

OPINION PIECE

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## The multifaceted task of the Latin American adjuster



*Adjusting losses in Latin America is highly complex and covers multiple aspects. To assure the best possible outcome for clients, expert adjusters need a great deal of knowledge, global vision and local and international market insights. With over 25 years of experience in Latin America, RTS International Loss Adjusters highlights some of these facets in this article.*

A terminology issue needs to be clarified, as the activity of loss adjusting is not referred-to in the same way in all the countries. In **Spain and Portugal**, individuals in this profession are called “peritos de seguros” (insurance experts), while in **Mexico, Dominican Republic and Peru**, they are called “ajustadores de siniestros” (loss adjusters) or “ajustadores de seguros”

(insurance adjusters), and in **Chile, Paraguay and Argentina**, “liquidadores de siniestros” (insurance settlers).

In the past 20 years, insurance regulators in these countries have come to appreciate the crucial role that adjusters and their activity play. There is a regional and international movement to **acknowledge and protect the rights of insureds as consumers, and adjusters are pivotal in delivering the service.** But the State has a more important and more difficult interest beyond total consumer satisfaction, which is the accurate application of the insurance contract -which could imply limiting or even denying indemnity rights.

The State must protect this aspect, which refers to the correct use of the funds that insurance companies accumulate. The goal is to protect insurance as an institution, and this is essential to understand the adjuster’s role. The State’s concerns have resulted in laws and regulations referring to the activity of adjusting losses, which are acknowledged in detailed by RTS International Loss Adjusters due to our extensive experience and cover in Latin America.

### **Requirements to work as an “adjuster”**

The nature and extent of State intervention varies, although professional registration with an insurance regulator or an authorized institution is currently required to practice the loss adjusting profession in most Latin American countries. This is the case in **Argentina, Bolivia, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Puerto Rico, Nicaragua, Panama, Paraguay, Peru, and Venezuela.**

Registered adjusters need to meet requirements of age, residency and education, as well as general background conditions, including the lack of conflicts of interest. But they also must demonstrate their specific suitability for the job, usually by passing demanding exams. In some countries, such as **Chile** for example, in order to obtain their license adjusters also need to post a security to cover any possible damages they may cause in the course of their activity. In **Bolivia**, they need a “fiscal solvency certificate” issued by the

General Audit Office of the Republic. In **Dominican Republic** regulations allude to a security deposit, but this is a financial certificate issued by any bank.

Registration comes at a cost and its renewal may depend on attending state-approved CPD courses. Once registered, adjusters or loss adjusting firms are added to a roster held by the regulating authorities for public information and review.

But State participation is not limited to the initial registration as **usually adjusters must fulfill obligations relating to certain aspects of their activity**, and these may also vary from jurisdiction to jurisdiction. Normally, adjusters must keep special records and safeguard their reports and support documents for a certain length of time. But there are also obligations relating to how to perform the actual work, focusing on different aspects.

In **Honduras**, the regulations of the National Banking Commission provide a long list of obligations for adjusters, which include investigating the loss, determining whether the risk is covered, establishing the value of the insured property on the date of the loss and the corresponding indemnity amount. Chilean regulations, however, are more detailed to the point of listing the information that an adjuster's report must contain at a minimum.

The State also exerts active compliance control and may demand information from adjusters as well as their active collaboration. In **Chile** the regulating authority, the Commission for the Financial Market (known by the abbreviation CMF) may "require loss adjusters to report on adjustments that they have performed, inspect their offices, examine documents and registrations, as well as provide standards for the presentation of financial information and accounting".

To **protect insureds as consumers**, channels have been established for submitting complaints relating to the adjuster's performance, normally with the participation of the regulatory authority. In **Mexico**, there are two institutions exercising this control: The National Commission of Insurance and Finance (CNSF), which is the state organization with specific incumbency in

insurance matters, and the National Commission for the Protection and Defense of Users of Financial Services (CONDUSEF). In recognition of the fact persons other than the insured could suffer damages by cause of an adjuster's actions or omissions, the CNSF also receives complaints from "any affected person with a legal interest concerning the [adjuster's] infringement". The CONDUSEF has powers to interpret and apply insurance policies, one of the adjuster's most important activities. Less than a year ago, this institution launched a micro-site relating to auto claim adjusters, with the purpose of making each adjuster's individual performance available for assessment.

Finally, the regulatory authority usually has the power to impose sanctions if the adjuster breaches the law or regulations. In **Chile**, these sanctions can consist of censures, fines, suspension of business for up to six months and removal from the official roster of adjusters.

### **Actions speak louder than words**

Licensing and State controls form a framework for working in the profession of adjusting claims, but this is just a start. In fulfilling their duties, **adjusters are responsible for following regulations** which are applicable to insurance contracts and insurance companies in their jurisdiction. Depending on the circumstances, adjusters may also be required to be familiar with and follow the rules set forth by other laws, including procedural law.

An important example of this legal aspect refers to timeframes, since legislations often contain deadlines regarding the insured's rights and timely payment of claims. Article 56 of the **Argentine Insurance Statute**, for example, states that the insurer must issue a "pronouncement" in respect to the insured's rights within 30 days. If the insurer fails to do so, or if the adjuster representing the insurance company sends an inappropriate communication, the loss may be deemed as accepted.

According to article 46 of the Insurance Statute, the only way to extend this time period is to request "additional information" to verify the loss and/or its severity -and this is normally done by the adjuster. Consequently, loss adjusting

typically begins with a barrage of questions and requests for documents that postpone the need for a pronouncement until such requests are met. Adjusters need to be highly disciplined to carry this out effectively.

Some Latin American countries, for example **Chile and Peru**, have new legislations with a different view of the adjuster's role. The adjuster no longer represents insurance firms as in the past but instead remains equidistant between the parties. The Peruvian insurance statute upholds the adjusters' independence and impartiality, as well as the insured's right to participate in his or her designation. The regulatory authority ensures compliance with this objective and can even apply sanctions. The law and regulations establish a timeline of activities, timeframes and legal consequences throughout the loss adjusting process, which are designed to give the insured appropriate participation in crafting the final outcome. Chile has similar rules.

Every jurisdiction has its own loss adjusting laws and regulations. **For an adjustment to be successful, it should not be criticized for breaching any rules** and it must provide a definitive solution, whether by agreement with the insured or through confirmation by administrative or judicial authorities.

## **Conclusion**

As we can easily derive, the profession of adjusting losses in Latin America has matured. Today the job requires technical training as well as State licensing, and it is subject to the parameters and controls of the entities regulating insurance in the different countries.

Every country has its own peculiarities when it comes to adjusting losses. However, all of them have in common the need for in-depth knowledge and compliance with all requirements to legally practice the profession in a technically correct manner, which involves compliance with technical, organizational and legal guidelines.

It is important to remember that adjusters in Latin America must often settle their cases in a context of high inflation, currency devaluation, changing

regulations, scarce supply of spare parts or items similar to the damaged ones, and lack of any public instruction or appreciation concerning insurance.

All these special circumstances imply that adjusters may be seen as requiring certain juggling skills to perform their work, since they have to control an array of difficult situations to successfully bring their projects to conclusion.

### About RTS International Loss Adjusters

We are an international business group founded in 1989, with our own offices in Spain, Latin America and Portugal. Since our beginnings, our business has focused on adjusting losses in industrial risks and all types of technical sectors.

*For more information, please visit the website [www.rtsgrupo.com](http://www.rtsgrupo.com) or contact us.*

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