

Relevant Legislation

INSURANCE ORDINANCE 2000

Insurance Ombudsman

125. Appointment of Insurance Ombudsman.- (1) As soon as may be, after the commencement of this Ordinance, the Federal Government shall appoint an Insurance Ombudsman.

(2) The Insurance Ombudsman shall be a natural person having high integrity and ability and unimpeachable insurance or legal credentials, and shall not at the date of his appointment be more than seventy years of age. He shall not be a shareholder of an insurance company.

(3) The Insurance Ombudsman shall hold office for a period of four years from the date of his appointment unless he resigns earlier or is disqualified or removed in accordance

with sub-section (2) or (3) of section 126. He shall not be eligible for any extension of tenure or for reappointment under any circumstances whatsoever.

(4) Any vacancy occurring in the office of the Insurance Ombudsman shall be filled within sixty days of the occurrence of such vacancy.

(5) The Insurance Ombudsman shall not hold any other office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services, and shall not during the two years immediately prior to his appointment have held any office in any body corporate carrying on insurance business in Pakistan.

126. Terms and conditions of Insurance Ombudsman.- (1) The Insurance Ombudsman shall be entitled to the same salary and allowances as a Judge of a High Court.

(2) The Insurance Ombudsman may at any time resign his office by giving written notice to the Commission of not less than three months.

(3) The Insurance Ombudsman shall be disqualified from holding his office and his appointment may be revoked if:

- (a) he has been convicted of an offence involving moral turpitude;
- (b) he has been guilty of misconduct;
- (c) he has been or is adjudged insolvent;
- (d) he is incapable of discharging his duties by reason of physical, physiological or mental unfitness and has been so declared by a registered medical practitioner appointed by the Commission;
- (e) he is disqualified by virtue of holding an office (other than that of Insurance Ombudsman) for which he receives remuneration; or
- (f) he fails to discharge diligently or impartially his duties under this Ordinance:

Provided that, unless a disqualification referred to in this subsection arises from the judgement or a court or tribunal of competent jurisdiction under any relevant provision of applicable law, the appointment of an Insurance Ombudsman shall not be revoked without an enquiry by an impartial person or body of persons constituted in accordance with such

procedure as may be prescribed by rules made by the Federal Government, and such rules shall provide for a reasonable opportunity for him to be heard in his defence.

(4) The Insurance Ombudsman shall be provided with a secretariat to be appointed in consultation with the Commission. Appointments to the secretariat may be made on deputation from the Commission or other insurance companies or otherwise on the basis of professional qualifications. The costs of the secretariat shall be shared by insurance companies in such proportions as may be determined by the Commission.

127. Jurisdiction, functions and powers of Insurance Ombudsman.- (1) The Insurance Ombudsman may on a complaint by any aggrieved person undertake any investigation into any allegation of mal-administration on the part of any insurance company

Provided that the Insurance Ombudsman shall not have any jurisdiction to investigate or inquire into any matters which –

- (a) are within the jurisdiction of the Office of the Wafaqi Mohtasib under the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O. 1 of 1983) ; or
- (b) are sub-judice before a court of competent jurisdiction or tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him.

(2) For the purposes of this section “mal-administration” includes –

- (a) a decision, process, recommendation, act of omission or commission which:
 - (i) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons; or
 - (ii) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or
 - (iii) is based on irrelevant grounds; or
 - (iv) involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and
- (b) corruption, nepotism, neglect, inattention, inordinate delay, incompetence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities.

(3) Notwithstanding anything contained in sub-section (1), the Insurance Ombudsman shall not accept or investigate any complaint which is brought by or on behalf of an insurance company and which relates to a contract of reinsurance.

(4) Notwithstanding anything contained in sub-section (1), the Insurance Ombudsman shall not accept for investigation any complaint by or on behalf of an employee of an insurance company concerning any matters relating to the insurance company in respect of any personal grievance relating to his service therein.

(5) For carrying out the objectives of this Ordinance and, in particular for ascertaining the root causes of corrupt practices and injustice, the Insurance Ombudsman may arrange for studies to be made or research to be conducted and may recommend appropriate steps for their eradication.

128. Reference to Insurance Ombudsman by Court.- If at any time during the pendency of a case, a Court or Tribunal trying a case relating to an insurance company is of the opinion that the management of the insurance company has prima facie acted in a mala fide manner, or in violation of insurance rules and regulations, it may make reference to the Insurance Ombudsman for inquiring into the matter and passing such order in accordance with the provisions hereof as he may deem fit:

Provided that the making of a reference shall not prevent the Court or Tribunal from deciding the claim before it on its merits.

129. Procedure for making complaints.- (1) A complaint shall be made on solemn affirmation or oath in writing addressed to the Insurance Ombudsman. The complaint shall set out the full particulars of the transaction complained of and the name and address of the complainant.

