

**PROFESSIONAL  
LIABILITY INSURANCE  
CONTRACT DRAFTING**

**GUIDE**

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**Insurers, Firms  
and Representatives**

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 **AUTORITÉ  
DES MARCHÉS  
FINANCIERS**

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The *Autorité des marchés financiers* (the “AMF” or the “Authority”) is the body mandated by the government of Québec to regulate Québec’s financial sector and to provide assistance to consumers of financial products and services.

Its mission is to protect the public by applying the laws and regulations governing the following areas of activity: insurance, securities, deposit institutions (other than banks) and distribution of financial products and services.

As part of their professional activities, insurers, agents and brokers may offer, if they hold a licence issued by the AMF<sup>1</sup>, a professional liability insurance product to clients that are supervised by the AMF pursuant to the *Act respecting the distribution of financial products and services* (R.S.Q. c. D-9.2).

Clients requiring professional liability insurance can be grouped into the following regulated entities:

- › Independent representatives
- › Firms
- › Representatives acting on behalf of a firm without being an employee
- › Independent partnerships

Among the measures aimed at protecting the public, the *Act respecting the distribution of financial products and services* (the “Act”) requires these clients to purchase and maintain professional liability insurance, as well as to meet their obligations in order to be able to register and to maintain their registration<sup>2</sup>. Not complying with these requirements could lead to the suspension or cancellation of registration<sup>3</sup>. Regulated entities must therefore provide the AMF with an insurance policy that meets the prescribed conditions<sup>4</sup> for all the sectors and ways of pursuing professional activities for which they are registered with the AMF.

This guide will help insurers prepare a contract or an endorsement (or “rider”) specific to Québec that meets the requirements of the Act for the above clients as they pursue their professional activities. It describes the various ways of pursuing professional activities, the sectors defined under the Act, as well as the specifics of insurance coverage for these clients.

We would ask insurers to read through this guide to avoid any ambiguities when preparing and drafting their liability insurance contracts. We are also providing them with a self-assessment grid so they can check if the contents of their insurance policy comply with the requirements.

As well, this guide will help brokers and representatives understand the contents of liability insurance policies so they can also meet their requirements.

1 *An Act respecting insurance*, R.S.Q. c. A-32, ss. 201 and 202 or *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, ss. 5 and 6.

2 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, ss. 76, 83, 131 and 136.

3 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 83, par. 2.

4 *Regulation respecting the pursuit of activities as a representative*, D-9.2, r.1.3, s. 17; *Regulation respecting firms, independent representatives and independent partnerships*, D-9.2, r.0.2, s. 29.

# PART 1

## SECTORS AND SECTOR CLASSES

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This information must be indicated on the Self-Assessment Grid, in Point 1 – *Sectors and items covered by the policy.*

With respect to the distribution of financial products and services, sectors represent the field of activity in which the independent representative, firm, representative acting on behalf of the firm without being employed by it, and independent partnership pursue their activities. Certain sectors authorized by the Act are subdivided into classes.

Sectors and sector classes<sup>5</sup>:

- Insurance of persons
  - Accident and health insurance
- Group insurance of persons
  - Group insurance plans
  - Group annuity plans
- Damage insurance
  - Personal-lines damage insurance
  - Commercial-lines damage insurance
- Claims adjustment
  - Claims adjustment in personal-lines damage insurance
  - Claims adjustment in commercial-lines damage insurance
  - Claims adjustment in the employ of an insurer
  - Claims adjustment in the employ of an insurer in personal-lines damage insurance
  - Claims adjustment in the employ of an insurer in commercial-lines damage insurance
- Financial planning
- Group savings plan brokerage
- Investment contract brokerage
- Scholarship plan brokerage

Independent representatives, firms, representatives acting on behalf of a firm without being employees and independent partnerships that are authorized to pursue activities in a sector will automatically be authorized to pursue their activities in the classes belonging to this sector<sup>6</sup>.

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<sup>5</sup> *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 13.

<sup>6</sup> *Regulation respecting the issuance and renewal of representatives' certificates*, ss. 2, 4, 6 and 8.

The professional liability insurance policy will have to cover all the sectors and sector classes in which these clients pursue their activities and for which they are registered with the AMF.

## 1.1 INSURANCE OF PERSONS

Representatives certified in this sector may offer, directly to the public, to a firm, to an independent representative or to an independent partnership, individual insurance of persons products<sup>7</sup> (life insurance and accident and health insurance) or individual annuities. They may also enrol people in group insurance or annuity contracts.

Since October 1, 1999, date on which the Act came into effect, the terms “agent” and “broker” are no longer being used in the insurance of persons sector. The Act now uses the term “representative.”<sup>8</sup>

### 1.1.1 Accident and health insurance<sup>9</sup>

Accident insurance guarantees payment of the agreed-upon compensation in the event of bodily injury. Health insurance guarantees payment of the agreed-upon compensation in the event that the insured person becomes ill.

## 1.2 GROUP INSURANCE OF PERSONS

Group insurance representatives<sup>10</sup> offer group insurance of persons or group annuity products from one or more insurers. They may also offer individual annuities to members of a group.<sup>11</sup>

### 1.2.1 Group insurance plans<sup>12</sup>

Representatives only certified in the group insurance plans class may not offer group annuity plans.

