

CHARTER
REGULATING THE COUNCIL OF BUREAUX

PREAMBLE

RECALLING that the Council of Bureaux is a COMESA Institution, recognized under Article 174(2) (f) of the COMESA Treaty and has been in operation since 1987 under the PTA Treaty;

RECALLING FURTHER that the Council of Bureaux is established as the highest decision-making body by Article 15 of the e Protocol on the Establishment of the Yellow Card Scheme (Annex II to the COMESA Treaty) and exercises its functions under Article 18;

CONSIDERING that the Inter-Bureaux Agreement was entered into for the Implementation of the Third-Party Motor Vehicle Insurance Scheme so as to facilitate the implementation of the Protocol;

CONSIDERING further that the Constitution of the COMESA Yellow Card Scheme Reinsurance Pool, which aims at improving efficiency in the operations of the Scheme through reinsurance and the COMESA Yellow Card Reinsurance Pool Management Agreement for the management of the business ceded to the Yellow CARD Reinsurance Pool, establishes the Management Committee as a Board of the Pool and the yellow card scheme;

AWARE of the need to strengthen the Yellow Card institution and governance in accordance with the Yellow Card Scheme Strategic Plan 2018-2022;

TAKING ACCOUNT of the decision of the Thirty-Third Meeting of the Council of the Bureaux to develop its own Administrative and Legal instruments to ensure adherence and full implementation of the yellow card scheme strategic objectives;

DETERMINED to establish its own Charter to regulate the activities of the Council of Bureaux of the Yellow Card Scheme;

THE PARTIES HEREBY AGREE AS FOLLOWS:

ARTICLE 1

DEFINITIONS

In this Charter, unless the context otherwise requires:

"Charter" means the Charter Regulating the Council of Bureaux of the Yellow Card Scheme;

"COMESA Secretariat" means the Secretariat of COMESA provided for in Article 7 of the COMESA Treaty;

"COMESA" means the Common Market for Eastern and Southern Africa;

"Council of Bureaux" means the Assembly of National Bureaux established under Article 15 of the Protocol;

"Court" means the Court of Justice of the Common Market established by Article 7 of the COMESA Treaty;

“Director” means the Director of the Secretariat provided for by Article 12 of this Charter;

“Gender mainstreaming” means that consideration of the experiences, aspiration, knowledge, needs and concerns of both men and women are integrated in the formulation of policies and decision making; the planning, programming and budgeting; the monitoring and evaluation of progress achieved and obstacles encountered in the implementation of this Charter;

“Management Committee” means a body of a Council of Bureaux established pursuant to Article 5 of the Constitution of COMESA Yellow Card Scheme Reinsurance Pool;

“Member Country” means a State that is a member of the Yellow Card Scheme;

“Member State” means a Member State of the Common Market for Eastern and Southern Africa, whose predecessor was the Preferential Trade Area for Eastern and Southern African States;

“National Bureaux” means a government designated agency in each Member State that shall be responsible for the management and control of the COMESA Yellow Card;

“Pool” means the COMESA Yellow Card Reinsurance Pool established by Article 2 of the Constitution;

“Pool Manager” means a legal or natural person appointed by the Council of Bureaux to manage the Reinsurance Pool on the Yellow Card Scheme

“Protocol” means the Protocol on the Establishment of the Third-Party Motor Vehicle Insurance Scheme;

“Reinsurance Pool on the Yellow Card Scheme” means a Reinsurance Pool arrangement established by Council of Bureaux to provide, among other things, reinsurance cover for Yellow Card risks underwritten by Issuing Bureaux and Clearing House Services for reimbursement of claims payment transaction between Handling and Issuing Bureaux;

“Secretariat” means the Secretariat of the Council of Bureaux provided for in Article 12 of this Charter;

“Secretary General” means the Secretary General of COMESA provided for in Article 17 of the COMESA Treaty;

“Treaty” means the Treaty Establishing the Common Market for Eastern and Southern Africa; and

“Yellow Card Scheme” means the third-party motor vehicle insurance scheme established under the Protocol.

ARTICLE 2

GOVERNANCE OF COUNCIL OF BUREAUX

Subject to article 174 of the Treaty and Articles 3(5) and 18 of the Protocol, the governance of the Council of Bureaux as an institution of the COMESA shall vest in the Council of Bureaux regulated under the framework of agreements, constitutions and regulatory instruments as may be adopted by the Council of Bureaux or between its members.

