



# ARBITRAL TRIBUNAL RULES<sup>1</sup>

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<sup>1</sup> These Rules are consistent with the Arbitration Act, 2009, Statute Laws of The Bahamas and with international rules, including the Rules of the International Court of Arbitration.

# Articles

## Article I: Scope of Arbitration

1. The Insurance Commission of The Bahamas (“the Commission”) shall maintain surveillance over the insurance market, promote prudent insurance management and business practices and supervise compliance with the Insurance Act<sup>2</sup>.
2. The Arbitral Tribunal (“the Tribunal”) is set up in accordance with the Insurance Act, 2005<sup>3</sup> and the Arbitration Act, 2009<sup>4</sup>.
3. Arbitration is s a formal procedure leading to a binding decision from a neutral tribunal, liable to enforcement pursuant to domestic arbitration laws.
4. The object of arbitration is to obtain the fair resolution of disputes or differences between the insurer and the policyholder (“the parties”), by an impartial tribunal, without unnecessary delay and expense.<sup>5</sup>
5. The Supreme Court of The Bahamas (“the Court”) shall intervene as provided by the Arbitration Act, 2009.<sup>6</sup>
6. The Tribunal shall be utilized by any policyholder or insurer where the dispute or difference between the parties arises out of a policy issued by any insurance company which is a licensee of the Commission.
7. Where a dispute or difference has been referred to the Tribunal, the commencement of legal proceedings will terminate the arbitration.
8. Where a dispute or difference has been referred to the Tribunal and legal proceedings have commenced prior to the arbitration, the parties must agree to apply to the court for a stay of

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<sup>2</sup> S. 8, Insurance Act

<sup>3</sup> S. 20(1), Insurance Act states “Where in relation to any policy, any dispute or difference arises between an insurer and a policyholder, the Commission may with the consent of the parties involved, act as arbitrator of the dispute or difference.”

<sup>4</sup> S. 20(2), Insurance Act states “An arbitration under this section shall be conducted in accordance with the Arbitration Act.”

<sup>5</sup> S. 3, Arbitration Act, General principles.

<sup>6</sup> Ibid.

the legal proceedings in accordance with the Arbitration Act, prior to the commencement of the arbitration.<sup>7</sup>

9. The Commission shall act as the Secretariat for the Tribunal.

## Article II: Commencement of Arbitration

1. A party wishing to have recourse to arbitration under the Tribunal shall submit its Request for Arbitration (“the Request”) in writing to the Secretariat at the address listed in Appendix I. The Request may be made in the format outlined in Appendix II.
2. The Secretariat shall notify the claimant and respondent of the receipt of the Request and the date of such receipt.
3. The date on which the Request is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of the arbitration.
4. The Limitation Act, Ch. 83, shall apply to proceedings initiated before the Tribunal.<sup>8</sup>
5. The Request shall contain the following information<sup>9</sup>:
  - (a) the name in full, address and other contact details of each of the parties;
  - (b) the name in full, address and other contact details of any person(s) representing the claimant in the arbitration;
  - (c) a description of the nature and circumstances of the dispute or difference giving rise to the claims and of the basis upon which the claims are made;
  - (d) a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
  - (e) any relevant agreements and, in particular, the insurance policy;
  - (f) where claims are made under more than one insurance policy, an indication of the insurance policy under which each claim is made; and
  - (g) the claimant may submit such other documents or information with the Request as it considers appropriate or as may contribute to the efficient resolution of the dispute or difference.

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<sup>7</sup> Procedure outlined in s. 9, Arbitration Act.

<sup>8</sup> S. 13(1), Arbitration Act states “*The [provisions of the] Limitation Act (Ch. 83) apply to arbitral proceedings as they apply to legal proceedings.*”.

<sup>9</sup> See form in Appendix II.

