Bill 141: Checklist on insurance products offered via the internet and distribution without a representative

February 13, 2020

Authors

Marie-Claude Cantin

Partner, Lawyer

Gabrielle Mathieu

Senior Associate

Download your checklist

A major reform of the financial sector and, more specifically, of the standards surrounding the practice of professionals governed by the Autorité des marchés financiers (the "AMF") is now applicable under the *Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*[1], formerly known as Bill 141.

One of the main goals of this reform is to offer greater protection to consumers by providing a framework for online insurance product offers and for distribution without a representative. This framework is provided for in the *Regulation respecting Alternative Distribution Methods* (the "RADM")[2].

Considering that 60 laws are amended by Bill 141, many of which apply to insurance firms[3] and insurers[4], it is important to be well informed of your key obligations in order to navigate through this transition.

Here is what you need to know:

The obligations of insurance firms for insurance products offered via the internet[5]

If you offer insurance products online, as of June 13, 2019, you must comply with the following:

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

Information to be provided to the AMF

Before offering a product online:
- The information about your “digital space”
- The information about the products you offer
- The insurers whose products are offered

Annually:
- The number of insurance policies issued
- The amount of premiums written through your digital space
- The number of cases where clients cancelled their insurance contracts

Information to be provided to the client:

At all times:
- Make the means to interact with a representative of the firm visible
- The information must be presented in a clear, readable, specific and non misleading way
- Make readily accessible through your digital space:
- The name, contact details, sectors and AMF registration number of the firm
- The information on where the client can file a complaint and the summary of the complaint processing policy
- A specimen of the policy for each product offered and any available endorsement, if applicable[6]

Before a contract is entered into:
- The name and contact information of the insurer offering the product
- The product coverage, exclusions and limitations
- The warnings about the consequences of misrepresentation or concealment
- The premiums, and other fees and expenses, including applicable taxes
- The period of validity of the quote

Immediately before a contract is entered into:
- The information collected from the client and the options and conditions the client has chosen

As soon as a contract is entered into:
- Confirmation that the contract has been entered into and the temporary insurance, if applicable
- The right of rescission and the procedures for exercising it
- The way in which the policy will be provided to the client

Obligations specific to the operation of the digital space:

Ensure the proper operation and reliability of your digital space at all times
Require an action from the client each time confirmation or consent is needed
Detect and automatically suspend or terminate an action initiated on the digital space if the information provided may lead to an inappropriate result or the client does not meet the product eligibility criteria
Enable the client to correct a mistake at any time prior to entering into a contract
Where the firm offers an insurance of persons contract that is likely to replace another contract and is unable to proceed with the replacement through its digital space, the firm must interrupt such offer, and provide the information as it would have been done in the presence of a representative[7]
Suspend the action initiated through the digital space when no representative can interact immediately with a client who asks to interact with a representative
Ensure that the information provided by the client is kept in a manner that ensures its confidentiality and security

Prohibitions

It is forbidden, through your digital space:

To present advertising unrelated to the product offered
To automatically make a choice for the client regarding the products offered
To exclude or limit your liability to the client relating to the proper operation or reliability of your digital space or the accuracy of the information presented thereon

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

Obligations of insurers for insurance products offered through a distributor

A distributor is 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 or secures a client's adhesion in respect of such an insurance product.[9]

Information to be provided to the AMF

Before offering an insurance product through a distributor:

- A list of distributors[10]
- A list of the contracts offered by a distributor, including a description of the insurance coverage provided by those contracts[11]
- The hyperlink to access the distributor's offer through the Internet
- The contact information of the insurer's assistance service

Annually, for each product offered through a distributor:

- The number of insurance policies and certificates issued and the amount of premiums written
- The number of claims and the amount of indemnities paid
- The number of rescissions and cancellations
- The remuneration paid to all distributors and third parties to which the insurer has entrusted the performance of the obligations of an insurer with respect to the distribution of a product through a distributor

Documents and information to be provided to the client

The notice of free choice
The notice of specific consent
The notice of rescission of an insurance contract
The fact sheet
The product summary[12]

As soon as a contract is entered into:

- A summary of the information collected from the client
- The policy, the insurance certificate or the temporary insurance

Prohibitions

With respect to replacement insurance for insured vehicles or insured parts and with respect to the life, health and employment insurance of a debtor or investor, no insurer may[13]:

Enable the distributor to keep its remuneration within a time period not commensurate with the term of the product, which time period may not, however, be less than 180 days
Pay to the distributor a bonus or a share in the profits based on contract experience
Set different commission rates applicable to a distributor for products with similar insurance coverage

Other changes effective June 13, 2020

For Internet offers you must:

- Make a specimen of the policy for each product offered and any available endorsement available on your digital space
- Adopt a procedure for the design, use and maintenance of your digital space and ensure its implementation

For each insurance product offered by a distributor, the insurer must make available on its website:

- A specimen of the insurance policy or insurance certificate and any available endorsements
- The product summary[14]

For the offer of insurance products by a distributor, the insurer will have to:

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

Adopt and implement procedures that enable the supervision and training of its distributors
Provide training to its distributors covering the topics listed in the RADM

Penalties

Certain breaches of your obligations may have administrative and criminal consequences that may be imposed at the initiative of the AMF. The AMF has broad powers to carry out preventive inspections and inquiries to demonstrate that infractions have been committed. Consistent with the consumer protection objectives of Bill 141, the ARRFS now provides for greater protection for those who report an offence and much stiffer fines for those who obstruct inspections and inquiries.

It should also be noted that certain contraventions of the ARDFPS or the RADM can lead to the cancellation or revocation of the firm's registration. Administrative monetary penalties of up to $2,000,000 may also be imposed by the Financial Markets Administrative Tribunal. It is therefore essential that you be aware of and comply with your new obligations under the *Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*.

---

1. S.Q. 2018, c. 23.
2. CQLR, c. D-9.2, r. 16.1.
3. The term "firm" is used for brevity, but the information in this bulletin also applies to independent partnerships.
4. Most of these amendments can be found in the *Insurers Act*, CQLR, c. A-32.1 (the "IA"); this act replaces the *Act respecting insurance*, CQLR, c. I-21. A-32, the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2 (the "ARDFPS"), and the *Act respecting the regulation of the financial sector*, CQLR, c. E-6.1 (the "ARRFS": the *Act respecting the Autorité des marchés financiers*, which has been renamed)
5. Chapter II of the RADM mainly provides the framework applicable to insurance firms and insurers offering products online via a transactional website.
6. This requirement is subject to a transitional period of one year ending June 12, 2020.
7. In accordance with section 22 of the *Regulation respecting the pursuit of activities as a representative* (chapter D-9.2, r. 10.)
8. Chapter III, of the RADM provides the framework applicable to insurers that offer their products through a distributor.
9. ARDFPS, s. 408.
10. The insurer must, without delay, inform the Authority of any change to this list.
11. The insurer must, without delay, inform the Authority of any change to this list.
12. The distribution guide filed with the AMF before June 13, 2019 can be used until June 12, 2020 and until then, delivery of the guide will be equivalent to the delivery of the summary and the fact sheet.
13. In accordance with sections 424 and 426 of the ARDFPS, these insurance products are deemed to be insurance products which relate solely to goods.
14. The distribution guide that can be used until June 12, 2020 must be currently accessible on the Insurer's website.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.