

ANNEX II

to the Local Law relating to Book V of the Insurance Code applicable in French Polynesia

BOOK V INSURANCE DISTRIBUTORS

(replaced, LP n° 2024-10 of 02/07/2024 art LP 4 JOPF of 02/07/2024 p. 4321 NS)

TITLE 1: INSURANCE DISTRIBUTION

Chapter 1: Scope of Application, Definitions, and Professional and Organizational Requirements

Section I: Scope and definitions

Article LP 511-1 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - Insurance distribution is the activity of providing recommendations on insurance contracts, presenting, proposing, or assisting in the conclusion of such contracts, or carrying out other preparatory work for their conclusion, or contributing to their management and execution, particularly in the event of a claim.

Also considered as insurance distribution is the provision of information on one or more insurance contracts based on criteria chosen by the policyholder or member on a website or through other means of communication, and the establishment of a ranking of insurance products including a comparison of prices and products, or a premium discount, when the policyholder or member can conclude the contract directly or indirectly through the website or by other means of communication.

For the purposes of this book, membership in a mutual insurance scheme or a collective contract is deemed equivalent to an insurance contract.

II. - The following activities are not considered insurance distribution within the meaning of I:

1° The provision of information on an occasional basis in the context of another professional activity, where the provider does not take any further steps to assist in the conclusion or execution of an insurance contract;

2° The activity consisting exclusively of managing, assessing, and settling claims;

3° The mere provision of data and information on potential policyholders to insurance intermediaries or insurance companies, where the provider does not take any further steps to assist the policyholder or member in concluding an insurance contract;

4° The mere provision of information on insurance products, on an insurance intermediary, or on an insurance company to potential policyholders, where the provider does not take any further steps to assist the policyholder or member in concluding an insurance contract.

III. - An insurance distributor is any insurance intermediary, any ancillary insurance intermediary, or any insurance company referred to in Article LP 310-2.

An insurance intermediary is any natural or legal person other than an insurance company and its staff and other than an ancillary insurance intermediary, who, for remuneration, engages in or carries out insurance distribution activities.

An ancillary insurance intermediary is any person other than a credit institution, an investment firm, or a financing company who, for remuneration, engages in or carries out insurance distribution activities, provided that the following conditions are met:

1° Insurance distribution does not constitute the principal professional activity of that person;

2° The person distributes only insurance products that are complementary to a good or service;

3° The insurance products concerned do not cover life insurance or civil liability risks, unless such coverage is complementary to the good or service provided as part of the principal professional activity of the intermediary

IV. - For insurance distribution activities, the employer or principal is civilly liable, in accordance with the provisions of Article 1384 of the Civil Code as applicable in French Polynesia, for damage caused by the fault, imprudence, or negligence of their employees or agents acting in such capacity, who are considered, for the purposes of this article, as employees, notwithstanding any agreement to the contrary.

Article LP 511-2 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

For the purposes of Article LP 511-1, the presentation, proposal, or assistance in the conclusion of an insurance operation is considered to include any act by a natural or legal person to solicit or collect the subscription to a contract or the adherence to such a contract, or to orally or in writing explain to a potential policyholder or member, for the purpose of such subscription or adherence, the terms of coverage of a contract.

The preparatory work for the conclusion of an insurance contract referred to in I of Article LP 511-1 includes, on the one hand, all activities related to the animation of networks of insurance distributors or the organization by an insurance intermediary of the network of insurance intermediaries or ancillary insurance intermediaries it uses, and, on the other hand, all analysis and advisory work carried out with a view to the presentation, proposal, or conclusion of a contract. They do not include activities involving the provision of information or advice on an occasional basis in the context of a professional activity other than that mentioned in the first paragraph.