6. In the event that the claimant fails to comply with all of the requirements in Article II(5) above, the Secretariat may fix a time limit within which the claimant must comply, failing which the file shall be closed without prejudice to the claimant's right to submit the same claims at a later date in another Request.
7. The Secretariat shall notify the respondent of the Request within 7 days of receipt of the Request from the claimant.
8. The Secretariat shall transmit a copy of the Request and the documents annexed thereto to the respondent for its Answer to the Request ("the Answer") within 14 days of receipt of the Request from the claimant unless further a time period is fixed by virtue of Article II(6).
9. The Answer may be submitted in the format outlined in Appendix III.
10. Within 30 days from the receipt of the Request from the Secretariat, the respondent shall submit the Answer which shall contain the following information:
  - (a) respondent's name in full, address and other contact details;
  - (b) respondent's comments as to the nature and circumstances of the dispute or difference giving rise to the claim(s) and the basis upon which each claim is made;
  - (c) respondent's reply to the relief sought; and
  - (d) the respondent may submit such other documents or information with the Answer as it considers appropriate or as may contribute to the efficient resolution of the dispute or difference.
11. The Secretariat may grant the respondent an extension of the time for submitting the Answer. If the respondent fails to do so, the Tribunal shall proceed in accordance with these Rules.
12. The Secretariat shall communicate the Answer and the documents annexed thereto to the claimant within 14 days from the receipt of the Answer from the respondent.
13. A Counterclaim made by the respondent shall be submitted with the Answer and shall provide:
  - (a) a description of the nature and circumstances of the dispute or difference giving rise to the counterclaim and of the basis upon which each counterclaim is made;

- (b) a statement of the relief sought together with the amounts of any quantified counterclaims and, to the extent possible, an estimate of the monetary value of any other counterclaims;
- (c) any relevant agreements and, in particular, the insurance policy;
- (d) where more than one counterclaim is made, an indication of the insurance policy under which each counterclaim is made; and
- (e) the respondent may submit such other documents or information with the counterclaim(s) as it considers appropriate or as may contribute to the efficient resolution of the dispute or difference.

14. The Counterclaim may be submitted in the format outlined in Appendix IV.

15. The claimant shall submit a reply to any counterclaim within 30 days from the date of receipt of the counterclaim(s) communicated by the Secretariat. Prior to the transmission of the file to the Tribunal, the Secretariat may grant the claimant an extension of time for submitting the reply. Any reply to a Counterclaim shall be submitted to the respondent by the Secretariat within 7 days.

16. The Secretariat shall, within 14 days of receipt of the Answer to the Request (or receipt of the reply to the Counterclaim, if any), make a determination of whether arbitration proceedings will be commenced by the Secretariat. The Secretariat shall notify the parties immediately of the decision.

### Article III: The Arbitral Tribunal

1. Every arbitrator must be independent of the parties involved in an arbitration.
2. Before appointment, a prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence, as per Appendix V. The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality.
3. The Secretariat shall provide the statement and disclosure of the arbitrator to the parties and fix a time limit for any written comments from them.

4. An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature to those referred to in Article III(2) concerning the arbitrator's impartiality or independence which may arise during the arbitration.
5. The decisions of the Secretariat as to the appointment, challenge or replacement of an arbitrator shall be final, and the reasons for such decisions shall not be communicated.
6. By accepting to serve, arbitrators undertake to carry out their responsibilities in accordance with the Rules.
7. The dispute or difference shall be decided by a panel of three arbitrators who will be appointed at the discretion of the Secretariat.
8. The Secretariat will communicate the appointment of the panel to the parties following receipt of the Request, the Answer, the Reply and the Counterclaim (if any) and the arbitrators' statements and disclosures.
9. The parties must agree upon the arbitrator within 2 days upon receipt of the notification of appointment or inform the Secretariat within 2 days that they intend to challenge the appointment.
10. In appointing an arbitrator, the Secretariat shall consider the prospective arbitrator's availability and ability to conduct the arbitration in accordance with the Rules. The Secretariat shall also consider any qualified statement and disclosure of the prospective arbitrator regarding impartiality or independence, especially where such qualified statement or disclosure has given rise to a challenge by any party.
11. A challenge of an arbitrator, whether for an alleged lack of impartiality or independence, or otherwise, shall be made by the submission to the Secretariat of a written statement specifying the facts and circumstances on which the challenge is based.
12. For a challenge to be admissible, it must be submitted in writing to the Secretariat by a party either within 14 days from receipt by that party of the notification of the appointment of the arbitrator, or within 7 days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based, if such date is subsequent to the receipt of such notification. Where the challenge arises from notification of appointment, the challenge will be not admissible without the initial 2-day notification to the Secretariat.

