

## **Draft Regulation**

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

(chapter D-9.2, s. 31, 38, 202 par. (2), 203 par. (4), 208, 223 pars. (1), (5), (13) and (13.1))

### **Regulation respecting damage insurance brokerage**

Notice is hereby given by the *Autorité des marchés financiers* (the “Authority”) that, in accordance with section 217 of the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2 (the “Distribution Act”), the following regulation (the “Draft Regulation”), the text of which is published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 60 days have elapsed since its publication in the Bulletin of the Authority:

- *Regulation respecting damage insurance brokerage*

The Draft Regulation is also available under “Public consultations” on the Authority’s website at [www.lautorite.qc.ca](http://www.lautorite.qc.ca).

### **Purpose of the Draft Regulation**

*An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions* (S.Q. 2018, c. 23) introduces, among other changes to the Distribution Act:

- new obligations for damage insurance brokers;
- new titles for damage insurance brokerage firms and agencies; and
- criteria to be met to qualify as a damage insurance brokerage firm.

These legislative amendments will come into force on December 13, 2019.

Further to the amendments made to section 38 of the Distribution Act, as of December 13, 2019, damage insurance brokers who offer insurance products directly to the public will, each time they offer a client who is a natural person an insurance product belonging to a class determined by regulation of the Authority, have to be able to obtain quotes from at least three insurers that do not belong to the same financial group, failing which, they will have to keep the information allowing them to prove that they made every effort to comply with this requirement.

The Draft Regulation proposes the classes of products covered by this new obligation. It also sets out the information representatives acting as brokers should disclose to their clients and the information firms should provide to the Authority and provides clarification regarding the representatives who may act on behalf of an agency.

A primary consideration in making the Draft Regulation was to promote transparency for consumers who deal with damage insurance representatives so they could make enlightened decisions. The Draft Regulation also takes into account the various business models of damage insurance firms, comments obtained during the Authority’s work in preparing the Draft Regulation and comments made during the parliamentary proceedings that led to the passage of *An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*.

To provide all interested stakeholders with an opportunity to present their points of view on the Draft Regulation, and given that the consultation is beginning in the summer period, the Authority is providing a 60-day comment period.

The relevant provisions of the Distribution Act, as they will read on December 13, 2019, are reproduced in the annex hereto.

## I. **Damage insurance**

A damage insurance **representative** offers damage insurance products, including home insurance, automobile insurance, movable property insurance and legal expenses insurance, directly to the public.

A representative authorized to act in the damage insurance sector uses the title of damage insurance agent or damage insurance broker, as the case may be.

A damage insurance **agent** is a natural person who acts on behalf of a firm that is an insurer or that is bound by an exclusive contract with a single damage insurer. An agent offers damage insurance products directly to the public only.

A **broker**, meanwhile, is a natural person who offers a range of damage insurance products from several insurers. He may also offer damage insurance products from one or more insurers to a firm, an independent representative or an independent partnership.

The damage insurance sector consists of two classes of sectors:

- **Personal-lines damage insurance:** This class is limited to products pertaining to property and civil liability that are intended to meet the personal, family or household needs of a natural person or an independent worker at his residence or pertaining to residential buildings containing not more than six dwellings.
- **Commercial-lines damage insurance:** This class is limited to products pertaining to damage insurance for commercial businesses, including in respect of independent workers.

Currently, firms<sup>1</sup> registered in the damage insurance sector act either exclusively through agents or exclusively through brokers. Since June 13, 2019, firms have also been able to act without the intermediary of a natural person (via the Internet). Whether a firm acts through agents or brokers, it is registered as a firm and may use the title of “damage insurance firm”.

## II. **Qualification of firms registered in the damage insurance sector**

### **Damage insurance brokerage firm**

The new provisions of the Distribution Act, which will come into force on December 13, 2019, provide for a new registration for damage insurance firms. Section 75 of the Distribution Act, as it will read at that date, specifies that a damage insurance firm is registered as a damage insurance agency, unless it demonstrates that it qualifies as a **damage insurance brokerage firm**.

Under section 75 of the Distribution Act, in order to be registered as a damage insurance brokerage firm, a firm must meet the following three criteria:

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<sup>1</sup> For purposes of brevity, the term “firm” is used in this notice to also mean an independent representative and an independent partnership, where applicable.