Article LP 511-3 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - The activity of distribution as an insurance intermediary or ancillary insurance intermediary may only be carried out for remuneration by the following categories of persons:

1° Insurance brokers, natural persons and companies registered in the Trade and Companies Register in French Polynesia for insurance brokerage activities. These persons carry out distribution in accordance with the modalities mentioned in paragraph (b) or (c) of II of Article LP 521-2;

2° General insurance agents, natural or legal persons, holding a mandate or temporarily appointed for a maximum period of two years, non-renewable, to perform the functions of a general insurance agent. These persons carry out distribution in accordance with the modalities mentioned in paragraph (a) of II of Article LP 521-2;

3° Insurance agents, self-employed natural persons and legal entities other than general insurance agents, mandated for this purpose by an insurance company. These persons carry out their activities in accordance with the modalities mentioned in paragraph (a) or (b) of II of Article LP 521-2;

4° Mandated insurance intermediaries, self-employed natural persons and legal entities mandated by a natural or legal person mentioned in 1°, 2°, and 3° above.

5° Salaried natural persons appointed for this purpose:

- a) Either by an insurance company;
- b) Or by a natural or legal person mentioned in 1° above;
- c) Or by a natural or legal person mentioned in 2° above;
- d) Or by a natural or legal person mentioned in 3° above;
- e) Or by a natural or legal person mentioned in 4° above.

The activity of the persons referred to in 3° and 4° of this article is limited to the presentation, proposal, or assistance in the conclusion of an insurance operation within the meaning of Article LP 511-1, and possibly to the physical collection of premiums or contributions, and, in addition, with respect to life insurance and capitalization, to the physical delivery of sums due to policyholders or beneficiaries.

This limitation does not apply to:

- Credit institutions and financing companies as defined in Article L 511-1 of the Monetary and Financial Code;
- Persons exercising mandates in maritime, river, or air transport insurance, excluding all other lines of business.

II. - An intermediary may operate under several categories among those mentioned in 1° to 4° of I of this article.

Article LP511-4 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - The remuneration referred to in III of Article LP 521-1 shall mean any commission, fee, any other type of payment, or any benefit of any kind, economic or otherwise, proposed or offered in connection with insurance distribution activities.

II. - Remuneration allocated for distribution activities may only be retroceded, in whole or in part, to one of the intermediaries referred to in I of Article LP 511-3.

At the request of the latter, the intermediary shall disclose to the natural or legal person considering subscribing to or joining an insurance contract due to their professional activities the amount of the commission and any other remuneration paid by the insurance company for the proposed contract. This obligation applies when the intermediary operates under the modalities provided for in paragraph (c) of II of Article LP 521-2 and presents, proposes, or assists in concluding a contract for that person, where the annual premium exceeds the amount set by an order issued by the Council of Ministers.

III. - The above provision does not prevent the retrocession of a referral commission to introducers whose role is limited to connecting the policyholder and the insurer and one of the intermediaries referred to in Article LP 511-3, or to referring one to the other.

Section II: Professional Requirements

Article LP 511-5 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - To protect the interests of potential policyholders or members, insurance distributors and their staff whose activities consist in providing recommendations on insurance contracts, presenting, proposing, or assisting in the conclusion of such contracts, or carrying out other preparatory work for their conclusion, must possess, prior to commencing their activity, the appropriate knowledge and skills enabling them to fulfil their duties and meet their obligations adequately.

II. - Insurance intermediaries and the staff of insurance companies, as well as the staff of insurance intermediaries carrying out the activities mentioned in I, shall comply with the requirements for continuous professional training and development to maintain an adequate level of performance corresponding to the function they hold and the relevant market.

III. - Persons within the management structure of the companies referred to in I and II who are responsible for the distribution of insurance products, as well as all other persons directly involved in insurance distribution, must possess the professional knowledge and skills necessary to perform their tasks.

IV. The persons referred to in II and III shall demonstrate compliance, by themselves and, where applicable, by their employees, with the applicable requirements for professional knowledge and skills set out in I and II of this article.

V. An order issued by the Council of Ministers shall specify the modalities for implementing this article.

Article LP 511-6 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Insurance intermediaries, natural persons working for an insurance company or an insurance intermediary who are responsible for insurance distribution activities, as well as staff directly involved in such activities, must possess the integrity necessary for their functions, this condition being verified in accordance with the provisions of I to V of Article LP 331-3 applicable to them.

