

Bill 188 respecting the distribution of financial products and services: how to find your way!

by **Johanne L. Rémillard**



1 Preamble

On June 20, 1998, the National Assembly adopted Bill 188, an *Act respecting the distribution of financial products and services* (the "Act").

The coming into force of the Act will be determined by the Government at a later date (s. 583), although certain provisions of an administrative nature applicable to the new regulatory bodies have been in force since August 26, 1998 (order-in-council 1108-98).

The Act replaces the *Act respecting market intermediaries* ("Bill 134") (s. 582) adopted ten years earlier. Nevertheless, Bill 134 shall continue to apply until the new Act comes into force. Many of its provisions have been reproduced or retained in the new Act.

The main objectives underlying the adoption of the Act may be summarized as follows:

- To contribute to the harmonious development of the overall market for distribution of financial products and services;
- To ensure additional protection to the consumer and, finally;
- To encourage the standardization of the regulatory framework applicable to the distribution of financial products and services.

2 Preliminary comments regarding the dominant regulatory bodies and structures under the Act

All regulatory authorities which had been put in place under Bill 134, whether the *Conseil des assurances de dommages*, the *Conseil des assurances de personnes*, the *Association des intermédiaires en assurances de personnes du Québec* or the *Association des courtiers d'assurances de la province de Québec*, have been dissolved and replaced by bodies whose functions and powers are more or less equivalent to the latter (s. 555 and 556).

The *Bureau des services financiers* (the "Bureau") replaces the *Conseil des assurances de personnes* and the *Conseil des assurances de dommages* (s. 556), in addition to taking on certain functions which were carried out by the *Inspecteur des institutions financières*. The *Chambre de la sécurité financière* (CSF) and the *Chambre de l'assurance de dommages* (CAD) replace the *Association des intermédiaires en assurance de personnes du Québec* (AIAPQ) and the *Association des courtiers d'assurances de la province de Québec* (ACAPQ) (s. 555).

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The *Fonds d'indemnisation en assurance de personnes*, the *Fonds d'indemnisation en assurances de dommages* and the *Fonds d'indemnisation des planificateurs financiers* have been dissolved (s. 558).

A new fund has been created: the *Fonds d'indemnisation des services financiers*.

The object of the Fund shall be to administer the sums of money deposited with it to compensate the victims of fraud, fraudulent tactics or embezzlement for which a firm, an independent representative or an independent partnership is responsible (s. 274).

Finally, the Bureau remains free to create an insurance fund and impose the obligation to subscribe to it. The Bureau is, in such a case, an insurer within the meaning of the Act respecting insurance (s. 198).

The role and mission of the new regulatory bodies are more fully described in section 3.6 of this Bulletin.

3 Structure of the Act

3.1 Sectors covered by the Act

The concept of "Market Intermediaries" which existed under Bill 134 has been replaced by that of "Representatives". The new representative refers to a natural person who, in addition to carrying out transactional functions, acts as an advisor (s. 13).

The eight (8) Sectors covered by the Act are explained below:

Insurance of persons (s. 3)

The Act makes no distinction between the agent and the life insurance broker, both being currently regrouped under the designation of "representatives in insurance of persons"¹

The new representative acts as an advisor in the field of individual insurance of persons and offers such products

or individual annuities from one or more insurers directly to the public, to a firm, to an independent representative or to an independent partnership. This representative is authorized to secure the adhesion of any person in respect of a group insurance or group annuity contract. However, the following persons are excluded: persons who, on behalf of an employer, a union, a professional order or an association or professional syndicate, secure the adhesion of an employee of such a union, professional order, association or professional syndicate in respect of a group insurance contract of persons or a group annuity contract; the members of a mutual benefit association who offer policies for a company that does not guarantee the payment of a benefit upon the occurrence of a risk.

Group insurance of persons (s. 4)

Group insurance of persons constitutes a new sector under the Act.

The representative acts as an advisor and offers group insurance and group annuities of persons from one or more insurers.² An actuary who offers such products within the scope of his activities is excluded from this definition.

Damage insurance (s. 5, 6 and 7)

The Act has retained the concepts of "agent" and "broker" in damage insurance.

An agent in damage insurance acts as an advisor in the field of damage insurance and offers damage insurance products, on behalf of a firm that is an insurer, or who is bound by an exclusive

contract with a single damage insurer directly to the public. This definition includes agents bound to the insurer by an exclusive contract, as well as, the employees of insurers (s. 73). Agents who offer liability insurance products on behalf of the insurance fund (that may be created by the Bureau) and customs brokers are excluded from this definition.

A broker in damage insurance acts as an advisor and offers a range of insurance products from several insurers directly to the public, or may offer damage insurance products from one or more insurers to a firm, an independent representative or an independent partnership. Customs brokers are excluded from this definition.

Claims adjustment

(s. 10, 46, 213, 539 and 540)

Under Bill 134, a broker in damage insurance could carry out the activity of a claims adjuster without holding a certificate for this purpose. The Act clarifies this situation by requiring persons acting as claims adjusters and insurers who have claims adjusters in their employ to obtain a certificate.

