

Rules of the Office of Insurance Commission

Re: Conciliation of Insurance Dispute in Arbitration Proceedings

B.E. 2553 (2010)

By virtue of section 32 (2) of the Insurance Commission Act, B.E. 2550 (2007), together with clause 26 of the Rules of the Office of Insurance Commission Re: Arbitration, B.E. 2551 (2008), amended by the Rules of the Office of Insurance Commission Re: Arbitration (No. 2), B.E. 2553 (2010), the Office of Insurance Commission, by the approval of the arbitration committee, hereby issues the following rules.

Chapter 1

Definitions

Clause 1 In these rules,

"Office" means the Office of Insurance Commission.

"committee" means the arbitration committee pursuant to the Rules of the Office of Insurance Commission Re: Arbitration, B.E. 2551 (2008), and amendment.

"secretary-general" means the secretary-general of the Insurance Commission, or a person delegated by the secretary-general of the Insurance Commission.

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

"dispute" means any dispute in connection with an insurance contract which is under the dispute resolution process by arbitration of the Office, and such dispute may be resolved by settlement and compromise by the parties.

"conciliator" means a person or body of persons enrolled by the Office as insurance conciliators with the approval of the committee.

"parties" mean the applicant and the respondent in the dispute resolution by arbitration of the Office.

Clause 2 The secretary-general shall have the charge and control of the execution of these rules, and shall have the power to interpret and decide on any issue arising from the execution of these rules, and to determine regulations, ethics, or any other rules so as to enable an orderly conciliation by taking into account the parties' best interests.

Chapter 2

Conciliation and conciliator

Part 1

Appointment and retirement of conciliator

Clause 3 Once a request for arbitration has been submitted into the dispute resolution by arbitration, before the parties agree to appoint an arbitrator to settle the dispute, if the secretary-general deems it appropriate, or either or both parties wish for the Office to arrange a settlement or compromise before the appointment of arbitrator, the competent officer shall schedule a meeting for preliminary conciliation. If the parties are unable to reach an agreement at the stage of the competent officer, and the parties wish to have a conciliator appointed, the competent officer shall appoint an enrolled conciliator of the Office to carry out the conciliation in accordance herewith.

Clause 4 After being appointed as a conciliator, the conciliator shall disclose information in relation to interest or personal relation with all parties immediately.

Clause 5 The conciliator shall retire from duty in the following cases:

(1) the conciliator's name has been removed from the conciliator register of the Office under clause 22;

(2) the secretary-general orders a removal of the conciliator when it appears that the conciliator:

(a) performs any act as a representative of or on behalf of the parties;

(b) has a conflict of interest or is related to any party which may affect impartiality in the conciliation;

(c) threatens, forces, or influences in any way which may affect willingness of the parties in the conciliation;

(d) exercises any power that the conciliator has or may otherwise have which will affect settlement by the parties.

Clause 6 When the conciliator retires from duty under clause 5, if the parties wish for the conciliation to be continued by an enrolled conciliator, the competent officer shall appoint a new conciliator under the Office's conciliator register to proceed with the conciliation.

Part 2

Conciliation proceedings

Clause 7 After the competent officer appoints the conciliator, acceptance or delivery of the case file or any evidence relating to the dispute between the conciliator and both parties shall be as agreed upon by the conciliator and the parties.

Clause 8 Prior to the commencement of the conciliation proceedings, the conciliator shall cause the parties to affix their signatures in agreeing to enter into the conciliation proceedings, and in agreeing to comply with these rules, in writing in accordance with the form prescribed by the Office.

Clause 9 The conciliator may discuss with the parties to determine a procedure or guideline for carrying out of the conciliation before the commencement of the conciliation proceedings.

Clause 10 For the purpose of conciliation, the conciliator may have the parties present facts or background information of the dispute, as well as proposal of dispute resolution, to the conciliator, or may propose that the said information be exchanged between the parties.

The parties may request that the conciliator take action pursuant to paragraph one, in which case the conciliator may take action as requested by the parties or not.

