

(c) the name of the financial institution with which the account was opened;

(4) in the case of a sum received in trust and withdrawn from a special trust account:

(a) the information listed in paragraph 2;

(b) identification of the special account;

(c) the name of the financial institution with which the account was opened.

2832

Draft Regulation

An Act respecting the distribution of financial products and services
(1998, c. 37)

Obligations of firms, independent representatives and independent partnerships

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation respecting the practice of firms, independent representatives and independent partnerships adopted by the Bureau des services financiers, the text of which appears hereunder, may be submitted to the Government for approval, with or without amendments, at the expiry of a 45-day period from the date of this publication.

According to the Bureau des services financiers, this draft regulation is intended to determine the conditions which must be respected by firms, independent representatives and independent partnerships in respect of advertising, representations and client solicitation. The rules pertaining to the keeping of registers and records, in particular registers of clients, registers of commissions and registers of complaints are also set out. The manner of dealing with complaints received is also included among the subjects covered. Moreover, this draft regulation highlights the rules pertaining to the compulsory maintenance of liability insurance by such registrants and the features that such insurance shall have. Finally, the draft regulation sets out rules applicable to franchisers and franchisees.

Other than the fact that it introduces a new obligation for processing complaints and keeping the corresponding register, this draft regulation has a minimal impact on small business. Firms and partnerships registered with the Bureau des services financiers must continue to comply with a variety of rules which were already appli-

cable thereto by the regulations of the organizations which respectively govern their sectors of activity prior to the coming into force of section 582 of the Act. In addition, according to the Bureau, an examination of the file reveals no impact on the public except for an increase in public protection by a harmonized supervision for all sectors, of the activities of firms, independent representatives and independent partnerships governed by the Bureau des services financiers.

Additional information may be obtained from M^e Nathalie G. Drouin, Director of Legal Affairs, Bureau des services financiers, 140, Grande Allée Est, local 300, Québec (Québec) G1R 5M8, telephone number: (418) 525-6273 or 1-877-525-6273, facsimile number: (418) 525-9512, E-mail: ndrouin.bsf@megaquebec.net.

Any interested party having comments regarding this matter is asked to forward them, in two copies, prior to the expiry of the 45-day period, to the Minister of Finance, 12, rue Saint-Louis, local 1.10, Québec (Québec) G1R 5L3.

BERNARD LANDRY,
*Minister of State for
the Economy and Finance*

Regulation respecting the obligations of firms, independent representatives and independent partnerships

An Act respecting the distribution of financial products and services
(1998, c. 37)

CHAPTER I ADVERTISING, REPRESENTATIONS AND CLIENT SOLICITATION

DIVISION 1 GENERAL PROVISIONS

1. Firms, independent representatives and independent partnerships shall render services and sell products that comply with their declarations and advertising.

2. Firms, independent representatives and independent partnerships shall not, by any means whatsoever, make false, misleading, or incomplete representations to persons with whom they transact business.

3. Firms, independent representatives, and independent partnerships shall not falsely, by any means whatsoever,

(1) claim that a service or product meets the standards set out by an organization;

(2) promise results that they are not reasonably able to provide.

4. Subject to section 71 of the Act, firms, independent representatives and independent partnerships may advertise or make representations in respect of activities governed by the Act concerning only the sectors or sector classes for which they are registered with the Bureau des Services financiers.

5. Firms, independent representatives or independent partnerships shall not, by reason of their registration with the Bureau, purport that their activities are recognized, approved or guaranteed by the Bureau.

6. In all advertising documents and written representations, firms, independent representatives and independent partnerships shall, in respect of services they render or products they sell in connection with their activities governed by the Act:

(1) adequately describe the services and products referred to in the advertising document or written representation;

(2) describe the service or product without emphasizing its advantages to the detriment of its disadvantages.

7. In all advertising, representation or solicitation pertaining to activities governed by the Act, firms, independent representatives or independent partnerships shall

(1) use their names or, where applicable, the other names they use in Québec in pursuing activities and shall not make reference to any elements which may lead to confusion, in particular, with respect to trademarks, slogans, symbols or logos; and

(2) indicate the title under which they pursue activities as firms or independent partnerships.

