

Gouvernement du Québec

O.C. 986-2018, 3 July 2018

Travel Agents Act
(chapter A-10)

**Travel agents
— Amendment**

Regulation to amend the Regulation respecting travel agents

WHEREAS, under subparagraphs *a*, *b.1*, *c*, *g*, *i*, *l*, *m*, *n* and *p* of the first paragraph of section 36 of the Travel Agents Act (chapter A-10), the Government may make regulations to

- establish classes of travel agents licences;
- prescribe the terms and conditions of issue, renewal, suspension or cancellation of a travel counsellor certificate, and the qualifications required of a person applying for a certificate, as well as the conditions to be met and the duties to be paid by that person;
- require individual security of a travel agent, prescribe the amount and the form and determine the cases and the terms and conditions of collection, payment, administration and use of that security;
- prescribe the conditions respecting the deposit and withdrawal of the funds a travel agent must transfer in trust and deposit in a trust account;
- prescribe standards respecting the protection of the customers of a travel agent;
- prescribe the obligations applicable to travel agents;
- in particular determine the functions of an advisory committee;
- exempt from or subject to the application of all or part of the Act, in the cases and on the conditions determined by the Government, persons, operations or tourist services, or modify the list of exceptions provided for in section 3 of the Act;
- determine among the regulatory provisions those the contravention of which constitutes an offence;

WHEREAS the Act mainly to modernize rules relating to consumer credit and to regulate debt settlement service contracts, high-cost credit contracts and loyalty programs (2017, chapter 24) was assented to on 15 November 2017;

WHEREAS section 71 of that Act amends the first paragraph of section 36 of the Travel Agents Act in particular by replacing subparagraphs *b* and *c.1*, by introducing subparagraph *b.2* and by amending subparagraph *c.2*;

WHEREAS, under those subparagraphs, the Government may make regulations to

- prescribe in particular the terms and conditions of issue, maintenance, suspension, transfer or cancellation of a licence, the qualifications required of a person applying for a licence, the conditions to be met and the duties to be paid by that person;
- prescribe the rules for establishing the amount of the contribution to be paid into the Fonds d'indemnisation des clients des agents de voyages and determine the cases and the terms and conditions of collection, payment, administration and use of the fund, in particular to set a maximum amount, per client or event, that may be paid out of the fund;
- prescribe the terms and conditions of issue, maintenance, suspension or cancellation of a travel agency manager certificate, the qualifications required of a person applying for a certificate, and the conditions to be met and the duties to be paid by that person;
- prescribe, with respect to the indemnity fund, that the investment income on the sums accrued in the fund may be used by the Office de la protection du consommateur, on the terms and conditions the Government determines, to inform and educate clients with respect to their rights and obligations under the Acts whose application is under the supervision of the Office;

WHEREAS the Government made the Regulation respecting travel agents (chapter A-10, r. 1);

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft Regulation to amend the Regulation respecting travel agents was published in Part 2 of the *Gazette officielle du Québec* of 18 April 2018 with a notice that it could be made by the Government on the expiry of 45 days following that publication;

WHEREAS it is expedient to make the Regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister responsible for Consumer Protection and for Housing:

THAT the Regulation to amend the Regulation respecting travel agents, attached to this Order in Council, be made.

ANDRÉ FORTIER,
Clerk of the Conseil exécutif

Regulation to amend the Regulation respecting travel agents

Travel Agents Act
(chapter A-10, ss. 3 and 36; 2017, chapter 24, s. 71)

1. The Regulation respecting travel agents (chapter A-10, r. 1) is amended in section 1.1 by adding the following at the end:

“(h) a person offering tourist guide or local sightseeing tour services of a maximum period of 1 day;

(i) an educational institution or a teacher mandated by the institution if the following conditions are met:

i. the educational institution or teacher organizes a trip lasting no longer than 72 hours and exclusively in Québec for students or organizes a trip for them through a travel agent;

ii. the educational institution or teacher receives no form of remuneration for organizing the trip, except the teacher’s participation in the trip.

For the purposes of subparagraph *i* of the first paragraph, an educational institution means any institution listed in paragraphs *a* to *g.1* of section 188 of the Consumer Protection Act (chapter P-40.1).”