Clause 11 The method, date, time, and venue of the conciliation shall be as prescribed by the Office. The conciliator shall inform both parties about the carrying out of conciliation that either party did not attend for information.

Clause 12 In conciliating a dispute before the parties, if the conciliator deems it necessary for the purpose of the conciliation, the conciliator may allow particularly both parties or either party to be present at the conciliation meeting.

The provision in paragraph one shall be applied to the representative, attorney, or adviser of the parties, or any person allowed by the conciliator to enter the conciliation proceedings.

Clause 13 Subject to clause 14 and clause 17, paragraph three, the conciliation proceedings shall be carried out confidentially, and no details of the conciliation shall be recorded, whether in writing or in an electronic form or other types of technological media.

Clause 14 When the dispute has been conciliated, the conciliator may arrange a compromise agreement to be made for the parties.

Clause 15 The conciliator shall complete the conciliation within 30 days from the date of appointment of the conciliator. The parties may request an extension of time for carrying out the conciliation, but for no more than two extensions and no more than seven days for each extension . If the conciliator deems that an agreement is close to be achieved in the dispute resolution and there are reasonable grounds, it shall be at the conciliator's discretion to extend the time beyond such period as the conciliator deems fit.

In the case that the conciliator deems that either party carries out the conciliation in a dilatory way or in bad faith, the conciliator shall promptly notify the competent officer thereof for further action.

After having acknowledged the grounds in paragraph two, the competent officer may order that the conciliation proceedings be terminated, in consideration of the interests of both parties.

Part 3

Termination of conciliation proceedings

Clause 16 It shall be deemed that the conciliation proceedings terminate in the following cases.

(1) The parties are able to resolve the dispute by withdrawing the request for arbitration, or making a compromise agreement.

(2) The conciliator is unable to successfully carry out the conciliation proceedings within the period of time prescribed under clause 15, paragraph one.

(3) The conciliator deems that the dispute may not be settled by conciliation, or the conciliation is no longer beneficial to the parties.

(4) The competent officer issues an order prescribing that the conciliation proceedings shall be terminated under clause 15, paragraph three.

In the case that the conciliation proceedings terminate in accordance with paragraph one, and the parties wish to continue the dispute resolution proceedings, the parties shall jointly appoint an arbitrator in accordance with the Rules of the Office of Insurance Commission Re: Arbitration, B.E. 2551, and amendment. The conciliator who conciliated the dispute may not be appointed as the arbitrator to decide on the dispute.

Chapter 3

Confidentiality

Clause 17 Unless otherwise agreed by the parties, the parties and related persons agree to keep confidential the facts arising in the conciliation proceedings, and agree not to use the facts and the carrying out of the conciliation proceedings as evidence in any proceeding in arbitration or court.

The facts per paragraph one shall include contact between the parties, any facts in relation to the carrying out of the conciliation, facts that are contents or details of the negotiation and agreement in the conciliation proceedings, facts that a party has admitted or denied in the conciliation proceedings, any opinion or proposal presented by a party in the conciliation proceedings, and any opinion or proposal presented by the conciliator.

The competent officer shall cause an agreement to be made between the parties containing an agreement to maintain confidentiality of the facts presented in the conciliation proceedings, and not to use the facts and the carrying out of the conciliation proceedings as evidence in any proceeding in arbitration or court, unless otherwise agreed by the parties.

Chapter 4

Enrollment of conciliator

Clause 18 The Office shall cause a conciliator register to be prepared, by the approval of the committee, by taking into account the necessity and requirements of the Office.

With respect to application for enrollment as a conciliator, the Office shall cause the enrollment to be arranged both centrally and provincially. For central enrollment, an application shall be filed with the central Office, and for the provincial enrollment, an application shall be filed with only one regional Office, in accordance with the rules and conditions designated by the Office.