8. The advertisement of a product by a firm, an independent representative, or an independent partnership is authorized, where prior approval is obtained from the promoter, issuer or marketer and, in particular, the insurer, in the case of insurance products, and the manager, in the case of mutual funds.

9. Firms, independent representatives or independent partnerships may, in advertising, use a testimonial if it meets the following conditions:

(1) it is general in nature;

(2) it is authentic;

(3) it expresses the opinion of its author;

(4) the firm, the independent representative or the independent partnership guarantees it to be true.

If firms, independent representatives or independent partnerships, or a person acting on their behalf, directly or indirectly pay to obtain testimony or a favourable opinion, the advertising must mention such fact.

10. A firm, an independent representative or an independent partnership may use statistics in advertising, provided that the source of the statistics is clearly identified.

11. In their advertising, firms, independent representatives and independent partnerships shall not directly or indirectly criticize the services, products, or methods of competitors.

12. Sections 238, 239, 240 and 244 of the Regulation applying the Act respecting insurance (R.R.Q., 1981, c. A-32, r.1) apply, *mutatis mutandis*, to advertising and the representations made by firms, independent representatives and independent partnerships in respect of the products they sell.

DIVISION 2 MISCELLANEOUS PROVISIONS

13. The provisions of this chapter apply to all forms of representation, whether an affirmation, a declaration, a behaviour, or an omission.

CHAPTER II REGISTERS AND RECORDS

DIVISION 1 GENERAL PROVISIONS

14. The following information, records and registers must be kept and updated or made accessible, in the case of a firm, at an establishment in Québec, and in the case of independent representatives and independent partnerships in a location that is the establishment of the representative or partnership in Québec:

(1) client records;

(2) a register of commissions;

(3) a register of complaints.

Every firm, independent representative or independent partnership may, in order to safeguard and keep its

client records and its registers, use computers or any other data-processing method, provided that reasonable measures are taken to prevent loss, destruction or falsification of the entries and provided that it is possible to provide information within a reasonable time and in a precise form that is comprehensible to all persons authorized under the Act to verify the registers.

To the extent permitted by the Act, the client records and registers that must be kept as set out in this section may be consolidated in a single document, record or register provided that all required information is recorded in such register and that the information in the client records may be separated from such records.

The information in the client records may also be safeguarded and kept in various locations to the extent that all required information is recorded with the firm or the independent partnership and provided that it is also possible to provide the full client record within a reasonable time and in a precise form that is comprehensible to any person authorized by the Act to verify such record.

DIVISION 2

CLIENT RECORDS

15. All firms, independent representatives and independent partnerships shall keep one or more client records for each of their clients.

16. The client records that must be kept by firms, independent representatives and independent partnerships in respect of each of their clients in connection with the pursuit of their activities, save those relating to the sectors of damage insurance, shall include the following information, when necessary:

- (1) the client's name;
- (2) the client's address, telephone and facsimile numbers, and the electronic mail address if any;
- (3) where the client is a natural person, his date of birth if the information has been obtained by the representative;
- (4) the amount, the object and the nature of the service rendered or the product sold, as the case may be;
- (5) the policy or contract number, the contract issue date and the date of signature of the proposal or request for services, as the case may be;
- (6) the name of the representative involved in the transaction and the method by which he is remunerated for each service rendered or product sold to the client;

(7) the method and date of payment of the products sold or services rendered;

(8) a copy, in any medium, of the needs analysis set out in section 7 of the Regulation respecting the pursuit of activities as a representative;

(9) a copy of the form completed at the time of replacement of an insurance contract, where applicable, as set out in Chapter VII of the Regulation respecting the pursuit of activities as a representative.

All other information or documents concerning products sold or services rendered to the client and obtained from him shall also be filed in the client's record by the firm, the independent representative or the independent partnership.

