



THE SAUDI CENTRAL BANK 'SAMA' LAUNCHES A PUBLIC CONSULTATION ON A DRAFT RULES FOR LOSS ADJUSTERS AND LOSS ASSESSORS

The Saudi Central Bank (referred to as 'SAMA' being the former Saudi Arabian Monetary Authority¹) has launched a public consultation on a draft Rules for Loss Adjusters and Loss Assessors¹ ('Draft Rules'), which will close on 11 September 2022.

The Draft Rules are the first set of regulations to expressly cover the operations of loss adjusters and loss assessors, and their relationship with clients in Saudi Arabia. The rules set out minimum requirements for such work and are part of SAMA's continuing measures to develop the insurance sector in the Kingdom and to achieve stability and growth.

¹ The consultation was launched on 28 August 2022 and will close on 11 September 2022. It's available on the Public Consultation Platform with the National Competitiveness Centre. <https://istitlaa.ncc.gov.sa/ar/Finance/SAMA/LossAdjusters/Pages/default.aspx>

In this Briefing, we highlight some of the key provisions of the Draft Rules which will be of interest to loss adjusters/assessors and the wider insurance industry in Saudi Arabia.

Overview

Insurance/reinsurance-related service providers, such as loss adjusters/assessors or third-party administrators, must be licensed by SAMA in order to operate in KSA. The prohibition on dealing with unlicensed entities prohibits insurers from dealing with such unlicensed insurance/reinsurance related service providers².

However, there is currently no detailed legal framework regulating the activities of loss adjusters and loss assessors. Rather, until now the only regulatory requirement is that loss adjusters and loss assessors in the Kingdom must be licensed by SAMA³.

Article 5(1) of the Draft Rules now cements the regulatory requirement that loss adjusters and loss assessors be licenced by SAMA.

Both loss adjusters and loss assessors are equally defined in the Draft Rules as natural or legal persons who *'adjust the subject matter of insurance before it is insured'* and who *'assess the loss upon occurrence of the risk'* (our emphasis). Whilst the latter definition will be readily familiar with the bread and butter work of loss adjustment, the former definition may appear to be more familiar with that of risk surveying as opposed to adjustment/assessment.

However, that the Draft Rules intend to also deal with services pre-occurrence of risk is apparent from the definition of 'Subject Insured' being *'the subject to be assessed before insured and the subject to be assessed upon the occurrence of the risk'* (our emphasis).

When looking at the minimum scope of work that loss adjusters/assessors are to provide in accordance with the Draft Rules, it is apparent that such minimum scope includes both pre-occurrence and post-occurrence of risk.

Notwithstanding the equivocal definition of both loss adjuster and

loss assessor, pursuant to Article 6 of the Draft Rules the minimum scope of work for *loss adjusters* **must** include: inspecting the subject of insurance and meeting with clients and employees to understand the nature and process of business; performing a comprehensive examination of the subject of insurance together with documenting the same; conducting a thorough examination of main systems and equipment to understand the condition of the same and any direct or indirect associated risks; inspecting and checking surveillance and safety systems and ensuring minimum standards are met; assessing risks and providing clients with a comprehensive report analysing the risks to enable effective risk mitigation and management.

Pursuant to Article 7 of the Draft Rules the minimum scope of work for *loss assessors* **must** include detecting damages; inspecting the subject of insurance; investigating the causes of the risk occurrence and the resulting loss; assessing the loss and whether it is covered under the policy.

In other words, the Draft Rules impose a mandatory regulatory requirement on *loss adjusters* to perform certain tasks prior to the occurrence of risk; and they impose a minimum requirement on *loss assessors* to assess cause and loss post-occurrence of risk and to provide an opinion on policy liability.

However, Article 9(5) then provides that both *loss adjusters* **and** *loss assessors* are required to *'investigate the accident circumstances and whether the accident is covered under the insurance policy or not'*.

Article 9(8) further provides that both *loss adjusters* **and** *loss assessors* are to *'determine the Client's liability for the accident under the policy, taking into consideration the conditions, exclusions, and deductible...'*

Article 9(10) then sets out how both *loss adjusters* **and** *loss assessors* are to also determine a third party's liability. And Article 9 (12) describes how both *loss adjusters* **and** *loss assessors* are to *'prepare the final*

report, which must include, as a minimum, the value of the loss, whether it is covered under the insurance policy, the responsibility of any third party for such loss, in addition to any other information that must be clarified in the report.'

Whilst an opinion on policy liability commonly occurs in loss adjuster reports in practice, we envisage that loss adjusters/assessors may be revisiting the business activities of their trade licences and the terms of their own professional indemnity insurances to ensure that they are able to offer the above services required as a regulatory minimum under the Draft Rules.

Further minimum requirements on *loss assessors* pursuant to Article 7 are to: assess property and liability losses; investigate claims; assess indemnities under the policy terms and conditions; investigate fraud and suspicious claims; provide recommendation and advice as to repairs; issue a report detailing damage and cause together with an estimate of loss and a technical opinion on policy coverage

Article 7 (8) then further provides that loss assessors are to co-ordinate between insurers as to any joint liability. We envisage that the assessor's ability to do so will be largely dependent on who is the assessor's client so as to avoid any potential conflict of interest. Such eventuality is catered for in the rules at Article 11 whereby loss adjusters/ assessors may not engage in activities that may lead to a conflict of interest; or not practice any other insurance service that may create a conflict unless a non-objection is first received from SAMA.

The definition of 'Client' – as separate to that of 'Insurer' and 'Insured' – as a *'natural or legal person who contracts with Loss Adjusters and Loss Assessors for insurance adjusting and assessing services'*, is also important. This is because as drafted the Draft Rules provide for loss adjusters/assessors to not only contract directly with insurers but also with insureds.

² Article 19 of the Implementing Regulations.

³ Art. 19 of the Implementing Regulations of the Law on Supervision of Cooperative Insurance Companies (**Implementing Regulations**).

With the above in mind, Article 5 sets out how the Draft Rules envisage clarity of instructions. Prior to undertaking work for a Client, loss adjusters and loss assessors are required to sign a contract with the client which **must** at least include: the scope of work; where the work will be undertaken; the pricing mechanism, payment method and due date; the parties' obligations and rights; the procedure and time frame for preparing and submitting reports; and the right of the Client or the 'other party' to review the report and related documents. We read 'other party' as either an insured or an insurer, depending on who is the Client, in an insured-insurer relationship.

Article 5 also provides a requirement on loss adjusters/assessors to provide continuous employee training.

Further provisions are the mandatory requirements pursuant to Article 8(1) on loss adjusters/assessors to provide SAMA with an annual statement of its business on a SAMA prepared form; to establish internal anti-fraud

internal policies and procedures (Article 10(1)) and check all claims for fraud (Article 10(2)); and only use Client data for the purpose of which it was collected (Article 10(3)).

Article 12 sets out how non-compliance will result in, as yet unspecified, regulatory fines.

Conclusion

The results of the public consultation on the Draft Rules will no doubt be interesting, not least given that the scope of services envisaged appears to take the traditional loss adjusters;' services into a wider territory. It will also be very interesting to see the extent, if any, to which any amendments are implemented.

Regardless however, as Saudi Arabia continues its widespread transformation and economic diversification, this forthcoming regulatory development to govern loss adjusters and loss assessors can be viewed as a mechanism to develop and grow the insurance market within the Kingdom.

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