

A-411

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A411 - T1

Addendum to manuals A-411 and A-412

An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions, and related amendments and changes

Introduction — Key changes affecting damage insurance representatives

*An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*¹ (better known as Bill 141) introduces a reform of the laws governing the financial sector by, in particular, enacting the *Insurers Act*² to replace the *Act respecting insurance*, and amending the *Act respecting the distribution of financial products and services* (Distribution Act) to, among other things, allow firms (and independent partnerships) to offer financial products and services by technological means and to specify that damage insurance brokers must, when offering certain insurance products to a client, be able to obtain quotes from at least three insurers.³

The *Act respecting the Autorité des marchés financiers* is renamed the *Act respecting the regulation of the financial sector* and is amended to, in particular, protect people who disclose failures to comply to the Authority and establish the Financial Products and Services Consumers Advisory Committee within the Authority.

The *Civil Code of Québec* (C.C.Q.) is also amended in regard to the divided co-ownership of an immovable to require co-owners to take out third person liability insurance, the minimum amount of which is determined by government regulation, and syndicates to establish a self-insurance fund to be used to pay the deductibles provided for by the insurance they have taken out, set out the rules applicable to the immovable's insurance and contributions to the self-insurance fund, and enable the Government to determine the terms applicable to such insurance and contributions by regulation.

Finally, the *Automobile Insurance Act* (AIA) is amended to specify how information concerning the automobile driving experience of insured persons is to be communicated to an authorized insurer when automobile insurance is obtained or renewed.

Insurers Act

The *Insurers Act* came into force on June 13, 2019 pursuant to *An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*.⁴

The *Insurers Act* replaces the *Act respecting insurance*,⁵ which came into force on October 20, 1976 and reformed all insurance rules in Québec. The first part of this Act originally included rules governing insurance contracts—rules that were incorporated

¹ S.Q. 2018, c. 23.

² CQLR, c. A-32.1.

³ Effective December 13, 2019.

⁴ S.Q. 2018, c. 23, s. 814.

⁵ *Act respecting insurance*, CQLR, c. A-32.

into the *Civil Code of Lower Canada* in force at the time. The second part was integrated into the *Act respecting insurance* as it existed until June 12, 2019.

The *Insurers Act* sets out the rules governing the constitution (establishment) and administration of Québec chartered insurers and the activities of all insurers operating in Québec. It also covers certain powers of the AMF, which is responsible under the Act for monitoring insurer activities in Québec.

The *Insurers Act* regulates the granting by the AMF of authorization to carry on insurer activities in Québec and sets out the rules relating to insurer assets, reserves, investments and book-keeping. It is supplemented by the Regulation under the Insurers Act,⁶ which, in order to protect the public, includes certain rules relating to advertising. The *Insurers Act* and its implementing regulation are an important source of law in damage insurance.

For damage insurance representatives, the main changes stemming from the *Insurers Act* are:

- the right for insurers to offer financial products and services without the intermediary of a natural person, via the Internet (*Insurers Act*, s. 59); and
- the insurer's liability for the acts done by distributors toward underwriting or enrolling a participant in an insurance contract with respect to distribution without a representative (*Insurers Act*, s. 65).

Act respecting the distribution of financial products and services

The *Act respecting the distribution of financial products and services*⁷ (Distribution Act) is the main source of law in matters pertaining to the distribution of financial products and services (including damage insurance and claims adjustment) in Québec.

Amendments have recently been made to the Distribution Act pursuant to *An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*. The most important changes for damage insurance representatives and damage insurance firms are:

- The AMF will take over mortgage brokerage supervision from the OACIQ as of May 1, 2020 (Distribution Act, ss. 1, 11.1, 11.2, 13, 70);⁸
- Insurance representatives are no longer required to personally collect the information required to identify a client's needs, but they continue to be responsible for the collection of such information;

⁶ Regulation under the Act respecting insurance, CQLR, c. A-32, r. 1. A new implementing regulation aligned with and adjusted and complementary to the *Insurers Act* is expected to be published shortly. Until then, the Regulation under the Act respecting insurance will continue to apply with the necessary adjustments.

⁷ *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2.

⁸ See: <https://lautorite.qc.ca/en/professionals/mortgage-brokerage-supervision-to-be-transferred-to-the-amf-on-may-1-2020/>

- Natural persons responsible for appraising damage to automobiles no longer need to be appraisers within the meaning of Title VI of the *Automobile Insurance Act* (Distribution Act, s. 10);
- When offering certain products to their clients, damage insurance brokers must now be able to obtain quotes from at least three insurers (Distribution Act, s. 38);⁹
- When the renewal of an insurance policy includes a change other than to the premium, damage insurance agents and brokers must take the necessary steps to ensure that the coverage provided corresponds to the client's needs;
- A firm registered in the sector of damage insurance must now be registered as a "damage insurance agency" or a "damage insurance brokerage firm" (Distribution Act, s. 75);¹⁰
- An insurance firm may now offer insurance products without the intermediary of a natural person, via a digital space (Distribution Act, s. 71.1). An insurer wishing to offer insurance products directly via the Internet must register as an insurance firm. Whether the firm is an insurer or not, it must comply with the obligations applicable to an insurance representative, including the duty to advise (Distribution Act, s. 86.0.1). Furthermore, a damage insurance agency must disclose, on its website and in its written communications with its clients, the names of the insurers for which it offers insurance products, the name of any insurer to which it is bound by an exclusive contract and the products covered by that contract. Meanwhile, a damage insurance brokerage firm must disclose the name of any financial group that holds more than 20% of the value of the firm's equity capital and the name of any insurer to which are paid more than 60% of the premiums (Distribution Act, s. 83.1);¹¹
- An insurance firm must keep a complaints register (Distribution Act, s. 103). It must also make its complaint processing policy available on its website (Distribution Act, s. 103.1);
- Several technical changes have been made to the rules governing the holding of an interest (equity capital) in a damage insurance firm and the attached voting rights (Distribution Act, s. 150);¹² and
- Several provisions related to distribution without a representative have been moved to the *Insurers Act*.