### 1.2.2 Group annuity plans

Representatives only certified in the group annuity plans class may not offer group insurance plans.

7 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 3.

8 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, ss. 2 and 3.

9 *Regulation respecting the issuance and renewal of representatives' certificates*, s. 2.

10 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 4.

11 Resolution No. 99-10-16, adopted at the meeting of the Board of Directors of the *Bureau des services financiers*, held on October 22, 1999.

12 *Regulation respecting the issuance and renewal of representatives' certificates*, s. 4.

## 1.3 DAMAGE INSURANCE

Damage insurance representatives<sup>13</sup> offer damage insurance products directly to the public. Representatives who act on behalf of one insurer or who are bound to an insurer by an exclusive contract are agents. As for brokers, they offer, to the public, to firms, to independent representatives or to independent partnerships, damage insurance products from several insurers. Professional liability insurance policies that cover the damage insurance sector must include the agents and brokers. Contracts that cover brokers must, therefore, not include an exclusivity clause.

### 1.3.1 Personal-lines damage insurance<sup>14</sup>

This class restricts representatives to offering products and consultation services pertaining to the property and civil liability of a domestic nature of a natural person and an independent worker. A restriction is also set for residential buildings containing no more than six dwellings.

### 1.3.2 Commercial-lines damage insurance

This class restricts representatives to offering products and consultation services pertaining to the property and liability of businesses and independent workers.

## 1.4 CLAIMS ADJUSTMENT

The claims adjuster is the natural person who investigates insured losses (investigates the cause of and circumstances surrounding a claim), appraises damages (decides on the value of the damage) and negotiates the settlement of claims<sup>15</sup> (examines and settles the claim).

### 1.4.1 Claims adjustment in personal-lines damage insurance<sup>16</sup>

This class restricts the adjuster to claims related to personal-lines damage insurance (see Point 1.3.1).

### 1.4.2 Claims adjustment in commercial-lines damage insurance

This class restricts the adjuster to claims related to commercial-lines damage insurance (see Point 1.3.2).

### 1.4.3 Claims adjustment in the employ of an insurer

This class is used to settle all claims, but only for insurers that have a representative in their employ.

<sup>13</sup> *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, ss. 5 and 6.

<sup>14</sup> *Regulation respecting the issuance and renewal of representatives' certificates*, s. 6.

<sup>15</sup> *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 10.

<sup>16</sup> *Regulation respecting the issuance and renewal of representatives' certificates*, s. 8.

**1.4.4 Claims adjustment in the employ of an insurer in personal-lines damage insurance**

This class is used to settle all personal-lines damage insurance claims, but only for insurers that have a representative in their employ.

**1.4.5 Claims adjustment in the employ of an insurer in commercial-lines damage insurance**

This class is used to settle all commercial-lines damage insurance claims, but only for insurers that have a representative in their employ.

**1.5 FINANCIAL PLANNING**

In order to obtain a certificate in financial planning and use the title of Financial Planner,<sup>17</sup> the representative must have a diploma from the *Institut québécois de planification financière* (IQPF). Certain professional orders have signed an agreement with the AMF whereby members who meet the requirements of the Act may use this title.<sup>18</sup>

**1.6 GROUP SAVINGS PLAN BROKERAGE**

This is a securities sector within the meaning of the Act<sup>19</sup> that allows the representative to offer units in mutual funds.

**1.7 INVESTMENT CONTRACT BROKERAGE**

This is a securities sector within the meaning of the Act<sup>20</sup> that allows the representative to offer a participation in investment contracts. These are contracts whereby a person, having been led to expect profits, undertakes to participate in the risk of a venture by a contribution of capital or loan, without having the required knowledge to carry on the venture or without obtaining the right to participate directly in decisions concerning the carrying on of the venture (e.g. limited partnership units, Québec business investment company).

**1.8 SCHOLARSHIP PLAN BROKERAGE**

This is a securities sector within the meaning of the Act<sup>21</sup> that allows representatives to offer units in scholarship plans.

17 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 11.

18 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, ss. 59 to 69.

19 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 9, par. 2.

20 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 9, par. 2.

21 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 9, par. 4.



## WAYS OF PURSUING PROFESSIONAL ACTIVITIES

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This information must be indicated on the Self-Assessment Grid, in Point 2 – *Ways of pursuing activities covered by the contract.*

In order to carry on business in the financial products and services industry in Québec, individuals or companies must choose the way in which they will pursue their professional activities<sup>22</sup> as well as the sector in which they would like to pursue these activities.

Under the Act, there are three ways of pursuing professional activities:

- › The independent representative
- › The firm
- › The independent partnership

The way of pursuing activities selected in one sector must be the same as that selected for all the other sectors, except for the securities sectors (scholarship plan brokerage, group savings plan brokerage and investment contract brokerage). Consequently, only one way of pursuing activities is authorized, except if the representative has registered in the securities sectors for which he must be attached to only one firm.

