NATIONAL ASSEMBLY

FIRST SESSION FORTIETH LEGISLATURE

Bill 201
(Private)

An Act to establish Mutuelle de microfinance (Québec)

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Bill 201

(Private)

AN ACT TO ESTABLISH MUTUELLE DE MICROFINANCE (QUÉBEC)

AS there is reason to allow a microfinance mutual to be established to meet the needs of individuals who have difficulty gaining access to financial products and services adapted to their reality;

AS it is appropriate to create a solidarity-based financial tool;

AS the mutual's mission should also include improving financial literacy among individuals who have difficulty gaining access to traditional financing networks;

AS it is appropriate to facilitate access to financial products and services and establish an assistance and education process for such individuals;

AS the non-profit organizations known as the Fonds d'emprunt économique communautaire (Québec) and Fonds 2 propose to transfer a significant part of their lending activities to the mutual;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

ESTABLISHMENT AND MISSION

1. A microfinance mutual is established under the name "Mutuelle de microfinance (Québec)" (the Mutual).

The Mutual is a legal person established for a private interest.

2. The Mutual's head office is located in the territory of Ville de Québec.

3. The Mutual's mission is to offer financial products and services to individuals who have difficulty gaining access to traditional financial networks, and to establish an assistance and education process aimed at developing their financial autonomy and security.

4. The Mutual may, in accordance with the applicable legislative provisions,

(1) offer its members financial products and services, including credit and savings products;

(2) assist its members by offering adequate technical support in preparing their business plans;

(3) promote the economic literacy of its members, including with respect to sound savings, insurance and investment habits; and

(4) encourage its members to adopt sound governance practices in their business endeavours.

5. Despite its legal structure, the Mutual may carry on activities reserved for a legal person under the Act respecting trust companies and savings companies (chapter S-29.01), provided it obtains the required authorization from the Autorité des marchés financiers and meets all other requirements provided for by that Act. In such a case, the provisions of Chapter X of this Act apply to the Mutual.

The Mutual may receive deposits of funds from its members without the authorization referred to in the first paragraph, provided it does so as a mandatary of a financial institution registered for the purposes of the Deposit Insurance Act (chapter A-26) and designated by the Mutual's board of directors.

6. The Mutual must identify itself by its own name, which must appear on all of its negotiable instruments, contracts, invoices and purchase orders for goods or services.

7. Third persons may presume

(1) that the Mutual is exercising its powers in accordance with its constituting Act and its internal by-laws;

(2) that the documents relating to the Mutual that are deposited in the enterprise register contain accurate information;

(3) that the directors and officers of the Mutual validly hold office and lawfully exercise the powers of their office; and

(4) that the documents of the Mutual issued by a director, officer or other mandatary of the Mutual are valid.

CHAPTER II

ORGANIZATION MEETING

8. Within 90 days after the Mutual is established, it holds its organization meeting.

A representative of the Fonds d'emprunt économique communautaire (Québec), a representative of Fonds 2 and any person who, on the date the meeting is called, is a borrower from the Fonds d'emprunt économique communautaire (Québec) or Fonds 2 participate in the meeting.

9. The meeting is called by the Fonds d'emprunt économique communautaire (Québec) or, if it fails to do so, by any person referred to in the second paragraph of section 8.

A notice stating the items of business on the agenda must be sent to every participant at least 10 days before the meeting.

10. The quorum at the organization meeting is 15 participants.

11. During the organization meeting, the participants must

(1) adopt internal by-laws; and

(2) elect the first directors taking into account the third paragraph of section 55.

The participants may also adopt any other by-law and take any measure relating to the Mutual's affairs.

CHAPTER III
RECORDS

12. The Mutual prepares and maintains, at its head office, records containing

(1) the by-laws;

(2) the minutes and resolutions of the meetings of its members;

(3) the names and domiciles of the directors, and the dates of the beginning and end of their term of office; and

(4) a register of common shares and preferred shares.

The members may examine the Mutual's records during its regular office hours and obtain extracts from them without charge.

13. The Mutual prepares and maintains accounting records and records containing the minutes of meetings and the resolutions of the board of directors and its committees. The records are kept at the Mutual's head office or at any other place designated by the board.

The Mutual is required to preserve all accounting records for a period of six years after the end of the fiscal year to which they relate.

Except as otherwise provided by law, only the directors, the auditor and any other person authorized by the Mutual's board of directors may have access to the records referred to in the first paragraph.

