

Claims handling in Chile

Loss adjusting activities in Chile are controlled by the Financial Market Commission (CMF), under the legal framework set out in DL 1055, which came into force on the 1st June 2013. Introduced in the aftermath of the February 2010 earthquake, it was designed to improve claims handling, mainly by expediting the loss adjusting process and providing the Insured with better information on the progress of the adjustment. Patrick Hardy, Licensed Loss Adjuster, Integra Technical Services Chile, outlines some important considerations for Reinsurers.

MAKE SURE YOUR LOSS ADJUSTER IS COMPETENT

Among the CMF stipulations is the necessity for all Loss Adjusters to pass an exam, part of which covers general property claims adjustment. Unfortunately, this does not really provide any indication of an individual's competence to handle complex claims, particularly those within the specialty insurance arena.

Loss Adjusters are appointed by the Cedant and it is commonplace for larger specialty business to have a panel of Loss Adjusters approved by Reinsurers. An option for Reinsurers is to appoint their own Loss Adjuster, to work alongside the locally registered Loss Adjuster, to bring appropriate experience and support, and ensure that Reinsurers' interests are safeguarded during the adjustment process.

THE INSURED IS ENTITLED TO SEE ALL INFORMATION

Whilst the Insurer can appoint an independent Loss Adjuster or adjust the claim in-house, the Insured retains the right to request an independent Loss Adjuster. Whichever route is taken, the following principles must be observed:

- Speed and procedural economy;
- Objectivity and technical in nature;
- Transparency and access.

This final point is particularly important, as it means that the Insured is entitled to receive the same information that the Loss Adjuster provides to the Insurers.

DON'T FORGET ABOUT TIME LIMITATIONS

The legislation allows 45 days to adjust a claim, increasing to 90 days for losses under policies with premiums in excess of UF100 (around USD 4,500) or 180 days for general average losses. It is commonplace to ask for time extensions for large or complex claims which require detailed information or investigation. An unlimited number of time extensions can be requested in writing to the Insured, Insurer and the CMF, but in the event that the Insured or Insurer object, the CMF can compel the Loss Adjuster to issue the final report based on the information available at the time.

THE IMPORTANCE OF INTERIM REPORTS

The Loss Adjuster's Final report is effectively a formal settlement proposal and is issued simultaneously to Insurers and Insured and then:

- Parties have 10 working days to contest the findings and recommendations;
- The Loss Adjuster then has six working days to address any contested issues;
- Insurers then have a further five working days to advise the Insured of their decision, with settlement due within six working days.
- If disagreement remains then Insurers must advise the Insured of the dispute resolution procedure in the policy wording or take the matter to Court, but any undisputed amounts must be paid to the Insured.



These timescales are often insufficient for Reinsurers to be able to voice their opinion and, all too often, local Loss Adjusters will fail to take Reinsurers' needs into account. Preliminary or Interim reports are recommended as these can allow Reinsurers to consider the loss and voice any concerns before the Final report is issued. The Loss Adjuster is free to issue as many Interim reports as he sees fit.

ARTICLE 24

This provides a mechanism to enable the Loss Adjuster to address contentious issues, giving both Insurers and the Insured an opportunity to voice their opinion on these issues. An Article 24 report is issued simultaneously to the Insured and Insurer and provides five working days to respond. In practice this is hardly ever enough time for Insurers, considering the potential need for them to liaise with the consultant engineers and other experts managing the claim. Given this tight schedule, it is almost impossible for Reinsurers to consider and voice their opinion on issues raised in an Article 24 report.

Many experienced Loss Adjusters will, therefore, issue 'ordinary' Interim reports regularly so that there are no surprises and contentious issues can be resolved before the Final report. Another tactic is to propose an interim payment as this can help to draw out any policy liability issues. Policies often contain an Interim Payments Clause, but it is worth noting that these are often not 'payments on account' (of expenses already incurred by the Insured) but 'advanced payments'.

SETTING THE CORRECT RESERVE

The transparency of Loss Adjuster reports places increased importance on the setting of accurate reserves, to avoid raising the Insured's expectations. As a result, Loss Adjusters will often set lower reserves, which will be raised later in the adjustment process. This can create problems for Reinsurers, especially when the Loss Adjuster does not correctly explain their reserve calculation, highlighting any uncertainties or questions that may lead to future reserve increases.

For more information about loss adjusting in Chile and the laws, please email patrick.hardy@integratechnical.com