Registration as a firm, independent representative or independent partnership is required under the Act in order to be able to act through a representative<sup>23</sup> as well as in order to receive commissions.<sup>24</sup> Registration validates each regulated entity's way of pursuing activities.

### 2.1 INDEPENDENT REPRESENTATIVES

Independent representatives are natural persons certified by and registered with the AMF.<sup>25</sup> They are sole proprietorships, registered or not, and are also commonly called single proprietorships or sole ownerships.

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22 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 14

23 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, ss. 71 and 128.

24 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, ss. 100 and 143.

25 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 128, par. 1.

Independent representatives may not be bound to an insurer by an exclusive contract, unless they have an acquired right.<sup>26</sup> These independent representatives must be covered under a liability insurance policy for all of their activities, regardless of the nature of the products sold or where they originate (firms or insurers). The policy may not contain a clause restricting the products that an independent representative may offer.

Damage insurance representatives (agents) as well as securities representatives may not choose to pursue their activities as independent representatives because they must be attached to only one firm.<sup>27</sup>

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## INDEPENDENT REPRESENTATIVE V. INDEPENDENT OR SELF-EMPLOYED WORKER

Independent representatives should not be confused with independent or self-employed workers. The concept of independent or self-employed worker mainly pertains to taxation, as opposed to a salaried employee. You can be an independent worker without being an independent representative.

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### 2.2 FIRMS

A firm is a legal entity set up as a joint-stock company with an establishment in Québec.<sup>28</sup> A joint-stock company is very often designated as a “company” or a “corporation.”

A firm is therefore a legal person separate from the members who make up the entity. It pursues its activities through representatives certified by the AMF.<sup>29</sup>

Certified representatives may act as employees of the firm or on behalf of the firm without being employed by it.<sup>30</sup>

If they are employees of the firm, representatives are automatically covered under the firm’s liability insurance. Representatives who act on behalf of the firm without being employed by it must carry their own liability insurance policy.<sup>31</sup> However, they may be covered under the liability insurance policy of the firm on whose behalf they are acting. In such a case, the policy will have to indicate the representative’s name as a designated insured, or specify that this specific way of pursuing activities is indeed covered.

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26 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 545.

27 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, ss. 5 and 14.

28 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 72.

29 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 82.

30 *Regulation respecting the registration of firms, representatives and independent partnerships*, s. 2 (5).

31 *Regulation respecting the pursuit of activities as a representative*, s. 17.

Representatives may be attached to several firms<sup>32</sup> (except for the securities sectors). The professional liability insurance policy of a representative who is acting on behalf of a firm without being employed by it and who is attached to several firms will therefore have to specify whether it covers all of the representative's activities, regardless of the firm on whose behalf he is acting, or whether it only covers the activities for a specific firm.

### 2.3 INDEPENDENT PARTNERSHIPS

Independent partnerships are made up of representatives who are part of a general partnership.<sup>33</sup> A general partnership is not a joint-stock company. In fact, a general partnership is defined as a contract between two or more persons who have decided to combine their property, knowledge and activities together with a view to operating an enterprise. Nor is it a group of independent representatives. The attached representatives may be partners or employees<sup>34</sup> of this partnership.

The partners and employees of an independent partnership must be covered under the partnership's liability insurance.<sup>35</sup>

### 2.4 TRAINEES

Under a supervisor, trainees are persons who, with a view to obtaining a representative's certificate, have been placed in a work environment for a period of 45 or 90 days, depending on the sector or the class of sector they have chosen to pursue their activities.

Even though their status is not considered a way of pursuing activities, trainees must be covered under the liability insurance of the independent representative, the firm or the independent partnership where they are performing their training. The insurance issued for the firm, independent representative or independent partnership must cover trainees.

32 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 14.

33 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 128, par. 2.

34 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 14.

35 *Regulation respecting firms, independent representatives and independent partnerships*, D-9.2, r.o.2, s. 29, par. 1 (3) (c).

# PART 3

## SPECIFICITY OF COVERAGE

This information must be indicated on the Self-Assessment Grid, in Point 3 – *Coverage and deductible amounts*.

Under Québec regulations, a professional liability insurance contract must contain specific provisions based on the selected way of pursuing activities and the sectors in which activities are pursued.

### 3.1 COVERAGE AND DEDUCTIBLE AMOUNTS

The liability insurance policy must clearly indicate the amounts covered under the contract. The Act prescribes the minimum amounts of coverage required and the maximum amount authorized for the deductible<sup>36</sup> for each way of pursuing activities, that is:

- Independent representatives and representatives acting on behalf of a firm without being employed by it<sup>37</sup>; firms and independent partnerships with three representatives<sup>38</sup> or fewer.
  - \$500,000 per claim
  - \$1,000,000 overall per year
  - \$10,000 deductible
  
- Firms and independent partnerships with more than three representatives<sup>39</sup>:
  - \$500,000 per claim
  - \$2,000,000 overall per year
  - \$25,000 deductible

However, the deductible applicable to the liability insurance contract for independent representatives, firms and independent partnerships may be greater than the maximum authorized amount as long as the insured designated in the contract agrees to maintain at all times liquid assets at least equal to the amount stipulated in the insurance contract.<sup>40</sup> The insured will have to file a Sworn Statement to this effect with the AMF every year (see Appendix F).