A claims adjuster is defined as a representative who, in the field of damage insurance, investigates insured losses, appraises damages and negotiates the settlement of claims. The activities which do not fall within the field of insurance and of appraisers within the meaning of the Automobile Insurance Act do not fall within the scope of the activities of such representative.

Employees of insurers, agents or brokers in damage insurance shall be permitted to act as claims adjusters with respect to policies subscribed by their firm within the legal and regulatory framework provided thereunder.

¹ During the year following the coming into force of the Act, the Bureau may, by regulation, create a class of agents and a class of brokers in the sectors of insurance of persons and group insurance of persons (s. 574).

² Ibid



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Financial planning (s. 11, 56, and 57)

A financial planner is a representative who uses the title of financial planner, and who holds a diploma issued in this regard by the *Institut québécois de planification financière* and a certificate issued by the Bureau.

It should be noted that the Act provides no legal definition for the expression "financial planning".

Certain securities brokerage activities (s. 9)

Bill 134 applied to investment dealers, securities advisors or their representatives acting as market intermediaries (s. 39), the latter remaining otherwise governed by the *Securities Act* in investment matters.

The new Act only applies to representatives who specifically operate in group savings or investment contracts or who are involved in selling scholarship plans. It excludes persons who act as representatives for a broker governed by the *Securities Act*.

Special treatment reserved for real estate brokerage

Bill 134 considered real estate agents governed by the *Real Estate Brokerage Act* as market intermediaries (s. 42). A market intermediary in the insurance field could also pursue the activity of a real estate broker with regard to a loan secured by immovable hypothec on certain conditions and subject to the *Real Estate Brokerage Act* (s. 14).

Real estate brokerage remains an activity covered by the Act in respect of a legal person who, upon the coming into force of the Act, meets certain prerequisites. (s. 549).

3.1.1 Certain points of interest

Geographical origin of the representation

Independent representatives, residing outside Québec, may pursue activities in Québec from a base in another province or country provided they abide by the rules set by the Bureau or the *Commission des valeurs mobilières du Québec* (the "C.V.M.Q.") (s. 205).

Firms and independent partnerships must, for their part, maintain an establishment in Québec (s. 72 and 146), although the scope of the term "establishment" has not been defined.

Financial planning (s. 59 to 69)

As already provided by Bill 134 (s.32), agreements may be entered into between certain professional orders and the Bureau for the purpose of recognizing professionals who wish to avail themselves of the title of financial planner and who hold a diploma in financial planning issued by the *Institut québécois de planification financière*. Their supervision will be ensured by the professional bodies under the aegis of the Bureau. Any act committed by a member as a financial planner, within the scope of an applicable agreement, shall be deemed to be an act committed as a member of the order to which the member belongs.

The liability insurance prescribed by the order to its members and the provisions relating to its compensation fund shall cover the acts of the members acting in the capacity of financial planner.

Special brokerage (s. 41, 42, 212 and 509)

Damage insurance brokers acting on behalf of firms may continue to act for damage insurers who do not have an establishment in Québec and who do not hold a licence issued under the *Act respecting insurance*, when market scarcity so justifies, with the prior

authorization of the Bureau and the payment of the security deposit required upon the issuance of each insurance policy by an outside insurer. Automobile insurance and surety insurance are excluded from this application.

Ownership of damage insurance firms³

Special provisions continue to govern the ownership of firms registered in damage insurance acting through a damage insurance broker and not engaging exclusively in the business of reinsurance (s. 147).

No more than 20% of the shares in these firms may be held by financial institutions, financial groups or legal persons related to them. Exceptions to this rule are firms whose shares were covered by a transfer agreement entered into before December 21, 1988 and firms whose shares are listed on a stock exchange. However, not more than 49% of the shares in such firm may be held, directly or indirectly, by such financial institutions (s. 148 and 155).

A firm (other than a firm constituted in Canada and whose shares were listed on a stock exchange on December 21, 1988) whose shares or voting rights attaching thereto were held in excess of 20% by a financial institution, financial group or related legal person on December 21, 1988 may not, as long as the situation endures, hold, directly or indirectly, shares of another firm or on or after May 11, 1989 grant it a concession or acquire its business (s. 152 and 153).

A similar prohibition exists in respect of firms whose shares are listed on a stock exchange where more than 49 % of such shares or voting rights attaching thereto are held, directly or indirectly, by a financial institution, financial group or related legal person (s. 155 and 156).

³ Section 574 of the Act provides that provisions concerning the ownership of firms apply to firms specialized in insurance of persons and group insurance of persons during the year following the coming into force of the Act.

Except as provided by the Act (including that of a firm constituted in Canada whose shares were listed on a Canadian stock exchange on December 21, 1988), a firm which does not meet the conditions of the above paragraphs may not act through a damage insurance broker nor purport to be acting as such (s. 150, 151, 152, 153, 154 and 157).

3.2 Operating structures applicable to representation

A distinction exists between the independent representative, the independent partnership and the firm.

3.2.1 Independent representatives and independent partnerships

These operating structures apply to the field of insurance, as well as, to claims adjustment and financial planning. They do not apply to securities brokerage (s. 128).

