



MODEL FOR A CORRESPONDENTS' CHARTER

(With comments¹)

**(can be modified and adapted in accordance with the Bureau's own situation)*

The Explanatory Memorandum makes provisions for each Bureau to produce a document (for better transparency and if possible for publication on its website) which is accessible to all candidates for the position of correspondent established in its country in order to explain the conditions under which the Bureau grants, refuses or withdraws its approval to a correspondent. It is suggested to extend this document to all rights and obligations of the correspondent, in order to constitute a "Correspondents' Charter";

The following elements could be included in this Charter:

CHAPTER 1: CONDITIONS UNDER WHICH A BUREAU GRANTS, REFUSES OR WITHDRAWS ITS APPROVAL TO A CORRESPONDENT

Comment:

Article 4 of the Internal Regulations implies two mandates for the correspondent since it shall handle claims

- *on behalf of the foreign insurer that requested its approval;*
- *and in the name of the Bureau which has approved it.*

Hence, the conditions applying to the correspondents are as follows:

1.1 How to act as correspondent of a foreign insurer in [²Please add your country]?

1.1.1 Which entities can be accepted as correspondents in ...[Please add your country]?

¹ Comments in green are only addressed to the Bureaux to give additional explanations on each provision for a better understanding. They are not meant to be used in the customised version prepared by each Bureau for its correspondents.

² The model Charter contains provisions which are to be adapted or filled in by the Bureau which grants the approval to the correspondent (see indication in the text inviting the Bureau concerned to add the missing information). However, some of its provisions can still be adapted but are of a more general nature.



Comment:

- *The Bureau should explain which entities can act as correspondent in its country (insurers, loss adjusters, others ...)*
- *It could recall that the approval will be granted as of right when requested in the name of a member of a foreign Bureau for any establishment of this member in the country receiving the request, provided that it has the requested licence. It means that the quality of the member of a Bureau is necessary in order to receive automatic approval.*
- *For the EEA Bureaux, it has to be recalled that the Bureau will grant its approval to correspondents already appointed as representatives pursuant to the 4th Directive, subject to the national law applicable.*
- *However, in the cases above, a request has to be made in conformity with the procedure described in § 3.*

Wording Proposal:

The Bureau of[Please add the name of your Bureau granting the approval] accepts as correspondent³:

[Please add the relevant information:

- Insurers (all members of the bureau...?)
- Loss adjusters?
- Others]

The approval will be granted as of right when requested in the name of a member of another Bureau for any establishment (*branches, subsidiaries ...*) of this member in..... [Please add your country], provided that it is authorized to transact insurance against civil liability in respect of the use of motor vehicles.

[To be used by EEA Bureaux only: Subject to the national law applicable, the Bureau of [Please add the name of your Bureau granting the approval] as of right approves as correspondent any representative pursuant to the 4th Motor Insurance Directive who is already appointed as such by the insurer].

In all cases, the request to appoint a correspondent has to be made according to the procedure described in Section 1.2 of the present document. The Bureau of [Please add the name of your Bureau granting the approval] will send its approval and the date of activation to the correspondent.

1.1.2. Conditions according to which a correspondent of a foreign insurer can be approved

³ Correspondent shall be understood in the meaning of Article 4 of the Internal Regulations.



Comment

The Internal Regulations provide that the Bureau has to explain the conditions requested to be fulfilled by the correspondent.

Some Bureaux choose to impose a general principle, such as that the correspondent must be able to compensate the victim.

Other Bureaux prefer to be more precise, taking into account the situation of their country.

The purpose of the CoB is not to impose strict conditions, but to draw the attention of the Bureaux to particular aspects that they should take into account:

A) The correspondents have to fulfil the national requirements, if applicable (registration, etc): it is up to the Bureau to remind the correspondents what these requirements are;

B) They must also be able to fulfil the requirements of the Internal Regulations;

C) The Bureau should take note of the type of correspondents:

- The insurers, members of the Bureaux, which have received an agreement and are permanently controlled by the Supervisory Authority, even if the correspondents in such capacity are not subject to this supervision;*
- The case is different for loss adjusters' offices, because in the majority of countries there are no requirements (administrative, legal and financial) relating to these entities;*
- Furthermore, loss adjusters' offices can be member of internationally known enterprises giving some guarantees (legal and financial), but they can also be isolated entities whose reliability is not known.*

The Bureau is therefore entitled, without being considered as discriminatory, to insure that these loss adjusters' offices can achieve the purpose prescribed to a correspondent: it means to be able to handle claims and to compensate the victim without delay.

Since the Internal Regulations do not provide for any obligations to the Bureaux in this field, the main elements to be checked which are left to the discretion of each Bureau according to the situation of its own market could be:

- Legal structure of the entity: does it correspond to a statute accepted by national law? Does it present sufficient guarantees (legal liability of representatives, guarantees in case of bankruptcy?, etc....);*
- Financial guarantees: will the correspondent be able to fulfil the requirements of the Internal Regulations?(ability to have a sufficient cash flow to compensate the victim without waiting for money...);*
- Skills of the claims handlers (legal skills, foreign languages, experience in the field of international claims handling....) and the possibility of having regular training;*
- Capacity to handle claims efficiently: network of experts (experts in property damages, medical expertise, lawyers...);*
- Access to information for claims handlers (web...);*



This list of elements to be checked is based on the earlier enquiry addressed to the CoB Membership and is the compilation of the main elements currently being checked by the Bureaux.

