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Bill 150 and the distribution of financial products and services

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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 newsletter we will discuss the changes made to the *Civil Code of Québec* ("CCQ"), the *Act respecting insurance, c. A-32 and the Act respecting the distribution of financial products and services,* c. D-9.2 ("Distribution Act") affecting the offer and distribution of insurance products.

According to the Minister's speech upon introduction of Bill 150, the main amendment that would affect products themselves would be to permit group damage insurance contracts. Other proposed amendments affect the offer and distribution of group insurance products.

Civil Code of Québec

The proposed changes to the CCQ relating to damage insurance are significant since they formally introduce the concept of group damage insurance.

Until now, the CCQ provided that insurance of persons was either individual or group. The lack of a similar provision for damage insurance, along with the lack of a clear provision allowing this type of insurance, led to the conclusion that group damage insurance was not permitted in Québec. Bill 150 codifies this concept, making the following changes:

- Non-marine insurance may henceforth be either individual insurance or group insurance;
- The concept of a group damage insurance policy is introduced in article 2395 CCQ;
- The CCQ no longer indicates that insurance of persons is individual insurance or group insurance, which removes any ambiguity about whether group damage insurance is permitted.

Act respecting the distribution of financial products and services

With the repeal and amendment of several sections of the Distribution Act and the removal of the concept of adhesion, which is specific to group insurance, distribution without a representative, through a distributor, would now cover individual insurance products.

In fact, Bill 150 maintains the possibility of an insurer to offer an insurance product through a distributor, namely a 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 goods sold by the person.[1]

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Products deemed to be insurance products which relate solely to goods but which are not affected by Bill 150 are: travel insurance, vehicle rental insurance where the rental period is less than four months, credit card and debit card insurance, and vehicle replacement insurance as defined in the Distribution Act.[2]

The section of the Distribution Act[3] that provides that debtor life, health and employment insurance and investor life, health and employment insurance are deemed to be an insurance product which relates solely to goods and to which clients adhere is repealed.

Such changes suggest that participation in group insurance products offered by insurers, whether in damage insurance or insurance of persons, is no longer covered by the rule respecting distribution other than through a representative.[4]

The changes made by Bill 150 relating to the definition of representative in insurance of persons[5] also indicate that participation in a group insurance contract would no longer be reserved for representatives in insurance of persons, meaning that group insurance contracts could henceforth be offered directly.

Act respecting insurance

Along with the changes made to the Distribution Act, the *Act respecting insurance* is amended to provide that an insurer who enters into a group insurance contract must deliver to the client a document intended for participants, in respect of the sound and prudent management practices and commercial practices insurers must adhere to.[6]

The information set forth in this document is intended to disclose to participants, in a timely manner, information relevant for making an enlightened decision and for the performance of the contract.

The information from this document is somehow similar to what must be included in the distribution guide for insurance products distributed without a representative:

1) the scope of the coverage considered and any exclusions;

2) the time limits, in conformity with the Civil Code, within which the insurer must be notified of a loss and the time limits within which the insurer is required to pay the insured sums or the indemnity provided for;

3) the information necessary for filing a complaint with the insurer referred to in section 285.29 of the *Act respecting insurance,* which provides for the policy in respect of the examination of complaints and resolution of disputes every insurer must establish in order to provide equitable resolution of complaints.

Since the documentation prescribed by article 2401 CCQ remains the same, insurers must also give the client the insurance certificates which the client must distribute to participants, and issues the group insurance policy to the client, who must make it available to participants and beneficiaries wishing to examine or make copies of it.

Finally, the proposed changes also introduce an increased level of liability for an insurer entering into a group insurance contract with a client that is affiliated with the insurer or that belongs to the insurer's group, such as a federation and the mutual insurance associations that are members of it.[7] Not only must the insurer deliver an explanatory document to participants, it must also ensure that the client delivers it to participants. The insurer is liable for the acts performed by or on behalf of the

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client toward enrolling participants under the group insurance contract.

The amendments proposed by Bill 150 are in addition to those set out in Bill 141,[9] which reforms, extensively, Québec's financial sector. Lavery's experts can help you position yourself competitively and seize new strategic opportunities resulting from these fundamental changes in the financial sector.

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1. Section 408 of the Distribution Act.
2. Section 424(5) of the Distribution Act.
3. Section 426 of the Distribution Act.
4. Title VIII of the Distribution Act.
5. Section 238 of Bill 150 and section 3 of the Distribution Act.
6. Sections 222.1 and 222.2 of the *Act respecting insurance,* c. A-32.
7. Section 1.5 of the *Act respecting insurance,* c. A-32.
8. See section 235 of Bill 150.
9. **See Lavery's October 5, 2017 newsletter entitled "Comprehensive reform of the rules governing the regulation and operations in the Québec financial sector".**

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