<sup>36</sup> *Regulation respecting the pursuit of activities as a representative*, D-9.2, r.1.3, s. 17, par. 1; *Regulation respecting firms, independent representatives and independent partnerships*, D-9.2, r.0.2, s. 29, par. 1.

<sup>37</sup> *Regulation respecting the pursuit of activities as a representative*, D-9.2, r.1.3, s. 17, par. 1 (3); *Regulation respecting firms, independent representatives and independent partnerships*, D-9.2, r.0.2, s. 29, par. 1 (3).

<sup>38</sup> *Regulation respecting the pursuit of activities as a representative*, D-9.2, r.1.3, s. 17, par. 1 (1); *Regulation respecting firms, independent representatives and independent partnerships*, D-9.2, r.0.2, s. 29, par. 1 (1).

<sup>39</sup> *Regulation respecting firms, independent representatives and independent partnerships*, D-9.2, r.0.2, s. 29, par. 1 (1).

<sup>40</sup> *Regulation respecting firms, independent representatives and independent partnerships*, D-9.2, r.0.2, s. 29 *in fine*.

### 3.2 TYPE OF LIABILITY

This information must be indicated on the Self-Assessment Grid, in Point 4 – *Type of liability*.

The professional liability insurance policy must provide coverage for liability arising from faults, errors, negligence or omissions (hereinafter called “breaches”) committed by the independent representative, firm, representative acting on behalf of a firm without being employed by it and independent partnership in the pursuit of their professional activities.<sup>41</sup>

This policy must also provide coverage for breaches committed by the partners, mandataries, employees or trainees of the representatives of the independent representative, firm, representative acting on behalf of a firm without being employed by it, or independent partnership.<sup>42</sup>

The insurance policy must provide coverage for the liability of these persons in the pursuit of their activities, regardless of whether or not such persons are still so engaged on the date of the claim.<sup>43</sup> These persons shall not be named specifically in the policy as designated insureds, but they must be included in the coverage of the independent representative, firm, representative acting on behalf of a firm without being employed by it, and independent partnership for which they are acting.

### 3.3 MORE THAN ONE INSURED AND SEVERABILITY OF INSURANCE

This information must be indicated on the Self-Assessment Grid, in Point 5 – *More than one insured*.

Considering that a liability insurance policy may be issued in the name of more than one insured,<sup>44</sup> each insured named specifically in the contract must benefit from the minimum coverage amounts prescribed by regulation.<sup>45</sup>

Where more than one insured is designated in the liability insurance contract, a provision stipulating the severability of insurance (amount of coverage) should be included in the policy. The purpose is to ensure that each insured designated in the contract is covered for the minimum amounts prescribed by regulation.

41 *Regulation respecting the pursuit of activities as a representative*, D-9.2, r.1.3, s. 17, par. 1 (3); *Regulation respecting firms, independent representatives and independent partnerships*, D-9.2, r.0.2, s. 29, par. 1 (3).

42 *Regulation respecting the pursuit of activities as a representative*, D-9.2, r.1.3, s. 17, par. 1 (3); *Regulation respecting firms, independent representatives and independent partnerships*, D-9.2, r.0.2, s. 29, par. 1 (3).

43 *Regulation respecting the pursuit of activities as a representative*, D-9.2, r.1.3, s. 17, par. 1 (3); *Regulation respecting firms, independent representatives and independent partnerships*, D-9.2, r.0.2, s. 29, par. 1 (3).

44 *Civil Code of Québec*, art. 2464.

45 *Regulation respecting the pursuit of activities as a representative*, D-9.2, r.1.3, s. 17, par. 1; *Regulation respecting firms, independent representatives and independent partnerships*, D-9.2, r.0.2, s. 29, par. 1.

### 3.4 DEFENCE COSTS

This information must be indicated on the Self-Assessment Grid, in Point 6 – *Defence costs*.

In Québec, defence costs are assumed by the insurer, over and above the proceeds of the insurance.<sup>46</sup> They must, therefore, be over and above the amount of coverage.

### 3.5 TERM OF COVERAGE

This information must be indicated on the Self-Assessment Grid, in Point 7 – *Term of coverage*.

The Act states that a policy must be issued for a period of at least 12 months.<sup>47</sup> A policy may be issued for a period greater than 12 months for the purpose of matching the policy expiry date with the date for renewing the representative's certificate or maintaining the registration of the firm, independent partnership or independent representative. However, in such cases, the amount covered must be adjusted on the basis of the period of use in order to comply with the regulation.<sup>48</sup>

### 3.6 MAINTENANCE OF COVERAGE

This information must be indicated on the Self-Assessment Grid, in Point 8 – *Maintenance of coverage*.

The professional liability insurance contract must stipulate that coverage is extended for an additional five years if the representative acting on behalf of a firm without being an employee ceases to pursue his activities, irrespective of whether or not he is still alive.

The same applies if the registration of an independent representative, firm or independent partnership is cancelled or suspended.

<sup>46</sup> *Civil code of Québec*, art. 2503.

