

THE INSURANCE ACT

(Cap. 487)

IN EXERCISE of the powers conferred by section 169 (6) of the Insurance Act, the Cabinet Secretary to the National Treasury makes the following Rules:—

THE INSURANCE (INSURANCE APPEALS TRIBUNAL) RULES,  
2013

1. These Rules may be cited as the Insurance (Insurance Appeals Tribunal) Rules, 2013.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation

“appeal” means an appeal to the Tribunal;

“appellant” means the person entering an appeal, the advocate or duly authorized agent of that person;

“Chairman” means the Chairman of the Tribunal appointed as such under section 169(2) of the Act;

“Company” means the Kenya Reinsurance Corporation Limited;

“member” means a person appointed as a member of the Tribunal under section 169(2) of the Act;

“memorandum” means a memorandum of appeal presented under rule 10 of these Rules;

“Secretary” means the Secretary to the Tribunal appointed under rule 6 (1) of these Rules;

“Tribunal” means the Insurance Appeals Tribunal established under rule 4.

3. Nothing contained in these Rules shall limit or otherwise affect the power of the Tribunal to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Tribunal.

Saving of the  
Inherent Power.  
of the  
Tribunal.

Establishment of the  
Tribunal and Tenure  
of Office

4. (1) There shall be established a Tribunal to be known as the Insurance Appeals Tribunal for the purpose of hearing appeals under the Act.

(2) The Chairman and members of the Tribunal appointed under section 169(2) of the Act shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(3) A person shall not be qualified to be appointed as the Chairman or a member of the Tribunal or if already appointed shall become disqualified if—

- (a) he is a director, officer, employee or shareholder, whether directly or indirectly, of an insurer, broker, Medical Insurance Provider, insurance agent or any other member of the insurance industry;
- (b) has been adjudicated bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (c) has previously been involved in the management of an insurer that has collapsed.

(4) A member of the Tribunal may at any time resign his office by notice in writing addressed to the Cabinet Secretary.

(5) The Cabinet Secretary may cancel the appointment of the Chairman or a member of the Tribunal on the ground of his infirmity, incapacity or misbehaviour, or if a member is absent from three consecutive meetings of the Tribunal without leave of the Tribunal.

(6) Subject to these Rules, the Tribunal may act notwithstanding a vacancy in its membership, and the presence or participation of a person not entitled to be present or participate in the proceedings of the Tribunal as a member shall not invalidate the proceedings.

Powers of the  
Chairman.

5. (1) The Chairman shall have the power to give directions for—

- (a) furnishing of further particulars and supplementary statements;
- (b) filing and exchange of documents;
- (c) framing of issues ; and
- (d) other directions as are necessary to enable the parties to prepare for the hearing or to assist the Tribunal to determine any issue.

(2) The Chairman, in matters before the Tribunal, shall have the same powers as vested in the Registrar of the High Court and shall exercise the power, *mutatis mutandis*, in accordance with the Civil Procedure Rules.

Tribunal Secretary.

6. (1) The Cabinet Secretary shall appoint a person with relevant experience and competency in law, insurance, actuarial science, finance or economics as a Secretary to the Tribunal.

(2) Subject to the Rules of confidentiality, the Secretary shall, in matters relating to appeals to the Tribunal and procedure therefore, comply with any general and special directions lawfully given by the Chairman.

(3) The Secretary shall, by notice in the Gazette, publish his address for the presentation of service of documents for the purposes of these Rules, and shall in the same manner publish any change in that address.

7. (1) Every appeal under section 146 of the Act by an insurer aggrieved by a refusal of the Company under that section shall be entered by presentation of a memorandum of appeal, together with such number of copies as may be necessary, to the Secretary.

Presentation of  
appeals

(2) Every appeal under section 173 of the Act by a person aggrieved by a decision of the Commissioner under that section, shall be entered by presentation of a memorandum of appeal, together with such number of copies as may be necessary, to the Secretary.

8. The fees prescribed by the Minister under section 169 (6) (a) shall be as set out in the Schedule to these Rules.

Fees

9. In exercising its functions, the Tribunal shall have power to prescribe the forms and any other documents as it may deem necessary.

Forms

10. A memorandum of Appeal shall be signed by the appellant and shall set forth concisely under distinct heads, numbered consecutively, the grounds of appeal without any argument or narrative.