D) Financial requirements:

If a Bureau requires financial guarantees from correspondents, they must not be discriminatory.

The amounts charged should be related to the services actually provided by the Bureau on a non-profit basis.

E) Special situation of the EEA Bureaux:

According to the 4th Motor Insurance Directive (Article 4), insurers have to appoint representatives in other EEA countries. According to Article 4§2, the Member States shall not restrict their choice.

Generally speaking, the insurers want their representatives to perform also the function of correspondent.

It was clear that the European Commission felt that the Bureaux should not restrict the choice of the insurer. This was the reason for introducing Article 4.2 of the Internal Regulations.

Hence, it would be impossible for an EEA Bureau to impose conditions for the approval of a correspondent of an insurer of another EEA country if the correspondent is, at the same time, appointed as a 4th MID representative.

In other cases, it is possible to set conditions, provided they are non-discriminatory.

F) Fronting requested to claims adjusters' offices by some Bureaux:

Some Bureaux accept claims handling agencies as correspondents but oblige them to choose one of their members as a "fronter". This fronter is responsible towards the Bureau.

The reason for fronting is that these Bureaux argue that insurers are controlled by the Supervisory Authorities (even if it is not in their capacity of correspondents), but there is no supervision on claims handling agencies. Hence, the use of fronting aims at preserving the victims' interest.

In light of Article 4§2 of the Internal Regulations, the use of fronting can be accepted in the interest of the victims and if the situation in the country requires so.

However the freedom of the insurer should be respected at most.

In case of difficulties faced by the correspondent (being as well nominated as claims representative according to the 4th MID) to find a fronter, the Bureau of the country where fronting is used, should with regard to Art.4§ 2 of the Internal Regulations accept this correspondent.



Wording Proposal:

General conditions: *[Please mention them: e.g. national law]:*

Requirements from the Bureau *[Please mention them if applicable]:*

The request for approval is supported by the following information, *[Please mention them: e.g.:*

- Statutes;
- Number of claims handlers;
- Skills of claims handlers;
- Available training and conditions to obtain them;
- Capacity to handle claims; network of experts (material damages, medical experts, lawyers....) and access to information;
- Average amount of cash flow.....

]

Financial requirements *[Please mention them if applicable]*

The files have to be handled in ... *[Please mention your country]*. The victims must be able to have a contact and to consult their file in the official language(s) of the country.

Fronting *[Only for Bureaux asking for a fronting:*

If the correspondent requested is not a member of the Bureau of*[Please add the name of your Bureau granting the approval]* it will be appointed under the guarantee of one of the members of this Bureau (hereafter call fronter)

In case of difficulties to find a fronter, the correspondent (being as well nominated as claims representative according to the 4th MID) shall contact the Bureau of*[Please add the name of your Bureau granting the approval]*

1.2. How can the insurer ask for the approval of a correspondent in a country of the Green Card system?

Comment:

The document should recall that any appointment of a correspondent by an insurer must be transmitted by the Bureau of which it is member to the Bureau of the country of appointment, which then has to approve this appointment.

It should recall the procedure and the time limit.



Other principles to be recalled are inter alia:

- ▶ *the request has to be supported by the proof of acceptance;*
- ▶ *The Internal Regulations provide that the Bureau which gives the approval notifies the decision to the Bureau which requests the approval and to the correspondent within a time limit of 3 months, and that it is up to this Bureau to decide on the effective date of approval.*

However, it should be clear that the Bureaux must not hinder the relationship between the insurer and its correspondent.

- ➔ *The Bureau which grants its approval should therefore give its answer as soon as possible. If there is a problem, it should be raised shortly so as to solve it within the time limit of 3 months, which is the compulsory deadline.*
- ➔ *The insurer which wants to appoint a correspondent may suggest a date of activation, which should be respected by the Bureau granting its approval, except in justified exceptional cases. However, the insurer should also take into account the necessary time limit prescribed to the Bureau for the procedure of approval.*
- ▶ *The Bureau which has granted the approval recognizes the correspondent as exclusively competent to handle and settle claims in the name of the Bureau and on behalf of the insurer that requested the appointment.*
- ▶ *From the date of activation onwards, the Bureau shall forward the claim promptly to the correspondent on receipt of any claim involving a driver insured by the insurer which requested the appointment.*
- ▶ *Particular cases are to be negotiated with the Bureau that granted its approval.*

Wording Proposal *[being a reminder of the general principles stated in the Internal Regulations]*

1.2.1 Procedure

Each insurer may designate a correspondent in another country of the Green Card system which handles claims on behalf of the Bureau and on its own behalf.

The designation of a correspondent falls within the exclusive competence of the Bureaux.

Each request for approval of a correspondent shall be sent to the Bureau of which the insurer making the request is a member. The request will be sent to the Bureau of *[Please state the Bureau of which the insurer making the request is a member of]* by *[Please add the appropriate wording: fax, e-mail, letter, addressed to the attention of Mr./Ms ...]*

This request must be supported by evidences that the proposed correspondent agrees to the requested approval (which can be any credible and clear declaration of acceptance and can be made by the international organisation of which the local correspondent is a representative in accordance with Decision N° 8 of the 2005 General Assembly).



The request shall be communicated by the Bureau of... [*Please state the Bureau of which the insurer making the request is a member of*] to the foreign Bureau which shall grant the approval to the correspondent.

