

A-412

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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>

Addendum

Revised version of the Québec Automobile Insurance

Policy Form (Q.P.F.) No. 5

On November 29, 2018, the *Autorité des marchés financiers* published a revised version of the “Québec Automobile Insurance Policy Form (Q.P.F.) No. 5 – Complementary Insurance for Damage Caused to Insured Vehicle Form (*Replacement Insurance*).”

The automobile insurance exams (03-412 and 05-512) will be updated to reflect the revised form when it comes into force on March 1, 2019.

When preparing for your exams, you can refer to the revised version of the [Q.P.F. No. 5](#) on the AMF website at www.lautorite.qc.ca under Professionals / Insurers / Automobile insurance / AMF approved forms. Note that this version may not be brought into the examination room.

New automobile insurance insert: A412-S2

As of January 7, 2019, an insert containing the revised version of Q.P.F. No. 5 will be added to manual:

- *Automobile Insurance – Damage Insurance Agent and Broker (A-412)*,
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Candidates are permitted to bring this insert into the examination room. Copies will also be available on the day of the exam.

This insert will not be sold separately on the on-line sales site.

Main amendments to the form

- Addition of a caution on the cover page of the insurance policy

The caution serves to inform the insured that Q.P.F. No. 5 complements the primary insurance contract and that, for Q.P.F. No. 5 to apply, an indemnity must be paid under the primary insurance contract. The insured is also cautioned that removing coverage from the primary insurance contract will have consequences.

- Amendment of the calculation of the indemnity

This amendment was necessary to address the problem related to claims that are settled in accordance with the Direct Compensation Agreement in cases where liability is shared and an insured does not have Section B2 coverage under his primary insurance contract. The indemnity payable by the Q.P.F. No. 5 insurer will now be calculated based on the “actual cash value determined by the primary insurer.”

- Withdrawal of indemnity options (withdrawal of option 1)

Q.P.F. No. 5 provided the following two indemnity options:

- Option 1: Replacement of the vehicle through the named dealer;
- Option 2: Payment of an indemnity to replace the vehicle through a dealer of the customer's choice.

The new version of Q.P.F. No. 5 will not offer the choice of an indemnity option. The insurer's undertaking will thus be limited to the payment of an indemnity to replace the vehicle.

- Addition of a retroactive termination clause

The purpose of this clause is to allow insureds to be refunded for the period when the primary insurance contract no longer applied due to the absence of coverage under Section B. This retroactive termination clause will only be valid in the event of total loss of the insured vehicle.

- Addition of coverage that complements Q.P.F. No. 4 – Garage Form (“Q.P.F. No. 4”)

Since Q.P.F. No. 4 occasionally covers the personal vehicles of persons engaged in a garage business, the definition of “primary insurance contract” was amended to ensure that Q.P.F. Nos. 4 and 5 are complementary.

●●● EXAMPLE

When he purchased automobile insurance, Benoît told the insurer that he used his vehicle for personal purposes. The insurer issued a Q.P.F. No. 1 policy for one year starting on ~~May~~ 25. Benoît paid the \$800 premium for the entire policy period. June

On August 20, Benoît tells his insurer that in his new job, he uses his vehicle to travel to the United States. The insurer views this as an aggravation of risk. Since this new use of the vehicle does not meet his underwriting standards, the insurer cancels the contract. It may do so even if the automobile insurance contract has been in effect more than 60 days because the aggravation of risk is such that it is likely to materially influence a reasonable insurer in its decision to keep the contract in effect. The insurer informs Benoît in writing of its decision. Benoît receives the notice of cancellation on August 25. The cancellation of Benoît's insurance contract will be effective on September 25, i.e. 30 days after receipt of the notice. The insurer must refund the overpayment based on the number of days Benoît was actually covered under the automobile insurance policy.

The contract was in effect for 92 days, i.e. from June 25 to September 24.

The premium that the insurer can keep is calculated on a day to day basis, because the named insured cannot be penalized for the insurer's costs.

$$\frac{\$800}{365 \text{ days}} = \$2.19 \text{ per day}$$

$$\$2.19 \times 92 \text{ days} = \$201$$

The insurer's earned premium is \$201. Benoît is therefore entitled to a refund of \$599, i.e.

$$\$800 \text{ (premium paid)} - \$201 \text{ (insurer's earned premium)} = \$599.$$



It bears mentioning that agents and brokers cannot cancel automobile insurance contracts because they are not parties to the contract. Only the insurer and the named insured can do so.

3.2.9 “Cancellation Table” section

The cancellation table of an automobile insurance contract is used to calculate the portion of the premium the insurer has to return to the named insured when the latter wants to cancel the contract.

This table takes into account the fact that the insurer keeps a portion of the premium to cover the operating costs incurred to issue and cancel the contract. The portion of the premium kept by the insurer decreases as the cancellation date approaches the contract expiry date.

Table 3.1 is a sample cancellation table.