

## NOTICE RELATED TO REPLACEMENT INSURANCE

The *Autorité des marchés financiers* (the “Authority” or the “AMF”) reminds consumers and the industry that, effective August 1, 2010, replacement guarantees will no longer be sold. Replacement insurance will now be offered by insurers authorized to transact automobile insurance business in Québec.

Only replacement insurance policy [Q.P.F. No. 5](#) and endorsement [Q.E.F. No. 5-25](#) approved by the Authority must be used, in their complete versions and without any addition or amendment. The replacement insurance product to be offered on the market will therefore provide consumers with the same protection, although limits may be different.

### Underwriting of risk by insurer

In order to make replacement insurance accessible to all consumers, the sole requirement for obtaining this product, as stipulated in a replacement insurance policy, is that the insured must hold a primary insurance policy.

Selection criteria must pertain to vehicles, not insureds. Therefore, the insurer may determine the type of motor vehicle it wishes to insure. For example, it may elect to insure only new vehicles and certain classes of vehicles by excluding luxury vehicles. An insurer may also elect to underwrite risks related to recreational vehicles.

Insurers may also cover vehicles used for specific purposes, such as commercial and public vehicles, provided coverage of such vehicles is stipulated in the contract declarations.

### Coverage

The product must offer complementary coverage in the event of total loss and partial loss of **new and used** vehicles. An insurer will not be able to underwrite only total losses. Similarly, no limit will apply to the indemnity to be paid in the event of the total loss of the insured vehicle.

#### *Total loss*

In the event of the total loss of a **new vehicle**, the insurer must assume the following costs:

- the difference between the value of a replacement vehicle and the indemnity paid by the primary insurer (no limit should be stipulated);
- the deductible (subject to the stated limit), provided the insured has paid it;
- the cost of leasing a courtesy vehicle (subject to the stated limit).

In the event of the total loss of a **used vehicle**, the insurer must assume the following costs:

- the difference between the marked-up value of the insured vehicle and the indemnity paid by the primary insurer (no limit should be stipulated);
- the deductible (subject to the stated limit), provided the insured has paid it;
- the cost of leasing a courtesy vehicle (subject to the stated limit).

With respect to leasing costs, replacement insurance coverage will, on expiry of the loss of use period stipulated in the policy, complement the coverage offered under the primary policy. Where the primary insurer does not cover leasing costs, the replacement insurer will not be required to refund leasing costs incurred.

#### *Partial loss*

In the event of partial loss of **new vehicles**, the insurer must assume the following costs:

- the difference between the replacement cost of damaged parts by genuine manufacturer's new parts and the indemnity paid by the primary insurer (subject to the stated limit);
- the deductible (subject to the stated limit) paid by the insured;
- the cost of leasing a courtesy vehicle (subject to the stated limit).

In all cases of partial loss, the insurer must replace the damaged parts and not cause them to be repaired. Where the primary insurer is required to replace damaged parts with genuine manufacturer's new parts, the replacement insurer is only required to assume the deductible and leasing costs.

The insured may however have parts repaired by the repairer of his choice.

With respect to leasing costs, as in the event of total loss, replacement insurance coverage will, on expiry of the loss of use period stipulated in the policy, complement the coverage offered under the primary insurance policy. Where the primary insurer does not cover leasing costs, the replacement insurer will not be required to refund leasing costs incurred.

For **used vehicles**, replacement insurance does not cover the replacement of damaged parts in the event of partial loss, but only the deductible and leasing costs.

### **Compensation**

The consumer chooses a compensation option when taking out insurance. The representative or distributor must offer the consumer the following two options:

- the replacement of the vehicle through the named dealer (Option 1); **or**
- the payment of an indemnity to replace the vehicle (Option 2).

#### *Option 1*

Under the option to **replace the vehicle through the named dealer**, the insurer undertakes to replace the vehicle. Therefore, the insurer makes available to the insured a replacement vehicle that has the same features and equipment as the insured vehicle. If the insured chooses to replace the insured vehicle with a higher class vehicle, he must assume any cost differential.