ARTICLE 3

AIMS AND OBJECTIVES OF COUNCIL OF BUREAUX

1. Pursuant to Article 174 (2)(f) of the Treaty and Article 2 of the Protocol, the objectives of the Council of Bureaux shall be to provide a compulsory third party motor vehicle insurance scheme providing at least minimum guarantees as those required by the laws in force in the territories of the parties to this Protocol when the vehicles insured are transiting the territories of other contracting parties.
2. In order to achieve this, the Council of Bureaux shall -
 - (a) facilitate cross-border road traffic with regard to compulsory third party motor vehicle liability insurance on entry into other COMESA and non-COMESA member countries which are party to the Yellow Card Scheme;
 - (b) act for the protection of cross-border road traffic victims;
 - (c) improve the functioning of the Yellow Card Scheme;
 - (d) harmonise the systems of compensation for damages occasioned by road traffic accident; and
 - (e) improve accident prevention.
3. The Council of Bureaux aims at coordinating and overseeing over the whole of the COMESA Yellow Card Scheme operations in the region.

ARTICLE 4

FUNDAMENTAL PRINCIPLES

The Council of Bureaux, in pursuit of the objectives stated in Article 2 of the Protocol, shall –

- (a) uphold laws in force on the compulsory third party motor vehicle insurance in the territories of the parties to the Yellow Card Scheme when the vehicles insured are transiting the territories of other member countries;
- (b) ensure transparency and accountability in all its organs;
- (c) ensure efficiency and effectiveness of the Yellow Card Scheme operations;
- (d) ensure efficient, effective and economical allocation of resources; and
- (e) in all policies, structures, systems, programs and activities of the Council of Bureaux and its organs incorporate gender mainstreaming principles.

ARTICLE 5

POWERS AND FUNCTIONS OF THE COUNCIL OF BUREAUX

Subject to the Treaty, Protocol and this Charter, the Council of Bureaux shall-

- (a) admit new members to the Yellow Card Scheme;

- (b) suspend or terminate membership to the Yellow Card Scheme;
- (c) appoint members of the Management Committee;
- (d) make Staff Rules , Financial Rules, Procurement Rules and other rules and regulations as it may consider necessary;
- (e) appoint, on such terms and conditions as it may determine, the Director and such staff of the Secretariat as it considers necessary for the performance of its functions;
- (f) determine the location of the Headquarters of the Council of Bureaux of the Yellow Card Scheme; and
- (g) exercise such other powers and perform such other duties as are conferred or imposed on it by this Charter.

ARTICLE 6

ORGANS OF THE COUNCIL OF BUREAUX

1. There shall be organs of the Council of Bureaux which shall manage the Yellow Card Scheme operations -
 - (a) the Management Committee;
 - (b) Information Technology Sub-Committee;
 - (c) the Secretariat;
 - (d) Reinsurance Pool on the Yellow Card Scheme; and
 - (e) the National Bureaux.
2. The organs of the Council of Bureaux shall act within the powers conferred upon them by or under the provisions of this Charter, the Protocol and the Yellow Card Instruments.

ARTICLE 7

THE MANAGEMENT COMMITTEE

1. The Management Committee shall, for purposes of the COMESA Yellow Card Scheme, be composed of –
 - (a) five members representing National Bureaux who shall be elected on rotational basis for a term of two years by the Council of Bureaux;
 - (b) the Chairperson of the Council of Bureaux, who shall be the Chairperson of the Management Committee;
 - (c) the Vice Chairperson of the Council of Bureaux, who shall serve as the Vice-Chairperson of the Management Committee; and
 - (d) one official of the Secretariat, who shall be an ex-officio member.

2. The Management Committee may establish such sub-committees as it may consider necessary.

ARTICLE 8

MANAGEMENT COMMITTEE MEETINGS

1. The Management Committee shall meet at least twice a year, for the proper discharge of its functions.
2. One of the meetings of the Management Committee shall immediately precede the annual meeting of the Council of Bureaux.