<sup>47</sup> *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 197; *Regulation respecting the pursuit of activities as a representative*, s. 17, par. 1; *Regulation respecting firms, independent representatives and independent partnerships*, s. 29, par. 1.

<sup>48</sup> *Regulation respecting the pursuit of activities as a representative*, s. 17, par. 1; *Regulation respecting firms, independent representatives and independent partnerships*, s. 29, par. 1.

This five-year period of coverage extension must be applicable as of the date the AMF cancelled or suspended the registration of the independent representative, firm or independent partnership, or the date when the representative acting on behalf of a firm without being employed by it ceased to pursue his activities.

This extension clause must be integrated into the insurance contract. Consequently, it may not be left to the discretion of the insured or the insurer. If the event occurs (cessation of activities, death, cancellation or suspension), the insured must be able to automatically benefit from this five year coverage extension and the insurer must grant this coverage without condition.

### 3.7 REFUND OF PREMIUM

If the liability insurance policy is cancelled, the insurer must refund the policy owner for any overpayment of premium.<sup>49</sup>

### 3.8 NOTICE TO THE AMF

This information must be indicated on the Self-Assessment Grid, in Point 9 – *Notice to the Autorité des marchés financiers*.

The insurer must notify the AMF:

- 30 days prior to the date of non-renewal or cancellation, of its intention to not renew or to cancel a contract.<sup>50</sup>
- as soon as it receives a notice of non-renewal or cancellation from the insured.<sup>51</sup>
- of the receipt of any claims, whether the insurer decides to honour them or not.<sup>52</sup>

49 *Civil Code of Québec*, art. 2479.

50 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 197; *Regulation respecting the pursuit of activities as a representative*, s. 17, par. 1 (3) (c); *Regulation respecting firms, independent representatives and independent partnerships*, D-9.2, r.o.2, s. 29, par. 1 (3) (e).

51 *An Act respecting the distribution of financial products and services*, R.S.Q. c. D-9.2, s. 197; *Regulation respecting the pursuit of activities as a representative*, s. 17, par. 1 (3); *id.*, s. 17, par. 1 (3) (d); *id.*, s. 29, par. 1 (3) (f).

52 *Regulation respecting the pursuit of activities as a representative*, s. 17, par. 1 (3) (e); *id.*, s. 29, par. 1 (3) (g).

Standard notices are provided in Appendices IV and V. These notices must be sent to the following address:

Autorité des marchés financiers  
Service de la conformité  
Place de la Cité, tour Cominar  
2640, boulevard Laurier, bureau 400  
Québec (Québec) G1V 5C1  
[scq@lautorite.qc.ca](mailto:scq@lautorite.qc.ca)

### 3.9 QUÉBEC ENDORSEMENT

A Québec endorsement is a document that may be attached to the liability insurance policy if a contract underwritten by an insurer does not meet the regulatory requirements of Québec. This includes all mandatory and necessary clauses. The endorsement may specify, among other matters, the sectors and the ways of pursuing activities covered using the correct terminology, as well as the amount of coverage and the deductible applicable to the insurance contract. Severability of insurance, a five-year coverage extension and notices to the AMF may also be specified.



## CONCLUSION

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It is hoped that this guide will help insurers, brokers and representatives better understand the regulatory requirements related to the professional practice of independent representatives, firms, representatives acting on behalf of a firm without being an employee, as well as independent partnerships. It can be useful for drafting or clarifying, as the case may be, professional liability insurance contracts intended for Québec clients, thus ensuring the contracts are in compliance with the Act and acceptable to the AMF.

In order to accelerate processing of a regulated entity's request, we suggest that insurers use the terms provided in this guide when drafting a contract. We also ask that they complete the attached self-assessment grid and send it to the AMF, along with the insurance contract.

## GLOSSARY OF TERMS RECOMMENDED FOR USE IN PROFESSIONAL LIABILITY INSURANCE POLICIES

### **Cabinet**

Rattaché comme employé

Rattaché sans y être employé

Rattaché à plusieurs cabinets

### **Société autonome**

Employé

Associé

### **Représentant autonome**

Stagiaire

### **Disciplines / catégories de discipline**

Assurance de personnes

Assurance contre les accidents  
ou la maladie

Assurance collective de personnes

Régimes d'assurance collective

Régimes de rentes collectives

Assurance de dommages

Assurance de dommages des particuliers

Assurance de dommages des entreprises

Agent

Courtier

Expertise en règlement de sinistres

Expertise en règlement de sinistres en  
assurance de dommages des particuliers

Expertise en règlement de sinistres en  
assurance de dommages des entreprises

Expertise en règlement de sinistres  
à l'emploi d'un assureur

Expertise en règlement de sinistres  
à l'emploi d'un assureur en assurance  
de dommages des particuliers

Expertise en règlement de sinistres  
à l'emploi d'un assureur en assurance  
de dommages des entreprises

