



Vehicle Sales Authority of BC
Motor Dealer Customer
Compensation Fund

Motor Dealer Customer Compensation Fund Claim Processing and Adjudication Policy and Procedures Manual

TABLE OF CONTENTS

1. Background..... 8

1.1 History 8

1.2 Operation of the Compensation Fund 9

1.3 Compensation Fund Policies 9

2. Claim Processing and Adjudication Policy and Procedures..... 10

2.1 Purpose of this Manual 10

2.2 Role of Policy in Decision Making..... 10

2.3 Application of Time Limits 10

2.4 How this Manual is Organized 11

3. Roles and Responsibilities 12

3.1 MDCCF Board 12

3.2 VSA Board..... 12

3.3 Registrar of Motor Dealers 13

3.4 MDCCF Claims Manager..... 13

3.5 Paralegal..... 14

3.6 VSA Consumer Services 14

3.7 VSA Investigations 15

3.8 VSA Finance 15

3.9 Deputy Registrar 15

4.0 Director of Operations 15

A. PROCESSING APPLICATIONS FOR COMPENSATION..... 16

1. Overview and Service of Notices and Documents..... 16

1.1 Overview Flowchart – Processing Applications for Compensation 18

1.2 Service of Notices and Documents..... 19

2. Intake of Application and Review for Completeness 20

2.1 Introduction 20

2.2 Status of Application 20

2.3 Flowchart – Intake of Application, Review for Completeness 21

2.4 Legislative Authority and Requirements..... 22

2.5 Policy 22

 Demand is required 22

 Timeline for making the demand..... 22

 Where a demand is made more than 4 years from the transaction to which the demand relates 22

 Application requirements 23

 Timeline for making the application 23

 Where an application is made less than 30 days from the date of the demand..... 23

 Where an application is made more than 120 days from the demand 23

 Where the application meets timeline criteria but is incomplete..... 23

 Application may be re-opened 24

MDCCF Claim Processing and Adjudication Policy and Procedures

2.6	Procedures	24
	Where a demand is made within 4 years from the transaction to which the demand relates	24
	Where a demand is made more than 4 years from the transaction to which the demand relates	24
	Where a claim application is made after 30 days from the date of the demand	25
	Where a claim application is made less than 30 days from the date of the demand	25
	Where an application is made more than 120 days from the demand	25
	Review of application for completeness, where demand and application timeline requirements have been met.....	26
	Where application is complete	28
	Where application is incomplete.....	29
	Where application may be re-opened.....	30
3.	Initial Eligibility Assessment.....	31
3.1	Introduction	31
3.2	Status of Application	31
3.3	Flowchart – Initial Eligibility Assessment	32
3.4	Legislative Authority and Requirements.....	33
	Definitions.....	33
	Definition of a motor vehicle prior to December 1, 2006	34
3.5	Policy	34
	Initial eligibility criteria.....	34
	Meaning of “individual”.....	36
	Meaning of “registered dealer”.....	36
	Determining primary use of vehicle	36
	When a trailer is a vehicle.....	37
	Review of initial eligibility by Claims Manager.....	39
	Where evidence is a court judgment.....	39
	Where application meets criteria	39
	Where application does not meet criteria.....	40
3.6	Procedures	40
	Where application meets criteria	40
	Where application does not meet criteria.....	40
4.	Claim Acknowledgement.....	42
4.1	Introduction	42
4.2	Status of Application	42
4.3	Flowchart – Claim Acknowledgement	43
4.4	Legislative Authority and Requirements.....	44
4.5	Policy	44
	Notification to claimant and dealer	44
	Where motor dealer is currently licensed and in business.....	44
	When delivery is unsuccessful	45
4.5	Procedures	45
	Claim Acknowledgement to claimant and motor dealer	45

MDCCF Claim Processing and Adjudication Policy and Procedures

Where motor dealer is currently licensed	45
Where motor dealer is no longer in business – successor motor dealer.....	45
Where motor dealer is no longer in business – no successor motor dealer ...	46
Where motor dealer response is received or 10 business days for a response elapse	47
5. Claim Analysis and Dispute Resolution	48
5.1 Introduction	48
5.2 Status of Application	48
5.3 Flowchart – Claim Analysis and Dispute Resolution	49
5.4 Legislative Authority and Requirements.....	50
5.5 Policy	50
Claim analysis.....	50
Review of eligible loss by Claims Manager	50
Dispute resolution and investigation	50
Investigation	51
5.6 Procedures	52
Claim Analysis	52
Review of eligible loss by Claims Manager	52
Dispute resolution and Investigation.....	52
Resolution of the claim	54
6. Review of Eligible Loss by Claims Manager	55
6.1 Introduction	55
6.2 Status of Application	55
6.3 Flowchart – Review of eligible loss by claims manager.....	56
6.4 Legislative Authority and Requirements.....	57
6.5 Policy	57
6.6 Procedures	57
Where loss may be eligible.....	58
Where loss is not eligible	58
7. Review of Lien Claims for Liquidated/Unliquidated Loss by Claims Manager.....	59
7.1 Introduction	59
7.2 Status of Application	59
7.3 Flowchart – Review of Liquidated Loss by Claims Manager	60
7.4 Legislative Authority and Requirements.....	61
7.5 Policy	61
7.6 Procedures	62
Where loss may be liquidated	62
Where loss is not liquidated	62
8. Board Hearing.....	64
8.1 Introduction	64
8.2 Status of Application	64
8.3 Flowchart – Board Hearing.....	65
8.4 Legislative Authority and Requirements.....	66
Authority and powers of the Board	66

MDCCF Claim Processing and Adjudication Policy and Procedures

Confidentiality	66
Board hearing procedures	66
Consideration of a default judgment/judgment by consent	66
Reasons.....	66
8.5 Policy	66
Nature of Board hearing	66
Notice to the parties	67
Hearings to be conducted at a meeting of the Board	67
Conflict of interest.....	68
Conduct of Board hearings.....	68
Where evidence is a court judgment.....	68
Standard of proof.....	69
Decision and reasons	69
Paying compensation	70
Dealer repayment to the Compensation Fund.....	70
Confidentiality	70
Solicitor-client privilege	71
8.6 Procedures.....	71
Notice to the parties	71
Claim File to Board Members.....	71
Claim File Review by Board Members.....	72
Board hearing procedures.....	73
Procedures for an oral Board hearing.....	74
Decision and reasons	74
Communicating the decision and reasons	75
Paying compensation	76
Dealer Repayment to the Compensation Fund.....	76
9. Reconsideration	77
9.1 Introduction	77
9.2 Status of Application.....	77
9.3 Flowchart - Reconsideration	78
9.4 Legislative Authority and Requirements.....	79
9.5 Policy	79
General	79
Request for reconsideration.....	80
Reconsideration on the Board’s own motion.....	81
Reconsideration where compensation has been paid	81
Deciding whether to reconsider.....	81
Notification of parties – no reconsideration	82
Notification of parties – Board to reconsider.....	82
Investigation	83
Conducting a reconsideration	83
Paying compensation	83
Dealer repayment to the Compensation Fund.....	84
9.6 Procedures.....	84
Deciding whether to reconsider.....	86
Where request is not granted	87

MDCCF Claim Processing and Adjudication Policy and Procedures

Where decision is to be reconsidered	87
Investigation	87
Conducting a reconsideration	88
Paying compensation	88
Dealer repayment to the Compensation Fund.....	89
B. ELIGIBLE LOSSES AND COMPENSATION	90
1. Overview	90
2. Purchase of a Vehicle.....	91
2.1 Legislative Authority and Requirements.....	91
Definition of "purchase" and "material fact"	91
2.2 Policy	91
Loss must be liquidated	91
Loss must not be based on the cost, value or quality of the vehicle	92
Eligible loss under s. 5(1)(a)(i) of the MDCCF Regulation	92
Eligible loss under s. 5(1)(a)(ii) of the MDCCF Regulation	96
"Other failure" in s. 5(1)(a)(ii) of the MDCCF Regulation	96
Eligible loss under s. 5(1)(a)(iii) of the MDCCF Regulation.....	96
Eligible loss under s. 5(1)(a)(iv) of the MDCCF Regulation.....	97
Eligible loss where claimant traded in vehicle	97
2.3 Procedures.....	98
3. Purchase of Extended Warranty/Service Plan.....	100
3.1 Legislative Authority and Requirements.....	100
3.2 Policy	100
Eligible loss under s. 5(1)(b) of the MDCCF Regulation	100
"Other failure" in s. 5(1)(b) of the MDCCF Regulation.....	100
Not eligible where loss is recoverable from insurer.....	101
3.3 Procedures.....	102
4. Eligible Loss – Consignment Agreement	103
4.1 Legislative Authority and Requirements.....	103
4.2 Policy	103
General	103
Eligible loss under s. 5(1)(c)(i) of the MDCCF Regulation	103
Eligible loss under s. 5(1)(c)(ii) of the MDCCF Regulation.....	103
"Other failure" in s. 5(1)(c)(ii) of the MDCCF Regulation	104
Eligible loss under s. 5(1)(c)(iii) of the MDCCF Regulation.....	104
Loss due to claimant's failure to maintain insurance not eligible	104
4.3 Procedures.....	104
5. Determining the Amount of Compensation	106
5.1 Legislative Authority and Requirements.....	106
5.2 Policy	106
General	106
Where applicant may have other forms of compensation.....	106

MDCCF Claim Processing and Adjudication Policy and Procedures

Where claimant received other forms of compensation before money is paid from the Compensation Fund	107
Proportion of business use	107
Taxes	107
Compensation for purchase of a vehicle	107
Compensation for purchase of an extended warranty or service plan	108
Compensation for consignment agreement – loss of vehicle or proceeds.....	108
Compensation for consignment agreement – vehicle returned	110
Fair market value	110
5.3 Procedures.....	111
6. Determining the Amount of Investigation Costs for Recovery from the Compensation Fund	112
6.1 Introduction	112
6.2 Status of Application.....	112
6.3 Flowchart – Determining the amount of investigation costs for recovery from the Compensation Fund.....	113
6.4 Legislative Authority and Requirements.....	114
6.5 Policy	114
6.6 Procedures.....	114
Where investigation is for a claim that requires adjudication by the Board ..	115
Where investigation is for a claim that does not require adjudication by the Board	115
C. REPAYMENT OF VALUE RECEIVED FROM ANOTHER SOURCE TO THE COMPENSATION FUND	117
1. Overview	117
1.1 Status of Application.....	117
1.2 Flowchart – Repayment of Value Received from another Source to the Compensation Fund	118
1.3 Legislative Authority and Requirements.....	119
1.4 Policy	119
Repayment to the Compensation Fund.....	119
Repayment from the Compensation Fund	119
1.5 Procedures.....	120
Repayment to the Compensation Fund.....	120
Repayment from the Compensation Fund	121
Deciding if money is returned to claimant.....	121
Where claim for repayment from the Compensation Fund is denied	122
Where claim for repayment from the Compensation Fund is approved.....	122
Failure to repay.....	123
GLOSSARY.....	124
APPENDIX.....	125
TABLE OF TIME LIMITS	125

INTRODUCTION

1. Background

1.1 History

The Motor Dealer Customer Compensation Fund (Compensation Fund) was established by the B.C. government on June 1, 1995, with the introduction of the *Motor Dealer Customer Compensation Fund Regulation* (MDCCF Regulation) and related amendments to the *Motor Dealer Act* (MDA).

The Compensation Fund replaced a requirement for each motor dealer to maintain a \$15,000 bond. The intended purpose of the bond was to provide compensation for a consumer loss resulting from the bankruptcy or other financial failure of a motor dealer. However, in practice there was a lack of clear agreement and understanding among dealers, consumers, the bond-issuer and the courts as to when a consumer could collect on the bond. In the end this lack of clarity made it very difficult for consumers to be compensated.

The Compensation Fund was introduced to remedy the shortcomings of the bond system, in particular by

- clarifying who is eligible for compensation and the types of loss that will be compensated
- eliminating the requirement for consumers to go to court in order to be compensated, and
- establishing a maximum amount of compensation to be awarded per claim rather than a maximum amount per dealer.

On April 1, 2004, the Motor Vehicle Sales Authority of BC (VSA) was delegated responsibility for the MDCCF Regulation as part of its overall administration of the MDA and regulations. On January 1, 2018, the VSA became responsible for all aspects of the Compensation Fund, including managing the monies in trust.

MDCCF Claim Processing and Adjudication Policy and Procedures

1.2 Operation of the Compensation Fund

The purpose of the Compensation Fund is to reimburse consumers for eligible financial losses related to

- the purchase or lease of a motor vehicle
- the purchase of an extended warranty or service plan, or
- the consignment of a motor vehicle

in a transaction with a licensed motor dealer, particularly in circumstances where the dealer is no longer in business.

The maximum amount of compensation that may be awarded is \$20,000 per loss. The Compensation Fund is financed through mandatory contributions by all registered motor dealers in B.C. as required by the Registrar.

The Motor Dealer Customer Compensation Fund Board (Board) has the sole authority to hear and decide claims against the Compensation Fund. Board members and the Chair and Vice-chair of the Board are appointed by the VSA under the MDA and act as an independent administrative tribunal when exercising their statutory duties.

The VSA is responsible for collecting dealer contributions to the Compensation Fund and provides administrative and operational support for the Board and the processing of claims against the Compensation Fund.

1.3 Compensation Fund Policies

In addition to this policy and procedures manual, there are two other policy documents that guide the operation of the Compensation Fund:

- The MDCCF Board Appointment Policy – this is the VSA Board’s policy on how MDCCF Board members are to be appointed or reappointed; and
- The MDCCF Fund Administration Policy – this is the VSA’s policy on how the VSA supports the Board and the administration of the Compensation Fund.

2. Claim Processing and Adjudication Policy and Procedures

2.1 Purpose of this Manual

The purpose of the Claim Processing and Adjudication Policy and Procedures Manual is to document the policies and procedures that support the operation of the Compensation Fund. It is intended to assist the Board and the VSA in maintaining a fair and consistent process for adjudicating claims against the Compensation Fund and which meets the requirements of the MDA, the MDCCF Regulation and administrative fairness and natural justice.

2.2 Role of Policy in Decision Making

The role of the Claim Processing and Adjudication Policy and Procedures is to assist VSA administrators and the Board in ensuring that the statutory requirements regarding eligibility for compensation are applied in an open, structured and consistently fair manner.

Nonetheless, nothing in these policies and procedures binds or limits the discretion of the Board or the VSA when exercising their authority under the MDA and the MDCCF Regulation. The principles of natural justice require that statutory decision-makers consider the unique facts and context of each application when determining eligibility for compensation.

2.3 Application of Time Limits

The policies and procedures in this manual contain time limits for the completion of activities of the parties or the Board. Some of these time limits are established in legislation and others are a matter of policy. Where a time limit has been established by policy, the purpose of the time limit is to ensure a timely and fair resolution of an application for compensation. A table summarizing the time limits established by policy is included in the Appendix.

MDCCF Claim Processing and Adjudication Policy and Procedures

The Board will exercise discretion when enforcing a time limit set by policy and will consider the reasons why a time limit was not met and the impact of the failure to meet the limit on the positions of the parties and the fairness of the application process.

2.4 How this Manual is Organized

This manual is divided into the following sections:

- Section A – Introduction. This section provides background information about the history and operation of the Compensation Fund, the use of this manual, and the roles and responsibilities of those involved in the operation of the Compensation Fund.
- Section B – Processing Applications for Compensation. This section provides the policies and procedures regarding application requirements, initial eligibility criteria, claim analysis and processing, Board hearings and reconsiderations.
- Section C – Eligible Losses and Compensation. This section provides the policies and procedures for determining whether a claimant has suffered a loss that is eligible for compensation under section 5 of the MDCCF Regulation and for determining the amount of compensation to be awarded.
- Section D - Repayment of Alternative Compensation. This section provides the policies and procedures for determining the amount that a claimant must repay to the Compensation Fund where a claimant receives alternative compensation from other sources for the same loss that led to payment from the Compensation Fund.
- Glossary. The glossary contains definitions for important terms and acronyms used in this manual.
- Appendix. The appendix contains a table of time limits established by policy.

3. Roles and Responsibilities

3.1 MDCCF Board

The Board is an independent administrative tribunal established under the MDA and carries out statutory duties under the Act and the MDCCF Regulation. These duties include:

- determining whether a claim is eligible for compensation
- determining the amount of compensation to be awarded for an eligible claim
- determining the amount of the investigation costs in respect of the claim
- informing the Registrar of the money paid out of the Compensation Fund to claimants and of the investigation costs
- providing direction to the Claims Manager on matters of claim processing
- approving the Claims Processing and Adjudication Policy and Procedures Manual
- monitoring the balance of the Compensation Fund in consultation with the Registrar, and
- providing an annual report on the administration of the Compensation Fund to the VSA Board of Directors.

3.2 VSA Board

The VSA Board of Directors oversees the conduct of business and supervises the management of the VSA. The responsibilities of the VSA Board in regard to the Compensation Fund include:

- appointing members of the MDCCF Board
- appointing a Chair and Vice-chair of the MDCCF Board
- acting as the Trustee of the Compensation Fund
- setting per diem rates for the MDCCF Board, and

MDCCF Claim Processing and Adjudication Policy and Procedures

- reviewing the MCCCCF Board's annual report on the administration of the Compensation Fund.

3.3 Registrar of Motor Dealers

The Registrar of Motor Dealers (Registrar) has overall responsibility for the registration of dealers and licensing of salespeople, and enforcement of the MDA and regulations. The responsibilities of the Registrar in regard to the Compensation Fund include:

- requiring dealer contributions and repayments to the Compensation Fund
- overseeing the requirements for an application for compensation and the process for receiving and reviewing applications, and
- overseeing the balance of the Compensation Fund in consultation with the Board.

3.4 MDCCF Claims Manager

The Claims Manager is a VSA employee who is primarily responsible for the day-to-day operation of the Compensation Fund. This includes:

- maintaining the application for compensation form and application requirements
- managing intake and review of application requirements
- conducting an initial eligibility assessment for all applications
- conducting claim analysis, and participating in and monitoring VSA dispute resolution processes regarding applications
- conducting a review of eligible loss for deposit claims up to \$5000 and all other claims up to \$2000
- conducting a review of eligible losses for all lien claims with no limit on the amount claimed
- preparing claim files for Board meetings
- requesting compensation payments from the Compensation Fund
- informing the Registrar of payments from the Compensation Fund to claimants and investigation costs
- corresponding with claimants and other parties on behalf of the Board

MDCCF Claim Processing and Adjudication Policy and Procedures

- managing the development and publication of consumer education and communications materials regarding the Compensation Fund and ensuring that published information is consistent with the Claim Processing and Adjudication Policy and Procedures
- reporting to the Registrar regarding all matters related to the application process and the day-to-day operation of the Compensation Fund, and
- reporting to the Board regarding all matters related to claims processing and any determinations regarding an application made by the Claims Manager.

3.5 Paralegal

The Paralegal is a VSA employee who assists the Claims Manager and is primarily responsible for providing administrative support to the Board. This includes:

- scheduling Board meetings
- acting as liaison in communications with the Board, providing administrative support and maintaining Board's records
- attending Board meetings to provide secretarial support and record minutes, and
- drafting, editing and proofreading the Board's documents including decisions and compensation payment cheque requisitions.

3.6 VSA Consumer Services

The VSA Consumer Services staff assist the Claims Manager in administering the application process and provides dispute resolution services for claimants where recommended by the Claims Manager. This includes:

- performing case management at all stages of claim processing, including application intake and correspondence with claimants and parties
- performing conciliation, and
- arranging for other forms of dispute resolution where available.

3.7 VSA Investigations

The VSA Investigations staff assist the Claims Manager in analyzing claims and provides investigative services where required. This includes:

- participating in claim analysis
- conducting investigations on behalf of the Board
- producing investigation reports

3.8 VSA Finance

VSA Finance staff is responsible for:

- processing payments to and from the Compensation Fund; and
- maintaining a record of contributions to and payments from the Compensation Fund and providing regular reports on the balance of the Compensation Fund to the Board.