On June 27, 2019, the AMF published a *Notice regarding information collection and insurance advice*.¹³ All insurance representatives should read this five-page notice carefully. With the amendments to section 27 of the Distribution Act, insurance representatives are no longer required to personally collect the information required to

⁹ Effective December 13, 2019.

¹⁰ Effective December 13, 2019.

¹¹ Effective December 13, 2019.

¹² Effective December 13, 2019.

¹³ See: https://lautorite.qc.ca/fileadmin/lautorite/reglementation/distribution/avis/2019juin27-avis-collecte_conseil-en.pdf

assess a client's insurance needs. This requirement previously prevented them from asking another person (e.g., a non-certified assistant) to collect the information for them.

In the Notice, the AMF points out that offering insurance products is an act reserved for insurance representatives who hold a certificate issued by the AMF (for the product being sold). However, providing advice is not a reserved act.¹⁴ That being said, damage insurance representatives cannot advise a client on a financial product or service they do not hold a certificate or licence for, but, instead, must refer the client to a person who holds the appropriate certificate or licence for such advice.

Before completing an insurance application or offering an insurance product, the insurance of persons representative must analyze the purchaser's or insured's needs. This needs analysis obligation applies to all insurance representatives and every type of insurance product. Even where they do not personally collect the information required to identify a client's needs, representatives remain wholly responsible for collection of the information and cannot transfer that responsibility to the person mandated by them to perform this function.

Their obligation to "appropriately advise" requires representatives to inquire into the client's situation in order to identify and analyze his or her needs so that they can help the person choose a product and can provide him or her with the necessary information and explanations about the products they distribute. Representatives must then offer the client a product that meets his or her needs, if they can. Conversely, representatives must inform the client when none of the products they are authorized to offer meet the client's needs. Representatives are responsible for demonstrating that they have complied with all these key steps.

Regulation respecting alternative distribution methods

The Regulation respecting alternative distribution methods (RADM),¹⁵ made under the Distribution Act and the Insurers Act, sets out the framework for the offering of insurance via the Internet without the intermediary of a natural person and distribution without a representative (DWR). The Regulation came into force on June 13, 2019, except for a handful of provisions that will come into force on June 13, 2020.

On May 15, 2019, the AMF published a *Notice relating to the application of the Regulation respecting alternative distribution methods*, which applies to both Internet

¹⁴ As long as the person who provides advice related to a product does not offer insurance products and does not receive any direct or indirect remuneration from anyone. See the AMF's Notice regarding information collection and insurance advice, p. 2.

¹⁵ The AMF published a *Notice relating to the application of the Regulation respecting alternative distribution methods* on May 15, 2019. See: <https://lautorite.gc.ca/en/professionals/regulations-and-obligations/distribution-of-financial-products-and-services/notices/>

insurance offerings and DWR. The AMF has also posted explanations on its website regarding insurance offered via the Internet¹⁶ and DWR.¹⁷

Insurance products offered without the intermediary of a natural person (on a digital transaction space (sales via the Internet))

Offering insurance products without the intermediary of a natural person is a new development.

To take advantage of this new distribution method, the firm must comply with the relevant provisions of the *Act respecting the distribution of financial products and services* and sections 1 to 18 of the Regulation respecting alternative distribution methods. The RADM applies only to firms whose digital space allows clients to complete the purchase of an insurance product without the intervention of an insurance representative.

As previously mentioned, the AMF has published a *Notice relating to the application of the Regulation respecting alternative distribution methods* dealing, among other things, with sales via the Internet (RADM, ss. 1 to 18) and has posted explanations regarding the offering of insurance via the Internet on its website.

Distribution without a representative

Under the Distribution Act, certain insurance products may be offered on behalf of an insurer through distributors that are not certified by the AMF as representatives (e.g., banks, car dealers and travel agencies). A distributor is a person who, in pursuing activities outside the field of insurance, offers, as an accessory, for an insurer, an insurance product which relates solely to goods sold by the person or secures a client's adhesion in respect of such an insurance product (Distribution Act, s. 408).

As previously mentioned, the AMF has published a *Notice relating to the application of the Regulation respecting alternative distribution methods* dealing, among other things, with distribution without a representative (RADM, ss. 1 and 19 to 35).

On June 13, 2019, the distribution guide delivered to clients was replaced by a summary and a fact sheet (the content of the fact sheet is prescribed by the AMF) under the RADM. The summary is shorter and simpler for consumers than the distribution guide. During the transition period extending until June 12, 2020, the delivery of a distribution guide filed with the AMF prior to June 13, 2019 will be equivalent to the delivery of a summary and a fact sheet.

The insurer must prepare a summary and mandate the distributor to deliver it to the client at the time it offers the product to him or her, together with a fact sheet in the form set out in Schedule 2 of the RADM. The summary describes the product, the nature of the coverage, and the exclusions. It must explain the procedure and time limit for making a claim. It must also indicate the time available to the insurer to pay the insured amounts

¹⁶ See: https://lautorite.gc.ca/en/professionals/firms-and-representatives/firms-independent-partnerships-and-independent-representatives/products-and-services-offered-via-the-internet/?oft_id=150703&oft_k=sWTPHloF&oft_lk=4LmBVo&oft_d=637042330057200000&cHash=2f5e65edc7a69d704aee821ec826b9e6&utm_campaign=septembre2019&utm_medium=email&utm_source=infolette-Info-conformit%C3%A9

¹⁷ See: <https://lautorite.gc.ca/en/professionals/insurers/distribution-without-a-representative-dwr/>

and the time available to the insured to react when the insurer refuses to pay the indemnities.

