

## Draft Regulation

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

### Damage insurance brokers — Code of ethics

In accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), notice is hereby given that the Regulation of the *Chambre de l'assurance de dommages* respecting ethics of Damage Insurance, the text whereof is set forth hereinbelow, will be submitted to the Government which may approve it, with or without any amendments, upon the expiry of 45 days from the present publication.

According to the *Chambre de l'assurance de dommages*, the proposed regulation sets forth the obligations of Damage Insurance Brokers, including their obligations towards the public, towards clients, insurers, and representatives, and towards the *Bureau des services financiers* and the *Chambre de l'assurance de dommages*. The regulation draws on the current rules of ethics set forth in the By-law of the *Conseil des assurances de dommages* respecting market intermediaries in damage insurance. However, adjustments and amendments have been made in order to clarify the current rules and provide greater detail regarding certain obligations, given the new environment created by An Act respecting the distribution of financial products and services, and in order to fill certain gaps which had been noted.

The *Chambre* believes that to date, a review of this file has not disclosed any impact upon the public, other than a greater degree of protection through effective monitoring of the Damage Insurance Brokers with whom the public will do business.

Additional information may be obtained by contacting Mrs. Maya Raic, Director General and Interim Secretary, *Chambre de l'assurance de dommages*, 500, rue Sherbrooke Ouest, 7<sup>e</sup> étage, Montréal (Québec), H3A 3C6, telephone number (514) 842-2591 or 1-800-361-7288, telecopier number (514) 842-3138, e-mail: [acapq@videotron.ca](mailto:acapq@videotron.ca).

All interested persons wishing to provide comments with regard to the foregoing are requested to send such comments, in duplicate, prior to the expiry of the 45-day deadline, 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*

## Code of ethics of damage insurance brokers

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

### CHAPTER I GENERAL PROVISIONS

(omitted)

1. A damage insurance broker must take all reasonable steps to ensure that his employees or those of the partnership of which he is a partner comply with the provisions of An Act respecting the distribution of financial products and services (1998, c. 37), the regulations adopted thereunder which are applicable to him and this Code.

The person under whose supervision and responsibility are carried on the activities of an office or a point of sale of a firm, an independent representative or an independent partnership must act in the same manner as regards the employees carrying on their activities in the said office or point of sale, as the case may be.

The training supervisor for a trainee must act in the same manner as regards the trainee.

2. A damage insurance broker must not carry on an occupation that runs counter to the dignity of the profession or that is incompatible therewith.

3. A damage insurance broker must not, directly or indirectly, pay or compensate or allow the payment or compensation of a person who is not a representative in order for that person to act in that capacity or use that title.

4. A damage insurance broker must not, directly or indirectly, be promised or receive a payment or compensation from a person who is not a damage insurance broker and who acts or attempts to act in that capacity.

5. A damage insurance broker must not, directly or indirectly, be promised or receive a payment or compensation not authorized by the Act or the regulations adopted thereunder from a person other than the person who used his services.

6. A damage insurance broker must not pay, offer to pay or undertake to pay to a person who is not a representative any advantage, rebate, compensation or other remuneration, except where permitted by the Act.

7. A damage insurance broker must not share, offer to share or promise to share the commission or compensation received by him, except as permitted by the Act or the regulations applicable to him.

8. A damage insurance broker must not pay or promise to pay remuneration in order for his services to be used, except as permitted by the Act or the regulations applicable to him.

9. A damage insurance broker must not neglect the professional duties relating to the carrying on of his activities; he must carry out such duties with integrity.

(omitted)

10. A damage insurance broker must avoid placing himself, directly or indirectly, in a situation of conflict of interest.

## **CHAPTER II DUTIES AND OBLIGATIONS TOWARDS THE PUBLIC**

11. A damage insurance broker must support any measure designed to protect the public.

12. A damage insurance broker must support any measure likely to improve the quality of service and the availability of professional services in the field in which he carries on activities.

