



## Reminder of principles Beverage alcohol sales and sample stamp

August 25, 2016

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### To all agents

The principles applicable to beverage alcohol sales were published by the Société des alcools du Québec (hereinafter the “SAQ”) in the fall of 2009 and a reminder was distributed in May 2014. As a large number of agents have begun doing business in the years since, we felt it was appropriate to update the information on this subject and to include information about products to which an *échantillon – revente interdite* stamp (hereinafter the “sample stamp”) has been affixed.

The main topics covered by this reminder of principles are the following:

- The agent’s role and limits;
- Use of the sample stamp;
- Risks for permit holders (violation of applicable laws).

### The agent’s role

To avoid any misunderstanding of the role and powers of agents with respect to the sale of beverage alcohol, the SAQ wants to remind them of the basic principals regarding the sale of bottled alcoholic beverages in Quebec. These principles are embodied in Quebec law and codified by a detailed regulatory system that is controlled by bodies other than the SAQ.

Setting aside the main exceptions, which involve the holders of grocery permits and certain producers that hold artisanal or industrial production permits, the SAQ is the only entity allowed to sell bottled alcoholic beverages in Quebec. In other words, all sales of beverage alcohol products, which must be either listed in the SAQ catalogue or available through the private order process, must be between the SAQ and the purchaser. This means that the SAQ takes the orders, bills the customers, receives payment of the retail price and delivers the products to the customers.

Accordingly, agents may not acquire beverage alcohol products and sell them to anyone. Agents who purchase products in order to reach sales quotas or who buy private order products because they can no longer be stored in the SAQ’s warehouses may not resell the products with violating Quebec law.

However, agents may be authorized by the SAQ to carry out certain activities on its behalf. To qualify for such an authorization, an agent must represent in Quebec at least one product sold in the SAQ network or, failing that, must meet the following conditions:

- a) The agent must submit a private order application;
- b) When submitting his or her private order application, the agent must provide to the SAQ a letter in which the supplier of the ordered product informs the SAQ that the agent represents its product in Quebec;
- c) The agent's company must be listed in the Quebec government's Registre des entreprises individuelles, des sociétés et des personnes morales and the registration documents must state that the company does business in Quebec in the field of promoting the sale of beverage alcohol and has a physical address in Quebec;
- d) The agent has obtained an authorization, issued by the SAQ, to act as an agent.

Any person who wishes to receive such an authorization from the SAQ must request it by emailing [sara@saq.qc.ca](mailto:sara@saq.qc.ca).

This authorization applies only to soliciting and taking orders from customers, to buying the ordered products for them and directly from the SAQ and to delivering the ordered products or having the products delivered to them. Agents who wish to be remunerated for their services must charge the customer. The amount of this remuneration is agreed upon with the customer and is not subject to the conditions of the authorization. Only agents who hold an authorization from the SAQ are allowed to carry out these activities and collect remuneration.

Even after an authorization has been obtained, significant restrictions apply. The only beverage alcohol products that an agent who holds an authorization can acquire are those included in a specific customer order. The agent may not store the products on the agency's premises or elsewhere; the products must be delivered immediately to the customer. The agent—and even more so, any agent who does not hold an authorization—may not acquire products and store them in the expectation of selling them to another person.

### **The sample stamp**

The police forces responsible for enforcing the laws respecting alcoholic beverages have, in recent years, noted that a number of agents are inappropriately or even abusively using stamped samples of beverage alcohol products. Such practices expose permit holders to criminal and administrative penalties, including the loss of their permit. In fact, such containers have repeatedly been confiscated at permit holders' establishments in recent years and cases are currently pending before the courts and the Régie des alcools des courses et des jeux.

This situation appears to be relatively new, as the number of stamped sample containers found on permit holders' premises was marginal until the most recent changes to the sample policy were implemented. It now appears to be common practice. It also appears that agents and permit holders are not fully aware of the rules governing the use of these containers.

