

GOVERNMENT NOTICE No. published on.

THE INSURANCE ACT
(CAP.394)

REGULATIONS

(Made under sections 124(4) and 167)

THE INSURANCE OMBUDSMAN REGULATIONS, 2013

ARRANGEMENT OF REGULATIONS

Regulations Title

PART I
PRELIMINARY PROVISIONS

1. Citation.
2. Application.
3. Interpretation.

PART II
PRINCIPLES OF OMBUDSMAN

4. Principles of Ombudsman.

PART III
OMBUDSMAN SERVICES

5. Appointment of the Ombudsman.
6. Functions and powers of the Ombudsman.
7. Tenure of office.
8. Removal of Ombudsman.
9. Mediators and other staff.
10. Code of conduct.
11. The Board.
12. Indemnity.

PART IV
COMPLAINTS PROCEDURE

- 13. Admission of complaints.
- 14. Registrar of complaints.
- 15. Determination of complaints.
- 16. Viability of a complaint.
- 17. Investigation of a complaint.
- 18. Attendance of the parties.
- 19. Hearing of a complaint.
- 20. Reference to High Court.
- 21. Compliance with the award.
- 22. Enforcement.

PART V
GENERAL PROVISIONS

- 23. Acting in Ombudsman capacity.
- 24. Report to the Minister.

—————
SCHEDULE
—————

THE INSURANCE ACT
(CAP.394)

REGULATIONS

(Made under sections 124(4) and 167)

THE INSURANCE OMBUDSMAN REGULATIONS, 2013

PART I

PRELIMINARY PROVISIONS

- Citation **1.** These Regulations may be cited as the Insurance Ombudsman Regulations, 2013.
- Application **2.** These Regulations shall apply in relation to resolution of disputes arising between insurance consumers and insurance registrants' business in Tanzania.
- Interpretation **3.** In these Regulations, unless the context requires:
Cap. 394 "Act" means the Insurance Act;
 "arbitration" means a method of dispute resolution which its award is binding upon the parties;
 "Commissioner" means the Commissioner of Insurance appointed pursuant to the provisions of section 7 of the Act;
 "Board" means the National Insurance Board established under section 13 of the Act;

“insurance consumer” or “complainant” means a policyholder, a third party claimant, an administrator of the deceased’s estate, a successor in title or a beneficiary;

“insurance registrant” for the purposes of these Regulations, means a person carrying on insurance business other than a broker or agent and an association of underwriters to which the Act apply;

“mediator” means an Officer in the office of the Ombudsman who tries to resolve complaint between complainants and insurers;

“Minister” means the Minister responsible for finance;

“Ombudsman” means an Insurance Ombudsman referred to under Part IX of the Act;

“Registrar of complaints” means the Registrar responsible for receiving, admitting and registering complaints in terms of regulation 14;

“senior officer” means a person who holds office in the Ombudsman for a period of not less than three years or who is employed in the office of the Ombudsman after working in a public office for not less than five years.

PART II

PRINCIPLES OF OMBUDSMAN

Principles of
Ombudsman

4. The Ombudsman shall, in performance of its functions, seek to ensure and observe the principles that:

- (a) it acts independently and objectively in resolving any complaint received and takes no instructions from any person regarding the exercise of its powers;
- (b) it follows informal, fair and cost effective procedures;
- (c) it keeps in balance the scale between complainants and insurance registrants;
- (d) it accords due weight to considerations of equity;
- (e) it maintains confidentiality, in so far as it is feasible to do so, in

- respect of every complaint received; and
- (f) insurance registrants act with fairness and with due regard to both the letter and the spirit of the contract between the parties and render an efficient service to those with whom they contract.

PART III OMBUDSMAN SERVICES

Appointment of
the
Ombudsman

5.-(1) The Minister shall in consultation with the Board appoint a person with adequate knowledge and experience in legal matters and disputes resolution to be the Ombudsman.

(2) In appointing the Ombudsman, the Minister shall receive recommendations of three names from the Board.