The AMF has prepared a *Summary Drafting Guide*.¹⁸

Note that insurance products that can be offered by distributors through the DWR regime can also be distributed by distributors via the Internet. In such cases, since the distributor is not an insurance firm, the rules that apply are those for distribution without a representative.

Finally, with respect to distribution without a representative, the AMF published a *Notice regarding the offering of insurance products by automobile and recreational and leisure vehicle dealers* on June 21, 2018.¹⁹

Regulations governing the activities of damage insurance representatives

The following are the main regulations governing the activities of damage insurance representatives:

- Regulation respecting the pursuit of activities as a representative (changes will be made to this regulation to integrate the mortgage brokerage sector);
- Regulation respecting firms, independent representatives and independent partnerships (changes will be made to this regulation to integrate the mortgage brokerage sector);
- Regulation respecting the keeping and preservation of books and registers (changes will be made to this regulation to integrate the mortgage brokerage sector);
- Code of ethics of damage insurance representatives;
- Code of ethics of claims adjusters;
- Regulation respecting information to be provided to consumers;
- Regulation respecting the registration of firms, representatives and independent partnerships (changes will be made to this regulation to integrate the mortgage brokerage sector);
- Regulation respecting fees and contributions payable (this regulation will be amended to integrate the mortgage brokerage sector);
- Regulation respecting the compulsory professional development of the Chambre de l'assurance de dommages;

¹⁸ See: https://lautorite.qc.ca/fileadmin/lautorite/professionnels/distribution-sans-rep/guide-redaction-sommaire_an.pdf

¹⁹ See: https://lautorite.qc.ca/fileadmin/lautorite/reglementation/distribution/avis/2018juin21-avis-concessionnaires_an.pdf

- Regulation respecting the issuance and renewal of representatives' certificates (this regulation will be amended to integrate the mortgage brokerage sector); and
- Regulation respecting alternative distribution methods.

Civil Code of Québec: co-ownerships

An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions amended the articles of the *Civil Code of Québec* (C.C.Q.) dealing with co-ownership insurance. Certain provisions are already in force, while others will apply once the related regulations have been adopted by the government. The *Chambre de l'assurance de dommages* prepared a very good summary of the impact of these changes for damage insurance representatives and claims adjusters. The following is an excerpt of the summary prepared by the *Chambre de l'assurance de dommages* regarding the changes to co-ownership insurance, which we encourage you to read.²⁰

Provisions in force since December 13, 2018

- Obligation of the co-ownership syndicate to keep a register containing a description of the private portions and identifying any improvements made to them (various coming into force dates)
- Decision by syndicate to claim an insurance indemnity or not in the event of a loss
- Obligation relating to repairs and apportionment of common expenses
- Limiting of insurer's right to subrogation and syndicate's recourse to legal action

Provisions coming into force after the passing of a new regulation

- Minimum compulsory amount for co-owner civil liability insurance
- Minimum compulsory contribution to the self-insurance fund
- Evaluation of the replacement cost by a chartered appraiser every five years
- Risks covered under the syndicate's insurance contract by operation of law

20 See: http://www.chad.ca/fr/membres/pratique-professionnelle/industrie-enjeux-et-specialites/copropriete/587/changements-a-lassurance-des-coproprietes?utm_source=chadexpress&utm_medium=bouton&utm_campaign=changements-assu-copro

Conduct of Insurance Business and Fair Treatment of Customers

It should be noted that on September 27, 2018, the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organization (CISRO) jointly published guidance (entitled Conduct of Insurance Business and Fair Treatment of Customers) setting out their overall expectations of insurers and intermediaries as to the conduct of insurance business and the fair treatment of customers.²¹ This important guidance applies to both insurers and intermediaries (insurance representatives and insurance firms). All insurance representatives should be familiar with it.

Since June 13, 2019, as a result of the coming into force of sections 103 to 103.4 of the *Act respecting the distribution of financial products and services*, firms must not only provide equitable resolution of complaints filed with them (this was an existing obligation), but must also, as mentioned above, keep a register of complaints (Distribution Act, s. 83). They must also make their complaint processing policy available on their website (Distribution Act, s. 103.1).

Firms, independent partnerships and independent representatives must have a complaint examination and dispute resolution policy. A standard policy is available on the AMF website.²² Firms, independent partnerships and independent representatives may use it as a basis for their own policies.

