

## C H A P . 63

An Act respecting the powers of certain companies to issue and re-issue bonds, debentures and other securities

[Assented to, the 15th of March, 1924]

**W**HEREAS doubts have arisen as to whether, under Preamble. articles 6119a and following of the Revised Statutes, 1909, as enacted by the act 4 George V, chapter 51, section 1, a company may cede and transfer to a trustee, with power, in the event of the failure of the company to fulfil the conditions of the trust deed, to take possession of, administer and sell the properties which it is authorized to hypothecate, mortgage and pledge;

Therefore, His Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

**1.** It is and always has been lawful for a company falling under articles 6119a and following of the Revised Statutes, 1909, besides hypothecating, mortgaging and pledging for the purposes set forth in the said articles, to cede and transfer, for the same purposes, the said properties to the trustee, with power, in the event of the failure of the company to fulfil the conditions of the trust deed, to take possession of the properties ceded and transferred, to administer and sell them for the benefit of the bondholders.

Transfer of property by company to trustee with power to deal there-with for benefit of bondholders.

**2.** This act shall apply to pending suits, save as to costs.

Pending suits.

**3.** This act shall come into force on the day of its sanction.

Coming into force.

## C H A P . 64

An Act respecting the issue and sale of shares, bonds and other securities

[Assented to, the 15th of March, 1924]

**H**IS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

**1.** The following subsection and articles are inserted in the Revised Statutes, 1909, after article 6119e, as enacted by the act 8 George V, chapter 62, section 1.

R. S., 6119f to 6119j, enacted.

“§ 6.—*Issue and sale of shares, bonds and other securities*

Meaning of word “company”.

“**6119f.** 1. The word “company” as used in this subsection means:

*a.* All corporations and joint stock companies incorporated, after the date of the coming into force of the act 14 George V, chapter 64, as fixed by the proclamation mentioned in section 2 of the said act, by or under an act of the Legislature of this Province, authorized by their charter or by the general law to issue shares or bonds;

*b.* Corporations and companies incorporated, after the date of the coming into force of the act 14 George V, chapter 64, as fixed by the proclamation mentioned in section 2 of the said act, in any way, by or under an act of the Legislature of another province in Canada, or of a foreign country.

“Bond”.

2. In the present subsection, unless the context requires another interpretation, the word “bond” includes both bonds and debenture stock; the word “share” includes all kinds of shares and share warrants.

“Share”.

Where not applicable.

3. This subsection does not apply to:

*a.* The bonds and shares issued by a corporation or company whose shares or bonds are listed upon any incorporated stock exchange in Canada, or upon the Exchange (*Bourse*) of Paris, London or New York;

*b.* The issue of shares and bonds by any company in favour of its shareholders or bondholders as dividends or as division of profits, or upon a reorganization, or upon any new issue whatsoever, nor to the sale of shares or bonds made judicially or by an executor, an administrator, a sequestrator, an official receiver, a guardian, or a trustee appointed under judgment of a Court;

*c.* Any isolated sale of any security by the owner thereof, or his representative, for the owner’s account, such sale not being made in the course of repeated and successive transactions of a like character by such owner or on his account by such representative, and such owner or representative not being the underwriter of such securities.

Prior to issue, etc., of bonds, following documents transmitted:

“**6119g.** No company may issue, sell, offer for sale or otherwise dispose of, in any manner, directly or indirectly, through an officer, an agent or any person, its bonds in this Province, unless it has previously transmitted, to the Provincial Secretary, the following documents:

Copy of charter, etc.:

1. A copy of its charter, of its articles of association or of any other act or document incorporating it, as well as of all supplementary letters patent, if any, certified to be

true copies by the officer having the custody of the originals of such document ;;

2. A copy of the by-law of the directors of the company, ordering the issue and sale of such bonds, showing the date of the passing of the by-law by the directors, the date of the shareholders' meeting at which the by-law was approved, the number of shares held or represented by the shareholders present at such meeting and by the shareholders who have voted in favour of the by-law, the aggregate amount of the proposed issue of bonds, the number and par value of such bonds, the rate of the interest they shall bear, the date of their maturity and the description of the moveable and immoveable property to be given in security, if any, with a statement of the value of such properties. Such copy of the by-law must be certified to be a true copy by the president or vice-president and the secretary of the company, and bear the company's seal;