An applicant for enrollment as a conciliator shall have the following qualifications:

(1) having graduated with a degree not lower than a bachelor's degree, and having no less than five years of work experience in insurance or another field which shall be beneficial to conciliation;

(2) having passed a technique or procedure training course on conciliation of insurance dispute organized by the Office, or a similar course certified by the Office, or being a person deemed by the Office to have good knowledge and experience in dispute resolution without requiring such training;

(3) being no less than 35 years of age;

(4) not being a competent officer under the law on life insurance and the law on non-life insurance;

(5) not being bankrupt, or a person discharged from bankruptcy within the previous five years;

(6) not being an incompetent or quasi-incompetent person; and

(7) not having been sentenced to imprisonment by a final judgment, whether or not the person actually serves his sentence, unless for an offense committed by negligence or a petty offense.

Clause 19 The person wishing to enroll as a conciliator of the Office shall submit an application in accordance with the prescribed form, together with evidence as follows:

- (1) a copy of the house registration;
- (2) a copy of the identity card, official identification card, or state enterprise employee identification card;
- (3) a copy of qualification document; and
- (4) a copy of evidence certifying the pass of training or work experience under clause 18 (2).

Clause 20 The director of the Dispute Settlement and Arbitration Department, or the director of regional office of the Office, as the case may be, shall examine the qualifications and present the names of applicants for enrollment as a conciliator to the committee for consideration and approval.

Clause 21 The conciliator register shall become invalid every four years from the date on which the register was first made, regardless of the time on which the persons whose names are contained therein were enrolled.

For the first making of the register, if the invalidity date per paragraph one does not fall on the year-end date, the calendar year-end date shall be considered as the invalidity date.

The invalidity of the register shall not affect the appointment of a conciliator that was previously carried out. The appointed person shall continue to perform his or her duties, and shall be entitled to compensation as prescribed herein.

When the conciliator register becomes invalid, the Office shall prepare a new register within 60 days. During the period in which a new register has not been prepared, the original conciliator register shall be used until the Office completely prepares the same, and the provision in paragraph three shall be applied *mutadis mutandis*.

Clause 22 The Office shall remove the names of conciliators from the register in the cases of:

- (1) death;
- (2) resignation;
- (3) lack of qualifications under clause 18; or
- (4) the conciliator acts inappropriately by performing or omitting to perform his or her duties deliberately or negligently, causing damage to the parties.

Clause 23 If it appears later that the conciliator lacks qualifications or the appointment was unlawful, causing that person to be relieved from being a conciliator, this retirement from being a conciliator shall not affect any acts performed by the person under his or her powers and duties.

Clause 24 The conciliator shall:

- (1) prepare the conciliation;
- (2) provide assistance and support for the negotiation between the parties, and suggest a problem-solving guideline to settle the dispute;
- (3) not give opinions relating to the decision of the dispute, unless it is agreed by the parties that the conciliator may express such opinions;
- (4) not threaten, force, or influence in any way that may affect the parties' willingness to resolve the dispute; and
- (5) not exercise any power that the conciliator has or otherwise may have, that will affect the agreement by the parties.

Clause 25 The conciliator shall perform the duties in accordance with these rules, including any notifications, regulations, or rules issued pursuant hereto to ensure an orderly conciliation by taking into account the parties' best interests.

Clause 26 The conciliator shall not be liable to the parties for any act taken to conciliate and resolve the dispute, unless the act or omission thereof was intentional or in gross negligence, causing damage to the parties.

The parties shall not call the conciliator as a witness in the arbitration or court proceedings in relation to the dispute that is the cause of the arbitration or court proceedings.

Chapter 5

Compensation and expenses

Clause 27 The conciliator is entitled to compensation at the rate designated by the committee by virtue of clause 40 of the Rules of the Office of Insurance Commission Re: Arbitration, B.E. 2551 (2008), amended by the Rules of the Office of Insurance Commission Re: Arbitration (No. 2), B.E. 2553 (2010).

Clause 28 In the case that the conciliator deems that a third party must be engaged to take any action, or expenses other than as prescribed must be incurred relating to the conciliation proceedings, which will be for the benefit of the conciliation and the parties, the conciliator may take such action only when the parties have agreed to bear the expenses.

Effective henceforth.

Notified on 7 September 2010.

Chantra Purnariksha

Secretary-General

Insurance Commission