A representative may only pursue his activities if he is registered as an independent representative or if he is a partner in, or employee of, a sole independent partnership (s. 14). An independent partnership may, at any time, employ a representative to pursue activities in a sector for which the partnership is registered (s. 134).

Independent representatives and all partners and employees of independent partnerships must carry liability insurance (s. 131). Where an insurance fund has been established by the Bureau, the representatives must, instead, pay the insurance premium prescribed by the latter. Their clients are covered by the Financial Services Compensation Fund (s. 274).

Special comments

Independent insurance representatives and independent partnerships acting through insurance representatives may engage in brokerage transactions with respect to loans secured by immovable

hypothecs and receive deposits, other than deposits of money, on behalf of a deposit institution (s. 141 and 142).

Under Bill 134, a firm could make itself known as a financial planner to the extent that at least one of the persons through whom it was acting was authorized to use the title of financial planner (s. 31). Under the Act, an independent partnership may make itself known as a financial planning firm to the extent that its representatives are all financial planners (s. 101).

Finally, a claims adjuster is not authorized to act in a sector other than claims adjustment (s. 45).

3.2.2 Firms

Under Bill 134, a legal person or a partnership could be registered as a firm. The new Act limits this operating structure to legal persons only (s. 72). A firm may be either a single-sector or a multi-sector firm (art 70). Unlike the situation which existed under Bill 134, all the representatives of a single-sector firm engaged in financial planning must be financial planners (s. 101).

A firm constitutes a mandatory operating structure for securities brokerage purposes (s. 14). This is an optional operating structure with regard to insurance, claims settlement and financial planning.

Firms are always liable for the acts of their members vis-à-vis the firms' clients (s. 80). They are required to hold liability insurance, as are representatives who act on their behalf without being employees of the firms. When there is an insurance fund, payment of the insurance premium set by the Bureau becomes mandatory for the latter (s. 76). Clients of the firm are also covered by the Financial Services Compensation Fund set up by the Bureau (s. 274).

Finally, any firm may, for a sector for which it is registered, grant a concession to another firm authorizing the operation of a franchise (s. 97).



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Special comments

A securities representative may only pursue his activities as a representative if he is acting for only one firm (s. 14). Typically, a representative for a life insurance firm who also pursues activities as a securities representative may act for only one firm in respect of his activities in the securities field. It should be noted that this limitation applies only to securities and is not applicable to other sectors covered by the Act.

Like independent insurance representatives and independent partnerships acting through insurance representatives, a securities and insurance representative employed by a firm may collect deposits, other than cash deposits, for deposit institutions and engage in brokerage activities in respect of loans guaranteed by immovable hypothec (s. 95 and 96) provided that the representative was authorized to pursue such activities on June 20, 1998 or on condition that the Government, by order, subsequently authorizes the pursuit of such activities (s. 553).

3.2.3 Financial institutions Conditions applicable to representation

No deposit institution may offer financial products or services in any of its establishments through an independent representative or independent partnership (s. 129).

Financial institutions may register with the Bureau to act as a firm (i.e. insurers, banks, trust companies, credit unions, securities dealers or securities advisors registered under the *Securities Act*) (s. 72).

Insurers who employ representatives bound by a hiring or exclusive contract are required to register as a firm for the purposes of the Act (s. 73). Conversely, insurers who were already employing agents in insurance of persons or damage insurance, are not required to register, provided that each holder of a certificate under Bill 134 on June 20, 1998 registers as an independent representative within two years following the coming into force of the Act (s. 545).

Financial transactions and insurance

An insurance representative may not be assigned to current over-the-counter deposit and withdrawal transactions or credit operations for a financial institution, except in connection with:

- credit referrals;
- providing credit advice to a client with regard to the client's financial situation and needs;
- the granting of credit for the purchase of an insurance product or for investment purposes;
- any other credit operation determined by government order (s. 29).

It is essential to keep in mind that federal financial institutions are already authorized to provide advice in respect of credit insurance (also called "authorized insurance") or related services, through their employees.

Advertising and marketing

We should remember that the promotion of insurance products by federal financial institutions is already highly regulated. This promotion is limited to "credit" insurance and to group insurance applicable to bodily injury, and must take place outside the institution's branches.

Under the Act, a financial institution may, by giving out brochures, flyers or by using direct mail or any other form of publicity, invite the public to purchase insurance products, shares or units in mutual funds or units in scholarship plans (s. 12).

No financial institution, financial group or related legal person may use a name previously used by an independent representative having pursued activities as a damage insurance broker or the name of an independent partnership or firm having pursued activities through a damage insurance broker (s. 149).

Finally, damage insurers having no establishment in Québec may not advertise or publicize their business in Québec (s. 509).

3.2.4 Registration

Independent representatives and partnerships

Every independent representative and partnership must register with the Bureau, in each sector covered (s. 128). Partnerships that register as independent partnerships must do likewise with respect to all their partners and all the representatives in their employ (s. 131). Fees are prescribed on an individual basis. Fees include basic annual registration fees, fees prescribed by regulation of the Bureau, liability insurance premiums and contributions to the financial services compensation fund and to the Chambers (s. 131, 133 and 135).