(3) The Ombudsman shall be sworn by the Chief Justice before commencement of his duty.

(4) The Ombudsman shall be entitled to such salaries and allowances as shall be determined by the Board.

Functions and
powers of the
Ombudsman

6.-(1) The Ombudsman shall be the head of the Ombudsman service and accordingly, shall-

- (a) administer all complaints filed by insurance consumers with monetary value of maximum Tanzania shillings forty million;
- (b) conduct investigations for determining viability of complaints; and
- (c) perform other functions and exercise powers as conferred under the Act.

(2) Subject to general functions and powers provided for in section 124 of the Act, the Ombudsman shall have the following powers-

- (a) to admit viable or decline to admit unviable complaints;

- (b) issue advise generally to the complainant or insurance registrant;
- (c) to conduct mediation, reconciliation and arbitration;
- (d) to determine and make principle or *ex-gratia* award to the complainant:

Provided that the *ex-gratia* award shall be made when a complaint is determined by way of mediation or reconciliation.

- (e) issue declaratory order against the insurance registrant.

(3) In the performance of his functions, the Ombudsman may seek expert opinion from any person who have knowledge, experience or specialized skills on the subject matter of the complaint.

(4) Subject to Section 124 of the Insurance Act, the Ombudsman shall determine all complaints from policy holders and third parties.

Tenure of office

7. The Ombudsman shall hold office for a term of five years and may be re-appointed once for a further term of five year.

Removal of Ombudsman

8.-(1) The Ombudsman may be removed from office on the reason of:

- (a) failure to discharge the duties;
- (b) misconduct; or
- (c) adjudged bankrupt.

(2) Where the need to remove the Ombudsman from office arises, the Minister shall, within thirty days, appoint a committee to investigate the matter and submit recommendations on whether to remove the Ombudsman.

- (3) The Committee shall comprise four members as follows:
 - (a) one member of the Board who shall be the Chairman;
 - (b) a principal State Attorney from the Attorney General's Chambers;
 - (c) a principal judicial officer from the Judiciary; and

(d) President of the Association of Tanzania Insurers.

(4) The Committee shall investigate on the matter or conduct which is the subject of complaint and make recommendation on whether or not the subject of complaint has been proved against the Ombudsman.

(5) Where the subject of complaint is proved, the Minister shall immediately order the Ombudsman to vacate office.

(6) Where the subject of complaint is not proved, the need to remove the Ombudsman shall abate.

Mediators and
other staff

9. For effective performance of the functions of the Ombudsman, the Ombudsman shall appoint such number of persons who possess adequate knowledge and experience in dispute resolution as mediators to assist the Ombudsman in resolving disputes between insurance consumers and insurance registrants.

Code of
conduct

10. The Ombudsman, the Registrar of complaints, mediators, arbitrators and other staffs' shall comply with the code of conduct prescribed in the Schedule to these Regulations.

The Board

11. The Board shall exercise the following functions in relation to the Ombudsman Service:

- (a) provide general guidance to the administration of the Ombudsman;
- (b) hiring of senior staff.

Indemnity

12. No act done or omitted to be done, by the Ombudsman, the Registrar, a mediator, staff or a member of the Board shall, when done or omitted in good faith during the performance of functions, discharge of duties or the exercise of powers of the Ombudsman service, render such member personally liable to any action, liability or demand.

PART IV
COMPLAINTS PROCEDURE

Admission of
complaints

13.-(1) Complaints to the Ombudsman shall be made in writing, electronic or oral, and shall elicit such further information or expert advice as may be necessary to resolve every such complaint through mediation, reconciliation or arbitration.

(2) The Ombudsman shall, subject to section 123 of the Act, receive and consider every complaint by insurance consumers, a successor in title or a beneficiary, or by a life insured or premium payer against an insurance registrant's business concerning or arising from the marketing, conclusion, interpretation, administration, implementation or termination of any insurance contract marketed or effected within the United Republic.

