



# Modernizing the Governance of Government Corporations

Policy statement

Québec 



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## Message from the Premier

### *High-performance, transparent and accountable government corporations*

*In April 2003, the Québec government embarked on a thorough renewal of how the State functions. This modernization, which targets government corporations as well as government as a whole, is necessary. It will enable us to realize our ambitions for the future.*

*Québec government corporations essentially grew out of the Quiet Revolution and, in fact, are one of the strategic assets of that era. Forty years after the creation of the first corporations, the time has come to review their rules of governance, adapt them to today's requirements and, in so doing, meet the legitimate expectations of Quebecers.*

#### **Revision of the modes of governance**

*In recent years, the modes of corporate governance in most developed countries have undergone a comprehensive review and deep changes. Unfortunate incidents made this revision unavoidable. It was imperative to restore trust, without which companies cannot sustain business operations on the national and international markets.*

*In the last election, the team I head made a clear pledge to Quebecers to improve the management of government corporations. At the outset of our mandate, we undertook to completely revamp the policy for assisting investment by government corporations.*

*Today, we are taking action to have government corporations adopt new rules of governance that will enable them not only to enhance their performance, but also to better carry out their mission in regard to Quebecers. In addition, we will make sure that the rules of governance are reviewed regularly so that they continue to be in line with the best practices in use, with a view to guaranteeing quality management of government corporations today as well as in the future.*

*Substantial progress has already been achieved. Changes have been made to the internal management guidelines and policies of the Société générale de financement du Québec and Investissement Québec. Extensive amendments have been made to the Act respecting the Caisse de dépôt et placement du Québec. Today, the government is taking another step, with the release of a policy statement aimed at **Modernizing the governance of government corporations.***

### **Comprehensive in scope, a tailored approach**

*This statement is comprehensive in scope—a first in Québec. Indeed, for the first time, a government has established objectives and means with a view to modernizing the mode of governance of various government corporations and agencies under the responsibility of a board of directors, and defined an overall vision of what that governance should be.*

*At the same time, the approach adopted is in keeping with the reality of the organizations targeted: government corporations must take on missions that are often very different in nature. They operate in specific contexts and encounter challenges that vary from one corporation to the next. On the basis of very clear guidelines, the government is therefore undertaking a gradual, tailored application of the principles adopted.*

### **Trust in institutions, serving the public interest**

*The objectives and rules established by the government with regard to the governance of its corporations are demanding, but Quebecers as a whole will rally around them. My government wants high-performance, transparent government corporations, whose directors are fully accountable for their management to the population at large and its representatives.*

*We will then be able to strengthen Quebecers' trust in the institutions that belong to them collectively, while serving the public interest.*

*I am convinced of our ability to succeed. As a result of this policy statement, our government corporations will be able to take their rightful place in enabling Québec to “shine among the best”.*



Jean Charest

Premier of Québec

## Message from the Minister of Finance

### *The first comprehensive policy on the governance of government corporations*

*For several months, our government has been working actively to establish new rules of governance of government corporations and agencies. Today, with this policy statement, we are taking action, and putting forward the first comprehensive policy on this crucial issue. It is a major step that will ensure governance in keeping with Québec's values and interests.*

*Government corporations manage a large share of our collective heritage. Accordingly, they must meet strict and exacting governance criteria that safeguard the public interest and ensure Quebecers' trust. At the same time, government corporations must have all the manoeuvring room they need to deliver the performance the public is entitled to expect from them.*

*Thus, a delicate balance must be maintained between corporate independence and the demands stemming from the corporations' public status. The policy statement on the governance of government corporations makes this possible, by emphasizing the accountability and responsibility of boards of directors.*

*The government has adopted an approach based on concrete action and initiatives. An approach that steers clear of "wall-to-wall" measures and takes into account the very different missions of the government corporations targeted.*

*I am tabling today a policy statement to be followed, in the fall of 2006, by the tabling of an amending bill applicable to six government corporations with a financial or commercial mission. Other legislative amendments will be presented to the National Assembly so that, by the end of 2007, all government corporations covered by the policy statement will be in compliance with the principles of the new rules of governance.*

*By its very scale, the policy statement on the governance of government corporations will give rise to comments and reactions, which the government will want to take into account at the next stage. Accordingly, there will be an opportunity to submit comments on this first comprehensive policy during the debate in the National Assembly on the amending bill to be tabled in the fall of 2006.*

*At the end of this process, Québec will have, for its government corporations, a governance framework built on the strictest of standards.*



Michel Audet

Minister of Finance



## Acknowledgments

*Eminent experts were consulted throughout this endeavour.*

*We would like to especially thank professor Yvan Allaire, Chairman of the Institute for Governance of Private and Public Organizations, for his exceptional contribution to the reflection process.*

*We would also like to thank Denis Desautels, guest executive at the University of Ottawa School of Management and former Auditor General of Canada; Stephen Jarislowsky, Chairman of Jarislowsky Fraser Limited; Claude Lamoureux, President and CEO of the Ontario Teachers' Pension Plan (OTPP) and co-founder, with Stephen Jarislowsky, of the Canadian Coalition for Good Governance; and Henri-Paul Rousseau, President and CEO of the Caisse de dépôt et placement du Québec and co-founder of the Collège des administrateurs de sociétés.*

*These renowned experts were kind enough to share their comments and observations with us and, in so doing, gave the government food for thought in devising the policy statement.*



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# OVERVIEW



## OVERVIEW

For the first time since the start of the Quiet Revolution, the government is proposing a comprehensive policy for the governance of government corporations,<sup>1</sup> on the basis of an overall vision of the organization and control methods needed.