Persons responsible for ancillary insurance distribution shall also meet this integrity requirement.

Section III: Organizational Requirements

Article LP 511-7 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

To ensure compliance with the requirements set out in Articles LP 511-5 and LP 511-6 by staff engaged in insurance distribution activities, insurance companies shall approve, implement, and regularly update their appropriate internal policies and procedures. They shall establish within their organization a function responsible for ensuring the proper implementation of the approved policies and procedures and shall communicate to French Polynesia the name of the person responsible for this function.

These companies shall create, maintain, and update registers containing all relevant documents regarding the application of the provisions of Articles LP 511-5 and LP 511-6.

Article LP 511-8 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

All persons required to receive or disclose information in connection with the provisions of this chapter shall be bound by professional secrecy under the conditions set out in Article LP 322-8.

Chapter II: General Principles Relating to Insurance Intermediation

Section I: Registration Obligation

Article LP 512-1 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - Insurance intermediaries and ancillary insurance intermediaries as defined in article LP 511-1 must be registered in a single register of intermediaries, which is freely accessible to the public.

The same intermediary may not have more than one registration number.

Decisions relating to registration in the register are made by French Polynesia.

Registration, which may be renewed each year, on a date set by order of the Council of Ministers, may be subject to the prior payment of annual registration fees set by order of the Council of Ministers.

An order issued by the Council of Ministers specifies the conditions for registration on this register and determines the information that must be made public.

II. - When French Polynesia decides not to examine applications for registration and maintain the register itself, it may entrust this public interest task to a body with legal personality and made up of members from the fields of insurance, banking and finance.

In the event that the collection of registration fees is also entrusted to a legal entity other than French Polynesia, this task shall be subject to a financial mandate under the conditions laid down by the regulations in force in French Polynesia.

III. - The provisions of this article shall not apply to natural persons who are employees of an insurance intermediary or of an insurance intermediary on an ancillary basis.

Article LP 512-2 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Insurance companies that use the services of intermediaries must ensure that such intermediaries are registered in the single register of insurance intermediaries.

Section II: Other Conditions for Access and Practice.

Article LP 512-3 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I- Upon their registration or the renewal thereof, insurance intermediaries and ancillary insurance intermediaries shall provide French Polynesia with the information necessary to verify the conditions relating to access to and practice of the intermediation activity.

II- Insurance intermediaries and ancillary insurance intermediaries shall promptly inform French Polynesia when they no longer meet the conditions for access to and practice of the intermediation activity. In such cases, French Polynesia shall order the removal of the corresponding registration.

Subsection 1: Integrity Conditions

Article LP 512-4 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The provisions of Article LP 331-3 shall apply to insurance intermediaries and ancillary insurance intermediaries who are natural persons acting in their own name, persons who manage, administer, or direct legal entities acting as intermediaries, persons who are members of a supervisory body, have signing authority on behalf of, or are directly responsible for intermediation activities within these intermediaries, as well as employees of insurance companies who are directly responsible for intermediation activities.

Subsection 2: Professional Competence Conditions

Article LP 512-5 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Insurance intermediaries and ancillary insurance intermediaries who are natural persons acting in their own name, persons who manage, administer, or direct legal entities acting as intermediaries or insurance companies, persons who are members of a supervisory body, have

signing authority on behalf of, or are directly responsible for intermediation activities within these intermediaries, as well as employees of these intermediaries or companies, shall be subject to professional competence conditions that take into account the activities carried out by these persons and the products distributed.

These conditions shall be demonstrated by:

- Either the completion of a professional internship;
- Or professional experience;
- Or a diploma, title, or certificate.

An order issued by the Council of Ministers shall specify the modalities for implementing this article, taking into account the nature of the activities carried out by these persons and the products distributed.

Subsection 3: Professional Liability Insurance

Article LP 512-6 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - Every insurance intermediary and ancillary insurance intermediary shall take out a professional liability insurance policy covering the financial consequences of their professional liability. They shall be exempt from this obligation:

- If such insurance or an equivalent guarantee is already provided to them by an insurance company, an insurance intermediary, or another company on whose behalf they act or by whom they are mandated;
- Or if these companies or this intermediary assume full responsibility for their actions.

