

Recommendations for legal protection insurers in managing their relationship with independent lawyers

Preface

Legal protection insurances and lawyers are committed to ensuring the best possible access to the law for all those seeking legal advice. To this end, close cooperation between these parties is essential in the interests of the insured and the clients. Both parties must show respect for each other's role in the legal system.

In the course of their work, lawyers are subject to State supervision and to the mandatory provisions of the Federal Law on the Free Movement of Lawyers (LLCA). They are also required to comply with the rules of professional ethics. The rule of law requires full respect for the principles governing the legal profession, in particular professional confidentiality, the independence of the lawyer and the prevention of conflicts of interest. These professional rules are non-negotiable elements for lawyers.

Legal protection insurance is subject to FINMA supervision. They are required to comply with the provisions of the Federal Law on Insurance Supervision and the related regulations, the Insurance Contract Law (ICA), as well as the insurance contracts and general contract conditions. They must protect on the one hand the interests of the individual policyholder and, on the other hand, the interests of the pool of insureds. They are obliged to observe the obligation of equal treatment, damage mitigation and the contractual responsibilities of insurance law. This is the only way to ensure that insured persons pay affordable premiums and that their interests are upheld by the rule of law.



1 Establishment of contact

Registration of the case by or on behalf of the insured

- Under the Insurance Contract Act (ICA), it is in principle the responsibility of the insured person to notify the legal protection insurance company of the case as soon as possible. After the claim has been reported, the legal protection insurance will check whether there is coverage and what the scope is. It also decides whether to have the case dealt with by its own lawyers internally or by external lawyers.
- If the insured person instructs a lawyer to register the case, the legal protection insurance will also check first whether there is coverage and what the extent is. It decides whether the case should be dealt with internally with its own lawyers or by an external lawyer.
- If the notifications of the case are made by a lawyer of her or his own choice, the insured must in principle pay the fees himself until a possible guarantee of assumption of costs. The legal protection insurance may, but is not obliged to, grant retroactive coverage.
- In the event of a no-fault breach of obligation by the insured, in particular where the consultation of a lawyer is understandable (first aid lawyer, emergency situation, etc.), the insurance, in a covered case, waives the right to invoke the breach.
- If the insured person first consults a lawyer before the legal protection insurer confirms coverage, this circumstance must not in itself lead to the complete rejection of cover for further steps.
- The legal protection insurance will inform the insured person or his lawyer immediately of any limitation of coverage (e.g. reductions due to gross negligence, deductibles, etc.) or benefit reservations (intent, subsidiarity, etc.).
- In the event of a conflict of interest, the legal protection insurance waives the right to have the case handled by its in-house lawyers. In particular, a conflict of interests shall also be deemed to exist where a case is brought against an associated group company or where one or more parties are insured by the same legal protection insurance. The insurance company informs the insured person of this and of his or her right to choose a lawyer freely.
- If, in individual cases, the policyholder expressly wishes that his or her claim be treated internally, internal treatment remains possible after the policyholder has been fully informed about the conflict of interest and the right of free choice of a lawyer.
- The right to an economic settlement (compensation of the claim) is also guaranteed in this case.
- In the event of a conflict of interest, the legal protection insurance renounces to provide the reasons for the conflict of interest.
- Within the scope of the monopoly, the legal protection insurance must not handle the claim in-house.
- Subsequently, the legal protection insurance will inform about the next steps, in particular the necessary steps to safeguard any rights, and will make reference to the SAV/SVV checklist for legal protection policyholders.
- If recourse to a lawyer is necessary, the legal protection insurance shall inform the insured of his right to choose his lawyer freely:
 - > It shall not deviate without important reason from the choice of the insured. It shall consider the right of the insured to be represented by a trusted lawyer.
 - > In case the right of refusal is exercised within the scope of the monopoly or in the event of a conflict of interest, the legal protection insurance shall make the insured person aware of his or her additional right to make a proposal pursuant to Art. 167 para. 2 OS. After the insured has submitted three further proposals for lawyers, the legal protection insurance must finally accept a lawyer proposed by the insured. The legal protection insurance must exercise the right of refusal immediately.