### ***A clear objective***

The government has a clear objective in modernizing the governance of its corporations, namely, to foster management that meets demanding criteria of transparency, integrity and responsibility, so as to ensure that public-sector companies deliver the performance expected of them.

This objective will be attained by reinforcing accountability. Reporting will enable senior management—general management and the board of directors—to show that it has complied with the rules of governance established by the government.

### ***Broad-based application that avoids “wall-to-wall” measures***

This policy statement applies to over 20 government corporations all run by a board of directors.

The application of the new rules for government corporations will be gradual, tailored and varied, since in this area, as in many others, “wall-to-wall” measures must be avoided.

### ***Application in two stages***

The policy statement will apply to over 20 government corporations, in two stages:

- In the case of six government corporations with a financial or commercial mission,<sup>2</sup> the government will revise their constituting act in order to bring them into line with the new policy. The amending bill in regard to these corporations will be tabled in the fall of 2006. Note that the constituting act of the Caisse de dépôt et placement du Québec has already been amended, in December 2004, in keeping with the policy statement.
- In the case of the other government corporations targeted by the policy statement, legislative amendments in line with their specific context and enabling their rules of governance to be harmonized with the new policy will be tabled before the National Assembly by the end of 2007.

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1 In this paper, government corporations include government agencies.

2 Namely, Hydro-Québec, Investissement Québec, the Société de l'assurance automobile du Québec, the Société des alcools du Québec, the Société des loteries du Québec and the Société générale de financement du Québec.

Moreover, the policy statement will apply immediately to all new legislation in the field. The government will take advantage of the revision of certain constituting acts of government corporations to introduce the new rules of governance.

### ***A stage in the modernization of the Québec State***

This revision of the governance of government corporations is an integral part of the modernization of the Québec State.

It is all the more necessary in that, in recent years, major difficulties have highlighted the shortcomings in the governance of some of these corporations and the need for redress.

In modernizing the governance of its corporations, the government is following a worldwide trend. The government is drawing on all the ideas of the industrialized nations, including Canada, in both the private and public sectors, in order to give government corporations in Québec modern governance in keeping with the public interest.

### ***A culture of re-evaluation***

In its policy statement, the government is following up on a commitment made in the **Modernization Plan 2004-2007**, *Modernizing the State*, by introducing a culture of ongoing re-evaluation of government corporations.

At least every 10 years, the government will review the constituting act of each of its corporations to ensure that the mandate and mission set forth in the act are clear and continue to reflect the context of the day. The culture of re-evaluation will ensure that government corporations and the Québec State in general perform well and that the needs of Quebecers are better met.

### ***The changes implemented***

To attain the objective set, the government is relying above all on strengthening the authority of boards of directors, as it is the board of directors of a government corporation that implements management mechanisms designed to meet the criteria of transparency, integrity and responsibility with a view to ensuring the corporation delivers the anticipated performance.

### ***A clear division of responsibilities***

Henceforward, the positions of chair of the board of directors and of president and chief executive officer will be separate and the rules for appointing senior management will make it possible to balance corporate independence and government authority.

Boards of directors will be more efficient and more independent. Moreover, they will be clearly responsible and accountable to the government.

The government will bolster its oversight role respecting its corporations and give the Auditor General additional responsibilities in their regard. These measures will be tailored to the mission of each corporation.

***Remuneration of the members of boards of directors***

The members of the boards of directors of the six aforementioned government corporations with a financial or commercial mission will be remunerated as determined by the government.

***Demanding rules, an ambitious objective***

The new rules of governance of government corporations are demanding.

They correspond to an objective which is ambitious in its own right, since the government is targeting an exemplary mode of governance for all public bodies of the Québec State. The rules draw on the models adopted in the major industrial nations, and in North America in particular.

The government is convinced that Québec can only gain from modernized governance focused on bolstering trust and safeguarding the public interest.



# INTRODUCTION



## INTRODUCTION

The Québec government's policy statement on the **modernization of the governance of its corporations** is divided into two chapters.

- First, the statement reiterates the reasons why modernization is necessary. Most government corporations were set up in the wake of the Quiet Revolution. Forty years later, their mode of governance must be revamped and adapted to the demands and realities of our time. **Chapter 1** reiterates those demands and realities, explains the government's decision to opt for a policy statement and states the objective pursued by the government.
- Second, to attain the objective sought, the government determined a number of changes to the current rules of governance. **Chapter 2** sets forth these changes, which affect the division of responsibilities within senior management, how boards of directors function, and control methods, while emphasizing that, ultimately, the purpose of the government's undertaking is to bolster trust and serve the public interest.

With this policy statement on the modernization of corporate governance, the government has defined a clear, ambitious policy that will be applied in accordance with the realities of the organizations targeted. In addition, the policy statement is in line with the government's efforts to modernize the Québec State.



