

IMPLEMENTATION DIRECTIVE OF THE AUTORITÉ DES MARCHÉS FINANCIERS PERTAINING TO THE DEFINITION AND EXCLUSIVE ACTIVITIES OF CLAIMS ADJUSTERS

This directive replaces the directive published in the Bulletin of the Autorité des marchés financiers on October 26, 2007. In the event of contradictions with other documents, this directive will prevail.

We note that the Chambre de l'assurance de dommages ("ChAD") also publishes a guide in table form entitled "Guide to the Sharing of Roles and Responsibilities" which is intended for industry professionals and outlines activities that are reserved exclusively for claims adjusters and activities that may be carried out by service providers or employees working by phone, provided that they adhere to certain conditions authorized by this directive. The ChAD prepared the table with the co-operation of claims adjusters who work on behalf of firms and insurers. It can be accessed via the ChAD website at www.chad.qc.ca.

Claims adjustment is exclusively reserved for persons holding claims adjustment certification as conferred by the *Autorité des marchés financiers* ("AMF"). Any person who acts as a claims adjuster without holding such certification is committing an offence.

Insurers are required to entrust the settlement of claims to authorized persons, either by:

- employing their own certified personnel, and holding registration as a firm (the firm is therefore responsible for ensuring that its personnel hold claims adjustment certification); or
- assigning claims settlement to claims adjustment firms or independent partnerships, or to certified independent representatives (in which case insurers must ensure that they are registered with the AMF, and these firms or partnerships are responsible for employing duly certified personnel).

1. EXCLUSIVE ACTIVITIES

Activities reserved exclusively for claims adjusters who hold AMF certification are as follows:

1.1 Investigate claims

The primary objective of an investigation is to determine the cause of loss and related circumstances.

The following functions are part of claims investigations:

- Make initial contact with the insured;
- Secure signature on the consent form authorizing the gathering of information;
- Gather information relating to the loss;
- Take the insured's statement;
- Obtain statements from third parties, including specialists or service providers;
- Visit and inspect the location where the loss occurred;
- Take measurements and photos;
- Mandate and supervise suppliers and specialists;
- Determine whether the conditions of the contract were respected with regard to insured risk;

- Have the non-waiver agreement signed;
- Determine the cause of the loss;
- Provide the insured with explanations relating to insurance coverage and activities carried out during the course of the investigation;
- Review the investigation.

1.2 Estimate damages

This activity involves making judgments about the value of losses. The primary functions are as follows:

- Estimate the amount of damages;
- Establish depreciation of a property;
- Mandate and supervise suppliers and specialists;
- Declare the property a total loss;
- Provide the insured with explanations relating to the damage estimate;
- Review the damage estimate.

1.3 Negotiate claims settlements

The primary objective of this activity is to examine claims with regard to investigations and assessments that have been carried out, and settle claims to the mutual satisfaction of insurers and insureds.

The main functions involved in this activity are as follows:

- Establish the liability of the parties;
- Determine the eligibility of the loss;
- Determine the depreciation that applies to the loss;
- Authorize replacement of property declared to be a total loss;
- Authorize the replacement cost of the property;
- Establish the amount of compensation;
- Mandate and supervise suppliers and specialists;
- Have the “assignment of claim” signed;
- Recommend a settlement to the insurer and obtain the authorization to settle;
- Review the investigation as a whole and authorize the settlement;
- Forward the insurer’s offer to the insured;

- Provide explanations regarding settlement terms and arrangements the insurer intends to make;
- Negotiate a settlement with the insured;
- Settle with the insured;
- Make a payment recommendation to the insurer;
- Obtain a proof of loss or a release;
- Notify the insured that the insurer denies coverage.

2. EMPLOYEES, SUPERNUMERARIES AND SENIOR MANAGERS AUTHORIZED TO CARRY OUT CERTAIN EXCLUSIVE ACTIVITIES

Activities reserved exclusively for claims adjusters may be carried out by other persons under certain conditions. These persons are as follows:

2.1 Supernumeraries, in catastrophic cases

In catastrophic cases, the AMF will allow, for a limited time, firms or independent partnerships registered in the claims adjustment sector to use the services of supernumeraries who are not certified claims adjusters in order to carry out the activities listed in item 1 above where the following three conditions are met:

- The urgency of the situation prevents all persons normally authorized to act as claims adjusters from responding to the needs of all persons who have incurred losses;
- Consumer protection warrants the intervention of supernumeraries; and
- The AMF publishes a notice or press release indicating that the case is catastrophic.