1.2.2 Time limit

The Bureau granting the approval shall grant or refuse its approval within a period of three months from the request of the Bureau of which the insurer making the request is member. It shall send its decision as soon as possible to the Bureau that made the request.

1.2.3 Date of activation

The insurer requesting the approval of a correspondent may ask for a date of activation (while taking care of the necessary time limit to consider the request).

The Bureau granting the approval shall accept this date, except if there are any justified reasons to set another date. It shall notify its decision and the date of activation of the approval to the Bureau of which the insurer making the request is a member of and to the correspondent as soon as possible but not more than 3 months from the date of receipt of the request.

In the event of no response being received, the approval shall be deemed granted and shall take effect on the expiry of that period.

1.3 Activation

Comment

The Charter should recall the basic rules of the Internal Regulations relating to the correspondents.

The purpose is that when an insurer has appointed a correspondent, the Bureau should not interfere in their business except for exceptional circumstances. Generally speaking, it should be regarding the protection of the victims' interest. It means that the provisions of Article 4.5 of the Internal Regulations ("the Bureau can at any time and without any obligation to justify its decision, take over the handling and settlement of a claim from a correspondent") should be used only as an exception. The Bureau does not have to be a competitor for correspondents.

Hence, the files involving a vehicle insured by the foreign insurer which appointed the correspondent should be transmitted without delay to the identified correspondent.

Rules of allocation of files to the correspondent:

To avoid difficulties, especially when the correspondent changes and if the situation is not settled between the insurer, the former and the new correspondent, it could be useful for the Bureaux to determine a priori the rules concerning the allocation of files to the correspondent.



- *The Bureau can forward all the claims of which it is informed to the new correspondent, whatever the date of the accident is.*
- *It could forward the claims to the correspondent appointed at the date of the accident (the relation between the insurer and the former correspondent is prolonged).*
- *It could choose another rule*
- *It should also determine the situation of the ongoing files when the correspondent changes (except if there is an agreement between the insurer, the former and the new correspondent).*

Some Bureaux request that the files have to continue to be handled by the former correspondent (because of its knowledge of the file, and because otherwise the calculation of the handling fees would be difficult).

- *For the same reason, when a file is re-opened after several years, they require that it has to be handled by the correspondent which began the claim handling.*

It seems that each Bureau has adopted different solutions, so it would be not pertinent to impose a general rule. It is only important to know clearly what the rules are.

Wording Proposal:

1.3.1. Once the approval is granted, the correspondent has exclusive competence to handle and settle claims resulting and/or caused by the vehicles insured by the insurer having requested its approval.

1.3.2. If the Bureau of[*Please add the name of your Bureau granting the approval*] is informed of an accident occurring in[*Please add your country*], involving such a vehicle, it will forward this information to the correspondent for further action.

1.3.3. If the Bureau of.....[*Please add the name of your Bureau granting the approval*] receives a claim arising out of an accident involving such a vehicle, it will forward it without delay to the correspondent so that it may be handled and settled in conformity with the provisions of the Internal Regulations.

1.3.4. The date taken into account for the transmission of the file to the correspondent is[***Please keep the relevant wording and/ or specified :***

- *The date of the accident*
- *The date of information of the Bureau*
- *Another rule: please specify ...*
- *Please specify also the case of old files closed and then re-opened...]*



1.4. Conditions under which the Bureau can refuse the approval of a correspondent

Comment

If the Bureau has set up conditions under which it grants its approval, it can refuse it if these conditions are not fulfilled.

It could also refuse for another important reason.

For the EEA Bureaux the refusal would not comply with Article 4.2 of the Internal Regulations, if the requested correspondent is appointed, at the same time as a representative according to Article 4.1 of the 4th Motor Insurance Directive.

Only very serious reasons could lead an EEA Bureau to refuse a correspondent which is also appointed as a representative (one of these reasons could be the information on the financial situation of the requested correspondent: such as the imminent bankruptcy for instance). Hence, informing the Bureau requesting the approval would be necessary.

Wording Proposal:

If the above conditions are not fulfilled, the Bureau of [Please add the name of your Bureau granting the approval] is entitled to refuse the agreement of the correspondent.

[Wording to be used by the EEA Bureaux only:

If the requested correspondent is appointed as a representative pursuant to the 4th Motor Insurance Directive, the Bureau grants its approval as of right and subject to the national law applicable. It could refuse its approval only if it is able to justify that the correspondent is actually not able to perform this function].

1.5. Cancellation of the mandate

Comment

It should be recalled that the rules for cancellation of a mandate follow the same principles as for the approval, i.e.: it cannot be effective without the intervention of the Bureau.

The document should describe different cases of cancellation and explain the procedure.

As said above, the question of cancellation of the approval often leads to disputes about the ongoing files and to problems for the Bureau. A general principle should be established a priori (even if particular cases could lead to different solutions).



Wording Proposal:

1.5.1. Cancellation by an insurer of its agreement with a correspondent (general rule):

The insurer which wants to cancel its agreement with a correspondent shall inform the Bureau of which it is a member of about its wish to cancel the nomination of its correspondent. This Bureau shall inform the Bureau which granted the agreement. The latter shall inform the correspondent of the date of the termination of its mandate. Even if it falls within the competence of the latter to set the date of cancellation, the insurer can request a termination date (taking into account, the time limit necessary to the Bureaux to consider the request). The Bureaux shall respect this date except if there are serious and justified reasons to set another date, especially in light of the victims' interests.