3.9 Deputy Registrar

The Deputy Registrar provides strategic leadership and oversight of the VSA departments with the Registrar's delegated authority – Consumer Services, Licensing, Investigations and Industry Standards. The responsibilities of the COO in regard to the Compensation Fund include:

- Overseeing the claims processing
- Providing VSA updates to the Compensation Fund Board

4.0 Director of Operations

The Director of Operations has overall responsibility for the strategic and operational leadership for the VSA departments with the Registrar's delegated authority – Consumer Services, Licensing, Investigations, and Industry Standards. The responsibilities of the Director of Operations in regard to the Compensation Fund include:

- Overseeing the claims processing and ensuring that it meets the requirements of the applicable legislation, policy and procedures, and principles of procedural fairness and natural justice
- Providing VSA updates to the Compensation Fund Board

A. PROCESSING APPLICATIONS FOR COMPENSATION

1. Overview and Service of Notices and Documents

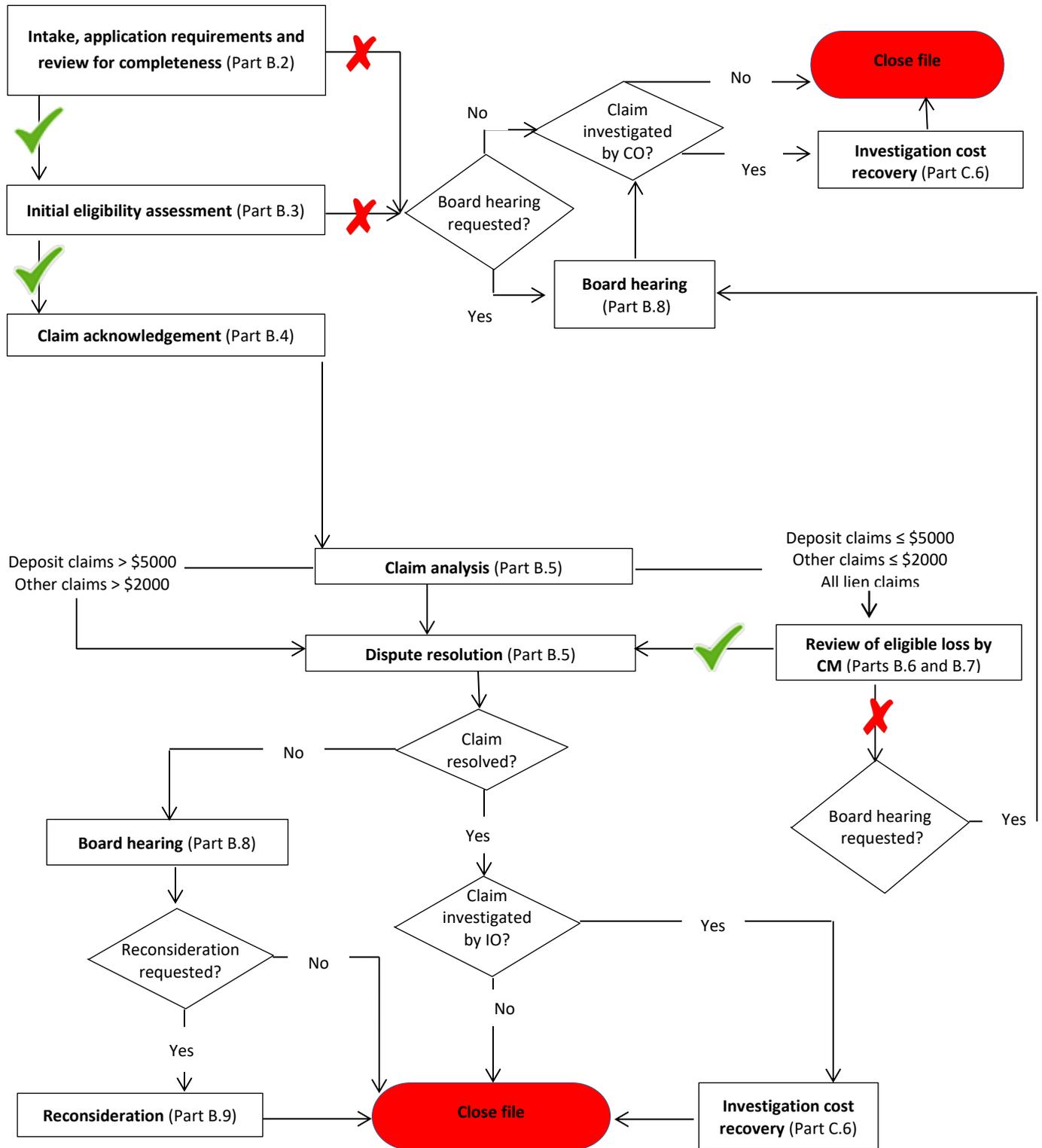
This section outlines the policies and procedures related to processing applications for compensation from receipt of the application to a Board hearing and reconsideration. It is divided into the following parts:

- Part 1 – Overview and Service of Notices and Documents. This part explains what is covered in section B and includes a flowchart showing the major steps in processing applications for compensation. It also outlines how notices and documents related to claims processing and adjudication are served.
- Part 2 – Intake and Application Requirements. This part discusses the review of application for completeness and compliance with application requirements at intake. The Claims Manager ensures all application requirements have been met before processing further.
- Part 3 – Initial Eligibility Assessment. This part discusses how applications are reviewed for eligibility based on the requirements of the legislation. At this stage, the VSA is determining whether or not the application is within the Board’s jurisdiction.
- Part 4 – Claim Acknowledgement. This part discusses the required notifications and disclosures to the dealer and to the claimant in order to ensure a fair process.
- Part 5 – Claim Analysis and Dispute Resolution. This part discusses the process for gathering further information required for hearing the claim or early dispute resolution where appropriate.
- Part 6 – Review of Eligible Loss by the Claims Manager. This part discusses how the Claims Manager reviews a claim against the legislation to see if it is or is not eligible for compensation.
- Part 7 – Review of Liquidated/Unliquidated Loss with Respect to Claims Involving Liens by the Claims Manager. This part discusses the Claims Manager’s review of a specific eligibility requirement - whether a loss is liquidated or unliquidated.

MDCCF Claim Processing and Adjudication Policy and Procedures

- Part 8 – Board Hearing. This part provides the policies and procedures regarding preparation for and the conduct of a hearing by the Board.
- Part 9 – Reconsideration. This part provides the policies and procedures regarding when a reconsideration of a decision will be conducted by the Board and the conduct of a reconsideration.

1.1 Overview Flowchart – Processing Applications for Compensation



1.2 Service of Notices and Documents

- 1.2.1 This section provides the requirements for serving Notices and Documents in this policy.
- 1.2.2 A notice or document in this policy must be either
 - (a) personally delivered,
 - (b) sent by ordinary or registered mail,
 - (c) sent by electronic mail,
 - (d) left in the mailbox or taped to the door where a person resides or a company's business address, or
 - (e) sent by facsimile. [MDA s. 30]
- 1.2.3 A notice or document in this policy is considered to have been received
 - (a) if sent by ordinary or registered mail, the delivery or service is considered to be complete on the 5th day after the day it was mailed,
 - (b) if sent by electronic mail, the delivery of service is to be complete on the 3rd day after it was sent,
 - (c) if sent by leaving a copy in the mail box or slot, the delivery of service is considered to be complete on the 3rd day after it was left,
 - (d) if sent by attaching a copy to the door or other place, the delivery of service is considered to be complete on the 3rd day after it was attached, and
 - (e) if sent by facsimile, the delivery of service is to be complete on the 3rd day after it was transmitted. [MDA s. 30.1]

2. Intake of Application and Review for Completeness

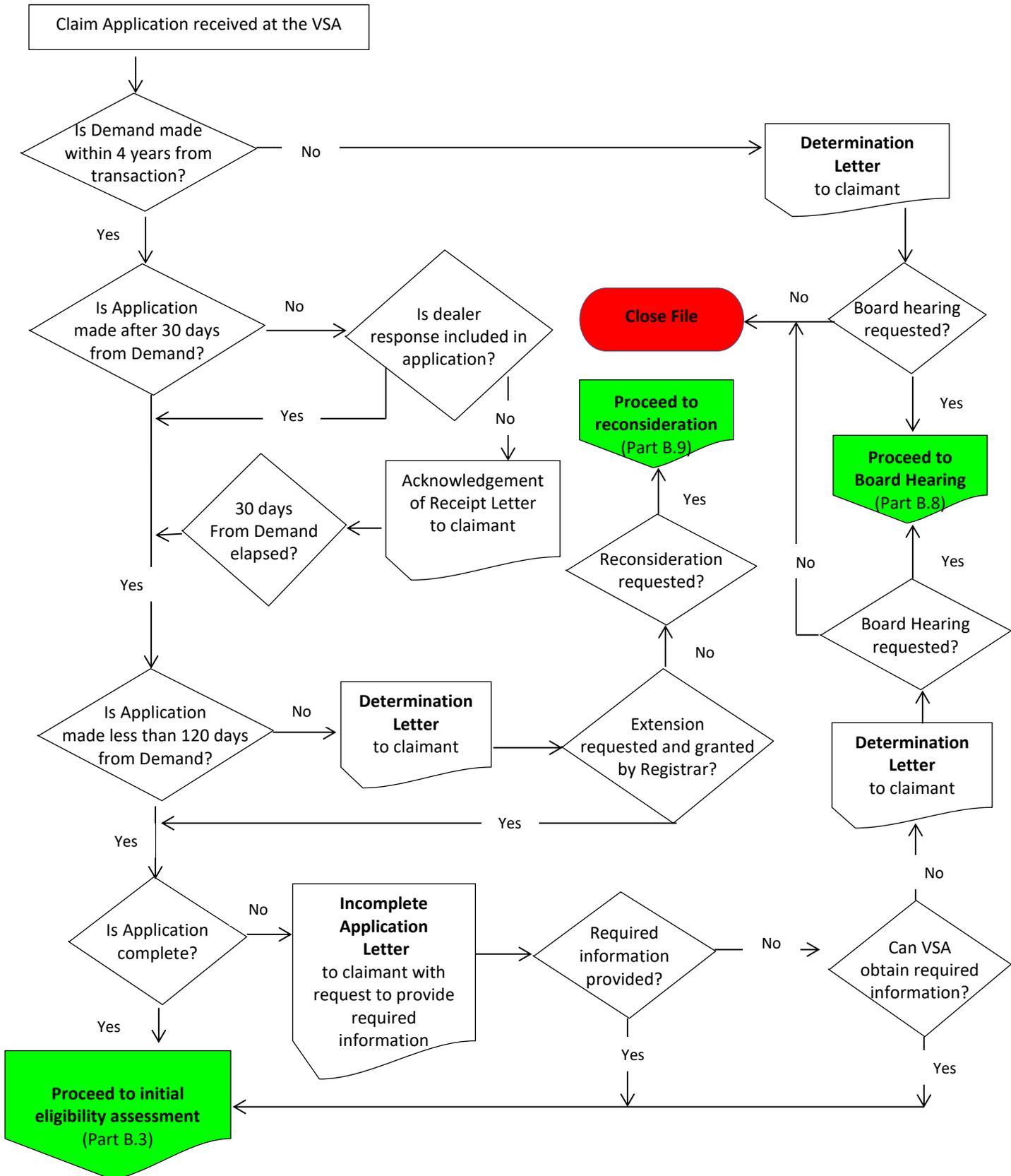
2.1 Introduction

This part provides the policies and procedures related to intake and review of application for compliance with the application requirements. The application requirements are established by the MDA and the MDCCF Regulation. The application form is established by the Registrar. The Claims Manager is responsible for ensuring that all application requirements have been met before an application is processed further.

2.2 Status of Application

Application has been received by the VSA.

2.3 Flowchart – Intake of Application, Review for Completeness



2.4 Legislative Authority and Requirements

- 2.4.1 Section 6(1) and (2) of the MDCCF Regulation provide requirements for making a demand to the dealer to return the vehicle or money that is the subject of the claim for compensation.
- 2.4.2 Section 17(1) of the MDA and sections 8, and 8.1 of the MDCCF Regulation provide the requirements for making an application for compensation from the Compensation Fund.
- 2.4.3 Money must not be paid from the Compensation Fund unless the claimant has assigned to the Trustee all rights under the claim that gave rise to the application. [MDA – s. 19]
- 2.4.4 The Board must not compensate a person who has applied for compensation in respect of a default judgment or judgment by consent against a dealer unless the Board is satisfied that the claim would otherwise be payable. [MDA – s. 17(3)]

2.5 Policy

Demand is required

- 2.5.1 In order to be eligible for compensation from the Compensation Fund, a claimant must first make a written demand to the dealer to return the vehicle or money that is the subject of the claim for compensation. [MDCCF Reg – s. 6(1)]

Timeline for making the demand

- 2.5.2 The demand must be made within 4 years of the date of the transaction to which the demand relates. [MDCCF Reg – s. 6(2)]

Where a demand is made more than 4 years from the transaction to which the demand relates

- 2.5.3 Where a demand is made more than 4 years from the transaction to which the demand relates, the application does not meet the required criteria and will not be processed further. [MDCCF Reg – s. 6(2)]
- 2.5.4 The claimant will be notified of this determination and the right to request a Board hearing of the claimant disagrees with the determination [MDA – s. 16.1].

MDCCF Claim Processing and Adjudication Policy and Procedures

Application requirements

- 2.5.5 An application for compensation from the Compensation Fund must comply with the MDCCF Regulation. [MDA – s. 17(1)]
- 2.5.6 A claimant must provide a completed Motor Dealer Customer Compensation Fund Claim form provided by the Registrar. [MDA – s. 17(1); MDCCF Reg – s. 8(a)]
- 2.5.7 A claimant must provide a copy of all available documentation related to the transaction that is the subject of the claim, including any receipts and any purchase, conditional sale, lease or consignment agreement. [MDCCF Reg – s. 8(b)]

Timeline for making the application

- 2.5.8 The application must be filed with the Registrar within 120 days of the claimant's demand. [MDCCF Reg – s. 8.1(a)]
- 2.5.9 Despite 2.5.8, the Registrar may extend the time to apply if satisfied on evidence provided by a claimant that extenuating circumstances prevented the claimant from applying for compensation within the required 120 days. [MDCCF Reg – s. 8.1(b)]

Where an application is made less than 30 days from the date of the demand

- 2.5.10 The dealer has 30 days to honour the demand [MDCCF Reg – s. 6(1)].

Where an application is made more than 120 days from the demand

- 2.5.11 Subject to 2.5.8, where an application is made more than 120 days from the demand, the application will not be processed further.
- 2.5.12 A Claimant will be notified of the right to apply to the Registrar for an extension of the filing term. [MDCCF Reg – s. 8.1(b)]
- 2.5.13 Where the extension is not granted, the claimant will be notified of the right to request a reconsideration by the Board [MDA – s. 18.1]

Where the application meets timeline criteria but is incomplete

- 2.5.14 Where the demand and application meet timeline requirements but the application is incomplete under the MDCCF Regulation section 8(1), the claimant will be notified of the deficiencies and requested to provide required documentation.

MDCCF Claim Processing and Adjudication Policy and Procedures

- 2.5.15 Where the required documentation is received, the application will be proceed further – see Pat B.3 - Initial Eligibility Assessment.
- 2.5.16 Where the required documentation is not received and cannot be obtained by the VSA, the claim will not be processed further. The claimant will be notified of this determination and the right to request a Board hearing if the claimant disagrees with this determination. [MDA – s. 16.1]

Application may be re-opened

- 2.5.17 If a claim file has been closed because the claimant refused or was unable to provide the required information or documentation, the claim file may be re-opened if the claimant later provides the required information or documentation within a reasonable time in consideration of the facts provided by the applicant for their delay.

2.6 Procedures

Where a demand is made within 4 years from the transaction to which the demand relates

- 2.6.1 Where a demand is made within 4 years from the transaction to which the demand relates, the claim will be processed further.

Where a demand is made more than 4 years from the transaction to which the demand relates

- 2.6.2 Where a demand is made more than 4 years from the transaction to which the demand relates, the claim will not be processed further.
- 2.6.3 The Claims Manager will send a Determination Letter to the claimant advising the claimant
- a. of the reasons why the demand did not meet the criteria,
 - b. of the claimant’s right to request a Board hearing if the claimant disagrees with the determination, and
 - c. that such request for a Board hearing must be made in writing within 30 days from the Determination Letter.

MDCCF Claim Processing and Adjudication Policy and Procedures

2.6.4 Where the claimant requests a Board hearing within 30 days of the date of the Determination Letter, the Claims Manager proceeds with scheduling the Board hearing (see part B.8).

2.6.5 Where the claimant does not request a Board hearing within 30 days, the Claims Manager closes the file.

Where a claim application is made after 30 days from the date of the demand

2.6.6 Where a claim application is made after 30 days from the date of the demand, the claim application will be processed further.

Where a claim application is made less than 30 days from the date of the demand

2.6.7 Where a claim application is made less than 30 days from the date of the demand and the application does not contain dealer response to the demand, the Claims Manager will send an Acknowledgment of Receipt Letter to the claimant informing the claimant

- a. of the requirement to wait 30 days after making a demand before a claim can be made, and
- b. that the claim will be processed further after 30 days from the date of the demand elapse.

2.6.8 Where a claim application is made less than 30 days from the date of the demand and contains dealer response to the demand, the claim application will be processed further.

Where an application is made more than 120 days from the demand

2.6.9 Where an application is made more than 120 days from the demand, the claim will not be processed further.

2.6.10 The Claims Manager sends a Determination Letter to the claimant advising the claimant

- a. of the reasons why the application did not meet the criteria,
- b. of the claimant's right make a request to the Registrar for an extension allowing to make a claim after 120 days from the date of the demand, and
- c. that such request must be made in writing within 30 days from the Determination Letter.

2.6.11 Where the claimant does not request the extension within 30 days, the Claims Manager closes the file.

MDCCF Claim Processing and Adjudication Policy and Procedures

- 2.6.12 Where a written request for an extension is received, the Registrar will review request.
- 2.6.13 Where the Registrar is satisfied that due to the extenuating circumstances, the claimant was not reasonably able to make the claim application within 120 days from the date of the Demand, the filing extension will be granted by the Registrar.
- 2.6.14 The claimant will be advised about the Registrar's determination and the claim will be processed further.
- 2.6.15 Where the Registrar is not satisfied with the reasons why the extension is requested, the extension will not be granted and a Determination Letter will be sent to the claimant advising the claimant
- a. of the reasons why the extension is not granted,
 - b. of the claimant's right to request for reconsideration by the Board, and
 - c. that such request must be made in writing within 30 days from the Determination Letter.
- 2.6.16 Where the claimant requests a reconsideration by the Board within 30 days of the date of the Determination Letter, the Claims Manager proceeds with scheduling the reconsideration by the Board (see part B.9).
- 2.6.17 Where the claimant does not request a reconsideration within 30 days, the Claims Manager closes the file.

Review of application for completeness, where demand and application timeline requirements have been met

- 2.6.18 The Claims Manager reviews the application for completeness to determine if all of the following items have been submitted by the claimant:
- (a) a completed Motor Dealer Customer Compensation Fund Claim Application form
 - (b) a copy of all available documentation related to the transaction that is the subject of the claim, including any receipts and any purchase, conditional sale, lease or consignment agreement

MDCCF Claim Processing and Adjudication Policy and Procedures

Rationale

This documentation is needed to verify the nature of the transaction that is the subject of the claim. This is necessary to determine eligibility for compensation.

- (c) where a copy of the purchase, conditional sale, lease or consignment agreement is not available to the claimant and the VSA cannot obtain a copy from dealer records, a completed and sworn agreement affidavit
- (d) where the claim concerns the purchase of a vehicle or an extended warranty
 - i. a copy of both sides of the cheque written to the dealer that was used for payment
 - ii. a copy of the credit card voucher or statement indicating the payment, or
 - iii. if paid by cash in an amount of \$1,000 or more, a completed and sworn Cash Payment Affidavit form

Rationale

This documentation is needed to verify that the claimant provided consideration for the transaction that is the subject of the claim.

- (e) a copy of the claimant's Demand to Motor Dealer form and, where the dealer is still in business, proof that the demand was sent to the dealer

Rationale

When the dealer is not in business, it may be difficult for the claimant to determine where to address the demand and it is more practicable for the VSA to send the demand to the dealer.

- (f) where applicable, a copy of dealer response to the claimant's demand
- (g) where applicable, a copy of the claimant's current vehicle registration form and owner's certificate of insurance for the vehicle that is the subject of the claim

MDCCF Claim Processing and Adjudication Policy and Procedures

Rationale

This documentation is needed to verify that the claimant is the individual who purchased or owns the vehicle that is the subject of the claim. The certificate of insurance provides evidence regarding the claimant's use of the vehicle.

- (h) where the vehicle that is the subject of the claim was used for business purposes, a copy of that part of the claimant's income tax return used for claiming vehicle-related costs as a business expense for the tax year in which the transaction that is the subject of the claim took place, and two subsequent tax years

Rationale

This documentation provides evidence on which to determine whether the vehicle was used primarily for personal or family purposes. Where a claim is approved, this documentation is necessary for the Board to apply the limitation in s. 7(c) of the MDCCF Regulation when determining the amount of compensation.

- (i) where the claimant is relying on a court judgment as the basis of the claim, a copy of the judgment and the pleadings, and
- (j) a completed Assignment and Undertaking form.

Rationale

Requiring this form is intended to ensure that the requirement in s. 19 of the MDA will be met. It also ensures that the claimant is informed of the requirement to reimburse the Compensation Fund under the circumstances described in s. 20 of the MDA.

Where application is complete

- 2.6.19 Where all the required items have been provided, the Claims Manager proceeds with an initial eligibility assessment of the claim application (see part B.3).
- 2.6.20 Where it is anticipated that it will be more than 7 business days before the Claims Manager can complete an initial eligibility

MDCCF Claim Processing and Adjudication Policy and Procedures

assessment, the Claims Manager sends an Acknowledgement of Receipt Letter to the claimant.

Where application is incomplete

2.6.21 Where an application is incomplete, the Claims Manager sends the claimant an Incomplete Application Letter with a request that the claimant provide within 30 days

- (a) the required documentation or information,
- (b) a reasonable substitute, including sworn evidence, or
- (c) an explanation why it cannot be provided.

Rationale

The required documentation or a reasonable substitute provides the minimum amount of documentary evidence necessary to support an application for compensation.

2.6.22 If the requested documentation or information is not provided within 30 days, the Claims Manager determines whether the VSA can obtain the required documentation, information or a reasonable substitute from another source.

2.6.23 Where the required documentation or information that is not provided by the claimant can be reasonably obtained by the VSA from another source, the Claims Manager proceeds with an initial eligibility assessment of the claim application (see part B.3).

2.6.24 Where the required documentation or information that is not provided by the claimant cannot be reasonably obtained by the VSA from another source, the claim will not be considered further. The Claims Manager will send a Determination Letter to the claimant informing the claimant

- (a) of the determination not to consider the claim further because the application is incomplete,
- (b) of the claimant's right to request a Board hearing if the claimant disagrees with the determination, and
- (c) that such request for a Board hearing must be made in writing within 30 days from the date of the Determination Letter.

MDCCF Claim Processing and Adjudication Policy and Procedures

- 2.6.25 Where the claimant requests a Board hearing within 30 days of the date of the Determination Letter, the Claims Manager proceeds with scheduling the Board hearing (see part B.8).
- 2.6.26 Where the claimant does not request a Board hearing within 30 days, the Claims Manager closes the file.

Where application may be re-opened

- 2.6.27 Where a claim file has been closed because the claimant refused or was unable to provide the required documentation or information, and the claimant later provides it within a reasonable time, the Claims Manager re-opens the claim file after consulting with the Board where necessary.

3. Initial Eligibility Assessment

3.1 Introduction

This part provides the policies and procedures for an initial assessment of eligibility for compensation based on specific requirements and limitations in the MDA and the MDCCF Regulation. The initial eligibility criteria are based on the elements necessary to establish the Board's jurisdiction to hear an application for compensation.

The Claims Manager reviews all applications and determines if an application does not meet the initial eligibility criteria.