CHAPTER IV

SHARE CAPITAL

DIVISION I

GENERAL PROVISIONS

14. The share capital of the Mutual is unlimited. It consists of a single class of common shares and one or more classes of preferred shares.

15. The rights of the holders of shares of the same class are equal in all respects, subject to the order in which the shares are repaid in the event of liquidation.

16. Shares must be paid for in cash. Only fully paid shares may be issued.

17. Shares are registered, and may only be transferred on the conditions and in the manner prescribed in the Mutual's internal by-laws.

18. The Mutual must, by by-law, determine

(1) the price of shares;

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

(3) the conditions under which holders may request repayment of their shares and the order, among holders of the same class, in which shares are repaid in the event of the dissolution or liquidation of the Mutual.

In the event of liquidation or dissolution, shares cannot entitle their holder to be repaid before the liquidator has performed the Mutual's obligations, obtained forgiveness of those obligations or otherwise made provision for them.

19. The Mutual issues certificates attesting the existence of shares.

20. Any amendment to the Mutual's internal by-laws must be approved by the vote of at least two thirds of the members present.

All other by-laws and any amendments to them must also be approved by the vote of at least two thirds of the members present.

DIVISION II

COMMON SHARES

21. Common shares may be issued only to members.

The price of such shares may not be less than $5.

22. In the event of the death or expulsion of a member, the Mutual repays the sums paid to obtain the member's common shares.

At the request of a member and on the conditions prescribed in its by-laws, the Mutual may repay to the member the sums paid to obtain the member's common share.

DIVISION III

PREFERRED SHARES

23. The Mutual may issue preferred shares by resolution of the board of directors if authorized to do so by the Mutual's by-laws.

The Mutual's by-laws must also establish the classes of preferred shares, the preferences, rights and restrictions attaching to each class of shares and the conditions of their redemption.

24. Certificates attesting the existence of preferred shares must state the amount of, the interest payable on and the preferences, rights and restrictions attaching to those shares and the conditions of their redemption or repayment.

25. In the event of the dissolution or liquidation of the Mutual, preferred shares take precedence over common shares and entitle their holders to be repaid first.

26. Preferred shares cannot entitle their holder to repayment before the expiry of five years after their issue.

27. Preferred shares cannot entitle their holder to receive notice of a general meeting, attend or vote at such a meeting or be eligible for any office within the Mutual.

DIVISION IV

MAINTENANCE OF SHARE CAPITAL

28. The Mutual may not repay a share if repayment would cause its capital base or liquid assets to become inadequate.

Directors who authorize repayment of a share contrary to the first paragraph are solidarily liable for the sums involved and not recovered.

CHAPTER V

MEMBERS

DIVISION I

GENERAL PROVISIONS

29. To become a member of the Mutual, a person or partnership must

(1) borrow sums from the Mutual under the terms of a contract;

(2) deposit funds with the Mutual, which, in accordance with section 5, receives the funds on its own behalf or as a mandatary of another financial institution; or

(3) take out and maintain in force an individual insurance policy with an insurer designated by the Mutual's board of directors.

In addition, every member must purchase a common share and undertake to comply with the Mutual's by-laws.

30. Provided they purchase a common share and undertake to comply with the Mutual's by-laws, the following are also members of the Mutual:

(1) the Fonds d'emprunt économique communautaire (Québec); and

(2) any holder of preferred shares of the Mutual having paid over $1,000,000 in consideration for the issue of those shares.

DIVISION II

SUSPENSION AND EXPULSION

31. A member described in section 29 who ceases to hold a valid contract as a borrower, depositor or policyholder is automatically expelled from the Mutual.

32. A member described in paragraph 2 of section 30 who ceases to hold issued and outstanding preferred shares for a consideration of over $1,000,000 is automatically expelled as a member of the Mutual.

33. The board of directors may suspend or expel a member who fails to comply with the Mutual's by-laws. Before doing so, the board of directors must inform the member of its intention and the reasons invoked for its decision, and give the member an opportunity to submit observations.

34. The minutes of the meeting of the board of directors at which a member is suspended or expelled must record the facts justifying the decision.

The Mutual must mail the member a written and signed notice, with reasons, within 15 days after the meeting.

35. A member's suspension period may not exceed six months.

36. A suspended or expelled member loses the right to receive notice of the meetings of the Mutual and to attend and vote at such meetings.

However, contracts between the Mutual and the member entered into before the suspension or expulsion remain in force.

