

Regulations and other acts

Gouvernement du Québec

O.C. 1136-2004, 8 December 2004

An Act respecting Québec business investment companies
(R.S.Q., c. S-29.1)

Québec business investment companies — Amendments

Regulation to amend the Québec Business Investment Companies Regulation

WHEREAS, under section 16 of the Act respecting Québec business investment companies (R.S.Q., c. S-29.1), the Government may make regulations for the application of the Act;

WHEREAS the Government made the Québec Business Investment Companies Regulation by Order in Council 1627-85 dated 14 August 1985;

WHEREAS it is expedient to amend the Regulation to give effect to certain measures announced in the Budget Speech of 9 May 1996, 31 March 1998, 9 March 1999, 14 March 2000, 29 March 2001 and in the press releases issued by the Ministère des Finances on 6 November 1998, 30 September 1999 and 26 November 1999;

WHEREAS, under section 305 of the Act to harmonize public statutes with the Civil Code (1999, c. 40), the words “corporation” and “corporations” in the Act respecting Québec business investment companies were replaced by the words “legal person” and “legal persons”;

WHEREAS, under section 253 of the Act to amend the Taxation Act, the Act respecting the Québec sales tax and other legislative provisions (2001, c. 51), the words “the Société de développement industriel du Québec” in the Act respecting Québec business investment companies were replaced by the words “Investissement Québec”;

WHEREAS it is expedient to amend the Regulation to make consequential amendments to harmonize it with chapter 40 of the Statutes of 1999 and chapter 51 of the Statutes of 2001;

WHEREAS, under section 12 of the Regulations Act (R.S.Q., c. R-18.1), a proposed regulation may be made without having been published as prescribed by section 8 of that Act, if the authority making it is of the opinion that the fiscal nature of the norms established, amended or repealed therein warrants it;

WHEREAS, under section 18 of that Act, a regulation may come into force on the date of its publication in the *Gazette officielle du Québec* where the authority that has made it is of the opinion that the fiscal nature of the norms established, amended or repealed therein warrants it;

WHEREAS the Government is of the opinion that the Québec Business Investment Companies Regulation is a fiscal regulation;

IT IS ORDERED, therefore, on the recommendation of the Minister of Economic and Regional Development and Research:

THAT the Regulation to amend the Québec Business Investment Companies Regulation, attached to this Order in Council, be made.

ANDRÉ DICAIRE,
Clerk of the Conseil exécutif

Regulation to amend the Québec Business Investment Companies Regulation*

An Act respecting Québec business investment companies
(R.S.Q., c. S-29.1, s. 16)

1. (1) Section 2.0.1 of the Québec Business Investment Companies Regulation is revoked.

(2) Subsection 1 applies in respect of investments made by a Québec business investment company after 9 May 1996.

* The Québec Business Investment Companies Regulation, made by Order in Council 1627-85 dated 14 August 1985 (1985, *G.O.* 2, 3750), was last amended by the regulation made by Order in Council 1184-97 dated 10 September 1997 (1997, *G.O.* 2, 4624). For previous amendments, refer to the *Tableau des modifications et Index sommaire*, Québec Official Publisher, 2004, updated to 1 September 2004.

2. (1) Section 3.2 is revoked.

(2) Subsection 1 applies in respect of investments made by a Québec business investment company after 31 March 1998.

3. (1) Section 12.1 is revoked.

(2) Subsection 1 applies in respect of investments made by a Québec business investment company after 9 May 1996.

4. (1) Section 12.2 is replaced by the following :

“**12.2.** The amount of the qualified investment is the price paid in cash for a common share with full voting rights of a qualified legal person.”.

(2) Subsection 1 applies in respect of investments made by a Québec business investment company after 9 May 1996. However, where section 12.2 of the Regulation has effect before 22 October 1999, the reference to “legal person” shall be read as a reference to “corporation”.

5. (1) Section 13 is amended

(1) by replacing the first paragraph by the following :

“**13.** The expressions “related person”, “related legal person” and “deal at arm’s length”, with the necessary modifications, have the meaning assigned to them by sections 17 to 21 of the Taxation Act (R.S.Q., c. I-3). For the purposes of that Act, the expression “related legal person” means a “related corporation”.”;

(2) by replacing the third paragraph by the following :

“The expression “additional interest in respect of a qualified investment” has the meaning assigned to it by paragraph *b.2* of section 965.29 of the Taxation Act.”.

(2) Paragraph 1 of subsection 1 has effect from 22 October 1999.

6. Section 17 is amended by replacing “given to it in the Taxation Act” by “assigned to the expression “associated corporation” by the Taxation Act”.

7. (1) Section 18.1 is replaced by the following :

“**18.1.** A qualified legal person shall, within 4 months following the 12-month period after the date of acquisition of a qualified investment, file a declaration with Investissement Québec or, where required by Investissement Québec, a statement of its auditors confirming that, in the 12 months following the acquisition of the qualified investment,

more than 50% of the wages paid to its employees and, where applicable, to employees of the legal persons with which it is associated, were paid to employees who, for the purposes of the regulations made under section 771 of the Taxation Act, are employees of an establishment situated in Québec.”.