ARTICLE 9

FUNCTIONS OF THE MANAGEMENT COMMITTEE

1. The Management Committee shall be responsible for overseeing the management of the operations of the Yellow Card Scheme.
2. The functions of the Management Committee shall be to-
 - (a) monitor and keep under constant review the work of the Reinsurance Pool of the Yellow Card Scheme, and ensure the Yellow Card Scheme discharges its functions efficiently and effectively;
 - (b) monitor the performance of the National Bureaux and Reinsurance Pool of the Yellow Card Scheme and give direction;
 - (c) allocate funds, to activities that facilitate growth of the Yellow Card Scheme;
 - (d) make recommendations to the Council of Bureaux on matters of management policy aimed at efficient and smooth functioning of the Yellow Card scheme;
 - (e) make recommendations on the appointment and promotion of staff of the Secretariat, other than the Director;
 - (f) recommend to the Council of Bureaux, the appointment of external auditors who shall have demonstrated a high degree of professional skills and are persons of outstanding repute and integrity;
 - (g) determine general underwriting and claims policies and practices;
 - (h) approve reinsurance arrangements;
 - (i) examine the annual accounts and fund management of the Pool and determine its banking and investment policies and recommend to the Council of Bureaux for approval;
 - (j) recommend to the Council of Bureaux for approval of operational instruments including the Staff Rules, Financial Rules and Procurement Rules of the Yellow Card Scheme;

- (k) consider and submit, for approval to the Council of Bureaux, the budget of the Secretariat;
- (l) examine the annual accounts of the Secretariat and recommend to the Council of Bureaux for approval;
- (m) submit reports and recommendations to the Council of Bureaux on the activities of the Yellow Card Scheme on the initiative of the Director, on its own initiative, or through the directives of the Council of Bureaux;
- (n) exercise such other powers and functions as are conferred on it by this Charter and other Yellow Card Instruments or duly delegated to it by the Council of Bureaux; and
- (o) determine, subject to this Charter, its own Rules of Procedure.

ARTICLE 10

DECISION MAKING OF THE MANAGEMENT COMMITTEE

1. The Management Committee shall, by a simple majority of the members present and voting, make recommendations to the Council of Bureaux and in the event of equality of votes, the Chairperson shall have a casting vote.
2. Each Member shall have one vote.
3. Observers shall not have the right to vote.

ARTICLE 11

INFORMATION TECHNOLOGY SUB-COMMITTEE

1. The Sub Committee comprises of Information Technology Directors and Experts from the National Bureaux of Member Countries.
2. The Sub-Committee shall be responsible for the design, development, implementation, operation and security of the Yellow Card Scheme platform and the digital administrative, financial and procurement operations of the Council of Bureaux and its organs.
3. The Information Technology Sub-Committee shall determine its own Rules of Procedure.

ARTICLE 12

THE SECRETARIAT

1. The Director shall be the Chief Executive Officer of the Secretariat of the Council of Bureaux.
2. The Director shall be appointed by the Council of Bureaux to serve in such office for a term of five years and shall be eligible for reappointment for a further term of five years.
3. The Director shall-
 - (a) represent the Council of Bureaux in the exercise of its legal personality;

- (b) be accountable to the Council of Bureaux;
 - (c) be assisted by such other staff as the Council of Bureaux may determine; and
 - (d) be the Secretary to the Council of Bureaux and the Management Committee.
4. The staff shall be recruited and appointed in accordance with Staff Rules and Financial Rules of the Council of Bureaux.

ARTICLE 13

FUNCTIONS OF THE COUNCIL OF BUREAUX SECRETARIAT

1. The Director shall be responsible for the implementation of all the programmes of the Yellow Card Scheme.
2. Without prejudice to paragraph 1 of this Article, the Director shall, in particular-
 - (a) be in charge of the day-to-day operations of the Yellow Card Scheme under the general supervision of the Management Committee;
 - (b) keep under constant review the operations of the Yellow Card Scheme, taking into account the strategies adopted and policy directives of the Council of Bureaux and from time to time make proposals to the Management Committee, aimed at promoting the achievements of the objectives of this Charter;
 - (c) ensure the sound management of the administration and finance of the Yellow Card Scheme;
 - (d) mobilize financial resources for the programmes of the Yellow Card Scheme;
 - (e) establish gender management systems in the Secretariat and ensure gender equality in the staffing of the Secretariat;
 - (f) submit to the Council of Bureaux, through the Management Committee, implementation plans and timetables for each sub-programme;
 - (g) submit to the Management Committee audited accounts of the Council of Bureaux;
 - (h) report to the Council of Bureaux through the Management Committee paid and unpaid subscriptions, subventions, technical assistance, grants and other financial support received on behalf of the Yellow Card Scheme; and
 - (i) respond to the opinions of the Council provided pursuant to Article 175(3) of the Treaty; and
 - (j) on his or her own initiative or as may be assigned to him or her by the Council of Bureaux or the Management Committee, undertake such work and studies and perform such services; which relate to the objectives of the Yellow Card Scheme.
3. In the performance of their duties, the Director and the staff of the Secretariat shall not seek or receive instructions from any member, bodies or authority external to the Yellow Card

Scheme.

