

Rules of the Office of Insurance Commission

Re: Arbitration

B.E. 2551 (2008)

By virtue of section 32 (2) of the Insurance Commission Act, B.E. 2550 (2007), the Secretary-General hereby issues the following rules.

Clause 1 These rules are called the "Rules of the Office of Insurance Commission Re: Arbitration, B.E. 2551 (2008)."

Clause 2 These rules shall come into force henceforth.

Chapter 1

Definitions

Clause 3 In these rules,

3.1 "Office" means the Office of Insurance Commission.

3.2 "Committee" means the arbitration committee.

3.3 "Arbitrator" means an arbitrator deciding disputes registered by the Office as an arbitrator in accordance with the committee's approval.

3.4 "Arbitration Rules" means the rules of the Office of Insurance Commission concerning arbitration.

3.5 "Competent officer" means a competent officer under the law on life insurance or the law on non-life insurance assigned by the secretary-general to perform duties in accordance with these arbitration rules.

3.6 "Secretary-General" means the Secretary-General of Insurance Commission, or a person delegated by the Secretary-General of Insurance Commission.

3.7 "Applicant" means a person submitting to the Office a request for arbitration on the basis of claims arising from an insurance contract.

3.8 "Respondent" means an insurance company subject to a claim by the Applicant for liability under the claims arising from an insurance contract.

3.9 "Parties" mean the Applicant and the Respondent.

3.10 "Pleading" means any and all requests for arbitration, pleadings, or motions submitted to the Office or the Arbitrator to establish issues between the parties.

Chapter 2

Arbitration Committee

Clause 4 There shall be a committee called "Arbitration Committee," consisting of the Secretary-General as a chairman, Assistant Secretary-General on Law and Litigation, representative of the Office of Judiciary, representative of the Office of Attorney General, president of Thai General Insurance Association, president of Thai Life Assurance Association, president of Thai Insurance Brokers Association, no more than three qualified persons appointed by the Secretary-General as committee members, and the Director of Law and Litigation Bureau of the Office, as a committee member and secretary.

The Director of Arbitration Division shall be the assistant secretary.

Qualified committee members shall be in office for a term of four years, and may be reappointed after the expiry of term.

In addition to retirement by rotation, qualified committee members shall vacate their office upon:

- (1) death;
- (2) resignation;
- (3) being bankrupt;
- (4) being an incompetent or quasi-incompetent person; or
- (5) being sentenced to imprisonment by a final judgment, unless for an offense committed by negligence or a petty offense.

In the case of a qualified committee member's retirement prior to the expiry of term, the Secretary-General shall appoint a replacement qualified committee member who shall be in office for the remaining term of the member who was replaced.

Upon the expiry of term mentioned in paragraph three, if no replacement qualified committee members have been appointed, the qualified committee members retiring by rotation shall remain in office until the replacement qualified committee members are appointed and assume office.

Clause 5 At any committee meeting, a quorum requires the presence of no less than half of the total number of committee members.

At any committee meeting, if the committee chairman is absent or incapable of performing his or her duties, the meeting shall elect one person from among themselves to preside over the meeting.

Resolutions of the meeting shall be passed by a majority of votes.

Each committee member shall have one vote. In the case of a tie, the chairman of the meeting shall cast one extra vote to reach a final decision.

Clause 6 The committee members shall have the following powers and duties:

- (1) designate an office of the Arbitrator;
- (2) designate rates of commission of the Arbitrator, expense incurred in the proceedings, and rates of money deposit as security for commission of the Arbitrator and expense incurred in the proceedings;
- (3) give advice or counsel relating to the Arbitration Rules;
- (4) give advice on or approval of a person suitable to perform as an arbitrator and propose to the Office to register that person as the Office's arbitrator. The Arbitrator registry may be subject to change from time to time as the Committee sees fit;
- (5) issue notifications and specify procedures for compliance with these Arbitration Rules.

Chapter 3

Application of Arbitration Rules

Clause 7 Arbitration Rules shall be applied for dispute resolution by arbitration in the case of any dispute, difference, or claim between a person who has the right to claim under the insurance contract and an insurance company subject to the Office's operation.