1.5.2. Cancellation by a correspondent of its agreement with the foreign insurer that asked for its approval (general rule):

If a correspondent wants to terminate the mandate with the foreign insurer which asked for its approval, it shall inform this insurer which shall then follow the procedure explained in paragraph 1.5.1 hereabove.

If, for exceptional reasons, it is not possible to apply this procedure, the correspondent shall inform the Bureau which granted its agreement. The latter will give the information to the Bureau of which the insurer concerned is a member. The correspondent may propose a date for the cancellation of this agreement, but it cannot agree with the insurer which requested its agreement on this matter, the Bureau which gave the agreement shall fix the date from which the cancellation will take effect in line with the victim's interests.

1.5.3 Situation of ongoing files

Comments

The allocation of new files is settled according to paragraph 1.3.4.

Particular situations could lead to negotiated solutions (for instance, in the event of a dispute, if the former correspondent is no longer able to handle claims, or in the event of an agreement between the former and the new correspondent,...). The claim has to be settled in accordance with the interest of the victim.

The Bureau can add a specific provision in the Charter to cover particular cases (for instance when the correspondent does not want to handle the file anymore, etc...).

Wording Proposal:

Apart from specific agreements between the foreign insurer, the former and the new correspondent, approved by the Bureau which granted the approval, the dispute shall be settled according to the rules specified in paragraph 1.3.4 hereabove.



If there is no problem, and the foreign insurer, the former and the new correspondent agree, there is nothing preventing the former correspondent from continuing to handle the old files.

If it is proved that the victim's interests are no longer protected, the Bureau shall take over the handling and settlement of a claim from the correspondent.

In the event of a dispute, the Bureau may offer good advice to the parties and should be entitled to propose a specific agreement with the aim of protecting the victims' interests.

1.6 Decision of the Bureau which granted the approval to withdraw this approval.

Comments

The withdrawal of the agreement is a serious decision which leads to major consequences. It could therefore only be taken in the event of very serious and/or repeated proven breaches of the national law or of the Internal Regulations. It is for the Bureau to appreciate the cases of "serious breaches". It can be, inter alia :

- ▶ *If, repeatedly, the offer of compensation to the victim is not made;*
- ▶ *If there are repeated delays for the compensation of victims;*
- ▶ *other serious problems (situation of bankruptcy....)*

To avoid litigations, except in case of emergency, the Bureau which granted the approval should write to the correspondent before its withdrawal to explain the reason why it is considering withdrawing the approval.

The correspondent should be invited to answer to the comments and to change the situation within a prescribed time limit.

In the meantime, the Bureau which requested the approval should be informed of the situation (the insurer which requested the approval should be informed of the problem by the Bureau of which it is member)

If, after the time limit prescribed, the situation has not improved, the Bureau should withdraw the approval.

The situation of ongoing files has to be considered according to the specific situation:

- ▶ *If the correspondent is able to settle the run off, it should continue to handle the files;*
- ▶ *If the interests of the victims are no longer protected or if the file is not to be settled by the correspondent, a solution has to be found with the insurer which requested the approval, as it is often impossible for the Bureau to substitute itself as the correspondent to handle the files.*



Wording Proposal:

The Bureau of[Please add the name of your Bureau granting the approval], can withdraw its approval if it appears that the correspondent makes serious and repeated breaches to the national law or to the Internal Regulations.

The procedure applicable in case of withdrawal is governed by Chapter 4 (Sanction) here below.

In case of emergency, the Bureau can withdraw its approval immediately, after receiving information from the insurer transmitted by the Bureau which requested the appointment of the correspondent.

1.7 Specific cases: cases of merger transfer of portfolio, withdrawal of the licence, or termination of the correspondent's activity.

Comments

The Bureau should consider some specific cases as follows:

1.7.1. Merger of the correspondent with another entity

The mandate of the correspondent is not cancelled as of right.

The situation depends on the decision of the mandating insurer. It could maintain the mandate for the new entity or ask the Bureau which gave its approval to cancel it.

1.7.2. In the event of bankruptcy and withdrawal of the correspondent's licence

From a general point of view, the Bureau which gave its approval should inform the Bureau which requested the approval of any difficulty on the financial situation of the correspondent.

In the event of bankruptcy or withdrawal of licence, if the correspondent terminates its activities, the Bureau should cancel the mandate at the more convenient date for the protection of the victims' interests. The situation of ongoing files should be negotiated with the Bureau and the insurers which requested its approval.

If the correspondent is authorised by the Court to continue its activities, the mandate could continue if the mandating insurer agrees, especially for the ongoing files.

1.7.3. Termination of the activity of the insurer which requested the approval of the correspondent

The Bureau whose insurer is a member should inform the Bureau which granted the approval as soon as possible.

If the activity of the insurer is continuing (handling of the run off or transfer of portfolio, etc...), the situation of the ongoing files should be negotiated.

If the insurer terminates its activities, the mandate should be cancelled.

In all cases (7.2 & 7.3), the Bureau has to be prepared to take over the files from the correspondent.