# CHAPTER 1

## Modernization: a necessary step



# 1 MODERNIZATION: A NECESSARY STEP

Essentially, the Québec State as we know it was built on the era of the Quiet Revolution.

To carry out its various missions, the Québec State very quickly relied on a number of companies and other entities separate from government departments but forming with them the public sector controlled by Quebecers through the National Assembly.

## **Government corporations**

The government set up government corporations and agencies among these organizations, so that they would have the independence justified by their mission and the context of their activities.

These public bodies are all run by a board of directors. The policy statement targets over 20 such entities that can be grouped under the generic term “government corporation” even though some of them have not been given that name.

## **One of the main legacies of the Quiet Revolution**

The government corporations created in the past 40 or so years meet many different objectives. They were set up for economic or financial purposes, or with a view to intervention, in areas or sectors of activity where the presence of public bodies was necessary.

They gave the Québec State strategic tools the importance of which has already been amply proven.

One need only mention the Société générale de financement du Québec, Hydro-Québec, the Caisse de dépôt et placement du Québec and the Régie des rentes du Québec. The creation of these organizations in the 1960s, or the broadening of their role, as in the case of Hydro-Québec, is an integral part of the Quiet Revolution, of what it contributed to Québec and of what subsequently grew out of it, economically and culturally, and in the various spheres of State intervention.

## **Forty years later: an overall vision**

After forty years, a government understandably seeks to modernize the governance of its corporations.

The gradual creation of the corporations over several decades meant that an overall vision regarding the necessary organization and control methods could not be applied to governance.

An overall vision is now possible, and is a natural component of the modernization of the State undertaken by the government. It is all the more necessary in that, in recent years, major difficulties have highlighted the shortcomings in the governance of some of these corporations and the need for redress.

## **A worldwide issue**

Around the world, key companies in their particular sector of activity were faced with bankruptcy because of dysfunctional management and control methods.

Unhealthy relations had developed between the companies' boards of directors and general management, between the various components of senior management and between senior management and those responsible for control. Control deficiencies prevented shareholders from being informed as they should have been, and, as a result, bad decisions could not be averted or remedied in time. The very integrity of the directors could not be guaranteed.

The Enron and WorldCom scandals, to name only the best-known examples, illustrate the disastrous consequences of inadequate governance: leading companies in their sectors disappeared in a few months after wreaking economic and financial havoc that resulted in a considerable trust deficit.

The major Western countries put considerable effort into restoring that trust. Thus, as early as 1999, the Organization for Economic Cooperation and Development (OECD) released its *Principles of Corporate Governance*, updated in 2004. Essentially, stricter rules establishing new standards for corporate governance were developed.

## Québec's public sector

Corporate dysfunction in Québec's public sector was fortunately on a much smaller scale.

Several corporations nonetheless experienced major difficulties, in particular due to rules of governance that are no longer adequate.

The problems are well known today. Bad management decisions in a number of government corporations could not be turned around rapidly, because of ambiguity in the definition of the respective roles of management and boards of directors. The lack of involvement of certain boards of directors in defining the corporation's directions, and control shortcomings, meant that the necessary corrective measures could not be taken. In certain cases, the situation was made worse by a lack of transparency.

The government moved swiftly to redress the management of these corporations. Action in that regard was clearly set forth in the 2003-2004 budget. In the fall of 2004, the first major reform—the amendment of the *Act respecting the Caisse de dépôt et placement du Québec*—was carried out.

The time has come to do even more and ensure that, as regards the governance of all government corporations, the deficiencies noted in certain cases do not recur.

But, beyond that necessity, the Québec government intends to make the public sector a model of effective, efficient and modern corporate governance.

The government is therefore drawing on all the ideas of the industrialized nations, including Canada, in both the private and public sectors, in order to give government corporations in Québec modern governance in keeping with the public interest. That governance must respect the corporations' necessary independence, while maintaining existing ties between the corporations and the State, and, consequently, between the corporations and Quebecers.

## A policy statement

The government chose to effect the necessary modernization of the governance of its corporations through a major initiative, namely, the release of a policy statement.

In so doing, the government has confirmed the importance of this issue and chosen the means best suited to sharing its vision of corporate governance with Quebecers.

A policy statement enables the government to set a number of objectives for its action and establish the means required to attain them.

A policy statement has another advantage, in that it clearly establishes the new rules to be followed by government corporations, while providing for the gradual, tailored and varied application of the rules, since in this area, as in many others, "wall-to-wall" measures must be avoided.

## Providing for gradual, tailored application

The government wants to define an overall vision for the governance of its corporations, while taking into account their diversity. This dual objective will be attained through the policy statement and the choices made by the government in regard to its implementation.

As indicated at the outset, the policy targets a diversified group of organizations, namely, government corporations and agencies run by a board of directors.

These government corporations and agencies operate in a variety of contexts, and significant differences characterize their missions.

All of them enjoy extensive operational independence, as manifested in the strategic role played, or that should be played, by the board of directors.

Thus, the policy statement will apply to this group of over 20 corporations and other organizations, albeit in two stages.