Any act that is not specified in the Arbitration Rules shall be carried out in accordance with the Parties' agreement, as the Arbitrator sees fit, or in accordance with the Arbitration Act, B.E. 2545 (2002), as the case may be.

Clause 8 For the purpose of construction of the Arbitration Rules, the sending of pleadings, police reports, or any other documents shall be deemed valid once the other litigant or their representative receives the same in person, or once the same reach the recipient's domicile or workplace. If no true domicile or workplace is able to be found, they shall be sent to the last-known place of residence or workplace of such person.

For the purpose of calculation of the term under the Arbitration Rules, the first day of the term shall not be included in the calculation. If the last day of such term is a holiday, on which work is suspended by custom, the term shall be extended until the next working day.

The holiday on which work is suspended by custom that is during the term shall be included in the calculation of the term.

Chapter 4

Carrying out of Dispute Resolution Proceedings

Part 1

Submission of Dispute

Clause 9 In submission of a dispute, the Applicant shall submit a request for arbitration to the Competent Officer in accordance with the specified form, together with sufficient copies thereof for the Arbitrator and the Respondent. The request shall contain the details as follows:

- (1) request for dispute resolution by arbitration subject to the Office's operation;
- (2) names and addresses of the parties;
- (3) contract or agreement for dispute resolution by arbitration;
- (4) facts and details of the dispute, and the amount claimed if the dispute involves money;

(5) request for award; and

(6) one or three arbitrators as the case maybe. In submission of the dispute in paragraph one, the Applicant shall submit the insurance contract which causes the dispute, the original document stating the facts on which the claims are based, or a copy thereof certified as true and correct.

Clause 10 The request for arbitration shall be filed with the Competent Officer at the Office in which the applicant is domiciled as follows:

(1) in Bangkok, the request shall be filed at the Office; and

(2) in provinces other than Bangkok, the request shall be filed at the provincial or regional Office.

Aside from the jurisdiction in paragraph one, if convenient, the applicant may file the request for arbitration at the site of loss, or the place of issuance of the insurance policy or making of the insurance contract within the jurisdiction in (1) or (2).

For the filing of the request for arbitration as per paragraph two, the Applicant shall indicate the reason for convenience and conditions on the filing of the request for arbitration.

The Competent Officer who reviews that request for arbitration filed in accordance with paragraph one and paragraph two, if deeming the request as incorrect or incomplete, shall issue an order prescribing that the request for arbitration be returned and revised, or amended, corrected, and completed.

Upon receipt by the Competent Officer of the request for arbitration, the Applicant shall not file the same request for arbitration with the Office or the provincial or regional Office.

Part 2

Notice of Submission of Dispute

Clause 11 When the request for arbitration is filed and the Competent Officer deems that the request for arbitration is correct, the request for arbitration shall be accepted for the carrying out of the proceedings.

The Competent Officer shall notify the Respondent of the submission of the dispute in writing and send a copy of the request for arbitration to the Respondent without delay at the Respondent's domicile, place of business, or place of residence by registered mail with return receipt or other means as prescribed by the Secretary-General.

Part 3

Filing of Response and Counterclaim

Clause 12 The Respondent who has received the notice of submission of the dispute and the copy of the request for arbitration may file with the Competent Officer a response and submit a counterclaim in accordance with the form prescribed by the Secretary-General, within 15 days from the date of receipt of the notice on submission of the dispute and the copy of the request for arbitration.

In the case of necessity in which the Respondent is unable to file the response within the prescribed period as per the first paragraph, the Respondent shall file a motion to extend the period for filing of a response with the Competent Officer, and the Competent Officer shall order that the period for filing of the response be extended as appropriate, but for no more than 15 days.

Clause 13 Upon filing of a counterclaim, the provision in clause 11 shall be applied to the counterclaim *mutadis mutandis*.

Clause 14 For the filing of a reply to counterclaim, the provision in clause 12 shall be applied to the reply to counterclaim *mutadis mutandis*.

Clause 15 A response, counterclaim, or reply to counterclaim shall be filed with the Competent Officer with whom the request for arbitration was filed.