Planification financière

Courtage en épargne collective

Courtage en contrat d'investissement

Courtage en plans de bourses d'études

### **Firm**

Attached as an employee

Attached without being an employee

Attached to several firms

### **Independent partnership**

Employee

Partner

### **Independent representative**

Trainee

### **Sectors / Sector classes**

Insurance of persons

Accident and health insurance

Group insurance of persons

Group insurance plans

Group annuity plans

Damage insurance

Personal-lines damage insurance

Commercial-lines damage insurance

Agent

Broker

Claims adjustment

Claims adjustment in personal-lines  
damage insurance

Claims adjustment in commercial-lines  
damage insurance

Claims adjustment in the employ of an  
insurer

Claims adjustment in the employ of an  
insurer in personal-lines damage insurance

Claims adjustment in the employ of  
an insurer in commercial-lines damage  
insurance

Financial planning

Group savings plan brokerage

Investment contract brokerage

Scholarship plan brokerage

## GLOSSARY OF TERMS RECOMMENDED FOR USE IN PROFESSIONAL LIABILITY INSURANCE POLICIES (CONT'D)

<b>Couverture</b>	<b>Coverage</b>
Erreurs	Errors
Fautes	Faults
Négligences	Negligence
Omissions	Omissions
<b>Prolongation de garantie</b>	<b>Coverage extension</b>
<b>Avis</b>	<b>Notice</b>
Résiliation	Cancellation
Renouvellement	Renewal
Réclamation	Claim
<b>Frais de défense</b>	<b>Defence costs</b>

APPENDIX  
**B**

**SELF-ASSESSMENT GRID FOR  
PROFESSIONAL LIABILITY INSURANCE POLICIES**

The professional liability insurance policy that you issue must comply with the requirements of the *Act respecting the distribution of financial products and services* and related regulations. You may, however, attach a Québec endorsement in order to meet the requirements of the province of Québec in respect of any contracts issued for several jurisdictions.

Please fill out this self-assessment grid to see whether you have met the requirements of the Act.

**IDENTIFICATION**

Policy No.: \_\_\_\_\_

Master contract No.: \_\_\_\_\_

Endorsements: \_\_\_\_\_

\_\_\_\_\_

Name of insurer(s): \_\_\_\_\_

\_\_\_\_\_

Broker's name: \_\_\_\_\_

## REGULATORY REQUIREMENTS

Please indicate where the information below can be found in the policy.

**1**

### SECTORS AND ITEMS COVERED BY THE POLICY

Insurance of persons	Page No. and/or clause: _____
Group insurance of persons	Page No. and/or clause: _____
Damage insurance	Page No. and/or clause: _____
Claims adjustment	Page No. and/or clause: _____
Financial planning	Page No. and/or clause: _____
Brokerage in connection with loans secured by immovable hypothec	Page No. and/or clause: _____
Group savings plan brokerage	Page No. and/or clause: _____
Scholarship plan brokerage	Page No. and/or clause: _____
Investment contract brokerage	Page No. and/or clause: _____




**2**

### WAYS OF PURSUING ACTIVITIES COVERED BY THE CONTRACT

The insurance must cover the liability of registrants, their mandataries, their employees and the trainees of their representatives in the performance of their duties, regardless of whether or not they are still so engaged on the date of the claim.




#### Independent representatives

The coverage offered to independent representatives also includes:

 Representative's "employees"	Page No. and/or clause: _____
 Mandataries	Page No. and/or clause: _____
 Trainees	Page No. and/or clause: _____

**Firms**





The coverage offered to firms also includes:

- |   |                            |                               |
|---|----------------------------|-------------------------------|
|  | “Employed” representatives | Page No. and/or clause: _____ |
|  | Mandararies                | Page No. and/or clause: _____ |
|  | Representatives’ trainees  | Page No. and/or clause: _____ |

Please note that a representative who is attached without being an employee must be the “designated insured” or must be added through an endorsement in order to be insured for the amounts prescribed by the regulation. The *Act respecting the distribution of financial products and services* does not allow for shared coverage between insureds.

**Independent partnerships**

The coverage offered to independent partnerships also includes:

- |   |                            |                               |
|---|----------------------------|-------------------------------|
|    | “Employed” representatives | Page No. and/or clause: _____ |
|    | Partners                   | Page No. and/or clause: _____ |
|   | Mandararies                | Page No. and/or clause: _____ |
|  | Representatives’ trainees  | Page No. and/or clause: _____ |

**3****COVERAGE AND DEDUCTIBLE AMOUNTS**

Per claim: \_\_\_\_\_ Page No. and/or clause: \_\_\_\_\_

Per period: \_\_\_\_\_ Page No. and/or clause: \_\_\_\_\_

Deductible amount: \_\_\_\_\_ Page No. and/or clause: \_\_\_\_\_

Number of representatives: \_\_\_\_\_ Page No. and/or clause: \_\_\_\_\_

If the amount of the deductible exceeds the authorized maximum, you must provide us with a **declaration of liquid assets** (*maximum for independent representatives: \$10,000; maximum for firms and independent partnerships: \$25,000*).

**4****TYPE OF LIABILITY**

Types of liability covered: \_\_\_\_\_ Page No. and/or clause: \_\_\_\_\_

- |                                 |                                     |
|---------------------------------|-------------------------------------|
| <input type="checkbox"/> Faults | <input type="checkbox"/> Negligence |
| <input type="checkbox"/> Errors | <input type="checkbox"/> Omissions  |

**5 MORE THAN ONE INSURED**

Does this contract contain a clause for more than one insured?