13. The Secretariat shall decide on the admissibility and, at the same time, if necessary, on the merits of a challenge after the Secretariat has afforded an opportunity for the arbitrator concerned and the other party (if necessary) to comment in writing within a suitable period of time. Such comments on a challenge shall be communicated to the party challenging the appointment and to the arbitrator (if necessary).
14. An arbitrator shall be replaced upon death, upon acceptance by the Secretariat of the arbitrator's resignation or a challenge or upon a request of all the parties.
15. An arbitrator shall also be replaced on the Secretariat's own initiative when it decides that the arbitrator is prevented *de jure* or *de facto* from fulfilling the arbitrator's functions, or that the arbitrator is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.
16. When, on the basis of information that has come to its attention, the Secretariat considers applying Article III(15), it shall decide on the matter after the arbitrator concerned, the parties and any other members of the Arbitral Tribunal have had an opportunity to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.
17. Once the Tribunal is reconstituted, the Tribunal shall repeat prior proceedings.
18. The seat of arbitration is The Bahamas. The place of the arbitration shall be fixed by the Secretariat at any location it considers appropriate within The Bahamas.
19. The language of the arbitration shall be English.
20. The proceedings shall be governed by the Rules and, where the Rules are silent, the Tribunal may settle on any appropriate rules of procedure in The Bahamas or under generally accepted conventions.
21. In applying rules of law and procedure, the Tribunal shall take into account the contractual provisions of the policy.
22. The Tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute.
23. The Tribunal may make any order concerning confidentiality of the proceedings or of any other matter relative to the proceedings, as it deems necessary.

24. The Tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.
25. The parties undertake to comply with any order made by the Tribunal.

## Article IV: Conduct of Arbitration Proceedings

1. The Secretariat shall prepare Terms of Reference for each arbitral proceeding in the format in Appendix VI.
2. The Terms of Reference for each proceeding shall contain the following:
  - (a) the names in full, address and other contact details of each of the parties, including the address to which notifications and communications arising in the course of the arbitration may be made;
  - (b) a summary of the parties' respective claims and of the relief sought by each party, together with the amounts of any quantified claims;
  - (c) a list of issues to be determined;
  - (d) the name in full, address and other contact detail of the arbitrators; and
  - (e) the place of the arbitration.
3. The Terms of Reference shall be signed by both parties to the proceeding and the panel of arbitrators. The arbitration shall not proceed without the signed Terms of Reference. The arbitration shall be deemed to have commenced when the Terms of Reference have been signed by all parties.
4. No party shall make new claims which fall outside of the limits of the Terms of Reference, unless it has been authorized to do so by the Tribunal, which shall consider the nature of the new claims, the stage of the arbitration and other relevant circumstances.
5. Once the Terms of Reference have been signed by all of the parties, the Tribunal shall convene a case management conference to consult with the parties on procedural measures, which may embody one or more of the techniques described in Appendix VII.
6. During or following this conference, the Tribunal shall establish the procedural timetable that will be followed for the conduct of the arbitration, and the timetable shall be communicated in writing to the parties and the Secretariat.
7. The Tribunal may, at any time, modify the procedural measures or the procedural timetable for continued effective case management, subject to immediate communication of the modifications to the parties and the Secretariat.



8. Case management conferences may be conducted through a meeting in person, by video conference, telephone or similar means of communication.
9. The Tribunal shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.
10. The Tribunal shall also consider issues related to limitation of actions and the possibility of extension of time periods in accordance with the Arbitration Act.<sup>10</sup>
11. After studying the written submissions of the parties and all documents relied upon, the Tribunal shall hear the parties together in person if any of them so requests or, failing such a request, it may of its own motion decide to hear them.
12. The Tribunal may decide to hear witnesses and experts appointed by the parties in the presence of the parties.
13. The Tribunal, after having consulted the parties, may appoint one or more experts, define their terms of reference and receive their reports. The parties shall be given the opportunity to question at a hearing any such expert.
14. At any time during the proceedings, the Tribunal may summon any party to provide additional evidence.
15. The Tribunal may decide the case solely on the documents submitted by the parties unless any of the parties requests a hearing.
16. When a hearing is to be held, the Tribunal, giving reasonable notice, shall summon the parties to appear before it on the day and at the place fixed by it.<sup>11</sup>
17. If any of the parties, although duly summoned, fails to appear without valid excuse, the Tribunal shall have the power to proceed with the hearing.
18. The Tribunal shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Save with the approval of the Tribunal and the parties, persons not involved in the proceedings shall not be admitted.
19. The parties may appear in person or through duly authorized representatives. In addition authorized representation shall not include legal representation.<sup>12</sup>

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<sup>10</sup> See s. 13, Arbitration Act regarding application of the provisions of the Limitation Act.