2. Section 1.2 is amended by adding “They also do not apply to an employee of the holder of a restricted outfitter’s licence acting for a travel agent holding a general licence with whom the outfitter entered into an agreement for the sale of packages.” at the end.

3. Section 3 is amended by striking out “establishments of the rugged furnished lodging, hospitality village,” in subparagraph *a* of the first paragraph.

4. Section 4.1 is amended

(1) by replacing “On 1 May 1995 and on 1 May of each subsequent year,” at the beginning of the first paragraph by “On 1 July 2019 and on 1 July of each subsequent year.”;

(2) by inserting “and the indemnity relating to living and accommodation expenses referred to in paragraphs *b* of section 43.8 and paragraph *c* of section 43.10” after “and section 31.9” in the first paragraph;

(3) by adding “and indemnity” after “The new duties” in the first paragraph;

(4) by replacing “The duties thus indexed” in the second paragraph by “The duties and indemnity thus indexed”;

(5) by adding “and indemnity” after “the new duties” in the third paragraph.

5. Section 5 is amended by replacing “once a year on the anniversary date of the licence.” in the second paragraph by “, once a year, not later than 2 months before the anniversary date of the licence.”.

6. Section 6 is amended

(1) by striking out subparagraph *c* of the first paragraph;

(2) by replacing subparagraph *g* of the first paragraph by the following:

“(g) subject to section 11.13, a declaration stating that the person holds, at the time of applying for the issue of the licence, a travel agency manager certificate issued by the president after having passed, within less than 5 years, an examination on the knowledge of the laws and regulations applying to the travel sector and the management of a travel agency.”;

(3) by striking out subparagraph *f* of the second paragraph;

(4) by striking out subparagraph *g* of the second paragraph.

7. Section 8.1 is amended by replacing “Subparagraphs *c* and *g*” in the first paragraph by “Subparagraph *g*”.

8. Section 11.2 is amended

(1) by inserting the following after subparagraph *e* of the first paragraph:

“(f) has sent the information required under section 11.4.”;

(2) by replacing the second paragraph by the following: “The certificate is issued or renewed for a period of 1 year.”;

(3) by adding the following after the second paragraph:

“The president renews the certificate if the conditions set out in subparagraphs *b* to *f* of the first paragraph are met.”

9. Section 11.4 is replaced by the following:

“**11.4.** The travel counsellor must, when applying for the issue or renewal of the certificate, send to the president, on the form provided by the president, the following information:

(a) the counsellor’s name, domicile address, date of birth, personal and professional telephone numbers and, where applicable, personal and professional technological address and fax number;

(b) the name, address and licence number of the travel agent to whom the counsellor is bound by an exclusive employment or service contract;

(c) a declaration according to which the counsellor has not committed, in the 5 years preceding the application, an offence against the Act or this Regulation;

(d) a declaration according to which the counsellor has not been found guilty, in the 5 years preceding the application, of fraud, forgery or fraudulent operations in contractual or commercial matters;

(e) a declaration according to which the counsellor has not made a false or misleading declaration or failed to mention an important fact for obtaining the certificate.”

10. Section 11.5 is amended by replacing “la reconduction annuelle” in the French text by “le renouvellement annuel”.

11. Section 11.7 is amended

(1) by replacing “or cancel” in the portion preceding paragraph *a* by “, cancel or refuse to issue or to renew”;

(2) by adding the following paragraph at the end:

“The president may also suspend, cancel or refuse to issue or to renew a certificate if the president has reasonable grounds to believe that the suspension, cancellation or refusal is necessary to ensure, in the public interest, that the operations proper to a travel agent will be performed with honesty and competence.”

12. Section 11.8 is amended by replacing “reconduire” in the French text by “renouveler”.

13. Section 11.9 is replaced by the following:

“**11.9.** Where the travel counsellor no longer has an employment relationship or an exclusive service contract with the travel agent, the counsellor’s certificate is suspended until a new employment relationship is established or a new exclusive service contract is entered into with a travel agent.

After a maximum period of 2 years following the suspension and in the absence of a new employment relationship or a new exclusive service contract with a travel agent, the certificate ceases to have effect.

During the suspension period, the counsellor must deal with the formalities related to the renewal of the counsellor’s certificate.”