In all cases, intermediaries must be able to demonstrate their compliance with this obligation at any time.

An order issued by the Council of Ministers shall determine:

- the minimum amount of coverage under the insurance contract per claim and per year for a single intermediary;
- The maximum rate of any deductible per claim.

II. - The insurance policy, the coverage of which takes effect on the date set pursuant to Article LP 512-1 for a period of twelve months, shall be tacitly renewed on the 1st of January of each year.

Any suspension of coverage, termination of the tacit renewal, or cancellation of the insurance policy shall be promptly notified by the insurer and the intermediary to French Polynesia.

III. - Any person with an interest may request from the competent administrative department the name of the company that issued the professional liability insurance certificate to the intermediary, as well as the references of the insurance policy to which the certificate relates.

Subsection 4: Financial Guarantee

Article LP 512-7 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - Every insurance intermediary and ancillary insurance intermediary who, even occasionally, collects funds intended to be paid either to an insurance company or to policyholders, or who uses a non-agent representative to transmit such funds, must obtain a financial guarantee specifically allocated to the reimbursement of these funds to policyholders, unless such representative can themselves provide such a guarantee.

This guarantee may only result from a surety bond issued by a credit institution, a financing company, or an insurance company governed by this Code.

An order issued by the Council of Ministers shall determine the minimum amount of the financial guarantee and the conditions for its implementation.

II. - The guarantor may require the submission of all accounting records and documents.

III. - Any person with an interest may request from the competent administrative department the name of the company that issued the professional financial guarantee certificate to the intermediary, as well as the references of the contract to which the certificate relates.

IV. - The surety bond, which takes effect on a date set by an order issued by the Council of Ministers for a period of twelve months, shall be tacitly renewed on the 1st of January of each year. The amount of the guarantee shall be revised upon the renewal of the bond.

V. - The obligation provided for in this article shall not apply to payments for which the intermediary has received a written mandate from an insurance company expressly authorizing them to collect premiums or contributions and, where applicable, to settle claims.

In all cases, intermediaries must be able to demonstrate their compliance with this obligation at any time.

Article LP 512-8 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The guarantee shall cease due to the termination of the contract at its expiry. It shall also cease upon the death or cessation of activity of the guaranteed person or, in the case of a legal entity, upon its dissolution. Any suspension of the guarantee, termination of the bond, or cessation of the guarantee shall be promptly notified by the guarantor and the intermediary to French Polynesia.

In no case shall the guarantee cease before the expiration of a period of three clear days following the date on which French Polynesia is informed by the guarantor of the cessation of the guarantee.

In all cases provided for in the preceding paragraphs, the cessation of the guarantee shall not be enforceable against the creditor for claims arising during the validity period of the surety bond.

Chapter III: Derogations from General Principles for Ancillary Insurance Intermediaries

Article LP 513-1 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The obligations mentioned in this book shall not apply to ancillary insurance intermediaries when all the following conditions are met:

1° The insurance contract is complementary to the good or service provided by a supplier and covers:

- a) Either the risk of malfunction, loss, including theft, or damage to the good or non-use of the service;
- b) Or damage to or loss of luggage, including theft, and other risks related to travel;

2° The amount of the insurance premium calculated on an annual basis does not exceed an amount defined by an order issued by the Council of Ministers, with a maximum limit of XPF 80,000;

3° By derogation from 2°, where the insurance contract is complementary to a service mentioned in 1° and the duration of this service is equal to or less than three months, the amount of the premium per person does not exceed an amount defined by an order issued by the Council of Ministers, with a maximum limit of XPF 30,000.

Article LP 513-2 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The company or insurance intermediary that carries out distribution activities through an ancillary insurance intermediary referred to in Article LP 513-1 shall ensure that:

1° Information is made available to the potential policyholder or member, prior to the conclusion of the contract, on the identity and address of the intermediary, as well as on the complaint procedures;

2° Appropriate and proportionate measures are taken to ensure compliance with the provisions of Article LP 521-1 and to take into account the requirements and needs of the client before proposing the contract;

3° The insurance product information document referred to in Article L 112-2 of this Code is provided to the potential policyholder or member before the conclusion of the contract;

4° The potential policyholder or member is informed of the possibility of purchasing the good or service provided by the supplier separately.