- Yes  
 No

Page No. and/or clause: \_\_\_\_\_

**6 DEFENCE COSTS**

Are the defence costs excluded from the limit?

- Yes  
 No

Page No. and/or clause: \_\_\_\_\_

**7 TERM OF COVERAGE**

The period covered is from \_\_\_\_\_ to \_\_\_\_\_.

The period covers a total of \_\_\_\_\_ months.

**8 MAINTENANCE OF COVERAGE**

Maintenance of coverage for five (5) years with no additional payment of premiums as of the date:

Page No. and/or clause: \_\_\_\_\_

- The representative ceased to pursue his activities, irrespective of whether or not he is still alive
- The registration of the firm, independent representative or independent partnership was cancelled
- The registration of the firm, independent representative or independent partnership was suspended

**9 NOTICE TO THE AUTORITÉ DES MARCHÉS FINANCIERS**

- Notice from the insurer 30 days prior to the renewal or cancellation date of intention to not renew or to cancel the contract  
 Page No. and/or clause: \_\_\_\_\_
- Notice from the insurer of receipt of a notice of non-renewal or cancellation of contract by the insured  
 Page No. and/or clause: \_\_\_\_\_
- Notice of receipt of a claim by the insurer  
 Page No. and/or clause: \_\_\_\_\_





## MANDATORY CLAUSES

	REPRESENTATIVES ATTACHED TO A FIRM WITHOUT BEING AN EMPLOYEE <sup>1</sup>	INDEPENDENT REPRESENTATIVES	FIRMS OR INDEPENDENT PARTNERSHIPS
<b>Coverage</b>	<p>For errors, faults, negligence or omissions committed while pursuing their activities in the sectors for which they are legally authorized.</p> <p>For the following persons, regardless of whether or not they are still so engaged on the date of the claim:</p> <ul style="list-style-type: none"> <li>■ Their mandataries</li> <li>■ Their employees</li> <li>■ Their trainees</li> </ul>	<p>For errors, faults, negligence or omissions committed while pursuing their activities in the sectors for which they are legally authorized.</p> <p>For the following persons, regardless of whether or not they are still so engaged on the date of the claim:</p> <ul style="list-style-type: none"> <li>■ Their mandataries</li> <li>■ Their employees</li> <li>■ Their trainees</li> </ul>	<p>For errors, faults, negligences or omissions committed while pursuing their activities in the sectors for which they are legally authorized.</p> <p>For the following persons, regardless of whether or not they are still so engaged on the date of the claim:</p> <ul style="list-style-type: none"> <li>■ Their mandataries</li> <li>■ Their employees</li> <li>■ Their attached representatives who are not <u>employees</u></li> <li>■ The representatives' trainees</li> <li>■ Their partners (for independent partnerships only)</li> </ul>
<b>Amount of coverage, per insured</b>	<ul style="list-style-type: none"> <li>■ Minimum \$500,000 per claim</li> <li>■ Minimum \$1,000,000 per year</li> </ul> <p>These amounts may not be shared amongst several insureds under a given contract.</p>	<ul style="list-style-type: none"> <li>■ Minimum \$500,000 per claim</li> <li>■ Minimum \$1,000,000 per year</li> </ul> <p>These amounts may not be shared amongst several insureds under a given contract.</p>	<ul style="list-style-type: none"> <li>■ Minimum \$500,000 per claim</li> <li>■ Minimum \$1,000,000 per year, if there are 3 attached representatives or fewer.</li> <li>■ Minimum \$2,000,000 per year, if there are more than 3 attached representatives</li> </ul> <p>These amounts may not be shared among several insureds under the same contract.</p>

1 Representatives attached to a firm without being an employee are not automatically covered by the firm's liability insurance contract. The firm on behalf of which these representatives are acting must ask them to take out a liability insurance contract similar to that carried by independent representatives. (See *Regulation respecting the pursuit of activities as a representative.*)

However, some insurance contracts purchased by firms could provide for additional clauses that cover attached representatives who are not employed by the firm. This type of contract must be reviewed carefully to ensure that the representative is covered for all the sectors for which he is authorized and that he is covered for the amounts prescribed by the *Regulation respecting firms, independent representatives and independent partnerships.*

**FOR REPRESENTATIVES ATTACHED TO SEVERAL FIRMS** – The firms to which the representative is attached will have to demonstrate that the representative is adequately covered for all his activities, regardless of the number of firms to which he is attached.