Part 4

Appointment of Representative and Person to Assist the Carrying out of Proceedings

Clause 16 The Parties may appoint a representative or any person to aid themselves in carrying out the dispute resolution proceedings. The Parties shall give notice of the name and address of the representative or person so appointed as an assistant, in writing in accordance with the form prescribed by the Secretary-General, and file it with the Competent Officer to be included in the case file.

Part 5

Appointment of arbitrators

Clause 17 The parties shall appoint an arbitrator or arbitrators in the following number.

(1) In the case of a dispute without an amount in dispute, or with a claimed amount not exceeding Baht 2,000,000, there shall be one Arbitrator.

(2) In the case of a dispute with claimed amount exceeding Baht 2,000,000, there shall be three Arbitrators, unless agreed upon by the parties where there may be one Arbitrator.

Clause 18 Unless otherwise agreed by the Parties, with respect to the appointment of one Arbitrator, the Competent Officer shall schedule a meeting of the Parties within 15 days from the date of receipt of the response or reply to counterclaim. Upon the presence of both Parties, the Competent Officer shall propose the list of names of Arbitrators in the Arbitrator registry of the Office, together with brief profiles, and have the Parties select an arbitrator therefrom.

Upon the appointment of the Arbitrator as per the first paragraph, the Arbitrator shall schedule a date for the first hearing.

Clause 19 Unless otherwise agreed by the Parties, with respect to the appointment of three Arbitrators, the Competent Officer shall schedule a meeting of the Parties within 15 days from the date of receipt of the response or reply to counterclaim. Upon the presence of both Parties, the Competent Officer shall propose the list of names of Arbitrators in the Arbitrator registry of the Office, together with brief profiles, and have the parties select Arbitrators therefrom.

Upon the appointment of the Arbitrators as per the first paragraph, the Arbitrators shall schedule a date for the first hearing, and determine the person who shall act as a chairman of the arbitral tribunal.

If any or both Parties have not selected or are unable to agree on selecting the Arbitrators as per clause 18 or clause 19, the Secretary-General shall appoint an Arbitrator for the Parties, by taking into account independence and impartiality of the person to be appointed as an Arbitrator.

Clause 20 The appointment of Arbitrators shall be made in writing in accordance with the form prescribed by the Secretary-General.

Clause 21 Upon being appointed as an Arbitrator and during the period of arbitral proceeding, the Arbitrator shall disclose the facts that may cause the parties to have justifiable doubts as to the Arbitrator's independence and impartiality (if any).

The Arbitrator may be challenged if there appears to be reasonable doubt as to his or her impartiality and independence. However, a party may not challenge the Arbitrator appointed by him or her, or in whose appointment he or she has participated as per clause 18 or clause 19, unless that Party did not become aware or know of the grounds for challenge at the time of appointment.

A challenge shall be made in writing, indicating explicitly the reasons therefor, and filed with the secretary-general within 15 days from the date on which the reasons for challenge became known, and shall be done before the date on which the Arbitrator orders an adjournment of the hearing.

Clause 22 If the other Party approves the challenge to the Arbitrator, or the arbitrator requests a withdrawal after the challenge, a new Arbitrator shall be appointed to replace the challenged Arbitrator under clause 18 and clause 19 within 30 days from the date on which he or she ceases to be an Arbitrator.

The other party's approval of the challenge to the Arbitrator or the Arbitrator's request for withdrawal does mean that the Arbitrator agrees to the rightness of grounds for challenge.

Clause 23 If the other Party disapproves the challenge to the Arbitrator, and the challenged Arbitrator does not withdraw himself or herself, if the Secretary-General approves the challenge, action in clause 18 or clause 19 shall be taken within 30 days from the date of the Secretary-General's approval. If the challenge has been disapproved, the challenge shall be dismissed and conclusive.

If the challenging Party disagrees with the decision of the Secretary-General per the first paragraph, that party may bring the challenge to the court within 30 days from the date of the decision by the Secretary-General. Such action shall not cause interruption of arbitral proceedings by the Arbitrator, unless the court orders otherwise.