- In the case of six government corporations with a financial or commercial mission,<sup>3</sup> the government will revise their constituting act in order to bring them into line with the new policy. The amending bill in regard to these corporations will be tabled in the fall of 2006. Note that the constituting act of the Caisse de dépôt et placement du Québec has already been amended, in December 2004, in keeping with the policy statement.

These six corporations stand apart from the group of organizations targeted by the policy statement, because of their size, but also because of their financial independence in terms of credits from the State budget—a situation that must be taken into account in a specific manner.

- In the case of the other government corporations targeted by the policy statement, legislative amendments in line with their specific context and enabling their rules of governance to be harmonized with the new policy will be tabled before the National Assembly by the end of 2007.

Thus, the policy statement on the governance of government corporations will be implemented gradually. Moreover, it will apply to all new legislation in the field. The government will take advantage of the revision of certain constituting acts of government corporations to introduce the new rules of governance.

## A clear objective

The modernization of corporate governance in the public sector is an integral part of the government's determined efforts to modernize the Québec State.

Modernizing the State means reviewing programs, structures and procedures. Modernizing corporate governance will have a direct impact on that.

The government has a clear objective in modernizing the governance of its corporations: to foster management that meets demanding criteria of transparency,

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3 *Ibid.* at VII.

integrity and responsibility, so as to ensure that public-sector companies deliver the performance expected of them.

### ***Transparent, honest and responsible management***

Above all, the management of government corporations must be transparent, honest and responsible. Governance of these corporations must be exemplary to ensure that they perform well.

- Attaining this objective is directly dependent on the balance between the responsibilities assumed by general management and those entrusted to boards of directors.

Experience has shown that a company is all the more likely to conduct itself with transparency and integrity if the managers and the members of the board of directors are disciplined in carrying out their respective roles. Many of the problems encountered in recent years stem from a certain ambiguity in the definition of the roles attributed to the two bodies running the company. The new rules of governance established by the government will eliminate such ambiguity in the future, by redefining the responsibilities of everyone involved and the framework within which the responsibilities are carried out.

- Transparent, honest management is also dependent on effective tools for sharing information and tight methods of control. Tightness is essential, but it must not interfere with the independence necessary in managing public bodies.

### ***High-performance government corporations***

To ensure transparent, honest and responsible management is to ensure good performance by public-sector companies in Québec.

The measures in this policy statement will result in efficient and effective management of the corporations targeted, regardless of their mission. For example, in the case of government corporations with a financial or commercial mission, the rules will generate optimal cost-effectiveness for the shareholder State, given the expectations formulated.

- Such an objective implies broad independence for government corporations in carrying out their mandate. The rules of governance implemented guarantee that independence.
- In addition, these rules mean that corporate performance will closely reflect government expectations: ties will therefore be maintained between the government and its corporations.
- The performance of government corporations hinges directly on the excellence of senior management. Thus, the rules of governance create the requisite conditions for excellence, be it in regard to the designation of a president and chief executive officer, or in regard to the appointment, independence or evaluation of the members of boards of directors.

## **The key: greater accountability**

The government is convinced that the key to modernizing the governance of its corporations lies in greater accountability.

- In the case of privately owned companies, accountability structures are relatively simple to describe: general management, chosen by the board of directors, is answerable for its management to the board. The board of directors must report to the shareholders on the choices it makes and the directions it adopts.
- In the case of government corporations, the structures are more complex. General management answers for its management to the board of directors, which in turn is answerable to the government, represented by the minister who has jurisdiction over the corporation concerned. The minister is accountable for the proper enforcement of the corporation's constituting act and must therefore report to the National Assembly. The Minister may also be asked to account for the amounts invested by the State in the corporation. In addition, the corporation's general management, and the chair of its board of directors, may be asked, by the minister who has jurisdiction, to account for the management of the corporation before the National Assembly.

Furthermore, the Auditor General of Québec, who is accountable only to the National Assembly, examines the financial statements of a number of government corporations and must attest to the conformity of their accounts. The role of the Auditor General is crucial: he has maximum independence because he answers directly to the population's elected representatives as a whole, regardless of the political party to which they belong.

Despite this relative complexity, government corporations must be accountable in accordance with clear, strict rules. Reporting will enable senior management—general management and the board of directors—to show that it has followed the rules of governance established by the government and that, as a result, it will ensure transparent, honest management, thereby guaranteeing good performance by the corporation.

# CHAPTER 2

## The changes implemented



## 2 THE CHANGES IMPLEMENTED

### A culture of re-evaluation

This policy statement is an integral part of the efforts to modernize the Québec State and enables the government to follow up on the commitment made in the **Modernization Plan 2004-2007**, *Modernizing the State*, by introducing a culture of ongoing re-evaluation of government corporations.

At least every 10 years, the government will review the constituting act of each of its corporations to ensure that the mandate and mission set forth in the act are clear and continue to reflect the context of the day. The culture of re-evaluation will ensure that government corporations and the Québec State in general perform well and that the needs of Quebecers are better met.

### The changes to the existing rules

The modernization of governance focuses on strengthening the authority of boards of directors. It is up to the board of directors of a government corporation to ensure that the corporation is managed well and in keeping with the criteria of transparency, integrity and responsibility with which the government wants to ensure compliance.