Memorandum of  
Appeal

11. (1) Each copy of a memorandum shall be accompanied by a statement signed by the appellant setting out precisely all the facts on which the appeal is based and referring specifically to any documentary or other evidence which it is proposed to adduce at the hearing of an appeal, and there shall be annexed to the statement of facts a copy of the decisions appealed against and any other document referred to upon which the appellant proposes to rely on as evidence at the hearing of the appeal.

Memorandum to be  
accompanied by  
appellant's Statement  
and fees

(2) The fee for presentation of a memorandum shall accompany the memorandum and shall be paid in favour of the Principal Secretary to the Treasury.

12. Within three working days after the presentation of a Memorandum, the Secretary shall transmit to the Commissioner or the Company, as the case may be, a copy of the Memorandum, the statement of facts and any other documents annexed thereto.

Service of  
Memorandum on  
Commissioner

13. (1) Where the Commissioner or the Company does not accept any of the facts of the appellant, the Commissioner or the Company, as the case may be, shall file with the Secretary a statement of facts within fifteen days after service thereof under rule 12, together with such number of copies as may be necessary and the provisions of rule 11 shall *mutatis mutandis* apply to that statement of facts.

Commissioner's  
dealing with  
Memorandum.

(2) At the time of filing a statement of facts under paragraph (1), the Commissioner or the Company, as the case may be, shall serve a

copy thereof together with copies of any documents annexed thereto, upon the appellant or any other interested party.

( ) If the Commissioner or the Company, as the case may be, does not desire to file a statement of facts under this rule, the Commissioner or the Company shall forthwith give written notice to that effect to the Secretary and to the appellant, and in that case the Commissioner or the Company shall be deemed at the hearing of the appeal to have accepted the facts set out in the statement of facts of the appellant.

Notice to Chairman of Memorandum and Hearing Notice.

14. (1) The Secretary shall forthwith after receipt of the Memorandum notify the Chairman of the receipt.

(2) The Chairman shall, after the Commissioner or the Company, as the case may be, has filed a statement of facts or has notified the Secretary that he or the Company does not intend to do so, fix a time, date and place for the meeting of the Tribunal for the purpose of hearing the appeal.

(3) The Secretary shall cause such notice of the time, date and place of the meeting to be served on the appellant and the Commissioner or the Company, as the case may be.

(4) The Secretary shall cause to be supplied to each member of the Tribunal a copy of the notice of hearing and of all documents received by him from the parties to the appeal.

(5) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the hearing of the appeal.

Interim relief and Interlocutory application.

15. (1) The appellant may make application to the Secretary that the Tribunal suspends operation of a decision of the Company or Commissioner which is subject of appeal.

(2) The Tribunal may determine the application on the basis of written presentation if the parties to the proceedings in the Tribunal agree in writing or it may direct the parties or any interested party to appear before it.

(3) The Tribunal shall notify the parties and the interested parties of its determination giving a statement of its reasons.

(4) All interlocutory applications made to the Tribunal shall be in such form as may be directed by the Tribunal, signed by the applicant, his advocate or a duly authorised agent, supported by an affidavit.

(5) A party served with an application as directed by the Tribunal, may file a Replying Affidavit or Grounds of Opposition.

(6) The Tribunal shall have the power to hear any party who desires to be heard despite failure to file Replying Affidavit or Grounds of Opposition.

Amendment of Memorandum of Appeal.

16. (1) An appellant may file with the Secretary a notice of amendment of the Memorandum at any time before the hearing.

(2) Leave to amend the Memorandum—

(a) shall not be granted unless the Commissioner or the Company, as the case may be, has been afforded an opportunity to make representation on the proposed amendment;

(b) may be granted on such terms, including terms as to costs as the Tribunal thinks fit.

(3) Where the Memorandum of Appeal is amended, the Secretary shall immediately notify any party or interested party to the appeal.

(4) The Commissioner or the Company or any other interested party may amend any response where the Memorandum of Appeal has been amended within such time as may be directed by the Tribunal.

17. At the hearing of an appeal the following procedure shall be observed—

Procedure at hearing of appeal.

(a) the Commissioner or the Company, as the case may be, shall be entitled to be present or to be represented;

(b) the appellant shall state the grounds of his appeal and may support it by any relevant evidence:

Provided that, except with the consent of the Tribunal and upon such terms as it may determine, the appellant may not at the hearing rely on any grounds of appeal other than a ground stated in the Memorandum and may not adduce any evidence of facts or documents unless those facts have been referred to in, and copies of those documents have been annexed to, the statement of facts of the appellant;

(c) at the conclusion of the statement and evidence on behalf of the appellant the Commissioner or the Company, as the case may be, shall be entitled to make such submissions, supported by such relevant evidence, as may be necessary to support his case, and the provisions of the proviso to subparagraph (b) shall apply *mutatis mutandis* to evidence of facts and documents to be adduced by the Commissioner or by the Company.