- 1- it is not an insurer;
- 2- its capital complies with section 150 of the Distribution Act and no financial institution, financial group or legal person related thereto holds:
  - an interest allowing it to exercise more than 20% of the voting rights attached to the shares issued by the firm; or
  - an interest representing more than 50% of the value of the firm's equity capital.
- 3- its representatives are brokers who comply with section 6 and section 38 of the Distribution Act, where the products offered by these brokers are insurance products belonging to a prescribed class or, when acting without the intermediary of a natural person (via the Internet, for example), the firm complies with these two sections.

The third criterion requires brokers who act on behalf of the brokerage firm to comply with sections 6 and 38 of the Distribution Act. To comply with section 6, brokers must offer their clients a range of insurance products from several insurers. Under section 38 as amended, brokers who offer insurance products directly to the public will also have to be able to obtain quotes from at least three insurers in the personal-lines insurance product classes referred to in the Draft Regulation, failing which, they will have to keep the information allowing them to prove that they made every effort to comply with this requirement.

In addition, sections 85 and 86 of the Distribution Act specify that a firm and its executive officers must ensure that their representatives and employees comply with the Act and its regulations. In this context, damage insurance brokerage firms are responsible for ensuring that their brokers are able to obtain quotes from at least three insurers in the classes of products covered by the Draft Regulation. In practice, this means that brokerage firms will be responsible for structuring their operations so as to enable their damage insurance brokers to comply with section 38 of the Distribution Act. This may involve entering into agreements with at least three insurers who are not members of the same financial group or, for example, entering into an agreement with a banner that would provide access to products from at least three insurers.

In order to meet this requirement and qualify as a damage insurance brokerage firm, a firm should disclose to the Authority the names of at least three insurers whose insurance products it and its brokers offer.

### **Damage insurance agency**

A damage insurance firm that does not meet one of the criteria set out in section 75 of the Distribution Act (indicated above) may not be registered as a damage insurance brokerage firm. It is then registered as a **damage insurance agency**.

In other words, a firm that is an insurer or whose capital does not comply with section 150 or whose representatives do not comply with sections 6 and 38 of the Distribution Act will be registered as a damage insurance agency.

A damage insurance agency acts through damage insurance agents. These agents must meet the definition set out in section 5 of the Distribution Act and offer damage insurance products directly to the public on behalf of a firm that is an insurer or that is bound by an exclusive contract with a single insurer. Accordingly, an agency that is not an insurer must have an exclusive contract with an insurer.

However, in accordance with the Draft Regulation, a damage insurance agency may also act through damage insurance brokers, who would act exclusively in commercial-lines damage insurance.

This type of agency would have an exclusive contract with an insurer for the personal-lines damage insurance products it offers through agents and should, if it wishes to act through commercial-lines damage insurance brokers, have distribution agreements with several insurers in this class of sectors.

Furthermore, in this type of “hybrid” agency, damage insurance agents should inform clients that they are able to offer only personal-lines damage insurance products and use the title of “personal-lines damage insurance agent”. Similarly, for commercial-lines damage insurance, brokers in the agency would use the title of “commercial-lines damage insurance broker”. This is consistent with section 10 of the Regulation respecting the pursuit of activities as a representative, which specifies that the representative uses the title that he is authorized to use in respect of the firm on whose behalf he is acting and indicates this to the client upon first meeting.

Moreover, in light of section 4 of the Draft Regulation, the certificates of brokers or agents who are currently authorized to act in both classes of sectors will be limited to the personal-lines damage insurance class in the case of agents and to the commercial-lines damage insurance class in the case of brokers, where a broker or agent acts exclusively on behalf of such hybrid agency.

As sections 5 and 6 of the Distribution Act are mutually exclusive, damage insurance representatives must choose their status: they are either agents or brokers and may not be authorized to act under both titles.

To summarize, firms that do not qualify as brokerage firms within the meaning of section 75 of the Distribution Act will be registered as damage insurance agencies. Such agencies must ensure that the damage insurance representatives acting on their behalf (either agents or agents authorized to act in personal-lines damage insurance and brokers authorized to act in commercial-lines damage insurance) comply with sections 5 and 6 of the Distribution Act.