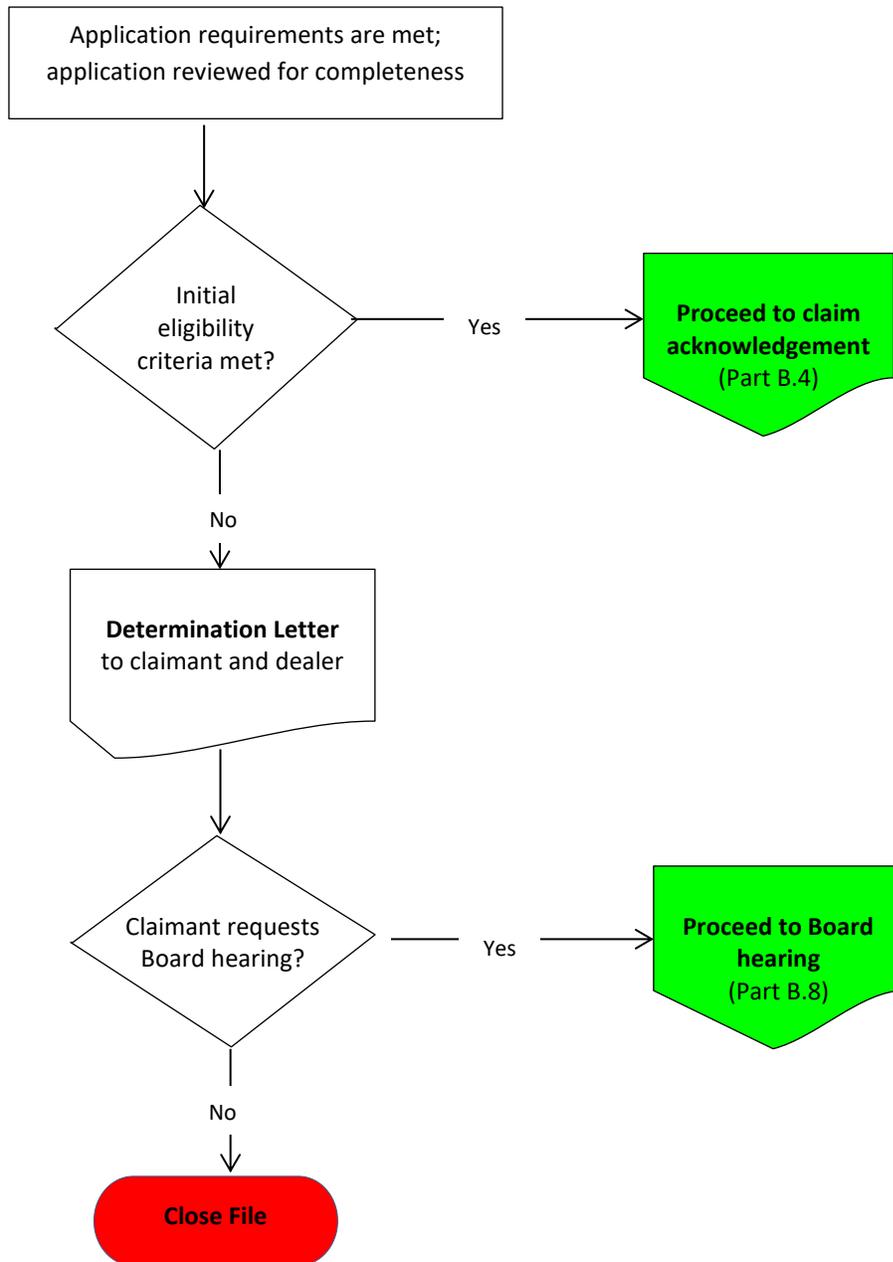
Where the Claims Manager determines that the criteria are not met, the claimant has the right to request that the Board conduct a hearing.

Where the Claims Manager determines that an application may meet the initial eligibility criteria and the application ultimately goes to a Board hearing, the Board will conduct its own assessment of the criteria prior to considering whether the claimant has suffered an eligible loss.

3.2 Status of Application

The application meets the requirements and has been reviewed for completeness.

3.3 Flowchart – Initial Eligibility Assessment



3.4 Legislative Authority and Requirements

- 3.4.1 Section 4 of the MDCCF Regulation establishes who may apply for compensation from the Compensation Fund.
- 3.4.2 The Board must not compensate a person who has applied for compensation in respect of a default judgment or judgment by consent against a motor dealer unless the Board is satisfied that the claim would otherwise be payable under the MDA and the MDCCF Regulation. [MDA – s. 17(3)]

Definitions

- 3.4.3 The following definitions apply to the initial eligibility criteria:
- (a) “**motor vehicle**” means a self-propelled vehicle designed or used primarily for travel on a highway, as defined in the *Highway Act*, and **includes a trailer**, as defined in the *Motor Vehicle Act*, **designed or used primarily for accommodation during travel or recreation**, but does not include (emphasis added)
 - i. an all-terrain vehicle, as defined in section 1 of the Motor Vehicle Act Regulations
 - ii. a farm tractor or motor assisted cycle, as those terms are defined in the Motor Vehicle Act,
 - iii. machinery primarily intended for construction, mining or logging purposes. [MDA – s. 1], or
 - iv. a vehicle exempted by the MDA Regulations.
 - (c) “**purchase**” includes a lease or exchange of a motor vehicle. [MDCCF Reg – s. 1]
 - (d) “**registered**” means registered as a motor dealer under the *Motor Dealer Act*. [MDA – s. 1]
 - (e) “**trailer**” means a vehicle that is designed or used primarily for accommodation during travel or recreation, and at any time is drawn on a highway by a motor vehicle, except
 - i. an implement of husbandry,
 - ii. a side car attached to a motorcycle,

MDCCF Claim Processing and Adjudication Policy and Procedures

- iii. a disabled motor vehicle that is towed by a tow car. [*Motor Vehicle Act* – s. 1], or
- iv. a trailer exempted by the MDA Regulations.

Definition of a motor vehicle prior to December 1, 2006

3.4.4 Prior to December 1, 2006, the definition of motor vehicle in the Motor Dealer Act was the following:

“**motor vehicle**” means a motor vehicle as defined in the *Motor Vehicle Act* and includes a trailer, motor home and manufactured home [as defined in the *Manufactured Home Act*] but does not include a motorized snow vehicle, an electric trolley bus, farm tractor or other self-propelled machinery primarily intended for farming, construction, mining or logging purposes, or a motor vehicle exempted by the regulations.

3.5 Policy

Initial eligibility criteria

3.5.1 Prior to determining whether a loss is eligible for compensation, an application must meet the following initial eligibility criteria:

- (a) the claimant must be an individual [MDCCF Reg – s. 4]
- (b) the claimant must have
 - (i) purchased a motor vehicle or an extended warranty or service plan for a motor vehicle, or [MDCCF Reg – s. 4(a)]
 - (ii) delivered a motor vehicle for sale on consignment in a transaction with a licensed motor dealer [MDCCF Reg – s. 4(b)]
- (c) in a purchase under paragraph 3.5.1(e)(i), the claimant must have intended to use the vehicle primarily for personal or family purposes [MDCCF Reg – s. 4(a)(i)(ii)]

MDCCF Claim Processing and Adjudication Policy and Procedures

- (d) in a delivery for consignment under paragraph 3.5.1(e)(ii), the type of motor vehicle consigned to the motor dealer must be such that it does not preclude a sale to an individual primarily for the individual's personal or family use, and [MDCCF Reg – s. 4(b)]
- (e) the loss for which the claimant is seeking compensation must have already occurred.

Rationale

The requirement in paragraph 3.5.1(b)(i) is found in s. 4(a) of the MDCCF Regulation and applies to the purchase of a vehicle or the purchase of an extended warranty or service plan for a vehicle. Section 4(a)(i) expressly requires that the purchase be for a "motor vehicle to be used primarily for personal or family use".

The requirement in paragraph 3.5.1(b)(ii) is found in s. 4(b) of the MDCCF Regulation and applies to the consignment of a vehicle. This requirement is not expressly stated, but is implied in the wording of s. 4(b) indicating that the vehicle must be delivered "for sale by the motor dealer...". Under the MDA, "sale" is defined as "the lease, exchange or other disposition or supply of a motor vehicle to an individual primarily for the individual's personal or family use". When reviewing the initial eligibility criteria for a consignment, the Board should ensure that the vehicle being consigned is a type of vehicle that could be used primarily for personal or family purposes.

The requirement in paragraph 3.5.1(e) is found in s. 4 of the MDCCF Regulation in that a claimant must be an individual who "suffers a loss referred to in section 5". This requirement clarifies that an application cannot be made in anticipation of a loss, but can only be made after a loss has actually occurred.

MDCCF Claim Processing and Adjudication Policy and Procedures

Meaning of “individual”

3.5.2 “Individual” means a natural person as per *Fireman’s Fund Insurance Co. of Canada v. Shoreline Auto Sales Ltd.* [1986] B.C.J. No. 1745 (B.C. Supreme Court).¹

Rationale

The use of the word “individual” rather than “person” in section 4 of the MDCCF Regulation limits eligibility to natural persons. This interpretation is consistent with the consumer protection purpose of the Compensation Fund.

3.5.3 Except as provided in paragraph 3.5.4, the claimant must be the individual who suffered the loss that is the subject of the claim.

3.5.4 A person who is legally entitled to act in place of the individual who suffered the loss, such as an executor or committee, may apply in the name of that individual.

Meaning of “registered dealer”

3.5.5 To be eligible for compensation, the dealer who is the subject of the claim must have been licensed at the time that the claimant’s purchase or consignment agreement was made.

Determining primary use of vehicle

3.5.6 For the purpose of determining whether a vehicle was used or intended to be used primarily for personal or family purposes, “primarily” means that more than 50% of the use of the vehicle was, or was intended for personal or family purposes.

3.5.7 When making a determination about the primary use of a vehicle, the Board will consider, where available, any evidence of

- (a) the intended use at the time of the purchase,
- (b) any actual use of the vehicle by the claimant, and

¹ Although the current policy is that a claimant must be a natural person, there may be circumstances in which the Board would consider whether a legal entity, such as a family trust, may be eligible where that entity has no commercial purpose, was acting in the place of a natural person, and suffered a loss that was, in fact, borne by that natural person. Likewise, there may be circumstances where an insurer may be eligible based on the subrogated claim of a natural person if that person’s claim is eligible.

MDCCF Claim Processing and Adjudication Policy and Procedures

- (c) where the vehicle was purchased to replace a vehicle previously used by the claimant, the primary purpose of the claimant's use of the vehicle to be replaced.
- 3.5.8 If 50% or more of the intended use was for business purposes, the claim is not eligible for compensation.
- 3.5.9 Business use includes
- (a) the use of the vehicle to conduct sales calls, to meet with clients, carry or store equipment or inventory, or
 - (b) generally to conduct business whether the individual is self-employed or employed by a third party, and
 - (c) the purchase of a vehicle primarily for the purpose of reselling the vehicle.
- 3.5.10 Business use does not include a claimant's use of the vehicle to commute to a place of employment if the vehicle is not otherwise used to conduct business.

When a trailer is a vehicle

- 3.5.11 Except as provided in paragraph 3.5.16, when assessing whether a trailer is a motor vehicle, the determining factor will be whether the trailer was designed or used primarily for accommodation during travel or recreation, rather than its designation or certification.
- 3.5.12 A trailer that was designed primarily for accommodation during travel or recreation but was not used primarily for these purposes is a motor vehicle.
- 3.5.13 A trailer that was designed primarily for permanent accommodation is a motor vehicle only if it was used primarily for accommodation during travel or recreation.
- 3.5.14 When determining whether a trailer was designed for permanent accommodation, the Board will consider whether the trailer was designed with permanent connections for electricity, sewer and water, and any other information the Board considers relevant.

MDCCF Claim Processing and Adjudication Policy and Procedures

- 3.5.15 For the purpose of determining whether a trailer was designed primarily for accommodation during travel or recreation, the Board will consider the design of the trailer at the time of purchase or consignment.

Rationale

*The change to the definition of motor vehicle in the MDA on December 1, 2006, was intended to exclude manufactured homes from the definition. The definition and certification requirements for manufactured homes are found in the Manufactured Home Act. However, the MDA definition of motor vehicle does not reference or explicitly exclude a manufactured home as defined under that Act. Rather the MDA uses the requirement that the trailer be "designed **or** used primarily for accommodation during travel or recreation" (emphasis added) to define when a trailer is a motor vehicle for the purposes of the MDA. Therefore, a determination for the purpose of the Compensation Fund should focus on the primary use of the trailer rather than on how the trailer may be classified under a different Act.*

The definition in the MDA clearly indicates that a trailer that was either designed or used primarily for accommodation during travel or recreation is a motor vehicle. This is reflected in paragraphs 3.5.13 and 3.5.14.

The purpose of paragraph 3.5.16 is to address circumstances where a trailer was not originally designed for accommodation, but may have later been modified for this purpose. If, prior to a purchase or consignment, a trailer was modified to be used primarily for accommodation during recreation or travel, then the trailer is a vehicle for the purposes of the Compensation Fund. If the modifications were done after the purchase or consignment, then the trailer is not a vehicle for the purposes of the Compensation Fund.

- 3.5.16 When assessing whether a trailer is a motor vehicle where the transaction that is the subject of a claim occurred prior to December 1, 2006, the definition of motor vehicle in the MDA as it was then will be used.

MDCCF Claim Processing and Adjudication Policy and Procedures

Review of initial eligibility by Claims Manager

3.5.17 The Claims Manager will review the application to determine if it meets the initial eligibility criteria in paragraph 3.5.1.

Where evidence is a court judgment

3.5.18 Where the claimant relies on a default judgment or a consent order that ends a matter with a judgment in favour of the claimant (consent to judgment), the Claims Manager will not rely on the default judgment or consent order as proof that one or more of the initial eligibility criteria have been met.

3.5.19 Where the claimant relies on a court judgment in a contested matter, the Claims Manager will rely on a finding of fact in the judgment that indicates that one or more of the initial eligibility criteria have been met.

Rationale

Under s. 17(3) of the MDA, the Board is prohibited from awarding compensation where the claimant has applied in respect of a default judgment or judgment by consent against a dealer unless the Board first ensures that the claim would be payable without relying on the judgment. In these circumstances, a judge has not assessed the evidence and reached an independent decision on the facts. Where a judgment has been issued based on a judicial assessment of the evidence and findings of fact, the Board must accept any of those facts that are relevant to determining eligibility. A failure to give full faith and credit to judicial findings of fact may amount to an abuse of process through re-litigation of matters already decided.

Where application meets criteria

3.5.20 Where the Claims Manager determines that an application meets the initial eligibility criteria, the Claims Manager will proceed to Claim Acknowledgement (see part B.4).

MDCCF Claim Processing and Adjudication Policy and Procedures

Where application does not meet criteria

3.5.21 Where the Claims Manager determines that an application does not meet the initial eligibility criteria, the claim application will not be processed further. The claimant will be notified of this determination and the right to request a Board hearing if the claimant disagrees with the determination. [MDA – s. 16.1]

3.6 Procedures

3.6.1 The Claims Manager reviews the application and determines whether the following initial eligibility criteria are met:

- (a) the claimant is an individual,
- (b) the claimant
 - (i) purchased a vehicle or an extended warranty or service plan for a vehicle, or
 - (ii) delivered a vehicle for sale on consignment,
- (c) the vehicle was purchased from or delivered to a licensed motor dealer, and
- (d) if the claimant purchased a vehicle or an extended warranty for a vehicle, the vehicle was used or was intended to be used primarily for personal or family purposes.

Where application meets criteria

3.6.2 Where the application may meet the initial eligibility criteria in paragraph 3.6.1, the Claims Manager proceeds with Claim Acknowledgement (see part 4).

Where application does not meet criteria

3.6.3 Where the Claims Manager determines that the application does not meet the initial eligibility criteria in paragraph 3.6.1, the Claims Manager will send a Determination Letter to the claimant informing the claimant

- (a) of the reasons for the eligibility determination,
- (b) of the claimant's right to request a Board hearing if the claimant disagrees with the determination, and

MDCCF Claim Processing and Adjudication Policy and Procedures

- (c) that such request for a Board hearing must be made in writing within 30 days from the date of the Determination Letter.
- 3.6.4 The Claims Manager sends a copy of the Determination Letter to the dealer who is the subject of the claim.
- 3.6.5 Where the claimant requests a Board hearing within 30 days of the date of the Determination Letter, the Claims Manager proceeds with scheduling the Board hearing (see part B.8).
- 3.6.6 Where the claimant does not request a Board hearing within 30 days, the Claims Manager closes the file.

4. Claim Acknowledgement

4.1 Introduction

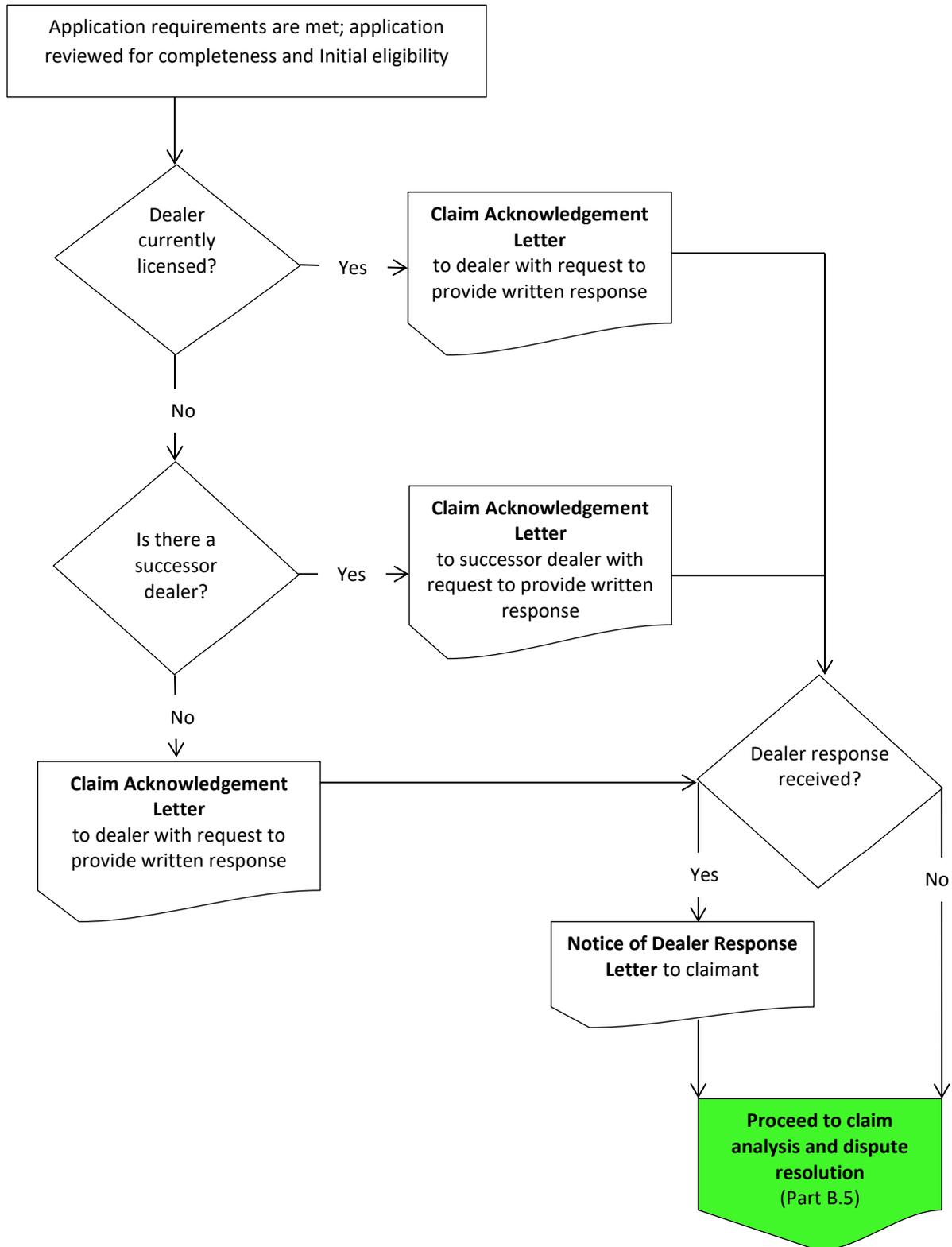
This part provides the policies and procedures notifying the claimant and the dealer who is the subject of the claim that the application is being considered. At this stage, the dealer receives a copy of the claimant's submission and is asked to submit a written response, which is then provided to the claimant.

4.2 Status of Application

The application

- meets the application requirements and has been reviewed for completeness, and
- meets the initial eligibility criteria.

4.3 Flowchart – Claim Acknowledgement



4.4 Legislative Authority and Requirements

- 4.4.1 The Board may examine records and make inquiries that it considers necessary. [MDA – s. 18(c)]
- 4.4.2 If a motor dealer is affected by an application for compensation, the Board must send a copy of the application, by regular mail, to the most recent home address of the motor dealer’s principal, senior officer or director provided by the motor dealer to the Registrar. [MDCCF Reg – s. 10(1)]

4.5 Policy

Notification to claimant and dealer

- 4.5.1 Where an application may meet the initial eligibility criteria, the claimant and the motor dealer will be notified that the claim is being considered.

Where motor dealer is currently licensed and in business

- 4.5.2 Where the motor dealer who is the subject of a claim is currently licensed and in business, the motor dealer will be sent written notification of the claim and provided with a copy of the claimant’s submission.
- 4.5.3 The motor dealer will be asked to submit a written response to the claimant’s submission within 10 business days of the date of the letter. Once received, a copy of the dealer’s response will be sent to the claimant.
- 4.5.4 Where the motor dealer who is the subject of the claim is no longer in business and there is a successor dealer operating at that dealer’s former place of business, then the Claims Manager will determine whether the successor dealer is liable for the claim.
- 4.5.5 Where the motor dealer who is the subject of a claim is no longer in business and there is no successor dealer who is liable for the claim, notification of the claim and a copy of the claimant’s submission will be sent to
 - (a) the dealer’s current address if it can be verified through VSA records, or

MDCCF Claim Processing and Adjudication Policy and Procedures

- (b) the address of the dealer's registered office as recorded in the Corporate Registry.

When delivery is unsuccessful

- 4.5.6 Where notification of a claim cannot be delivered to a dealer's last verifiable address, no further delivery of claim documentation will be attempted.

4.5 Procedures

Claim Acknowledgement to claimant and motor dealer

- 4.6.1 After finding that the claimant meets the initial eligibility criteria, the Claims Manager sends a Claim Acknowledgement Letter to the claimant and the motor dealer.
- 4.6.2 The Claim Acknowledgement Letter to the motor dealer includes
 - (a) a copy of the claimant's claim application submission, and
 - (b) a request to provide a written response to the claim within 10 business days of the date of the letter.
- 4.6.3 When the motor dealer's written response to the claimant's submission is received, the Claims Manager forwards a copy of the response and any supporting documentation to the claimant.

Where motor dealer is currently licensed

- 4.6.4 Where the motor dealer who is the subject of the claim is currently licensed by the VSA, the Claims Manager sends the Claim Acknowledgement Letter by email to the dealer principal or general manager at the business address indicated in the VSA records.

Where motor dealer is no longer in business – successor motor dealer

- 4.6.5 If the dealer that is the subject of the claim is no longer in business, then the Claims Manager determines
 - (a) whether there is successor motor dealer operating at that dealer's place of business, and

MDCCF Claim Processing and Adjudication Policy and Procedures

- (b) if there is a successor motor dealer, whether VSA records indicate that the successor dealer has undertaken responsibility for outstanding consumer claims.
- 4.6.6 Where there is no record of the successor motor dealer undertaking responsibility for outstanding consumer claims, the Claims Manager sends a Letter to Establish Liability to the dealer principal or general manager requesting confirmation as to whether the successor dealer has liability for outstanding consumer claims.
- 4.6.7 If there is a successor dealer who has assumed liability for outstanding consumer claims, then the Claims Manager sends the Claim Acknowledgement Letter by email to the dealer principal or general manager at the business address indicated in the VSA records.