(3) For the purposes of sub regulation (1) and subject to section 124(1) of the Act, the Ombudsman shall not consider a complaint, where:

- (a) such complaint is, or if it has been, the subject of legal proceedings instituted and not withdrawn in the court of law;
- (b) legal proceedings are contemplated to be instituted by the complainant against the insurance registrant, during such time as the complaint remains under advisement by the Ombudsman;
- (c) it has previously been determined by the Ombudsman, unless new evidence likely to affect the outcome of a previous determination has thereafter become available; or
- (d) three years or more has lapsed from the date on which the complainant became aware or should reasonably have become aware that the complainant had cause to complain to the Ombudsman.

(4) The provisions of sub regulation (3)(d) shall not apply where failure so to complain within three years was due to circumstances for which, in the opinion of the Ombudsman, the complainant could not be

blamed or was incapacitated to file a complaint.

Registrar of
Complaints

14.-(1) For the purpose of the Regulation 11, there shall be, within the office of Ombudsman, the Registrar of Complaints.

- (2) Duties of the Registrar of Complaints shall include-
- (a) receiving all complaints from insurance consumers;
 - (b) ascertaining viability of complaints file with the Ombudsman;
 - (c) admitting and registering the complaints to the complaint register;
 - (d) advising complainants generally on the nature of the complaint;
 - (e) recording complaints made orally;
 - (f) making a summary of every complaint received and presenting such complaints to the Ombudsman;
 - (g) issue summons to the parties to the disputes;
 - (h) discharging any duty as assigned by the Ombudsman.

Determination
of complaints

15.-(1) The Ombudsman shall determine a complaint through mediation, reconciliation or arbitration.

- (2) The determination by the Ombudsman may be made by way of:
- (a) decline to consider a complaint;
 - (b) uphold the complaint, either wholly or in part;
 - (c) dismiss the complaint;
 - (d) make a ruling of a procedural or evidentiary nature;
 - (e) award compensation for material inconvenience or distress or for financial loss suffered by a complainant as a result of error, omission or maladministration on part of the insurance registrant's business (including manifestly unacceptable or incompetent service);
 - (f) order an insurance registrant, in addition to any other recommendation or determination made, to pay interest to a complainant on the principal sum at a rate of 5% and from a

date that he considers to be fair and equitable in the circumstances;

(g) order an insurance registrant to take or refrain from taking, any such action in regard to the disposal of a specific complaint as the Ombudsman may find necessary; or

(h) issue a declaratory order.

(4) The Ombudsman shall determine a viable complaint within a period of sixty days from the date of admission.

(5) Where it has been determined that the complaint is admissible, the complainant shall pay filing fees of shillings twenty five thousand.

(6) The Ombudsman may exercise his discretionary powers to exempt payment of filing fees wholly or in part.

Viability of a
complaint

16.-(1) The Ombudsman may refuse to consider or may dismiss a complaint without first referring it to an insurance registrant concerned, if it appears to the Ombudsman, on the information furnished by the complaint, that:

(a) the complaint has no reasonable prospect of success;

(b) the complaint is being pursued in dishonest, frivolous, vexatious or abusive manner;

(c) the complaint can more appropriately be dealt by a court of law;

(d) the complaint is predominantly about investment performance or the legitimate exercise by an insurance registrant of its commercial judgment; or

(e) the complainant has not suffered, and is not likely to suffer, material inconvenience or distress or financial loss either within the meaning of Regulation 15(2)(e), or at all.

(2) Where a complaint or an insurance registrant fails or refuses to furnish information requested by the Ombudsman within the time fixed for that purpose, the Ombudsman shall be free to make a determination on the

information as may be available to the Ombudsman.

(3) A determination made by the Ombudsman shall be binding on the insurance registrant concerned.

(4) A determination made by the Ombudsman shall not be a bar to a complainant from thereafter instituting legal proceedings against an insurance registrant in respect of any such complaint.

Investigation of
a complaint

17.-(1) All exchange of information between, on the one hand, the office the Ombudsman and a complainant and, on the other, the office of an insurance registrant in relation to a complaint and all the documentation gathered regarding a complaint shall by agreement be regarded as privileged and shall, as such, be immune from disclosure in evidence, except for an order of a court of law or by consent of the parties concerned.