2.2 Employees working by phone

The AMF accepts¹ that the activities listed in item 1 may be carried out by employees of firms or independent partnerships registered in the claims adjustment sector who are not certified claims adjusters where all the following conditions are met:

- These activities are carried out under the direct responsibility and supervision of duly certified claims adjusters;
- These employees are not required to travel outside their normal workplace; and
- These activities occur solely in connection with the processing of any of the following:
 - cases involving repair or replacement of automobile glass,

¹ To protect consumers, the AMF may reconsider such authorization, either specifically, in the case of failure by a firm or independent partnership, or generally, as part of a review of the directive for all firms and partnerships.

- cases subject to application of the *Direct Compensation Agreement*,
- cases in which claims total less than \$2,000.

2.3 Insurance company senior managers²

Senior managers who do not have claims adjustment certification may carry out activities reserved exclusively for claims adjusters—notably the functions listed in item 1.3—where they act solely in their capacity as corporate managers.

First-tier managers, however, must be certified as claims adjusters. First-tier managers are the following in particular: claims managers responsible for claims adjustment operations who are in charge of department managers, reviewers, technical advisers and claims adjusters.

The fact that a person is designated as a senior manager is not sufficient: it is a question of fact. A senior manager is part of senior management. He reports directly to one or more shareholders, the president, the board of directors or the general manager of the business. He has important decision-making authority, generally oversees management personnel and helps develop policies and make decisions that affect the entire company. Not all companies have senior managers.

3. SERVICE PROVIDERS AND SPECIALISTS

Certain persons who engage in the activities covered in item 1 do not need to be certified claims adjusters. Under section 10 of the *Act respecting the distribution of financial products and services* (“Distribution Act”), the following are not claims adjusters:

- Persons who, in pursuing activities in a field other than insurance, carry out one of the functions of a claims adjuster;
- Natural persons who act as appraisers within the meaning of Title VI of the *Automobile Insurance Act*.

Appraisers are persons qualified by the *Groupement des assureurs automobiles* to appraise damage sustained by automobiles. The scope of their activities is very limited; it does not include all of the activities that certified claims adjusters may perform.

These persons may be called “service providers.” Service providers are the following in particular: automobile appraisers (including appraisal centres), engineers, insurance restoration specialists, contractors, assessors, cleaners, etc.

These persons may also be employed by an insurance company as specialists.

These service providers and specialists should be hired solely in connection with their specific expertise. Claims adjusters are responsible for clearly defining the scope of the mandates assigned to service providers or specialists and making sure that they stay within the confines of their expertise.

4. TRAINEES

² For the purposes of this Directive, the expression “insurance company” includes any legal person transacting damage insurance in Québec.

Trainees at insurance companies, claims adjustment firms or independent partnerships may carry out certain activities reserved for claims adjusters. These are set out in sections 90 and 90.1 of the *Regulation respecting the issuance and renewal of representatives' certificates*, which state that:

- trainees may gather information and assist their training supervisors in claims investigations, damage assessments, and settlement negotiations; and
- trainees who participate in a Work-Study Learning Program may, as of the 46th day, gather information, investigate a claim, assess damages or negotiate a settlement.

A trainee's activities must always be performed **under supervision** of the claims adjusters/training supervisors and the firms or independent partnerships on whose behalf they act.

The word "**assist**" should be construed as meaning taking part in the functions performed by the training supervisor.

"**Under supervision**" means that activities performed independently by trainees must be reviewed and corrected, as needed, by training supervisors.

5. VESTED RIGHTS

Under section 547 of the Distribution Act, persons who were previously employed by market intermediaries in damage insurance (including claims adjusters) benefit from vested rights and may, without holding certification, continue to act as claims adjusters and therefore remain authorized to carry out activities that are reserved for claims adjusters.