### **III. Classes of damage insurance products**

Following the amendments to section 38 of the Distribution Act, as of December 13, 2019, damage insurance brokers who offer products directly to the public will, **each time they offer a client** who is a natural person an insurance product for personal, family or household insurance needs in the classes covered by the Regulation, have to be able to obtain quotes from at least three insurers who do not belong to the same financial group. This does not imply that the three quotes are actually presented to the client or even obtained by the broker. However, brokers must be able to provide them when expressly requested by the client.

The classes set out in the Draft Regulation are **automobile insurance** and **home insurance**.

In other words, the obligation set out in section 38 of the Distribution Act should apply each time a client deals with a broker for personal-lines automobile insurance or home insurance. Consequently, the fact that his firm has agreements enabling him to offer products from at least three insurers would be not be sufficient in and of itself for a broker to satisfy the requirement in section 38.

In fact, section 27 of the Distribution Act requires that representatives ensure to appropriately advise their clients and, if they can, offer them a product that meets their needs. In this context, a client’s needs include not only the protection offered, but also underwriting that is based on the risk he represents. For example, it would not be appropriate to offer a home insurance product intended

for high-value homes to a client seeking to insure a residence whose replacement cost falls within the average range.

If brokers are unable to obtain the three quotes, paragraph 2 of section 38 specifies that they must keep the information allowing them to prove that they made every effort to comply with the requirement. The Authority expects brokers to comply with this requirement each time they are unable to obtain the three quotes and for each client. Brokers must therefore explain every effort they made. The explanations should be detailed enough to enable an Authority inspector to properly understand the situation that prevented the broker from being able to obtain the three quotes.

However, and as the Draft Regulation specifies, this requirement would not apply where a change is made to a contract during its term. For example, if a client adds a new vehicle to his existing contract, the broker could add it to the vehicle already covered by the policy without his having to be able to obtain three quotes.

#### **IV. Disclosures**

In addition to the disclosures set out in section 83.1 of the Distribution Act and in accordance with section 2 of the Draft Regulation, it is proposed that brokers communicate to their clients the names of the three main insurers whose personal-lines damage insurance products they offer. For each of the three insurers, they must disclose the percentage of the total volume of risks placed. The percentage disclosed should be the one reported to the Authority by the broker's firm when maintaining its registration, in the form used for that purpose. This disclosure should be made to each client before the representative inquires into his situation to assess his needs and in accordance with the chosen means of communication.

This disclosure obligation is in addition to the one set out in section 4.8 of the Regulation respecting information to be provided to consumers (CQLR, chapter D-92, r. 18), which deals with the business relationships defined in section 26 of the Distribution Act and section 4.10 of this Regulation. Firms may have business relationships with insurers other than those with whom they place the most risks.

In addition, the Draft Regulation proposes that brokerage firms provide clients, in writing, with the disclosure made by its broker or by it, in the case of an independent representative, at the time of issuance of the policy and of each renewal, as applicable. They should also provide the Authority with the information relating to this obligation when maintaining their registration, in the annual form they must complete for that purpose. If there is any significant change in business volumes during the year, the disclosures will have to be adjusted as of the occurrence of the change.

Sections 11, 13 and 14.6 of the Regulation respecting the registration of firms, representatives and independent partnerships (CQLR, chapter D-9.2, r. 15) set out the various titles firms may use in their representations, particularly when they are registered in more than one sector. However, damage insurance agencies may not use the title of damage insurance firm or financial services firm.

#### **V. Transitional measures and qualification form**

The new provisions of the Distribution Act will come into force on December 13, 2019. Accordingly, as of that date, brokers and firms will have to ensure that they comply with the new provisions of the Distribution Act.

The Authority will make a qualification form available to all damage insurance firms and they will have to complete it in E-Services or mail it to the Authority before March 1, 2020.

The information to be provided in the form will be that specified in the Regulation and sections 75 and 83.1 of the Distribution Act.

A firm wishing to pursue its activities as a **damage insurance brokerage firm** must disclose, among other things, that:

- it is not an insurer;
- its capital complies with section 150 of the Distribution Act; and
- all of its damage insurance representatives are brokers who comply with section 6 and, where they offer products belonging to a class determined by regulation, section 38 of the Distribution Act.