1.7.4. Suspension by the CoB of the Bureau which requested the approval of the correspondent

In this case there is no longer any relationship between the Bureaux. However,

- ➔ *If the Bureau guarantees the claims which occurred before suspension: the approval should be maintained.*
- ➔ *If the box of the suspended country is not crossed out on the Green Card, the insurer has to compensate the victim of an accident occurred of which its insured vehicle is liable after the suspension, even if the Bureau is suspended. The relationship between the insurer and its correspondent can therefore be maintained.*

Wording Proposal:

1.7.1. Merger of the correspondent with another entity

In case of merger of a correspondent with another entity, its mandate shall not be cancelled as of right. The Bureau which granted the approval has to conform to the decision of the insurer which requested the approval. Should this insurer request to cancel its mandate with the correspondent, such request shall be transmitted according to the procedure provided in paragraph 1.5.1 hereabove.

1.7.2. Bankruptcy, withdrawal of the correspondent's licence

If the Bureau of[*Please add the name of your Bureau granting the approval*] is informed of the changes to the correspondent's situation, which can give rise to difficulties for the compensation of victims, or can infringe the foreign insurer's interests, it will inform the Bureau which requested the approval.

The Bureau of.....[*Please add the name of your Bureau granting the approval*] can withdraw the approval at each suitable date to protect the victims and the foreign insurer's interests.

It will propose to take over the ongoing files from the correspondent, except if another solution which is favourable to the victim, is set up between the parties.

If the correspondent is authorised to continue its activity (for instance: in case of run off or transfer of portfolio) the correspondent can continue to handle ongoing files, if there is no danger to the victims' interests.

1.7.3. Cases where the foreign insurer which requested the appointment of the correspondent is no longer a member of a Bureau (e.g. bankruptcy and cases provided for in the national law such as liquidation, withdrawal of licence, etc).



If the Bureau of... ..[*Please add the name of your Bureau granting the approval*] is informed of the changes to the situation of the foreign insurer which requested the appointment of the correspondent, which can give rise to difficulties for compensation of the victims and for the correspondent, it will inform the latter.

If this foreign insurer is no longer a member of its Bureau (e.g. bankruptcy and cases provided in the national law such as liquidation, withdrawal of licence, etc ..), the mandate of the correspondent shall terminate as soon as the Bureau of[*Please add the name of your Bureau granting the approval*] is informed of the situation.

The Bureau may ask the correspondent to handle the ongoing files. In this case, the Bureau shall sign a new agreement with the correspondent which is then acting as being mandated by this Bureau

17.4. Suspension by the CoB, of the Bureau which requested the approval of the correspondent

The Bureau of... ..[*Please add the name of your Bureau granting the approval*] will maintain the approval of the correspondents, because the suspended Bureau remains guarantor of the ongoing claims which occurred before its suspension.

The foreign insurer remains guarantor if one of its insured vehicles is liable for an accident in the country of the suspended Bureau after the date of suspension, when this country is not crossed out on the Green Card.

CHAPTER 2 RIGHTS AND OBLIGATION OF THE CORRESPONDENTS

2.1. Authorisation to settle claims in the name of the Bureau

Comments

This provision is a reminder of the basic rules:

- *the bureau is the professional organisation recognised by the Government as guarantor of the victims' compensation;*
- *the correspondent cannot handle files if it is not authorised to do so by the Bureau;*
- *the scope covers only MTPL claims;*



Wording Proposal:

The Bureau remains, as the last resort the guarantor of the compensation to the victims, and authorises the correspondent to handle and settle the claims under certain conditions.

The Bureau authorises the correspondent to handle and settle, in its name the claims, regarding civil liability, in respect of the use of a motor vehicle that is covered by a Green Card or which is normally based in a country of the Multilateral Agreement (MA). The authorisation is granted to the correspondent strictly under the condition that it does not accept to manage any claims regarding civil liability from foreign insurers other than those listed by the Bureau.

2.2. Cases of outsourcing

Comments

It appears that some insurance companies approved as correspondents, decide for internal reasons to delegate the claims handling or part of it to another member of the Bureau or to a specialised organisation, while remaining officially the correspondent.

Furthermore, it may happen that the handling of claims was delegated to a foreign company or organisation not established in the country where it was approved as an official correspondent.

There are two ways to outsource, namely nationally and internationally. However, international outsourcing is not compatible with the interest of the victim

Outsourcing is an increasing practice and experience shows that sometimes neither the insurer who asked for the approval of the correspondent nor the Bureau which gave the approval are informed of this outsourcing. This can also be confusing for the injured party which was only informed about the name of the official correspondent and received correspondence from someone else.

The outsourcing of the claims handling is an organisational choice of the company which should not be forbidden by the Bureaux, unless prevented by the national legislation of the country where the accident occurred. However, some rules should be set out to ensure transparency and to protect the victims' interests.

The rules should be:

- Preliminary information to the Bureau which gives the approval;*
- The approval of the outsourcing by the foreign insurer which asked for the correspondent;*
- Commitments by the subcontractor to indicate the name of the approved correspondent in its correspondence and to respect obligations applying to the correspondent (Internal Regulations,...);*
- The approved correspondent remains legally and financially liable for the handling and settlement of files;*
- The Bureau shall have a contact person in each entity to solve possible difficulties;*
- The injured party shall be able to contact directly the correspondent in its own country.*



Wording Proposal:

Exceptionally, and after producing a written agreement of the foreign insurer which requested its approval, it can be authorised to delegate the handling of claims to a Bureau member or to a specialised organisation established in the country, unless prevented by the national legislation of the country where the accident occurred.

