

Draft Regulation

Civil Code of Québec
(Civil Code)

An Act respecting mainly the implementation of certain provisions of the Budget Speech of 10 March 2020 (2021, chapter 15)

Categories of insurance contracts and insured parties that may derogate from the rules of articles 2500 and 2503 of the Civil Code

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation respecting categories of insurance contracts and insured parties that may derogate from the rules of articles 2500 and 2503 of the Civil Code, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation specifies the categories of civil liability insurance contracts that may derogate from the rules set out in article 2500 and the first and second paragraphs of article 2503 of the Civil Code of Québec, the categories of insured parties that may be covered by such contracts, and the other standards that apply to such contracts.

Further information on the draft Regulation may be obtained by contacting Jean-Hubert Smith-Lacroix, coordinator, Direction générale du droit corporatif et des politiques relatives au secteur financier, Ministère des Finances, 8, rue Cook, 4^e étage, Québec (Québec) G1R 0A4; email: jean-hubert.smith-lacroix@finances.gouv.qc.ca.

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to the Minister of Finance, 390, boulevard Charest Est, 8^e étage, Québec (Québec) G1K 3H4.

ERIC GIRARD
Minister of Finance

Regulation respecting categories of insurance contracts and insured parties that may depart from the rules of articles 2500 and 2503 of the Civil Code

Civil Code of Québec
(Civil Code, art. 2503; 2021, chapter 15, s. 84)

1. In any civil liability insurance contract, an insured that meets one of the following conditions may be covered by a contract that departs from the rules set out in article 2500 and the first and second paragraphs of article 2503 of the Civil Code:

(1) the insured is a drug manufacturer under the Act respecting prescription drug insurance (chapter A-29.01);

(2) the insured is a legal person established under one of the following Acts or one of its subsidiaries within the meaning of those Acts:

(a) Act constituting Capital régional et coopératif Desjardins (chapter C-6.1);

(b) Act to establish Fondation, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi (chapter F-3.1.2);

(c) Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.) (chapter F-3.2.1);

(3) the insured is a director, officer or trustee of any entity referred to in paragraph 1 or 2, even one not insured under such a contract.

2. In any civil liability insurance contract, an insured that is not referred to in section 1 but meets one of the following conditions may be covered by a contract that departs from the rules set out in article 2500 and the first and second paragraphs of article 2503 of the Civil Code where the total coverage under all the civil liability insurance contracts subscribed by that insured is at least \$5,000,000:

(1) the insured is considered to be a large business for the purposes of the Act respecting the Québec sales tax (chapter T-0.1) or is a person related to a large business within the meaning of the Taxation Act (chapter I-3);

(2) the insured is a reporting issuer or a subsidiary of such a reporting issuer within the meaning of the Securities Act (chapter V-1.1);

(3) the insured is a foreign business corporation within the meaning of the Taxation Act (chapter I-3) or the Income Tax Act (R.S.C. 1985, c. 1 (5th Supp.));

(4) the insured pursues an activity outside Canada and derives income from that activity;

(5) the insured is a director, officer or trustee of any entity referred to in any of paragraphs 1 to 4, even one not insured under such a contract.

3. In any civil liability insurance contract, an insured that is not referred to in section 1 or 2 but meets one of the following conditions may be covered by a contract that departs from the rules set out in article 2500 and the second paragraph of article 2503 of the Civil Code:

(1) the insured pursues activities in order to provide services provided for in the Act respecting health services and social services (chapter S-4.2) as

(a) an intermediate resource not referred to in the Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements (chapter R-24.0.2) and who is a “Support for Elderly Autonomy (SAPA)”-type resource;

(b) a private seniors’ residence within the meaning of section 346.0.1 of the Act respecting health services and social services; or

(c) a private health and social services institution operating a residential and long-term care centre or rehabilitation centre;

(2) the insured is a director, officer or trustee of any entity referred to in paragraph 1, even one not insured under such a contract.

4. For the purposes of paragraph 4 of section 2, when an insured is referred to only in that paragraph, only the activities referred to in that paragraph may be covered by an insurance contract that departs from the rules set out in article 2500 and the first and second paragraphs of article 2503 of the Civil Code.

5. When a director, officer or trustee referred to in paragraph 3 of section 1, paragraph 5 of section 2 or paragraph 2 of section 3 also pursues activities as a member of a pension committee, those activities must be covered under a contract that does not depart from the rules set out in article 2500 and the first and second paragraphs of article 2503 of the Civil Code.

6. In any civil liability insurance contract, an insured that is not referred to in any of articles 1 to 3 may be covered by a contract that departs from the rules set out in article 2500 and the first and second paragraphs of article 2503 of the Civil Code when legal costs and expenses resulting from actions against the insured, including those of the defence, and interest on the proceeds of the insurance are, when not covered by the contract that departs from those rules, covered by one or more other primary civil liability insurance contracts.

7. When a civil liability insurance contract departs from the rules set out in the first paragraph of article 2503 of the Civil Code, it must state that the insured may, where applicable and after consulting the insurer, select counsel, and that the insured must keep the insurer informed of the progress of the proceeding and allow it to participate in the defence.

8. When a civil liability insurance contract specifies that the proceeds of the insurance are not applied exclusively to the payment of injured third persons, the percentage of the proceeds that may be applied to other purposes may not exceed 50%, unless the insured is found to be not liable or unless the payments to injured third persons do not reach 50% of the proceeds.

However, where a minimum amount of civil liability insurance coverage is specified by law, proceeds must be applied to the payment of injured third persons before any other payment.

9. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

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