14. The following is inserted after section 11.10:

**“DIVISION IV.3
TRAVEL AGENCY MANAGER**

11.11. Sections 11.2 to 11.8 apply, with the necessary modifications, to the applicant for and the holder of a travel agency manager certificate.

11.12. On payment of the duties required under section 11.5, the holder of a travel agency manager certificate also holds a travel counsellor certificate.

11.13. Where the employment relationship with the travel agent for whom the holder works as manager is broken, the person’s manager certificate is suspended. The person may again hold a manager certificate without having again passed the examination provided that the person is again appointed manager within 2 years following the suspension of the certificate.

After that period and in the absence of a new employment relationship with a travel agent as manager, the certificate ceases to have effect.

During the suspension period, the holder must deal with the formalities related to the renewal of the manager’s certificate.

The first 3 paragraphs also apply, with the necessary modifications, to the holder of a travel agent licence.”

15. The following is inserted after section 12:

“**12.1.** A travel agent must submit interim financial statements at the request of the president within the period set by the president. The financial statements must include a trust account statement. At the request of the president, the statements must also be accompanied by a review engagement report or any other information or document related to the travel agent operations.”

16. Section 13.1 is amended

(1) by inserting “The list must contain the names of the travel counsellors, their certificate number and the date of expiry of the certificate.” after the first sentence;

(2) by adding the following paragraph at the end:

“Where the employment relationship with any of the travel counsellors is broken or the exclusive service contract that binds the counsellor to the agent is resiliated or terminated, the travel agent must so inform the president within 5 days of the event.”

17. The following is inserted after section 13.1:

“**13.1.1.** A travel agent may not employ a travel counsellor who does not hold a valid travel counsellor certificate. Nor may the travel agent sign an exclusive service contract with a travel counsellor who does not hold such a certificate.”

18. Section 18 is amended

(1) by inserting “, except if they are collected by an outfitter holding a restricted licence exempt from the obligation imposed in section 33 of the Act under section 29.1” at the end of subparagraph *e* of paragraph 2;

(2) by replacing subparagraph *g* of paragraph 2 by the following:

“(g) the amount and percentage of the contribution to the Fonds d’indemnisation des clients des agents de voyages and a mention and the amount of the credit granted by the fund in accordance with section 39.01, where applicable. If necessary, the number of the exemption certificate issued under section 39.1;”

(3) by inserting the following after subparagraph *h* of paragraph 2:

“(i) the following mention near the information provided for in subparagraph *c*: “Tourist services paid but not received, may be reimbursed by the Fonds d’indemnisation des clients des agents de voyages. It is administered by the Office de la protection du consommateur. It is a financial protection for travelers. For more information: www.ficav.gouv.qc.ca.”

19. Section 22 is amended by inserting “Subject to section 29.1,” at the beginning of the first paragraph.

20. Section 22.01 is amended by inserting “and subject to section 29.1” after “Despite the first paragraph of section 22”.

21. Section 27.1 is revoked.

22. Section 28 is amended

(1) by replacing subparagraph *a* of the first paragraph by the following:

“(a) to compensate in capital, interest and costs, but excluding punitive damages, any customer in possession of a final judgment rendered other than on acquiescence in the judgment, against the travel agent, his employee or a travel counsellor with whom the travel agent has entered into an exclusive employment or service contract related to the performance of the mandate given to them;”

(2) by striking out “provided for in Division XII” at the end of the last paragraph.

23. The following is inserted after section 29:

“**29.1.** An outfitter holding a restricted licence who deposits an additional security to the president the amount of which is based on the amount of sales subject to the contribution to the fund appearing in the certificate required under the second paragraph of section 8.1 is exempt from the obligation referred to in section 33 of the Act to transfer funds collected on account of a third person in trust; the amount is set as follows:

**AMOUNT OF INDIVIDUAL SECURITY
OF EXEMPTED OUTFITTER**

AMOUNT OF SALES	SECURITY
Up to \$0.5M	\$40,000
Up to \$2M	\$80,000
Up to \$5M	\$120,000
Over \$5M	\$160,000

”

24. Section 30 is amended

(1) by inserting “or, if the president is in a position to accept it, by a transfer of funds to an account held by the president in a financial institution” at the end of paragraph *b*;

(2) by inserting “or 29.1” at the end of paragraph *c*.