17. In addition to the information set out in section 16, the client records that must be kept by firms registered in one of the securities sectors in respect of each of their clients in connection with the pursuit of their activities shall contain the following information, when necessary:

- (1) the client's occupation, the name, address and telephone number of his employer, if applicable, and the sector of activity of the employer's enterprise;
- (2) how contact was first established, for example, through advertising, a personal meeting, a referral, a telephone call or an office visit;
- (3) the kind of account;
- (4) the investment objectives of the client and his knowledge of investment;
- (5) the client's annual income and net assets;
- (6) the account number of the bank, the trust company, the credit union or the caisse populaire of any person authorized to give orders in the account;
- (7) the name and signature of any person authorized to give orders in the account;
- (8) any power of attorney whereby the client has conferred on another person the power to give orders on his behalf and the address of such person;
- (9) in the case of a joint account or an account opened in the name of a legal person or a partnership, the name and address of the person authorized to give orders and the document conferring this power;

(10) the form used to open the account and updates;

(11) the form entitled "Declaration of Funds", used in material cash transactions.

18. In addition to the information set out in section 16, the client records that must be kept by firms, independent representatives or independent partnerships registered in the sector of group insurance of persons in respect of their clients in connection with their activities shall include the following information, when necessary:

(1) the name of the holder of the group insurance policy;

(2) the name of the person designated as the contact person of the holder;

(3) the calls for tenders and the proposals submitted.

19. The client records that must be kept by firms, independent representatives or independent partnerships registered in the sector of damage insurance in respect of their clients in connection with their activities shall include the following, when necessary:

(1) the client's name;

(2) the amount, the object and the nature of the insurance coverage;

(3) the policy or contract number and the contract issue and proposal signature dates, where applicable;

(4) the method and date of payment of the insurance contact; and

(5) any list evaluating the insured's property transmitted by the insured, where applicable;

Any other information or document related to the services rendered or the products sold gathered from the client shall also be included in the register.

20. Firms, independent representatives and independent partnerships shall allow their clients to read and obtain copies of information concerning them in their client records. The clients shall pay the copying costs.

DIVISION 3 REGISTER OF COMMISSIONS

21. Every firm, independent representative or independent partnership shall keep a register of commissions.

22. The register of commissions shall contain the following information for each commission:

(1) the contract number or the client name, as the case may be;

(2) the name of the client, the insurer or any other third person who have paid it or him a commission;

(3) the name of the firm, the independent representative or the independent partnership that received payment of the commission;

(4) the statement pertaining to each commission or other remuneration received by the firm, the independent representative or the independent partnership.

However, in the event that the statement provided for in paragraph 4 includes any information set out in paragraphs 1 and 2, the filing of the statement in the register of commissions shall be sufficient.

Where a firm is an insurer, the register of commissions may contain only the information set out in paragraphs 1 and 3.

23. The register of commissions shall contain the following information in respect of commissions shared:

(1) the identity and business address of each person sharing the commission and the sectors for which they are registered with the Bureau;

(2) the object and the date of the transaction and the identity of each party to the transaction;

(3) the percentage of the commission or the fixed amount resulting therefrom and the manner in which the commission is divided between the persons sharing it.

DIVISION 4 REGISTER OF COMPLAINTS

24. Every firm, independent representative or independent partnership shall keep a register of complaints.

For the purposes of this division and of Chapter IV, the word "complaint" means a written account or an account on any medium enabling such complaint to be preserved, including a telephone complaint, if the complainant requested that the complaint be recorded, alleging a breach of the Act or a situation that is likely to derogate from the Act. An account received in response to a poll conducted by a firm, an independent representative or an independent partnership does not constitute a complaint.

25. The register of complaints kept by the firm, the independent representative or the independent partnership shall indicate, for each written complaint,

- (1) the date it is received;
- (2) the name, address, and telephone and facsimile numbers of the person who lodged the complaint and his electronic mail address, if any;
- (3) the nature of the complaint in accordance with the classification set out in schedule 1 hereto and, in the case of a firm registered in the securities sector, a description of the securities to which the complaint pertains;
- (4) the name of the representative, partner, director, officer, trainee, mandatary, or employee whom the complaint concerns, as the case may be;
- (5) the date of the complaint, the manner in which it was settled with and the reasons which led the firm, independent representative or independent partnership to settle it in that manner;
- (6) whether notice was given to the insurer covering the liability of the person concerning whom the complaint was lodged.

