



INSURANCE CLAIMS Vs CONTRACTOR CLAIMS IN TANZANIA.

• INSURANCE CLAIMS IN TANZANIA.

INTRODUCTION.

Section 3 of the Insurance Act, 2009 defines an insurance business as the business of assuming the obligation of an insurer in any class of insurance whether defined in this section or not, and includes assurance and reinsurance and reinsurance.

Insurance claims in Tanzania are requests made by an insured person or entity to an insurance company for financial compensation in the event of a covered loss or damage. Insurance claims are made by policyholders who have experienced an unexpected event that is covered by their insurance policy.

Insurance claims can be made for various types of insurance policies such as health insurance, motor insurance, property insurance, and life insurance, among others. The claims process typically involves notifying the insurance company of the loss or damage, providing supporting documentation such as medical reports, police reports, or repair estimates, and completing a claims form. Upon receiving a claim, the insurance company will investigate the claim and assess the validity of the claim. If the claim is approved, the insurance company will pay out the agreed-upon amount to the policyholder to cover the loss or damage, less any applicable deductibles or excess.

Disputes between insurance consumers and insurance registrants may either be settled by court process or by the Insurance Ombudsman. On the other hand, there is an Insurance Tribunal which determines disputes arising from decisions of the Commissioner of Insurance exercising his powers conferred by the Insurance Act, 2009. If one is not satisfied with the decision of the Insurance Tribunal, he may appeal to the High Court, also a person aggrieved by the decision of the Ombudsman may make reference to the High Court against such the decision.

Section 122(1) of the Insurance Act, 2009 establishes the Ombudsman Service in Tanzania for settlement of insurance disputes arising between insurance consumers and insurance registrants in Tanzania. The Insurance Ombudsman is appointed by the Minister for Finance ('the Minister') in consultation with the National Insurance Board ('the Board'). The Ombudsman should be a person with adequate knowledge and experience in legal matters and dispute settlement. The Board proposes three names to the Minister whereby the



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Minister selects one name out of the three names submitted by the Board.

The functions and powers of the Ombudsman include, among others, the administration of all complaints filed by insurance consumers with monetary value of maximum Tanzanian Shillings Forty Million (TZS 40,000,000) and issuance of an award upon arbitration for direct losses and damages suffered by the Complainant up to the maximum of Tanzanian Shillings Fifteen Million Shillings (TZS 15,000,000). This means that the Ombudsman may determine a claim whose value does not exceed TZS 40 Million but his award should not exceed TZS 15 Million. If the Ombudsman is of the view that the award may exceed the statutory limit of TZS 15 Million; he will advise the parties to prefer the matter to a court of law.

Furthermore, the Ombudsman has powers to conduct investigation for determination of viability of the complaint and conduct of mediation, reconciliation and arbitration. In the course of determination of a complaint the Ombudsman may also give advice to both complainant and insurance registrant as to the best way of resolving a dispute either before the Ombudsman or file the same in a court of law.

MODES OF DISPUTE SETTLEMENT IN INSURANCE CLAIMS

• BY THE OMBUDSMAN

Dispute settlement by the Ombudsman is done through mediation, reconciliation and arbitration. The process of reconciliation and/or mediation involves an interaction between the Ombudsman playing the role of a mediator and the parties with a view of reaching an amicable settlement. This involves separate meetings between the Ombudsman and the parties before a dispute is settled. It is from these meetings, parties will reach at a consensus to have their dispute settled amicably in the presence of the Ombudsman.

On determination of the complaint, the Ombudsman may decline to consider the complaint, uphold the complaint either wholly or in part, dismiss the complaint, award compensation, order the insurance registrant to pay the principal sum plus interest at the rate of 5% and issue declaratory orders to the insurance registrant.

1. Mode Of Filing Complaints Before The Ombudsman

Regulation 13(1) of the Ombudsman Insurance Regulations, 2013 (GN. No. 411 of 2013) ('the Regulations') provides that complaints be made to the Ombudsman in writing, electronically or orally. This is for the purpose of easing the process without being a formal required to file such pleadings which may be cumbersome to some complainants.



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1. Time for determination of Complaints by the Ombudsman:

Once the dispute is considered to be viable by the Ombudsman, it should be determined within 60 days from the date of admission.

