Three key points about the *Regulation respecting damage insurance brockerage*

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On December 13, 2019, the *Regulation respecting damage insurance brokerage* (the "Regulation"), adopted under the *Act respecting the distribution of financial products and services* ("ARDFPS"), came into force.

The Regulation includes the following changes:

New titles for firms and qualification requirements;
New obligations for damage insurance brokers; and
New disclosure requirements

New titles for firms and qualification requirements

The Regulation amends the *Regulation respecting the registration of firms, representatives and independent partnerships* by creating two new titles, namely "damage insurance brokerage firm" (hereinafter "**Brokerage Firm**") and "damage insurance agency" (hereinafter "**Agency**").

To qualify as a Brokerage Firm, a firm must meet the following conditions:

It must not be an insurer; and

Its capital must comply with section 150 of the ARDFPS, which stipulates that no financial institution, financial group or related legal person may hold an interest allowing it to exercise more than 20% of the voting rights attached to the shares issued by the firm in question or an interest representing more than 50% of the value of the firm's equity capital.

To qualify as an Agency, a firm must meet the following

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conditions:

- It must be bound by an exclusive contract with a single insurer; and
- The natural persons through whom it pursues activities, if any, must be damage insurance agents.

It should be noted that neither an independent representative nor an independent partnership may act as an Agency. As for a firm that does not meet the conditions to qualify as a Brokerage Firm, it must register as an Agency and abide by the conditions that apply to Agencies.

Firms registered in damage insurance have until March1, 2020, to submit a qualification form to the Autorité des marchés financiers ("**AMF**"). The AMF has confirmed that it will send one of the following notices to all registrants by mid-March 2020:

- A notice confirming registration as an Agency or Brokerage Firm; or
- A notice of change giving the firm in question ninety (90) days to comply as an Agency.

When the 90-day period expires, if applicable, the firm will be registered as an Agency, and the title of its representatives will be changed to "agent," unless they are attached to another Brokerage Firm. Such representatives will not be allowed to hold the titles of "agent" and "broker" at the same time.

New obligations for damage insurance brokers

Section 38 of the ARDFPS provides that a damage insurance broker offering insurance products directly to the public must be able to demonstrate the ability to obtain quotes from at least three (3) insurers that are not part of the same financial group.

Section 1 of the Regulation specifies that this obligation applies to brokers offering automobile or home insurance products (property and civil liability insurance on a principal residence that an insured owns or rents). This means that commercial insurance brokers are not subject to this obligation.

New disclosure requirements

A damage insurance broker who directly offers automobile or home insurance products, as described above, to the public, is now subject to a disclosure obligation.

According to section 2 of the Regulation, before inquiring into a client's needs in accordance with the obligation set out in section 27 of the ARDFPS, a broker must disclose to the client the name of the insurer to which the broker, as an independent representative, or the firm or independent partnership on behalf of which the broker is acting pays 60% or more of the personal-lines damage insurance premiums.

This requirement exempts a broker from disclosing the names of insurers with which the broker or the firm or independent partnership on behalf of which the broker is acting has a business relationship, and from the obligation to confirm said disclosure in writing (obligations set out in sections 4.8, 4.10(2) and 4.13 of the *Regulation respecting information to be provided to consumers*).

Summary

The amendments regarding firm qualification and disclosure requirements are intended to ensure transparency with respect to business relationships between registrants and insurers.

The draft version and current version of the Regulation differ significantly in relation to the way in

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which these two components are set out. Following consultation sessions and various publications, the disclosure obligation was eased and the concept of hybrid agency was removed.

Although the change in qualification only directly affects firms, the form issued by the AMF must be completed by all registrants, including independent partnerships and independent representatives, to confirm that they comply with the requirements that apply to them.

All damage insurance registrants should thus take note of and set aside time for the AMF online qualification form, which must be completed by March 1, 2020, at the latest.

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