CHAPTER III SHARING OF COMMISSIONS AND ENTRY IN THE REGISTER

26. Payment of the commission to those sharing it shall not be made in cash.

27. Any sharing of commission shall be promptly entered in the register provided for such purpose in Division 3 of Chapter II.

CHAPTER IV DEALING WITH COMPLAINTS

28. An independent representative, and in the case of a firm or an independent partnership, the officer responsible for the principal establishment of the firm or the partnership in Québec shall be responsible for the register of complaints and the processing of the complaints.

29. In dealing with any written complaint, a firm, an independent representative or an independent partnership shall

- (1) acknowledge receipt in writing within ten business days after the complaint has been received to the person who lodged the complaint; the acknowledgement

shall indicate the name of the person designated to respond or the person designated to assist him, where applicable, who will deal with the complaint, and his telephone number, the complainant's right to address the Bureau directly to lodge his complaint, as well as the address and E-mail address, telephone and facsimile numbers of the Bureau;

- (2) promptly enter the complaint in the register of complaints set out for such purpose in Division 4 of Chapter II;

(3) in the case of a representative who has been the subject of more than five complaints in a calendar year, give notice in writing to the Bureau within 20 days after receiving the fifth complaint;

(4) deal with the complaint promptly and, in all cases provided a final answer in such regard within a maximum of three months;

(5) take all necessary measures to uncover all facts relevant to the understanding of the complaint;

(6) when the complaint has been settled, indicate in writing to the client the manner in which the complaint was settled, the scope and nature of the internal verifications and the reasons justifying the manner in which the complaint was settled.

CHAPTER V INSURANCE

30. The minimum insurance coverage for a 12-month period is \$1 000 000 for an independent representative and \$5 000 000 for a firm or an independent partnership. Such insurance shall also include a minimum limit of \$500 000 per claim.

31. The insurance contract may include a deductible in an amount not exceeding \$5 000. The deductible may also be in an amount exceeding \$5 000, to the extent that the insured maintains net liquid capital that is at all times at less equal to the amount of the highest deductible appearing in the insurance contract.

32. The insurance contract that must be maintained by a firm, an independent representative or an independent partnership shall include the following stipulations:

in the case of a firm, that the coverage shall extend, in particular, to the liability that it may incur by

- (1) reason of faults, errors, negligence, or omissions committed in the pursuit of its activities governed by the Act, or by reason of faults, errors, negligence, or omissions committed by its mandataries, its employees or the

trainees of representatives who are in its employ, present or past, in the performance of their duties;

(2) in the case of an independent representative, that the coverage shall extend, in particular, to the liability he may incur by reason of faults, errors, negligence, or omissions committed in the pursuit of his activities governed by the Act, or by reason of faults, errors, negligence, or omissions committed by his mandataries, his employees or his trainees, present or past, in the performance of their duties.;

(3) in the case of an independent representative, that the coverage shall extend, in particular, to the liability that may be incurred by its partners and representatives who are in its employ by reason of faults, errors, negligence, or omissions committed in the pursuit of his activities governed by the Act, or by reason of faults, errors, negligence, or omissions committed by his mandataries, his employees or the trainees of partners and representatives who are in his employ, present or past, in the performance of their duties;

(4) that the coverage provided in respect of the activities of a firm, an independent representative or partners or representatives employed by an independent partnership for the period during which the contract is in effect will continue to apply beyond the period of insurance provided for by the contract for a term of five years, for all activities of the firm, the independent representative or partners and representatives employed by an independent partnership, whether or not the mandatary, representative or trainee, as the case may be, holds a certificate as a representative, whether he is or not alive, and whether or not the firm, the independent representative or the independent partnership is registered;

(5) that the time within which an insurer must notify the Bureau of its intention not to renew or its intention to cancel the contract be 30 days prior to the date of non-renewal or cancellation;

(6) that the insurer notify the Bureau upon receiving notice of cancellation of an insurance contract from a firm, an independent representative or an independent partnership;

(7) that the insurer give notice to the Bureau of the receipt of any claim, whether or not the insurer decides to honour the claim.