1. Compliance and Enforcement of the award

An insurance registrant is required to comply with the award issued by the Ombudsman within 30 days from the date of determination unless reference of the award is preferred to the High Court (Regulation 21 of the Regulations). Where an insurance registrant fails or refuses to comply with the determination made by the Ombudsman, the Ombudsman may give notice to the insurance registrant requiring compliance with the award within 14 days or such further period as the Ombudsman may determine. When the insurance registrant refuses to comply with the notice resort is made to the Commissioner of Insurance who may impose sanction including penalty and cancelation of license.

NOTE:

Dispute settlement by the Insurance Ombudsman is viewed as time saving and free from legal technicalities. It is easy for every complainant to access the services of the Ombudsman as far as the court process takes long and is costly since parties have to engage advocates. Advocates are restricted to appear before the Insurance Ombudsman for representation of parties thereto.

• BY COURT

In Tanzania, when it comes to court proceedings, the process begins with the filing of a claim in a court of law. The plaintiff (the person making the claim) must provide evidence to support their claim, while the defendant (usually the insurance company) may provide evidence to defend against the claim. The court will then hear arguments from both sides and make a ruling.

• BY INSURANCE TRIBUNAL

The Insurance Tribunal determines disputes arising from decisions of the Commissioner of Insurance as conferred by the Insurance Act, 2009. The Commissioner of Insurance is the regulatory authority responsible for the supervision and regulation of insurance companies in some jurisdictions. The Insurance Tribunal is intended to provide an independent forum for resolving disputes between policyholders, insurance companies, and other parties affected by decisions of the Commissioner of Insurance. The tribunal is made up of



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individuals with specialized knowledge and experience in insurance law and practice, and its decisions are typically binding on all parties involved in the dispute.

The Insurance Tribunal plays an important role in ensuring that the interests of all stakeholders in the insurance industry are protected, and that disputes arising from decisions of the Commissioner of Insurance are resolved in a fair and impartial manner.

• CONSTRUCTION CLAIMS IN TANZANA.

INTRODUCTION.

Construction claims are requests made by one party involved in a construction project, such as the owner, contractor, or subcontractor, for compensation or other relief due to a dispute or disagreement that has arisen during the course of the project. Construction claims can be made for a variety of reasons, including schedule delays, cost overruns, defective work, or contract disputes.

The claims process typically involves the party making the claim notifying the other party in



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writing of the issue and providing evidence to support the claim. The parties may then negotiate to resolve the issue or may seek third-party mediation or arbitration to resolve the dispute. In some cases, a construction claim may result in litigation, with one party suing the other in court to seek compensation or other relief. In such cases, the parties will typically hire attorneys to represent them and present their case to a judge or jury.

Construction claims can be complex and may involve multiple parties, contracts, and legal issues. It is important for all parties involved in a construction project to have a clear understanding of their rights and obligations under the contract and to seek legal advice if a dispute arises that cannot be resolved through negotiation or mediation. Proper documentation and record-keeping throughout the project can also be important in resolving claims and avoiding disputes.

CONSTRUCTION STRUCTURE IN TANZANIA.

The Tanzanian construction sector is made up of the Ministry of Works, Transport, and Communication and its agencies, consultative body, regulatory boards and clients, suppliers of construction materials and equipment, consulting firms, construction enterprises, private firms, and professional associations.

The Ministry of Works, Transport and Communication (MoWTC) is responsible for policy formulation, planning, overseeing, and overall coordination of the transport and communications infrastructure. It includes institutions under the MoWTC that deal directly with the construction sector such as Agencies to include Tanzania Building Agency (TBA), responsible for the maintenance and development of government buildings, Tanzania National Roads Agency (TANROADS) and the Tanzania Rural and Urban Roads Agency (TARURA) responsible for the maintenance and development of the road network, Tanzania Electrical, Mechanical, and Service Agency (TEMESA) responsible for providing electrical, mechanical, and electronic services, reliable and safe ferry transport services, and the hiring of equipment to government institutions and the public at large.

There are also a number of associations that represent consultants and contractors in Tanzania, this includes the Tanzania Institute of Quantity Surveyors (TIQS), Architects' Association of Tanzania (AAT), Institute of Engineers Tanzania (IET), Association of Civil Engineering Consultants of Tanzania (ACET), the Tanzania Civil Engineering Contractors' Association (TACECA), the Contractors' Association of Tanzania (CATA), and the Association of Citizen Contractors of Tanzania (ACCT). Generally, all these associations collectively protect the interests of their members and promotes their interest.

LAWS GOVERNING CONSTRUCTION IN TANZANIA.