²¹ See: <https://www.ccir-ccrra.org/Documents/View/3450>

²² Autorité des marchés financiers. *Your complaint examination obligations*. [On-line]. [Document consulted on July 21, 2017]. See: <https://lautorite.qc.ca/en/professionals/obligations-and-administrative-procedures/complaint-examination/your-complaint-examination-obligations/> and <https://lautorite.qc.ca/fileadmin/lautorite/professionnels/obligations/Complaint-examination-policy.pdf>

A411-S1

Collection of Forms

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TABLE OF CONTENTS

Agreement Relating to Claims for Damage to Owned Contents and Agreement Relating to Claims for Damage to Non-Owned Contents (Insurance Bureau of Canada)	3
Conditions particulières (available in French only) (Insurance Bureau of Canada).	7
Insurance Binder – Home Insurance (Chambre de l’assurance de dommages).	11
Habitational Insurance Application (Centre for Study of Insurance Operations)	15
Agreement – Claims Settlement of Condominiums (Divided Co-Ownership) (2011 Version) (Insurance Bureau of Canada).	21
Règlement des sinistres en assurance de biens – Principes directeurs (available in French only) (convention 1984) (Insurance Bureau of Canada).	29
General Conditions	137
Quebec Personal Property Forms	143
IBC 1501 Homeowners – Specified Perils Form	147
IBC 1502 Homeowners – Building, Comprehensive Coverage – Contents, Specified Perils Coverage	187
IBC 1503 Homeowners – Comprehensive Form	231
IBC 1506 Tenants – Specified Perils Form	271
IBC 1507 Tenants – Comprehensive Form	307
IBC 1510 Condominium Unit Owners – Specified Perils Form	345
IBC 1511 Condominium Unit Owners – Comprehensive Form	387
IBC 1521 Building and Contents – Specified Perils Form	429
IBC 1522 Building and Contents – Building, Comprehensive Coverage – Contents, Specified Perils Cover	453
IBC 1523 Seasonal Dwelling – Specified Perils Form	477
IBC 1548 Endorsement – Amended Amounts of Insurance	499
IBC 1549 Endorsement – Miscellaneous Property – Specified Perils Coverage.	503
IBC 1550 Endorsement – Miscellaneous Property – Comprehensive Coverage	513
IBC 1552 By-Laws Endorsement	523
IBC 1553 Endorsement – Single Amount of Insurance	527
IBC 1554 Earthquake Endorsement	531
IBC 1557 Endorsement – Above Ground or Semi-Inground Swimming Pool and Spa.	535
IBC 1558 Endorsement – Fuel Oil Overflow or Escape.	545
IBC 1560 Endorsement – External Tear Out Expense	549
IBC 1561 Endorsement – Water Damage – Ground Water and Sewers	553
IBC 1562 Endorsement – Water Damage – Above Ground Water	557
IBC 1563 Endorsement – Water Damage – Ground Water, Sewers and Overflow of Body of Water.	561
IBC 1567 Endorsement – Inground Swimming Pool and Spa.	565
IBC 1570 Endorsement – Exclusion for Water Damage Originating from a Water Heater	575
IBC 1580 Endorsement – Roofing Exclusion.	579
IBC 3000 Standard Mortgage Clause	583

~~Règlement des sinistres en assurance des biens –
Principes directeurs
(adopté en 1984)
Bureau d'assurance du Canada~~

**Agreement of guiding
principles
(Property insurance)
(1984)**

Insurance Bureau of Canada



INDEX

Section A - Rules Dealing with Primary Insurance

- Rule 1 Insurance on Specifically Described or Scheduled Property
- Rule 2 Two or More Policies Insuring Specially Described or Scheduled Property
- Rule 3 Trip Transit Policy and Other Insurance on Same Property
- Rule 4 Specific Glass Insurance and Other Policy also Insuring Glass
- Rule 5 Invitors and Guests Insurance and Employers and Employees Insurance
- Rule 6 Policy Insuring Owner of Construction Project or Prime Contractor, and also insuring Sub-Contractor, and Separate Policy insuring Owner, Contractor or Sub-Contractor

Section B- Rules Dealing with Insurance by Bailees in Relation to that by Bailors

- Rule 7 Carriers', Bailees' and Bailors' Insurance

Section C - Rules Dealing with Reduced Amount of Contribution in Certain Cases

- Rule 8 Effect of Pick-Up Endorsement

Section D - Rules Dealing with Boiler and Machinery Insurance and Other Insurances

- Rule 9 Boiler and Machinery and Other Insurance

Section E - Rules Dealing with Building and Contents

Insurance including Condominiums

- Rule 10 Building Insurance and Contents Insurance When Building Owner Occupied or Condominium
- Rule 11 Radio and Television Antennae and Satellite Receivers - Owner Occupied Building
- Rule 12 Radio and Television Antennae and Satellite Receivers - Building Tenant Occupied

Section F - Rule Applicable When Loss Deductible Clause(s) in Question

- Rule 13 Insurance(s) Subject to a Deductible

Section G - Rules Applicable to Non-Concurrent Apportionments (Including Limit of Liability Rule and Rule Dealing with Business Interruption)

- Rule 14 Limit of Liability Rule
- Rule 15 Two or More Blanket Floating Policies
- Rule 16 Two or More Business Interruption Policies

Section H - Rule for Concurrent Insurance Subject to Limitation Clauses

- Rule 17 Concurrent Insurance(s)-Subject to Limitation Clause

Section I - General Rules

- Rule 18 Certain Clauses Set Aside
- Rule 19 Specific Rule Prevails
- Rule 20 Effect of Loan Agreement
- Rule 21 Effect of Payment When Pending Dispute
- Rule 22 Application of Agreement When Discrepancy Between English and French Text
- General Provisions -
 - Application of Agreement
 - Arbitration
 - Companies Bound
 - Amendments
 - Withdrawal

SECTION A
RULES DEALING WITH PRIMARY INSURANCE

RULE 1: INSURANCE ON SPECIFICALLY DESCRIBED OR SCHEDULED PROPERTY

1. Insurance on
 - (i) specifically described property; or
 - (ii) each article or object individually itemized on a schedule, whether or not for a specified amount, is primary.
2. If there is any conflict between this Rule and Rule 5, 7 or 9, Rule 5, 7 or 9, whichever is applicable, prevails.

RULE 1: Insurance on specifically described property or individual itemized articles is primary.