13. A damage insurance broker must promote measures designed to provide education and information in the field in which he carries on activities.

14. The conduct of a damage insurance broker must be characterized by objectivity, discretion, moderation and dignity.

15. A damage insurance broker must avoid any misrepresentations as to his level of competence or the effectiveness of his services.

## **CHAPTER III DUTIES AND OBLIGATIONS TOWARDS CLIENTS**

16. Before accepting a mandate, a damage insurance broker must take into account the limits of his abilities and knowledge and the means available to him. In particular, he must not undertake or continue a mandate for which he does not have the necessary skills, without obtaining the proper assistance.

17. Before advising a client or a prospective client about a damage insurance product, a damage insurance broker must take into account the actual needs of the client or prospective client regarding the product concerned.

18. A damage insurance broker must not advise his client not to consult another representative in damage insurance or another person of his choosing.

19. A damage insurance broker must always place the interests of the insured and of all prospective clients before his own interests and those of any other person or institution.

20. A damage insurance broker must not, by fraud, trickery or other deceitful means, avoid or attempt to avoid his professional civil liability.

21. When requesting remuneration or compensation from a client, a damage insurance broker must charge and accept remuneration or compensation that is fair, reasonable and proportionate to the services rendered. In particular, he must take into account the following factors in determining his remuneration:

(1) his experience;

(2) the time devoted to the matter;

(3) the difficulty of the problem submitted;

(4) the importance of the matter;

(5) the responsibility assumed;

(6) the provision of unusual services or services requiring exceptional competence or speed;

(7) the result obtained.

22. Prior to or concurrently with the acceptance of a mandate, a damage insurance broker must notify the client that he will be requesting remuneration for the services to be rendered and he must inform the client of the amount of the remuneration for each of the services.

23. A damage insurance broker must take all reasonable measures to ensure that employees do not reveal personal information about a client.

24. A damage insurance broker must carry out the mandate accepted by him in a transparent manner.

#### **CHAPTER IV** DUTIES AND OBLIGATIONS TOWARDS INSURERS

25. A damage insurance broker must not abuse the good faith of an insurer or use unfair practices in dealing with it.

26. A damage insurance broker must not, without good cause, fail to pay an insurer, upon request or upon the expiry of a prescribed period, the premiums that he collects on its behalf.

(omitted)

#### **CHAPTER V** DUTIES AND OBLIGATIONS TOWARDS REPRESENTATIVES

27. A damage insurance broker must not, directly or indirectly, publish or distribute a report or comments which he knows to be false regarding another representative, a firm or an independent partnership carrying on activities governed by the Act.

Moreover, he must not use judicial proceedings deemed dilatory or excessive by the body seized thereof in order to prevent the filing or continuance of a complaint against him for a breach of the Act or its regulations or in order to cause such complaint to be withdrawn or abandoned.

28. A damage insurance broker must not discredit another representative.

(omitted)

29. A damage insurance broker must not abuse the good faith of another representative or use unfair practices in dealing with him.

30. A damage insurance broker must not file a malicious complaint or make a malicious accusation against another representative.

#### **CHAPTER VI** DUTIES AND OBLIGATIONS TOWARDS THE BUREAU DES SERVICES FINANCIERS AND THE CHAMBRE DE L'ASSURANCE DE DOMMAGES

31. A damage insurance broker must answer without delay any correspondence from the Bureau or the Chamber, from their executive officers or inspectors, from the syndic of the Chamber or his assistants, or from an investigator referred to in sections 339 and following of the Act, in the performance of the duties devolved upon them under the Act or its regulations.

32. A damage insurance broker must not, directly or indirectly, obstruct the work of the Bureau or the Chamber, of their executive officers or inspectors, of the syndic of the Chamber or of its investigators.

33. Where a damage insurance broker has been informed of an investigation concerning him, he must not intervene vis-à-vis the complainant or informer, except in performing his mandate, where applicable.