Copy of by-law ordering issue and sale; contents and certification thereof;

3. A copy of every estimate and prospectus and of every other representation in writing made by the company or upon its instructions, containing a statement of the profits likely to be realized;

Copy of estimate, prospectus, etc.;

4. A statement certified by the auditor of the company and sworn to by two of the directors, showing:

Certified and sworn statement; contents.

a. The number of shares, if any, fixed by the by-laws, to qualify as a director, and the conditions determined by the by-laws of the company for the remuneration of the directors;

b. The names, quality and addresses of the directors and their salaries, if any;

c. The cash on hand;

d. The aggregate amount of the claims of the company showing the aggregate amount of those doubtful of realization;

e. The claims of the company against the directors, officers and shareholders, respectively, as well as their claims against the company, showing the amount and nature of such claims,—the balance due by the shareholders upon the shares not fully paid-up may be indicated by a lump sum;

f. Merchandise on hand and its value;

g. Disbursements made for future operations;

h. The moveable and immoveable property, and their value;

i. The goodwill, grants, patents and copyrights, trademarks, leases, contracts and permits;

j. The debts of the company, secured by hypothecs or other charges on the property of the company, setting forth such securities and the names of the creditors;

*k.* The aggregate amount of the unsecured debts of the company; the name of the creditor and the nature of each debt to be indicated when the debt is the result of any operation outside of the ordinary course of the company's business;

*l.* The amount of common shares, subscribed for and allotted, and the amount paid upon such shares, indicating in what proportion such shares were issued for services rendered, commissions or purchase of assets, since the organization of the company;

*m.* The amount of preferred shares, if any, subscribed for and allotted, and the amount paid on such shares, indicating in what proportion such shares were allotted for services rendered, commissions or purchase of assets, since the formation of the company;

*n.* The indirect and conditional obligations and their value:

*o.* The previous issues and sales of bonds, if any, with all details of such issues and sales;

*p.* The amount to be deducted for depreciation of the stock in trade and of any property of the company;

*q.* The total amount of share warrants issued;

*r.* The names and addresses of the auditors of the company's accounts.

Prior to issue, etc., of shares, following documents transmitted:

**6119h.** No company shall issue, sell, offer for sale or otherwise dispose of in any manner, directly or indirectly, through an officer, agent or any person, any share of its capital stock unless it has previously transmitted to the Provincial Secretary, the following documents:

Copy of charter, etc.:

1. A copy of its charter, of its articles of association or of any other act or document incorporating it, as well as of all supplementary letters patent, if any, certified to be true copies by the officer in charge of the originals of such documents;

Copy of by-law ordering issue and sale; contents and certification thereof;

2. A copy of the by-law of the directors of the company ordering the issue and sale of such shares, indicating the date of the passing of the by-law by the directors, the total amount of the proposed issue, the number and complete description of such shares, including the privileges affecting any such shares. Such copy of the by-law shall be certified to be a true copy by the president or vice-president and the secretary of the company and shall bear the company's seal;

Copy of estimate, prospectus, etc.:

3. A copy of every estimate and prospectus and of every other representation in writing made by the company or upon its instructions, containing a statement of the profits likely to be realized;

4. A statement certified by the auditor of the company and sworn to by two of the directors, setting forth; Certified and sworn statement; contents.

*a.* The names, quality, and addresses of the persons who applied for the incorporation, the number of shares subscribed for by each of them, and the nature and extent of the interest of each of the subscribers in the property and profits of the company;

*b.* The number of shares, if any, fixed by the by-laws, to qualify as a director and the conditions fixed by the by-laws of the company, for the remuneration of directors;

*c.* The names, quality, and addresses of the directors or proposed directors, stating their salaries, if any;

*d.* The minimum subscription required before the directors may proceed to allot shares, and the sum to be paid upon subscribing and that upon allotment; and, in the event of a second issue or a subsequent issue of shares, the amount offered for subscription at each previous allotment in the two preceding years, as well as the amount actually allotted and the instalments, if any, paid on the price of the shares so allotted;

*e.* The number and amount of shares and bonds which within the two preceding years have been issued or agreed to be issued, as fully or partly paid up otherwise than in cash; and, in the latter case, the statement must show to what extent these shares or bonds were so paid up, and, in both instances, the consideration for which the issue of the shares or bonds was made or proposed;