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Construction in Tanzania is regulated by various laws and regulations, including the following:

1. The Contractors Registration Act, 1997

The Act requires all contractors to be registered with the Contractors Registration Board (CRB) before they can undertake any construction work in Tanzania. The Act also establishes the CRB, which is responsible for regulating the construction industry and enforcing standards for contractors.

1. The Public Procurement Act, 2011

The Act establishes the legal framework for public procurement in Tanzania, including the procurement of construction services by government agencies. The Act sets out the procedures for procurement, as well as the requirements for bidding and contract award.

- The National Construction Council Act, 1979

The Act establishes the National Construction Council (NCC), which is responsible for promoting and regulating the construction industry in Tanzania. The NCC is also responsible for setting standards and guidelines for the industry, as well as providing training and certification for construction professionals.

1. The Occupational Health and Safety Act, 2003

The Act establishes the legal framework for occupational health and safety in Tanzania, including the construction industry. The Act sets out the requirements for workplace safety, including the use of protective equipment, and establishes penalties for non-compliance.

1. The Land Act, 1999

The Act regulates land use and ownership in Tanzania, including the use of land for construction purposes. The Act sets out the procedures for acquiring land, as well as the



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requirements for land use planning and development.

1. The Environment Management Act, 2004

This Act establishes the legal framework for environmental management in Tanzania, including the construction industry. The Act sets out the requirements for environmental impact assessments and establishes penalties for non-compliance.

NOTE:

All these laws and regulations establish the legal framework for construction in Tanzania, including the registration of contractors, procurement procedures, industry regulation and standards, workplace safety, land use and ownership, and environmental management.

POSSIBLE DISPUTES UNDER CONSTRUCTION PROJECTS.

There are various types of disputes that can arise in construction projects in Tanzania. Some of the most common types of disputes include:-

1. Delay Claim

It occurs when unanticipated events extend a project's completion date beyond the originally set one. If construction is delayed, production and money will be lost. An event even beyond the contractor's control, like flawed designs, bad weather, a pandemic, or an earthquake, can also be the reason for this.

1. Damage Claim

A claim is made when a construction project harms the business location or any nearby



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property. In these situations, the customer who sustained property loss may hold the contractor accountable for this harm by bringing a claim for damages against the contractor.

1. Price Escalation Claim

Price escalation claims occur when the anticipated project budget rises for finishing the task early or on time. Given that customers are responsible for paying the expenses associated with the accelerated service, clients are the ones that submit claims.

1. Change in Site Condition

The possibility of a different site conditions claim arises when the real state of the project site varies from what the client represented in the contract.

1. Change of Work

One of the most typical claims in the construction sector is this one. When the project has already begun, and the contractor gets a modification order from the customer, this claim is made. Conflicts arise when the customer and the contractor differ on what is and isn't covered under the contract.

MODES OF DISPUTE SETTLEMENT IN CONSTRUCTION DISPUTES.

Construction disputes in Tanzania can be handled through various means, including litigation, alternative dispute resolution (ADR) mechanisms such as mediation, arbitration or adjudication. The choice of the appropriate dispute resolution mechanism depends on the nature and complexity of the dispute, as well as the preferences of the parties involved.

• BY LITIGATION.

In Tanzania, litigation is the traditional method of resolving construction disputes. The parties can initiate legal proceedings in the court of law, and the dispute will be decided by a judge based on the evidence presented by both parties. However, litigation can be time-consuming and expensive, and it may not be the best option for parties who wish to



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maintain a long-term relationship.

• **BY ADR MECHANISM.**

Alternative Dispute Resolution mechanisms includes mediation, arbitration and adjudication. Mediation is a voluntary process in which a neutral third party facilitates negotiations between the parties to reach a settlement. Arbitration is another common method of resolving construction disputes in Tanzania as the parties appoint an arbitrator who will hear both sides of the dispute and make a final and binding decision. Arbitration is often faster and more cost-effective than litigation, and it provides parties with more flexibility in the choice of the arbitrator and the procedure for resolving the dispute. Adjudication, on the other hand, is a process in which a neutral third party makes a binding decision on the dispute based on the evidence presented by the parties.

In Tanzania, *the Construction Industry Arbitration and Adjudication Board (CIArb)* is a specialized institution that provides ADR services for construction disputes. The CIArb has established rules and procedures for arbitration and adjudication, and it provides training and certification for arbitrators and adjudicators. Parties can also choose to use other ADR service providers or appoint their own arbitrator or mediator.

