

**DIRECTIVES CONCERNING THE
OBLIGATIONS OF DISCLOSURE
OF DISTRIBUTORS**Bureau des
services financiers**Application of sections 431 and 433 of the *Act respecting the distribution of financial products and services* (L.R.Q., c. D-9.2)****Introduction**

In February 2000, the Bureau conducted a consultation through its Bulletin to obtain comments concerning the impacts and the terms and conditions of the application of the disclosures provided for in sections 431 and 433 of the *Act respecting the distribution of financial products and services*. Comments were received from ten groups or so. These comments were examined and submitted to the ad hoc committee on disclosures and to the board of directors of the Bureau.

Considering the numerous interpretations and the differences reported in the application of these sections, the Bureau had to take a stand.

In adopting these directives, the Bureau based itself on the following principles: these sections are in force and they must be complied with; the application must be simple, must not lead to multiple interpretations and must be subject to an easy and efficient control to ensure more equity among the actors; any pernicious effect for the consumers must be avoided.

SECTION 431**Section 431 reads as follows:**

431. A person who distributes an insurance product must describe the product to the client and explain the nature of the guarantee.

The person distributing the product must clearly explain the exclusions under the guarantee to enable the client to decide whether the situation applying in the client's case constitutes an exclusion under the guarantee.

The person distributing the product must also, if the remuneration received by the distributor for the sale of the product exceeds 30% of its sale price, disclose that remuneration to the client.

Four elements must be retained as regards section 431

1. The disclosure of any remuneration exceeding 30% of the cost of the premium is compulsory at all times, whether or not the distributor offers more than one insurance product.
2. In order to make sure that all forms of remuneration received are considered, the remuneration referred to by section 431 is defined as follows:

Any sum, benefit or advantage of a pecuniary nature received by a distributor in exchange for the distribution of an insurance product and which comprises among others, the following elements:

- *commissions;*
- *wages;*
- *dues;*
- *sums paid as compensation;*
- *benefits paid according to the sales volume;*
- *benefits paid for the sale of other products offered at the same time as the insurance product (ex.: replacement guarantee).*

It is in fact any quantifiable amount received by the distributor, and which is linked to the distribution of an insurance product.

3. In reading section 431, we notice that the law purely and simply refers to remuneration. It introduced neither the concept of «fees» nor any precision whereby it could be concluded that, for the calculation of its remuneration, a distributor could deduct the expenses related to the distribution of insurance products. Consequently, the Bureau does not deem acceptable the fact that a distributor could consider expenses to decrease the percentage of remuneration and avoid disclosure.

This interpretation is that more logical when time comes to apply section 432, which provides that an insurer must disclose to the Bureau the remuneration it grants to a distributor for the sale of an insurance product. In fact, it is not always possible for the insurer to determine which portion of the remuneration is allocated for administration fees.

Consequently, the remuneration referred to in section 431 is the full (gross) remuneration granted by the insurer to a distributor. Thus, there must be disclosure every time the remuneration will exceed 30% of the cost of the insurance product, and it will not be possible for the distributor to subtract any expense or charge whatsoever.

4. Disclosure may be done verbally or in writing, in the form of a percentage or a quantum.

Here are some examples of application:

- For the sale of such product, we receive a remuneration of \$20.
- For the sale of such product, we receive a remuneration equal to 35% of your premium.

SECTION 433

Section 433 reads as follows:

433. A distributor offering more than one insurance product for the same goods must disclose to the client the remuneration paid by the insurer for the sale of each insurance product.

The obligation to disclose the remuneration applies if:

1. the sale of one of the insurance products brings in a remuneration that exceeds 30%;

And

2. the distributor can offer more than one insurance product for the same goods.;

1. Remuneration exceeding 30%

Section 433 must be read in correlation with section 431. Thus, there must be disclosure only when the remuneration received for **one of the products** will exceed 30%. This disclosure will however be **applicable to all the products that can be offered** by the distributor.

Here are some examples of application:

- A distributor can offer two insurance products for the same goods. It receives a remuneration of 35% for the first one and 25% for the second one. **Disclosure will have to be done for both insurance products.**
- A distributor can offer two insurance products for the same goods. It receives a remuneration of 30% for the first one, and 20% for the second one. No disclosure will be necessary, since the remuneration received is 30% or less in both cases.

2. More than one insurance product for the same goods

The notion of «offering more than one insurance product for the same goods» refers to insurance products of the **same category (insurance of persons or damage insurance)**. Consequently, this second precision will have to be considered to determine whether or not it is necessary to disclose the remuneration received.

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Here are some examples of application:

- A distributor can offer two insurance products to cover the financing granted to a debtor. The first one is disability insurance and the second one, life insurance. As these two products are in the insurance of persons category, the distributor will have to proceed with disclosure, provided that the remuneration received for one of the two products exceeds 30%.
- A distributor can offer two insurance products to a debtor, following the purchase of a motor vehicle. The first one is disability insurance and the second one, insurance against breakage caused to the vehicle. As these two products belong to different insurance categories (insurance of persons and damage insurance respectively), the distributor will have to proceed with disclosure only for the product for which the remuneration exceeds 30% (and not for both products). In other words, only section 431 will apply.