37. The suspension or expulsion of a member takes effect on the adoption of the resolution of the board of directors.

CHAPTER VI

MEETING OF THE MEMBERS

DIVISION I

GENERAL PROVISIONS

38. The members of the Mutual, whether assembled at an annual meeting or a special meeting, constitute the Mutual's general meeting.

39. Unless the Mutual's internal by-laws provide for a greater number, the quorum at a general meeting is one tenth of the Mutual's members if the Mutual has 500 members or less, or 50 members if the Mutual has more than 500 members.

There is no quorum at a meeting if more than one half of the members present are directors, mandataries or paid staff members of the Mutual.

Any meeting that has been called twice but has not been held due to a lack of quorum may be called again; on that occasion, the members present constitute a quorum.

40. Notice of a general meeting must be given at least 15 days and not more than 45 days before the meeting, by mail or in at least one daily or weekly newspaper circulated in the judicial district in which the Mutual has its head office.

The notice must state the place, date and time of the meeting and, if applicable, give a summary of any draft by-law submitted for adoption or of any amendment proposed to the Mutual's by-laws.

41. A member may, in writing, waive notice of a general meeting of the members. The member's attendance at the meeting is a waiver unless the member attends the meeting for the sole purpose of objecting to the holding of the meeting on the grounds that it was not lawfully called.

42. Each member has only one vote.

If the Mutual's internal by-laws so provide, a member's vote may be cast by a representative holding a proxy, whether or not the representative is a member of the Mutual. To be valid, the proxy must have been given in the year preceding the meeting and must be presented to the secretary at least 10 days before the meeting. The proxy may be used only at that meeting or its adjournments.

43. A legal person or partnership that is a member of the Mutual may be represented at a general meeting.

No person may, however, represent more than one legal person or partnership.

44. No member who has been a member for less than 60 days may vote at a general meeting of the Mutual.

45. Unless otherwise provided in this Act, decisions are made by a majority of the votes cast by the members present.

In the case of a tie, the chair of the meeting has a casting vote.

DIVISION II

ANNUAL MEETING

46. The annual meeting of the Mutual must be held within four months after the end of its fiscal year. The members are convened to

(1) examine the annual report;

(2) elect the directors; and

(3) make any other decision reserved for the general meeting under the laws governing the activities of the Mutual for which it holds a permit issued by the Autorité des marchés financiers.

DIVISION III

SPECIAL MEETING

47. The board of directors, the president or the vice-president of the Mutual may call a special meeting whenever it is considered necessary.

48. The Mutual's board of directors must call a special meeting to make any decision requiring the vote of at least two thirds of the members present.

49. The board of directors must call a special meeting if requested to do so by 50 members if the Mutual has 500 members or more, or by at least one tenth of the members if it has fewer than 500 members.

50. The request must include an agenda stating the items of business to be submitted to the members at the meeting and must be sent to every member of the board of directors and to the Mutual, at its head office.

51. If the board of directors fails to call the meeting within 30 days after receipt of the request, two signatories of the request may call the meeting.

The Mutual reimburses the persons who called the meeting for any reasonable expenses they incurred to hold it, unless the members object by resolution at the meeting.

52. Nothing may be considered or decided at a special meeting except the items of business mentioned in the notice calling the meeting.

CHAPTER VII

DIRECTORS

DIVISION I

GENERAL PROVISIONS

53. The board of directors of the Mutual is composed of at least seven directors.

The number of directors is determined by the Mutual's internal by-laws.

54. Any natural person may be a director of the Mutual.

The following may not be directors of the Mutual:

(1) an employee of the Mutual;

(2) an undischarged bankrupt;

(3) a minor;

(4) a person of full age under protective supervision, a person prohibited by the court from holding such office or a person declared incapable by a decision of a court of another jurisdiction; and

(5) a person found guilty in the last five years of an offence or an indictable offence involving fraud or dishonesty, unless the person has obtained a pardon.

A person need not be a member in order to be a director of the Mutual.

55. The term of office of a director is three years.

The internal by-laws must provide for a mode of rotation by which one third of the directors, to the nearest whole number, are replaced each year.

For that purpose, the Mutual may shorten the term of office of the directors elected at the organization meeting or elected following a change in the number of directors.

56. A quorum of directors may fill a vacancy on the board for the unexpired portion of the term of office.

If there is no quorum or if there has been a failure to elect the minimum number of directors required, the directors in office must call a special meeting as soon as possible to fill any vacancy.