25. Section 31.2 is amended by inserting “or 29.1” at the end of the first paragraph.

26. Section 31.6 is amended by replacing “its anniversary date” at the end of the third paragraph by “the date on which the licence ceases to have effect”.

27. Section 31.8 is amended by inserting “or 29.1” at the end of paragraph 4.

28. Section 33 is amended by replacing “which follow the formation of the mandate” in paragraph 4 by “of the date on which the cause of action arose”.

29. Section 35 is amended by adding “or 29.1” at the end.

30. Section 37 is revoked.

31. Section 38 is revoked.

32. Section 39 is replaced by the following:

“**39.** Subject to section 39.1, the amount of the contribution of customers of travel agents is calculated by multiplying the total cost of the purchased tourist services by a percentage varying according to the surplus accumulated in the Fonds d’indemnisation des clients des agents de voyages as of the preceding 31 March; the percentage is set as follows:

CONTRIBUTION TO THE FUND

Surplus accumulated in the fund	Percentage of tourist services
Up to \$75M	0.35%
Up to \$100M	0.20%
Over \$100M	0.10%

Where applicable, the change to the percentage applicable to the calculation of the contribution takes effect on 1 January of the year following the submission of the financial statements indicating the surplus accumulated in the fund as of 31 March.

The contribution must be collected by the travel agent dealing directly with the customer.”

33. The following is inserted after section 39:

“**39.01.** Despite section 39, where the financial statements of the Fonds d’indemnisation des clients des agents de voyages indicate that the surplus accumulated in the fund as of 31 March is equal to or greater than \$125M, the customers of travel agents are credited the amount of the contribution to the fund.

In that case, the travel agent must, on the receipt remitted in accordance with section 18, indicate

(a) the amount corresponding to the contribution calculated by multiplying the total cost of the purchased tourist services by 0.10%; and

(b) on the subsequent line, after the mention “Credit applicable”, the amount corresponding to a credit of a value equivalent to the amount calculated in accordance with subparagraph *a*.

The terms and conditions take effect on 1 January of the year following the submission of the financial statements of the fund.

The terms and conditions are maintained until the financial statements of the fund indicate a surplus accumulated in the fund as of 31 March of \$75M or less. The obligation to contribute to the fund, in accordance with section 39, resumes on 1 January of the year following the submission of the financial statements of the fund.”

34. Section 39.1 is amended

(1) by replacing “is entitled to the reimbursement of the contribution referred to in section 39” in the portion before subparagraph *a* of the first paragraph by “is exempt from paying the contribution to the fund referred to in section 39 provided that the customer obtains an exemption certificate and provides a copy of the certificate to a travel agent before entering into a tourist service contract”;

(2) by replacing the second paragraph by the following:

“The exemption certificate is issued by the president on written request submitted by the Ministère des Relations internationales for the benefit of the customer.

The customer who prevailed himself of the exemption may not receive an indemnity or reimbursement under sections 43.7 to 43.14.”

35. Section 40 is amended

(1) by replacing the words “within 30 days of” wherever they appear by “not later than the last day of the month following”;

(2) by replacing the third paragraph by the following:

“A licence holder or other officer must, within the period prescribed by the first paragraph, sign and send a report to the president indicating

- (a) the amount of the sales subject to the contribution;
- (b) the total of the contributions collected; and
- (c) the amount remitted.”;

(3) by inserting “the report or” after “who does not remit” in the fourth paragraph;

(4) by adding the following paragraph after the fourth paragraph:

“Where section 39.01 applies, a travel agent is exempt from collecting the contributions and sending the report. Despite the foregoing, the travel agent must send to the president the contributions collected before the date referred to in the third paragraph of section 39.01 and the report not later than 28 February following that date.”

36. Section 43 is amended

(1) by striking out the first and second paragraphs;

(2) by replacing “The sums” in the third paragraph by “The sums making up the Fonds d’indemnisation des clients des agents de voyages”.

37. Section 43.2 is amended

(1) by striking out subparagraphs *a*, *b*, *c*, *d* and *g* of the first paragraph;

(2) by replacing “provisional administrator’s fees” at the end of subparagraph *e* of the first paragraph by “the fees of a provisional administrator or a claims manager”;

(3) by striking out the second paragraph.