Clause 24 During the carrying out of the proceedings, if the Arbitrator dies, resigns, is subject to an absolute receivership, or is incapable of performing the duties for other reasons, a replacement Arbitrator shall be appointed by the same method for appointing such Arbitrator within 30 days from the date on which he or she ceases to be an Arbitrator.

Clause 25 If the replacement Arbitrator(s) so appointed in accordance with clauses 22, 23, and 24, is or are one or three Arbitrators, as the case may be, whether the arbitral proceedings will be recommenced shall be at the discretion of the Arbitrator(s) or arbitral tribunal.

Part 6

Settlement and Compromise

Clause 26 Prior to the date scheduled by the Arbitrator for the first hearing, if the Secretary-General deems it appropriate or either party wishes for the Office to attempt to reach a settlement or compromise, the competent officer shall schedule a meeting of both Parties to negotiate, agree, or compromise the dispute.

Once the parties have reached a settlement or compromise to resolve the dispute, wholly or partly, the Parties shall make a written settlement or compromise agreement, and sign the agreement.

If the Parties wish for the arbitrator to decide under the compromise agreement, the arbitral proceedings shall proceed pursuant to these rules.

Chapter 5

Arbitral Procedure

Clause 27 Regardless of the extent to which the Arbitrator's hearing has been carried out, if the Arbitrator deems it appropriate, the arbitrator shall have the power to compromise the dispute.

Clause 28 Unless otherwise agreed by the Parties, the taking of evidence shall be in accordance with the following procedures.

(1) The Parties shall submit the list of relevant evidence in support of their claim, response, counterclaim, or reply to counterclaim to the Arbitrator on the date of the first hearing. If the Arbitrator deems it appropriate, the Arbitrator shall have the power to order that the parties make testimony records or submit any documents related to the dispute in advance.

(2) The examination of witnesses shall be carried out before the Arbitrator. The Arbitrator shall record the witness testimonies in brief to be read, have the witnesses sign the records as evidence, and keep them in the case file.

(3) During the hearing, the Arbitrator may have the Competent Officer assigned by the Office record the witness testimonies.

(4) The examination of witnesses shall be carried out openly, unless either party requests or the Arbitrator deems it appropriate for it to be held in camera.

Clause 29 The Party raising a claim shall be obligated to produce evidence until it appears that that Party has a *prima facie* claim.

Clause 30 The Arbitrator may have any expert make and present a report of opinions, in which case the Parties shall inform relevant facts in accordance with the expert's inquiries.

Having received the report of opinion of the expert, the arbitrator shall inform the Parties of the details in the opinion report, and if the Parties request, shall make and provide them a copy thereof.

The Parties may file a motion to examine the expert. If the Arbitrator allows it, the procedures for taking of evidence in clause 28 shall be applied *mutatis mutandis*.

Clause 31 If the Applicant fails to attend the scheduled first meeting without filing a motion to postpone the hearing or giving notice of the cause of difficulty, the Arbitrator may dispose of the dispute.

If the Respondent fails to attend the scheduled first meeting, or either Party fails to attend the following appointment as scheduled, without filing a motion to postpone the hearing or giving notice of the cause of difficulty prior to the commencement of the hearing, if the Arbitrator deems it fit, the arbitrator shall carry out the hearing *ex parte*.

If either Party fails to attend the scheduled appointment per paragraph two, without giving notice of the cause of difficulty or requesting a postponement of the hearing, the Arbitrator shall charge actual penalty from that Party for payment to the other Party, or for the expense for the proceedings.

The Party may file a motion to postpone the case by indicating explicitly the reason therefor, and it shall be at the discretion of the Arbitrator.

If the Parties have no other witnesses to present to the Arbitrator, the Arbitrator shall order that the hearing be adjourned, and schedule a hearing for announcement of the award.

Chapter 6

Award

Clause 32 The award must be made within the prescribed 90 days from the completion of the process setting up the arbitration. In the case of necessity, it shall be at the Arbitrator's discretion to grant an extension of time as appropriate.

Clause 33 The award shall be made by a majority of votes of the Arbitrators.

