KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2013

NAIROBI, 18th June, 2013

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THE INSURANCE (AMENDMENT) BILL, 2013

A Bill for
An Act of Parliament to amend the Insurance Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Insurance (Amendment) Act, 2013.

2. Section 3A of the Insurance Act, in this Act referred to as “the principal Act”, is amended—

   (a) by deleting paragraph (d) and (e);

   (b) by renumbering the existing provision as subsection (1) and adding the following new subsection —

   (2) For better clarity, the objects of the supervision of insurers and reinsurers by the Authority under this Act shall be -

       (a) to promote the maintenance of a fair, safe and stable insurance sector;

       (b) to protect the interest of the insurance policyholders and beneficiaries, and

       (c) generally to promote the development of the insurance sector.

3. Section 22 of the principal Act is amended by deleting the word “Kenya” wherever it occurs and substituting therefor the words “a Partner State of the East African Community”.
4. Section 23 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection —

(4) Out of the amount of the paid-out capital under subsection (1), not less than one third shall be owned by citizens of the East African Community Partner States, by a partnership whose partners are all citizens of such states, wholly owned by citizens of such states or by the Government.

5. Section 29 of the principal Act is amended —

(a) by deleting subsection (1) and substituting therefor the following new subsection —

(1) Subject to subsection (3), no person shall be registered under section 31 except a person who has re-insurance strategies and arrangements, being strategies and arrangements approved by the Commissioner, for insurance of liabilities in respect of which persons, property or interests are, or are to be, insured by the insurer in the course of carrying on insurance business.

(b) in subsection (2), by inserting the words "strategies or" immediately after the word "arrangements".

(c) in subsection (3), by inserting the words "strategies or" immediately after the word "arrangements".

(d) in subsection (4), by inserting the words "strategies and" immediately before the word "arrangements".

6. Section 54 of the principal Act is amended by inserting the following new subsection immediately after subsection (5) —
(6) A person who contravenes the provisions of this section commits an offence.

7. Section 61 of the principal Act is amended in subsection (1) by deleting the word “four months” substituting therefor the words “three months”.

8. Section 67C of the principal Act is amended –

(a) in subsection (2) by deleting the words “any person” appearing in paragraph (i) and substituting therefor the words “a competent person familiar with the business of the insurer”.

(b) in subsection 10 by inserting a proviso at the end as follows –

Provided that this subsection does not apply to any sum due as contributions or penalties to the Policyholder Compensation Fund.

9. The principal Act is amended by repealing section 68A and replacing it with the following new section –

68A. (1) Notwithstanding any other provision of this Act, the Authority shall, from time to time, carry out an assessment of the professional, financial and moral suitability of the persons managing, controlling or having a significant ownership or significant beneficial interest in a person licensed under this Act.

(2) An assessment under subsection (1) shall be in accordance with such criteria as may be prescribed in regulations.

(3) Where, upon an assessment under this section, the Authority is satisfied as to the professional, financial and moral suitability of the person managing, controlling or having a significant ownership or significant beneficial interest in a person licensed under this Act, it shall so certify in writing.
(4) A person who, upon an assessment under this section, is not certified by the Authority as fit and proper to manage or control a person licensed under this Act, shall be deemed to be disqualified from holding such office.

10. Section 146 of the principal Act is amended by deleting subsection (2).

11. Section 153 of the principal Act is amended—

(a) in subsection (2), by deleting the expression “Kenya citizens” wherever it occurs and substituting with the words “citizens of the East African Community Partner States”;

(b) by deleting subsection (5).

12. Section 169 of the principal Act is amended—

(a) in subsection (2), by inserting the words “and vice-chairman” immediately after the word “chairman”;

(b) in subsection (3), by inserting the words “or vice-chairman” immediately after the word “chairman”.

13. Section 170 of the principal Act is amended in subsection (1) by deleting the word “subordinate court” and substituting therefor the words “Resident Magistrate’s Court”.

14. Section 174 of the principal Act is amended in subsection (2) by deleting the words “Attorney-General” and substituting therefor the words “Director of Public Prosecutions”.

15. Section 179 of the principal Act is amended—

(a) by deleting subsection (1) and substituting therefor the following new subsection—
(1) The Cabinet Secretary shall, for the protection of policyholders, establish a Policyholders Compensation Fund, in this section referred to as “the Fund”, to provide compensation to the claimants of insolvent insurers.

(b) in subsection (2A), by renumbering paragraph (d) as paragraph (f) and inserting the following new paragraphs—

(d) participate in the statutory management of an insurer placed under statutory management by the regulator;

(e) liquidate an insurer as may be ordered by a court.