Where motor dealer is no longer in business – no successor motor dealer

- 4.6.8 If there is no successor motor dealer with liability for the claim and the motor dealer's current address can be verified through VSA records, then the Claims Manager sends the Claim Acknowledgement Letter and the claimant's submission by registered mail to the dealer principal or general manager at the business address indicated in the VSA records.
- 4.6.9 If there is no successor motor dealer with liability for the claim and the dealer's current address cannot be verified through VSA records, then the Claims Manager sends the Claim Acknowledgement Letter and the claimant's submission by registered mail to the dealer's registered address as recorded in the Corporate Registry.
- 4.6.10 If a letter in paragraph 4.6.8 and 4.6.9 cannot be delivered, the Claims Manager sends a notification of the claim by registered mail to the dealer's principal, senior officer or director at their most recent home address indicated in the VSA records. For privacy reasons, a claimant's submission is not included with such notification until the mailing address of the dealer's principal, senior officer or director is verified.

MDCCF Claim Processing and Adjudication Policy and Procedures

- 4.6.11 Upon receipt of the verified address in paragraph 4.6.10, the Claims Manager sends the Claim Acknowledgement Letter and the claimant's submission by registered mail to the verified address.
- 4.6.12 In no response is received to the request for address verification in paragraph 4.6.10, no further claim communication to the dealer will be conducted.

Where motor dealer response is received or 10 business days for a response elapse

- 4.6.13 Where the motor dealer's written response to the claim is received, the Claims Manager forwards a copy of the response and any supporting documentation to the claimant and proceeds to claim analysis and dispute resolution (see Part B.5)
- 4.6.14 Where 10 days from the date of the Claim Acknowledgement Letter to the motor dealer elapse and the written response to the claim is not received, the Claims Manager proceeds to claim analysis and dispute resolution (see Part B.5)

5. Claim Analysis and Dispute Resolution

5.1 Introduction

This part provides the policies and procedures for gathering further information required for hearing the claim and for attempting dispute resolution where appropriate prior to a Board hearing. The Claims Manager, in consultation with the Manager of the VSA Investigations Department, is responsible for overseeing claim analysis and dispute resolution processes.

5.2 Status of Application

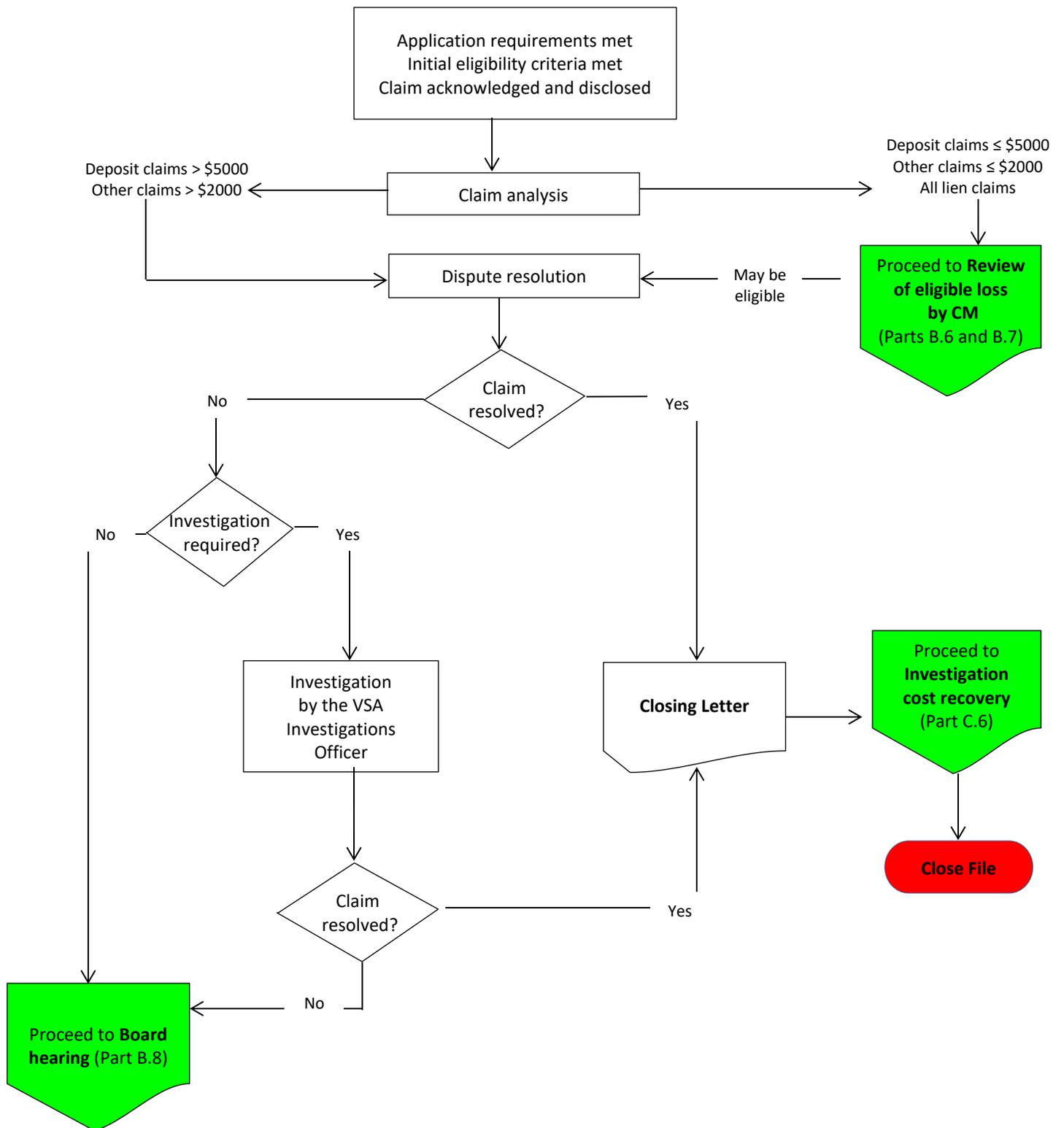
The application

- meets the application requirements and is complete, and
- meets initial eligibility criteria; and

The claimant and the dealer who is the subject of the claim

- have been notified that the application is being considered, and have received a copy of the other party's submissions.

5.3 Flowchart – Claim Analysis and Dispute Resolution



5.4 Legislative Authority and Requirements

- 5.4.1 The Board may consider various evidence. [MDA – s. 18]
- 5.4.2 The Board may apply to the court for an order named in sections 16.1(a) of the MDA and sections 34(3) and 34(4) of the *Administrative Tribunals Act*.

5.5 Policy

Claim analysis

- 5.5.1 The Claims Manager will gather information required to determine the next steps in resolving the claim.
- 5.5.2 Where a legal opinion is required for determining claim eligibility for compensation the Claims Manager will arrange for obtaining it.

Review of eligible loss by Claims Manager

- 5.5.3 Where warranted, the Claims Manager will conduct a review of eligible loss. Where the Claims Manager has determined there is no need for an investigation and the claim is
 - (a) a deposit claim for \$5,000 or less (see part B.6),
 - (b) any other type of claim for \$2,000 or less (see part B.6), or
 - (c) a claim involving a lien (see part B.7).

Dispute resolution and investigation

- 5.5.4 A claim will be addressed through any suitable avenues of the VSA dispute resolution. VSA dispute resolution will be conducted according to the applicable VSA policies and procedures.

Rationale

In many circumstances, a claim can be resolved more quickly and effectively through alternative dispute resolution. If a motor dealer is in business, an investigation may result in resolving the dispute that is the subject matter of the claim. Where warranted, an investigation may result in a hearing before the Registrar.

- 5.5.5 Where a claim is resolved through a VSA dispute resolution process, the Claims Manager

MDCCF Claim Processing and Adjudication Policy and Procedures

- (a) will request that the claimant provide a written release of the claim,
- (b) send a closing letter to the parties involved, and
- (c) assess the claim processing for the need of investigation cost recovery in accordance with part C.6 of this policy.

5.5.6 For those claims that

- (a) cannot be resolved after all suitable avenues of VSA dispute resolution have been exhausted, or
- (b) where the claimant's compensation as a result of the VSA dispute resolution is less than claimed,

the claim processing will be continued as needed.

Investigation

5.5.7 If a claim is unresolved through VSA dispute resolution, the Claims Manager, in consultation with the VSA Manager of Investigations will determine whether a claim requires an investigation.

5.5.8 Where investigation is completed, the Claims Manager will initiate the investigation cost recovery in accordance with part C.6 of this policy.

5.5.9 Where an investigation is completed and results in dispute resolution, the Claims Manager will send a closing letter to the parties involved.

5.5.10 Where an investigation is completed and dispute resolution is not achieved, a copy of the Investigation Report and Investigation Cost Recovery Invoice will be provided to the parties, who may submit a written response to the report.

5.5.11 Where a written response to an Investigation Report is received, it will be provided to all other parties and to the Investigations Officer who conducted the investigation.

MDCCF Claim Processing and Adjudication Policy and Procedures

5.5.12 The Investigations Officer will review the response and determine if any additional investigation is required based on the information in the response. If an additional investigation is required, paragraphs 5.5.7 to 5.5.11 will apply to the additional investigation.

5.6 Procedures

Claim Analysis

- 5.6.1 The Claims Manager analyzes the claim and gathers further information required to establish or confirm facts essential to the eligibility of the claim.
- 5.6.2 If the Claims Manager gathers information for the claim file that is relevant to a consideration of eligibility, the Claims Manager sends a copy of the information to each party to the claim.
- 5.6.3 If the Claims Manager identifies an issue that may require a legal opinion, the Claims Manager consults with the Board Chair to determine whether a legal opinion is necessary. Where a necessity for a legal opinion is confirmed, the Claims Manager requests a legal opinion for the claim file from the Board's legal counsel.

Review of eligible loss by Claims Manager

- 5.6.4 The Claims Manager will conduct a review of eligible loss where the Claims Manager has determined there is no need for an investigation and the claim is
- (a) a deposit claim for \$5,000 or less (see part B.6),
 - (b) any other type of claim for \$2,000 or less (see part B.6), or
 - (c) a claim involving a lien (see part B.7).

Dispute resolution and Investigation

- 5.6.5 The Claims Manager determines whether any of the VSA dispute resolution strategies can be applied for the dispute that is the subject matter of a claim, including:
- (a) conciliation or other forms of dispute resolution,
 - (b) an investigation, and

MDCCF Claim Processing and Adjudication Policy and Procedures

- (c) a hearing.
- 5.6.6 VSA dispute resolution is conducted according to the applicable VSA policies.
- 5.6.7 Where possible, the VSA Consumer Services will attempt to facilitate dispute resolution.
- 5.6.8 Where disputes are unresolved through the facilitation by the VSA Consumer Services, the Claims Manager consults with VSA Manager of Investigations to determine whether an investigation is required.
- 5.6.9 If an investigation is required, the Claims Manager forwards a copy of the claim file to VSA Investigations.
- 5.6.10 Where investigation is completed and dispute resolution is not achieved, VSA Investigations sends a copy of the Investigation Report to the Claims Manager and the report is added to the claim file.
- 5.6.11 The Claims Manager initiates investigation cost recovery pursuant to part C.6 of this policy and obtains an Investigation Cost Recovery Invoice from VSA Finance.
- 5.6.12 The Claims Manager sends a Disclosure Letter to each party to the claim
 - (a) providing a copy of the Investigation Report and Investigation Cost Recovery Invoice,
 - (b) requesting the parties to review the Investigation Report to confirm that the information contained in it is accurate and complete, and
 - (c) informing the parties that if they identify errors of fact, or if significant relevant information is not included in the report, they must send a written response within 10 business days of the date of the letter.
- 5.6.13 If a party's written response to an Investigation Report is received at the VSA, the Claims Manager
 - (a) acknowledges receipt,
 - (b) discloses the response to the other parties,

MDCCF Claim Processing and Adjudication Policy and Procedures

- (c) forwards a copy of the response to the VSA Investigations Officer who conducted the investigation for determination if additional investigation is required, and
 - (d) adds the response to the claim file.
- 5.6.14 The VSA Investigations Officer who conducted the investigation reviews the response and determines if any additional investigation is required based in the information in the response. If an additional investigation is required, paragraphs 5.6.9 to 5.6.13 apply to the additional investigation.
- 5.6.15 After pre-hearing disclosure of investigation documents is completed, the Claims Manager directs the claim to a Board hearing (part B.8).

Resolution of the claim

- 5.6.16 If the dispute giving rise to the claim is resolved through conciliation, dispute resolution, or a hearing, the Claims Manager
 - (a) sends a Closing Letter to the parties acknowledging the resolution of the dispute and indicating that the claim file will be closed, and
 - (b) initiates investigation cost recovery pursuant to part C.6 of this Policy.

6. Review of Eligible Loss by Claims Manager

6.1 Introduction

This part provides the policies and procedures regarding a determination by the Claims Manager as to whether a loss is not eligible for compensation. The Claims Manager conducts a review of eligible loss on deposit claims for \$5,000 or less and on any other claim for \$2,000 or less.

6.2 Status of Application

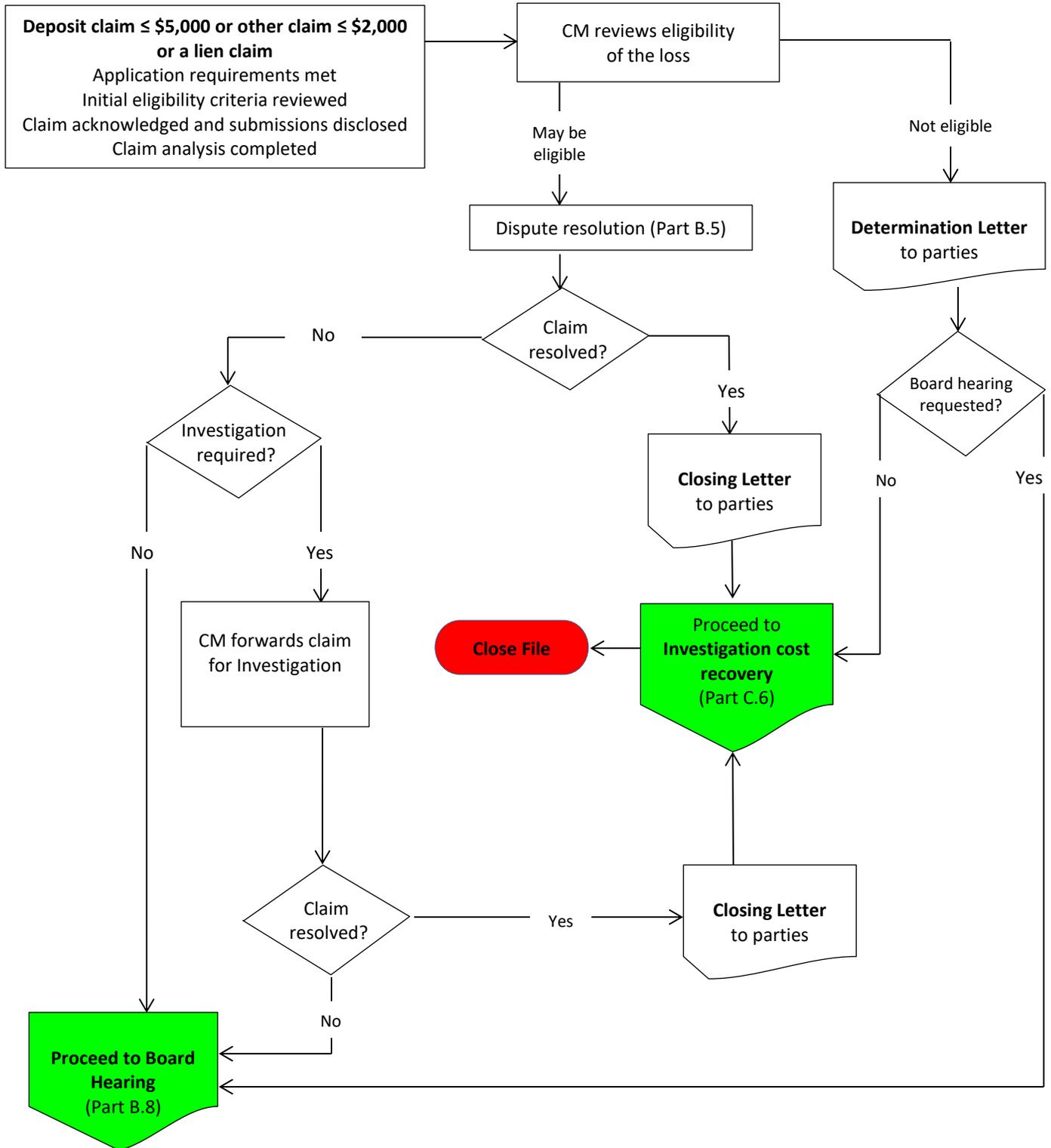
This section is to be applied to an application only if it:

- meets the application requirements and is complete,
- meets the initial eligibility criteria, and

The claimant and the dealer who is the subject of the claim:

- have been notified that the application is being considered, and
- have received a copy of the other party's submissions.

6.3 Flowchart – Review of eligible loss by claims manager



6.4 Legislative Authority and Requirements

- 6.4.1 The Board has exclusive jurisdiction to hear and decide claims against the Compensation Fund. [MDA – s. 16(1)]

6.5 Policy

- 6.5.1 For deposit claims up to \$5,000 or for any other claim up to \$2,000, the Claims Manager may determine if a loss is not eligible for compensation.

Rationale

Generally, these claims are not complex and a determination that a loss is not eligible may be more efficiently and cost-effectively addressed by the Claims Manager at this stage.

The scope of the Claims Manager’s authority is limited to determining that a loss is not eligible.

- 6.5.2 In making a determination under paragraph 6.5.1, the Claims Manager will follow any applicable policies and procedures that the Board uses in determining eligibility of a loss.
- 6.5.3 Where the Claims Manager determines that a loss is not eligible, the claimant will be notified of this determination and the right to request a Board hearing if the claimant disagrees with the determination. [MDA – s. 16.1]
- 6.5.4 Where the Claims Manager determines that a loss may be eligible for compensation, the claim will be processed further.

6.6 Procedures

- 6.6.1 Where the claim is for deposit up to \$5,000 or any other claim up to \$2,000, the Claims Manager reviews the claim following the applicable policies and procedures in parts C.2, C.3 and C.4 to determine if the loss is eligible for compensation.

MDCCF Claim Processing and Adjudication Policy and Procedures

Where loss may be eligible

- 6.6.2 Where the Claims Manager determines that a loss may be eligible for compensation, the Claims Manager determines whether any of the following options should be taken prior to directing the claim to the Board for hearing:
- (a) conciliation or other forms of dispute resolution where available in accordance with policy and procedures in part B.5, and
 - (b) an investigation by the VSA Investigations Officer in accordance with part B.5.
- 6.6.3 Where the dispute giving rise to the claim is not resolved through conciliation, dispute resolution, or investigation, the Claims Manager directs the claim to the Board for hearing (see part B.8).

Where loss is not eligible

- 6.6.4 Where the Claims Manager determines that the loss is not eligible for compensation, the Claims Manager sends a Determination Letter to the claimant with a copy to the motor dealer informing
- (a) of the reasons for the determination,
 - (b) of the claimant's right to request a Board hearing if the claimant disagrees with the determination, and
 - (c) that such request for a Board hearing must be made in writing within 30 days from the date of the Determination Letter.
- 6.6.5 Where the claimant requests a Board hearing within 30 days of the date of the Determination Letter, the Claims Manager proceeds with scheduling the Board hearing (see part B.8).
- 6.6.6 Where the claimant does not request a Board hearing within 30 days, the Claims Manager proceeds to investigation costs recovery review (Part C.6).
- 6.6.7 Where no investigation costs have been incurred, the Claims Manager closes the file.

7. Review of Lien Claims for Liquidated/Unliquidated Loss by Claims Manager

7.1 Introduction

This part provides the policies and procedures regarding the Claims Manger's review of the loss for lien claims and a determination whether a loss involving a lien is liquidated.

7.2 Status of Application

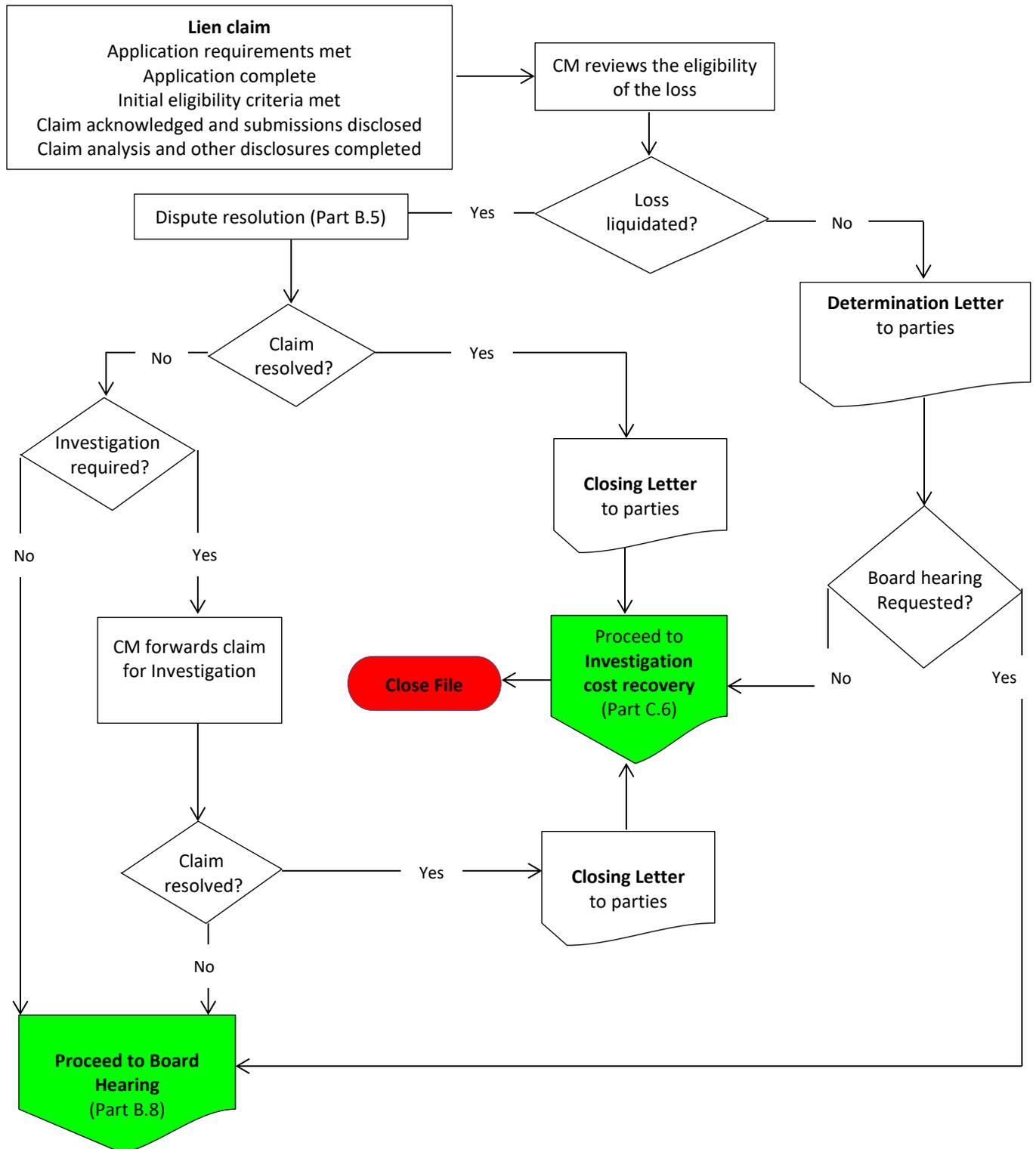
This section is to be applied to an application only if it

- meets the application requirements and is complete,
- meets the initial eligibility criteria, and

The claimant and the dealer who is the subject of the claim

- have been notified that the application is being considered, and
- have received a copy of the other party's submissions.