RULE 2: TWO OR MORE POLICIES INSURING SPECIFICALLY DESCRIBED OR SCHEDULED PROPERTY

- (1) Two or more policies, whether or not for a specified amount,
 - (i) on specifically described property; or
 - (ii) on each article or object individually itemized on a schedule, shall contribute as provided in the Limit of Liability Rule (Rule 14).
- (2) If there is any conflict between this Rule and Rule 5,7 or 9, Rule 5,7 or 9, whichever is applicable, prevails.

RULE 3: TRIP TRANSIT POLICY AND OTHER INSURANCE ON SAME PROPERTY

- (1) Insurance on a trip transit certificate or baggage policy is primary unless the property lost or destroyed is specifically described on another policy.
- (2) For purposes of this Rule, trip transit certificate or policy includes a baggage policy whether issued for a specific trip or upon a time basis and whether or not forming part of a travel policy.
- (3) Subsection (1) does not prejudice nor affect the right of action against any bailee or carrier to which the trip transit insurer may be subrogated upon payment of a loss.

RULE 4: SPECIFIC GLASS INSURANCE AND OTHER POLICY ALSO INSURING GLASS

Glass, lettering and ornamentation insured under a glass form is primary to other insurance which insures the glass as part of a building whether against a specific peril or perils or on an all risk basis by whomsoever placed.

RULE 5: INVITORS AND GUESTS INSURANCE AND EMPLOYERS AND EMPLOYEES INSURANCE

- (1) In this Rule, a reference to a guest includes a reference to a member of the household of the invitor.
- (2) Insurance carried by a guest on his own property is primary to insurance carried by an invitor.
- (3) Where there is a policy insuring both the property owned by an employer and property owned by employees and there is also a policy separately insuring property owned by an employee, the policies pay according to the following order of priority:
 - (i) the employer's policy pays the loss or damage to that employer's own property;
 - (ii) the employee's policy pays the loss or damage to that employee's own property; and
 - (iii) any shortfall of insurance, after exhausting the limits of insurance of the employee's policy referred to in (ii), is added to the loss or damage to property owned by employees not separately insured, and any policy limits available under (i) are pro rated among such employees.
- (4) In the application of this Rule,
 - (i) where there is a deductible on any policy insuring property of an employee, such deductible, for the purpose of contribution to that employee's loss from the employer's policy, shall be treated as that employee's uninsured loss;
 - (ii) to determine the amount of insurance available under the employer's policy to contribute to the loss of employees, after payment of the employer's own loss, any co-insurance application shall be based on total values at risk on the employer's policy at the time of loss, including the values of uninsured property of employees.

RULE 6: POLICY INSURING OWNER OF CONSTRUCTION PROJECT OR PRIME CONTRACTOR AND ALSO INSURING SUB-CONTRACTORS AND SEPARATE POLICY INSURING OWNER, CONTRACTOR OR SUB-CONTRACTORS

- (1) Where the policy insuring the owner of a specific construction project or the prime contractor on the project also insures the interests of the other, as the case may be, and sub-contractors engaged in such project, such insurance is primary insurance and any other insurance placed by the owner, prime contractor or a sub-contractor is excess insurance.
- (2) Unless the construction contract between the prime contractor and sub-contractor provides otherwise, the primary policy referred to in subsection (1) pays according to the following order of priority:
 - (i) loss or damage to the property of the named insured;
 - (ii) loss or damage to property of unnamed insureds,
 and if there is insufficient insurance to fully indemnify the unnamed insureds, the amount available under the primary policy shall be apportioned on a pro rata basis between or among the unnamed insureds.

SECTION B

RULES DEALING WITH INSURANCE BY BAILEES IN RELATION TO THAT BY BAILORS

RULE 7: CARRIERS', BAILEES' AND BAILORS' INSURANCE

- (1) A policy insuring a carrier or bailee in respect of property owned by others, either directly or indirectly, is primary insurance and any other insurance placed by the bailor or owner is excess insurance, unless there is a valid written agreement or contract between the bailor and the carrier or bailee expressly providing that the property is at the risk of the bailor or that the bailor is required to place insurance on the property or mutually agreeing upon a limitation of value of the property.
- (2) Where there is a policy insuring both the carrier's or bailee's own property and property owned by others and there is also a policy separately insuring property owned by others, the policies pay according to the following order of priority:
 - (i) the carrier's or bailee's policy pays the loss or damage to that carrier's or bailee's own property;
 - (ii) the policy separately insuring the property owned by another pays the loss or damage to that other's own property; and
 - (iii) any shortfall of insurance, after exhausting the limits of insurance of the policy insuring the property of another referred to in (ii) is added to the loss or damage to property owned by others and not separately insured, and any policy limits available under (i) are pro rated among the owners of such other property.
- (3) In the application of this Rule,
 - (i) where there is a deductible on any policy insuring property of a bailor, such deductible, for the purpose of contribution to that bailor's loss from the bailee's policy, shall be treated as that bailor's uninsured loss;
 - (ii) to determine the amount of insurance available under the bailee's policy to contribute to the loss of bailors, after payment of the bailee's own loss, any co-insurance application shall be based on total values at risk on the bailee's policy at the time of loss, including the values of uninsured property of bailors.
- (4) The insurer of the bailor, to the extent of the payment made by it, waives rights of subrogation against the legal liability insurer of the bailee.
- (5) In this Rule, a policy insuring a bailee's own goods and those of others held by him on trust or on commission or on assignment or on a similar basis is insurance of the property unless the insurance is clearly expressed as liability insurance providing cover only in the event that the carrier or bailee is held legally liable therefor as a carrier or bailee.