(2) Prior to making a complaint the complainant shall intimate in writing to the concerned insurance company his intention of filing a complaint and if the insurance company either fails to respond, or makes a reply which is unsatisfactory to the complaint, within a period of one month, the complainant may file a complaint at any time thereafter within a further period of three months:

Provided that the Insurance Ombudsman may, if satisfied that there were reasonable grounds for the delay in filing the complaint, condone the delay and entertain the complaint.

(3) The Insurance Ombudsman may adopt any procedure as he considers appropriate for investigating a complaint.

Provided that he shall not pass any order against a insurance company without first giving it a notice and an opportunity to be heard.

(4) Subject to section 128, the Insurance Ombudsman shall not have any power to issue an order in the nature of a stay order or to entertain any complaints if the matter is pending before a Court, Tribunal or other legal forum.

(5) The Insurance Ombudsman may reject a complaint summarily or he may accept the same or pass any other order he deems fit.

Provided that in each case he shall pass a reasoned order for his decision.

(6) The Federal Government may further prescribe rules for the conduct of proceedings in relation to complaints brought before the Insurance Ombudsman.

130. Recommendations for implementation.- (1) In the event the Insurance Ombudsman comes to the conclusion that the complaint is justified, in part or in whole, he shall try and facilitate an amicable

resolution or settlement by resort to mediation and failing that communicate his findings to the concerned insurance company with the direction -

- (a) to reconsider the matter;
- (b) to modify or cancel the earlier decision, action or failure to take appropriate action;
- (c) to pay reasonable compensation to the complainant as fixed by the Insurance Ombudsman;
- (d) to take the requisite steps to improve the functioning or efficiency of the insurance company; or
- (e) to take such other remedial steps or actions as may be specified by the Insurance Ombudsman.

(2) Any insurance company, or official of a insurance company or a complainant aggrieved by an order passed by the Insurance Ombudsman may file an appeal with the Commission within thirty days which shall pass any order thereon it deems fit.

(3) Any order passed by the Insurance Ombudsman which has not been appealed against, or any order passed by the Commission in appeal, as the case may be, shall become final and operative and if not implemented shall render the insurance company concerned liable to such action including the imposition of a fine or penalty as the Commission may deem fit, and in relation to a insurance company officer, to the appropriate disciplinary or other proceedings.

(4) Nothing contained herein shall prevent a complainant from filing a suit against an insurance company in the event his complaint is rejected.

131. Power to call for information.- The Insurance Ombudsman shall have the power for purposes of disposing a case, to require an insurance company to disclose to him any information subject to the following conditions, namely:-

- (a) the Insurance Ombudsman shall make every endeavour to ensure that insurance confidentiality is maintained as required by insurance law and procedure and shall take no action which is violative thereof;
- (b) the Insurance Ombudsman may call for any or all such documents which are relevant or pertinent for purposes of deciding a complaint;

Provided that he shall not be entitled to call for unrelated documents which may compromise the insurance company's position in relation to other customers;

Provided further that in cases where the Insurance Ombudsman is investigating cases of corruption, he shall have a greater latitude in relation to the inspection of documents; and

- (c) in the event of an insurance company refusing to furnish information, or copies of relevant documents, the Insurance Ombudsman may draw an adverse inference and comment on the same in his findings.

132. Duties of insurers.- (1) An insurer shall at all times co-operate with the Insurance Ombudsman and with any person properly authorized by him, in the conduct of an investigation by the Insurance

Ombudsman into a complaint which has been brought before him.

(2) An insurer that obstructs, through its wilful act or failure to act, any investigation by the Insurance Ombudsman shall be guilty of an offence.

133. Duty and power of the Insurance Ombudsman to report to the Commission.- (1) Where the Insurance Ombudsman has reason to believe during the course of his investigation into a complaint brought before him, or finds as a result of his investigation that an insurer has -

- (a) failed to comply with this Ordinance; or
- (b) failed to act in good faith; or
- (c) acted in such a manner as to bring the insurance industry into disrepute;

he shall make a report on that matter to the Commission in such manner as the Commission may prescribe.

(2) The Insurance Ombudsman may make a report to the Commission on any matter arising from his investigation into a complaint brought before him, in which he deems it fit or proper to do so.

(3) The Insurance Ombudsman may, in a report made under sub-section (1) or under sub-section (2), make recommendations as to action to be taken, including without limitation an investigation by the Commission, or the taking of the requisite steps or legal proceedings against an insurance company which has acted in violation of insurance laws, rules, regulations, procedures, or directives of the Commission.

134. Report of Insurance Ombudsman.- (1) The Insurance Ombudsman shall prepare and submit to the Federal Government on or before the 31st March in every year following the commencement date a report setting out a review of the activities of his office during the preceding year.

(2) The Insurance Ombudsman shall also submit a report or reports to the Federal Government containing the results of such inquiries as he may be directed to conduct by the Federal Government from time to time.

(3) All reports submitted by the Insurance Ombudsman shall be published and released to the public unless he directs otherwise for reasons to be recorded.