The subcontractor commits itself to respect the Internal Regulations, the national law and the other rules fixed by the Bureau as well as the obligations applying to the correspondent. It must also indicate on each document and letter (correspondence, mail, fax...), the corporate name of the correspondent and the foreign insurer's Green Card code number, specifying that it settles claims on its behalf.

[Option left to the Bureau: the convention between the correspondent and the subcontractor has to be approved by the Bureau].

The correspondent remains legally and financially liable for the files managed by the subcontractor, and it guarantees the payments of the sums owed by it, in case of default of payment.

The correspondent and the subcontractor will designate a contact person for the Bureau, to resolve difficulties.

2.3. Limits of the mandate

Comments

It is useful to recall when the mandate takes effect and when it stops.

It is also worth noting that if the foreign insurer contests the insurance cover (refusal to confirm the guarantee, contractual exceptions, liquidation, withdrawal of the licence, etc...), the mandate of the correspondent for this specific file will terminate. The correspondent shall then send the file back to the Bureau which granted the approval.

However, if it had expenses for emergency measures which were taken before sending back the file, the following options are left to the discretion of the Bureau when reimbursing these costs:

- ▶ *the costs will be reimbursed only in case of a valid Green Card or of a confirmation that the vehicle is normally based in the country concerned;*
- ▶ *the costs will be reimbursed even if the Green Card is not valid or if it is not confirmed that the vehicle is normally based in the country concerned.*

To take its decision, the Bureau should consider that:

1. *the issue of its own reimbursement by the “paying” Bureau when the asserted Green Card is not valid or the vehicle is not normally based in the country concerned, will be*



under the consideration of the GRC (i.e.: if a Bureau of the country of the accident, which had received a claim following an accident caused by a vehicle apparently covered by a Green Card or normally based in one of the countries of the Multilateral Agreement and took some actions in the interest of the possible "Paying Bureau" - expertises, investigations on the accident, court proceeding etc... -, it has the right to be reimbursed by the "Paying Bureau" when the asserted Green Card is not valid or the vehicle is not normally based in the country concerned).

2. *if the Bureau decides not to reimburse the costs if the Green Card is not valid or when it is not confirmed that the vehicle is normally based in the country concerned, the correspondent is not encouraged to handle the file properly, and to preserve the interest of the final payer. This situation can increase the expenses of the Bureau at the end. The attention of the EEA Bureaux should be drawn to the fact that the time limit provided by the 5th MID to make an offer to the victim is very short, and delays sometimes lead to heavy costs.*
3. *if the Bureau decides to reimburse the correspondent even when the asserted Green Card is not valid or the vehicle is not normally based in the country concerned, it takes the risk to keep the costs on its own account. And if the Bureau is not reimbursed of its own costs, its expenses, according to the experience of some Bureaux, can become very high.*
4. *In any case, no handling fees is to be paid to the correspondent*

Wording Proposal:

The correspondent's authorisation to manage a file shall only take effect as from the time when there is a clear indication on the name of the foreign insurer.

This authorisation shall terminate in the event that the foreign insurer contests the insurance cover (refusal to confirm the guarantee, contractual exceptions, liquidation, withdrawal of the licence, etc). In this case, the correspondent shall promptly notify the Bureau[Please add the name of your Bureau granting the approval] thereof and return the entire file to the Bureau (except in the event that the Bureau provides other instructions).

The correspondent shall be reimbursed of any justified **emergency** costs [it is left at the discretion of the Bureau whether such reimbursement should apply only if there is a valid Green Card or a confirmation that the vehicle is normally based in the country concerned] by the Bureau to which the file is to be returned. Such costs shall not include any handling fees."

2.4. Rights of the Bureau of[Please add the name of your Bureau granting the approval]



Comments

Reminder of the rules provided for by the Internal Regulations.

The Bureau which granted the approval may delegate to the correspondent being its representative the possibility to decide on any issue relating to the interpretation of the law applicable in the respective country.

Wording Proposal:

The Bureau of.....[Please add the name of your Bureau granting the approval] alone shall have the competence to decide on any issue relating to the decision on the interpretation of the laws applicable to the accident in its country even if it refers to the law of another country. But the Bureau of[Please add the name of your Bureau granting the approval] may delegate to the correspondent being its representative the possibility to decide on any issue relating to the interpretation of the law applicable in the respective country.

This Bureau may, at any time take over the handling and settlement of a claim from a correspondent without any obligation to justify its decision.

2.5. Obligations of the Bureau of[Please add the name of your Bureau granting the approval]:

Comments

These provisions are a reminder of the rules provided for by the Internal Regulations. The Bureau cannot keep the file if a correspondent of a foreign insurer has been approved.

Wording Proposal

On the receipt of a claim arriving in the circumstances described in paragraph 1.3.3 hereabove, if a correspondent of the insurer has been approved, the Bureau shall forward the claim promptly to the correspondent.