4. The Director and the staff of the Secretariat shall refrain from actions, which may undermine their positions as international officials responsible only to the Yellow Card Scheme.
5. Each member shall undertake to respect the international character and responsibilities of the Director and the staff of the Secretariat and shall not seek to influence them in the discharge of their responsibilities.
6. The Council of Bureaux and the Management Committee may authorize the Director to seek the assistance of Member States, other States and organizations, to co-operate with the Yellow Card Scheme in the execution of the projects for which the Yellow Card Scheme has obtained assistance.
7. The terms and conditions of service of the Director and other staff shall be determined by the Council of Bureaux.
8. In appointing staff to the Secretariat, subject to the paramount importance of securing the highest standards of integrity, efficiency and technical competence, regard shall be had to the desirability of maintaining the principle of equal opportunities and an equitable distribution of appointments to such offices among citizens of all the Member States.

ARTICLE 14

CO-OPERATION WITH OTHER ORGANISATIONS

The Council of Bureaux of the Yellow Card Scheme may enter into agreements with other organizations or insurance companies or firms in furtherance of its objectives.

ARTICLE 15

RELATIONSHIP BETWEEN THE COUNCIL OF BUREAUX OF THE YELLOW CARD SCHEME AND COMESA

1. The Council of Bureaux of the Yellow Card Scheme shall enter into co-operation agreements with the COMESA Secretariat and COMESA institutions for the purpose of establishing close working relationships as provided under Article 175(2) of the Treaty.
2. The Council of Bureaux of the Yellow Card Scheme shall maintain a close working relationship with COMESA to ensure that the provisions of the Treaty, the Protocol, this Charter and other Yellow Card instruments are implemented.

ARTICLE 16

FINANCIAL RESOURCES

1. Financial resources of the Council of Bureaux of the Yellow Card Scheme shall be derived from annual contributions of the members of the Council of Bureaux, funds allocated from the Yellow Card Reinsurance Pool and cooperating partners.

2. Gifts, legacies and donations shall be accepted subject to consultations with the Chairperson of the Council of Bureaux, who shall report to the next meeting of the Council of Bureaux

ARTICLE 17

BUDGET OF THE COUNCIL OF BUREAUX

1. The Council of Bureaux shall have a budget for each financial year.
2. The Council of Bureaux shall consider the draft budget prepared and submitted by the Director for each financial year for approval.
3. The contributions to the budget of the Council of Bureaux by each member of the Council shall be equal.
4. The financial year of the Council of Bureaux shall start from the first day of January and end on the last day of December.
5. There may be a supplementary budget approved by Management Committee, subject to approval by the Council of Bureaux, to meet supplementary expenditure of the Council of Bureaux.

ARTICLE 18

REPORTS OF ACCOUNTS

1. The Director shall keep proper accounts and records of all activities of the Council of Bureaux.
2. External Auditors appointed by the Council of Bureaux shall audit such accounts, in respect of each financial year.
3. The Director shall prepare and submit to the Council of Bureaux an annual report containing an audited statement of accounts.

ARTICLE 19

FINANCIAL RULES

The Council of Bureaux shall be governed by Financial Rules approved by the Council of Bureaux.

ARTICLE 20

AUDITING OF ACCOUNTS

1. The accounts of the Secretariat relating to each financial year shall be prepared in accordance with international standards and reports and shall be audited in the following financial year by the external auditors.
2. Such external auditors shall be based in the COMESA region and be qualified to practice in

accordance with the national laws of the Member States.

3. The external auditors shall be of outstanding repute and integrity and shall have demonstrated a high degree of professional skills.
4. the Management Committee shall provide general guidance to the external auditors.
5. The external auditors shall submit their report to the Director no later than six months from the expiry of the financial year to which the accounts audited relate.
6. Upon receipt of the report of the external auditors, the Director shall circulate copies thereof to every National Bureaux and convene a meeting of the Management Committee to examine the report and submit it to the Council of Bureaux for adoption.

