



AMVIC

Bylaw 2 – Compensation Fund

Version 1
November 1, 2018

Bylaw 2 Compensation Fund

Amendment history

Version	Date	Summary of Update
1.	Nov.1, 2018	Original. Approved by Board of Directors. Replace previous Bylaws from Society.
2.		
3.		
4.		
5.		

ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL – BYLAW 2

Compensation Fund

1.1 Compensation Fund Definitions

- (1) The definitions contained in AMVIC Bylaw #1 also apply to this Bylaw.
- (2) For the purposes of this Bylaw, the following additional terms shall have the following meaning unless the context otherwise requires:
 - a. "Automotive Business" has the meaning in the Designation of Trades and Business Regulation, Alta. Reg. 178/1999.
 - b. "Claimant" means an individual or business that makes a Claim against the Fund.
 - c. "Compensation Fund Coordinator" means an employee of the Council that is delegated authority by the CEO to review Claims.
 - d. "Consumer" means a consumer as defined in the Automotive Business Regulation, Alta. Reg. 178/1999, as amended, but does not include a business that purchases the goods for resale.
 - e. "Fund" means the compensation fund established by the Council pursuant to the Consumer Protection Act ("CPA").
 - f. "Review Panel" means the Compensation Fund Review Panel established in 7.1(3)(b)(i).
 - g. "Transaction" means the purchase, lease, gift, contest or other arrangement between a Consumer and an AMVIC Licensed Automotive Business.

2.1 Interpretation

- (1) In these Bylaws, unless the context otherwise requires, the Interpretation Act, being Chapter I-8, R.S.A. 2000, as amended from time to time, applies to these Bylaws.
- (2) Words importing the singular include the plural and vice versa; words importing gender include the masculine, feminine and neuter genders; and words importing persons include individuals, bodies corporate, partnerships, trusts and unincorporated associations.
- (3) The headings used throughout these Bylaws are inserted for reference purposes only, and are neither to be considered or taken into account in construing the terms of provisions of any article nor to be deemed in any way to qualify, modify or explain the effect of any such terms or provisions.

3.1 Compensation Fund Continuance

- (1) The Fund was established on January 1, 2012, and is continued by this bylaw, in accordance with section 137 of the CPA.
- (2) An application made under the compensation fund provisions of the previous bylaw continues under this bylaw.
- (3) The fund limits are calculated including claims under the previous bylaw and this bylaw.

4.1 Compensation Fund Claim Eligibility

- (1) A Consumer is eligible for Compensation from the Fund if the following conditions have been met:

- a. The Consumer entered into a Transaction with an Automotive Business on or after July 1, 2011;
 - b. The Automotive Business was licensed by the Council at the time of the Transaction;
 - c. The Consumer suffered a loss arising from an act or omission of the Automotive Business licensee during or as a result of the Transaction;
 - d. The Consumer applies for Compensation in accordance with these bylaws;
 - e. The Consumer provides an undertaking in accordance with 4.1(5);
 - f. The Consumer provides any additional information requested by the CEO;
 - g. The Automotive Business has filed for receivership, has filed for bankruptcy or is otherwise unable to compensate the Consumer;
 - h. The CEO has made a request for payment and the Automotive Business has not paid the claim within the time set in 6.1(6).
- (2) A Consumer who meets the requirements of 4.1(1) shall be paid Compensation in accordance with these bylaws.
- a. The Council is not required to make a payment from the Fund until:
 - i. the appeal period from a decision of the CEO has expired, or
 - ii. the Review Committee has rendered a decision.
 - b. Nothing in this article requires the Council to pay compensation that exceeds the amount set in the Fund.
- (3) A Consumer must submit a claim no later than the later of:
- a. two years from the date the Consumer knew or ought to have known that they had a claim in relation to the Transaction but not later than 3 years from the date of the Transaction,
 - b. one year from the date that AMVIC took administrative action against the Automotive Business or salesperson in relation to the Consumer's Claim, or
 - c. one year from the date that charges have been laid in relation to the Consumer's Claim against the:
 - i. Automotive Business
 - ii. A salesperson, employee, representative or agent of the Automotive Business.
- (4) A Consumer is not eligible for compensation from the fund in relation to any amount that the Consumer has recovered in relation to the claim from:
- a. The Automotive Business;
 - b. A salesperson, employee, representative or agent of the Automotive Business; and
 - c. Any other person who caused or is vicariously liable for the claim.
- (5) A Consumer is not eligible for compensation from the fund unless the Consumer has provided an undertaking that indicates, if the Consumer recovers money from the fund, the Consumer will deduct the amount recovered from any civil claim against the Automotive Businesses.
- (6) Nothing in these bylaws prevents a Consumer from pursuing a civil action against an Automotive Business.