33. An insurer registered as a firm in the sector of claims adjustment who acts through claims adjusters who are in its employ is exempt, for such sector, from maintaining professional liability-insurance coverage

specifically for its representatives who act as claims adjusters if it confirms to the Bureau that it is already in possession of an insurance contract including liability coverage for all of its operations and it undertakes toward the Bureau to assume the cost of any damage arising from faults, errors, omissions, or negligence committed by a claims adjuster in its employ.

CHAPTER VI FRANCHISES

34. A firm may act as franchiser or franchisee if it is entered in the register of franchises kept by the Bureau.

35. A franchiser shall:

(1) be entered as such in the register of franchises;

(2) register any new franchisee to whom it grants a franchise;

(3) see to the removal from the register of franchises the name of a firm that ceases to be its franchisee.

36. To be entered in the register of franchises, a franchiser shall furnish the following information:

(1) its name;

(2) the address of its establishment in Québec;

(3) the trademarks, signs, graphic symbols, logos, acronyms, and names that it permits its franchisee to use.

37. To enter its franchisee in the Bureau register of franchises, a franchiser shall furnish the Bureau with the following information concerning the franchise:

(1) its name;

(2) the address of its establishment in Québec;

(3) the names and addresses of all representatives through whom it pursues its activities as franchisee.

38. If the franchiser does not, in due course, see to the entry or removal of a franchisee in the register of franchises, the franchisee itself shall see to such entry or removal within 30 days after the beginning or end, respectively, of its activities.

39. The franchisee shall clearly identify itself as such in the pursuit of its activities, particularly as regards its letterhead, business cards, advertising, and signs.

40. Where the franchiser or the franchisee provides insurance coverage in accordance with Chapter V of this regulation, the insurance contract shall indicate that it pursues its activities as franchiser or franchisee.

41. This Regulation comes into force on *(insert here the date of coming into force of section 582 of the Act)*

SCHEDULE

CLASS 1 REPRESENTATIONS

Sub-classes

- (a) general advertising
- (b) false or misleading representation
- (c) comprehension of the policyholder or securities holder
- (d) replacement of contract in the insurance of persons
- (e) conduct of the representative
- (f) tied sales
- (g) privacy and confidentiality
- (h) all other types of complaint relating to representation or sales

CLASS 2 SETTLEMENTS

Sub-classes

- (a) delays
- (b) unsatisfactory settlements
- (c) refusal of an application for settlement
- (d) suspension in benefit payments
- (e) all other types of complaint relating to settlement

CLASS 3 CLIENT SERVICES

Sub-classes

- (a) invoicing
- (b) delays

(c) administrative problems

(d) all other types of complaint relating to customer services

(e) execution of the mandate

CLASS 4 PRODUCTS

Sub-classes

(a) low initial surrender values

(b) rate of return

(c) pre-existing conditions, exclusions

(d) all other types of complaint relating to products

2834

Draft Regulation

Civil Code
(1991, c. 64; 1998, c. 5)

An Act respecting registry offices
(R.S.Q., c. B-9)

Register of personal and movable real rights — Amendments

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation to amend the Regulation respecting the register of personal and movable real rights, the text of which appears below, may be made by the Government upon the expiry of 45 days following this publication.

The draft Regulation will make the register of personal and movable real rights fully operational by allowing the registration of reservations of ownership resulting from instalment sales and other rights covered by the Act to amend the Civil Code and other legislative provisions as regards the publication of personal and movable real rights and the constitution of movable hypothecs without delivery (1998, c. 5).

To that end, it specifies the property in respect of which reservations of ownership, rights of redemption or rights under a lease require publication in the register. It determines the kind of movable property that may be the subject of a movable hypothec without delivery granted by a natural person who does not operate an enterprise. Furthermore, it proposes to monitor the iden-