38. Section 43.3 is amended

(1) by replacing “20% of the surplus accumulated in the fund” by “60% of the surplus accumulated in the fund”;

(2) by replacing “\$5M” by “\$30M”;

(3) by striking out the second sentence.

39. Section 43.4 is revoked.**40.** Section 43.5 is revoked.**41.** Section 43.6 is amended

(1) by replacing “the lesser of the following sums” by “the higher of the following sums”;

(2) by replacing “under the Act” by “under the Acts under the supervision of the Office de la protection du consommateur”.

42. The following sections are inserted after section 43.6:

“**43.7.** In the case provided for in paragraph *a* of section 30.4 of the Act, the president reimburses to the customer

(a) the sums paid by the customer to the travel agent for the service that was not performed by the supplier in default; and

(b) where applicable, the sums paid by the customer to the travel agent for a tourist service, other than the service referred to in paragraph *a*, of which the customer could not benefit owing to the default of the supplier. If the customer has partially benefited from a tourist service, the reimbursement of the service is proportionate to the unused service.

“**43.8.** In the case provided for in paragraph *b* of section 30.4 of the Act, the president may reimburse to the customer

(a) the reasonable costs paid to replace the tourist benefit not performed owing to the default of the supplier;

(b) the other reasonable costs paid owing to the default of the supplier, such as

i. living and accommodation expenses up to a maximum amount of \$200 per day per person;

ii. where applicable, the costs paid to ensure a departure or repatriation required under the circumstances.

“**43.9.** Cases in which a customer may not prevail himself of tourist services the customer has paid due to the following reasons constitute a reason outside the customer’s control for the purposes of section 30.5 of the Act:

(a) a non-compliant performance of a tourist service that deprives the customer from benefiting from the performance of another tourist service paid to the travel agent;

(b) the dissemination, after the purchase of a tourist service, of an official warning from a Canadian public authority to avoid all travel or avoid non-essential travel to the destination;

(c) the occurrence of an event for which a default of the supplier is foreseeable.

43.10. In the cases provided for in section 30.5 of the Act, the president may reimburse to the customer:

(a) the sums paid by the customer to the travel agent for the service the customer did not benefit from. If the customer has partially benefitted from a tourist service, the reimbursement of the service must be proportionate to the unused service;

(b) the reasonable costs paid to replace the tourist benefit the customer did not benefit from;

(c) the other reasonable costs paid owing to the event that prevents the customer from availing himself of other tourist services such as

i. living and accommodation expenses up to a maximum amount of \$200 per day per person;

ii. where applicable, the costs paid to ensure a departure or repatriation required under the circumstances.

43.11. In the cases provided for in paragraphs *a* and *b* of section 30.4 and section 30.5 of the Act, on presentation of proof required to show the eligibility and value of the claim, the president may reimburse to the travel agent the reasonable sums the agent reimbursed to the agent's customer or paid for the benefit of the customer in accordance with sections 43.7, 43.8 and 43.10.

No travel agent may be reimbursed by the fund if otherwise paid or reimbursed.

43.12 In the cases provided for in paragraph *b* of section 30.4 and section 30.5 of the Act, the president, on presentation of proof required to show the value of the tourist benefit and on other conditions determined by the president, may mandate a travel agent or supplier and pay them directly the reasonable costs to ensure the departure or repatriation of a customer required under the circumstances.

43.13. In case of insufficient security, the president pays to the customer the sums required

(a) to compensate in capital, interest and costs of a final judgment, but excluding punitive damages, and any sum greater than \$500 granted to compensate moral damage, in the cases referred to in subparagraph *a* of the first paragraph of section 28;

(b) to reimburse a sum paid to the travel agent for the provision of a service not yet provided in the cases referred to in subparagraph *b* of the first paragraph of section 28.

The president may, instead of reimbursing to the client the sum referred to in subparagraph *b* of the first paragraph, pay the sums required to ensure the departure or repatriation of the customer.

43.14 Where the president receives a claim under section 43.8, 43.10, 43.11 or 43.12, the president assesses the reasonableness of the costs claimed taking into consideration that the claimant or the customer may not benefit from unjustified enrichment and that he must minimize damages.”