First, it is important to remember that, under section 84 of the *Act respecting Offences Relating to Alcoholic Beverages*, permit holders are forbidden to keep in their establishments containers of beverage alcohol to which the SAQ's stamp is not affixed. This provision is supplemented by other sections of the same act and of the *Act respecting liquor permits*, which provide that permit holders may not keep or allow in their establishments any beverage alcohol products that have not been acquired directly from the SAQ in accordance with their permit.

In view of these provisions, an agent's bringing to a permit holder's establishment a bottle of beverage alcohol that he\* has purchased from the SAQ may place the permit holder in violation of the applicable laws and regulations, as the bottle will not be stamped. Yet a significant part of agents' work is to show the products they represent in order to convince permit holders to buy them from the SAQ. And it goes without saying that this is difficult to accomplish without having the person in charge of selecting wines and spirits for the permit holder taste the products, which is usually done at the permit holder's establishment.

That is why, many years ago, the SAQ created the sample stamp. Sample stamps look very similar to the duty stamp affixed to all containers purchased by a permit holder, except that they contain the following phrase: "*échantillon – revente interdite*" (sample – resale prohibited).

Does this mean that any product on which a sample stamp is found can be used without restriction? The answer to that question is, of course, no.

The rule is that the agent must not leave a container bearing a sample stamp in a permit holder's establishment after his visit. As the sole purpose of the sample is to introduce the product to the employees of the establishment who are responsible for selecting its wines and spirits, the agent must leave with the opened bottle once the tasting is over.

In exceptional cases, a container may be left at a permit holder's establishment—for example, if the establishment's sommelier is not there when the agent visits. However, this practice should be avoided because it puts the permit holder at risk in the event of a visit by enforcement officers. The principle that should guide the agent is to leave with the container when the tasting is finished. Accordingly, in order not to leave sample containers in the establishment, the agent should make sure beforehand that the sommelier will be present when he visits or should pay a return visit at a time when the sommelier is present. If it is absolutely impossible to do as has just been described, the agent should not leave more containers than is strictly necessary to accomplish his purpose, which is to say, only one bottle in nearly all cases.

In addition, the agent may not, under any circumstances, give containers of beverage alcohol products that bear a sample stamp to permit holders as a gift, nor may he sell such containers to them, as that is forbidden by law. Such behaviour is clearly not an aim of the sampling policy. Moreover, it favours the underground economy and exposes the permit holder to criminal and administrative penalties.

Lastly, no sample container may be left in an establishment for tasting by the establishment's customers.

### **Risks for the permit holder**

It should be noted that enforcement officers who are assigned to inspecting permit holders' establishments and who find containers bearing the sample stamp will seize the containers

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\*The systematic use of the masculine to refer to persons of either gender is intended solely to facilitate reading.

unless there is clear evidence that the containers are being used in conformance with all laws and regulations. For example, the officers will seize containers in the following situations:

- When the container is a brand found on the wine list;
- When a product from a sample container is being sold or served by the permit holder to its customers;
- When there are an abnormally high number of sample containers of the same brand or of different brands.

Obviously, the preceding list is not exhaustive. However, it clearly illustrates that non-compliance with the strict framework governing the use of samples of beverage alcohol products risks having significant consequences for permit holders. It is therefore the responsibility of agents, as stakeholders in the beverage alcohol trade in Quebec, to act in full compliance with the letter and spirit of the sampling policy.

We also want to remind you that, in accordance with the authorization conditions issued by the SAQ to its agents, non-compliance with the directives and procedures issued by the SAQ may result in revocation of the authorization. We are therefore relying on the cooperation of all agents to ensure these rules are followed.

In light of this reminder of various basic principles, we believe agents will be well advised to review their business practices if it appears their activities go beyond the binding legal framework governing beverage alcohol sales in Quebec.

For more information, please contact the Service d'Assistance aux Relations d'Affaires (SARA), our business relations assistance service, at [sara@saq.qc.ca](mailto:sara@saq.qc.ca) or 514 254-2711.