Chapter IV: Control of Access and Practice Conditions for Distribution Activities

Section I: Justifications Required from Persons Authorized to Present Insurance or Capitalization Operations

(None)

Section II: Special control procedures for the conditions of professional competence.

(None)

Section III: Special control procedures for integrity requirements.

(None)

Section IV: Miscellaneous Provisions and Penalties.

Article LP 514-1 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Violations of the provisions of Chapter II of Title 1 of Book V is punishable by two years' imprisonment and a fine of XPF 715,990, or by one of these two penalties only.

Article LP 514-2 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Presenting contracts for subscription or having contracts subscribed on behalf of a company not authorised to carry out the corresponding operations in French Polynesia is punishable by a fine of XPF 357,995. In the event of a repeat offence, a six-month prison sentence may also be imposed.

The fine provided for in this article shall be imposed for each contract proposed or subscribed, but the total fines incurred may not exceed XPF 715,990.

Article LP 514-3 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Where a person referred to in Article LP 511-1, other than an insurance company, has failed to comply with a regulatory provision in the area under the supervision of French Polynesia, or has failed to comply with an injunction, French Polynesia may impose one or more of the following administrative penalties on that person or, where applicable, on its directors, partners or third parties with management or administration powers, depending on the seriousness of the breach:

1° Warning;

2° Reprimand;

3° Ban on carrying out certain intermediation transactions and any other restrictions on the exercise of this activity;

- 4° Temporary suspension of one or more directors of the intermediary organisation;
- 5° Compulsory resignation of one or more directors of the intermediation organisation;
- 6° Removal from the register mentioned in article LP 512-1;
- 7° Ban on carrying on the business of intermediation.

The sanctions mentioned in 3°, 4° and 7° may not exceed ten years in duration.

French Polynesia may impose a financial penalty either instead of or in addition to these penalties. The amount of this penalty must be commensurate with the seriousness of the breaches committed, but may not exceed 3% excluding tax of the turnover achieved in French Polynesia by the perpetrator of the practices during the last financial year ended, calculated over a period of twelve months. This maximum is increased to 5% in the event of a further breach of the same obligation within five years of the expiry or limitation period of the previous penalty.

These penalties are imposed and may be publicised in accordance with the conditions laid down in the regulations relating to the implementation of administrative measures and penalties in economic matters.

LP. 514-4 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)
Criminal offenses under this book shall be investigated and recorded under the conditions provided for offenses related to commerce by the Local Law No. 2009-12 of 03 August 2009, relating to the investigation and recording of economic offenses.

LP. 514-5 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)
Breaches of the provisions of this book shall be investigated, recorded, sanctioned, and/or subject to an injunction measure under the conditions provided by the applicable Local Law regarding the investigation and recording of administrative breaches of economic regulations and the implementation of administrative measures and sanctions by the administrative departments of French Polynesia.

TITLE II: INFORMATION TO BE PROVIDED BY DISTRIBUTORS AND CONDUCT RULES

Chapter 1: Provisions Applicable to All Insurance Contracts

Section I: General Principles

Article LP 521-1 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - Insurance distributors shall act honestly, impartially, and professionally, and in the best interests of the policyholder or member.

II- Without prejudice to the regulatory provisions in force relating to consumer information and protection, all information, including advertising communications addressed by the insurance distributor to a potential policyholder or member, must be clear, accurate, and not misleading. Advertising communications must be clearly identifiable as such.

III. - Insurance distributors shall not be remunerated, or remunerate or evaluate the performance of their personnel, in any way that is inconsistent with their obligation to act in the best interests of the policyholder or member. In particular, an insurance distributor shall not make any arrangements by way of remuneration, sales targets or otherwise which might encourage him or his staff to recommend a particular insurance product to a potential policyholder or member when that distributor could offer another insurance product which better meets the requirements and needs of the potential policyholder or member.

