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# NATIONAL ASSEMBLY

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FIRST SESSION

THIRTY-FOURTH LEGISLATURE

Bill 11

## **An Act to amend the Act respecting Québec business investment companies**

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### **Introduction**

**Introduced by  
Mr Gérald Tremblay  
Minister of Industry, Trade and Technology**

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#### EXPLANATORY NOTES

*This bill follows up the Budget Speech of 16 May 1989 by amending the Act respecting Québec business investment companies.*

*It provides for an increase in the investment limit to \$2 500 000.*

*The bill also provides that the conversion of a convertible debenture or convertible preferred share may, under certain conditions, constitute a qualified investment.*

*It provides amendments to encourage investments in the regions and broadens the rules relating to stock ownership plans.*

*Finally, the bill provides certain amendments to ensure the integrity of the programme, together with other provisions of a technical nature to simplify application of the Act.*

# Bill 11

## **An Act to amend the Act respecting Québec business investment companies**

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

**1.** Section 1 of the Act respecting Québec business investment companies (R.S.Q., chapter S-29.1) is amended by replacing the second paragraph by the following paragraph:

“For the purposes of this Act, a company shall be a private corporation within the meaning of section 1 of the Taxation Act (R.S.Q., chapter I-3). However, a company may be controlled directly or indirectly by one or more venture capital corporations which are public corporations within the meaning of section 1 of the Taxation Act.”

**2.** Section 2 of the said Act, amended by section 1 of chapter 80 of the statutes of 1988, is again amended by striking out the second paragraph.

**3.** Section 4 of the said Act, amended by section 3 of chapter 80 of the statutes of 1988, is again amended by replacing subparagraph 1 of the first paragraph by the following subparagraph:

“(1) where the company proves that common shares with full voting rights of its share capital have been subscribed and paid in cash in an amount of not less than \$100 000, except for a company or employee-owned company making only qualified investments in a designated region in accordance with section 12.3, in which case the amount shall not be less than \$50 000;”.

**4.** Section 4.1 of the said Act is amended by adding, at the end, the word and figure “or 15.2.1”.

**5.** Sections 4.2 and 4.3 of the said Act, enacted by section 4 of chapter 80 of the statutes of 1988, are repealed.

**6.** Section 8 of the said Act, amended by section 6 of chapter 80 of the statutes of 1988, is again amended by replacing paragraph 5 by the following paragraph:

“(5) upon reduction of the paid-up capital in respect of the company’s common shares with full voting rights

(a) either, after 1 May 1986, to less than \$100 000 in the case of a company which, during the 24 months preceding the date on which the paid-up capital was reduced, has made and still holds a qualified investment outside a designated region;

(b) or, after 12 May 1988, to less than \$50 000 in every other case.”

**7.** Section 11 of the said Act is replaced by the following section:

**“11.** A company shall make a qualified investment contemplated in section 12.2 or 12.3 to enable its shareholders to avail themselves of the tax benefits provided in the Taxation Act in respect of a company.

The amount of a qualified investment shall be established by regulation of the Government.”

**8.** Section 12 of the said Act, amended by section 8 of chapter 80 of the statutes of 1988, is again amended

(1) by striking out the word and figure “or 4.2” in the first line of subparagraph 1 of the first paragraph;

(2) by striking out the word and figure “or 4.3” in the first line of subparagraph 2 of the first paragraph, and by inserting the word and figure “or 15.2.1” after the figure “15.2” in the sixth line of the same paragraph;

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

“(3) in the case of a company referred to in section 4, a common share with full voting rights of the share capital of a qualified corporation that is acquired by a company as first purchaser, following the conversion of a convertible security of a qualified corporation that is acquired by a company as first purchaser after 16 May 1989, to the extent that such a conversion is made within 60 months from the date

on which the convertible security was issued and on the conditions determined by regulation of the Government,

“(4) in the case of a company referred to in section 4.1, a common share with full voting rights of the share capital of a qualified corporation that is acquired by a company as first purchaser, following the conversion of a convertible security of a qualified corporation that is acquired by a company as first purchaser after 16 May 1989, to the extent that such a conversion is made within 60 months from the date on which the convertible security was issued and on the conditions determined by regulation of the Government, and provided that each shareholder of the company holds, directly, indirectly or with related persons who are not employed by the qualified corporation or by a subsidiary mentioned in section 15.2 or 15.2.1, less than 5 % of the voting shares of the share capital of the qualified corporation,”;

(4) by replacing the first four lines of the third paragraph by the following lines:

“To be qualified, the corporation shall, at the time of acquisition, meet the following conditions:”;

(5) by replacing the words “two years” in the second line of subparagraph 6 of the third paragraph by the word and figure “24 months”, and by inserting the word “prior” before the word “authorization” in the third line of the same subparagraph;

(6) by striking out the fourth paragraph;

(7) by replacing the words “the fourth paragraph” in the second line of the fifth paragraph by the word and figure “section 12.3”, and by replacing the words “two years” in the third line of the same paragraph by the word and figure “24 months”.

**9.** Section 12.1 of the said Act, amended by section 9 of chapter 80 of the statutes of 1988, is again amended by replacing the words “in subparagraph 2 of the fourth paragraph of the said section” in the second and third lines of paragraph 1 by the words and figure “in paragraph 2 of section 12.3”, and by replacing the words “two years” in the third and fourth lines of the same paragraph by the word and figure “24 months”.

