useful to reproduce.

Constitution, organization, transfer of shares, amalgamation, continuation and winding-up

PROPOSAL 2

- It is proposed that the capital required to constitute an insurance company, a trust company or a savings company, including the required capital stock and contributed surplus, be raised to $5 million. However, the Autorité des marchés financiers may require more where justified by the risks identified in the business plan.

PROPOSAL 3

- It is proposed that the legislation specify the factors to be taken into consideration to authorize the constitution of an insurance company, a trust company or a savings company.

PROPOSAL 4

- It is proposed that the statutes stipulate provisions regarding the protection of third parties after the constitution of an insurer, trust company or savings company.

PROPOSAL 5

- It is proposed that provisions relating to first meetings be incorporated into the statutes with adaptations reflecting the specific situations of the financial institutions concerned.

PROPOSAL 6

- It is proposed that the Autorité des marchés financiers be given responsibility for establishing the appropriate certificate when an application for constitution or amendment of the articles presented by a financial institution. The Authority must send a copy to the Registraire des entreprises to be entered in the registry.

PROPOSAL 7

It is proposed:

- that what constitutes a transaction within the meaning of sections 43 of the Act respecting insurance and section 69 of the Act respecting Trust companies and savings companies be stipulated in the statutes;

- that it be expressly stipulated that a limited partnership may hold shares of an insurance company, a trust company or a savings company.

PROPOSAL 8

- It is proposed that it be specified that the authorization application must be submitted by the financial institution governed by the law and what information and documents must accompany the application.

PROPOSAL 9

- It is proposed that the exemption for shares listed on a Canadian stock exchange be eliminated.

PROPOSAL 10

- It is proposed that a streamlined continuation mechanism under Québec jurisdiction or to another jurisdiction be stipulated.

PROPOSAL 11

- It is proposed that the statutes specify the factors to be taken into consideration to authorize the amalgamation or conversion of insurers, trust companies or savings companies.

PROPOSAL 12

- It is proposed that the statutes specify the process for the amalgamation or conversion of insurers, and for the amalgamation or conversion of trust companies or savings companies.

PROPOSAL 13

- It is proposed that the Act respecting insurance stipulate the mandatory assessment by an independent external actuary of the actuarial liabilities of each of the insurance companies that want to amalgamate as well as those of the amalgamated company.

PROPOSAL 14

- It is proposed that section 175 of the Act respecting insurance be amended allow the Minister to authorize, in corporate reorganizations, the amalgamation of an insurance company with another company if the amalgamated company is an insurance company.

PROPOSAL 15

- It is proposed that the existing ownership restrictions on non-residents regarding a Québec-chartered trust company or savings company or the person who controls it be repealed.

PROPOSAL 16

- It is proposed that the applicable provisions of the statutes regarding winding-up be modernized to streamline the process and that responsibility for monitoring it be given to the Autorité des marchés financiers.

Administration of an insurer, a trust company or a savings company

PROPOSAL 17

- It is proposed that the books, accounts and records that must be kept at the head office of the financial institution be specified.

PROPOSAL 18

- It is proposed that the content of certain records that must be kept, such as the register of securities, shareholders, participating policy-holders or that of the members of a mutual insurance company, be specified.

PROPOSAL 19

- It is proposed to specify to whom access to certain books or documents is reserved and the conditions that may apply for the use of their content.

PROPOSAL 20

- It is proposed, for financial statements and annual reports, that a retention period of six years after the end of the fiscal year to which they relate be set. The same applies for records of insurance claims already settled.

PROPOSAL 21

- It is proposed that the existing rules regarding the composition of the board of directors of an insurance company, trust company or savings company be replaced with the requirement that a majority of the directors reside in Canada.

PROPOSAL 22

- It is proposed that where a subsidiary is wholly owned by the parent company, the employees and officers of the parent company and the subsidiary may sit to the latter's board of directors, but may not represent 50% or more of the directors.

PROPOSAL 23

- It is proposed that the statutes specify that the same persons can sit on the audit committees of a financial institution and of its single shareholder that is also a financial institution.

PROPOSAL 24

- It is proposed that all the obligations of the board of directors be consolidated in a single provision of the statutes.

PROPOSAL 25

- It is proposed that the statutes specify the powers of the board of directors that cannot be delegated.

PROPOSAL 26

- It is proposed that a provision similar to the one of the Business Corporations Act broadening the circumstances in which a director is presumed to have fulfilled his obligation to act with prudence and diligence be stipulated.

PROPOSAL 27

- It is proposed that provisions similar to those of the Business Corporations Act regarding the defence of directors be added to the statutes.

PROPOSAL 28

- It is proposed that it should be specified that the special resolution or by-law concerning remuneration must include all the sums paid to a director, regardless of why they are paid.

PROPOSAL 29

- It is proposed that the members of the board of directors be explicitly required to see to compliance with the applicable laws.

PROPOSAL 30

- It is proposed that special provisions be added to the Act respecting insurance regarding meetings of shareholders or of members regarding the method of convening participating policy-holders and members, if need be, notification deadlines, number of shareholders or members as well as participating policy-holders required to hold a meeting and the dates set to be entitled to participate in the meetings.

PROPOSAL 31

- It is proposed that the topics that may be discussed at an annual meeting of shareholders, participating policy-holders or members without being mentioned in the notice of meeting be specified.