Section II: Information to be Provided

Article LP 521-2 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - Prior to the conclusion of an insurance contract, the insurance intermediary shall provide the potential policyholder or member with information relating to their identity, address, registration, complaint procedures, and recourse to a mediation process, as well as, where applicable, the existence of financial ties with one or more insurance companies. They shall also specify whether they provide a recommendation service regarding the insurance contracts they distribute.

II. - Prior to the conclusion of an insurance contract, the insurance intermediary must:

1° Provide indications regarding the provision of this contract:

a) If they are contractually obligated to work exclusively with one or more insurance companies, the intermediary shall indicate this to the potential policyholder or member and inform them of the names of these insurance companies;

b) If they are not contractually obligated to work exclusively with one or more insurance companies but are unable to base their analysis on a sufficient number of insurance contracts offered on the market, the intermediary shall inform the potential policyholder or member of the names of the insurance companies with which they can and do work;

c) If they are not contractually obligated to work exclusively with one or more insurance companies and claim to provide a recommendation service based on an impartial and personalized analysis, they are required to analyse a sufficient number of insurance contracts offered on the market to be able to recommend, based on professional criteria, the contract or contracts that would be most suitable for the needs of the potential policyholder or member;

2° Indicate whether, in relation to this contract, they work:

a) On a fee basis, i.e., in the form of remuneration paid directly by the policyholder or member;

b) On a commission basis, i.e., remuneration included in the insurance premium;

c) On the basis of any other type of remuneration, including any economic benefit, proposed or offered in connection with the insurance contract; or

d) On the basis of a combination of the types of remuneration mentioned in a, b, and c;

3° Where the policyholder or member is required to pay fees, the insurance intermediary shall communicate the amount of such fees or, where this is not possible, the method of calculation.

III. - The policyholder or member shall be informed of changes affecting any of the information mentioned in II if they make payments under the insurance contract after its conclusion, other than ongoing premiums and scheduled payments.

IV. - Prior to the conclusion of an insurance contract, the ancillary insurance intermediary shall provide the potential policyholder or member with information relating to their identity, address, registration, complaint procedures, recourse to a mediation process, and the nature of the remuneration received for the distribution of the contract.

Article LP 521-3 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

When distributing an insurance contract, and prior to the conclusion of this contract, the insurance company shall provide the potential policyholder or member with information relating to its identity, address, status as an insurance company, complaint procedures, and recourse to a mediation process. It shall also inform the potential policyholder or member of the nature of the remuneration received by its staff for the distribution of the contract.

The policyholder or member shall be informed of changes occurring after the conclusion of the insurance contract that affect the information mentioned in the preceding paragraph, if they make payments under the insurance contract after its conclusion, other than ongoing premiums and scheduled payments.

Section III: Conduct Rules

Article LP 521-4 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - Prior to the conclusion of any insurance contract, the distributor referred to in Article LP 511-1 shall specify in writing, based on information obtained from the potential policyholder or member, their requirements and needs, and shall provide them with objective information about the proposed insurance product in a clear, accurate, and non-misleading manner to enable them to make an informed decision.

The distributor shall recommend a contract that is consistent with the requirements and needs of the potential policyholder or member and shall specify the reasons for this recommendation.

II. - Without prejudice to the provisions of I, prior to the conclusion of a specific contract, where the insurance distributor offers the potential policyholder or member a personalized recommendation service, this service shall consist in explaining why, among several contracts or several options within a contract, one or more contracts or options best meet their requirements and needs.

III. - The clarifications mentioned in I and II of this article and in Article LP 522-5, which are based in particular on the information provided by the potential policyholder or member, shall be adapted to the complexity of the proposed insurance contract. These clarifications shall be communicated to the potential policyholder or member in a clear, accurate, and non-misleading manner to enable them to understand the consistency of the proposed contract with their requirements and needs and to make an informed decision.