ARTICLE 21

STATUS

1. The Council of Bureaux, as an institution of COMESA recognized under Article 174(2)(f) of the Treaty, shall have international legal personality and corporate body status.
2. The Director shall negotiate a Host Agreement with a Member State in whose territory the Headquarters of the Council of Bureaux of the Yellow Card Scheme shall be situated.

ARTICLE 22

IMMUNITIES AND PRIVILEGES

1. Member Countries shall grant, in their respective territories, such privileges and immunities to the officials and property of the Council of Bureaux as are granted to the officials and property of the COMESA as provided for in the legal instrument on privileges and immunities of COMESA and the Treaty.
2. Member Countries and National Bureaux undertake to respect the international character of the responsibilities of the Director and the staff of the organs of the Council of Bureaux and shall not seek to unduly influence them in the discharge of their responsibilities.
3. Subject to the other provisions of this Charter, in the performance of their duties, the Director, and the staff of the Council of Bureaux shall refrain from any actions which might adversely reflect on their position as international officials responsible only to the Council of Bureaux.

ARTICLE 23

WITHDRAWAL FROM THE COUNCIL OF BUREAUX OF THE YELLOW CARD SCHEME

1. Any member wishing to withdraw from the Council of Bureaux shall give to the Director at least six months written notice of its intention to withdraw and at the end of such period, if such notice is not withdrawn, cease to be a member of the Council of Bureaux of the Yellow Card Scheme.

2. During the period referred to in paragraph 1 of this Article, a member wishing to withdraw from the Council of Bureaux shall nevertheless observe the provisions of this Charter and the Protocol.
3. A Member Country shall remain liable for the discharge of its obligations under this Charter and the Protocol.
4. The obligations assumed by Member Countries under this Charter and the Protocol shall, to the extent necessary, survive the termination of membership of any Member Country.
5. A withdrawing Member Country shall be entitled to claim any property, assets or rights over any of the property and assets of the Council of Bureaux only upon the termination of the Council of Bureaux of the Yellow Card Scheme.

Any property and assets of the Council of Bureaux situated in the territory of a Member Country and under the control of a Member Country who has withdrawn from membership shall continue to be the property of the Council of Bureaux and be available to the Council of Bureaux.

ARTICLE 24

SETTLEMENT OF DISPUTES

1. Any dispute arising from the interpretation or application of this Charter shall be settled amicably by the parties concerned.
2. Upon failure to amicably settle such dispute, any aggrieved party may submit it to the Court for arbitration.
3. The decision of the Court shall be final and binding on the parties.

ARTICLE 25

DISSOLUTION OF THE COUNCIL OF BUREAUX OF THE YELLOW CARD SCHEME

As an institution of COMESA, the Council of Bureaux may only be dissolved by the COMESA Council of Ministers.

ARTICLE 26

ACCESSION TO THE CHARTER

Any prospective signatory of this Charter desiring to join the Council of Bureaux after the entry into force of this Charter shall accede to this Charter by depositing an Instrument of Accession with the Secretary General who is the official depository.

ARTICLE 27

DEPOSITORY

1. The text of the Charter shall be deposited with the Secretary General, who shall notify Member Countries of the Council of Bureaux of the date of entry into force of the Charter and send certified copies of the Charter to Member Countries.

2. The Secretary General shall advise Member Countries of the Council of Bureaux of dates of receipt of the Instrument of Accession.

ARTICLE 28

AMENDMENT CLAUSE

1. Any Member Country may submit proposals for the amendment of this Charter.
2. Any proposals for the amendment of this Charter shall be submitted to the Director in writing who shall, within thirty days of its receipt, communicate it to the Member Countries.
3. The Member Countries who wish to comment on the proposals shall do so within ninety days from the date of the dispatch of the proposal by the Director.
4. After the expiration of the period prescribed under paragraph 3 of this Article, the Director shall submit the proposals and any comments thereon received from the Member Countries of the Council of Bureaux through the Management Committee.
5. Any amendment to this Charter shall be adopted by the Council of Bureaux and shall enter into force when ratified by two-thirds of the Member Countries.

ARTICLE 29

ENTRY INTO FORCE OF THE CHARTER

The Charter shall enter into force when adopted by the Council of Ministers

By Order of Council

Dated 1st December 2022