*f.* The names and addresses of the vendors of any property, acquired by the company or which it intends to acquire, which is to be paid for, wholly or partly, out of the proceeds of the proposed issue, or whose acquisition was not completed at the date of the proposed issue, but which is proposed to be paid for out of such proceeds, and the sum payable to the vendor in cash, shares or bonds, and, if there is more than one vendor, or if the company is a sub-purchaser, the sum payable to each vendor; provided that if the vendors are a firm they shall not be treated as separate vendors;

*g.* The amount, if any, paid or payable as the purchase price in cash, shares or bonds, for the purchase of any property, as above mentioned, specifying the amount, if any, allowed for goodwill;

*h.* The amount, if any, paid during the two preceding years or payable, as commission, for the placing or subscription of shares or bonds of the company and the rate of such commission; but it shall not be necessary to mention the commissions payable to those who have dealt with sub-underwriters;

*i.* The amount or estimated amount of preliminary expenses;

*j.* The amount paid within the two preceding years or to be paid to any promoter, and the consideration for any such payment;

*k.* The dates of every material contract with the names of the contracting parties, and a reasonable time and place at which each such contract or a copy may be inspected; this provision shall not apply to a contract relating to matters dealt with or to be dealt with in the ordinary course of the company's business, or to a contract made more than two years before the date of the proposed issue or sale;

*l.* The names and addresses of the auditors, if any, of the company's accounts;

*m.* Full particulars of the nature and extent of the interest, if any, of each director in the promotion of the company or in the properties which the company proposes to acquire, or, if the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or to be paid to such director or the firm in cash, shares or otherwise, by any person, either to induce him to become, or to qualify him as, a director, or for other services rendered by him or by the firm, in the promotion or formation of the company; and

*n.* If the company has shares of more than one class, the voting right respectively conferred by each class of shares, at the meeting of the company.

Party deemed vendor.

5. For the purposes of this article, every person who has been a party to a contract for the sale or purchase, or option to purchase, a property, bought or to be bought by the company, is deemed to be the vendor in the following instances:

*a.* If the purchase price has not been fully paid at the date of the proposed issue or sale;

*b.* If the purchase price is to be wholly or partly paid out of the proceeds of the proposed issue or sale;

*c.* If the contract depends for its validity or fulfilment on the result of such proposed issue or sale.

Application where lease instead of sale.

6. When a property is to be leased by the company, the present article applies as if the word "vendor" also meant lessor, and the expression "purchase price" included also rent, and the expression "sub-purchaser" included sub-lessee.

Nullity of stipulation inducing waiver, etc.

7. Every stipulation is null which induces or compels a subscriber for shares or bonds to waive compliance with any requirement of this article, or purports to affect him

with notice of any contract, document or matter not specifically mentioned in the statement.

8. This article shall not apply to sales of shares made by a company to persons who have signed the application or documents necessary for the incorporation of the company, nor does it apply to companies whose letters patent of incorporation or supplementary letters patent:

*a.* Limit the number of shareholders to twenty, exclusive of the present and past employees who are shareholders of the company and who have continued so to be after leaving its employ;

*b.* Forbid any appeal to the public to subscribe for shares.

9. Nothing in this article shall limit or diminish any liability arising from any other provision of law.

**6119i.** It is forbidden for any company, association or person, issuing or offering for sale the shares or bonds of any company, to mention, in the share-certificate or on the bond or in any written or printed document intended for publication, that the formalities required under the preceding articles for the issue and sale of such shares or bonds have been complied with other than by the declaration that the formalities required under the law with respect to the issue and sale of shares, bonds and other securities have been complied with.

**6119j.** Any company which does or allows to be done one or more of the transactions contemplated by articles 6119g and 6119h, without the formalities required by these two articles having been accomplished, shall lose its civil recourse against the purchasers of such shares or bonds for the purchase price or balance of purchase price thereof; and the directors of such company, who may have participated, by their vote, in the commission of such infringement, shall be jointly and severally liable for the repayment of the shares or bonds sold contrary to this subsection, to the extent of the price paid by the purchasers for such shares or bonds.

Nothing in this subsection shall be interpreted as depriving the shareholders or bondholders of the rights and recourses they may have against the company or any other person."

**2.** This act shall come into force upon such date as the Lieutenant-Governor in Council may be pleased to fix by proclamation.