(2) Subsection 1 applies in respect of investments made by a Québec business investment company after 31 March 1998. However,

(1) where section 18.1 of the Regulation has effect before 21 August 1998, the reference to “Investissement Québec” shall be read as a reference to “the Société de développement industriel du Québec” ;

(2) where section 18.1 of the Regulation has effect before 22 October 1999, the reference to “legal person” shall be read as a reference to “corporation”.

8. (1) Section 19 is replaced by the following :

“**19.** A company that makes a qualified investment in a year must hold the entire investment for at least 24 months after its acquisition by the company.

The first paragraph does not apply to a replacement of a share that forms part of a qualified investment, as a result of an amalgamation or merger, where the only consideration is a share, if the replacement occurs :

(a) in the 24 months following the acquisition of the investment, if the share issued in replacement is a qualified investment ; or

(b) after the expiry of a period of 12 months from the day on which the investment was acquired, if the amalgamation or merger involves the company and the qualified legal person which benefited from the investment, and Investissement Québec authorizes the amalgamation or merger.”.

(2) Subsection 1 applies in respect of investments made by a Québec business investment company after 26 November 1999.

9. (1) Section 20 is replaced by the following :

“**20.** Except with the prior authorization of Investissement Québec, funds from a qualified investment may not be used by a qualified legal person in the 24 months following the date of the qualified investment to

(1) repay a creditor who is a shareholder of the company having made the investment or of the qualified legal person or a person with whom the creditor does not deal at arm’s length or a corporation that is associated with the qualified legal person ;

(2) make a loan;

(3) purchase parcels of land with the intention of selling them;

(4) make investments outside Québec not directly related to its operations;

(5) purchase or acquire shares of other legal persons or all or substantially all of the assets of a business; or

(6) purchase or redeem shares of its capital stock except a purchase or redemption referred to in section 21.”

(2) Subsection 1 applies in respect of investments made by a Québec business investment company after 9 May 1996. However,

(1) where section 20 of the Regulation has effect before 21 August 1998, the reference to “Investissement Québec” shall be read as a reference to “the Société de développement industriel du Québec”;

(2) where section 20 of the Regulation has effect before 22 October 1999, the reference to “legal person” shall be read as a reference to “corporation”.

10. (1) Section 21 is replaced by the following:

“**21.** Where a share that forms part of a qualified investment and any share issued in replacement of such a share may, under its attributes or the conditions pertaining to its issue, be redeemed or purchased by the qualified legal person or be purchased by any other person, the following conditions apply:

(1) the share may not be redeemed or purchased within 60 months after its acquisition by the company;

(2) no commitment by way of reimbursement, compensation, revenue guarantee, proceeds of disposition, including entitlement, either immediately or in the future and either absolutely or contingently, to receive or to obtain such a commitment may be given to the holder; and

(3) the terms and conditions to determine the consideration payable or the value of the share at any time must be accepted by Investissement Québec prior to its issue or to the stipulations in an agreement.

In addition, within 60 months after the acquisition by a company of a share that forms part of a qualified investment, the qualified legal person may not redeem or purchase such a share or any share issued in replacement of such a share.”

(2) Subsection 1 applies in respect of investments made by a Québec business investment company after 9 March 1999. However, where section 21 of the Regulation has effect before 22 October 1999, the reference to “legal person” shall be read as a reference to “corporation”.

11. (1) Section 23 is amended

(1) by replacing “corporation” in the first paragraph by “legal person”;

(2) by deleting the second paragraph.

(2) Paragraph 1 of subsection 1 has effect from 22 October 1999.

(3) Paragraph 2 of subsection 1 applies in respect of investments made by a Québec business investment company after 9 May 1996.

12. (1) Section 25 is replaced by the following:

“**25.** In the 24 months preceding the date of a qualified investment and in the 60 months following such a date, a qualified legal person may not make any material cash outlay to its shareholders or the shareholders of the company that made the investment or to persons not dealing at arm’s length with such shareholders, the company or the qualified legal person, except with the consent of Investissement Québec.

For the purposes of this section, Investissement Québec may determine that a material cash outlay was made to the shareholders of a company or to persons related to such shareholders, where a shareholder of the company, or a person related to the shareholder,

(1) is or was also a shareholder of a legal person that has sold or is selling all or substantially all of the assets of a business; or

(2) is selling or has sold all or substantially all of the assets of a business

to the qualified legal person that are or were the subject of a qualified investment by the company. For that purpose, Investissement Québec may determine that the payment of any part of a debt incurred by the qualified legal person, including a debt relating to the acquisition of assets, was made primarily to indirectly make a material cash outlay to a shareholder of a company or a person related to the shareholder.”

(2) Subsection 1 applies in respect of investments made by a Québec business investment company after 9 May 1996. However,

(1) where section 25 of the Regulation applies in respect of investments made before 1 April 1998, the first paragraph is amended by inserting “, other than a loan made within the scope of a stock ownership plan,” after “outlay” and before “to its shareholders”;

(2) where section 25 of the Regulation has effect before 21 August 1998, the reference to “Investissement Québec” shall be read as a reference to “the Société de développement industriel du Québec”;

(3) where section 25 of the Regulation has effect before 22 October 1999, the reference to “legal person” shall be read as a reference to “corporation”.