RULE 7: Insurance by a carrier or bailee on the goods of a customer (i.e. the bailor) is primary. This rule covers conflicts between "off premises" cover under fire policies, personal contents insurance and other policies held by bailors and the bailee's insurance.

Claims filed by the bailor's insurer with the insurer of the carrier or bailee after payment or an advance have to be recognized to the same extent as if directly presented by the bailor through the carrier or bailee in order to fulfill the purpose of this Agreement.

SECTION C

RULES DEALING WITH REDUCED AMOUNT OF CONTRIBUTION IN CERTAIN CASES

RULE 8: EFFECT OF PICK-UP ENDORSEMENT

- (1) Where under any policy existing insurance is mentioned in a "pick-up" or "credit for existing insurance" or similar form of endorsement and credit is given on the premium in the policy containing such endorsement,
 - (i) if the limits of the policy having the pick-up endorsement (policy 1) do not exceed the limits of the policy not having the pick-up endorsement (policy 2), the latter policy (policy 2) pays the loss without contribution;
 - (ii) if the limits of the policy having the pick-up endorsement (policy 1) exceed the limits of the policy not having the pick-up endorsement (policy 2), the limits of the former policy (policy 1) less the limits of the latter policy (policy 2) contribute pro rata with the limits of the latter policy (policy 2) in payment of the loss.

(iii) if either or both policies contain a co-insurance clause, stated amount clause, or optional loss settlement clause (and in the case of the last named, the Insured elects settlement based on replacement cost), then respective limits of insurance of the one policy, or of both policies, applying to loss shall first be ascertained by reference to (i) or (ii) above and then the loss amounts to be paid by the respective policy or policies determined by application of the Limit of Liability Rule (Rule 14).

(2) Where either or both of the policies contain a deductible clause, the calculation shall first be made as per Rule 8(l) (above) and then Rule 13 applied.

RULE 8: Where, for example, an all risks personal insurance policy and a fire personal property insurance policy insure the same property and a pick-up endorsement is used on the former policy,

(i) if the limits of the policy having the pick-up endorsement (policy 1) do not exceed the limits of the policy not having the pick-up endorsement (policy 2), policy 2 pays the loss without contribution;

(ii) if the limits of the policy having the pick-up endorsement (policy 1) exceed the limits of the policy not having the pick-up endorsement (policy 2), the limits of policy 1 less the limit of policy 2 contribute pro rata with the limits of policy 2 in payment of the loss.

SECTION D

RULES DEALING WITH BOILER AND MACHINERY INSURANCE AND OTHER INSURANCES

RULE 9: BOILER AND MACHINERY AND OTHER INSURANCE

(1) In this Rule

(i) "Boiler Group" means insurers under boiler and machinery policies;

(ii) "Property Group" means insurers under fire (with or without extended coverage), multi-peril or all risk policies;

(iii) "individual loss" means that part of a loss covered by either the Boiler Group or the Property Group; (iv) "joint loss" means that part of a loss covered by both the Boiler Group and the Property Group; and (v) "loss" includes business interruption loss.

(2) Except as provided in Rule 1, where a joint loss occurs the Boiler Group and the Property Group shall each pay that proportion of the joint loss that its respective group limit, determined by the application of the Limit of Liability Rule as set out in Rule 14, bears to the sum of said limits so determined.

(3) Where there is both a joint and an individual loss the amount available under the policy insuring the individual loss shall be first applied to that loss and if there is any insurance thereafter remaining it shall contribute to the joint loss, together with the insurance provided by the other group in the proportion that the available limit of each policy bears to the amount of the joint loss.

(4) Where a joint loss or an individual loss

(i) is subject to a combined deductible which applies to both direct damage and business interruption losses, the deductible shall be apportioned on each kind of loss in the proportion that the respective payments ascertained under each policy, ignoring deductibles, bears to the total amount of the direct damage and business interruption losses respectively;

(ii) is subject to a deductible or deductibles which apply separately to the direct damage and business interruption losses, the respective deductible to apply to each policy payment shall be in the proportion that the payment under each respective policy bears to the total amount of the direct damage and business interruption losses respectively;

(iii) is subject to a co-insurance clause and with or without a deductible or deductibles, the amount payable by each group shall first be ascertained ignoring deductibles but after the application of such co-insurance clause, and such amounts then determined to be payable shall form the basis for calculation of the deductible apportionment in accordance with (ii).

(5) Rule 13 - Insurance Subject to a Deductible - does not apply to any case falling within the scope of this Rule.

(6) Rule 16 applies where business interruption loss is insured by both the boiler group and the property group.

SECTION E

RULES DEALING WITH BUILDING AND CONTENTS INSURANCE, INCLUDING CONDOMINIUMS

RULE 10: BUILDING INSURANCE AND CONTENTS INSURANCE WHEN BUILDING OWNER OCCUPIED OR BUILDING IS A CONDOMINIUM.