34. A damage insurance broker must not use judicial proceedings deemed dilatory or excessive by the body seized thereof in order to prevent the filing or continuance of a complaint against him for a breach of the Act or its regulations or in order to cause such complaint to be withdrawn or abandoned.

#### **CHAPTER VII** BREACHES OF THE CODE OF ETHICS

35. Breaches of the Code of Ethics by a damage insurance broker include:

(1) ceasing to fulfil the requirements for becoming a holder of a certificate for a damage insurance broker;

(2) carrying on activities dishonestly or negligently;

(3) having been found guilty, by final judgment, of a criminal act related to the activity of representative;

(4) contravening any provision of the Act and its regulations applicable to him;

(5) being an undischarged bankrupt, unless the bankruptcy resulted from causes unrelated to the activity of representative;

(6) carrying on activities under conditions or in situations likely to compromise the quality of his services;

(7) allowing any intervention of a third party to affect the carrying out of his professional obligations to the detriment of his client or the insured;

(8) using personal or confidential information gathered in the course of his activities for purposes other than those for which he gathered it;

(9) unless he has obtained the written consent of his client and all other interested persons, failing to maintain the secrecy of what has been confided to him in the course of his activities, unless he is relieved of that obligation by an express provision of an act, by an order of a competent court or by the carrying on of his activities;

(omitted)

(10) failing to report on the carrying out of any mandate;

(11) failing to act with integrity and as a conscientious advisor towards his clients in informing them of their rights and obligations and in giving them all necessary or useful information;

(12) knowingly making a false statement;

(13) failing to give insurers the information that it is common practice for him to provide;

(14) failing to use fair methods of competition and solicitation;

(omitted)

(15) using or appropriating, for personal purposes, money or securities entrusted to him in the carrying out of any mandate, whether the activities carried on by the broker are in the discipline of damage insurance or in another discipline contemplated in the Act;

(16) participating in gathering or in conserving evidence or a document that he knows is false;

(17) unjustifiably refusing or neglecting to appear at the office of the syndic, of one of his assistants or of an investigator referred to in sections 339 and following of the Act, at the request of any of them.

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(1998, c. 37)

### Contribution and certain fees payable

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 contribution and certain fees payable 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, upon 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 specify the annual fees payable for the issue and renewal of a representative's certificate or the registration of a firm, an independent representative or an independent partnership.

According to the Bureau, this regulation has no impact on public protection. In addition, it has no further impact on small- and medium-sized businesses since the level of costs is maintained. It is provided that the fees to register as a firm or an independent partnership are determined according to the number of representatives through whom it acts as well as the number of sectors in which it is acting. Supplementary fees are required of representatives and firms acting in any of the securities sectors to take into account the fees that must be henceforth paid by the Bureau pursuant to section 576 of the Act respecting the distribution of financial products and services (1998, c. 37). Finally, exemptions from payable fees are provided for the three years following the coming into force of section 552 of the Act in respect of the representatives in insurance of persons referred to in section 534 (2) of the Act and for independent representatives, firms or independent partnerships acting through them who wish to continue acting in the sector of group insurance of persons.

This draft regulation also provides for fees requested by the Bureau regarding certain formalities or measures provided in the Act or one of its regulations, and for goods and services that it provides.

Additional information may be obtained from M<sup>e</sup> Nathalie G. Drouin, Director of Legal Affairs, Bureau des services financiers, 140, Grande Allée Est, bureau 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, bureau 1.10, Québec (Québec) G1R 5L3.

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

## Regulation respecting the contribution and certain fees payable

An Act respecting the distribution of financial products and services  
(1998, c. 37, s. 203 par. 2; s. 225 and s. 226)

### CHAPTER I FEES PAYABLE

#### DIVISION 1 CERTIFICATION

1. The fees payable for the issuance and renewal of a certificate are \$63 for each of the sectors or sector