13. (1) Schedule I is amended

(1) by adding the following paragraph after paragraph 5 of section 3:

“(6) a business operating in the biotechnology sector to the extent that the business represents more than 50% of the activities of the qualified legal person.”;

(2) by replacing “exploitation” in the French text of the portion before paragraph 1 of section 4 by “exportation”;

(3) by adding the following after section 10:

“**11.** A business operated by a qualified legal person where more than 50% of the activities of the business consist in operating a broadcasting licence issued by the Canadian Radio-television and Telecommunications Commission and operating in the broadcasting sector.

12. A business operated by a qualified legal person where more than 50% of the activities of the business consist in operating an accredited bookstore in accordance with the Act respecting the development of Québec firms in the book industry (R.S.Q., c. D-8.1).”.

(2) Paragraph 1 of subsection 1 applies in respect of investments made by a Québec business investment company after 30 September 1999.

(3) Paragraph 3 of subsection 1,

(1) where it enacts section 11 of the Regulation, applies in respect of investments made by a Québec business investment company after 14 March 2000;

(2) where it enacts section 12 of the Regulation, applies in respect of investments made by a Québec business investment company after 29 March 2001.

14. (1) Schedule II is revoked.

(2) Subsection 1 applies in respect of investments made by a Québec business investment company after 31 March 1998.

15. (1) The Regulation is amended

(1) by replacing the words “the Société de développement industriel du Québec” and the words “the Société” wherever they appear in the following provisions by “Investissement Québec”:

- the first paragraph of section 1;
- the second paragraph of section 2;
- paragraph 4 of section 2.1;
- section 18;
- Schedule III;

(2) by replacing the words “the Société de développement industriel du Québec” wherever they appear in the following provisions by “Investissement Québec”:

- section 12;
- the first and second paragraphs of section 24;

(3) by replacing the word “corporation” wherever it appears in the following provisions by “legal person”:

- subparagraphs 1, 2, 3, 5, 7 and 8 of the first paragraph of section 2;
- paragraphs 4, 7 and 9 of section 2.1;
- section 3;
- section 5;
- section 7;
- section 9;
- section 10;
- section 11;
- section 12;
- section 15;

- section 16;
 - section 17;
 - section 18;
 - section 18.2;
 - section 19.1;
 - section 24;
 - the portion before section 1 of Schedule I;
 - section 8 of Schedule I;
 - section 9 of Schedule I;
 - section 10 of Schedule I;
- (4) by replacing the words “corporation” and “corporations” wherever they appear in the following provisions by “legal person” and “legal persons” respectively:
- subparagraphs 4 and 6 of the first paragraph of section 2;
 - section 3.1;
 - section 6;
 - section 8;
 - section 14;
 - section 4 of Schedule I;
 - section 6 of Schedule I;
- (5) by replacing “incorporation” in paragraph 3 of section 1 and paragraph 9 of section 2.1 by “constitution”.
- (2) Paragraphs 1 and 2 of subsection 1 have effect from 21 August 1998.
- (3) Paragraphs 3 and 4 of subsection 1 have effect from 22 October 1999.

16. This Regulation comes into force on the date of its publication in the *Gazette officielle du Québec*.

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Gouvernement du Québec

O.C. 1147-2004, 8 December 2004

Professional Code
(R.S.Q., c. C-26)

Amount of the contribution of each member of a professional order for the 2005-2006 fiscal year of the Office des professions du Québec

WHEREAS, under section 196.2 of the Professional Code (R.S.Q., c. C-26), the expenditures incurred by the Office des professions du Québec in a fiscal year shall be payable by the members of the professional orders;

WHEREAS, under section 196.3 of the Code, each member of a professional order is required to pay, for every fiscal year of the Office, a contribution equal to the total of the expenditures incurred by the Office for a year of reference, divided by the total number of members entered on the rolls of all orders on the last day of the year of reference;

WHEREAS, under section 196.4 of the Code, the Government shall fix, for each fiscal year of the Office, the amount of the contribution of each member of an order;

WHEREAS the first paragraph of section 196.5 of the Code determines that where, for a particular fiscal year, the total amount of the contributions paid under section 196.3 is less than or is more than the amount of the expenditures incurred by the Office, the contribution of each member, established in accordance with section 196.3, shall be increased or reduced, as the case may be;

WHEREAS, under the second paragraph of that section, the increase or reduction shall be determined by establishing the difference between the expenditures incurred by the Office for that fiscal year and the total amount of contributions paid for the year of reference and dividing that difference by the total number of members entered on the roll of every order on the last day of that fiscal year. The charge payable pursuant to section 196.8 shall be deducted when the increase or reduction is determined;

WHEREAS, for the purposes of section 196.5 of the Code, the reference year to serve as the basis for the calculation of the contribution is the period from 1 April 2002 to 31 March 2003;