7.3 Flowchart – Review of Liquidated Loss by Claims Manager



7.4 Legislative Authority and Requirements

- 7.4.1 Failure to provide clear title is generally a breach of warranty remedied by an award of damages (unliquidated amount): *Sale of Goods Act* R.S.B.C. 1996 c. 410, sections 16(c) and 56. The Board cannot assess damages in this circumstance. [MDCCF Reg – s. 5(1)(a)(iv)]
- 7.4.2 Compensation is available to “individuals”; the consumer who suffers harm by a dealer during a transaction. It is not available to motor dealers or companies (including finance companies) who have an interest in the transaction [MDCCF Reg – s. 4 and *Fireman’s Fund insurance Co. of Canada v. Shoreline Auto Sales Ltd.* [1986] B.C.J. No. 1745 (Supreme Court)].
- 7.4.3 By agreeing to pay a lien holder the amount they claim, the Board may be awarding compensation to the lien holder for its loss, instead of any loss suffered by the purchasing consumer. The Board may also inadvertently pay a lien holder whose lien is actually defective or unenforceable against the purchasing consumer [*Personal Property Security Act* R.S.B.C. 1996 c. 359 and *Sale of Goods Act* ss. 16 and 28].
- 7.4.4 Negotiating with the lien holder to reduce their claim is attempting to liquidate a loss through negotiations, which the Board cannot do either directly or through Claims Manager [MDCCF Reg – s. 5(1)(a)(iv)].

7.5 Policy

- 7.5.1 The Claims Manager has delegated authority from the Board to review lien claims for eligible losses with no limit on the amount claimed.

Rationale

Generally, these claims are not complex and a determination that a loss is not eligible may be more efficiently and cost-effectively addressed by the Claims Manager at this stage.

MDCCF Claim Processing and Adjudication Policy and Procedures

The scope of the Claims Manager's authority is limited to determining that a loss is not eligible.

- 7.5.2 In making a determination under paragraph 7.5.1, the Claims Manager will follow any applicable policies and procedures that the Board uses in determining the eligibility of a loss.
- 7.5.3 Where the Claims Manager determines that a loss is not liquidated, the claimant will be notified of this determination and the right to request a Board hearing if the claimant disagrees with the determination. [MDA – s. 16.1]
- 7.5.4 Where the Claims Manager determines that a loss that is the subject matter of a claim may be liquidated, the claim will be processed further.

7.6 Procedures

- 7.6.1 The Claims Manager reviews the lien claim following the applicable policies and procedures in parts C.2 and C.4 to determine if the loss is liquidated or unliquidated.

Where loss may be liquidated

- 7.6.2 Where the Claims Manager determines that a loss that is the subject matter of a claim may be liquidated, the claim
 - a. will be addressed first through any suitable avenues of dispute resolution through the VSA Consumer Services and VSA Investigations, and
 - b. If all suitable avenues of VSA dispute resolution are exhausted without resolution of the claim, the claim will be assessed for the need for investigation and directed to the Board for a hearing (see Part B.8).

Where loss is not liquidated

- 7.6.3 Where the Claims Manager determines that the loss is not liquidated and, therefore, not eligible for compensation, the Claims Manager sends a Determination Letter to the claimant with a copy to the motor dealer informing

MDCCF Claim Processing and Adjudication Policy and Procedures

- (a) of the reasons for the determination, and
- (b) of the claimant's right to request a Board hearing if the claimant disagrees with the determination, and
- (c) that such request for a Board hearing must be made in writing within 30 days from the date of the Determination Letter.

8. Board Hearing

8.1 Introduction

This part provides the policies and procedures regarding preparation for and the conduct of a hearing by the Board.

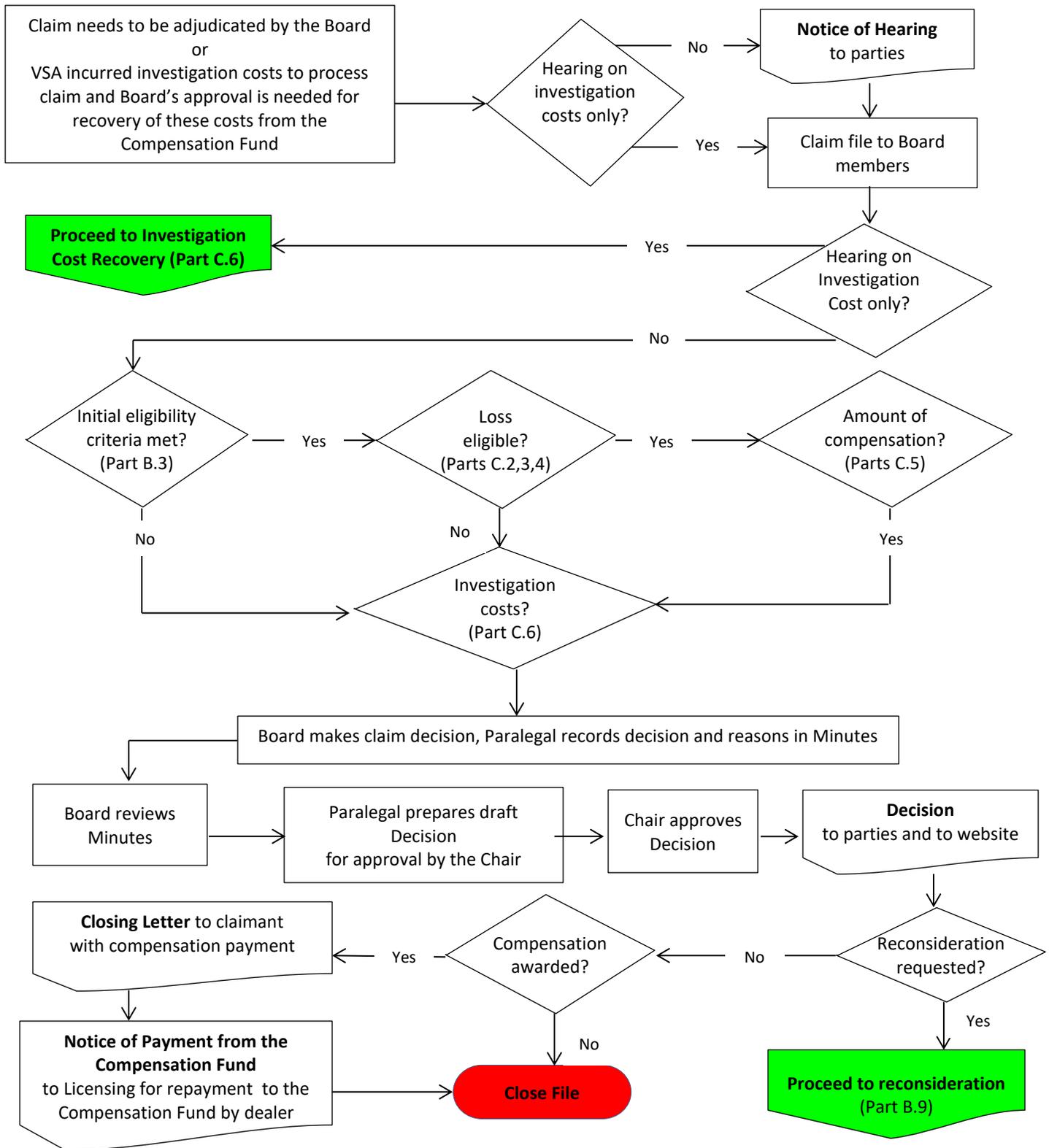
8.2 Status of Application

The status of an application that is being heard by the Board will vary depending on the pre-hearing claim processing required for each claim.

Where a hearing is for deciding a claim, at a minimum, the claimant and the dealer who is the subject of the claim have received copies of the other party's submissions and had an opportunity to respond.

Where a hearing is to review investigation costs for recovery by the VSA, at a minimum, claim investigation by the VSA Investigation was completed.

8.3 Flowchart – Board Hearing



8.4 Legislative Authority and Requirements

Authority and powers of the Board

8.4.1 The Board has the authority and powers under sections 16(1), 16(2.1), 16.1(1)(a), 16.1(1)(b), 16.1(1)(c) and 18 of the MDA and sections 34(3), 34(4), 48(1), 48(2), 48(3), 49(1) and 49(2) of the *Administrative Tribunals Act*.

Confidentiality

8.4.2 The Board must maintain confidentiality pursuant to section 29 of the MDA.

Board hearing procedures

8.4.3 The Board must apply sections 10(2), 10(3), 10(4) of the MDCCF Regulation and sections 15(5) and 15(6) of the MDA.

Consideration of a default judgment/judgment by consent

8.4.4 The Board must apply sections 16(2.1)(b) and 17(3) and of the MDA.

Reasons

8.4.5 The Board must make its decisions available in writing and, on the request of a person concerned, must provide written reasons for its decisions. [MDCCF Reg – s. 10(6)]

8.5 Policy

Nature of Board hearing

8.5.1 The Board will hear a claim based on the written submissions of the parties and other documentary evidence except as provided in paragraph 8.5.2.

8.5.2 The Board will conduct an oral hearing of a claim only where the Board determines that oral testimony is necessary to adequately evaluate the evidence. Without limiting the discretion of the Board, this may include circumstances where

MDCCF Claim Processing and Adjudication Policy and Procedures

- (a) the credibility of a party or witness is at issue, or
- (b) a party or witness is incapable of adequately providing evidence in writing.

Rationale

In most cases, documentary evidence will be sufficient for the Board to make a determination. Given the increased time and expense associated with conducting an oral hearing, all Board hearings should be based on documentary evidence except where the Board specifically determines that oral evidence is required.

Notice to the parties

- 8.5.3 Where a hearing is for deciding a claim, parties will be notified of the Board's hearing.
- 8.5.4 Where a hearing is only to review investigation costs incurred by the VSA to process a claim, parties will not be notified of the Board's hearing, since the hearing outcome will not affect the claim.

Hearings to be conducted at a meeting of the Board

- 8.5.5 A hearing of a claim will be conducted at a meeting of the Board members. Where an in-person meeting of the Board members is not practicable, the Board may conduct a hearing by way of a teleconference, video-conference or other conferencing technology.
- 8.5.6 The Board will generally meet every two months to ensure that claims are heard within a reasonable time.
- 8.5.7 The duration of a Board meeting will generally be no more than one day, but may be scheduled for two consecutive days where required to ensure that claims are heard within a reasonable time.
- 8.5.8 The dates and duration of future Board meetings will be decided at a Board meeting based on the number of claims for hearing and the availability of Board members.
- 8.5.9 The VSA will determine the location of Board meetings and book meeting rooms and accommodation if required. Board members will make their own travel arrangements. [MDCCF Reg – s. 10(2)]

MDCCF Claim Processing and Adjudication Policy and Procedures

Conflict of interest

- 8.5.10 A Board member will not knowingly participate in hearing a claim in which the member's private interests are or appear to be in conflict with the member's duty to impartially hear the claim.
- 8.5.11 Circumstances that may give rise to an actual or apparent conflict of interest include, but are not limited to the following:
- (a) a direct personal financial interest
 - (b) a personal relationship with one of the parties
 - (c) a current or previous professional relationship with one of the parties
 - (d) knowledge of or involvement with the claim outside of the claim adjudication process, and
 - (e) statements or conduct prior to a hearing that suggests a pre-judgment of the claim.

Conduct of Board hearings

- 8.5.12 A quorum for the purposes of hearing a claim is at least one-half of the number of the current members of the Board.
- 8.5.13 When making a decision on a claim, the Board will consider
- (a) the claim file, and
 - (b) where applicable, investigation costs incurred by the VSA to investigate a claim.
- 8.5.14 The Board may adjourn the hearing of a claim pending an investigation or further investigation of a claim and may direct that specific matters be investigated.

Where evidence is a court judgment

- 8.5.15 Where the claimant relies on a default judgment or a consent order that ends a matter with a judgment in favour of the claimant (consent to judgment), the Board will not rely on the judgment or consent order as proof that the claimant has met any of the requirements for eligibility. [MDA s. 17(3)]

MDCCF Claim Processing and Adjudication Policy and Procedures

- 8.5.16 Where the claimant relies on a court judgment in a contested matter, the Board will rely on a finding of fact in the judgment that indicates that one or more of the eligibility criteria have been met.

Rationale

Under s. 17(3) of the MDA, the Board is prohibited from awarding compensation where the claimant has applied in respect of a default judgment or judgment by consent against a dealer unless the Board first ensures that the claim would be payable without relying on the judgment. In these circumstances, a judge has not assessed the evidence and reached an independent decision on the facts.

Where a judgment has been issued based on a judicial assessment of the evidence and findings of fact, the Board must accept any of those facts that are relevant to determining eligibility. A failure to give full faith and credit to judicial findings of fact may amount to an abuse of process through re-litigation of matters already decided.

Standard of proof

- 8.5.17 A decision of the Board as to whether an application is eligible for compensation will be based on a balance of probabilities; that is, whether it is more probable than not that the application meets the requirements for compensation.

Decision and reasons

- 8.5.18 A Board decision on a claim or for investigation cost recovery by the VSA from the Compensation Fund will be based on the opinion of the majority of members present at a hearing.
- 8.5.19 After making a decision, the Board will review and confirm the reasons for its decision.
- 8.5.20 A claim decision will be in writing [MDCCF – Reg s. 10(6)] and will include:
- (a) reasons for the decision
 - (b) information for both parties on how to request reconsideration; and

MDCCF Claim Processing and Adjudication Policy and Procedures

- (c) information to the claimant regarding the obligation to notify the Board without delay if something of value is received from any other source in payment for the loss that led to payment from the Compensation Fund.

8.5.21 Where a decision of the Board is in regards to a claim, the written decision will be sent to the parties no more than 30 days after the date of the hearing.

8.5.22 Where a decision of the Board is only in regards to recovery from the Compensation Fund of the investigation costs incurred by the VSA, the VSA Finance Department will be notified of the Board's decision. The parties to a claim do not require notification, since they will not be affected by the decision.

Paying compensation

8.5.23 Where a claim is approved, compensation payment will be sent to the claimant no more than 60 days after the date of the Board hearing, unless a reconsideration is requested.

Dealer repayment to the Compensation Fund

8.5.24 Where compensation is paid from the Compensation Fund, the VSA Licensing will be notified of

- (a) claim payment from the Compensation Fund, and
- (b) where applicable, investigation costs recovered by the VSA from the Compensation Fund

for the purpose of obtaining repayment to the Compensation Fund from the dealer who caused payment from the Compensation Fund. [MDA s. 16(2.1)]

Confidentiality

8.5.25 Board members will maintain the confidentiality of all confidential information obtained when hearing a claim and will only reveal or make use of such information in the course of the performance of their duties as a Board member, except where the information becomes a matter of general public knowledge. [MDA – s. 29]

MDCCF Claim Processing and Adjudication Policy and Procedures

Solicitor-client privilege

- 8.5.26 Solicitor-client privilege applies to any legal advice requested and received by the Board. The privilege belongs to the Board as a whole and may not be waived by any individual member.
- 8.5.27 The Board's solicitor-client privilege may only be waived by a majority decision of all Board members.
- 8.5.28 The Board's confidential disclosure of privileged legal advice to the VSA and its employees and contractors for the purpose of furthering the administration of the Compensation Fund does not constitute a waiver of the Board's solicitor-client privilege.

8.6 Procedures

Notice to the parties

- 8.6.1 Where a hearing is only to review investigation costs incurred by the VSA to investigate a claim, parties to a claim will not be notified of a hearing, since they will not be affected.
- 8.6.2 Where hearing is for a claim and will be conducted based on written submissions of the parties, the Claims Manager sends a Notice of Hearing letter to the parties to the claim no less than 10 business days prior to the date of the Board hearing.
- 8.6.3 Where hearing is for a claim and will be an oral hearing the Claims Manager sends a Notice of Hearing letter to the parties to the claim no less than 30 days prior to the hearing date.
- 8.6.4 If a party who has received notice indicates that they are unable to attend on the scheduled date, the Claims Manager consults with the Chair to determine whether or not to reschedule the hearing.

Claim File to Board Members

- 8.6.5 The Claims Manager prepares a claim file for each claim to be heard by the Board. The Paralegal provides claim files to the Board members no less than 14 days prior to the date of the hearing.

MDCCF Claim Processing and Adjudication Policy and Procedures

- 8.6.6 Where claim hearing is for deciding a claim, a claim file will contain all of the documentary evidence to be considered by the Board, including
- (a) a summary of the claim prepared by the Claims Manager
 - (b) the application for compensation including supporting documentation submitted by the claimant
 - (c) any of the following where applicable:
 - (i) the dealer's response to the claim
 - (ii) the results of any information gathering completed by the Claims Manager
 - (iii) the investigation report
 - (iv) the investigation cost recovery invoice
 - (v) any further submissions of the parties
 - (vi) the Investigations Officer's affidavit and a copy of the Registrar's hearing decision
 - (vii) a determination made by the Claims Manager and the reasons for the determination
 - (viii) a settlement agreement, and
 - (ix) any legal opinions obtained on behalf of the Board.
- 8.6.7 Where claim hearing is only for review of the Investigation Cost Recovery Invoice, a claim file will contain
- (a) a summary of the claim prepared by the Claims Manager
 - (b) a file note prepared by the Claims Manager on the completed claim processing steps
 - (c) a claim closing letter, and
 - (d) an investigation cost recovery invoice.

Claim File Review by Board Members

- 8.6.8 Board members review the claim files prior to the hearing.
- 8.6.9 When reviewing a claim file, a Board member may request that the Claims Manager provide additional information regarding the claim.

MDCCF Claim Processing and Adjudication Policy and Procedures

- 8.6.10 Where the Claims Manager obtains additional information in paragraph 8.6.6, the Claims Manager sends a copy of it to each party to the claim along with a letter informing them that if they wish to respond to the information, they must send a written response prior to the hearing date.
- 8.6.11 If a party sends a written response to additional information, the Claims Manager sends the copy of the response to the Board members and to the other parties.

Board hearing procedures

- 8.6.12 Where a Board Member becomes aware of an actual or apparent conflict of interest in the hearing of a claim, the Board Member will
- (a) declare the circumstances of the conflict to the Chair, and
 - (b) withdraw from participating in the hearing of the claim.
- 8.6.13 Where a Board member declares a conflict of interest and withdraws from a hearing, the declaration and withdrawal will be noted in the minutes of the hearing.
- 8.6.14 The Claims Manager attends the Board hearing and answers the Board's questions about the claims processing.
- 8.6.15 The Paralegal attends the Board hearing and records the minutes.
- 8.6.16 When hearing a claim, the Board first decides whether the application meets the initial eligibility criteria, with reference to any applicable policy in part B, section 3.5.
- 8.6.17 Where the Board decides that the application meets the initial eligibility criteria, it then decides whether the claim is for an eligible loss, with reference to any applicable policy in parts C.2, C.3 and C.4.
- 8.6.18 Where the Board decides that the claim is for an eligible loss, the amount of compensation to be awarded is determined using the applicable policies and procedures in part C.5.
- 8.6.19 For all claims heard by the Board, if an investigation in respect of the claim was conducted prior to the hearing, the Board reviews the Investigation Cost Recovery Invoice using applicable policies and procedures in part C.6.

MDCCF Claim Processing and Adjudication Policy and Procedures

Procedures for an oral Board hearing

- 8.6.20 Where there is an oral hearing, if a party who was notified of the hearing does not appear, the Board may proceed with the hearing in the absence of that party.
- 8.6.21 The conduct of an oral hearing is informal and may vary at the discretion of the Board based on the nature of the evidence, needs of the witnesses and the requirements of natural justice and procedural fairness. At a minimum, the procedures include the following:
- (a) a description of the claim by the claimant
 - (a) a response to the claim by the dealer
 - (b) an opportunity for the claimant to respond to the dealer's submissions
 - (c) an opportunity for each party to ask questions of the other party, and
 - (d) an opportunity for Board members to ask questions of the parties.
- 8.6.22 In more complex matters, the Board may
- (a) require witnesses to take an oath or affirmation
 - (b) issue a summons to require a witness to attend or to produce documents
 - (c) allow parties to be represented by counsel
 - (d) allow for cross-examination of witnesses, and
 - (e) hear legal arguments.
- 8.6.23 After the parties have been heard, they leave the hearing and the Board considers the evidence and makes its decision as described in paragraphs 8.6.16, 8.6.17, 8.6.18 and 8.6.19.

Decision and reasons

- 8.6.24 After making a decision the Board reviews and confirms its reasons for making the decision, including
- (a) the Board's understanding of the parties' submissions

MDCCF Claim Processing and Adjudication Policy and Procedures

- (b) the significant facts that were accepted or rejected and why they were accepted or rejected, and
 - (c) how the Board applied the facts to the law regarding eligibility for compensation and the amount of compensation.
- 8.6.25 The Paralegal records the decision and reasons of the Board in the meeting Minutes.
- 8.6.26 The Paralegal in consultation with the Claims Manager prepares the Minutes of the Board hearing with the Board's decision and reasons and circulates the Minutes to the Board members for review.
- 8.6.27 Where a decision of the Board is in regards to a claim, the Paralegal in consultation with the Claims Manager, prepares a claim Decision containing the Board's decision and reasons based on the Minutes reviewed by the Board.
- 8.6.28 The Paralegal forwards a copy of the draft claim Decision to the Chair for review. The Chair reviews the draft in consultation with the Board members who participated in the decision, and provides the final approved claim Decision to the Paralegal.

Communicating the decision and reasons

- 8.6.29 The Claims Manager sends the final approved claim Decision to all of the parties to the claim no more than 30 days from the date of the hearing.
- 8.6.30 The Claims Manager adds the claim Decision to the VSA website 7 days after the claim Decision is circulated to the parties to the claim.
- 8.6.31 Where a claim Decision involves approved investigation costs for recovery by the VSA from the Compensation Fund, the Claims Manager sends a Notice of Investigation Costs Approved for Recovery to the VSA Finance.

MDCCF Claim Processing and Adjudication Policy and Procedures

Paying compensation

- 8.6.32 Where a claim is approved, the Paralegal in consultation with the Claims Manager prepares a Compensation Payment Cheque Requisition and forwards a copy of the requisition to the Chair for approval along with the draft claim Decision.
- 8.6.33 After approval by the Chair, the Claims Manager sends a request for the compensation payment cheque to the VSA Finance at the time that the Decision is sent to the parties.
- 8.6.34 If a reconsideration is not requested, the Claims Manager sends the claimant a Closing Letter with a compensation payment cheque not more than 60 days from the date of the hearing.