HOW TO APPROACH THE CONSTRUCTION INDUSTRY ARBITRATION AND ADJUDICATION BOARD (CIARB).

Basically, for one to go to the Construction Industry Arbitration and Adjudication Board (CIArb) in Tanzania, the following steps must be adhered to:

1. Inclusion of an arbitration clause in the construction contract.

The Construction Industry Arbitration and Adjudication Board (CIArb) applies only to the parties who included an arbitration clause in the construction contract, which automatically requires any rising disputes be dealt with amicably before the matter has been taken to court.

1. Initiating the arbitration process.

If a dispute arises, the party initiating the arbitration process must send a written notice to the other party, stating the nature of the dispute and the relief sought. The notice should also include a request to submit the dispute to arbitration under the CIArb rules.



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- Appointment of an arbitrator.

After receipt of notice been successful, parties can agree on the appointment of a single arbitrator, or they can each appoint their own arbitrator who will then select a third arbitrator. The arbitrator(s) must be qualified and trained in construction arbitration and must be on the CIArb panel of arbitrators.

1. Submission of evidence and arguments.

Once the arbitrator has been appointed, each party will have the opportunity to submit evidence and arguments in support of their case.

1. Attending the hearing.

After submission of evidences and arguments, parties shall be given an opportunity to present their case at a hearing, where the arbitrator(s) will listen to the evidence and arguments presented and make a final decision.

1. Obtaining an arbitration award.

This is the final stage after hearing, as the arbitrator(s) will make a final and binding decision, known as an arbitration award. The award will be in writing and will specify the amount of any damages awarded, if applicable.

NOTE:

The overall process for the Construction Industry Arbitration and Adjudication Board (CIArb) in Tanzania is provided under the rules and procedures of CIArb for the conduct of arbitration, as well as a panel of qualified arbitrators to choose from.

COUNCILS FOR CONSTRUCTION CLAIMS IN TANZANIA.

In Tanzania, a person who has a dispute with a contractor can refer their claim to one of the



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following councils:-

1. Contractors Registration Board (CRB)

The Contractors Registration Board CRB is responsible for regulating the construction industry in Tanzania and has the power to investigate complaints and disciplinary matters involving registered contractors. A person can file a complaint against a contractor with the CRB by submitting a written complaint to the Board, along with any supporting evidence.

1. National Construction Council (NCC)

The NCC is responsible for promoting and regulating the construction industry in Tanzania and has the power to investigate complaints involving construction professionals, including contractors. Hence, a person can file a complaint against a contractor with the NCC by submitting a written complaint to the Council, along with any supporting evidence.

- Fair Competition Commission (FCC)

This is an independent government agency responsible for enforcing fair competition in the marketplace. If a person believes that a contractor has engaged in unfair or anti-competitive practices, then can file a complaint with the FCC by submitting a written complaint to the Commission, along with any supporting evidence.

NOTE:

Generally, filing of complaints with any of these councils, a person needs to gather all relevant documentations and evidences to support the claim against the contractor, and submit a written complaint to the appropriate council. The council will then investigate the complaint and make a determination, which may include disciplinary action against the contractor. It is important to note that each council has its own rules and procedures for filing complaints and handling disputes.

BONNES AND GUARANTEES OF CONSTRUCTION IN TANZANIA.

In Tanzania, contractors are typically required to provide bonds and guarantees as part of their construction contracts. These bonds and guarantees serve as financial protection for the owner of the project and are intended to ensure that the contractor fulfills their



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contractual obligations. There are several types of bonds and guarantees that may be required in a construction project in Tanzania, including:-

1. Bid Bond

This bond is submitted by the contractor as part of the bidding process and serves as a guarantee that the contractor will sign the contract and provide the required performance and payment bonds if they are awarded the project.

1. Performance Bond

This bond is provided by the contractor once the contract is signed and serves as a guarantee that the contractor will complete the project according to the contract specifications, within the specified time frame, and to the required quality standards.

- Payment Bond

This bond is also provided by the contractor and serves as a guarantee that the contractor will pay all subcontractors, suppliers, and laborers involved in the project.

NOTE:

In addition to these bonds, contractors may also be required to provide other types of guarantees, such as warranties and maintenance bonds, which ensure that the contractor will repair any defects in the work after completion and maintain the project for a specified period of time. And if such contractor fails to fulfill his/her contractual obligations, the owner of the project can make a claim against the relevant bond or guarantee to recover any damages or losses incurred as a result of the contractor's failure.



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