The replacement insurance policy provides for the replacement of the vehicle through the dealer named in the contract or, where the insured cannot replace his vehicle through that dealer, through a dealer authorized by the insurer. For example, the vehicle cannot be replaced through the named dealer because that dealer has become bankrupt or closed its dealership.

#### *Option 2*

Where the insured selects the **payment of an indemnity to replace the insured vehicle**, he **must** arrange to replace the vehicle himself, since the insurer is required to pay the indemnity only upon receiving a copy of the new contract entered into between the insured and the dealer. In this way, the insured cannot decide to keep the indemnity and not replace his vehicle.

Where the insured replaces his vehicle by entering into a long-term lease, he may choose to apply the indemnity to the lease balance payable or use it for any other purpose, since the insured's obligation is the replacement of his vehicle.

#### *Leasing*

*(For purposes of this Notice, the term “leasing” comprises long-term leasing and a contract of leasing.)*

The replacement insurance policy stipulates that where a vehicle is leased under a long-term lease contract, only the lessee may benefit from this insurance.

### **Modification of contract**

Under endorsement [Q.E.F. No. 5-25](#), the insurer may modify the declarations without modifying the text of the insurance policy approved by the Authority. This endorsement may be used for a change of address of the insured, the addition of equipment or a change in vehicle use. The insurer may, of course, adjust the premium accordingly.

Requests to modify a contract must be made through a certified representative or the insurer directly. Requests may not be made through a distributor.

### **Cancellation of contract**

The insured may, at any time, cancel the contract simply by sending written notice to the insurer. The insurer must then refund the insured in accordance with the cancellation table. The premium must be refunded pursuant to article 2479 of the Civil Code of Québec, whereby the insurer is entitled to only the earned portion of the premium at the short-term rate. The short-term rate usually takes certain administrative fees into account and the refund **should gradually decline up to the contract expiry date**.

The insurer may only cancel a contract for non-payment of premium. In such case, the insurer must send the insured a written notice and refund any unearned premium calculated on a day-to-day basis.

In the event of total loss of the insured vehicle, the contract is cancelled and the insurer must refund any premium overpayment to the insured in accordance with the cancellation table.

### **Subrogation**

The insurer may institute legal action against a person who caused damage to an insured vehicle only for the purpose of recovering the deductible and leasing costs assumed in respect of the replacement insurance.

### **Distribution of product**

Replacement insurance may be offered through insurance representatives and distributors. Consumers can therefore decide whether to purchase this product through an automobile dealer or a certified representative.

Where the product is available through a **distributor**, the distributor must give the consumer a copy of the distribution guide prepared by the insurer and disclose any remuneration the distributor will receive that exceeds 30% of the sale price of the product. These obligations are set out in sections 431 and 435 of *An Act respecting the distribution of financial products and services*, R.S.Q., c. D- 9.2 (the “Act”).

The remuneration paid by the insurer to the distributor must be fixed and determined in advance for the same product. Such remuneration may not vary from one consumer to another for the same product offered by the same distributor.

Lastly, under section 441 of the Act, the insured has a right of rescission in respect of a contract. The insured may therefore rescind a contract within 10 days of signing it, by sending notice thereof to the insurer by registered or certified mail.

### **Similar products**

The Authority considers that endorsement Q.E.F. No. 43 "Change to indemnity" to be an insurance product offering coverage similar to that offered by replacement insurance. Consequently, consumers should hold only one of these products.

Where the product is offered by a distributor, the distribution guide should stipulate that the endorsement Q.E.F. No. 43 "Change to indemnity" is a similar product. The individual distributing the product must inform the consumer accordingly and ask him whether he is already covered by such an insurance product, in accordance with section 430 of the Act.

Insurance representatives must verify whether the consumer already holds replacement insurance, in accordance with their obligations under the Act.

### **Further information**

Further information is available from the AMF Information Centre:

Québec City: 418-525-0337  
Montréal: 514-395-0337  
Toll-free: 1-877-525-0337

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