	REPRESENTATIVES ATTACHED TO A FIRM WITHOUT BEING AN EMPLOYEE <sup>1</sup>	INDEPENDENT REPRESENTATIVES	FIRMS OR INDEPENDENT PARTNERSHIPS
<b>Deductible</b>	<ul style="list-style-type: none"> <li>Maximum \$10,000</li> </ul>	<ul style="list-style-type: none"> <li>Maximum \$10,000</li> </ul> <p>If the deductible is greater than this amount, the independent representative must provide the AMF with a Sworn Statement indicating that he is maintaining at all times liquid assets at least equal to the amount of deductible indicated.</p> <p>See Appendix F – Sworn Statement</p>	<ul style="list-style-type: none"> <li>Maximum \$10,000 if there are <b>3 attached representatives or fewer</b></li> <li>Maximum \$25,000 per year, if there are <b>more than 3 attached representatives</b></li> </ul> <p>If the deductible is greater than this amount, the firm or independent partnership must provide the AMF with a Sworn Statement indicating that it is maintaining at all times liquid assets at least equal to the amount of deductible indicated.</p>
<b>Extension of coverage</b>	<ul style="list-style-type: none"> <li>5 years beyond the term of insurance.</li> <li>As of the date the representative ceased to pursue his activities, whether he is still alive or not.</li> </ul>	<ul style="list-style-type: none"> <li>5 years beyond the term of insurance.</li> <li>As of the date the registration was suspended or cancelled.</li> </ul>	<ul style="list-style-type: none"> <li>5 years beyond the term of insurance.</li> <li>As of the date the registration was suspended or cancelled.</li> </ul>
<b>Notice of cancellation or non-renewal by the insurer</b>	<ul style="list-style-type: none"> <li>The insurer must notify the AMF 30 days before terminating the contract.</li> </ul>	<ul style="list-style-type: none"> <li>The insurer must notify the AMF 30 days before terminating the contract.</li> </ul>	<ul style="list-style-type: none"> <li>The insurer must notify the AMF 30 days before terminating the contract.</li> </ul>
<b>Notice of cancellation or non-renewal by the insured</b>	<ul style="list-style-type: none"> <li>The insurer must notify the AMF as soon as it receives a notice of termination of contract from the insured.</li> </ul>	<ul style="list-style-type: none"> <li>The insurer must notify the AMF as soon as it receives a notice of termination of contract from the insured.</li> </ul>	<ul style="list-style-type: none"> <li>The insurer must notify the AMF as soon as it receives a notice of termination of contract from the insured.</li> </ul>
<b>Notice of claim</b>	<ul style="list-style-type: none"> <li>The insurer must notify the AMF of all claims received.</li> </ul>	<ul style="list-style-type: none"> <li>The insurer must notify the AMF of all claims received.</li> </ul>	<ul style="list-style-type: none"> <li>The insurer must notify the AMF of all claims received.</li> </ul>

1 Representatives attached to a firm without being an employee are not automatically covered by the firm's liability insurance contract. The firm on behalf of which these representatives are acting must ask them to take out a liability insurance contract similar to that carried by independent representatives. (See *Regulation respecting the pursuit of activities as a representative.*)

However, some insurance contracts purchased by firms could provide for additional clauses that cover attached representatives who are not employed by the firm. This type of contract must be reviewed carefully to ensure that the representative is covered for all the sectors for which he is authorized and that he is covered for the amounts prescribed by the *Regulation respecting firms, independent representatives and independent partnerships.*

**FOR REPRESENTATIVES ATTACHED TO SEVERAL FIRMS** – The firms to which the representative is attached will have to demonstrate that the representative is adequately covered for all his activities, regardless of the number of firms to which he is attached.

APPENDIX  
D

**NOTICE OF NON-RENEWAL OR CANCELLATION  
OF A PROFESSIONAL LIABILITY INSURANCE CONTRACT**

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Pursuant to section 197 of the *Act respecting the distribution of financial products and services*.

Insured's name: \_\_\_\_\_

Insurer's name: \_\_\_\_\_

Policy number: \_\_\_\_\_

Master contract number (if applicable): \_\_\_\_\_

**Notice of:**

Non-renewal

Cancellation

Effective date: \_\_\_\_\_

**Requested by:**

Insurer

Insured



## NOTICE OF CLAIM

---

Pursuant to section 17 of the *Regulation respecting the pursuit of activities as a representative* and section 29 of the *Regulation respecting firms, independent representatives and independent partnerships*.

Insured's name: \_\_\_\_\_

Insurer's name and contact information: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of person handling the claim: \_\_\_\_\_

Policy number: \_\_\_\_\_

Master contract number (if applicable): \_\_\_\_\_

Claim number: \_\_\_\_\_

Date of claim: \_\_\_\_\_

Amount of claim: \_\_\_\_\_

Reason for the claim: \_\_\_\_\_



## SWORN STATEMENT

---

I, (name of officer responsible) \_\_\_\_\_

certify that, as required under section 29 (2) of the *Regulation respecting firms, independent representatives and independent partnerships*,\* (name of firm)

\_\_\_\_\_ is maintaining at all times net liquid capital at least equal to the amount of the highest deductible under its professional liability insurance contract.

Signed in (location): \_\_\_\_\_, on (date) \_\_\_\_\_.

\_\_\_\_\_ (name of officer responsible)

\_\_\_\_\_ (registration number of firm)

Solemnly declared before me in \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

\_\_\_\_\_  
Commissioner for Oaths (signature)

Commission No.: \_\_\_\_\_

---

\* *Act respecting the distribution of financial products and services*