Consequently, the new rules defined by the government confirm the accountability of boards of directors. However, they provide for additional means of control that are under the direct responsibility of the government or entrusted to the Auditor General.

The changes implemented are as follows:

- the **responsibilities** of the board of directors will henceforward be **clearly distinguished** from those of general management;
- **changes will be made to the rules for forming and running the boards of directors** of government corporations with a view to **strengthening the boards**;
- the government will **increase the means of control** of its corporations, while **adapting the means to the mission of each** corporation.

### A clear division of responsibilities

First, the new rules of governance of government corporations will impose a clear division of the responsibilities of senior management—between general management and the board of directors—which is currently not the case.

- Presently, a number of laws governing these corporations allow a person to occupy the positions of chair of the board of directors and of president and chief executive officer at the same time. That provision will be abolished.

By taking that initiative, the government is following a trend in the governance of both private and public companies. In fact, separating the positions of chair of the board of directors and of president and chief executive officer is recommended by the New York and Toronto stock exchanges.

There are several reasons for separating the positions:

- to increase the supervision of management, thereby fostering sound management;
  - to establish a clear hierarchical link between the president and chief executive officer and the board of directors, to which the former is answerable;
  - to establish a new balance of power, thereby ensuring the independence of the board of directors, relative to general management, with regard to decision making;
  - to avoid conflicts of interest, or the impression of conflicts of interest.
- Separating the positions of chair of the board of directors and of president and chief executive officer will lead to a clear distinction between their respective responsibilities and ensure balance between the independence of public companies and government authority.

These responsibilities are as follows:

- The chair of the board of directors is the corporation's main interlocutor with government authorities. Moreover, the chair sees to the smooth conduct of meetings and to the proper running of the board and its committees. The chair must also evaluate the other members of the board of directors, according to criteria adopted by the board and proposed by one of the board's committees, namely, the governance and ethics committee;
  - The president and chief executive officer recommends to the board of directors the key directions of the corporation, as well as its general investment, capital asset and operating strategies. The president and CEO must also see to the day-to-day management of the corporation and is accountable to the board of directors in that regard.
- A clear distinction will also be made between the methods of appointing the chair of the board of directors and the president and chief executive officer.
    - The chair of the board of directors will be appointed by the government for a renewable part-time term not exceeding five years. However, the number of terms will be limited to three. The chair of the board of directors may be dismissed by the government.
    - The president and chief executive officer of government corporations will be appointed by the government on the recommendation of the board of directors.
    - In the case of the six aforementioned government corporations with a financial or commercial mission, the terms and conditions governing the remuneration of the president and chief executive officer will be determined by the board of directors in accordance with government-approved parameters. In the case of the other government corporations covered by

the statement, the terms and conditions governing the remuneration of the president and chief executive officer will be determined by the government.

- The president and chief executive officer of each of the government corporations targeted by the policy statement will occupy a full-time position for a term not exceeding five years. The term may be renewed, further to an evaluation of the person's performance according to evaluation criteria proposed by the human resources committee.

## **Strengthened boards of directors**

Good governance of government corporations depends on strengthened boards of directors fully capable of exercising the responsibilities entrusted to them.

The existing governance framework had to be modernized in that respect, as the legislation currently in force in Québec does not provide for the independence of the administrators of government corporations. A board of directors may have anywhere from seven to seventeen members. Moreover, in certain cases, members can be appointed ex officio without voting rights. Consequently, they can be thought to have participated in decision making when, in actual fact, they were merely observers.

Thus, the new rules deal with the appointment of the members of boards of directors. They stipulate which administrators are considered independent and abolish non-voting member status. They also establish the basic responsibilities of boards of directors and introduce the three main committees of the boards.

### ***Changes to the rules for forming boards of directors***

Under the government's new rules of governance, the boards of directors of government corporations will henceforward be composed of at least nine members and no more than fifteen, including the chair of the board and the president and chief executive officer.

- The members of boards of directors will be appointed by the government. The latter will first consult the boards, which will determine the profile of the candidates sought. This provision is primarily designed to ensure that board of director members complement each other adequately from the standpoint of knowledge and experience.
- The government will enact public rules to ensure that the various components of Québec society are represented on the boards of directors of government corporations, and will make sure that, in five years, the boards of directors are composed of an equal number of men and women.
- The members of boards of directors, with the exception of the chair of the board, will be appointed for a renewable term not exceeding three years. However, the number of terms will be limited to three.
- Where possible, the terms of the members of boards of directors will be staggered so that the terms of no more than one third of the members of a given board expire during the year.
- When their term expires, the members of boards of directors will remain on the board until they are replaced or reappointed.

- In its efforts to modernize governance, the government places particular emphasis on the responsibility and accountability of the members of boards of directors, and on mobilizing the skills with which they must serve the organization and the public interest.
- Thus, the members of the boards of directors of the six aforementioned government corporations with a financial or commercial mission, as well as those of the Caisse de dépôt et placement du Québec, will be remunerated as determined by the government.
- The annual report of the corporation concerned must specify, for each member of its board of directors, the remuneration paid to the member and the member's participation in the meetings of the board and of its committees and subcommittees.