A partnership requesting registration as an independent partnership must designate one partner to represent the partnership in dealings with the Bureau (the "correspondent") (s. 130).

Firms

Each firm is registered individually, by sector (s. 74 and 75). Only the firm representative so qualified is authorized to act on the firm's behalf (s. 14). This representative may be an employee of the firm or, alternatively, may act on

behalf of the firm on an individual basis (s. 76). Fees payable by a representative are identical to those payable by independent representatives and independent partnerships (s. 76, 77, 81 and 82).

3.2.5 Compensation and commission sharing

An independent representative or independent partnership may share a commission with another independent representative or another independent partnership, a firm (other than a deposit institution) or a real estate broker governed by the *Real Estate Brokerage Act* (s. 143).

A firm may share a commission with another firm, an independent representative or an independent partnership, a real estate broker, a securities dealer or a securities advisor, a deposit institution, an insurer or a confederation within the meaning of the *Savings and Credit Unions Act* (s. 100).

No representative acting on behalf of a firm or an independent partnership may receive an amount deriving from a sharing of commissions except through a firm or independent partnership for which the representative acts (s. 24).

Finally, firms, independent partnerships and independent representatives must continue to enter every sharing of a commission in a register (art 100 and 143).

3.3 Distribution other than through a representative and restricted certificates

This is a new legal system. A distributor is the person who, in pursuing activities in a field other than insurance, offers as an accessory, for an insurer, an insurance product which relates solely to a product distributed by the person (art 408).

Products covered (s. 424 and 426)

- credit card and debit card insurance;
- debtor life, health and employment insurance;
- travel insurance;
- investor life insurance;
- vehicle rental insurance, where the rental period is less than four (4) months.

Except for investor life insurance and vehicle rental insurance, these products may be currently offered by federally-chartered financial institutions.

With the exception of products previously listed, the Government may order that an insurer may not offer, through a distributor, a given insurance product. The Government may also order, after consultation with the Bureau, that an insurance product which may not be offered through a distributor, may be offered by any person it specifies (s. 427 and 428).

An employee of an insurer whose principal duties consist in offering credit, may act as a distributor and secure the adhesion of clients in respect of a debtor life, health and employment insurance product (s. 409). A deposit institution and an employee of an insurer may also distribute travel insurance products. They are then deemed to be acting as distributors (s. 425).

Finally, it is noteworthy that a grandfather clause allows a credit union to continue distributing the insurance products it distributed on June 20, 1998, in addition to those previously identified (s. 573).

Restricted certificates

The Government may order that an insurance product offered by a distributor may only be offered by a distributor holding a restricted certificate issued by the Bureau for that purpose. It may also provide that an insurance product, which may not be offered by a distributor,

be offered by a person holding a restricted certificate issued by the Bureau for that purpose (s. 445 and 447).

The certificates will be issued to persons who have met the requirements prescribed by regulation (s. 450). A firm requesting the issuance of a restricted certificate must designate a natural person forming part of its personnel who meets the requirements; the natural person identified is the only person qualified to distribute the products offered on behalf of the firm (s. 451).

3.4 Tied Selling

Introductory remarks

The provisions governing tied selling found in Bill 134 have been reproduced and completed by new additions. They apply to the distribution of financial products made with or without representatives.

Main provisions

No representative or distributor may subject the making of a contract to entering an insurance contract (s. 18 and 439).

An insurance contract made at the same time as another contract may always be rescinded within ten (10) days of signing. Where such an insurance contract is cancelled, the first contract remains in effect. When a client rescinds his insurance contract before expiry, the more favourable conditions extended as a result of more than one contract being concluded at the same time are not lost except for contractual provisions to the contrary (s. 20, 21, 441 and 442).

A contract of credit may not stipulate that it is subject to the condition that the insurance contract subscribed with such an insurer remains in force until the expiry of the term of the contract of credit. Such contract may not provide for the forfeiture of the term of the contract of credit should the insurance contract subscribed with an insurer be terminated (s. 22 and 443).

3.5 Special provisions applicable to conduct and ethics, mandatory disclosure and the protection of personal information.

3.5.1 Conduct and ethics

A representative acting in contravention of the provisions of the Act with respect to the registration and representation conditions provided in sections 12 and 14 of the Act may not claim or receive remuneration for any products sold or services rendered (s. 15).

A similar provision exists currently in Bill 134 (s. 22).

a) Competence and professional integrity

A representative is always bound to act with honesty and loyalty in his dealings with clients. No representative may exert undue pressure on a client or use fraudulent tactics to induce a client to purchase a financial product or service (s. 16 and 18).

Firms and independent partnerships are held to the same duties of loyalty and diligence towards their respective clientele (s. 84 and 146). They have a duty to oversee the conduct of the firm's representatives who are self-employed and must ensure that their employees comply with the Act and its regulations. Finally, they must abide by the provisions of the Act and its regulations in the context of their mutual relations (s. 85, 86, 87, 137 and 138).