The firm should also indicate, for example:

- the names of the insurers for which it offers products covered by the Regulation;
- the name of the financial institution, financial group or legal person related thereto that holds an interest in shares issued by the firm representing more than 20% of the value of the firm's equity capital; and
- the name of any insurer to which are paid more than 60% of the premiums stipulated in the contracts entered into by the firm and belonging to a single class prescribed by the Regulation for the purposes of section 38.

A firm that has decided to continue pursuing its activities as a **damage insurance agency** should disclose the following, in particular, in this form:

- the name of any insurer to which it is bound by an exclusive contract and the products covered by that contract, if applicable.

The registration would remain unchanged while these disclosures were analyzed. On May 1, 2020, the annual registration maintenance date, damage insurance firms will be registered as either damage insurance brokerage firms or damage insurance agencies and these respective titles will be indicated in the Authority's public register.

## Comments

Comments regarding this Draft Regulation may be made in writing before **September 23, 2019**, to the following:

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Unless otherwise noted, comments will be posted on the Authority's website at [www.lautorite.qc.ca](http://www.lautorite.qc.ca). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

**Additional Information**

Further information is available by calling:

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**July 25, 2019**

## **Annex**

### **Relevant provisions of the Distribution Act as they will read on December 13, 2019 (Administrative version – unofficial)**

**5.** A damage insurance agent is a natural person who, on behalf of a firm that is an insurer or that is bound by an exclusive contract with a single damage insurer, offers damage insurance products directly to the public.

**6.** A damage insurance broker is a natural person who offers a range of damage insurance products from several insurers directly to the public, or who offers damage insurance products from one or more insurers to a firm, an independent representative or an independent partnership.

**26.** Insurance representatives must, when placing a risk with an insurer with which they have, or with which the independent partnership or firm for which they act has, a business relationship, disclose that relationship to the person with whom they are transacting business.

Any direct or indirect interest held by an insurer in the ownership of a firm or held by a firm in the ownership of an insurer, and the granting by an insurer of any benefit or other interest determined by regulation, constitutes a business relationship.

**27.** Insurance representatives must inquire into their clients' situation to assess their needs.

They must ensure to appropriately advise their clients regarding matters that fall within the sectors in which they are authorized to act; if they can, they shall offer their clients a product that meets their needs.

**38.** Damage insurance brokers who offer insurance products directly to the public must, each time they offer an insurance product belonging to a class determined by regulation of the Authority to a client who is a natural person, be able to obtain quotes from at least three insurers who do not belong to the same financial group, within the meaning assigned to that expression by section 147.

Such brokers must keep the information allowing them to prove that they made every effort to comply with the first paragraph and must update such information regularly.

The regulation made for the purposes of this section may only pertain to damage insurance products intended to meet personal, family or household insurance needs.

**71.** No person may act as or purport to be a firm without being registered with the Authority.

No person may act as or purport to be a damage insurance brokerage firm without being registered as such with the Authority.

A legal person that, without acting as a firm, receives a commission or other remuneration based on the sale of financial products or the provision of financial services must be registered with the Authority. As of its registration, the legal person is, for the purposes of this Act, considered to be acting as a firm in the sector in which the products and services are offered.

**75.** A firm is registered for a particular sector.

A firm registered for the damage insurance sector is so registered as a damage insurance agency except when it may be registered as a brokerage firm for that sector.

Only a firm that meets the following criteria may be registered as a damage insurance brokerage firm:

- (1) it is not an insurer;
- (2) its capital complies with section 150;
- (3) its representatives who offer damage insurance products are brokers who comply with sections 6 and 38, where those insurance products belong to a class prescribed by the regulation made for the purposes of the latter section;
- (4) when offering insurance products without the intermediary of a natural person, the firm complies with sections 6 and 38, where the insurance products belong to a class prescribed by the regulation made for the purposes of the latter section.

**83.1.** A damage insurance firm or damage insurance brokerage firm must disclose, on its website and in its written communications with its clients, the names of the insurers for which it offers insurance products.

A firm must disclose, in the same manner, the name of any insurer to which it is bound by an exclusive contract and the products covered by that contract.