16. Section 197A of the Insurance Act is amended in subsection (2) by deleting item (b).

17. Section 203 of the Insurance Act is amended by deleting the opening statement and replacing with the following—

203. Every insurer shall, in respect of claims arising out of policies of insurance issued by it—

18. Section 204 of the principal Act is amended by deleting the expression “Attorney-General” and substituting therefor the expression “Director of Public Prosecutions”.

Amendment to section 197A of Cap. 487.
Amendment to section 203 of Cap. 487.
Amendment to section 204 Cap.487.
MEMORANDUM OF OBJECTS AND REASONS

This Bill has been submitted by the Cabinet Secretary for the National Treasury in line with proposals announced in the Budget for 2013/2014. The object of this Bill is to clarify the objectives of the insurance supervision and the mandate and responsibilities of the supervisor as set out under the Act.

The Bill also seeks to facilitate the implementation of the EAC Common Market Protocol in particular, the requirement imposed by the Protocol to open up business opportunities to East Africans by allowing the free movement of persons, labour and services across the EAC member States. The Bill thus removes the restriction on ownership of insurance brokers to Kenyan citizens by opening up the ownership of insurance companies to persons from the EAC member States who meet the requirements specified under the Act.

The Bill proposes to protect the interests of policyholders in relation to the Policyholders' Compensation Fund by exempting the contributions to the Fund from a moratorium that would be declared by a statutory manager should an insurer be placed under statutory management. This would ensure that the contributions to the Fund are available for compensation to policyholders in the event an insurer is placed under statutory management.

The Bill proposes to enable the Insurance Regulatory Authority to carry out an assessment of the professional, financial and moral suitability of persons managing or having a significant controlling interest of a licensed person under the Act. This would ensure that criminals are prevented from controlling, holding or being beneficial owners of a significant controlling interest of a financial institution that is not covered under the Banking Act.

The Bill also proposes to align the Act with the Constitution to provide for the institution of proceedings for an offence under the Act only with the prior written sanction of the Director of Public Prosecutions.

The Bill also proposes to amend the Act to define a claimant in relation to compensation of a policyholder following the insolvency of his or her insurer to include a beneficiary to the policy such as a third party claimant. It also expands the mandate of the Policyholders Compensation
Fund to include the participation of insolvent insurance companies in the liquidation process.

The Bill proposes to amend the Act to provide for the timely compensation of policyholders of lodging i.e. within ninety days a claim. This is expected to address issue of unpaid or delayed claims as the Act provides for compensation within ninety days of submitting all relevant documents.

This Bill is not a Bill concerning county government.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 18th June, 2013.

BENJAMIN LANGAT,
Chairperson,
Committee on Finance, Planning and Trade.
Section 3A of Cap. 487 which it is proposed to amend—

3A. The objects and functions of the Authority shall be to—

(a) ensure the effective administration, supervision, regulation and control of insurance and reinsurance business in Kenya;

(b) formulate and enforce standards for the conduct of insurance and reinsurance business in Kenya;

(c) license all persons involved in or connected with insurance business, including insurance and reinsurance companies, insurance and reinsurance intermediaries, loss adjusters and assessors, risk surveyors and valuers;

(d) protect the interests of insurance policy holders and insurance beneficiaries in any insurance contract;

(e) promote the development of the insurance sector;

(f) advise the Government on the national policy to be followed in order to ensure adequate insurance protection and security for national properties; and

(g) issue supervisory guidelines and prudential standards from time to time, for the better administration of the insurance business of persons licensed under this Act;

(h) share information with other regulatory authorities and to carry out any other related activities in furtherance of its supervisory role;

(i) undertake such other functions as may be conferred on it by this Act or by any other written law.

Section 22 of Cap. 487 which it is proposed to amend—

22. Subject to section 23, no person shall be registered as an insurer under this Act unless that person is a body corporate incorporated under the Companies Act and at least one third of the controlling interest, whether in terms of shares, paid up share capital or voting rights, as the
case may be, are wholly owned by citizens of Kenya or by partnership whose partners are all citizens of Kenya or by a body corporate whose shares are owned by citizens of Kenya or is wholly owned by the Government.

**Subsection (4) of Section 23 of Cap. 487 which it is proposed to amend**—

(4) Out of the amount of the paid-up capital under subsection (1), not less than one third shall be owned by Kenya citizens or by a partnership whose partners are all citizens of Kenya or wholly owned by citizens of Kenya or is wholly owned by Government.

**Section 29 of Cap. 487 which it is proposed to amend**—

29. (1) Subject to subsection (3) of this section, no person shall be registered under section 31 except a person who has arrangements, being arrangements approved by the Commissioner for reinsurance of liabilities in respect of which persons, property or interests are, or are to be, insured by the insurer in the course of carrying on insurance business.

(2) The Commissioner shall not approve arrangements for reinsurance made or proposed to be made unless the amount of premium and commission to be paid or the manner in which the amount of premium and commission are to be ascertained are specified in the contract of reinsurance.