Independent representatives, independent partnerships and firms shall maintain a register of the complaints received from their clients and deal with each complaint diligently (s. 103 and 146).

3.5.2 Mandatory disclosure

The Act contains several provisions on disclosure. Certain requirements concern all representatives; others are more limited in their application and only cover a given sector.

a) General provisions

Representatives acting for several firms must disclose the name of the firm for which they are acting to the person with whom they are transacting business (s. 14).

A second disclosure requirement deals with the representative's remuneration. When representatives require compensation from the persons with whom they transact business, they must, according to the procedure determined by the regulations of the Bureau or, as the case may be, of the *Commission des valeurs mobilières du Québec*, disclose to the client the fact that they are also receiving remuneration for the products sold and the services rendered and any other benefit determined by regulation (s. 17).

Representatives, financial institutions, firms and enterprises that offer financing for the purchase of goods or services and that require the debtor to apply for insurance in order to guarantee the reimbursement of the loan, must give the debtor a notice stating that the debtor may apply for insurance with the insurer and representative of the debtor's choice provided that the insurance is considered satisfactory by the creditor, who may not refuse it without reasonable grounds (s. 22 and 443).

Finally, representatives who, at the time a contract is made, cause a client to enter an insurance contract must give the client a notice, drawn up in the manner prescribed by regulation of the Bureau, stating that the client may cancel the insurance contract within ten (10) days of signing it (s. 19).

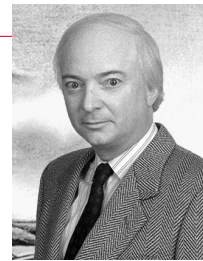
b) Provisions applicable to representatives of the insurance sector

Insurance representatives must abide by the following disclosure obligations towards the person with whom they are transacting business, they must:

- disclose the fact that they are acting for a firm that is an insurer or that is bound by an exclusive contract with a single insurer (s. 32);
- before offering an insurance product, disclose to the person with whom they are transacting business, in the manner prescribed by regulation, the names of the insurers whose products they are authorized to offer, together with the other information on those insurers prescribed by regulation (s. 31);
- before making an insurance contract, describe the product to the client, specify the nature of the coverage and indicate clearly all exclusions (s. 28) and, finally,
- disclose the fact that they are placing the risk with an insurer with whom they have, or with whom the independent partnership or firm for which they act has a business relationship (s. 26). A "business relationship" includes any interests held in the ownership of an insurer and any benefit or other interest determined by regulation of the Bureau.

Special provisions applicable to damage insurance brokers

Damage insurance brokers offering insurance products directly to the public must offer their clients a range of products from several insurers (s. 38). Before entering an insurance contract, they must also disclose in writing, to the person with whom they are transacting business, the fact that they carry out their activities for a firm or an independent partnership acting as a claims adjuster for an insurer (s. 40).



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Finally, when renewing an insurance policy, damage insurance brokers must take the necessary steps to ensure that the coverage provided corresponds to the client's needs (this applies also to agents) (s. 39).

Special brokers

Before placing a risk with an outside insurer, special brokers must give the client a written notice stating that the proposed insurer does not hold an insurance licence in Québec and has no establishment in Québec (s. 43).

Claims adjusters

Claims adjusters acting for an insurer must, when contacting a person having suffered an insured loss, inform the person that they are acting for the insurer (s. 47).

Claims adjusters who offer their services to a claimant must, as Bill 134 already provided, propose two (2) contracts, one providing for hourly remuneration and the other providing for percentage remuneration. The client may choose the most suitable contract. The contract is binding on the claimant only upon reception of a copy of the contract. The claimant may terminate the contract within ten (10) days of receiving it (s. 48 and 50).

c) Distribution other than through a representative

Certain disclosure responsibilities are incumbent on the insurer; other on the distributor.

Responsibilities of insurers

An insurer may not offer a product through a distributor without first preparing a distribution guide in respect of the product and providing the distributors concerned with a copy of the guide (s. 410). A copy of the guide must be forwarded to the Bureau together with a list of the distributors concerned and a copy of the insurance policy related to the products described in the guide (s. 414). The insurer must promptly inform the Bureau of the name and address of every new distributor through whom an insurance product is offered, together with a description of the product (s. 418). The guide describes the product offered, states the nature of the guarantee and states clearly all exclusions from the guarantee. Where applicable, the distribution guide mentions the fact that other insurance products offering guarantees similar to those of the product offered are available on the market. (s. 411 and 412).

The insurer shall promptly send a copy of an amended distribution guide to the distributors, and shall take the necessary steps to ensure that outdated guides are recovered (s. 415). It must take all appropriate steps to ensure that the distributors have a good understanding of the product offered (s. 420). The insurer shall also maintain a consultation service to answer any inquiries from a distributor or from a client concerning the distribution guide (s. 421).

An insurer must, at the request of the Bureau, disclose the remuneration it grants to distributors for the sale of a product (s. 432).