43. Section 47 is replaced by the following:

“**47.** Every person who contravenes any of sections 11.6, 12, 12.1, 13, 13.1, 13.1.1, 13.2, 14, 14.1, 15, 16, 17, 18, 19, 20, 22.1, 34, 35, 39, 39.01 or 40 commits an offence and is liable to the fine under section 40 of the Act.”

44. Section 57 is replaced by the following:

“**57.** The committee sends to the Minister, not later than 30 June of each year, a report on its activities for the preceding financial year.”

TRANSITIONAL AND FINAL

45. Sections 43.7 to 43.14, introduced by section 42 of this Regulation, apply where the facts giving rise to indemnification or reimbursement occur after the coming into force of this Regulation. Despite the foregoing, section 43.13 also applies where the facts giving rise to indemnification or reimbursement occurred before the coming into force of this Regulation.

46. Subparagraphs *b*, *c* and *d* of the first paragraph of section 43.2, struck out by section 37 of this Regulation, continue to apply to the facts giving rise to indemnification and reimbursement that occurred before the coming into force of this Regulation.

47. This Regulation comes into force on 1 August 2018, except paragraph 3 of section 18 of this Regulation, which comes into force on 1 January 2019.

103603

Gouvernement du Québec

O.C. 988-2018, 3 July 2018

An Act respecting the collection of certain debts
(chapter R-2.2)

Regulation — Amendment

Regulation to amend the Regulation respecting the application of the Act respecting the collection of certain debts

WHEREAS, under paragraphs 2, 6 and 8 of section 51 of the Act respecting the collection of certain debts (chapter R-2.2), the Government may make regulations in particular determining the duties a person applying for a permit or the renewal of a permit must pay, establishing rules governing the keeping of registers by a permit holder and determining the information that the permit holder must furnish to the president;

WHEREAS the Act mainly to modernize rules relating to consumer credit and to regulate debt settlement service contracts, high-cost credit contracts and loyalty programs (2017, chapter 24) was assented to on 15 November 2017;

WHEREAS section 80 of that Act introduces paragraph 2.1 of section 51 of the Act respecting the collection of certain debts;

WHEREAS, under paragraph 2.1 of section 51 of the Act, the Government may make regulations determining terms and conditions for the issue, renewal, suspension or cancellation of a collection agent representative certificate, cases where a certificate ceases to have effect, the qualifications required of a person applying for a certificate, the documents to be sent, the conditions to be met and the duties to be paid;

WHEREAS the Government made the Regulation respecting the application of the Act respecting the collection of certain debts (chapter R-2.2, r. 1);

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft Regulation to amend the Regulation respecting the application of the Act respecting the collection of certain debts was published in

Part 2 of the *Gazette officielle du Québec* of 18 April 2018 with a notice that it could be made by the Government on the expiry of 45 days following that publication;

WHEREAS it is expedient to make the Regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister responsible for Consumer Protection and for Housing:

THAT the Regulation to amend the Regulation respecting the application of the Act respecting the collection of certain debts, attached to this Order in Council, be made.

ANDRÉ FORTIER,
Clerk of the Conseil exécutif

Regulation to amend the Regulation respecting the application of the Act respecting the collection of certain debts

An Act respecting the collection of certain debts
(chapter R-2.2, s. 51; 2017, chapter 24, s. 80)

1. The Regulation respecting the application of the Act respecting the collection of certain debts (chapter R-2.2, r. 1) is amended in section 1 by replacing paragraphs *a* and *b* by the following:

“(a) “certificate” means a certificate required by section 44.1 of the Act;

(a.1) “application” means an application for a permit or certificate or renewal of a permit or certificate made by an applicant;

(b) “applicant” means a natural person, a partnership or a legal person that applies for a permit or the renewal of a permit or a natural person who applies for a certificate or the renewal of a certificate;”

2. Section 4 is amended in the French text by inserting “d’un” after “loyer” in the portion before paragraph *a*.

3. Section 11 is amended by inserting “collection agent’s” after “applicant for a”.

4. Section 12 is amended by inserting “for a collection agent’s permit” after “applicant” in the portion before paragraph *a*.

5. Section 13 is amended by inserting “for a collection agent’s permit” after “applicant”.