2.6. Obligations of the correspondent

2.6.1 General commitments.



Comments

This paragraph is a reminder of various rules:

- *No external outsourcing;*
- *to obtain, as soon as possible the confirmation of the insurance cover by the foreign insurer*
- *Compensation of the victim, without waiting for the funds from the foreign insurer. The insurer and the correspondent shall agree on conditions of payment and reimbursement which allow the correspondent to compensate the victims without delay. To be in position to respect this duty, the correspondent and the insurer which requested its designation should pay a particular attention to special cases where large amounts are likely to be paid to the injured party. The insurer is to be informed regularly of the estimates of the claim (see below) or of the evolution of the agreement with the injured party or of the Court proceeding;*
- *The law applicable to the accident shall apply without asking for the approval of the foreign insurer on the application and interpretation of this law;*
- *Obligations shall apply when the settlement is in excess of the limits applicable to the accident, but covered by the limits of the contract.*

The correspondent should also act in accordance with and fulfil requirements related to the national law on data protection (e.g. legislation transposing the European Directive on Data Protection, etc...)

Wording Proposal

The correspondent undertakes to handle and pay in the country where it has been approved the claims for which it received authorisation.

The correspondent undertakes to obtain, as soon as possible the confirmation of the insurance cover by the insurer which requested its appointment.

If the foreign insurer does not respond to the request of the correspondent regarding the insurance in due time and in view of related legal obligations for the Bureau, the correspondent shall approach the Bureau of [*Please add the name of your Bureau granting the approval*] and ask for its assistance to receive the needed statement from this foreign insurer.

The correspondent shall handle all claims in conformity with any legal or regulatory provisions applicable in the country in which the accident took place, relating to liability, compensation of the injured parties and to compulsory motor insurance. It shall handle all claims on behalf of the Bureau which gave the approval, arising out of accidents occurring in that country involving vehicles insured by the insurance company which requested its approval.



It will refrain from asking the approval of this company for interpreting the law of the country of accident on any issue relating to that law.

When a settlement is in excess of the conditions or limits applicable pursuant to the laws on compulsory insurance against civil liability in force in the country of accident, but is covered by the insurance policy, the correspondent shall consult the foreign insurer and obtain its approval as regards the part of the claim that falls outside the scope of these conditions or limits (Pursuant to the provisions of Article 2 of Directive 90/232/EEC, the insurer's consent is not required when the responsible party is insured with an insurer that carries on its business in the European Economic Area).

The correspondent is not allowed to subject payment to the receiving of the relevant amounts from the foreign insurer.

The correspondent expressly commits itself to comply with the instructions of the Bureau of[Please add the name of your Bureau granting the approval] which gave the approval, either from a general standpoint or in respect of a particular file.

The correspondent commits also itself to act in accordance with the relevant legislation on data protection.

2.6.2 Offer to the injured party

For EEA countries and countries in which the national law provides for an offer of compensation to the victims

Comments

It shall be reminded that the correspondent shall make an offer to the victim.

The important aspect is to determine who will pay the financial sanctions if the conditions are not respected.

Wording Proposal

The correspondent shall either make a reasoned offer of compensation or a reasoned reply to the points made in the claim in cases where the liability is denied or has not been clearly determined or the damages have not been fully quantified to the victim, pursuant to the law applicable to the accident.

If a claim is not handled by the correspondent in conformity with the provisions of the 1st paragraph of Article 4.4 of the Internal Regulations, and that, as a result of such lack of performance, the Bureau which gave the approval is required to pay sanctions as provided by the national regulatory provisions, it shall be reimbursed by the correspondent.



The attention of the insurer and of the correspondent is drawn to the necessity to include in their agreements provisions to regulate their respective rights and obligations relating to this offer procedure.

2.6.3 Duty in case of court proceeding

Comments

Provisions reminding that in the interest of the victims, only the Bureau can be sued. The correspondent cannot be sued and shall raise its lack of capacity if a lawsuit is taken out against it. The non-admissibility cannot be invoked by the correspondent itself if the victim sues the foreign insurer.

The Bureau which granted the approval can ask the correspondent to defend it before the courts. It shall inform the Bureau of the court proceeding. In the interest of the victims only, the Bureau can be sued.

Wording Proposal

The correspondent shall not receive any authorisation *ad litem* enabling it to be summoned to court or to serve a writ in its capacity as representative of the Bureau of..... [*Please add the name of the Bureau granting the approval*] or the foreign insurer which appointed it.

In the event that a lawsuit is taken out against the correspondent in its own name, it shall preliminarily raise the issue of its lack of capacity and shall immediately inform the Bureau which gave the approval thereof.

It is reminded that the injured party is always entitled to directly sue the foreign insurer which requested the approval of the correspondent. The latter cannot raise the unacceptability of this lawsuit if it is aware of the intention to do so by the injured party.

The correspondent may however defend the Bureau if it has been authorised to do so, defend the latter and the insured person in their respective names before the relevant courts, without however joining the proceedings or acting in its own name, in order to avoid a sentence being handed down against the correspondent itself.

The correspondent undertakes to systematically inform the Bureau of [*Please add the name of your Bureau granting the approval*] of the progress of any court proceedings.



2.6.4 Other duty information toward the Bureau.

Comments

It is left at the discretion of the Bureau to request the information needed;

At least, the correspondent shall give the statistical data asked by the CoB every year.

Wording Proposal

The Bureau of [Please add the name of your Bureau granting the approval] shall be kept informed of the financial risks it may incur and of any difficulties it can encounter in handling claims.