Responsibilities of distributors

A distributor must take all necessary steps to ensure that every person responsible for distributing the product is sufficiently familiar with the distribution guide relating to the product (s. 429). Where the distribution guide so indicates, the person responsible for distributing the product shall inform the client that other insurance products offering coverage similar to that of the product offered are available on the market and encourage the client to look into the matter if he is not already covered by such an insurance (s. 430). The person distributing the product must describe the product to the client and explain the nature of the guarantee and exclusions and inform the client of the various components of the claims process which could involve the insurer. The person must provide the client with a copy of the distribution guide at the time of the sale of the insurance product. Finally, the person must, if the remuneration received by the distributor for the sale of the product exceeds 30% of its selling price, disclose his remuneration to the client (s. 431 and 435).

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 (s. 433). The distributor who, on granting a loan, solicits the adhesion of a client to debtor life, health or job loss insurance must provide the client with confirmation of insurance from that insurer within thirty (30) days of the application for adhesion (s. 444).

It is noteworthy that where a client of a distributor has not received the information required concerning the product, the guaranties and the remuneration granted, the distributor is liable for any resulting injury to the client (s. 436).

d) Provisions applicable to securities representatives

Securities representatives must, before offering a product, ensure that the product corresponds to the financial situation and investment objectives described by the client (s. 51).

Group savings representatives, when offering shares or units in a mutual fund with which the firm for which they act has a "business relationship", must disclose the relationship to the person with whom they are transacting business (s. 53).

e) Provisions applicable to the Bureau regarding the handling of certain information

The Bureau keeps and maintains a register in which it enters the names of firms, independent representatives and independent partnerships, as well as a register of representatives to whom it issues certificates, and a register of holders of restricted certificates. These registers must be made available to the public (s. 234, 235, 239 and 458). The Bureau also makes the distribution guides it receives from insurers available for public consultation (s. 422).

The Bureau makes available to the C.V.M.Q. the information entered in the registers in connection with firms that pursue activities in the securities field (s. 237).

3.5.3 Protection of personal information

The protection of personal information, which is already covered by special legislation in the private sector (Bill 68), is reinforced through the application of the Act. Here again, one finds certain general provisions and others that are more specific. One should be well aware that the obligations provided by the Act are in addition to those of Bill 68.



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a) General provisions

Representatives must disclose all the information they collect about clients to the establishment to which they are attached. They may, however, disclose such information only to a person authorized by law (s. 23 and 139). No representative acting on behalf of a firm or an independent partnership may consult the information held by that firm or partnership unless specifically authorized by the person concerned (s. 25).

Firms will thus be required to obtain the client's specific consent to allow their representatives to have access to information on the client held by the firm for purposes unrelated to the object of the file for which the information was collected.

No firm may refuse to do business with a client on the sole ground that the client refuses to provide it with specific consent (s. 92 and 94).

The management of personal information by independent representatives, independent partnerships and firms is subject to the right of inspection of the Bureau and the *Commission d'accès à l'information*. A violation of the obligations prescribed by the Act may give rise to penalties of up to \$100,000. (s. 115 and 146). Moreover, all client files must remain in Québec. Information held by firms and independent partnerships on their clients must be kept for pre-regulated holding periods (s. 88, 90, 139 and 146).

b) Provisions applicable to the insurance sector

Insurance representatives must personally gather the information that is necessary to assess a client's needs, in order to propose the insurance product that best meets those needs (s. 27).

No insurance representative acting on behalf of a firm or independent partnership may pursue activities as a representative in an establishment of the firm or partnership except in a place designated for that purpose where confidentiality is assured (s. 30).

Independent partnerships and firms registered in an insurance sector shall, unless they have obtained consent from a client to the contrary, keep their insurance records separately from their other records (s. 89 and 140).

Insurance of persons and group insurance: information of a medical or lifestyle-related nature

Information of a medical or lifestyle-related nature required to process an insurance proposal is the object of new and specific protection measures (it must be gathered on a separate form) (s. 33). Such information must be forwarded directly to the insurer concerned and may not be kept by the representative acting for a firm, other than an insurer, that offers both credit and insurance by a distributor not employing representatives, or by a holder of a restricted certificate (s. 35, 437 and 448).

The confidentiality of information of a medical or lifestyle-related nature binds the insurance representative who assists the insured in connection with an insured loss, when the claim is forwarded to a firm offering both credit and insurance. This provision also applies to a distributor not employing representatives and a holder of a restricted certificate (s. 36, 437 and 448).

An insurer may not disclose information of a medical or lifestyle-related nature to a firm offering both credit and insurance, even with the authorization of the client (s. 37).

Certain information, other than that of a medical or lifestyle-related nature, may nevertheless be obtained using regular forms. Such requests must however be formulated in such a way that the client's answer will not reveal the disease for which the client consulted a health professional, received treatment, underwent tests or was admitted to a hospital, clinic or health care institution (s. 34).

c) Provisions applicable to the Bureau concerning the handling of certain information

The Bureau may, with the authorization of the Government, keep a register of individual life insurance. Such register shall contain the name and address of each insured and of the insurer that issued the policy and any other information determined by regulation. This register is not available to the public (s. 239 and 240).

Only certain persons may obtain information from the Bureau concerning the existence of an insurance policy: an heir or successor of a deceased person, the beneficiary of a life insurance policy, a person having parental authority over such an heir, successor or beneficiary, and the liquidator of the succession (s. 243).