Contact with the lawyer

- If an external lawyer is appointed, the legal protection insurance shall contact the external lawyer before guaranteeing to assume the costs.
 - › The legal protection insurance shall ensure that the lawyer is informed about the parties involved, the subject-matter of the dispute, the status of the proceedings, the current time limits and the insurance cover and its limits. If the lawyer is not able to accept the mandate he must refuse it immediately (Art. 395 CO).
 - › If the lawyer can assume the mandate he informs the legal protection insurance of the principles for the payment of his fee and the method of settlement. The legal protection insurance informs the insured to which extent it covers the costs or whether it pays in full.
 - › Any agreements of cession for security purposes between the client and the lawyer must be observed.
- The legal protection insurance provides the insured with a guarantee of assumption of costs as quickly as possible and also informs his lawyer. The same applies to extensions and limitations.
- The guarantee of assumption of costs must include the following points:
 - › the parties
 - › the subject-matter of the dispute
 - › if quantifiable, the amount in dispute and any limitations of the value in dispute
 - › the basis of the fee and the invoicing procedures, provided that the legal protection insurance covers them
 - › any cost ceiling; to be set in a manner appropriate to the subject-matter of the dispute
 - › any limits in benefits and the amounts of the remaining insurance cover
- The following special features must be explicitly mentioned in the guarantee to cover cost:
 - › non-reimbursement of VAT by the legal protection insurance in case principals are entitled to deduct tax
 - › reductions in benefits and/or deductibles
 - › the assumption/non assumption of advances, cost fees, indemnities to adverse parties, costs evidence and witnesses, etc.
 - › specific support offered by the legal protection insurance (medical consultants, case management, specialised services, etc.)
 - › modalities in the event of a settlement
 - › modalities to communicate information to the legal protection insurance



2 During case handling

- Legal protection insurance shall respect the rules of professional ethics, in particular professional confidentiality and the independence of the lawyer.
- No instructions may be given to the legal representative to the detriment of the insured person.
- The legal protection insurance may request interim reports from the insured free of charge. If the legal protection insurance requires to be informed directly by a lawyer instead the insured person, the legal protection insurance must reimburse the expenses.
- If no other method has been agreed, the lawyer may invoice at least once a year, depending on the progress of the case, even if the obligation of the legal protection insurance to pay benefits or advances is subsidiary.
- The cost guarantee for further actions shall be reviewed after each instance.
- In the event of a difference of opinion, in particular when claiming a lack of prospects of success, the following points should be considered:
 - › Timely notification of the lawyer, in particular in the appeal procedure.
 - › Written notification and justification of the type and extent of divergence of opinion.
 - › Information on the possibility of arbitration according to Art. 169 AVO and the corresponding provisions in the respective general insurance conditions.
 - › Reference to Art. 169 para. 4 AVO, according to which the insured person may initiate proceedings at her or his own expenses in the event that the legal protection insurance declines cover. If the outcome is more favourable than the legal protection insurance predicted the legal protection insurance is obliged to cover the resulting costs.
 - › If a guarantee is given to cover lawyer's fees and this is limited retrospectively, the legal protection insurance must inform in writing (also) the lawyer about this. The limitation or revocation of the assumption of costs vis-à-vis a lawyer who is in good faith takes effect "ex nunc".

3 Case closure

- Before a settlement, the legal protection insurance company shall inform the lawyer in good time and in a clear manner of the conditions for the assumption of costs. The lawyer must be informed in a documented manner of the costs incurred up to that time by the legal protection insurance to the extent that they are to be included by the lawyer in the settlement.
- If the legal protection insurance and the lawyer cannot agree on the fee, the mediation procedure (if existing) must be invoked.