In order to provide the statistical data asked by the CoB every year and in the event that any person or entity other than the Bureau transmits its claim directly to the correspondent (short cut), the latter undertakes to notify to the Bureau of ... [Please add the name of your Bureau granting the approval] the number of claims submitted directly to it during the year. Claims concerning material damage shall be listed separately from those concerning personal injuries, and the country in which the foreign vehicle is normally based or has its Green Card issued shall be specified.

Other statistical data asked from the correspondent:.... [Please fill in accordingly if you wish to receive other statistical data: provisions on other data are left at the discretion of the Bureau].

2.6.5 Information by the correspondent of the insurer which requested its approval:

Comments

This issue is a matter for the relations between the foreign insurer and the correspondent. However, this information is important for the good operation of the Green Card system. It therefore would be useful to remind ourselves of this good practice.

Wording Proposal

The correspondent commits itself to inform the insurer which issued the Green Card as soon as possible of the estimated amount of the claim, with a split between material damages and bodily injuries.



If the correspondent when handling the claim receives further information which can modify its former estimate, it shall inform the foreign insurer without delay. The provision of such information shall not delay the claim settlement.

2.7. Freedom as regards conditions of reimbursement and handling fees

Comments

This paragraph is a reminder of the related provisions of the Internal Regulations.

Subject to Article 4.4 of the Internal Regulations, the correspondent is left free to agree with the foreign insurer that requested its approval the conditions for reimbursement of the sums paid to injured party, but the insurer should be aware of the fact that the good functioning of the Green Card system implies short time limits for reimbursements.

Wording Proposal

The correspondent may agree with the foreign insurer that requested its approval on the terms and conditions for the reimbursement of the amounts paid to the injured parties, as well as on the calculation of the handling fees. However, in the event that the Bureau is requested to act in the place of the correspondent, it shall apply the rules as provided for in Article 5 of the Internal Regulations and shall by no means be bound by the rules agreed on between the insurer and the correspondent.

The correspondent shall keep the Bureau of[Please add the name of your Bureau granting the approval] informed of any difficulties it encounters in obtaining the reimbursement of compensation it has paid without delay.

2.8. Lack of reimbursement of the correspondent

Comments

This provision is a reminder of Article 4.7 of the Internal Regulations. Nevertheless, if the correspondent is repeatedly not reimbursed by the foreign insurer which requested its approval, the Bureau which granted the approval should inform the Bureau of which this defaulting insurer is a member. Both Bureaux should take measures to remedy this disfunctionning

Wording Proposal

The correspondent may obtain the amounts it has disbursed for the foreign insurer that appointed it from the Bureau of[Please add the name of your Bureau granting the approval] if it is unable to obtain the reimbursement of such amounts.



The request must be addressed to the Bureau of[Please add the name of your Bureau granting the approval] within a maximum period of one year from the date of last payment made in favour of the injured party.

This Bureau shall reimburse the correspondent for the costs and expenses relating to the compensation of the injured parties, including a handling fee if due and the late interest in accordance with the conditions set out in Article 5 of the Internal Regulations. However, the requested handling fee and late interest shall not exceed the provisions of Articles 5.1.3 and 5.2. of the Internal Regulations. The handling fee and late interest shall be reimbursed to the correspondent by the Bureau of.....[Please add the name of your Bureau granting the approval] which sent its request for reimbursement according to Article 5, after such amounts are received from the Bureau of which the insurer is or was a Member . Before paying such costs and expenses, the Bureau of.....[Please add the name of your Bureau granting the approval] shall ensure that payment was duly made in accordance with the provisions of Article 4.4 of the Internal Regulations.

CHAPTER 3 AUDIT OF THE CORRESPONDENT

Comments

The Bureau guarantees the compensation of the victims, so it should be able to make audits on the correspondent.

The use of audits is advised but let at the discretion of the Bureau. The audit report shall be discussed with the correspondent. The outcome of the audit is left at the discretion of the Bureau. The Bureau endeavours to respect confidentiality rules.

Wording Proposal

The Bureau of[Please add the name of your Bureau granting the approval] may analyse the performance of the correspondent's business on site in order to ensure the smooth operation of the Green Card system. A preliminary report shall be issued together with recommendations where applicable following on from this analysis and the findings of said report shall be discussed with the correspondent. In such case, the Bureau of[Please add the name of your Bureau granting the approval] shall not disclose any confidential and sensitive matters that it might be aware of in the course of the audit.



CHAPTER 4. SANCTIONS

Comments

The Bureau which provided the agreement should be entitled to impose sanctions in case of serious breach. This should be approved by the board or any other pertinent body.

Wording Proposal

In case of serious breach of its obligations pursuant to the Internal Regulations, the national law and the handling and payment agreement (when applicable), the Bureau of....
.....[Please add the name of your Bureau granting the approval] shall be entitled to apply the following sanctions:

[Please fill in accordingly: ...warning, financial sanctions, withdrawal of the approval...]

Should the withdrawal of the approval be applied, such decision shall be reasoned and preceded by:

- 1) A first warning granting the correspondent a deadline to remedy the defaults noted within a time limit given by the Bureau.
- 2) If the defaults noted are not corrected at the end of the set deadline, the Board [or please mention any other pertinent body] will address an official warning to the correspondent granting it a final deadline of [Please give a time limit] to remedy the defaults noted, unless the agreement is to be withdrawn.

The Bureau of.....[Please add the name of your Bureau granting the approval] will reserve its right to inform the Bureau and the insurer which requested the approval of the situation and, if needed, the supervisory authorities.