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Adoption of Bill 82: The insurer’s duty to defend can now be adjusted

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On Thursday, May 27, 2021, article 2503 of the *Civil Code of Québec* was amended as part of the adoption of Bill 82, titled *An Act respecting mainly the implementation of certain provisions of the budget speech of 10 March 2020,* which we had discussedin a publication last December.

The added paragraph provides that in cases to be provided for by regulation, it will now be possible to depart from the insurer's duty to defend and the exclusive allocation of insurance coverage to injured third parties, within the meaning of article 2500 of the *Civil Code of Quebec*:

> *2503. The insurer is bound to take up the interest of any person entitled to the benefit of the insurance and assume his defence in any action brought against him.*
>
> *Legal costs and expenses resulting from actions against the insured, including those of the defence, and interest on the proceeds of the insurance are borne by the insurer over and above the proceeds of the insurance.*
>
> *However, the Government may, by regulation, determine categories of insurance contracts that may depart from those rules and from the rule set out in article 2500, as well as classes of insureds that may be covered by such contracts. The Government may also prescribe any standard applicable to those contracts*

This legislative amendment confirms the government’s desire to allow contractual limits to certain rules of public order previously applicable to liability insurance for “categories of insurance contracts” and certain “classes of insureds” to be established by regulation. According to the May 12, 2021 debates, the government does not intend to include insurance contracts for individuals and small and medium-sized businesses in the categories covered. Instead, Finance Minister Éric Girard referred to public companies and insurance for directors and officers. This is what he said when the bill was presented for adoption last May 27:

> In terms of insurance, there is also a change in defence costs, which can be excluded from the insurer’s liability, because we had, in Quebec’s *Civil Code*, a distinction with the rest of Canada that put large public companies in Quebec at a disadvantage with respect to their competitors. That is to say that insurance premiums for directors and officers were much higher in Quebec, and now, with what we are introducing here, we will be able to make a difference and help our companies to grow and encourage head offices to be here.

We will continue to closely monitor the presentation of the regulation that will specify the departures allowed under the new article 2503 of *the Civil Code of Québec*.

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