5.1 Compensation Fund Application Requirements

- (1) The Consumer shall complete and file the application form provided by the Council,

6.1 Compensation Fund Review Process

- (1) The CEO shall review claims to determine if they meet the criteria for compensation under these bylaws.
- (2) The CEO may delegate their powers and responsibilities.
- (3) The CEO shall give the Automotive Business and any registered salesperson written notice that a claim has been made and shall give the Automotive Business at least 30 days to make representations in writing.
- (4) If the CEO receives representations from the Automotive Business under 6.1(3), the CEO may give the Claimant an opportunity to respond to the representations in writing.
- (5) The CEO shall give written notice of the decision to the Claimant and the Automotive Business.
- (6) If the CEO determines the claim to be valid, the CEO may in writing give the Automotive Business the opportunity to pay a claim before paying the claim from the Compensation Fund.
 - a. If the CEO gives the opportunity to pay the claim, they shall specify the time for paying and the time shall not exceed 45 days.
 - b. Subject to an appeal of the decision of the CEO, it is serious ethical misconduct for an Automotive Business to fail to pay the claim within the time specified by the CEO, or for an Automotive Business to fail to pay its debt to the Fund pursuant to s. 30 of the Automotive Business Regulation.
 - i. The CEO shall review the conduct of the licensee in (b) and the result of the review shall be reported to the Board of Directors. The report shall include details of any corrective or administrative action taken against the Automotive Business under the CPA.
 - ii. Nothing in this article affects or fetters the discretion of the CEO under the CPA and Regulations.
- (7) Notices to the Automotive Business are deemed to have been received if sent to the last address according to the records of the Council.

7.1 Compensation Fund Appeal Process

- (1) The Consumer and the Automotive Business have a right to appeal the decision to a Compensation Review Panel.
- (2) A notice of appeal must be given to the CEO within 30 days of receipt of the decision of the CEO.
- (3) The notice of appeal shall specify:
 - a. The grounds for the appeal and
 - b. The facts in support of the appeal.
 - i. Within 45 days of an appeal being filed, the Chair of the Board shall establish a Compensation Review Panel;
 - ii. If the largest possible claim under the appeal is under \$5,000, the Chair of the Board may establish a Compensation Review Panel of one individual who is a member of the Board of Directors of the Council. The sole member of a Compensation Review Panel under this article has the powers and responsibilities of Chairperson;
 - iii. If ii. does not apply, the Compensation Review Panel shall consist of:
 - (a) Chairperson who is a member of the Board of Directors of the Council;

- (b) An individual who is the owner or employee of an automotive business licensed by the Council;
 - (c) A Representative of the public, including Public Directors appointed under the CPA, Automotive Business Regulation and Bylaw #1.
- iv. The Chairperson of the Compensation Review Panel shall set the date, time and location of the appeal hearing and notify the Claimant and the Automotive Business;
- v. If the largest possible claim under the appeal is under \$5,000 the hearing shall be in writing unless the Chairperson makes an order to the contrary;
- vi. Unless the Chair of the Board has established hearing or pre-hearing procedures, the Chairperson has the authority to determine any question relating to appeal procedure;
- vii. The decision of the Compensation Review Panel is final and binding.

8.1 Compensation Fund Claim Limits

- (1) All payments from the Fund are restricted to the following limits:
 - a. The Claimant is not entitled to make a Claim against the Fund for an amount greater than:
 - i. what the Claimant has paid in relation to the automotive transaction, plus interest;
 - ii. what the Claimant will be obligated to pay in relation to the automotive transaction plus interest; or
 - iii. the amount of a judgment against an automotive business related to the consumer transaction, to the maximum amount identified in 8.1(1)b.
 - b. The maximum amount that will be paid to a Claimant from the Fund on a Claim is \$25,000.
 - c. The maximum amount that can be paid from the Fund in relation to any and all Claims against a licensee is \$300,000. Where the total Claims against a single licensee exceed \$300,000, valid Claims shall share within the maximum amount to be paid on a pro rata basis;
 - d. The Claimant is not entitled to make a Claim against the Fund for consequential, direct or indirect damages or expenses;
 - e. The CEO may use the rates under the Judgment Interest Act to calculate interest.

9.1 Compensation Fund Replenishment

- (1) As needed, the Board of Directors may authorize a transfer of monies from operations to provide revenue for the Fund. Such monies allocated to the Fund by the Council will be held by the Council pursuant to the terms of the CPA and the Automotive Business Regulation.
- (2) If the Fund has more than \$4,000,000, no transfer of monies from operations to the Fund shall be authorized by the Board of Directors.