IV. - Prior to the subscription or adherence to a contract referred to in Article LP 522-1, the distributor shall comply with the provisions of Article LP 522-5, by derogation from I and II of this article.

Article LP 521-5 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The obligations set out in Articles LP 521-2 to LP 521-4 shall not apply to the presentation of a contract covering the risks referred to in Article LP 111-6.

Article LP 521-6 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The communication of information provided by the distributor to the policyholder or member pursuant to Articles LP 521-2 to LP 521-4 and LP 522-1 to LP 522-6 shall be made on paper.

The communication may also be made on a durable medium other than paper, provided that this medium is appropriate to the commercial relationship between the distributor and the policyholder or member and that the latter has chosen this mode of communication after being offered both options by the distributor.

The information mentioned in the first paragraph may also be provided via a website if it is addressed personally to the policyholder or member or if the following conditions are met:

1° The use of this means is appropriate to the commercial relationship between the distributor and the policyholder or member;

2° The policyholder or member has consented to the use of this means;

3° The distributor has notified the policyholder or member electronically of the website address and the location on the website where this information can be found;

4° Access to the aforementioned information on the website is guaranteed for a reasonable period ensuring its availability for consultation by the policyholder or member.

Chapter II: Additional Requirements for Capitalization Contracts and Certain Life Insurance Contracts

Section I: Prevention of Conflicts of Interest

Article LP 522-1 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

In addition to the obligations imposed on them under Articles LP 521-1, LP 521-2, and LP 521-3, the intermediary or insurance company engaged in the distribution of individual life insurance contracts with surrender values or the subscription of capitalization contracts shall implement effective organizational and administrative arrangements to take all appropriate measures to prevent conflicts of interest as defined in Article LP 522-2 from harming the interests of their policyholders. These arrangements shall be proportionate to the activities carried out, the insurance products sold, and adapted to the types of distributor.

Article LP 522-2 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

In the course of their insurance distribution activities, intermediaries and insurance companies shall take all appropriate measures to detect conflicts of interest that may arise between themselves, including with their respective managers and staff, with any person directly or indirectly linked to them by a control relationship, and with their policyholders or members, or between two policyholders or two members, during the exercise of insurance distribution activities.

Where the arrangements put in place by the intermediary or insurance company in accordance with Article LP 522-1 to manage conflicts of interest are not sufficient to ensure, with a reasonable degree of certainty, that the risk of harming the interests of the potential policyholder or member will be avoided, the intermediary or insurance company shall inform the latter, prior to the conclusion of any insurance contract, of the general nature or sources of such conflicts of interest.

Section II: Information to be Provided

Article LP 522-3 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Without prejudice to the provisions of Articles LP 521-1 and LP 521-2, the intermediary or insurance company shall provide the potential policyholder or member, prior to the conclusion of any contract referred to in Article LP 522-1, with the following information:

1° An indication of whether or not they will receive the periodic assessment of the suitability of the recommended investment products to the requirements and needs of policyholders and members, as provided for in Article LP 522-6;

2° Information on the contracts and proposed investment strategies, including appropriate guidance and warnings on the risks inherent in these contracts or certain proposed investment strategies;

3° Information on all related costs and charges to be communicated, including any additional distribution costs not already included in the costs and charges specified in the key information documents, particularly those not caused by the occurrence of an underlying market risk. All such costs and charges shall be presented in an aggregated manner to enable the potential policyholder or member to understand their cumulative effect on the investment return. If requested by the potential policyholder or member, a breakdown of additional distribution costs shall be provided.

This information shall be provided to the policyholder or member regularly, at least annually, during the lifetime of the investment. It shall be presented in a clear, accurate, and non-misleading manner, enabling potential policyholders or members to understand the nature and risks of the insurance-based investment product offered to them and, consequently, to make informed investment decisions.

Article LP 522-4 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Intermediaries or insurance companies shall be deemed to comply with the obligations set out in I of Article LP 521-1, Article LP 522-1, or Article LP 522-2 when they pay or receive fees or commissions, or provide or receive a non-monetary benefit in connection with the distribution of a contract referred to in Article LP 522-1, to or from any party, excluding the policyholder or member or a person acting on behalf of the policyholder or member, only in cases where the payment or benefit:

1° Does not have a negative effect on the quality of the service provided to the policyholder or member; and

2° Does not impair compliance with the obligation of the intermediary or insurance company to act honestly, impartially, and professionally in the best interests of their policyholders or members.

