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Bill 150 and damage insurance brokerage

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On October 31, 2017, Québec's Finance Minister, Carlos J. Leitão, introduced Bill 150, *An Act respecting mainly the implementation of certain provisions of the Budget Speeches of 17 March 2016 and 28 March 2017* ("Bill 150"). In this article, we will discuss the changes made to the *Act respecting the distribution of financial products and services* (the "Act") relating to damage insurance brokerage.

The following is a summary of the main changes to the Act involving damage insurance brokerage based on Minister Leitão's speech introducing Bill 150.

New rules for products' offering, firm registration and disclosure

Damage insurance brokers will be required to offer clients products from at least four insurers that do not belong to the same financial group, namely insurers who are not affiliated with the firm. It will be interesting to hear comments from damage insurance brokers about the implementation of this new rule, which benefits consumers and will increase transparency.

Note that a broker who is unable to offer clients insurance products from at least four insurers may nonetheless continue offering insurance products but must make every effort to comply with this rule and keep on file any information proving these efforts were made. The *Autorité des marchés financiers* (the "AMF") may verify compliance with this provision during an inspection and require that a firm and its representatives change their registration to that of an agency if the broker's "efforts" are considered insufficient. This exception to the new obligation to offer products from at least four insurers seems to require that brokers be able to prove to the AMF that they have made the required efforts to offer a client an insurance proposal from at least four insurers.

Registration of a damage insurance firm will be made based on its representatives' registration categories:

- a firm will be a damage insurance agency if it acts through damage insurance agents;
- a firm will be a damage insurance brokerage firm if its acts through damage insurance brokers.

A damage insurance agent offers damage insurance products to the public on behalf of a firm that is an insurer or is bound by an exclusive contract with a single insurer. A damage insurance broker offers a range of damage insurance products directly to the public from several insurers and, under Bill 150, from at least four insurers, by client proposal.

Firms will be subject to new disclosure requirements on their website and in their communications with clients:

- a damage insurance agency will be required to disclose the name of the insurers with which it is bound by an exclusive contract and which products are included in such contract; and

- a damage insurance brokerage firm will be required to disclose the name of the insurers for which it offers insurance products.

Ownership of damage insurance brokerage firms

The 20% rule is maintained but in a different form. Consultations pertaining to the 20% rule were held in the spring of 2017.[1] During these consultations, the industry was asked to comment on the need to maintain this rule and on possible alternatives for managing conflicts of interest between damage insurance brokerage firms and insurers.

According to the changes proposed in Bill 150, registration as a damage insurance brokerage firm is prohibited if a financial institution, financial group or legal person affiliated with them has a significant interest in the firm's decisions or equity. "Significant interest" means:

- with respect to a firm's decisions, the power to exercise 20% or more of the voting rights attached to the shares issued by the firm; and
- with respect to a firm's equity, holding shares issued by the firm that represent 20% or more of its equity capital.

Section 148 of the Act, which prohibited a financial institution, financial group or a legal person affiliated with them from holding more than 20% of the voting rights or shares of a damage insurance firm acting through a damage insurance broker, is repealed.

The legislator specifies that the 20% rule under Bill 150 does not prohibit any financing agreement or any service contract between a financial institution and a firm. Recall that in 2007, the AMF published a staff notice[2] concerning the ownership of damage insurance brokerage firms which said that, to ensure that firms remained independent, a financial institution could not sign a financing agreement with a firm unless the terms of such agreement were those that would be agreed to by a lender at arm's length.

The changes proposed by Bill 150 are in addition to those set out in Bill 141[3], which proposes an extensive reform of the laws governing Québec's financial sector. Our financial products and services team can help you take a strategic position to benefit from new business opportunities that will result from the new rules and answer any questions you may have about these changes.

1. See *Need to know* newsletter of April 18, 2017 entitled "Consultation on the 20% Rule".
2. *Avis du personnel relatif à la propriété des cabinets en assurance de dommages* [staff notice regarding the ownership of damage insurance firms] (in French only), AMF Bulletin: 2007-02-16, Vol. 4 No. 07.
3. See Lavery's October 5, 2017 bulletin entitled "Comprehensive reform of the rules governing the regulation and operations in the Québec financial sector".