### ***Independent boards of directors***

The new rules of governance of government corporations will ensure the independence of boards of directors.

- Two thirds of the members of a board of directors, including the chair, must meet certain requirements in order to qualify as independent, the purpose being to ensure that these administrators have no relations or interests likely to interfere with the quality of their decisions regarding the interests of the corporation or organization.
  - Thus, an independent administrator cannot be, or cannot have been, employed by the corporation or one of its subsidiaries during the three years preceding the date on which the administrator was appointed.
  - An independent administrator cannot be employed by the government or a government body.
  - An independent administrator cannot have, or cannot have had, business or other ties with the corporation, as determined by government regulation.
- Boards of directors will no longer have members without voting rights. Accordingly, members of a board of directors who sit on the board as the representative of a minister or the government will have the right to take part in decision making. However, they will not qualify as independent members.
- The members of boards of directors will designate a vice-chair of the board from among the board's independent members. If the chair of the board is absent or unable to act, the vice-chair will take over as chair.

### ***Responsible, accountable boards of directors***

The new rules of governance set forth the responsibility and accountability of the members of boards of directors.

- For the government, the accountability of boards of directors and their chair is a key element of the new governance of government corporations.
- The chair and members of boards of directors will be accountable to the government for the way in which they exercise the responsibilities entrusted to them under the new rules.

### ***Basic responsibilities of governance***

It is essential for the boards of directors of all government corporations to exercise a certain number of basic responsibilities.

These responsibilities are the following:

- As the backbone of a government corporation, the board of directors must participate in every major decision made by the corporation in regard to its directions and operation.

Concretely, the board of directors must therefore adopt the strategic plan, including the variable remuneration rules applicable to the principal directors and to employees, and ensure follow-up. The board must also approve the financial statements, annual report and annual budget submitted by the president and chief executive officer.

In conjunction with these various approvals, the government expects the board of directors to examine the main risks associated with the corporation's business operations, to take measures ensuring optimal risk management and to carry out value-for-money planning.

- The board of directors must assume substantial responsibilities with regard to control, ethics and transparency.

For example, it must evaluate the integrity of internal controls and establish the policy and rules for disseminating information. The board of directors must give its opinion on the corporation's information systems. In addition, it must approve the rules of governance and ethics, and adopt the plan for replacing top-level managers.

It must be clear that the board of directors is also responsible for adopting the code of ethics applicable to its members and to the directors and employees of the government corporation and its wholly-owned subsidiaries.

- In regard to remuneration, the government expects a complete, direct commitment from the board of directors.

The board is responsible for approving a remuneration policy applicable to the employees of the government corporation, where the personnel is not part of the civil service, in compliance, of course, with the applicable statutes and regulations.

It must also approve the remuneration of the principal directors—including that of the president and chief executive officer of each of the six aforementioned government corporations with a financial or commercial mission—which will be determined in accordance with the parameters set by the government. This will also be the case for the remuneration of the employees and principal director of each wholly-owned subsidiary, where applicable.

- The president and chief executive officer must ensure that the board of directors has adequate human, material and financial resources to carry out its duties.

### ***Committees that play a strategic role***

Currently, the constituting acts of government corporations rarely provide for the responsibilities, or even the existence, of committees within boards of directors. Yet, the ability of a board of directors to fulfil the role entrusted to it depends directly on the smooth functioning of a certain number of committees.

In that regard, three committees—the audit committee, the governance and ethics committee and the human resources committee—occupy a strategic place in the operation of boards of directors.

Under the new rules of governance, the boards of directors of government corporations will be required to form these three committees, which must be composed entirely of independent members. The chair of the board of directors may attend any committee meeting.

The government intends to go further, by setting out the mission and responsibilities of each of the three committees.

- The audit committee normally plays a key role in controlling the activities of the corporation. The government wants to make sure that role is properly carried out.
  - The members of the audit committee must include people with accounting or financial expertise.
  - Internal and external auditors will interact directly with the audit committee from a functional standpoint, in order to increase and ensure the independence of the audit function. However, administratively speaking, the head of internal auditing will report to general management, in accordance with the recommendations of the Canadian Institute of Chartered Accountants.
  - External auditors will be entitled to an audit mandate of only three to five years. They will not be able to obtain, at the same time, another mandate from the government corporation or one of its subsidiaries, unless the mandate is directly related to their auditing role. Such a mandate must be authorized by the audit committee.
  - Henceforward, the constituting acts of government corporations will specify the nature of the mandate entrusted to the audit committee. The mandate must consist both in examining the financial situation of the government corporation and in ensuring that its resources are used efficiently and effectively—otherwise known as “value-for-money auditing”.

Thus, the audit committee will be required to examine the financial statements and recommend their approval to the board of directors. It will also be charged with analysing the annual report of the corporation’s auditor, making recommendations to the board of directors in that regard and approving the annual audit plan, including the value-for-money component.

- The government’s emphasis on value-for-money auditing is a very big change over the situation to date.

Value-for-money auditing is aimed at ensuring efficient, effective operation of the government corporation. Thus, it consists in overseeing the acquisition and use of the resources at the corporation's disposal and in implementing procedures to that end.