Dealer Repayment to the Compensation Fund

- 8.6.35 Where payment was made from the Compensation Fund for an approved claim, the Claims Manager will send Notice of Payment from the Compensation Fund to the VSA Licensing.
- 8.6.36 Notice of Payment from the Compensation Fund will include
 - (a) the amount of compensation payment to a claimant, and
 - (b) where applicable, the amount of investigation costs recovered by the VSA Finance from the Compensation Fund.
- 8.6.37 VSA Licensing will follow applicable procedures in the Fund Administration Policy to obtain a repayment to the Compensation Fund from the dealer who caused payment from the Compensation Fund.

9. Reconsideration

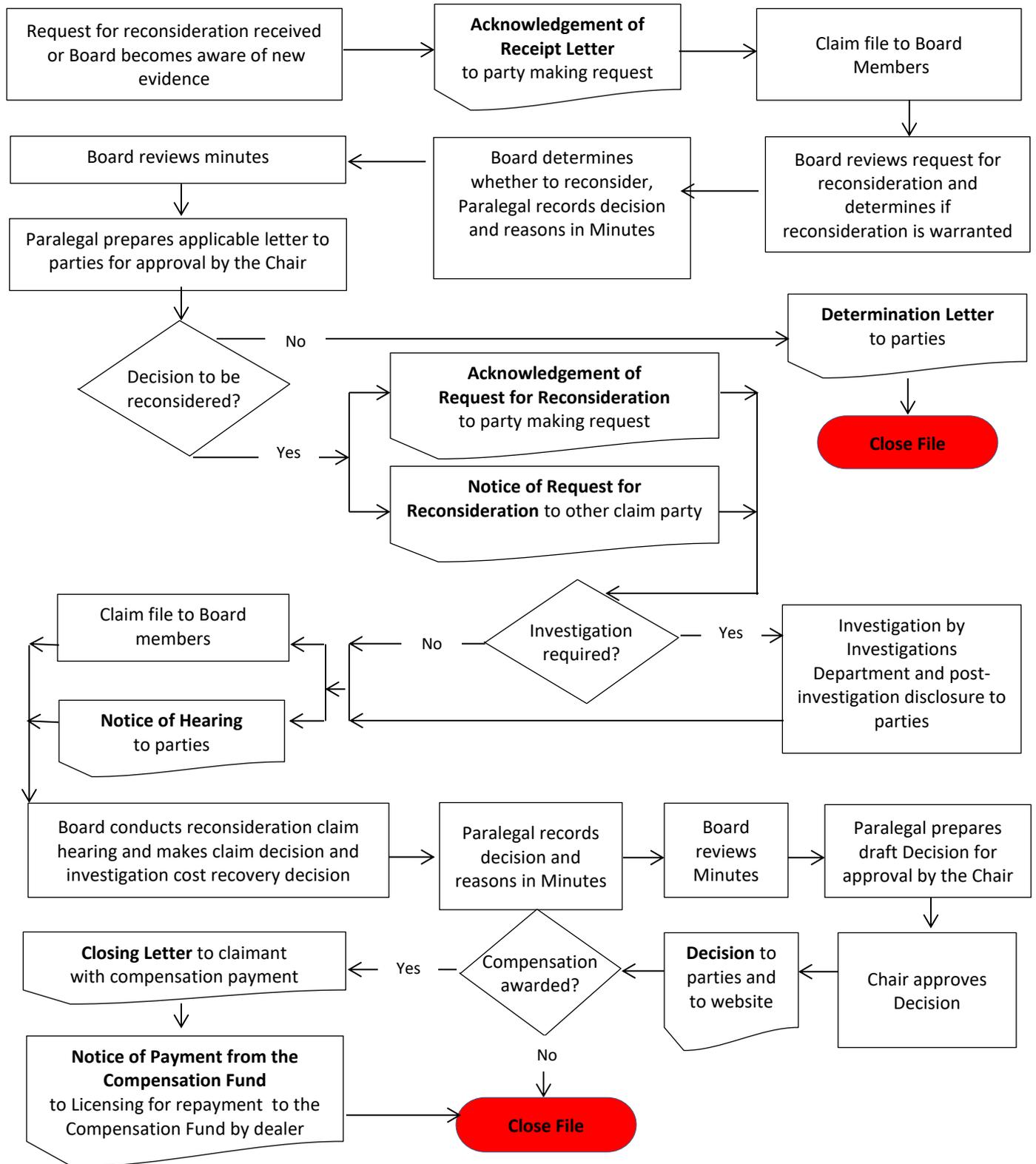
9.1 Introduction

This part provides the policies and procedures regarding when a reconsideration of a decision will be conducted by the Board and the conduct of a reconsideration.

9.2 Status of Application

The application has been heard and decided by the Board and the parties have been notified of the decision and reasons. One of the parties to the claim has requested that the Board reconsider its decision.

9.3 Flowchart - Reconsideration



9.4 Legislative Authority and Requirements

- 9.4.1 The Board has exclusive jurisdiction to hear and decide claims against the Compensation Fund. [MDA – s. 16(1)]
- 9.4.2 A decision, order or ruling of the Board made under this Act in respect of a matter that is within the Board’s jurisdiction is final and conclusive and is not open to question or review in court except on a question of law or excess of jurisdiction. [MDA – s. 16(2)]
- 9.4.3 Sections 17, 18.1, 18.2 and 24.2 of the MDA are also applied in reconsidering claims.

9.5 Policy

General

- 9.5.1 A reconsideration may be
 - a. for a Claims Manager’s determination regarding the application requirement, completeness of application, initial eligibility assessment, eligibility of loss;
 - b. for a Registrar’s determination regarding the extension of the claim application filing term; and
 - c. for the Board’s claim decision.
- 9.5.2 A reconsideration must be based on the merits of a determination or decision and entail a reassessment of the whole matter in light of new evidence. It may not be used to simply amend a previous determination or decision, or the reasons provided for the determination or decision.
- 9.5.3 The request for reconsideration must be in writing and must be made within 30 days of receiving original determination or decision. In special circumstances the Board may extend this timeline.
- 9.5.4 The Board will review the request for reconsideration and will determine if it contains new evidence that is substantial and material to the original determination or decision and:
 - (a) was not available at the time the original determination or decision was made, or

MDCCF Claim Processing and Adjudication Policy and Procedures

- (b) was available at the time the original determination or decision was made, but could not be discovered using reasonable diligence to obtain that evidence.
- 9.5.5 If the Board decides not to reconsider the original determination or decision, it will notify the party having requested reconsideration and will provide written reasons.
- 9.5.6 If the Board decides to reconsider the original decision, it will notify the parties affected by the reconsideration and all parties will be given an opportunity to provide submissions on the new evidence contained in the request for reconsideration.
- 9.5.7 The Board may confirm, vary or cancel the original determination or decision, only if new evidence is submitted that would substantially alter the original determination or decision.
- 9.5.8 The Board will give written reasons of the reconsideration decision to all parties affected by the reconsideration.
- 9.5.9 The Board's reconsideration decision may not be reconsidered.

Request for reconsideration

- 9.5.10 Any party to a claim may request that the Board reconsider a determination or decision. The parties to a claim will be informed about their right to request a reconsideration when they are notified of the original determination or decision.
- 9.5.11 To request a reconsideration a party to a claim must make a written request for reconsideration within 30 days of receiving the original determination or decision.
- 9.5.12 The Board may extend the 30 day deadline for requesting reconsideration if there are special circumstances requiring the extension and if granting the extension would not result in injustice.
- 9.5.13 The request for reconsideration must identify the error that a party believes the Claims Manager, the Registrar or Board have made in making the original determination or decision or the other grounds for which reconsideration is requested.

MDCCF Claim Processing and Adjudication Policy and Procedures

- 9.5.14 A determination or decision will be reconsidered only where the party requesting the reconsideration provides evidence that
- (a) is substantial and material to the original determination or decision, and if considered by the Board, may alter the original determination or decision or remedy a breach of procedural fairness or natural justice, and
 - (b) did not exist or could not be reasonably discovered at the time of the original determination or decision.

Reconsideration on the Board's own motion

- 9.5.15 Where the Board becomes aware of new evidence that was not considered when making a determination or decision, the Board may reconsider that decision on its own motion if new evidence
- (a) is substantial and material to the original determination or decision, and if considered by the Board, may alter the original determination or decision, or remedy a breach of procedural fairness or natural justice, and
 - (b) did not exist or could not be reasonably discovered at the time of the original determination or decision.

Reconsideration where compensation has been paid

- 9.5.16 If a claimant has been compensated by the time a request for reconsideration is made or the Board becomes aware of new evidence, the Board will not reconsider the decision unless
- (a) the failure to reconsider may unduly prejudice a party to the original decision, or
 - (b) the evidence indicates the possibility of fraud in relation to the claim.

Deciding whether to reconsider

- 9.5.17 Where a party requests a reconsideration or the Board becomes aware of new evidence that may support a reconsideration on the Board's own motion, the Board will meet as soon as possible to determine whether the determination or decision will be reconsidered.

MDCCF Claim Processing and Adjudication Policy and Procedures

- 9.5.18 In order to facilitate the earliest possible Board meeting to determine whether a determination or decision will be reconsidered, such a meeting may be conducted by teleconference.
- 9.5.19 A quorum for the purposes of determining whether a determination or decision will be reconsidered is at least half of the number of current members of the Board.
- 9.5.20 When deciding whether to reconsider a reconsideration or decision, the Board will consider
- (a) the request or other new evidence that may support the determination or decision
 - (b) the applicable legislation, and
 - (c) the Board's policy on reconsiderations.
- 9.5.21 A decision of the Board as to whether a determination or decision will be reconsidered will be based on a simple majority of the Board members present at the meeting.
- 9.5.22 After making a decision, the Board's decision and reasons will be recorded in the minutes of the meeting.

Notification of parties – no reconsideration

- 9.5.23 Where a party has requested a reconsideration and the Board decides that it will not reconsider a determination or decision, the Claims Manager will notify a party that has requested reconsideration of the Boards' decision and its reasons.
- 9.5.24 Where the Board decides not to reconsider a determination or decision on its own motion, the parties to a claim will not be notified.

Notification of parties – Board to reconsider

- 9.5.25 Where the Board decides to reconsider a determination or decision, the Claims Manager will notify the parties of the reconsideration, the new evidence to be considered, and their right to respond to the new evidence

MDCCF Claim Processing and Adjudication Policy and Procedures

- 9.5.26 Where the reconsideration was requested, the party who did not request the reconsideration may submit a written response to the new evidence within 10 business days of the notification of reconsideration.
- 9.5.27 Where the reconsideration is on the Board's own motion, any party may submit a written response to the new evidence within 10 business days of the notification of reconsideration.

Investigation

- 9.5.28 The Board may request an investigation into the new evidence supporting a reconsideration.
- 9.5.29 The Claims Manager, in consultation with the VSA Investigations Department, may also initiate an investigation into the new evidence supporting a reconsideration.
- 9.5.30 Where an investigation is required, a copy of the investigation report and investigation cost recovery invoice will be provided to the parties, and the Claims Manager will advise that they can submit a written response to the report within 10 business days of the date of the letter providing the report.
- 9.5.31 A copy of a written response to an investigation report will be provided to all other parties.

Conducting a reconsideration

- 9.5.32 When conducting a reconsideration, the Board will follow the same policies and procedures as a Board hearing in the first instance (part B.8).

Paying compensation

- 9.5.33 Where compensation is awarded or upheld as a result of reconsideration, the compensation payment will be sent to the applicant together with the Board's decision and reasons. If the payment cheque is not available when the Decision is sent, it will be sent once received by the Claims Manager.

MDCCF Claim Processing and Adjudication Policy and Procedures

Dealer repayment to the Compensation Fund

- 9.5.34 Where compensation is paid from the Compensation Fund, the VSA Licensing will be notified of
- (a) claim payment from the Compensation Fund, and
 - (b) where applicable, investigation costs recovered by the VSA from the Compensation Fund.

9.6 Procedures

- 9.6.1 The Claims Manager notifies the parties about their right to request a reconsideration in the original claim determination or decision.
- 9.6.2 When a request for reconsideration is received, the Claims Manager sends an Acknowledgement of Receipt letter to the party who requested the reconsideration.
- 9.6.3 Where the next regular Board meeting is scheduled for more than 7 weeks from the date a request for reconsideration is received, the Claims Manager
- (a) forwards the request for reconsideration and the claim file to the Board members, and
 - (b) schedules a teleconference Board meeting to review the request and decide whether the Board will reconsider a determination or decision.
- 9.6.4 Where the next regular Board meeting is scheduled for 7 weeks or less from the date a request for reconsideration is received,
- (a) the Claims Manager adds the request for reconsideration to the agenda for that meeting and forwards the request and the claim file to the Board along with the other materials for the meeting, and
 - (b) at the regular meeting, the Board reviews the request for reconsideration and decides whether it will reconsider a determination or decision.
- 9.6.5 Where a Board member becomes aware of new evidence that may lead to a reconsideration on the Board's own motion, the Board member informs the Chair.

MDCCF Claim Processing and Adjudication Policy and Procedures

- 9.6.6 When the Chair receives new evidence that may lead to a reconsideration on the Board's own motion, the Chair directs the Claims Manager to arrange for the Board to consider the request.
- 9.6.7 Where the next regular Board meeting is scheduled for more than 7 weeks from the date Chair receives the new evidence, the Claims Manager
- (a) forwards the new evidence and the claim file to the Board members, and
 - (b) schedules a teleconference Board meeting to review the new evidence and decide whether the Board will reconsider a determination or decision.
- 9.6.8 Where the next regular Board meeting is scheduled for 7 weeks or less from the date the Chair receives the new evidence,
- (a) the Claims Manager adds the request for reconsideration to the agenda for that meeting and forwards the new evidence and the claim file to the Board along with the other materials for the meeting, and
 - (b) at the regular meeting, the Board reviews the request for reconsideration and decides whether it will reconsider a determination or decision.
- 9.6.9 The Claims Manager prepares a claim file for a claim for which a request for reconsideration is received. A claim file will contain
- (a) where applicable, claim file that was considered by the Registrar or Claims Manager when the original determination was made,
 - (b) where applicable, claim file that was provided to the Board at the time when the original claim decision was made
 - (c) original claim determination or decision, and
 - (d) request for reconsideration.
- 9.6.10 A claim file will be provided to the Board members no less than 14 days prior to the date of the hearing.

MDCCF Claim Processing and Adjudication Policy and Procedures

Deciding whether to reconsider

- 9.6.11 The Claims Manager attends the Board hearing and answers the Board's questions about the claims processing.
- 9.6.12 The Paralegal attends the Board meeting and records the minutes of the meeting.
- 9.6.13 When deciding whether to reconsider a determination or decision, the Board reviews the new evidence supporting a request for reconsideration or a reconsideration on the Board's own motion and considers whether
- (a) it was in evidence when the Registrar, or Claims Manager, or Board made the original determination or decision
 - (b) it did not exist or could not be reasonably discovered prior to the time when the original determination or decision was made
 - (c) it is substantial and material, and if consideration of the new evidence may alter the original determination or decision or remedy a breach of procedural fairness or natural justice, and
 - (d) if the claimant has already been compensated, whether
 - (i) the failure to reconsider may unduly prejudice a party to the original decision, or
 - (ii) the evidence indicates the possibility of fraud in relation to the claim.
- 9.6.14 After making a decision on whether to reconsider, the Board reviews and confirms its reasons for making the decision, including
- (a) the Board's understanding of the basis of the request for reconsideration or of the new evidence that has become known to the Board, and
 - (b) the determining factors supporting the Board's decision, and the Paralegal records the decision and reasons in the minutes of the meeting.
- 9.6.15 Following the meeting, the Paralegal sends the minutes to the Board members for review and approval.

MDCCF Claim Processing and Adjudication Policy and Procedures

Where request is not granted

- 9.6.16 Where the Board decides that it will not grant a request for reconsideration, the Claims Manager prepares a letter to the party who requested the reconsideration explaining the Board's reasons and forwards it to the Chair or Vice-chair for review and in consultation with the members present at the meeting when the decision was made, provides final approval.
- 9.6.17 After approval by the Chair or Vice-chair, the Claims Manager sends the letter to the party who made the request.

Where decision is to be reconsidered

- 9.6.18 Where the Board decides that it will reconsider a Board's decision, the Claims Manager
- (a) sends a letter notifying the parties that the determination or decision will be reconsidered and cross discloses the new evidence to be considered, and
 - (b) informs
 - (i) the party who did not request the reconsideration, or
 - (ii) all of the parties where the reconsideration is on the Board's own motion
- that if they wish to respond to the new evidence, they must send a written response within 10 business days of the date of the letter.
- 9.6.19 Where the Board decides that it will reconsider a Registrar's or Claims Manager determination, the Claims Manager will notify the party having requested the reconsideration.
- 9.6.20 The Claims Manager schedules the reconsideration for the next available meeting of the Board.

Investigation

- 9.6.21 The Claims Manager consults with the VSA Investigations manager to determine whether an investigation of the new evidence supporting a reconsideration is required. If an investigation is required, the Claims Manager forwards the new evidence to the VSA Investigations.

MDCCF Claim Processing and Adjudication Policy and Procedures

- 9.6.22 Upon completion of an investigation, the VSA Investigations manager sends a copy of the investigation report to the Claims Manager and the report is added to the claim file.
- 9.6.23 The Claims Manager sends a copy of the investigation report and investigation cost recovery invoice to each party to the claim along with a letter informing the parties that if they wish to respond to the report, they must send a written response within 10 business days of the date of the letter.
- 9.6.24 If a party sends a written response to an investigation report, the Claims Manager forwards a copy of the response to the other parties and adds the original to the claim file.

Conducting a reconsideration

- 9.6.25 The Board may confirm, vary or cancel the original determination or decision.
- 9.6.26 The Board and the Claims Manager follow the Board hearing procedures in part B.8.6 to prepare for and conduct the reconsideration.
- 9.6.27 The parties to a claim affected by the reconsideration will be informed that the reconsideration decision may not be reconsidered by the Board.

Paying compensation

- 9.6.28 Where compensation is upheld on reconsideration and the payment cheque has been received, the Claims Manager sends the compensation payment to the applicant together with the claim Decision regarding the reconsideration.
- 9.6.29 Where there is a new award of compensation on reconsideration or where a payment cheque otherwise has not been received by the time the Decision is sent to the parties, the compensation payment will be sent immediately after it is received by the Claims Manager.

MDCCF Claim Processing and Adjudication Policy and Procedures

Dealer repayment to the Compensation Fund

- 9.6.30 Where payment was made from the Compensation Fund for approved claims, the Claims Manager will send Notice of Payment from the Compensation Fund to the VSA Licensing for the purpose of updating dealer records and obtaining a repayment to the Compensation Fund from the dealer who caused payment from the Compensation Fund.
- 9.6.31 Notice of Payment from the Compensation Fund will include
- (a) the amount of the compensation payment to a claimant, and
 - (b) where applicable, the amount of investigation costs recovered by the VSA Finance from the Compensation Fund.

B. ELIGIBLE LOSSES AND COMPENSATION

1. Overview

This section outlines the policies and procedures related to determining whether a loss is eligible for compensation. It is divided into the following parts:

- Part 1 – Overview. This part explains what is covered in section C and includes a review of the role of policy in decision making.
- Part 2 – Purchase of a Vehicle. This part provides the policies and procedures for determining the eligibility of a loss related to the purchase of a vehicle.
- Part 3 – Purchase of an Extended Warranty. This part provides the policies and procedures for determining the eligibility of a loss related to the purchase of an extended warranty or service plan.
- Part 4 – Consignment Agreement. This part provides the policies and procedures for determining the eligibility of a loss related to the delivery of a vehicle to a dealer on consignment.
- Part 5 – Determining the Amount of Compensation. This part provides the policies and procedures for determining the amount of compensation to be awarded for an eligible loss.

2. Purchase of a Vehicle

2.1 Legislative Authority and Requirements

- 2.1.1 In relation to a claim involving the purchase of a vehicle, the requirements in section 5(1)(a) of the MDCCF Regulation must be satisfied.
- 2.1.2 A claimant is not eligible for compensation in respect of the purchase of a motor vehicle if the claim is based on the cost, value or quality of the motor vehicle received. [MDCCF Reg – s. 7(a)]
- 2.1.3 The Board may, after considering an application, dismiss the application or pay compensation for a loss. [MDCCF Reg – s. 9 and s. 10(5)]
- 2.1.4 For the purpose of determining eligibility for compensation, a “purchase” of a motor vehicle includes a lease or exchange of a motor vehicle. [MDCCF Reg – s. 1]

Definition of “purchase” and “material fact”

- 2.1.5 A “material fact” is a fact that goes to the substance of the contract and would be a fact that a reasonable person would consider important in their deliberations of whether or not to enter into the contract. It does not need to be a fact that would have changed the decision, but it would have had significance in the decision making process of a reasonable person: *Sharbern Holdings Inc. v. Vancouver Airport Centre Ltd.* 2011 SCC 23 (Supreme Court of Canada). Where legislation compels the disclosure of certain facts, such as section 23 of the MDA Regulation, those can be considered material facts.

2.2 Policy

Loss must be liquidated

- 2.2.1 To be eligible under s. 5(1)(a), a loss must be a liquidated amount. A liquidated amount is a fixed amount or an amount that can be made certain by mere mathematical calculation.

MDCCF Claim Processing and Adjudication Policy and Procedures

2.2.2 Where the amount of the loss must be investigated beyond mere arithmetic and determined by opinion or an assessment of what is reasonable in the circumstances, it is not a liquidated amount.

2.2.3 Where the amount of a claimant's loss has been assessed by a court or tribunal, the amount assessed by the court or tribunal is a liquidated amount.

Loss must not be based on the cost, value or quality of the vehicle

2.2.4 A loss that is based on the cost, value or quality of a vehicle that was purchased from a dealer, is not an eligible loss under s. 5(1)(a), even where the amount of the loss has been liquidated by a court or tribunal.

Eligible loss under s. 5(1)(a)(i) of the MDCCF Regulation

2.2.5 To be eligible under s. 5(1)(a)(i), a loss must

- (a) be the loss of consideration provided to the dealer
- (b) be caused by the refusal of the dealer to
 - (i) deliver the vehicle contracted for, or
 - (ii) return the consideration, and
- (c) have occurred in circumstances where the dealer has no lawful justification for the refusal.