(d) the appellant shall be entitled to reply but may not raise any new issues or arguments in the reply;

(e) the Chairman or any member of the Tribunal shall be entitled at any stage of the hearing to ask such questions of the appellant or the Commissioner or the Company, as the case may be, or any witness examined at the hearing as he considers necessary to the determination of the appeal;

(f) a witness called and examined by either party may be cross-examined by the other party to the appeal and, if so cross-examined, may be re-examined;

(g) a witness called and examined by the Tribunal may be cross-examined by either party to the appeal;

- (h) the Tribunal may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary, on such terms as it may determine;
- (i) the decision of the Tribunal shall be by a majority;
- (j) the proceedings of the hearing shall be maintained and the decision of the Tribunal recorded therein.

(2) The Tribunal may, for good and sufficient cause, and in particular where necessary or expedient in circumstances where publicity would prejudice the interests of justice, exclude from its proceedings persons other than the parties thereto and their legal representatives.

(3) In matters of procedure not governed by these Rules or the Act, the Tribunal may determine its own procedure.

Admissibility of documents

18. Except where the Tribunal in any particular case otherwise directs or where any party to the appeal objects, copies of documents shall be admissible in evidence:

Provided that the Tribunal may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

Setting aside judgement, order or award

19. A judgement, order or award made *ex-parte* under these Rules may, on application, be set aside on such terms as may be just.

Withdrawal of appeal or opposition

20. (1) The appellant may withdraw an appeal, and the Commissioner or Company may withdraw its opposition to an appeal, at any time before the hearing by giving notice in writing to the Secretary and the Secretary shall transmit the notice to the other party.

(2) At the hearing, the appellant may give notice to the Tribunal that it desires to withdraw the appeal in which case such appeal shall be deemed dismissed and thereupon the Tribunal shall bring the hearing to a close with such orders as may be just and accordingly notify parties to the appeal.

(3) At the hearing, the Commissioner or Company may give notice that it desires to withdraw its opposition to the appeal and thereupon continue with the proceedings without the opposition.

Costs.

21. The costs of an appeal shall be costs in the discretion of the Tribunal and shall be taxed by the Registrar of the High Court in the same manner as the bills of costs in the High Court.

Appeal to the High Court

22. (1) Any party to the proceedings of the Tribunal who is dissatisfied with the decision of the Tribunal, if it involves a question of law, shall appeal to the High Court within one month from the date the decision is conveyed to him and the decision following such appeal shall be final.

(2) The Chief Justice may make Rules governing the making of appeals arising from the decision of the Tribunal and providing for the fees to be paid, the scale of costs of any such appeal, and the procedure to be followed therein, and until such Rules are made, and subject

thereto, the provisions of the Civil Procedure Act shall apply as if the matter appealed against were a decree of a subordinate court exercising original jurisdiction.

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23. The Tribunal shall cause to be kept and maintained a register on all disputes or appeals referred to the Tribunal containing the following particulars-

Registers

- (a) the names of the parties;
- (b) the appeal number;
- (c) date of filing the appeal;
- (d) the relief sought; and
- (e) the final determination or order and the date thereof.

24. (1) The principal registry of the Tribunal shall be at Nairobi.

Registries

(2) The Tribunal may establish such other sub-registries at such other places as and when it deems necessary.

25. (1) All the proceedings pending before the Tribunal immediately before the commencement of these Rules may be continued and concluded as if they had been commenced under or by virtue of these Rules.

Savings Provisions

(2) Every decree, order or award of the Tribunal which immediately before the commencement of these Rules had not been executed or enforced shall be executed or enforced in the same manner as if it were a decree or order of the Tribunal made in accordance with these Rules.

26. The Insurance (Insurance Appeals Tribunal) Rules of 1988 are revoked.

Revocation of  
L N 542/1988

## SCHEDULE

(r.8)

*Filing fees: KSh.*

(a) Filing of Memorandum of Appeal	10,000
(b) Filing of Defence	1,000
(c) Filing of interlocutory applications	1,000
(d) Presentation of Statements of Facts	500
(e) Filing of Affidavit	500
(f) Certification of Documents (per page)	300

Made on the 18th June, 2013.

HENRY ROTICH,  
*Cabinet Secretary for the National Treasury.*