Henceforward, the government will require each of the organizations targeted by the policy statement to carry out value-for-money auditing on an ongoing basis, for example, as part of a five-year plan, and to implement the appropriate procedures and systems to that end. The audit committee must see that value-for-money auditing is carried out and that the work performed is in line with customary standards.

Thus, the government is imposing major new requirements regarding value-for-money auditing, by emphasizing first and foremost the responsibility of boards of directors and by relying, in that regard, on the audit committee.

- The governance and ethics committee has as important a role within the board of directors as the audit committee.
  - In the area of governance and ethics, the members of the boards of directors of government corporations, including the president and chief executive officer, are subject to certain principles and rules defined in the *Regulation respecting the ethics and professional conduct of public office holders*.
  - The governance and ethics committee must propose to the members of the board of directors a code of ethics in accordance with the Regulation. A code of ethics must be introduced for directors who are not appointed by the government and for employees. The committee will also propose to the board of directors rules of governance and ethics relative to the corporation's business operations and a policy for disseminating information.
  - In regard to the selection and appointment of the members of the board of directors, with the exception of the chair of the board and the president and chief executive officer, the governance committee will recommend to the board of directors the knowledge and experience profiles proposed to the government.
  - Moreover, the governance and ethics committee must participate directly in establishing how the board of directors will function, as well as in evaluating, welcoming and training board members.
  - Thus, the governance and ethics committee will be required to propose to the board of directors structures and procedures enabling the board to function independently from management. In addition, the committee will propose mandates for the committees of the board, as well as the criteria for evaluating board members, including the president and chief executive officer, and the board as a whole. In fact, it will be up to the governance and ethics committee to evaluate the functioning of the board. A summary of the evaluation will be included in the annual report.
- The human resources committee is the third committee that all boards of directors must form.

- Generally speaking, this committee will be responsible for seeing to the implementation of the human resources policies developed by the government corporation.
- The committee will participate in the selection and appointment of the principal directors, in accordance with the terms and conditions of appointment decided on by the government.

As indicated previously, the president and chief executive officer will be appointed by the government on the recommendation of the board of directors. The human resources committee will recommend the proposed selection criteria to the board of directors.

- In addition, the human resources committee will play an important role, jointly with the governance committee, in evaluating the performance of the president and chief executive officer. It will be up to the human resources committee to make recommendations to the board of directors, in accordance with the parameters set by the government, concerning the remuneration of the president and chief executive officer of the six government corporations with a financial or commercial mission explicitly targeted by this policy statement.
- Moreover, the human resources committee will make recommendations to the board of directors concerning the standards and scales with regard to the remuneration and other employment conditions of the other directors, as well as concerning the remuneration of the employees and principal director of each wholly-owned subsidiary, where applicable.

### **Increased, tailored means of control**

Modernizing the governance of government corporations involves the implementation of increased means of control, which can, however, be tailored to the mission of each organization.

The government is taking two major initiatives in this regard:

- It is bolstering the tools at its disposal for the oversight of its corporations;
- It is entrusting the Auditor General with an extra role and additional responsibilities in the areas of auditing and control.

### ***A variety of tools***

The government's oversight role will be confirmed and clarified through five well-defined tools to be used according to the situation of each corporation. The five tools at the government's disposal are the strategic plan, the power to issue directives, requests for information, recourse to the Auditor General, and the annual report.

- The strategic plan of government corporations will be drawn up by the president and chief executive officer, and must be approved by the board of directors. It will be submitted to the government for approval. Among other things, the plan will include the variable remuneration policy applicable to the principal directors and the employees of the corporation.

- The minister concerned will have the power to issue directives on the general direction adopted, and the objectives to be pursued, by the organization. These directives must be approved by the government. The government corporation will be obliged to abide by them. The directives will be tabled before the National Assembly.
- A procedure for requesting information will be expressly provided for. Government corporations will be required to provide the minister responsible for enforcing their constituting act with any information that might be requested by the minister respecting their activities and operation.
- Moreover, as is currently the case, the government will always be able to ask the Auditor General to conduct an audit of any kind in respect of a government corporation, even without the consent of the corporation's board of directors.
- The annual report will include a section bearing specifically on the governance of the organization.

Among other things, the section will present the profile and experience of the members of the board of directors, and indicate their assiduity at board and committee meetings, and the remuneration paid to them, as well as the remuneration of each of the principal directors of the organization and its wholly-owned subsidiaries.

- The annual report will also include a section on ethics.

In accordance with the *Act respecting the ministère du Conseil exécutif*, the section will include, among other things, the code of ethics applicable to the members of the board of directors and other ethics-related information.

### ***The Auditor General***

In auditing matters, and in accordance with the commitments made to Quebecers, the government has decided to significantly strengthen current procedures. However, the new rules leave room for adaptation to the individual missions of government corporations.

- The rules are as follows for financial audits:
  - Currently, the Auditor General audits the books and accounts of most government corporations targeted by the policy statement. The government plans to gradually extend the Auditor General's financial auditing role to all government corporations.
  - Financial audits must include an opinion on the quality of internal controls.
  - As of 2010, the Auditor General will be associated with a private firm in a so-called "joint audit"<sup>4</sup> approach regarding the six government corporations with a financial or commercial mission<sup>5</sup> and regarding the Caisse de dépôt et placement du Québec. This means that the Auditor General will work with a

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<sup>4</sup> A joint verification (audit, review) participated in by two or more accounting professionals who are independent from one another and mandated to issue a joint opinion on the financial statements or accounts of a given entity. Joint audits mean joint risk and liability as well.