<sup>11</sup> S. 54, Arbitration Act.

<sup>12</sup> S. 47, Arbitration Act states *“Unless otherwise agreed by the parties, a party to arbitral proceedings may be represented in the proceedings by a counsel and attorney or some other person chosen by him”*.

20. As soon as possible after the last hearing concerning matters to be decided in an award or the filing of the last authorized submissions concerning such matters, whichever is later, the Tribunal shall declare the proceedings closed with respect to the matters to be decided in the award.
21. After the proceedings are closed, no further submission or argument may be made, or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the Tribunal.

## Article V: Awards

1. Upon the closing of the proceedings, the Tribunal shall inform the Secretariat and the parties of the date by which it expects to submit its award to the Secretariat, for signing by the parties.
2. The maximum time limit within which the Tribunal must render its award is thirty days or one month after the closing of the hearing, unless an extension of the time period is agreed between the Tribunal and the Secretariat.
3. The Tribunal must notify the Secretariat prior to the expiration of the agreed time period if more time is required to render its award. Consequent upon receipt of the notification, a reasonable time frame must be agreed between the Tribunal and the Secretariat.
4. The Secretariat must notify the parties of any change of the time frame in which the Tribunal must render its award.
5. The award shall state the reasons upon which it is based.
6. The award shall be deemed to be made at the seat of the arbitration and on the date stated therein.
7. If the parties reach a settlement after the file has been transmitted to the Tribunal the settlement shall be recorded in the form of an award made by consent of the parties, if so requested by the parties and if the Tribunal agrees to do so.
8. Each award is binding on the parties.

## Article VI: Costs

1. The Secretariat is liable to pay to the Tribunal on behalf of the parties such fees as agreed prior to the commencement of the arbitration proceedings.
2. Costs include fees and expenses of the Tribunal.

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## Appendix I: Address for the Secretariat

Secretariat of the Arbitral Tribunal

The Insurance Commission of The Bahamas

Third Floor, Charlotte House

Charlotte & Shirley Streets

P.O. Box N-4844

Nassau, Bahamas

Via Telephone: 242-328-1068

Via Facsimile: 242-328-1070

Via Email: [info@icb.gov.bs](mailto:info@icb.gov.bs)



## Appendix II: Request for Arbitration Form

### **Request for Arbitration**

**1. The name, address and other contact details of each of the parties.**

**2. The name, address and other contact details of any person(s) representing the claimant in the arbitration.  
\*[See article IV (19)]**

## Request for Arbitration

3. A description of the nature and circumstances of the dispute or difference; providing reason to the claims and of the basis upon which the claims are made.

**4. Provide a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims.**

**5. Documents:**

**(i) Indicate the insurance policy under which the claim is made. Advise if the same claim was made under more than one insurance policy. If so, provide details. Please provide a copy of the insurance contract.**

**(ii) List all documents supporting documents. Please provide copies.**

**Request for Arbitration**

**For Official Use Only**

Empty box for official use only.





## Appendix III: Answer to the Request for Arbitration Form

### **Answer to the Request for Arbitration**

**1. Provide respondent's name in full, address and any other contact details, including contact person.**

**2. Provide respondent's comments to the nature, circumstances of the dispute/difference and the basis upon which the claim(s) were made.**

**Answer to the Request for Arbitration**

**3. Provide the respondent's reply to the relief sought.**

**4. Are you submitting any supporting documents or information? Check one.**

**No**

**Yes ( if yes, provide a brief description and attach copies for review)**

**For Official Use Only**



## Appendix IV: Counterclaim Form Made by the Respondent

### Counterclaim made by the Respondent

1. Provide a description of the nature and circumstances of the dispute or difference, giving rise to the counterclaim and of the basis upon which each counterclaim is made.

2. If there is more than one counterclaim, state each. Indicate the insurance policies under which each counterclaim is made.