- (1) When the owner of a building is also the owner of the contents thereof and has separate insurance on each, the building policy is deemed to insure the following fixtures to the exclusion of the contents policy:
- (i) whether in position or stored on the premises, storm doors, storm sashes, shades, blinds, screens, screen doors and awnings;
 - (ii) permanently installed heating, ventilating and air conditioning equipment and appurtenances; (iii) permanently installed lighting, plumbing and cooking fixtures;
 - (iv) floor coverings glued, nailed, tacked, secured by molding or otherwise fixed to the floor including fixed wall to wall carpeting; and
 - (v) above ground swimming pool and its appurtenances.
- (2) When the building is a condominium
- (i) the condominium corporation policy shall, after allowing for the application of any co-insurance provision, pay
 - (a) if the policy is on a replacement cost basis, the amount required to restore the fixtures and fittings originally installed in the individual units; or
 - (b) if the policy is on an actual cash value basis, the actual cash value of the fixtures and fittings originally installed in the units,
 and the items specified in paragraphs (i) to (v) of Subsection (1) are deemed to be insured by the condominium corporation policy except to the extent specified in paragraph (ii) of this Subsection (2);
 - (ii) the unit owner's policy shall pay either on a replacement cost basis or an actual cash value basis, as the case may be, for all improvements or betterments to the individual unit made or acquired by the unit owner including any excess cost in respect of permanent fixtures and fittings referred to in (2)(i) above where such has been occasioned by the unit owner or predecessor in title substituting such original permanent fixtures and fittings with others of improved quality or enhanced value such as floor or wall coverings;

RULE 11: RADIO AND TELEVISION ANTENNAE AND SATELLITE RECEIVERS - OWNER OCCUPIED BUILDING

Where the owner of a building is also the owner of the contents thereof, any radio or television aerial, antenna or satellite receiver, and attachments, affixed to the building or to the described premises, is insured under the building insurance.

RULE 12: RADIO AND TELEVISION ANTENNAE AND SATELLITE RECEIVERS - BUILDING TENANT OCCUPIED

- (1) Where the occupant of a building is a tenant, the property mentioned in Rule 10(1) and the property mentioned in Rule 11 is insured under the tenant's contents insurance if he establishes that it was purchased by him.

SECTION F

RULES APPLICABLE WHEN LOSS DEDUCTIBLE CLAUSE(S) IN QUESTION

RULE 13: INSURANCE(S) SUBJECT TO A DEDUCTIBLE

- (1) Where there are two or more policies some with deductibles and some without, or with differing amounts of deductibles, the proportion to be paid by each policy is calculated as follows:-
- (i) the applicable deductible (if any) to be absorbed by the insured shall first be ascertained by examination of the amount of the loss compared with the respective policy limits (with or without deductibles) such that the insured would obtain maximum recovery with minimum deductible;
 - (ii) the pro rata proportion to be paid on each policy is then calculated as contributing individual policy limits (less respective deductibles if any) appear and from the respective amounts so obtained there is deducted the applicable deductible ascertained as in (i) above, apportioned over all policies.
- (2) Where there are two or more policies which are non-concurrent and one or more of such policies contains a deductible clause, the portion of the applicable limits of each policy available to pay the loss or losses shall first be ascertained by application of the Limit of Liability Rule (Rule 14), and Rule 13 (1) shall then be applied to determine respective payments to be made having regard to individual deductibles.

RULE 13(I): This Rule provides that where there are two or more policies with deductibles the insured gets the benefit of the smallest deductible or no deductible and each policy then pays its pro rata proportion less the applicable deductible, if any.

SECTION G

**RULES APPLICABLE TO NON-CONCURRENT APPORTIONMENTS
(INCLUDING LIMIT OF LIABILITY RULE AND RULE DEALING WITH BUSINESS INTERRUPTION)**

RULE 14: LIMIT OF LIABILITY RULE

- (1) This Rule is applicable to all types of non-concurrencies whether or not any or all of the policies are subject to co-insurance or stated amount clauses.
- (2) The limit of liability under each policy shall be determined as though no other insurance existed and the limits so separately determined under each policy shall be the least of
 - (i) the amount of insurance; or
 - (ii) the amount of loss; or
 - (iii) the amount payable after applying any policy limitation.

The limits so determined of all policies herein declared contributing shall be added and if the total amount exceeds the whole loss, each policy shall pay the proportion of the loss that its limit bears to the sum of all the limits, but if the sum of the limits of liabilities is less than the whole loss each policy shall pay its limit of liability.

- (3) For the purposes of this Rule, "policy" includes a group of concurrent policies which group shall be considered as an entity but the determined liability of such group shall be apportioned pro rata among the policies in that group.

RULE 15: TWO OR MORE BLANKET FLOATING POLICIES

Except as specifically provided in Rule 8, where there are two or more policies on property not in the custody of a bailee or carrier,

- (a) without an express amount of insurance applying to each expressly described or individually itemized article or object and
- (b) at an unnamed address or location, contribution by insurers is as provided in the Limit of Liability Rule (Rule 14).

RULE 16: TWO OR MORE BUSINESS INTERRUPTION POLICIES

- (1) Where there are two or more overlapping business interruption policies (concurrent or non-concurrent) the respective losses under each policy shall be separately calculated as if there were no other insurance and then
 - (i) the lowest of the amounts of insurance therein determined shall be apportioned equally between or among all policies;
 - (ii) the policy producing the lowest amount of insurance shall then be eliminated from the calculation and the difference between the lowest amount of insurance and the next lowest amount of insurance shall be apportioned equally among the remaining policies;
 - (iii) the policy producing the next lowest amount of insurance determined in (ii) shall then be eliminated and the difference between that figure and the highest amount of insurance shall be paid by the policy remaining. (If more than three policies, the apportionment is continued in similar sequence);
 - (iv) calculation shall then be made of any shortfall occasioned by application of co-insurance on the policy producing the highest amount of insurance, and the shortfall to be paid to the insured shall then be apportioned between or among all policies as their respective amounts available to pay the loss, less amounts to be paid as per (i), (ii) and (iii) above, indicate, up to an amount not exceeding such available individual policy amounts.
- (2) Where one or more business interruption policies (concurrent or non-concurrent) have been extended by endorsement to provide for reimbursement to the insured of amounts of extra expense over and above any such amounts recoverable under the underlying policy or policies, then such amounts payable under such endorsement shall be calculated separately and pro-rated as the respective limit of such endorsement bears to the total of all such extra expense amounts available, the individual endorsement payment thus calculated being added to the payment to be made under the underlying policy as determined by Sub-Section (1) of this Rule 16.

