

Notice regarding changes to the Guide to Compliance Audit Program and Use of FCSA Data (section 179.1 of the *Automobile Insurance Act*)

Under the agreement signed with the *Groupement des assureurs automobiles* (the “GAA”), the *Autorité des marchés financiers* (the “Authority” or the “AMF”) granted the GAA an inspection mandate to ensure that consultations by all users of the *Fichier central des sinistres automobiles* (FCSA) database have been made only for purposes of classification and rate application based on risk in respect of the issuance or renewal of an automobile insurance policy.

Since January 1, 2010, the GAA has been conducting inspections in accordance with the AMF-approved Guide to Compliance Audit Program and Use of FCSA Data (the “Guide”).

On July 13, 2018, section 654 of the *Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*¹ came into effect. This section amends section 179.1 of the *Automobile Insurance Act*² (the “Act”) by adding the following two paragraphs to specify when and under which conditions the FCSA can be consulted:

“That information may be communicated at the time a person expresses the intention to apply for or renew an automobile insurance policy with an insurer; that information may only be used for purposes of classification and rate application based on the risk the person represents.

If the insurer issues a policy, the information referred to in the first paragraph is presumed to have been confirmed by that person, subject to any other circumstances the person is required to declare in that respect, and the obligation relating to that declaration is presumed to have been properly discharged.” [Our emphasis]

Since July 13, 2018, this amendment has allowed all FCSA users to consult the database without first obtaining the claims record information from the customer or the insured.

However, they must still confirm the information obtained from the FCSA with the customer or the insured. This confirmation must be documented so that the GAA can verify it as part of its compliance audit mandate regarding FCSA data use.

Main changes to the Guide

The main changes to the Guide are as follows:

- Definition of “Underwriting”

“Underwriting: *An insurer underwrites the risk presented by a customer or an insured after evaluating and agreeing to assume such risk. This situation arises when a customer or an insured expresses the intention to apply for or renew an automobile insurance policy with an insurer, combined with either of the following:*

a) *The insurer informs the customer or the insured that it is going to obtain information about their prior claims by consulting the FCSA. After it obtains the information from the FCSA, the insurer must verify the accuracy of the information with the customer or the insured;*

or

b) *The insurer is able to complete an insurance application based on the information given to it by the customer or the insured. The insurer has informed the customer or the insured that it is going to obtain information about their prior claims by consulting the FCSA. After it has*

¹ S.Q. 2018, c. 23.

² CQLR, c. A-25.

obtained the information from the FCSA, the insurer must verify the accuracy of the information with the customer or the insured.”

- Compliance rule 2.3 – FCSA Claims History Statement access conditions

Insurers’ obligations with respect to consultations are set out in section 179.1 of the Act. Insurers must comply with the rules stated below pertaining to FCSA Claims History Statement access conditions. Therefore, for each rule described, one or more control measures have been identified and are included as part of the audit process.

- a) *Consultations may be made when a policy is underwritten for the purpose of issuing or renewing an automobile insurance policy.*
 - *Check the consultation date of the drivers’ licence(s) on the list of licences consulted for the same customer file (item 2, Section 5.2 of the Guide) among the files selected and check the insurance policy issuance or renewal date; if no policy has been issued, there must be an insurance application or other document to justify the consultation(s).*
 - *In the selected files, check whether the claims history information for each licence consulted for the same customer file has been validated with the customer or the insured.”*

Effective date of the new Guide

The new Guide is effective upon its publication in the Bulletin of the Authority on December 20, 2018.

The Guide is published hereinafter and is also available on the AMF website at www.lautorite.qc.ca under Professionals / Insurers / Automobile insurance / Automobile claims database.

Additional Information

Further information may be obtained from the AMF Information Centre:

Québec City: 418-525-0337
Montréal: 514-395-0337
Toll-free: 1-877-395-0337
www.lautorite.qc.ca

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