Any member of the Mutual may call the special meeting if the directors refuse or fail to do so or if there are no directors in office.

The Mutual must reimburse the persons who called the meeting for any reasonable expenses they incurred to hold it, unless the members object by resolution at the meeting.

57. Despite the expiry of a director's term of office, the director remains in office until re-elected or replaced.

58. The board of directors of the Mutual adopts a by-law to determine the total amount of remuneration that may be paid to the directors for a specified period. No director may receive any remuneration in that capacity before the by-law is adopted.

The by-law must be approved by the vote of at least two thirds of the members present at a meeting called for that purpose.

59. The Mutual assumes the defence of its directors or officers sued by a third person for an act done in the performance of their duties and pays any damages awarded as compensation for any injury resulting from that act, unless they have committed a grievous offence or a personal offence separable from the performance of their duties.

However, in a penal or criminal proceeding, the Mutual assumes payment of the expenses of its directors or officers only if they had reasonable grounds to believe that their conduct was in compliance with the law or if they have been freed or acquitted.

The Mutual assumes the expenses of its directors and officers if, having sued them for an act done in the performance of their duties, it loses its case and the court so decides.

If the Mutual wins its case only in part, the court may determine the amount of the expenses the Mutual must assume.

DIVISION II

POWERS AND DUTIES

60. The board of directors administers the affairs of the Mutual.

The board exercises all the powers necessary to manage, or supervise the management of, the business and internal affairs of the Mutual.

61. The board of directors must, among other things,

(1) comply and ensure compliance with the Mutual's by-laws;

(2) prepare, maintain and preserve the Mutual's records and registers;

(3) determine the rate of interest on common shares and preferred shares within the limit prescribed by by-law of the Mutual;

(4) adopt an investment policy and ensure that the Mutual's investments are made in accordance with it;

(5) rule annually on the distribution of the yearly surplus among the members;

(6) designate the persons authorized to sign contracts or other documents on behalf of the Mutual; and

(7) at the annual meeting, give an account of its management and submit the annual report.

62. The board of directors appoints a general manager for an indefinite term.

DIVISION III

MEETINGS

63. Subject to the internal by-laws, meetings of the board of directors are called by a notice given at least five days before they are to be held.

64. The general manager of the Mutual may attend the meetings of the board of directors and be heard.

65. A director may waive notice of a meeting of the board of directors in writing.

The director's attendance at the meeting is a waiver unless the director attends the meeting for the sole purpose of objecting to the holding of the meeting on the grounds that it was not lawfully called.

66. The quorum at meetings of the board of directors is a majority of the directors.

67. The decisions of the board of directors are made by a majority of the votes cast by the directors present. In the case of a tie, the chair of the meeting has a casting vote.

68. Subject to the internal by-laws, if all the directors agree, they may participate in a meeting of the board of directors by means of equipment enabling all participants to communicate directly with one another. In such a case, they are deemed to have attended the meeting.

69. A resolution in writing signed by all the directors is as valid as if it had been passed at a meeting of the board.

A copy of the resolution is kept with the minutes of the meetings of the board.

70. A director who was present at a meeting of the board of directors is deemed to have consented to every resolution passed during the meeting unless

(1) the director requested at the meeting that his or her dissent be recorded in the minutes; or

(2) the director sent a written dissent to the secretary of the meeting before the adjournment or closing of the meeting.

71. A director who was not present at a meeting at which a resolution was passed is deemed to have consented to the resolution unless the director records his or her dissent in accordance with section 70 within seven days after becoming aware of the resolution.

DIVISION IV

REMOVAL OF A DIRECTOR

72. A director may be removed at a special meeting called for that purpose.

73. A vacancy resulting from the removal of a director may be filled at the meeting at which the removal takes place.

74. A director may not be removed at the meeting unless the director has been informed in writing, within the same time limit as that prescribed for calling the meeting, of the grounds invoked and of the place, date and time of the meeting.

The director may be heard at the meeting or may explain in a written statement read by the chair of the meeting why he or she opposes the removal.

75. The minutes of the meeting at which a director is removed must record the facts which justify the decision.

The Mutual sends the director a written and signed notice of the removal, with reasons, by registered or certified mail within 15 days after the meeting.

The Mutual also sends a notice of the removal, as soon as possible, by filing a declaration to that effect in accordance with the Act respecting the legal publicity of enterprises (chapter P-44.1).