2.2.6 Where the dealer delivered a vehicle to the claimant, in order for a loss to be eligible under s. 5(1)(a)(i), the following criteria must be met:

- (a) the vehicle actually delivered must be different from the vehicle that was the subject of the contract, and not that its quality is not as expected or hoped,
- (b) in applying 2.2.7 and 2.2.9 the difference between the vehicles must be the result of a misrepresentation of an objective fact about the vehicle made by the dealer which
 - (i) the claimant relied on when deciding to purchase the vehicle, and
 - (ii) formed part of the contract, and

MDCCF Claim Processing and Adjudication Policy and Procedures

- (c) except as provided in paragraph 2.2.10, at the time the claimant became aware of the difference, the claimant must have either
 - (i) refused to accept delivery of the vehicle, or
 - (ii) returned or attempted to return the vehicle to the dealer in substantially the same condition as when the claimant accepted delivery as soon as practicable after the claimant discovered the misrepresentation.

2.2.7 A qualifying misrepresentation under paragraph 2.2.6(b) must meet any of the following criteria:

- (a) an intentional or reckless misrepresentation about the vehicle
- (b) an unintentional misrepresentation regarding the substance of the vehicle delivered, or
- (c) an unintentional misrepresentation about a key term of the agreement that at the time of the transaction the claimant declared to the dealer to be essential to the contract at the time of the transaction.

Rationale

(a) An intentional or reckless misrepresentation regarding a material fact rendering the contract of no use or value is grounds to ask a contract be rescinded and to have the full amount refunded (a liquidated amount). It is contrary to public policy to allow someone to benefit from their fraud: Kuczerpa v. Jim Pattison Industries 2000 BCSC 1327; Casillan v. 565204 B.C. Ltd dba Daewoo Richmond 2009 BCSC 1335, and see Tercon v. British Columbia 2010 SCC 4.

(b) For example, a vehicle sold and declared as meeting the requirements of the Motor Vehicle Act (legally safe), but not meeting those requirements (legally unsafe) is grounds to rescind the contract. The vehicle cannot be legally driven as delivered by the dealer, affecting the core or substance of the contract: Balderson v. Cheng 2006 BCPC 64. However, a claim that the odometer reading is incorrect and the vehicle has more mileage than claimed, will generally affect the quality of the vehicle, allowing only a claim for damages (unliquidated): Sale of Goods Act and Balderson v. Cheng 2006 BCPC 64. Similarly, a misrepresentation about whether or not a vehicle is from out of

MDCCF Claim Processing and Adjudication Policy and Procedures

province goes to its quality and is a claim for damages (unliquidated): Kuczerpa v. Jim Pattison Industries 2000 BCSC 1327.

(c) An unintentional misrepresentation about a key term of the agreement may allow for rescission where it goes to the substance of the contract and not the quality of the product provided. For example, if a claimant purchasing a pickup said it needed to tow a certain weight, and later it is discovered the truck does not tow that weight, this may be grounds for rescission: Vavra v. Victoria Ford Alliance 2003 BCSC 1297. However, in that same case, if the vehicle can tow the weight as requested, but the engine performance is less than the same vehicle with a stronger engine; this is probably a question of the quality of the vehicle delivered.

- 2.2.8 When determining whether a misrepresentation formed a part of the contract under paragraph 2.2.6(b)(ii), the Board will consider the whole of the contract and the intention of the parties. Where the misrepresentation is not documented in the contract, there must be clear evidence that
- (a) the dealer made an oral misrepresentation that the claimant reasonably relied on when deciding to purchase the vehicle,
 - (b) the dealer failed to declare a “material fact” which, if known to the claimant, reasonably would have stopped the applicant from purchasing the vehicle, or
 - (c) the claimant clearly made the dealer aware of a term essential to the applicant’s decision to purchase the vehicle at the time of the transaction.
- 2.2.9 Where a dealer refuses or is unable to accept the return of the vehicle as required in paragraph 2.2.6(c)(ii), in order to be eligible for compensation, a claimant must meet the requirements in 2.2.6 and sell the vehicle for fair market value. The claimant’s loss will be calculated as the difference between
- (a) the amount of consideration paid to the dealer for the vehicle, and
 - (b) the fair market value of the vehicle as determined by the Board.

MDCCF Claim Processing and Adjudication Policy and Procedures

Rationale

This provision addresses circumstances where the claimant attempts to return the vehicle in substantially the same condition as when received, but the dealer refuses to accept the vehicle or is unable to accept the vehicle because the dealer is no longer in business.

In these circumstances, the claimant is entitled to rescind the contract and receive a refund of the consideration paid. However, the claimant is not entitled to receive compensation from the Compensation Fund and to keep the vehicle. If the claimant wishes to rescind the contract, then the claimant must dispose of the vehicle for fair market value. They can then be compensated by an award of the difference between the consideration paid to the dealer and the fair market value received.

- 2.2.10 Where a claimant was not able to return or attempt to return the vehicle to the dealer in substantially the same condition as required in paragraph 2.2.6(c)(ii), the claimant's loss may be eligible if a court has
- (a) ruled that the claimant was entitled at law to rescind the sale contract, and
 - (b) has quantified the amount of the claimant's loss.

Rationale

This provision addresses circumstances where the difference between the vehicle contracted for and the vehicle received are not immediately apparent to the claimant. By the time the claimant becomes aware of the difference, the vehicle may no longer be in substantially the same condition as when it was received from the dealer.

Generally, the right to rescind a sale contract will depend on the ability of the purchaser to return the vehicle in substantially the same condition as it was received. However, there are circumstances such as fraud or where the dealer's own conduct prevented the return of the vehicle, where a court may find that a purchaser is entitled to rescind the contract even where the vehicle cannot be returned in its original form.

MDCCF Claim Processing and Adjudication Policy and Procedures

In these circumstances, when determining whether the purchaser is entitled to a refund of the consideration, a court may rule that the value of any benefit the purchaser has received from the vehicle be deducted from the value of the consideration the purchaser paid to the dealer.

In the absence of a judicial decision, a loss in these circumstances would not be eligible because it is not a liquidated amount. Where a court determines that the claimant is entitled to rescind the contract and quantifies the amount of compensation the claimant is entitled to, the Board may award compensation based on the judicial decision.

Eligible loss under s. 5(1)(a)(ii) of the MDCCF Regulation

2.2.11 To be eligible under s. 5(1)(a)(ii), a loss must

- (a) be the loss of consideration provided to the dealer
- (b) be caused by the inability of the dealer to
 - (i) deliver the vehicle contracted for, or
 - (ii) return the consideration

because of the bankruptcy, insolvency, receivership or other failure of the dealer.

“Other failure” in s. 5(1)(a)(ii) of the MDCCF Regulation

2.2.12 “Other failure” in s. 5(1)(a)(ii) means a type of economic or other business-related failure that renders the dealer unable to perform its obligations under the contract or at law.

Eligible loss under s. 5(1)(a)(iii) of the MDCCF Regulation

2.2.13 To be eligible under s. 5(1)(a)(iii), a loss must be

- (a) a loss of consideration or a loss in the value of consideration given to a dealer, and
- (b) caused by the dealer’s
 - (i) dishonest conduct, or
 - (ii) misappropriation or wrongful conversion of the consideration.

MDCCF Claim Processing and Adjudication Policy and Procedures

Rationale

Sections 5(1)(a)(i) and (ii) cover a complete loss of consideration where the dealer unlawfully refuses or is unable to deliver the vehicle or return the consideration paid by the purchaser. Section 5(1)(a)(iii) provides for compensation where there is a failure to return consideration or there is a loss in value of consideration that has been returned, and the loss is due to the wrongful conduct of the dealer

Eligible loss under s. 5(1)(a)(iv) of the MDCCF Regulation

2.2.14 To be eligible under s. 5(1)(a)(iv), a loss must be

- (a) an amount paid by the claimant to clear the title of the vehicle purchased by the claimant of any charge or encumbrance in favour of a third party, or
- (b) the amount paid to purchase a vehicle that was subsequently seized from the claimant by a third party and not returned

which resulted from a charge or encumbrance on the vehicle that the dealer did not declare to the claimant, and the claimant was not aware of at the time the vehicle was purchased.

Eligible loss where claimant traded in vehicle

2.2.15 A claimant may have a liquidated loss if they traded-in their vehicle on the condition that the dealer discharges the lien on the claimant's behalf. They may be eligible based on the following:

- (a) The loss to the claimant is "crystallized" as soon as the dealer fails to pay, because the claimant remains contractually liable to the creditor for the debt and the specified dollar amount (has "suffered a loss");
- (b) There is an agreement that the dealer will payout the lien on behalf of the claimant;
- (c) The amount of the lien payout is noted on the purchase agreement and becomes a contractual term of the agreement and is a specific dollar amount ("other liquidated amount" as required by s. 5(1)(a)); and

MDCCF Claim Processing and Adjudication Policy and Procedures

- (d) The dealer failed to pay out the lien and a reasonable inference is the dealer wrongfully converted the money entrusted to it in contravention of s. 5(1)(a)(iii).

Rationale

Section s. 5(1)(a) of the MDCCF Regulation identifies five types of losses that are eligible for compensation with respect to the purchase of a motor vehicle. These are the loss of a trade-in, full payment, deposit, down payment or other liquidated amount. Where a claimant pays a lien holder to discharge a lien in order to clear the title of a vehicle, the loss is eligible as an "other liquidated amount". Where a claimant's vehicle is seized and disposed of by the lien holder, the claimant's loss is the "full payment" made by the claimant for the vehicle that has been seized. In this context, the "full payment" would necessarily include any deposit, down payment and the value of any trade-in given toward the purchase of the seized vehicle.

Where a dealer fails to provide clear title, a claimant's loss "crystallizes" when the vehicle has been seized or when the claimant has paid the lien holder to clear the title of the vehicle. Before either of these events occurs, the claimant has an action for damages under s. 16(c) of the Sale of Goods Act, but this is not a compensable loss under the MDCCF Regulation.

Section 16(c) provides for an "implied warranty that the [vehicle is] free from any charge or encumbrance in favour of any third party, not declared or known to the buyer or lessee before or at the time when the contract is made".

2.3 Procedures

- 2.3.1 The Board reviews the claim file and determines whether the claimant's loss
- (a) is a liquidated amount
 - (b) is not based on cost, value or quality of the vehicle received by the claimant, and

MDCCF Claim Processing and Adjudication Policy and Procedures

(c) is an eligible loss under s. 5(1)(a)(i), (ii), (iii) or (iv) of the MDCCF Regulation.

2.3.2 Where the Board finds that the loss does not meet all of the requirements in paragraph 2.3.1, the Board dismisses the application

2.3.3 Where the Board finds that the loss meets the requirements in paragraph 2.3.1, the Board approves the application and determines the amount of compensation (see part C.5).

3. Purchase of Extended Warranty/Service Plan

3.1 Legislative Authority and Requirements

- 3.1.1 In relation to a claim involving the purchase of an extended warranty or service plan, the requirements in section 5(1)(b) of the MDCCF Regulation must be satisfied.
- 3.1.2 A claimant is not eligible for compensation in respect of the purchase of an extended warranty or service plan if the applicant is able to recover the cost of the unexpired portion of the warranty or plan from an insurer of the warranty or plan. [MDCCF Reg – s. 7(b)]
- 3.1.3 The Board may, after considering an application, dismiss the application or pay compensation for a loss. [MDCCF Reg – s. 9]

3.2 Policy

Eligible loss under s. 5(1)(b) of the MDCCF Regulation

- 3.2.1 To be eligible under s. 5(1)(b), a loss must be
- (a) the loss of an unexpired portion of a warranty or service plan, and
 - (b) be the result of the bankruptcy, insolvency, receivership or other failure of the motor dealer.

“Other failure” in s. 5(1)(b) of the MDCCF Regulation

- 3.2.2 “Other failure” in s. 5(1)(b) means
- (a) a type of economic or other business-related failure that renders the dealer unable to perform its obligations under the contract or at law, or
 - (b) the intentional or unintentional failure of a dealer to remit a payment collected from the applicant to the insurer of the warranty or plan.

MDCCF Claim Processing and Adjudication Policy and Procedures

Rationale

Under this policy, the meaning of "other failure" in s. 5(1)(b) is broader than its meaning in s. 5(1)(a)(iii) and s. 5(1)(c)(iii). This broader meaning is necessary because, unlike s. 5(1)(a) and (c), s. 5(1)(b) does not explicitly address a loss caused by the dealer's misappropriation of money paid for an extended warranty or service plan.

Limiting the meaning of "other failure" to economic or business-related failure in s. 5(1)(b) would preclude compensation where the loss was due to a dealer's failure to remit an applicant's payment. This result would be both unfair and inconsistent with the purpose of the Compensation Fund.

Not eligible where loss is recoverable from insurer

- 3.2.3 A loss under s. 5(1)(b) is not eligible for compensation if the claimant is able to recover the loss from the insurer of the extended warranty or service plan.
- 3.2.4 Where there is evidence that the extended warranty or service plan was insured, a claimant will not be eligible for compensation unless the claimant has exhausted all reasonable legal remedies, including enforcement remedies against the insurer and has not been able to recover the cost of the unexpired portion of the warranty or service plan.

Rationale

An extended warranty or service plan may be offered directly by a dealer or may be underwritten by an insurer. Under s. 7(b) of the MDCCF Reg, a claimant is not eligible if the claimant "is able to recover the cost of the unexpired portion of the warranty or service plan from an insurer of the warranty or plan". Where a warranty or plan is offered by an insurer, typically the dealer is acting as an agent of the insurer. Where this is case, the insurer is bound by law to provide the warranty or plan even where the dealer fails to remit payment to the insurer

When hearing a claim under s. 5(b), the Board must consider whether the warranty or plan was underwritten by an insurer. Where there is an insurer, the Board must be satisfied that the claimant is not able to recover the loss from the insurer.

MDCCF Claim Processing and Adjudication Policy and Procedures

Until a claimant has exhausted all legal remedies against the insurer without being compensated for their loss, their loss is not eligible because the application may still be able to recover the loss from the insurer.

3.3 Procedures

- 3.3.1 The Board reviews the claim file and determines whether
- (a) the claimant's loss is the unexpired portion of an extended warranty or service plan
 - (b) the claimant's loss was the result of the bankruptcy, insolvency, receivership or other failure of the motor dealer , and
 - (c) the claimant is unable to recover the loss from an insurer of the warranty or plan.
- 3.3.2 Where the Board finds that the loss does not meet all the requirements in paragraph 3.3.1, the Board dismisses the application.
- 3.3.3 Where the Board finds that the loss meets the requirements in paragraph 3.3.1., the Board approves the application and determines the amount of compensation (see part C.5).

4. Eligible Loss – Consignment Agreement

4.1 Legislative Authority and Requirements

In relation to a claim involving a consigned vehicle, the requirements in section 5(1)(c) of the MDCCF Regulation must be satisfied.

4.2 Policy

General

4.2.1 An eligible loss under s. 5(1)(c) must be the loss of a vehicle or the value of a vehicle delivered to a dealer for sale on consignment.

Eligible loss under s. 5(1)(c)(i) of the MDCCF Regulation

4.2.2 To be eligible under s. 5(1)(c)(i), a loss must be the loss of a vehicle or the value of a vehicle delivered to a dealer for sale on consignment

- (a) be caused by the refusal of a dealer to
 - (i) deliver the unsold vehicle at the end of the agreed consignment period, or
 - (ii) remit the agreed amount of proceeds from the sale within the agreed period after the sale
- (b) have occurred in circumstances where the dealer has no lawful justification for the refusal.

Eligible loss under s. 5(1)(c)(ii) of the MDCCF Regulation

4.2.3 To be eligible under s. 5(1)(c)(ii), a loss must

- (a) be caused by the inability of a dealer to
 - (i) deliver the unsold vehicle at the end of the agreed consignment period, or
 - (ii) remit the agreed amount of proceeds from the sale within the agreed period after the sale

because of the bankruptcy, insolvency, receivership or other failure of the dealer.

MDCCF Claim Processing and Adjudication Policy and Procedures

“Other failure” in s. 5(1)(c)(ii) of the MDCCF Regulation

4.2.4 “Other failure” in s. 5(1)(c)(ii) means a type of economic or other business-related failure that renders the dealer unable to perform its obligations under the contract or at law.

Eligible loss under s. 5(1)(c)(iii) of the MDCCF Regulation

4.2.5 An eligible loss under s. 5(1)(c)(iii) must be a loss of the vehicle or the value of the vehicle consigned to a dealer and must be caused by the dealer’s

- (a) dishonest conduct, or
- (b) misappropriation or wrongful conversion of
 - (i) the vehicle or property attached to the vehicle, or
 - (ii) money or other property that was the proceeds of a sale of a consigned vehicle held in trust by the dealer.

Rationale

Under s. 5(1)(c) of the MDCCF Regulation, an eligible loss is limited to “a loss of the vehicle or the value of a vehicle”. The policy interpreting the scope of what may be the subject of a dealer’s “misappropriation or wrongful conversion” in s. 5(1)(c)(iii) reflects this limitation.

A loss that is the result of a dealer’s negligence or a failure to act that falls short of dishonest conduct, misappropriation or wrongful conversion is not eligible.

Loss due to claimant’s failure to maintain insurance not eligible

4.2.6 If a claimant suffers a loss under s. 5(1)(c)(iii) because of the claimant’s failure to obtain or maintain insurance and insuring the vehicle was the responsibility of the claimant under the consignment agreement, the loss is not eligible.

4.3 Procedures

4.3.1 The Board reviews the claim file and determines whether the loss is

- (a) the loss of a vehicle or the value of a vehicle delivered to the dealer for sale on consignment, and

MDCCF Claim Processing and Adjudication Policy and Procedures

- (b) is an eligible loss under s. 5(1)(c)(i), (ii) or (iii) of the MDCCF Regulation.
- 4.3.2 Where the Board finds that the claim does not meet the requirements in paragraph 4.3.1, the Board dismisses the application.
- 4.3.3 Where the Board finds that the claim meets the requirements in paragraph 4.3.1, the Board approves the application and determines the amount of compensation (see part C.5).

5. Determining the Amount of Compensation

5.1 Legislative Authority and Requirements

- 5.1.1 The Board may, after considering an application, dismiss the application or pay compensation for a loss up to \$20,000. [MDCCF Reg – s. 9 and s. 10(5)]
- 5.1.2 The Board may prorate payments between claimants if the Compensation Fund is insufficient to pay all claims. [MDA – s. 23]
- 5.1.3 A claimant is not entitled to claim any interest with respect to an eligible loss. [MDCCF Reg – s. 5(2)]
- 5.1.4 A claimant is not eligible for compensation from the Compensation Fund in respect of that portion of the operation of a motor vehicle that is claimed as business expense for income tax purposes. [MDCCF Reg – s. 7(c)]

5.2 Policy

General

- 5.2.1 The Board may award a specific amount of compensation at the time the claim is accepted or may provide instructions to the Claims Manager as to how the amount should be calculated.

Where applicant may have other forms of compensation

- 5.2.2 Where the claimant has obtained a judgment against the dealer in respect of the loss, the Board will not award compensation unless the Board is satisfied that the claimant has made reasonable efforts to collect on the judgment.
- 5.2.3 Where a claimant may be eligible for some other compensation for the loss but has not actually received any other compensation and not commenced any proceedings to receive any other compensation, the Board
 - (a) will determine the amount of compensation without taking into account any potential future compensation, and

MDCCF Claim Processing and Adjudication Policy and Procedures

- (b) will not delay the award of compensation or make the award contingent on the claimant pursuing another form of compensation.

Where claimant received other forms of compensation before money is paid from the Compensation Fund

- 5.2.4 Where a claimant has received some other compensation for an eligible loss, the Board will subtract any other compensation received from the amount of the eligible loss when determining the amount of compensation to be awarded.

Proportion of business use

- 5.2.5 Where the claimant has claimed a portion of the operation of the vehicle as a business expense for income tax purposes, the Board will first determine the full amount of compensation and then subtract the percentage of the operation of the vehicle claimed as a business expense. For example, if the full amount of compensation was determined to be \$1,000 and 25% of the operation of the vehicle was claimed as a business expense, the actual amount awarded would be \$1,000 minus \$250 (25%), making the actual amount of compensation awarded \$750.

Taxes

- 5.2.6 When determining the amount of compensation, the Board will compensate for all taxes paid.

Compensation for purchase of a vehicle

- 5.2.7 The compensation awarded for a loss related to the purchase of a vehicle will be
- (a) the amount of consideration lost by the claimant as determined by the Board based on the information provided in the claim file, or
 - (b) the amount required to clear the title to the vehicle or remove any charge or encumbrance in favour of a third party that was not declared or known to the claimant at the time of the purchase.

MDCCF Claim Processing and Adjudication Policy and Procedures

Compensation for purchase of an extended warranty or service plan

- 5.2.8 The compensation awarded for a loss related to the purchase of an extended warranty or service plan is the cost of the unexpired portion of the warranty or plan that was lost.
- 5.2.9 The cost of the unexpired portion of an extended warranty or service plan will be calculated by
- (a) determining the cost of the warranty or plan paid by the claimant and the length of the warranty or number of service intervals covered under the plan
 - (b) determining the length of the warranty or plan in months, kilometres travelled or number of service intervals covered under the warranty or plan, and
 - (c) prorating the cost based on the unexpired number of months, kilometres, or service intervals.
- 5.2.10 The Board will not consider actual or estimated repair or service costs that may have been covered under a lost warranty or plan when determining the amount of compensation.

Compensation for consignment agreement – loss of vehicle or proceeds

- 5.2.11 Where the consigned vehicle was sold by the dealer
- (a) in a legitimate and arm's length transaction, and
 - (b) the selling price of the vehicle was sufficient to provide the claimant with the agreed amount of proceeds,
- the compensation awarded for a failure to remit the proceeds of the sale of a consigned vehicle will be the agreed amount of proceeds, up to a maximum of \$20,000.
- 5.2.12 Where
- (a) the selling price of the consigned vehicle was not sufficient to provide the agreed amount of proceeds
 - (b) the sale contract for the consigned vehicle included a trade-in allowance that was significantly in excess of the fair market value of the trade-in

MDCCF Claim Processing and Adjudication Policy and Procedures

- (c) the selling price of the consigned vehicle or the agreed amount of proceeds that the applicant was to receive from the sale of the consigned vehicle is unknown, or
- (d) the vehicle was not sold, or was not sold in a legitimate and arm's length transaction,

the compensation awarded for a failure to remit the proceeds of the sale or to return the consigned vehicle will be the fair market value of the consigned vehicle, less the agreed amount of the dealer's commission, up to a maximum of \$20,000. If the agreed amount of the dealer's commission is unknown, then the Board will determine a reasonable amount of commission in the circumstances.

Rationale

Where a dealer refuses or is unable either to return an unsold consignment vehicle or to remit the agreed amount of proceeds from the sale of a consignment vehicle, the amount of compensation should reflect the market value of the vehicle.

Generally, if the consignment agreement and subsequent sale have been completed in the ordinary course of business, the amount of compensation should be the agreed amount of proceeds owing to the applicant under the consignment agreement. However, there will be circumstances in which the Board may question whether the agreed amount of proceeds reflects the market value of the vehicle, or where the agreed amount of proceeds is unknown. In these circumstances, the amount of compensation should be the fair market value of the consigned vehicle as determined by the Board, less the dealer's commission.