**10.** The said Act is amended by adding, after section 12.1, the following sections:

**“12.2** A qualified investment outside a designated region is an investment which, at the time of acquisition,

(1) is a qualified investment under section 12;

(2) is made by a company whose paid-up capital in respect of its issued and outstanding common shares with full voting rights is not less than \$100 000.

**“12.3** A qualified investment in a designated region is an investment which, at the time of acquisition,

(1) is a qualified investment under section 12;

(2) is made in a qualified corporation which, during the 12 months preceding the date of the investment, or during the months preceding that date in the case of a corporation which has been operating for less than 12 months, has paid more than 75% of the wages paid to its employees, within the meaning of section 771 of the Taxation Act, to employees of an establishment located in a designated region;

(3) is made by a company whose paid-up capital in respect of its issued and outstanding common shares with full voting rights is not less than \$50 000.”

**11.** Section 13 of the said Act is replaced by the following section:

**“13.** No qualified corporation may be the beneficiary of an aggregate of qualified investments in excess of \$2 500 000 for the total qualified investments made in the qualified corporation and in all the corporations with which it is associated. However, for the purpose of computing that amount, any excess amount is deemed not to be a qualified investment and qualified investments held for at least 24 months in the qualified corporation and in the corporations with which it is associated shall not be taken into account.”

**12.** Section 13.1 of the said Act, enacted by section 10 of chapter 80 of the statutes of 1988, is amended by adding the following paragraph:

“The Société de développement industriel du Québec may, in particular, refuse to validate an investment if, in the opinion of the Société, the price paid by a company for the shares of the capital of a qualified corporation is considerably higher than the value of a common share issued before or after the investment by the qualified corporation, taking into account for this purpose the net assets of the shareholders of the qualified corporation.”

**13.** Section 13.2 of the said Act, enacted by section 10 of chapter 80 of the statutes of 1988, is amended by replacing the words and

figure “the fourth paragraph of section 12” in the third and fourth lines of paragraph 3 by the word and figure “section 12.3”.

**14.** The said Act is amended by inserting, after section 13.2, the following section:

**“13.3** In all cases where its prior authorization is required for a transaction, operation or event, the Société de développement industriel du Québec may authorize such a transaction, operation or event if it is proved that, notwithstanding the absence of its prior authorization, the fact of authorizing the transaction, operation or event does not contravene the objectives pursued by this Act and the regulations.”

**15.** Section 15.1 of the said Act, amended by section 12 of chapter 80 of the statutes of 1988, is again amended by striking out the word and figure “or 4.3” in the fourth line.

**16.** The said Act is amended by inserting, after section 15.2, the following section:

**“15.2.1** A stock ownership plan may provide that the expression “eligible employee of a qualified corporation” also means any individual residing in Québec who is in the employ of a subsidiary not less than 50 % of the shares of the issued capital stock of which, with full voting rights under all circumstances, are owned directly or indirectly by the qualified corporation and who, immediately before the acquisition of the shares from the company, and immediately before its registration, holds directly, indirectly or with related persons who are not employed by the qualified corporation or by such a subsidiary, less than 5% of the shares of the issued capital stock of the qualified corporation.”

**17.** Section 15.3 of the said Act is replaced by the following section:

**“15.3** A stock ownership plan may provide that an individual is not an eligible employee of a corporation if, at the time of acquisition of the shares of the company, he cannot prove three consecutive months of service with the qualified corporation or a subsidiary mentioned in section 15.2 or 15.2.1.”

**18.** Section 16 of the said Act, amended by section 13 of chapter 80 of the statutes of 1988, is again amended

(1) by inserting, after subparagraph 8 of the first paragraph, the following subparagraphs:

“(9) define the expression “convertible security”, determine the terms and conditions relating to the issue and conversion of a convertible security and the use made by the qualified corporation of the funds resulting from the issue of a convertible security, and allow the Société de développement industriel du Québec to consider that a convertible security is not qualified when, in the opinion of the Société, its yield constitutes a substantial cash outflow, or when its issue was preceded or followed by a substantial cash outflow in favour of shareholders of a qualified corporation or a company, or in favour of persons related to either one of them;

“(10) define the expression “amount of the qualified investment”;

“(11) determine the conditions which must be respected by a qualified corporation involved in a merger to ensure that, notwithstanding the Taxation Act, a company is not deemed to have disposed of a share which formed part of a qualified investment;

“(12) define the word “employee”.”;

(2) by striking out the second paragraph.

**19.** Companies registered before 17 May 1989 as regional companies or employee-owned regional companies pursuant to sections 4.2 and 4.3 of the Act respecting Québec business investment companies, repealed by section 5 of this Act, shall be considered to be companies registered under section 4 or 4.1, as the case may be, of the Act respecting Québec business investment companies.

**20.** Sections 2, 3, 4, 5, 13, 15, 16 and 19 and paragraph 5 of section 7 have effect from 17 May 1989.

**21.** Sections 6, 8, 9, 10, 11, 12, 14 and paragraphs 1, 2, 3, 4, 6 and 7 of section 7 apply to every investment made after 16 May 1989.

**22.** Section 1 has effect from 13 May 1988.

**23.** The regulations to be made before 1 October 1990 under subparagraphs 2, 2.1, 4, 6, 9, 10, 11 and 12 of section 16 of the Act respecting Québec business investment companies, amended by section 18 of this Act, may provide that they will apply from any date not prior to 17 May 1989.

**24.** This Act comes into force on (*insert here the date of assent to this Act*).