SECTION H

RULE FOR CONCURRENT INSURANCE SUBJECT TO LIMITATION CLAUSES

RULE 17: CONCURRENT INSURANCE(S) - SUBJECT TO LIMITATION CLAUSES

- (1) Where there are two or more concurrent policies, some with and some without clauses which limit the amount of loss payment recoverable other than deductibles, e.g. Co-insurance Clauses, Pro Rata Distribution Clauses, the portion of the applicable limits of each policy available to pay the loss or losses shall be ascertained by application of the Limit of Liability Rule (Rule 14).
- (2) If any of the policies referred to in Rule 17(l) contains a deductible clause, then the portion of applicable limits of each policy available to pay the loss shall first be ascertained in accordance with Rule 17(l) above (ignoring the deductibles) and then Rule 13(l) shall be applied to determine respective payments to be made having regard to individual deductibles.

SECTION I GENERAL RULES

RULE 18: CERTAIN CLAUSES SET ASIDE

Any other insurance, excess or contribution clause in a policy or certificate is inoperative to the extent that it is in conflict with this Agreement.

RULE 19: SPECIFIC RULE PREVAILS

Any Rule specifically providing the basis of settlement of disputes prevails over any Rule more general in scope.

RULE 20: EFFECT OF LOAN AGREEMENT

Payments of loss or advances under loan agreements do not affect or prevent the application of this Agreement.

RULE 21: EFFECT OF PAYMENT WHEN PENDING DISPUTE

Part of the intent of this Agreement being to avoid involving the insured in a dispute between or among insurers where this Agreement applies, the insurers shall pay the loss to the insured on a pro rata basis. Payment or partial payment by one or more insurers in no way prejudices the position of the insurer or insurers so paying and as between the disputant insurers shall not be considered as any admission of liability or affect the application of these Rules or any arbitration thereunder.

RULE 22: APPLICATION OF AGREEMENT WHEN DISCREPANCY BETWEEN ENGLISH AND FRENCH TEXT

This Agreement, comprising separate English and French texts, is a single Agreement.

Where the loss giving rise to the dispute occurs in a common law jurisdiction and there is a discrepancy between the English version of this Agreement and the French version, the English version shall prevail; where the loss occurs in the province of Quebec and there is such a discrepancy, the French version of the Agreement shall prevail.

GENERAL PROVISIONS

1. APPLICATION OF AGREEMENT

The provisions of this Agreement shall apply for the settlement of all disputes where the loss giving rise to the dispute occurs on or after January 1, 1985. Notwithstanding the foregoing, insurers may agree between or among themselves that the provisions of this Agreement shall apply for the settlement of any dispute whatever the date of the loss.

2. ARBITRATION

(a) Any dispute as to whether or not this Agreement applies or as to the interpretation of this Agreement shall be submitted to a Board of Arbitration consisting of three members to be appointed by the Claims Committee of Insurance Bureau of Canada. The three members shall agree among themselves as to which one shall be chairman and failing agreement, the chairman shall be appointed by the chairman of the said Claims Committee.

(b) Each insurer shall provide in writing, within 30 days of the submission of a dispute to the Board of Arbitration, such statement of facts, arguments and other information as it desires to have considered by the Board and it shall promptly provide such additional information as the Board may require. Insurers may, on request, appear before the Board and the Board may, by majority vote, request the insurers to appear.

(c) The decision of the Board is final and binding upon the insurers and shall be reported to the parties to the arbitration and to the President of Insurance Bureau of Canada as a matter of record.

3. COMPANIES BOUND

This Agreement is binding on those insurers who signify their adherence thereto by filing with the President of Insurance Bureau of Canada a card in the following form:

Receipt is hereby acknowledged of a copy of the Agreement of Guiding Principles (Property Insurance), as approved by the Board of Directors of Insurance Bureau of Canada.

The undersigned insurer agrees to become an adherent to and to be bound by the said Agreement.

NAME OF INSURERS (list companies here)

AUTHORIZED REPRESENTATIVE _____ Dated (PLEASE PRINT NAME) _____

4. AMENDMENTS

Amendments shall originate with the Personal Lines Committee or the Commercial Property Committee of Insurance Bureau of Canada. Where 80% or more of the subscribers adopt an amendment it shall be binding on all subscribers effective on a date indicated by the President of Insurance Bureau of Canada.

He shall set this date only after being satisfied that at least 80% of the subscribers have accepted in accordance with the following procedure.

On receiving notice of a proposed amendment subscribers shall indicate their acceptance or rejection of it on a form as prescribed below which shall be sent to the President of Insurance Bureau of Canada.

Receipt is hereby acknowledged of copy of amendment(s) numbered _____ to the Agreement of Guiding Principles (Property Insurance). The undersigned insurer

(a) agrees to adopt the amendment(s) numbered

(b) does not agree to adopt the amendment(s) numbered

NAME OF INSURER(S) (list companies here)

AUTHORIZED REPRESENTATIVE _____ ALSO PLEASE PRINT NAME TITLE _____

Dated 19 _____

5. WITHDRAWAL

No signatory to this Agreement shall withdraw until after 60 days after written notice of intended withdrawal shall have been given by registered mail to the President of Insurance Bureau of Canada but such notice of withdrawal shall not prejudice or affect any proceedings pending for adjustment, apportionment or arbitration of any loss.