Paragraph 5.2.11 identifies the circumstances in which, generally, the Board will set the amount of compensation as the agreed amount of proceeds. In these circumstances, there is evidence to indicate that the agreed amount of proceeds is a fair representation of the market value of the vehicle.

Paragraph 5.2.12 identifies circumstances in which, generally, the Board will determine the fair market value of the vehicle to calculate the amount of compensation. Subparagraphs 5.2.12(a) and (b) identify circumstances in which the agreed amount of proceeds may not reflect the market value of the consigned vehicle. Subparagraphs 5.2.12(c) and (d) identify when there may be

MDCCF Claim Processing and Adjudication Policy and Procedures

insufficient information to confirm whether the agreed amount of proceeds reflects the market value of consigned vehicle.

Compensation for consignment agreement – vehicle returned

- 5.2.13 Where the consigned vehicle was returned to the claimant, the compensation awarded for a loss in the value of the vehicle will be the difference between
- (a) the fair market value of the consigned vehicle immediately prior to the loss, and
 - (b) the fair market value of the vehicle at the time the vehicle was returned to the claimant, excluding any depreciation in the value of the vehicle attributable solely to the time elapsed during the agreed consignment period.

Fair market value

- 5.2.14 Fair market value is an estimate of the highest price that a willing seller may obtain for the vehicle in an open and unrestricted market from a willing and knowledgeable purchaser in an arm's length transaction.
- 5.2.15 Where the Board must determine the fair market value of a vehicle to calculate the amount of compensation, the Board will determine the fair market value of the vehicle at the time of the claimant's loss by considering
- (a) the value as indicated in recognized industry pricing guides for the region in which the vehicle was consigned
 - (b) where available,
 - (i) the estimated value or agreed amount of proceeds identified in the consignment agreement
 - (ii) the selling price of the vehicle
 - (iii) information on the vehicle's condition, trim level or other features that would affect its value, and
- the expert opinion of Board members.

MDCCF Claim Processing and Adjudication Policy and Procedures

5.3 Procedures

- 5.3.1 The Board determines the amount of compensation to be awarded based on the type of loss and all of the circumstances of the claim.

6. Determining the Amount of Investigation Costs for Recovery from the Compensation Fund

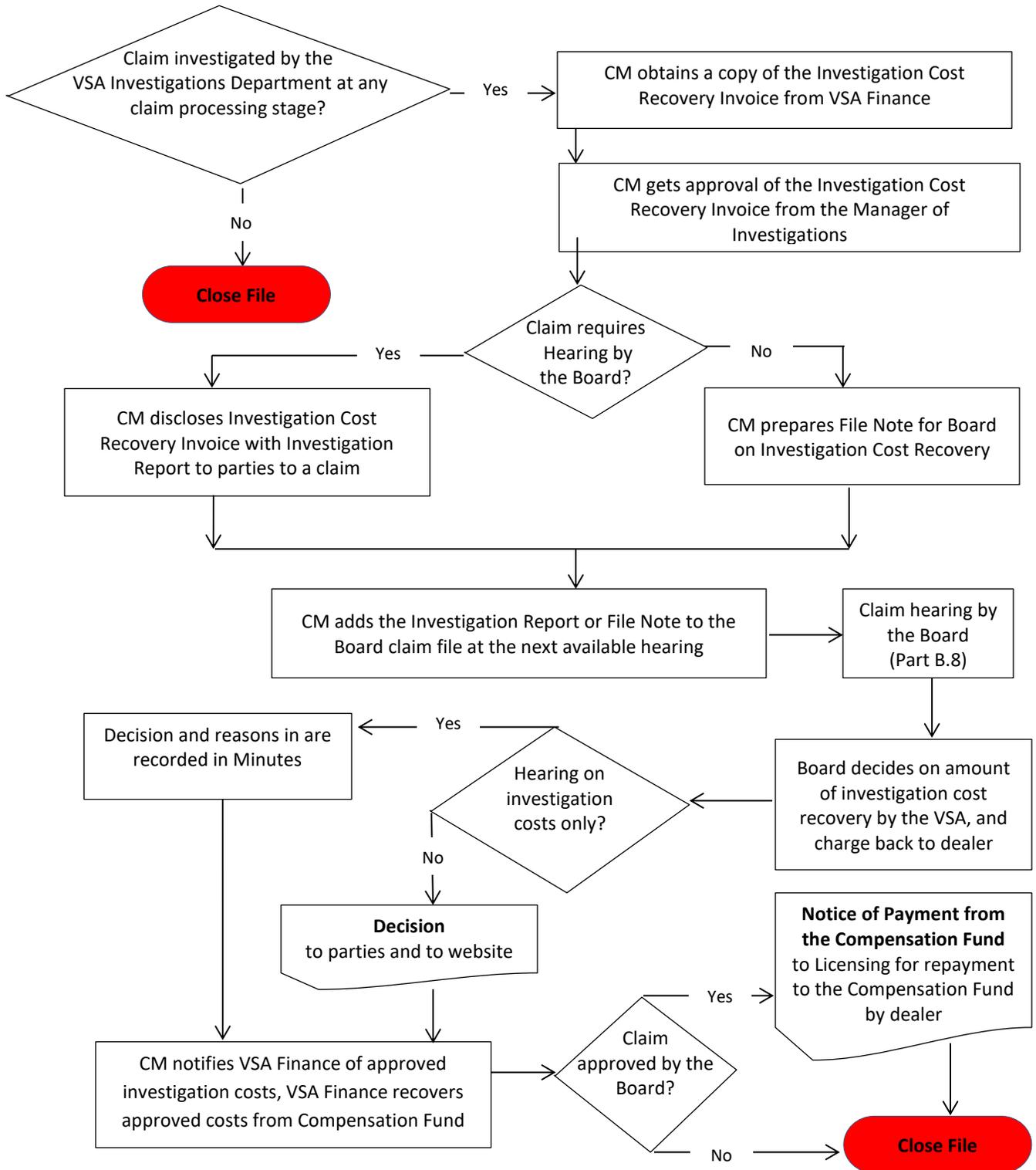
6.1 Introduction

This part provides the policies and procedures regarding the Board's approval of costs incurred for investigation of claims by the VSA Investigations team for recovery by the VSA from the Compensation Fund.

6.2 Status of Application

Status of application varies. The claim is being reviewed to determine if it has been investigated by the VSA Investigations Department at any stage of the claim processing.

6.3 Flowchart – Determining the amount of investigation costs for recovery from the Compensation Fund



6.4 Legislative Authority and Requirements

- 6.4.1 If the Board decides to pay money out of the Compensation Fund to a person who makes a claim under section 17 of the MDA, the Board must follow the procedures in section 16(2.1) of the MDA.
- 6.4.2 The costs of administering the Compensation Fund must be paid from the Compensation Fund, including costs incurred in investigating and processing claims against the Compensation Fund. [MDA – s. 22(b)]

6.5 Policy

- 6.5.1 Where a claim was investigated by the VSA Investigations Department and investigation was completed, an Investigation Cost Recovery Invoice will be prepared pursuant to the Fund Administration policy (sections 3.2.15 to 3.2.24) for review and approval by the Board.
- 6.5.2 At a claim hearing, the Board will review the Investigation Cost Recovery Invoice and the supporting documents.
- 6.5.3 The Board may approve, vary or not approve the amount of investigation costs for recovery by the VSA from the Compensation Fund.
- 6.5.4 The VSA will recover from the Compensation Fund the investigation costs approved by the Board.
- 6.5.5 Where investigation costs recovered by the VSA are with respect to approved claims, the dealer who caused payment from the compensation Fund is responsible for reimbursing the Compensation Fund.

6.6 Procedures

- 6.6.1 Where a claim was investigated by the VSA Investigations team, the Claims Manager will obtain a copy of the Investigation Cost Recovery Invoice from the VSA Finance.
- 6.6.2 The Claims Manager will obtain approval of the Investigation Cost Recovery Invoice from the Manager of Investigations.

MDCCF Claim Processing and Adjudication Policy and Procedures

Where investigation is for a claim that requires adjudication by the Board

- 6.6.3 The Investigation Cost Recovery Invoice will be added to the Investigation Report and will be disclosed to the parties of the claim at a pre-hearing stage.
- 6.6.4 At the claim hearing the Board will follow the policy and procedures for the Board hearing described in part B.8.
- 6.6.5 The Board will decide on the amount of investigation costs for recovery by the VSA from the Compensation Fund.
- 6.6.6 The Claims Manager will notify the VSA Finance of the Board's decision on investigation cost recovery.
- 6.6.7 The VSA Finance will recover approved investigation costs from the Compensation Fund.
- 6.6.8 Where investigation costs are for approved claims, the Claims Manager will send a Notice of Payment from the Compensation Fund to VSA Licensing for action to obtain repayment to the Compensation Fund from the dealer who caused payment from the Compensation Fund.

Where investigation is for a claim that does not require adjudication by the Board

- 6.6.9 Where a claim is abandoned, deemed not eligible by the Claims Manager, resolved or otherwise closed without adjudication by the Board, the Claims Manager will prepare an Investigation Cost Recovery File Note on the completed claim processing steps that will contain:
 - (a) a summary of the claim,
 - (b) a claim closing letter, and
 - (c) an investigation cost recovery invoice.
- 6.6.10 The Investigation Cost Recovery File Note will be provided to the Board for review prior to the hearing.
- 6.6.11 At the hearing the Board will follow the policy and procedures for the Board hearing described in part B.8.
- 6.6.12 The Board will decide on the amount of investigation costs for recovery by the VSA from the Compensation Fund.

MDCCF Claim Processing and Adjudication Policy and Procedures

- 6.6.13 The Claims Manager will notify the VSA Finance of the Board's decision on investigation cost recovery.
- 6.6.14 The VSA Finance will recover approved investigation costs from the Compensation Fund.

C. REPAYMENT OF VALUE RECEIVED FROM ANOTHER SOURCE TO THE COMPENSATION FUND

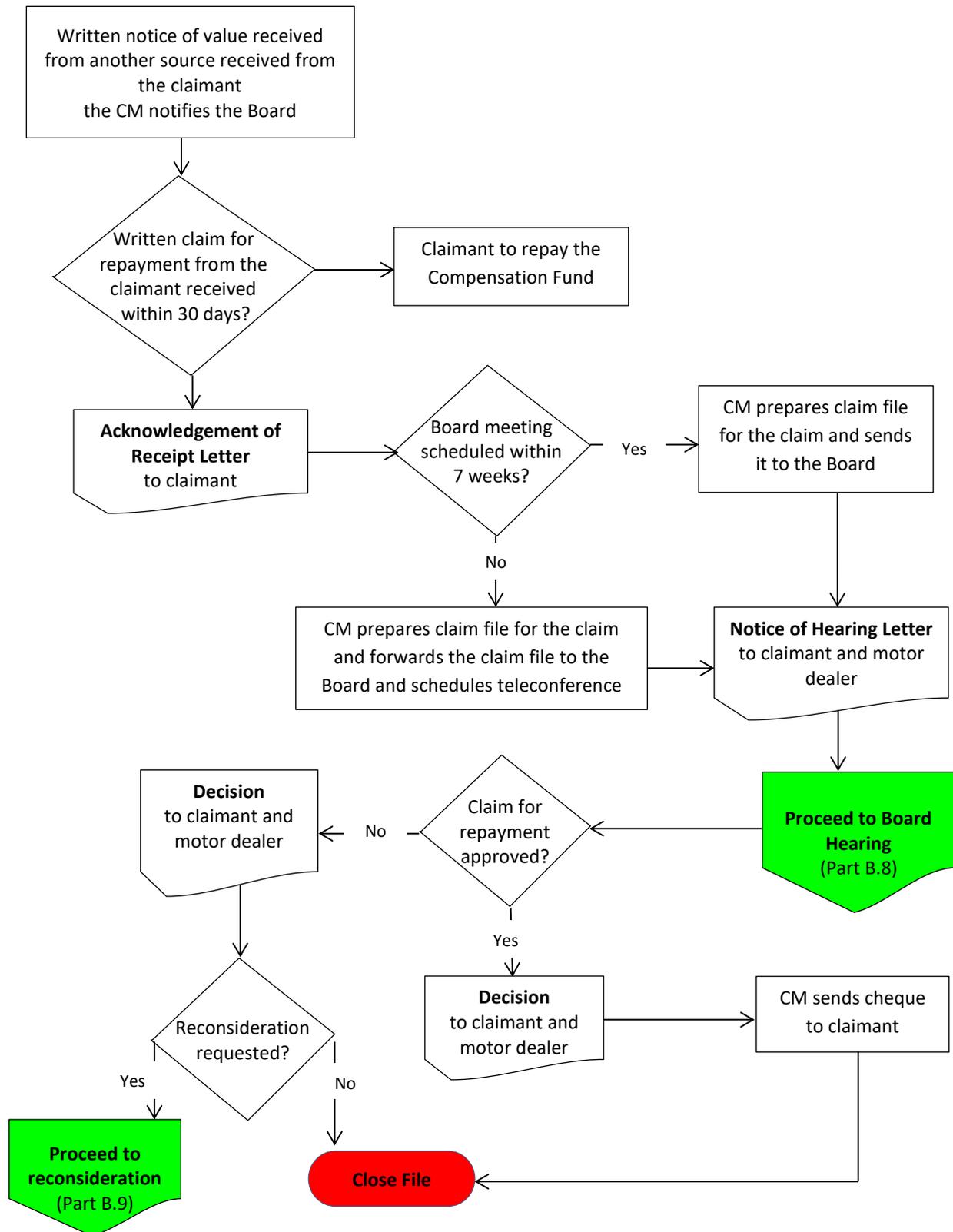
1. Overview

This section outlines the policies and procedures related to recovery of money paid to a claimant from the Compensation Fund. At times, claimants may obtain compensation from multiple sources and they are not eligible to recover compensation greater than their loss.

1.1 Status of Application

Claim has been heard by the Board and approved for payment or paid.

1.2 Flowchart – Repayment of Value Received from another Source to the Compensation Fund



1.3 Legislative Authority and Requirements

- 1.3.1 If a claimant receives something in value from some other source in payment of the loss that led to payment from the Compensation Fund, the claimant must give written notice to the Registrar and repay the Compensation Fund [MDA s. 20(1)(a) and 20(1)(b)].
- 1.3.2 If a claimant fails to repay the Compensation Fund, the trustee can start an action against the claimant. [MDA s. 20(2)].
- 1.3.3 The money recovered belongs to the Compensation Fund and deductions must be made. [MDA s. 20(2)].

1.4 Policy

- 1.4.1 Where a claimant is paid from the Compensation Fund, the claimant will be referred to the previously signed Assignment and Undertaking Agreement, requiring the claimant to inform the Registrar if they received value from any other source in payment for the loss that led to payment from the Compensation Fund.

Repayment to the Compensation Fund

- 1.4.2 Where a claimant receives value from any other source for the same loss for which money has been paid to the claimant from the Compensation Fund, the claimant must without delay notify the Claims Manager in writing and provide a description of the thing received and its value.
- 1.4.3 Where the Claims Manager receives a notice of value received from another source, the Claims Manager will notify the Registrar and the Board.
- 1.4.4 The claimant must send a cheque to the trustee in the amount received from the Compensation Fund.

Repayment from the Compensation Fund

- 1.4.5 Where the value received from another source does not cover the claimant's losses that are the subject matter of the claim, the claimant may request that all or part of the amount repaid to the Compensation Fund under 1.3.1 be repaid to the claimant.

MDCCF Claim Processing and Adjudication Policy and Procedures

- 1.4.6 To request repayment from the Compensation Fund under 1.3.1, the claimant must
- (a) within 30 days from repayment to the trustee under 1.3.1, send to the Claims Manager a claim for repayment from the Compensation Fund, and
 - (b) provide supporting documentation to prove that the value received from any other source was not 'extra recovery' but reimbursement for the remaining amount of loss that was not paid from the Compensation Fund due to the claim payout limit of \$20,000.
- 1.4.7 If the Board decides to return any amount repaid by the claimant under 1.3.1, the Board must first deduct:
- (a) the amount paid out of the Compensation Fund in respect of the claim,
 - (b) the interest on the amount deducted under paragraph (a) at the prescribed annual rate, and
 - (c) any costs including actual legal costs to recover the repayment.

1.5 Procedures

Repayment to the Compensation Fund

- 1.5.1 When a written notice of value received from another source is received from the claimant, the Claims Manager
- (a) notifies the Board and the Registrar; and
 - (b) sends an Acknowledgement of Receipt letter to the claimant notifying the claimant that they
 - (i) must repay to the Compensation Fund the amount received from the Compensation Fund; and
 - (ii) may within 30 days from repayment submit a written claim repayment from the Compensation Fund

MDCCF Claim Processing and Adjudication Policy and Procedures

Repayment from the Compensation Fund

- 1.5.2 When a written claim for repayment from the Compensation Fund is received from the claimant, Claims Manager sends Acknowledgement of Receipt to the claimant.
- 1.5.3 Where the next regular Board meeting is scheduled in seven weeks or less from the date a written claim for repayment from the Compensation Fund is received, the Claims Manager
- (a) prepares a claim file for the claim for repayment to be reviewed by the Board and adds it to the agenda for that meeting, and
 - (b) sends the claim file to the Board members no less than 14 days prior to the date of the hearing.
- 1.5.4 Where the next regular Board meeting is scheduled more than 7 weeks from the date a written claim for repayment from the Compensation Fund is received, the Claims Manager
- (a) prepares a claim file for the claim for repayment to be heard by the Board,
 - (b) forwards the claim file to the Board members , and
 - (c) schedules a teleconference Board meeting to review claimant's written notice .
- 1.5.5 The Claims Manager sends a Notice of Hearing letter to the claimant with a copy to the motor dealer no less than 10 business days prior to the date of the Board hearing.
- 1.5.6 The Board members follow the procedures set out in Part B, section 8.6.

Deciding if money is returned to claimant

- 1.5.7 The Board and the Claims Manager follow the Board hearing procedures in part 8.6 to prepare and conduct the repayment claim hearing.
- 1.5.8 The Board reviews the claim file along with the claimant's written claim for repayment from the Compensation Fund and the documentation supporting the claim for repayment.

MDCCF Claim Processing and Adjudication Policy and Procedures

- 1.5.9 The Board will determine if there is evidence to determine whether the money can be returned to the claimant
- 1.5.10 Where the Board decides to return to the claimant all or part of the money repaid to the Compensation Fund, the Board must deduct
- (a) the amount paid out of the Compensation Fund in respect of the claim,
 - (b) interest on the amount in paragraph (a) at the prescribed annual rate from the date of payment, and
 - (c) the costs of recovery including actual legal costs.
- 1.5.11 The Board and the Claims Manager will follow the procedures for documenting the Board's decision in the Minutes, review and approval of the Minutes, and drafting and approval of the decision (see part B.8).

Where claim for repayment from the Compensation Fund is denied

- 1.5.12 Where the Board denies the claimant's written claim for repayment from the Compensation Fund, the Claims Manager sends the Board's decision to the claimant with a copy to the dealer.
- 1.5.13 Where the claimant decides to reconsider the Board's decision the procedures in part B.9 must be followed.

Where claim for repayment from the Compensation Fund is approved

- 1.5.14 Where the Board approves the claimant's claim for repayment from the Compensation Fund, the Claims Manager sends the Board's decision to the claimant with a copy to the dealer.
- 1.5.15 The Claims Manager follows procedures in part B.8 to request payment from Compensation Fund.
- 1.5.16 The Claims Manager sends the cheque to the claimant within 60 days of the date of the meeting.

MDCCF Claim Processing and Adjudication Policy and Procedures

Failure to repay

- 1.5.17 Where the Board becomes aware that that a claimant received value from any other source for the same loss that led to payment from the Compensation Fund and fails to repay to the Compensation Fund payment received from the Compensation Fund, the Claims Manager notifies the trustee of the Compensation Fund.
- 1.5.18 The trustee of the Compensation Fund has a cause of action against the claimant for the amount unrepaid.

GLOSSARY

Board	means the Motor Dealer Customer Compensation Fund Board.
Compensation Fund	means the Motor Dealer Customer Compensation Fund.
Fair Market Value	means an estimate of the highest price that a willing seller may obtain for a vehicle in an open and unrestricted market from a willing and knowledgeable purchaser in an arm's length transaction.
MDA	means the <i>Motor Dealer Act</i> , R.S.B.C. 1996, c. 316.
MDCCF Reg or MDCCF Regulation	means the Motor Dealer Customer Compensation Fund Regulation, B.C. Reg 102/95.
Motor vehicle	means a self propelled vehicle designed or used primarily for travel on a highway, as defined in the <i>Highway Act</i> , and includes a trailer, as defined in the <i>Motor Vehicle Act</i> , designed or used primarily for accommodation during travel or recreation, but does not include <ul style="list-style-type: none">• an all terrain vehicle, as defined in section 1 of the Motor Vehicle Act Regulations• a farm tractor or motor assisted cycle, as those terms are defined in the <i>Motor Vehicle Act</i>, or• machinery primarily intended for construction, mining or logging purposes. [MDA – s. 1]
Purchase	means, in relation to eligibility for compensation, the purchase, lease or other exchange of a motor vehicle. [MDCCF Reg – s.1]
Licensed	means registered as a motor dealer under the <i>Motor Dealer Act</i> . [MDA – s.1]
Registrar	means the Registrar of Motor Dealers.
Trailer	means a vehicle that is at any time drawn on a highway by a motor vehicle except, <ul style="list-style-type: none">• an implement of husbandry• a side car attached to a motorcycle, and• a disabled motor vehicle that is towed by a tow car.
VSA	means the Vehicle Sales Authority of British Columbia

APPENDIX

TABLE OF TIME LIMITS

The following time limits have been established by policy.

Action	Time limit	From/Prior to
Claimant to provide information or documentation missing from application	30 days	From date of Incomplete Application Letter
Applicant to request Board hearing where CM determines that initial eligibility criteria are not met	30 days	From date of Determination Letter
Dealer to provide response to a claim	10 business days	From date of Claim Acknowledgment Letter
Party to respond to investigation report	10 business days	From date of letter providing the report
Applicant to request Board hearing where CM determines that claim is not eligible	30 days	From date of Determination Letter
CM to send Notice of Board hearing to parties	10 business days	Prior to date of Board hearing
CM to send Notice of Board hearing to parties – oral hearing	30 days	Prior to date of Board hearing
CM to send claims file to Board members	14 days	Prior to date of Board hearing
CM to send decision of the Board and reasons to parties	30 days	From date of Board hearing or reconsideration
Party to request reconsideration	30 days	From the date of receiving the original Decision
Party to respond to new evidence for reconsideration	10 business days	From date of letter notifying the parties of reconsideration
CM to send compensation payment to applicant if no reconsideration	60 days	From date of Board hearing