CHAPTER VIII

EXECUTIVE COMMITTEE

76. The board of directors of the Mutual may, if so authorized by the internal by-laws, establish an executive committee consisting of at least three directors, including the chair and vice-chair of the board.

However, the executive committee cannot be delegated the power

(1) to submit a question to the members that requires their approval;

(2) to fill a vacancy on the board of directors;

(3) to fill a vacancy in the office of auditor, if applicable;

(4) to issue preferred shares;

(5) to issue bonds or other debt securities;

(6) to declare a distribution of the yearly surplus;

(7) to redeem preferred shares issued by the Mutual;

(8) to approve the financial statements; or

(9) to adopt, amend or repeal by-laws.

The number of members of the executive committee may not exceed one half of the number of directors.

77. The executive committee exercises the powers of the board of directors to the extent determined in the internal by-laws.

78. The board of directors may replace any member of the executive committee.

79. Sections 63 to 71 apply, with the necessary modifications, to the executive committee.

CHAPTER IX

DISSOLUTION AND LIQUIDATION

80. Subject to this chapter, Divisions II and III of the Winding-up Act (chapter L-4) apply, with the necessary modifications, to the Mutual.

81. The dissolution of the Mutual may be decided by a resolution adopted by at least three quarters of the members present at a special meeting called for that purpose.

The special meeting then, by a resolution adopted by a majority of the votes cast by the members present, appoints a liquidator or liquidators, who take custody and control of all the assets of the Mutual. The board of directors then ceases to exist.

82. If the Mutual no longer has any members, its dissolution may be decided by a resolution adopted by its board of directors during a meeting called for that purpose.

83. Once the board of directors has ceased to exist, every action or suit against the property of the Mutual, in particular by seizure by garnishment, seizure before judgment or seizure in execution, must be suspended.

The costs incurred by a creditor after becoming aware of the liquidation, personally or through the creditor's attorney, cannot be collocated out of the proceeds of the property of the Mutual distributed as a result of the liquidation.

A judge of the Superior Court for the district in which the head office of the Mutual is located may nevertheless authorize the institution or continuance of any action or proceeding, on the conditions the judge considers suitable.

84. The liquidator must, without delay, send a notice of the liquidation, together with a certified copy of the decision to dissolve, to the enterprise registrar for deposit in the register provided for in Chapter II of the Act respecting the legal publicity of enterprises. The notice must also be published in a daily newspaper circulating in the territory of Ville de Québec.

The notice must state the name and address of the liquidator and the postal address where interested persons may send claims.

85. After performing or obtaining forgiveness of the obligations of the Mutual or otherwise making provision for them, the liquidator redeems the shares in accordance with the Mutual's by-laws and remits its remaining property to an organization that pursues objectives similar to those of the Mutual.

If it is impossible to remit the remaining property as provided for in the first paragraph, the property devolves to the State.

CHAPTER X

APPLICATION OF THE ACT RESPECTING TRUST COMPANIES AND SAVINGS COMPANIES

86. This chapter applies only to the extent provided for in section 5.

87. The Act respecting trust companies and savings companies, except sections 5, 11 to 46, 59, 64 to 66, the second paragraph of section 67, sections 68 to 85, 88 to 91, 95, 99 to 101, 103, 105, 113 and 169 to 169.2, applies, with the necessary modifications, to the Mutual as if it were constituted as a business corporation.

88. Unless the context indicates otherwise, for the purposes of the Act respecting trust companies and savings companies,

(1) "share" means a security interest. However, for the purposes of the first paragraph of section 67 of the Act respecting trust companies and savings companies, it means a preferred share;

(2) "shareholders" means the members of the Mutual;

(3) "common shareholders' equity" means the equity of common shareholders and preferred shareholders;

(4) "capital" means the equity of common shareholders and preferred shareholders;

(5) "capital stock" means share capital; and

(6) "dividends" means distributed yearly surpluses.

89. Despite section 120 of the Act respecting trust companies and savings companies, the Mutual may make a loan to a director, an officer, the spouse or child of a director or officer, or an employee of the Mutual, provided that such a loan is made under terms and conditions comparable or similar to those offered to the Mutual's members in a similar or analogous situation.

CHAPTER XI

MISCELLANEOUS AND FINAL PROVISIONS

90. The capital shares of the Mutual, issued to members or aspiring members, provided that the subscription was neither solicited nor received by a remunerated salesperson or canvasser, are exempted from the application of Titles II to VIII of the Securities Act (chapter V-1.1).

91. This Act comes into force on 7 December 2012.