

Guidelines of the Council of Bureaux on outsourcing 2018

I. Introduction

Business entities participating in the Green Card system (Bureaux, insurers, correspondents and claims handling companies) frequently outsource their activities to other entities.

Claims handling is sometimes delegated to a foreign entity not established in the country of the accident (international outsourcing). Even more than on national level, international outsourcing may prejudice the interest of the victims.

Handling and settlement of claims by a correspondent is a kind of outsourcing, for which the nominating insurer remains fully liable. Since the approval of a correspondent and the forwarding of claims to a correspondent by the Bureau which granted the approval has to be regarded as a kind of outsourcing of the activity of the Bureau, even this Bureau bears certain liability. This is also implied by the passive procedural legitimacy of the Bureau as well as of the so-called dual mandate that is stipulated in Article 4.4 of the Internal Regulations (that the correspondent handles claims in the name of the approving Bureau and on behalf of the insurer that requested their approval).

The liability of the two different entities (the insurer and the Bureau granting the approval) is mutually independent and oblige amongst others these two entities to exercise control over the activity of the correspondent independently.

Outsourcing is an increasing phenomenon and experience shows that in the case of outsourcing by a correspondent, sometimes neither the insurer who asked for their approval, nor the Bureau which gave the approval are aware of the outsourcing. This can also be confusing for the injured party who was only informed about the name of the correspondent and then receives correspondence from another entity.

The outsourcing of 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 minimum standards contained in these guidelines may be further extended by any national Bureau.

Outsourcing within the Green Card system is acceptable under the following conditions:

II. General

1. Any outsourcing must be lawful. Legal obligations (e.g. personal/commercial data protection) must always be complied with.
2. The business entity which is outsourcing the whole or a part of its activities to another entity, remains legally and financially liable for the outsourced activity.

III. Victims' rights

The rights of victims must be fully respected and preserved, amongst others:

- a) the right to communicate in the language of the victim if that language is an official language of the country in which the accident occurred;
- b) the right to contact and communicate with the correspondent in the country of accident and having their claim handled there;
- c) the right to compensation and/or a reasoned reply in due time in compliance with the applicable law - the fact of an activity being outsourced should not delay the process of claims settlement;
- d) the right to personal data protection.

IV. Outsourcing by foreign insurers to their correspondents

1. The insurer bears the final liability for the activity of the correspondent and has to care and control that amongst others, the above mentioned conditions and rights of victims are fully respected by the chosen correspondent.
2. The Bureau granting the approval should ensure that the insurer obliges the correspondent to:
 - a) mention the corporate name of the correspondent, the name of the foreign insurer and its Green Card code number on all correspondence of the entity proposed for the outsourcing and relating to the outsourced activity;
 - b) conduct all communication with the injured party in the latter's language, provided that this language is an official language of the country of accident;
 - c) designate a contact person for the Bureau which granted the approval to solve possible difficulties (such as complaints from injured parties, etc...).
3. Any potential further outsourcing by the correspondent to another subcontractor – whether known or unknown to the insurer – remains an integral part of the liability of the insurer. Thus, the insurer, when choosing a correspondent should not overlook this aspect. The insurer should give specific attention to potential outsourcing by a correspondent to a subcontractor, who is exercising its activity in a country different from the country of the Bureau, which is or will be granting the approval of the correspondent.

4. The handling and settlement of claims should be done in the country where the related accident occurred. Even if that would not be the case, still the above mentioned rights of victims must be respected. Thus, it cannot be recommended to insurers to agree or tolerate that their correspondents outsource the handling and settlement of claims to a subcontractor in another country. Regarding other so-called “back office” activities and their outsourcing by a correspondent to a subcontractor in another country, it is up to the insurer to carefully consider whether and in what scope this should be possible, taking into consideration the insurers’ liability.

V. Outsourcing by correspondents

1. In case of problems with the handling and settlement of claims, the Bureau which granted the approval of a correspondent, may ask for information on potential outsourcing by a correspondent to a third entity. This Bureau may address such request either directly to the insurer or to the correspondent or to the Bureau which sent the request for the approval of the correspondent.
2. The agreement signed between the correspondent and the subcontractor shall respect the obligations applying to the correspondent.
3. The entity to which a correspondent outsourced its activities does not have any rights under the Internal Regulations of the Council of Bureaux against any Bureau or against the Council of Bureaux.