



Banking and Payments Authority of Kosovo

Pursuant to the authority given under Section 17.b of UNMIK Regulation No. 2001/24 date of October 1, 2001 on Amending UNMIK Regulation No. 1999/20, on Banking and Payments Authority of Kosovo and Section 3.3 of UNMIK Regulation No.2001/25 date of October 5, 2001 on Licensing, Supervision and Regulation of Insurance Companies and Insurance intermediaries,

For the purpose of execution Section 57 of UNMIK Regulation Nr. 2001/25

Governing Board of the Banking and Payment Authority of Kosovo, at the meeting held on March 28, 2002 adopt the following:

Rule 28 on the Establishment of an Arbitration Forum to Resolved Disputes on Claims

Section 1

1. Scope of Rule

This rule applies to all insurance companies licensed by the BPK.

2. Legal Authority

This rule implements Section 57, Chapter IX (Market Practice and Consumer Protection) of the Insurance Regulation.

3. Definitions

In this rule, the following terms mean:

“Arbitration” is the a process of resolving disputes, outside of the judicial processes, that is designed to provide quick and inexpensive resolution of issues under dispute between two or more contending parties.

“Arbitrator” or “arbitrators” means the individual or group of individuals (panel) appointed by the mutual consent of the contending parties (or, if necessary, by the BPK in intervention) to conduct the arbitration to resolve their dispute.

“Claimant” is a person who has a right to claim and demand settlement or payment of benefit or benefits due under the terms and conditions of an insurance contract.

Claimants include, either or all, policyholders (assured), beneficiary, assignee, or third party claimant.

“Complainant” is a claimant, or a person acting in his or her behalf, who has a dispute, for which he or she seeks an independent resolution, with his or her insurer in relation to a settlement or payment of insurance claim or benefit.

“Independent resolution” means a resolution, with or without hearing, of a dispute made by individual or individuals other than insurance companies, insurance intermediaries, or their related parties, the complainant, or individuals acting in their behalf.

“Licensed company” includes either, or both, an insurance company or an insurance intermediary licensed as such by the BPK.

Section 2 The Need for Arbitration

1. Legal Requirement

- a) Sub-section 57.6 of the Insurance Regulations requires insurance companies to establish an arbitration forum, independent from the companies and their intermediaries, to deal with cases where their internal systems to handle complaints concerning policy claims fail to resolve a particular claim.
- b) Sub-section 59.3 (k) of the Insurance Regulations mandates that every policy of insurance issued and delivered in Kosovo, to be enforceable, must contain a provision respecting the designation of an independent arbitration forum for the settlement of a disputed claim.
- c) Sub-section 57.7 of the Insurance Regulation requires the BPK to compel insurance companies to establish an independent arbitration forum in timely fashion. This rule is premised upon this mandate.

2. Requirement for Consumer Protection

Insurance companies and their intermediaries must have a system in place to address complaints of their claimants. These systems may not be adequate to resolve a disputed claim. No claimant can be forced to accept a settlement of his or her insurance claim if, for any reason, he or she believes that the offer of settlement, made by the insurance company or its intermediary, fails to reasonably and adequately satisfy his or her rights to a fair settlement. Many times insurance companies become insensitive to the financial resources of the claimant, especially in regard to small claims, where they feel they can impose a settlement

of a claim in the form, manner and amount they so wish. This practice defies consumer protection. Resort to the judicial process is too costly and time consuming as an alternative recourse for the claimant. Arbitration seeks to provide a fast and inexpensive resolution of the disputed claim. Arbitration works to the advantage of both the insurer and the claimant in terms of time and cost attendant to the resolution of their disputes.

Section 3 **Establishment of an Arbitration Forum**

1. Insurance Companies' Initiative

Within a period of sixty (60) days from the date this Rule is entered into effect, every insurance company, individually or collectively, shall submit to the BPK their proposed arbitration forum to resolve their disputes with their policyholders or claimants involving settlement and payment of insurance claims. The establishment of this forum takes effect upon the approval of the BPK.

2. Guidelines in Establishing the Arbitration Forum

- a) The panel of arbitrators shall be individuals with proven integrity, honesty and possessed with adequate knowledge in, and competence to adjudicate, insurance related issues or disputes.
- b) Arbitrators are individuals who are not officers, employees or related parties of licensed companies.
- c) Individuals who are practitioners or members of institutions on consumer advocacy in Kosovo shall be included among the panel of arbitrators.
- d) The complainant (claimant) shall have the choice of arbitrator or arbitrators from the list of arbitrators included in the forum.
- e) The arbitrators are empowered to require the parties to submit documents describing the details of the complaint and such other evidence or proof they consider necessary in respect thereto.
- f) The cost of arbitration, respecting fees or honoraria of arbitrators, venue, supplies and materials and other reasonable expenses needed in the arbitration, is the responsibility of the insurance company or companies that are involved in the issues subject to arbitration.
- g) The resolution or adjudication made by the arbitrator is binding to the insurance company; and to the claimant unless, within ten (10) days from the date of resolution, the claimant signifies, in writing, his or her objections

thereto in which case the claimant may avail of other legal remedies except to demand for a new arbitration process involving the same issues.