Number of counterclaims \_\_\_\_\_

**Counterclaim made by the Respondent**

**3. Provide any relevant agreement(s), in particular, the insurance policy contract. Attach copies for review.**

**4. Give a statement of the relief sought together with the amounts of any quantified counterclaims and, to the extent possible, an estimate of the monetary value of any other counterclaims.**

**5. The respondent may submit such other documents or information with the counterclaim(s), as it considers appropriate or as may contribute to the efficient resolution of the dispute or difference.**

**Counterclaim made by the Respondent**

**For Official Use Only**



## Appendix V: Arbitrator's Statement

<b>Arbitrator's Statement</b>
<p><b>1. Acceptance of appointment:</b></p> <p>I, _____, hereby accept the appointment by the Insurance Commission to the Arbitral Tribunal for the matter of _____ vs. _____.</p> <p>I confirm that I will be available for the duration of the arbitration proceedings.</p>
<p><b>2. Statement of impartiality and independence:</b>  <b>(Disclose any relevant facts/circumstances which may cause the parties to call arbitrator's independence into question)</b></p> <p>I declare that I will act responsibly, fair and with diligence at all times in carrying out my duties.</p> <p>I declare that I know of no facts or circumstances which may give rise to a conflict of interest between myself and any of the parties or which may raise reasonable doubt as to my ability to be impartial or independent.</p> <p>I declare that I will carry out my duties in accordance with the Rules of the Arbitral Tribunal.</p> <p>I declare that I will uphold the confidentiality of the arbitral proceedings.</p> <p>I commit to completing the arbitration proceedings within prescribed time limits to the best of my ability.</p>
<p><b>3. Signature:</b></p> <p>Signed: _____ Date: _____</p>



## Appendix VI: Terms of Reference

[This section will be completed by the Secretariat]

### Terms of Reference

1. The name, address and other contact details of each of the parties, including the address to which notifications and communications arising in the course of arbitration may be made.

## Terms of Reference

**2. Summary of the parties' respective claims and of the relief sought by each party, together with the amounts of any quantified claims.**



## Terms of Reference

**3. List of issues to be determined.**

**4. The name, address and other contact details of the arbitrators.**

**5. Place of arbitration.**

## Appendix VII: Case Management Techniques

The following are examples of case management techniques that can be used by the Arbitral Tribunal and the parties for controlling time and cost. Appropriate control of time and cost is important in all cases. In cases of low complexity and low value, it is particularly important to ensure that time and costs are proportionate to what is at stake in the dispute.

- a) Bifurcating the proceedings or rendering one or more partial awards on key issues, when doing so may genuinely be expected to result in a more efficient resolution of the case.
- b) Identifying issues that can be resolved by agreement between the parties or their experts.
- c) Identifying issues to be decided solely on the basis of documents rather than through oral evidence at a hearing.
- d) Production of documentary evidence:
  - (i) requiring the parties to produce with their submissions the documents on which they rely;
  - (ii) avoiding requests for document production when appropriate in order to control time and cost;
  - (iii) in those cases where requests for document production are considered appropriate, limiting such requests to documents or categories of documents that are relevant and material to the outcome of the case;
  - (iv) establishing reasonable time limits for the production of documents;
  - (v) using a schedule of document production to facilitate the resolution of issues in relation to the production of documents.
- e) Limiting the length and scope of written submissions and written and oral witness evidence (both fact witnesses and experts) so as to avoid repetition and maintain a focus on key issues.
- f) Using telephone or video conferencing for procedural and other hearings where attendance in person is not essential and use of IT that enables online communication among the parties, the Arbitral Tribunal and the Secretariat.
- g) Organizing a pre-hearing conference with the Arbitral Tribunal at which arrangements for a hearing can be discussed and agreed and the Arbitral Tribunal can indicate to the parties issues on which it would like the parties to focus at the hearing.
- h) Settlement of disputes:
  - (i) informing the parties that they are free to settle all or part of the dispute either by negotiation.

- (ii) where agreed between the parties and the Arbitral Tribunal, the Arbitral Tribunal may take steps to facilitate settlement of the dispute, provided that every effort is made to ensure that any subsequent award is enforceable at law.

## Appendix VIII: Qualifications for Arbitrators

Arbitrators must hold membership in an internationally recognized arbitration body with a branch in The Bahamas, and be qualified to conduct arbitration in accordance with the rules and regulations of that body.

## Appendix IX: The Secretariat - Administration

(Administrative procedures)