(2) Where a determination on a complaint is made in terms of Regulation 16(1)(b) against an insurance registrant, the Ombudsman shall publish the determination, including a summary of the facts concerned, the reasons for the determination and the identity of the insurance registrant.

(3) The Ombudsman shall, in any case, not publish the determination in which there is reason to believe that such publication shall expose the identity of the complainant.

Attendance of
the parties

18.-(1) Where the Ombudsman believes that interests of parties are such that the determination of a complaint cannot be adequately made without hearing the complainant and, or the insurance registrant, the Ombudsman shall invite the parties to attend the hearing on the date, time and place prescribed by the Ombudsman.

(2) A complainant shall be required to appear in person before the Ombudsman and representation may be allowed only under special circumstances subject to approval by the Ombudsman.

(3) Representation will only be allowed where the representative has been given power of attorney.

(4) An insurance registrant shall appear through a company representative appointed by the company and given full powers and mandate on the subject matter of a complaint.

(5) Representation of parties by an advocate shall not be permitted during the hearing.

Hearing of a
complaint

19.-(1) The Ombudsman shall resolve material disputes of fact on a balance of probabilities and with due regard to the incidence of the subject matter of the complaint.

(2) Where the Ombudsman is of the opinion that a material and conclusive dispute of fact cannot be resolved on a balance of probabilities and with due regard to the incidence of the subject matter, the parties concerned shall be advised that a determination in favour of the one or the other party cannot be made.

(3) Notwithstanding sub-regulation (2), where the Ombudsman and all the parties concerned are in agreement that a complaint or a material and conclusive dispute of fact can best be determined by the hearing of evidence, it may decide to call parties to adduce evidence.

(4) Where hearing of evidence has been determined, the hearing may be conducted by the Ombudsman or any other person or persons appointed for that purpose by the Ombudsman.

(5) During a hearing, all issues of a procedural or evidentiary nature shall be determined by the Ombudsman or other person or persons so appointed.

Reference to
High Court

20. A complainant who is aggrieved by the decision of the Ombudsman shall make reference to the High Court in accordance with the provisions of the Act.

Compliance
with the award

21. An award made by the Ombudsman shall be complied with by the insurance registrant within thirty days from the date of determination

and no reference to the High Court has been made.

Enforcement

22.-(1) Where an insurance registrant fails or refuses to comply with a determination made by the Ombudsman:

- (a) the Ombudsman may give notice to the insurance registrant to comply with such determination within a period of fourteen days or such further period as the Ombudsman may determine; and
- (b) on the failure or refusal by the insurance registrant to comply with the notice, the Ombudsman shall report such failure or refusal to the Commissioner.

(2) Upon reporting of failure or refusal by the insurance registrant to the Commissioner, the latter may:

- (a) impose, in addition to the determination made by the Ombudsman, a penalty for failure or refusal to comply with the determination; or
- (b) cancelation of insurance registrant's business, and, in that event, publish in whatever manner the Commissioner considers to be appropriate, the fact of such termination.

PART V

GENERAL PROVISIONS

Acting
Ombudsman
capacity

23.-(1) Where the Ombudsman is out of office for a period of one month or more, a Senior officer within the Office of the Ombudsman shall be appointed to act on that capacity.

(2) The person who shall be appointed under sub-regulation (1) shall be sworn in before acting in that capacity.

Report to the
Minister

24.-(1) The Ombudsman shall, as soon as reasonably practicable after each year ending on the thirty first day of December, prepare a report

on the working of that year and same shall be part of the Insurance Market Performance Report.

- (2) The report shall contain:
 - (a) general review of the activities of the office of the Ombudsman during the year;
 - (b) complaints received, admitted and determined;
 - (c) complaints which are still pending; and
 - (d) any special report prepared under the direction of the Board or other report which within the circumstances is important to be drawn to the attention of the public.

Dar es Salaam,
....., 2013

WILLIAM A. MGIMWA
Minister for Finance