

Directive concerning contracting-out and network agreements

Contracting-out as a principle

At its meeting of November 18 and 19, 1999, the Bureau recognized that representatives and firms could resort to contracting-out with regard to some of the responsibilities prescribed under the *Act respecting the distribution of financial products and services* and the regulations, such as that having to do with books and registers.

The term “Contracting-out” means: “a legal person who hires a supplier of services to perform a task on its behalf rather than performing it itself.” However, this capacity does not free the person responsible within the meaning of the Act and the regulations from its obligations. It must therefore take all necessary precautions. As a rule, contracting-out includes, among others, the following clauses:

- the supervision of the acts performed by service suppliers;
- the fact that the person who contracts out is still in charge of supervising the manner in which the tasks are performed by the service supplier;
- the verification that the service supplier has the necessary skills to perform its duty;
- a provision respecting the frequency, contents and presentation of the service, the schedules, and the priorities in matters of processes, as well as production criteria;
- the settlement of disputes clause;
- a clause concerning the termination of the agreement.

For example, a firm would be allowed to agree with an insurer with which it has a distribution agreement so that the latter may proceed directly with the payment of the remuneration to the firm’s representatives. Such agreement would not exempt the firm from its obligations respecting the keeping of a register of commissions regarding payments made by this insurer.

The Bureau should draw up a more detailed directive specific to contracting-out this year.

Network agreements as a solution

On the other hand, insurers of persons submitted to the Bureau a more specific problem regarding representatives who are attached to an insurer-firm. As a rule, these representatives are linked by exclusive contract with regard to individual insurance products whereas they may place group insurance products with various other insurers. It even happens that, occasionally, these representatives also place individual insurance products with other insurers (“one single case agreement”).

Insurers and their representatives hoped to continue such practices. However, under Bill 188, only a registrant (firm, independent representative or firm) may place products directly with an insurer. In addition to the options already considered¹, the Bureau adopted at its meeting of April 13, a directive on network agreements among insurers, registrants and representatives.

¹ ➤ The representative is attached to the insurer-firm for individual insurance products and is attached to his own firm for group insurance products.

➤ The representative is attached to the insurer-firm for individual insurance products and is attached to another firm, a general agent for example, for group insurance products.

➤ The representative registers as an independent representative in all the sectors if he is not bound to a single insurer for all his insurance activities.

➤ The representative is attached to his own firm for all the sectors and the latter enters into exclusivity agreements with an insurer for individual insurance products.

CONTRACTING-OUT AND NETWORK AGREEMENTS

Such network agreements were already allowed under the *Insurance Act*. Representatives attached to an insurer-firm may then have access to the products of the companies with which agreements have been reached.

For the Bureau, this procedure could be favored since:

- such option does not distort the principles regarding the way of carrying on business;
- the firm retains its responsibility with respect to its attached representatives, regardless of the actions taken;
- the investigations and inspections of the syndics and the Bureau are not jeopardized;
- this option applies both to the sales of group insurance and to one single case agreements.

Content of the agreements

These agreements must provide for namely:

- the sales process of the insurer's products;
- the mechanisms to comply with the obligations of the registrants (clients' registers, commissions register, complaints register).

Payment of commissions

As far as the payment of the commissions is concerned, the Bureau requires that the register of the firm to which the representative is attached contain a proof of all the commissions paid to the representatives, even payments made by other insurers.

Deadline to implement the agreements

Given the fact that a period of time is necessary for the signing of the network agreements, the Bureau grants the same time period as the one provided for the verification of the ways of carrying on business by third parties, that is, until September 5, 2000. This means that, in the meantime, insurers and firms may continue to accept the businesses of any representative who is authorized to pursue his activities in the sector concerned, whether or not there has been a network agreement.

On the other hand, an agreement could always be reached after September 5, 2000. However, until the agreement is reached formally, a representative will have to carry on his activities according to the way of carrying business chosen.