- h) BPK reserves the right to cause the inclusion of an individual in the panel of arbitrators and/or the exclusion of any individual listed therein.
- i) A single arbitrator shall resolve disputed claims amounting to Euros: ten thousand (10,000.00) or less; or, for any amount in excess of this amount, with the written authorization and consent of the claimant. For all other cases, three (3) arbitrators are required, unless BPK directs differently. The resolution of a dispute, in the case of three (3) or more arbitrators, is determined by a majority vote from among them. A tie shall be decided by the BPK.
- j) Arbitration applies only to insurer-claimant disputes and only for issues necessary to the resolution of the dispute. When the arbitrator(s) determines that the actual loss or damage justly due to the claimant exceeds the policy limits, the determination of further amounts payable stops. The arbitrator(s) need not find the amount in excess of the policy limit in order to assist the claimant in a further legal action against the insurer or the insured, as in the case of a third party claim.
- k) Arbitration may resolve issues relating to the policy liability and the extent of the loss or damage but only as can be the subject of indemnity or compensation under the terms of the policy contract. It is cannot award civil damages.
- l) The claimant cannot recover his or her cost in the arbitration.
- m) No party can file an action in court for a cause of action relating to an issue or dispute pending arbitration.
- n) Subject to the time limitation prescribed in the next paragraph, no licensed company may decline to arbitrate a dispute if arbitration is requested or demanded by the claimant. The right of a claimant to submit to arbitration is voluntary.
- o) Any of the parties may submit a dispute to arbitration. The right to submit a dispute to arbitration must be exercised within one (1) year from the occurrence of the insurable event or events that gave rise to the claim.

3. Duties and Obligations of the Arbitrator(s)

- a) The conduct of arbitration shall be fair and equitable to both parties and under simple and reasonable rules of procedure.

- b) All arbitration proceedings require at least a ten (10) days prior notice to the parties, unless such notice is waived under a signature of the party to whom notice is due. The notification must be sent to the parties, by mail or by courier in such manner and fashion that the person to whom it is served receives the notification ten (10) days after the dispute is submitted to and accepted by the arbitrator(s).
- c) Arbitrator(s) must exert every effort to require the attendance of the parties or their duly authorized representatives in its conduct of investigation or hearing. However arbitrator(s) may, if he, she, (they) considers just and reasonable, declare a party in default and proceed in the arbitration proceedings consistent with this Rule, provided that the requirement for the service of proper notice is, on the record, satisfied.
- d) Issues or disputes submitted to arbitration must be decided and resolved within a period of forty-five (45) days, or less, counted from the date the arbitrator(s) took cognizance of the dispute. The date the arbitrator took cognizance of the dispute is the day when the first notification was signed by the arbitrator or a person signing on the notification under his authority.
- e) All processes and proceedings in the arbitration shall be recorded, and together, with the documents, evidences and proofs submitted by the parties in arbitration, the resolution or resolutions made pursuant thereto, constitute the record of arbitration. The record of arbitration is private and confidential among the arbitrator(s) and the parties in arbitration. Information relating to the arbitration can only be released to the BPK upon its written request or in compliance with an order of a competent court.
- f) The arbitrator or a member of a panel of arbitrators shall keep and secure the record of arbitration for a period of at least three (3) years from the date of its resolution, or non-resolution.
- g) All arbitrators conducting arbitration must submit a report, on the result or results of hearings and the resolution or resolutions concluded thereby, to the BPK within the first fifteen (15) days of January, April, July and October of any year.
- h) Arbitrators shall confer with the BPK on issues and matters relating to the arbitration as they consider the need for it, or on such reasonable day and time the BPK so request.

Section 4 Transitional Provision

1. BPK Initiative for Arbitration, in Transition

BPK shall give every opportunity for insurance companies to establish a reliable, credible and strong arbitration forum. However the need or needs to address consumer complaints or disputes with insurance companies may arise during this transition. Until such a forum is established, arbitration of disputes involving settlement and payment of insurance claims described under this Rule shall be conducted on and under the initiatives of the BPK under the following guidelines:

- a) Any claimant contesting a settlement or payment of an insurance claim, where the internal systems of the licensed companies fail to resolve the dispute, may submit his or her claim to the BPK.
- b) BPK evaluates the claim and the issues under dispute and, if it is satisfied that the claim and the issues are reasonable and justified, may take the arbitration of the dispute itself, or may appoint an independent arbitrator.
- c) The conduct of arbitration under this initiative shall, as much as possible conform, to the guidelines prescribed under sub-section 2, Section 3, of this Rule.
- d) The resolution of disputes under this initiative is binding to the insurance company and the claimant.

Section 4 Entry into Force

This present rule shall enter into force on April 1, 2002.

David Weatherman
Acting Managing Director