Section III: Conduct Rules

Article LP 522-5 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The intermediary or insurance or capitalization company shall recommend a contract that is consistent with the requirements and needs of the potential policyholder or member and shall specify the reasons for this recommendation. To this end, the intermediary or company shall inquire about the policyholder's or member's financial situation, investment objectives, and their knowledge and experience in financial matters.

The clarifications mentioned in the first paragraph shall be adapted to the complexity of the proposed insurance or capitalization contract and shall enable the determination of the suitability of the proposed contract for the potential policyholder or member.

For contracts with guarantees expressed in units of account, the intermediary or insurance or capitalization company shall communicate, prior to the subscription or adherence to a contract referred to in Article LP 522-1, detailed information specifying, for each unit of account, the gross performance, net performance, and fees charged over a period defined by an order issued by the Council of Ministers. This information shall include, in particular, any commission retrocessions received in connection with the financial management of the assets representing the commitments expressed in units of account by the insurance company, its delegated managers, including in the form of a collective investment scheme, or the depositary of the contract's assets under conditions defined by an order issued by the Council of Ministers.

Where the intermediary or company recommends bundled services or products, they shall verify the suitability of the bundled offer as a whole.

II.- Without prejudice to the provisions of I, prior to the subscription or adherence to a contract referred to in Article LP 522-1, and where a personalized recommendation service is provided by the intermediary or insurance or capitalization company to the potential policyholder or member, this service shall consist of explaining why, among different contracts or different investment options within a contract, one or more contracts or options are more suitable to their requirements and needs, and in particular more aligned with their risk tolerance and ability to bear losses.

Article LP 522-6 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Where an intermediary or insurance company has informed the policyholder or member that they would conduct a periodic assessment of the suitability of the recommended investment products, this assessment shall include an updated statement on how the insurance-based investment meets the preferences, objectives, and other characteristics of the policyholder or member.

Where the policyholder or member does not provide the information mentioned in Article LP 522-5, the intermediary or insurance or capitalization company shall warn them prior to the conclusion of the contract.

TITRE III: SPECIAL PROVISIONS FOR INSURANCE BROKERS AND BROKERAGE COMPANIES

Single Chapter

Article LP 530 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Uninsured persons who have made payments to a broker or brokerage company registered in the register referred to in Article LP 512-1, relating to contracts subject to an apparent commitment by one of the companies mentioned in Article LP 310-1, shall be guaranteed by said company when the professional liability insurance of the broker or brokerage company that received these payments cannot be invoked.

The insurer that has provided the guarantee under the provisions of the preceding paragraph shall be subrogated to the rights and actions of the insured under those of Article LP 512-7.

TITLE IV: SPECIAL PROVISIONS FOR GENERAL INSURANCE AGENTS

Single Chapter.

Article LP 540 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The status of general insurance agents and its amendments, after being negotiated and established by the relevant professional organizations, shall be approved by an order issued by the Council of Ministers.

TITLE V: SPECIAL PROVISIONS FOR AGENTS WHO ARE NOT GENERAL INSURANCE AGENTS

Single Chapter.

Article LP 550 (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

For the purposes of I of article LP 512-1, agents who are not general insurance agents, who carry out their activity in the name and on behalf of an insurance company and under its full responsibility, and who do not collect either premiums or sums intended for clients, may be registered in the single register of intermediaries by the company which appoints them. This company is responsible for verifying that they meet the conditions for taking up and pursuing the activity of intermediary.

Where French Polynesia has entrusted an organisation with the task of keeping the register, the insurance company is obliged to provide this organisation, at its request, with any information required to verify the conditions of access to and practice of agents other than general insurance agents whose registration it has examined.

An order issued by the Council of Ministers shall specify the modalities for implementing this article.