<sup>5</sup> *Ibid.* at XI.

private firm in auditing the corporations' books and accounts. These government corporations have highly specialized missions, so it is important for auditing to be entrusted in part to a firm very familiar with their sector of activity. Joint auditors will, however, prepare a single report.

- Joint audits will enable the Auditor General to assume his responsibilities in an efficient, operational manner, in accordance with the priorities he sets.
- In the interest of easing his workload, the Auditor General will continue to have the option of contracting out, that is, entrusting a private firm with all or part of the financial audit of a given corporation. However, the Auditor General will remain responsible for issuing an opinion on the financial statements.
- The government has decided to generalize value-for-money auditing and is bolstering the role of the Auditor General in that regard.
  - This type of audit will depend first and foremost on the board of directors. Value for money will be an integral part of the basic mission of the boards of directors of government corporations. This responsibility will be stipulated in the constituting act of government corporations, and the audit committee will oversee the quality of the work performed.
  - The Auditor General will be mandated to examine the value-for-money audit procedure in all organizations covered by the policy statement, and to report to the board of directors in this regard.
  - The Auditor General's report will be included in the corporation's annual report, and the Auditor General will have the option of mentioning the results of his examination in his own report, if he deems there is reason to do so, after informing the board of directors.
  - As already provided by law, the Auditor General may conduct a value-for-money audit of any government corporation of which he audits the books and accounts. However, in the case of "government enterprises", he must obtain prior authorization from the board of directors of the corporation concerned.
  - Moreover, the Auditor General will be able to conduct, on his own initiative, value-for-money auditing of government corporations henceforward subject to joint audits, where he already has the power to conduct value-for-money audits of the corporations.
  - In addition, as is currently the case, the government will always have the possibility of asking the Auditor General to conduct a value-for-money audit of a government corporation even without the consent of the corporation's board of directors.

Strengthening the Auditor General's role in value-for-money auditing will make it possible to better safeguard the public interest, thereby ensuring Quebecers' trust in their government corporations.

In accordance with its philosophy, the government fosters first and foremost an approach that respects the independence of government corporations and encourages their board of directors to assume its responsibilities.

# CONCLUSION



## CONCLUSION

The new rules of governance of government corporations are demanding.

They correspond to an ambitious objective, since the government is targeting an exemplary mode of governance for all public bodies of the Québec State. The rules draw on the models of the major industrial nations, and of North America in particular.

For the Québec government, it is important to attain the objective set, while tailoring the measures adopted to the specific situation of each corporation.

Thus, a first amending bill giving effect to this statement for six government corporations with a financial or commercial mission will be tabled before the National Assembly in the fall of 2006. Moreover, by the end of 2007, legislative amendments will be made in regard to the other government corporations targeted by the statement.

In the public sector as in the private sector, establishing durable, profitable relations for all parties depends on trust between a company and its various partners: its shareholders, its associates, its financial partners, and, of course, its clients. This is true for companies with a financial or commercial mission, but also, more broadly, for any organization, regardless of its mission.

In the public sector, the rules of governance must also serve the public interest. It is in that regard that the ties between government corporations and the government take on their full meaning.

By modernizing the governance of its corporations, the government intends to bolster the necessary trust in public companies and confirm the vocation of these companies with respect to society as a whole.

The government is therefore convinced that Québec can only gain from modernized governance focused on bolstering trust and safeguarding the public interest.



# APPENDIX

## Government corporations and agencies targeted by the policy statement



## GOVERNMENT CORPORATIONS AND AGENCIES TARGETED BY THE POLICY STATEMENT

The following is a list of the government corporations and agencies to which the policy statement applies:

Agence métropolitaine de transport<sup>6</sup>  
Caisse de dépôt et placement du Québec<sup>6</sup>  
Conseil des arts et des lettres du Québec  
Hydro-Québec<sup>6</sup>  
  
Investissement Québec  
La Financière agricole du Québec  
Régie de l'assurance maladie du Québec  
Régie des installations olympiques  
Régie des rentes du Québec  
Société d'habitation du Québec  
Société de développement des entreprises culturelles  
Société de l'assurance automobile du Québec  
Société de la Place des arts de Montréal  
Société de télédiffusion du Québec  
Société des alcools du Québec<sup>6</sup>  
Société des établissements de plein air du Québec<sup>6</sup>  
Société des loteries du Québec<sup>6</sup>  
Société des traversiers du Québec  
Société du Centre des congrès de Québec  
Société du Grand Théâtre de Québec  
Société du Palais des congrès de Montréal  
Société générale de financement du Québec<sup>6</sup>  
Société immobilière du Québec  
Société québécoise de récupération et de recyclage<sup>6</sup>

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<sup>6</sup> Government corporations which, pursuant to section 5 of the *Auditor General Act*, were defined as "government enterprises" in 2004-2005.