3.6 Regulatory bodies

As we have already observed, in addition to the C.V.M.Q., three (3) new regulatory bodies exist, i.e.:

- the Bureau
- the *Chambre de la sécurité financière*
- the *Chambre de l'assurance de dommages*

3.6.1 The Bureau (s. 158 and following)

The Bureau is a legal person. It is not a public body or a government body within the meaning of the *Financial Administration Act*, the *Act respecting the Ministère des affaires internationales, de l'Immigration et des Communautés culturelles*, the *Act respecting the Ministère du Conseil exécutif* and, finally, the *Auditor General Act*. The Bureau funds its own operations (s. 159 and 160).

The mission of the Bureau is mainly to protect the public, to make recommendations concerning the distribution of financial products and services, and to act as an information and reference centre in the field of insurance. The Bureau may also enter into agreements and institute penal proceedings (s. 184, 185, 186, 187, 189 and 190).

The Bureau's Board of Directors consists of fifteen (15) members, ten (10) of whom are appointed by the Minister. The five (5) other members are elected by the representatives. The Chamber Presidents and Vice Presidents are members ex-officio of the Bureau's Board of Directors.

First of all, the regulatory responsibility of the Bureau pertains to insurance, insured losses and financial planning. Its regulatory powers extends nevertheless to all sectors, including securities, for certain given issues of a more general scope, in particular the registration and the conditions applying to the pursuit of activities, the solicitation of clients, publicity, processing of complaints, commissions and information disclosure to clients (s. 200 to 216 and 223 to 229). Jurisdiction is shared with the C.V.M.Q. in several sectors applicable to the realm of securities, as provided by the Act (s. 204).

Finally, the Bureau shall be responsible for establishing the rules applicable to real estate brokerage to which insurance and securities representatives may engage in, as well as, the rules applicable to special brokerage (s. 206 and 212).

3.6.2 Role of the C.V.M.Q.

Let us keep in mind at the outset that the Bureau issues the certificates to group savings, investment contracts and scholarship plan representatives who do not work for an investment dealer (s. 13).

The C.V.M.Q. is empowered to supervise the activities of the Bureau and to inform the Minister in the event of irregularities. In addition, it may prescribe any measure to be taken by

the Bureau where it considers that it is necessary to do so to ensure the proper functioning of the securities market (s. 233).

Regulatory framework

The C.V.M.Q. is authorized to establish regulations over a wide range of issues in the field of securities, including the following:

- the requirements for obtaining a certificate and acquiring the training (s. 200);
- the restrictions applicable to the pursuit of activities as a representative (s.202);
- the rules of ethics (in consultation with the *Chambre de la sécurité financière*) (s. 201 and 202);
- the rules applicable to client solicitation and information of the insured (s. 202);
- the occupations that are incompatible with the pursuit of activities as a representative (s. 202);
- the business relationship (s. 207);
- the conditions to be met by securities representatives offering shares for a credit union or a group of credit unions (s. 214) and, finally,
- the rules relating to the establishment and maintenance of a trust account and a sound financial foundation (s. 227).

3.6.3 Chambers (s. 284 and following)

These are legal persons each having its head office in Québec (s. 285 and 287). The affairs of each Chamber shall be administered by a board consisting of eleven (11) members elected by the representatives engaged in the various sectors concerning them, except for two (2) members named by the Minister to represent the public (s. 288). Members of the Board of the *Chambre de la sécurité financière* shall be elected by the representatives in insurance of persons,

group insurance, securities and financial planning; members of the Board of the *Chambre de l'assurance de dommages* shall be elected by damage insurance agents, damage insurance brokers and claims adjusters (s. 289 and 290).

The responsibilities of the Chambers concern more specifically the rules of ethics (other than those applicable to securities) and training (other than those applicable in respect of financial planning), the criteria governing the professional titles and the amount of annual dues that the representatives, independent partnerships and firms must pay to the Bureau on their behalf (s. 313 and 320). The Chambers make recommendations to the Bureau on any matter within their jurisdiction (s. 314). They may also offer training services and advisory services in quality control and compliance with professional requirements to their contributors (s. 315).

The *Chambre de la sécurité financière* may also make recommendations to the *Commission sur les règles de déontologie* applicable to each securities sector (s. 319).

Measures concerning discipline

Each Chamber has a discipline committee consisting of lawyers, representatives and a syndic. The *Chambre de la sécurité financière* also benefits from the services of a cosyndic appointed by the C.V.M.Q. (s. 327, 352 and 355).

The syndic, the cosyndic, the Bureau and the C.V.M.Q. may file a complaint against a representative before the appropriate discipline committee when there are reasonable grounds to believe that an offence has been committed (s. 344). A decision rendered by the discipline committee can be appealed before the Court of Québec for any sector other than the securities sector (s. 379). In this case, the relevant sections of the *Securities Act* apply to an appeal.

3.7 Transitional provisions: respect for vested rights

The transitional provisions of Bill 188 contain a number of provisions applicable to natural and legal persons holding certificates issued under Bill 134 who wish to continue performing their functions under Bill 188.