The Arbitrator may not determine or decide any matter beyond the scope of the arbitration agreement or request for an arbitral award of the parties, unless in the case of determination of the costs of the proceedings or Arbitrator's compensation, or an award rendered in accordance with the settlement or compromise between the Parties.

Clause 34 The Arbitrator shall render an award under the principles of law and equity. In interpreting an insurance contract, feasibility and business practice of the insurance contract shall also be taken into account.

Clause 35 An award shall be made in writing and signed by the Arbitrator, and shall explicitly specify the date, month, year, and the place at which the award is made. If any arbitrator fails to sign the award, another Arbitrator or the Secretary-General shall record the cause of difficulty.

The award shall explicitly specify the reasons for all decisions.

The arbitral award may be disclosed by the Office to the public, unless in the case of in-camera proceedings, in which case consent must be obtained from the Parties.

The award made shall have a binding effect on the parties from the date of reading of the award, unless the Parties did not attend the reading of the award, in which case a copy of the award shall be hurriedly sent to all relevant parties and it shall be deemed that the award binds the Parties once the copy of the award reaches the parties.

Clause 36 Within the prescribed 30 days from the date of arrival of the copy of the award, in the case of a reasonable doubt relating to wording in the award, either Party may file a motion with the Secretary-General in writing, requesting interpretation of such wording by the arbitrator. The interpretation shall be deemed as an integral part of the award, and shall be carried out to the same effect as the making of the award.

Clause 37 If the award contains an insignificant error or mistake, when the Arbitrator or either party files a motion in writing with the Secretary-General, the arbitrator may correct the error or mistake.

Clause 38 Within the prescribed 30 days from the date of arrival of the copy of the award, if either Party deems that it fails to decide any material issue, the Party may file a motion with the Secretary-General in writing in accordance with the form prescribed by the Office, requesting that the Arbitrator make an additional award on the said issue.

If the Arbitrator deems that the issue is material and has not been decided, the Arbitrator shall carry out an award on such issue within 30 days from the date on which the Party files the motion.

If the Arbitrator is of the view that an additional award may not be made until additional facts have been heard, the Arbitrator may order the parties to take evidence. Furthermore, the Arbitrator shall carry out the additional award within 60 days from the date of filing of the motion by the parties.

In the case of necessity, it shall be at the Arbitrator's discretion to extend the period of time as appropriate, and when the award has been prepared, a copy thereof shall be delivered to all relevant Parties. The award shall have a binding effect once the copy reaches the Parties.

Clause 39 When the Arbitrator completes preparing an award, interpretation, correction of insignificant error or mistake, or additional award, the Arbitrator shall submit all case files to the Office.

Chapter 7

Arbitrator's Compensation, Cost of Proceedings, and Security Deposit

Clause 40 The Arbitrator's compensation and cost of proceedings shall be at the rates designated by the Committee.

Clause 41 The parties shall place a deposit as security for the Arbitrator's compensation and cost of proceedings, at the rates prescribed by the Committee, on the date of filing of the request for arbitration.

If the Applicant fails to place a deposit as security per the first paragraph in the full amount, the Secretary-General shall render an order not to accept the request for arbitration.

If a compromise is arranged by the Office, or the dispute is withdrawn before an Arbitrator is appointed or prior to the first hearing, the deposit placed as security per the first paragraph shall be returned to the person depositing security after deduction of the cost of proceedings, at the rate prescribed by the Committee.

Chapter 8

Transitional provisions

Clause 42 The dispute resolution proceedings by arbitration pending before the date on which these arbitration rules come into force shall be proceeded in accordance with the regulations of the Department of Insurance on arbitration in effect at the time of submission of the dispute.

All notifications of the Committee, notifications of the Department of Insurance, and forms in relation to arbitration process in accordance with the regulations of the Department of Insurance on arbitration in effect at the time of submission of the dispute may apply to the extent that they are not contrary to or inconsistent with these arbitration rules until there has been an amendment by these Arbitration Rules or by the Office.

Notified on 25 July 2008

Chantra Purnariksha

Secretary-General