PROPOSAL 32

- It is proposed that a director or a shareholder be allowed to apply to a court to resolve an impasse resulting from an inability to hold a vote, with the financial institution in question bearing the cost.

PROPOSAL 33

- It is proposed that the directors, if they form a quorum, be allowed to fill vacancies where the number of directors falls below the required minimum of seven. The Autorité des marchés financiers should be informed of the situation when it occurs.

Investments

PROPOSAL 34

- It is proposed to allow a financial institution to hold directly any proportion of the equity or voting rights of a legal person that operates exclusively in the real estate sector as long as this financial institution and the legal persons it controls control it jointly.

PROPOSAL 35

- It is proposed that the prescriptive constraints on investments of the Act respecting trust companies and savings companies be replaced by obligations similar to those set out in the Act respecting insurance.

PROPOSAL 36

- It is proposed that the Act respecting insurance include a provision that would one or more financial institutions that are members of a financial group to invest in varying proportions in a limited partnership whose limited partner and general partner are also members of the same financial group.

PROPOSAL 37

- It is proposed that the Autorité des marchés financiers be allowed to require a financial institution to constitute a subsidiary where in its opinion the carrying on of such activity, because of its nature or its scope compared with the corporation's other activities, makes the application of oversight and control standards ineffective.

PROPOSAL 38

- It is proposed to amend the Act respecting insurance to give more flexibility to a guarantee fund of a federation of mutual associations in the acquisition of its investments that must follow sound and prudent management practices in relation to its investments.

PROPOSAL 39

It is proposed that the statutes specify that institutions may pledge property as collateral:

- for the needs of securitization programs;
- for derivatives contracts.

Quantitative and qualitative limits on the property that may be pledged as collateral for these purposes could be imposed by regulation if need be.

Measures to protect the public and powers of the Authority

PROPOSAL 40

It is proposed:

- that the Authority's powers of intervention, as well as the circumstances under which these powers may be exercised, be clarified;
- to stipulate that where a financial institution experiences financial difficulties likely to endanger its solvency, it must implement the voluntary compliance program required and approved by the Authority;
- that the Act respecting insurance stipulate provisions concerning a freeze operation similar to those stipulated in section 329 and following of the Act respecting trust companies and savings companies.

PROPOSAL 41

It is proposed:

- that the various powers of the Autorité des marchés financiers regarding a parent company and its subsidiaries be harmonized, both for insurers as well as for trust companies and savings companies;

- that it be clearly specified in the statutes that the subject financial institution must supply the Authority with the information concerning the various components of a conglomerate so it can ensure compliance with the statutes;

- that a provision be added to the statutes allowing the Authority to demand directly information or documents from a subsidiary or from the company that controls a financial institution that holds a licence issued by the Authority where the institution's solvency is at risk. In addition, the Authority should also be able to investigate when it has reason to believe that breaches of the law have been committed.

PROPOSAL 42

- It is proposed that adoption of most regulations be entrusted to the Autorité des marchés financiers. These regulations would be approved by the Minister with or without modifications. Regulations concerning duties and rates as well as those having an impact on the scope of application of the laws would remain subject to government approval.

PROPOSAL 43

- It is proposed to amend the statutes to give the Autorité des marchés financiers the responsibility for authorizing certain operations currently under the responsibility of the Minister that have no impact on the financial sector. However, the Minister will continue to be responsible for granting authorizations concerning constitution, conversion, continuation, amalgamation and winding-up.

PROPOSAL 44

- It is proposed to include a provision in the Act respecting insurance allowing the auditor to attend meetings of shareholders, members and participating policy-holders, if any, and to be heard.

PROPOSAL 45

- It is proposed that the Act respecting insurance stipulate provisions similar to sections 278, 279 and 280 of the Act respecting trust companies and savings companies concerning the auditor.

PROPOSAL 46

- It is proposed that the Act respecting insurance include provisions to enable the transfer between participating funds and non-participating funds while ensuring that the insurer can continue to satisfy its financial obligations to its insured participants.

PROPOSAL 47

- It is proposed that foreign insurers that do business in Québec only with insurers be subject to a simple obligation of certification by the Autorité des marchés financiers. Such certification would be given on the basis of the insurer's oversight and its financial situation as assessed by a rating agency.

Elimination of irritants and miscellaneous amendments

PROPOSAL 48

- It is proposed that the Act respecting insurance be amended so that an insurer, when it takes on the management of an uninsured employee benefit plan, inform the members of the plan to that effect, make the required clarifications regarding the guarantees that are or are not offered and advise participants that it is acting solely as plan manager.

PROPOSAL 49

- It is proposed that the second paragraph of section 201 of the Act respecting insurance be amended so that it applies only to Lloyd's.

PROPOSAL 50

- The reference in subparagraph 1 of section 10 of the Act respecting insurance concerning syndicates should be removed and section 9 of the Professional Syndicates Act should be amended so that the Autorité des marchés financiers is no longer required to approve the articles of the funds mentioned therein.

PROPOSAL 51

It is proposed:

- that the statutes be amended to reflect the changes in financial terminology in Canada in recent years;

- that certain information no longer be published in the Gazette officielle du Québec.

Reorganization of the statutes

PROPOSAL 52

- It is proposed that the Act respecting insurance and the Act respecting trust companies and savings companies be reorganized to facilitate consultation and make them more user-friendly by separating administrative provisions from those dealing with the oversight and powers of intervention of the Autorité des marchés financiers.

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