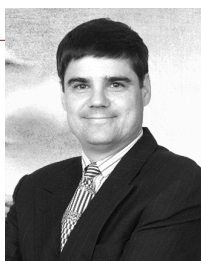
3.7.1 Market intermediaries and financial planners

A natural person holding a certificate issued under the *Act respecting financial intermediaries* or a financial planner diploma awarded by the *Institut québécois de planification financière* is entitled to a certificate equivalent to the one held under Bill 134, or a certificate authorizing him or her to act as a financial planner, as the case may be (s. 534 and 541).

Except for securities representatives holding a certificate issued under Bill 134 immediately before the coming into force of section 552 regarding the power of the Bureau to issue certificates, representatives covered by the Act may register as independent representatives or as employees of an independent partnership (s. 544).

3.7.2 Insurance of persons, group insurance and damage insurance

A natural person who holds a certificate of market intermediary in insurance of persons on the date preceding the coming into force of Section 552 regarding the power of the Bureau to issue certificates, will be entitled to be issued a certificate authorizing the person to act both as a representative in insurance of persons and as a group insurance representative (s. 534 and 538).



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A natural person who, on June 20, 1998, held a certificate issued under Bill 134 authorizing him or her to act as an agent in insurance of persons or a damage insurance agent may register as an independent representative, within two years from the coming into force of section 552, regarding the power of the Bureau to issue certificates (art. 545).

3.7.3 Claims adjusters

The Bureau may authorize a damage insurance broker that pursued activities as a claims adjuster on the date preceding the coming into force of section 552 of the Act, to continue acting in such capacity in respect of policies subscribed through its firm. A current employee of an insurer who pursues activities as a claims adjuster will also be entitled to be issued a certificate authorizing him or her to act as a claims adjuster (s. 539 and 540).

3.7.4 Securities brokerage

A natural person who, on the date preceding the coming into force of section 552 concerning the Bureau's power to issue certificates, was registered as a restricted practice broker in group savings plans, investment contracts or scholarship plans in accordance with the *Securities Act* shall be entitled to be issued a certificate corresponding to the same conditions and restrictions (s. 534).

In the future, a legal person who needs to register with the *Bureau des services financiers* in order to pursue activities through a securities representative governed by the Act, will no longer be able to register with the C.V.M.Q. (art. 533).

3.7.5 Real estate brokerage

A natural person holding a certificate as a real estate broker or agent restricted to loans secured by immovable hypothec on the date preceding the coming into force of the Act will be entitled, if the person is an insurance or securities representative, to continue to pursue such activities. In the case of an insurance representative in the employ of a firm, he or she will need to have been authorized to pursue such activities as of June 20, 1998 in order to continue acting in such capacity in the future (s. 542 and 553).

A legal person holding a certificate as a multidisciplinary firm issued by the Inspector General of Financial Institutions authorizing the pursuit of activities in the field of real estate brokerage may register with the Bureau as a multi-sector firm in that field. The legal person may, in such a case, pursue that activity through the holder of a real estate agent's certificate or an affiliated real estate broker's certificate issued under the *Real Estate Brokerage Act* (s. 549). These holders will be deemed to be representatives for purposes of the section of the Act applicable to the registration of firms.

3.8 Penal sanctions

The Act provides a number of penal sanctions applicable to natural and legal persons in the event of violations. These sanctions also apply to directors, officers and agents of a legal person that contributes to the perpetration of a violation (s. 461 and following).

3.9 Coming into effect of the Act and related provisions

Section 552 of the Act provides that the Bureau may issue representative's certificates or restricted practice certificates, register a legal person as a firm or a representative or firm as an independent representative or an independent partnership before the coming into force of the latter. On the other hand, the Government has reserved the privilege to adopt, before July 1, 1999, any other transitional provision needed to supply any deficiency and ensure the application of the Act (s. 577).

Once in effect, the Act shall entail the amending of several acts (for example: the *Savings and Credit Unions Act*, the *Act respecting Trust Companies and Savings Companies*, the *Real Estate Brokerage Act*, the *Act respecting Labour Standards*).

The application of the Act is the responsibility of the Minister of Finance. Every five (5) years, the Minister must report to the Government on the application of the Act and, if need be, on the advisability of maintaining it in force or amending it (s. 580).

4 General comments

The regulatory aspect retains a dominant position, difficult to evaluate. Given the number of regulatory bodies concerned, an understanding of the distinctions among the powers vested in them will not be easy.

Given the current projects to overhaul the national legislation on mutual funds, the division of the regulatory responsibility between the C.V.M.Q. and the *Bureau des services financiers* is likely to constitute an additional problem in terms of harmonization. Several harmonization problems also persist among the legislation governing federal financial institutions.

The number and importance of the provisions applicable to mandatory disclosure and protection of personal information go far beyond the framework known in Québec with respect to the protection of "consumer" and individual rights and thus constitute a precedent.

Finally, the Act does not deal with the question of the sale of financial products and services by electronic means and does not address the question of sales by direct marketing without personal contact with the customer.

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