A brokerage firm must disclose, in the same manner, the following information:

- (1) the name of the financial institution, the financial group or the legal person related thereto that holds an interest in shares issued by the firm representing more than 20% of the value of the firm's equity capital; and
- (2) the name of any insurer to which are paid more than 60% of the premiums stipulated in the contracts entered into by the firm and belonging to a single class prescribed by the regulation made for the purposes of section 38.

For the purposes of subparagraph 1 of the third paragraph, a firm's equity capital does not include shares that do not carry the right to vote or the right to receive a share of the firm's remaining property on liquidation.

**85.** A firm and its executive officers shall oversee the conduct of the firm's representatives. They shall ensure that the representatives comply with this Act and the regulations.

**125.1.** If, following the inspection of a firm registered as a damage insurance brokerage firm, the Authority considers that the proof referred to in the second paragraph of section 38 is insufficient, the Authority may register the firm as a damage insurance agency if it has not remedied the situation within the time the Authority granted it to do so.

**125.2.** The decision under section 125.1 may, within 30 days of its notification, be contested before the Financial Markets Administrative Tribunal.

**147.** For the purposes of this chapter,

— "financial institution" means a financial institution other than an insurer engaging exclusively in the business of reinsurance;

— "firm" means a firm registered as a damage insurance brokerage firm;

— "financial group" means a group made up of all or some of the following legal persons: a federation governed by the Act respecting financial services cooperatives (chapter C-67.3) and the legal persons that are members of the federation.

Any other group of legal persons composed of a financial institution and a legal person affiliated with the financial institution is also a financial group;

— “affiliated legal person” means a legal person that is controlled by or that controls another legal person.

A legal person affiliated with another legal person is deemed to be affiliated with any other legal person affiliated with that legal person;

— “controlled legal person” means a legal person in which more than 50% of the voting rights attached to its shares are held directly or indirectly by another legal person, or a majority of the directors of which can be elected by another legal person;

— “legal person related to a financial institution” or “legal person related to a financial group” means a legal person in which more than 20% of the shares or voting rights attached to the shares are held directly or indirectly by financial institutions or financial groups.

**148.** Not more than 20% of the shares of a firm or voting rights attached to its shares may be held directly or indirectly by financial institutions, financial groups or legal persons related thereto.

However, the first paragraph shall not operate to prevent a firm from allotting its shares or registering a transfer of its shares to give effect to a contract entered into before 21 December 1988.

**150.** A firm may not be registered with the Authority as a damage insurance firm if a financial institution, a financial group or a legal person related thereto holds an interest allowing it to exercise more than 20% of the voting rights attached to the shares issued by the firm or an interest representing more than 50% of the value of the firm’s equity capital.

For the purposes of the first paragraph, a firm’s equity capital does not include shares that do not carry the right to vote or the right to receive a share of the firm’s remaining property on liquidation.

This section shall not operate to prohibit a financial institution and a firm from entering into a financing agreement or a contract for services, restrict the provisions of such an agreement or contract, or prevent a firm from allotting its shares or registering a transfer of its shares to give effect to a contract entered into before 21 December 1988.

**235.** The Authority shall keep and maintain a register of the firms, independent representatives and independent partnerships to which it grants registration.

The register shall, in the case of a firm, contain its name, the address of its head office and of each establishment it maintains in Québec, the sector or sectors for which registration is granted, and the name of each of the firm’s representatives together with each sector or class of sectors in which the representative pursues activities and the establishment to which the representative is attached. Where applicable, the register shall specify whether the firm is a damage insurance agency or a damage insurance brokerage firm.

In the case of a damage insurance agency, the register shall contain the information that the agency is required to disclose under the second paragraph of section 83.1, while in the case of a damage insurance brokerage firm, the register shall contain the information that the firm is required to disclose under the third paragraph of that section.

In the case of an independent representative, the register shall contain the representative's name, the address of the representative's establishment, and the sectors and classes of sectors for which the representative is registered.

In the case of an independent partnership, the register shall contain the partnership's name, the address of all the partnership's establishments, and the names of all the partners of and representatives employed by the partnership, together with the sectors or classes of sectors in which they pursue activities and the establishments to which they are attached.