(3) The Commissioner shall not approve arrangements for reinsurance where, in the opinion of the Commissioner, the retention limits are too low or too high.

(4) The Commissioner may, in determining whether to approve arrangements for reinsurance made, or proposed to be made, by an insurer, have regard to all matters that he considers relevant and in particular to—

(a) the class or classes of insurance business carried on or proposed to be carried on by the insurer;

(b) the amount of premium received by or due to the insurer during his last preceding financial year in respect of each class of insurance business carried on by him;
(c) the amount of premiums expected by the insurer during the next financial year in respect of each class of insurance business to be carried on by the insurer;

(d) the size of contingency loading which can be built into the premium rates of the insurer;

(e) the amount of reinsurance commissions received by or due to the insurer during his last preceding financial year in respect of each class of insurance business carried on by the insurer;

(f) the amount of reinsurance commissions expected to be received by the insurer during the next financial year in respect of each class of insurance business to be carried on by the insurer;

(g) the price of reinsurance;

(h) the nature and value of the assets of the insurer;

(i) the capital reserves of the insurer and cost of servicing capital, investment policy and investment income;

(j) probability, number and size of losses expected and risk characteristics of the insurer’s portfolio;

(k) inter-dependence of exposure units; and

(l) the person or persons by whom the reinsurance is or is proposed to be undertaken.

(5) The Minister, having regard to such matters as he considers relevant, may, by notice in writing, exempt an insurer, subject to such terms and conditions and for such period as he specifies in the notice, from the requirements of subsection (1).

Section 54 of Cap. 487 which it is proposed to amend—

54. (1) Subject to subsection (3), every insurer incorporated in Kenya shall, in respect of all insurance business wherever carried on by the insurer, after the end of each financial year, prepare for the year, in
accordance with the prescribed forms, a revenue account for the year, a balance sheet as at the end of the year and a profit and loss account for the year, or, in the case of a company not trading for profit, an income and expenditure account of the year:

Provided that an insurer shall in respect of every quarter, prepare and submit to the Commissioner, within thirty days of the end of the quarter to which it relates, an unaudited revenue account, balance sheet, profit and loss account and statement of admitted assets and admitted liability.

(1A) The revenue account, balance sheet, profit and loss account and financial statement required to be prepared under subsection (1) shall be prepared in accordance with International Financial Reporting Standards and such accepted Kenyan reporting standards as may be prescribed.

(2) Every reserve shall be calculated in accordance with the method approved for the purpose by the Commissioner.

(3) All amounts which are required to be shown in any account or balance sheet shall be shown in Kenya currency to the nearest shilling.

(4) Notwithstanding the definition of "financial year" in section 2, the first financial year after the appointed date of an insurer shall mean the period ending on 31st December next after the appointed date.

(5) In subsection (1A), "International Financial Reporting Standards" means—

(a) the standards issued by the International Accounting Standards Board of London; or

(b) Kenyan accepted standards developed by the Institute of Certified Public Accountants of Kenya.

Subsection (1) of Section 61 of Cap. 487 which it is proposed to amend—

(1) Every account, balance sheet, certificate, abstract, return or statement required to be prepared or prepared under sections 54, 56, 57, 58 and 59 shall be deposited with the Commissioner within four months after the end of the period to which they relate:
Subsection (2) and (10) of section 67(c) of Cap. 487 which it is proposed to amend—

(2) The Commissioner may, with the approval of the Board—

(i) appoint any person (in this Act referred to as “a manager”) to assume the management, control and conduct of the affairs and business of an insurer to exercise all the powers of the insurer to the exclusion of its board of directors, including the use of its corporate seal;

(ii) remove any officer or employee, of an insurer who, in the opinion of the commissioner, has caused or contributed to any contravention of any provisions of this Act or any regulations or directions made thereunder or to any deterioration in the financial stability of the insurer or has been guilty of conduct detrimental to the interests of policy-holders or other creditors of the insurer;

(iii) appoint three competent persons familiar with the business of insurers to its board of directors to hold office as directors who shall not be removed from office without the approval of the Commissioner;

(iv) by notice in the Gazette, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the insurer in favour of any officer, employee or any other person.

(10) For the purposes of discharging his responsibilities, manager shall have power to declare a moratorium on the payment by the insurer of its policy holders and other creditors and the declaration of a moratorium shall—

(a) be applied equally to all classes of policy holders and creditors, subject to such exemptions in respect of any class of insurance as the manager may, by notice in the Gazette specify;

(b) suspend the running of time for the purpose of any law of limitation in respect of any claim by any policy holder or creditor of the insurer;
(c) cease to apply upon the termination of the manager's appointment whereupon the rights and obligations of the insurer, its policy holders and creditors shall, save to the extent provided in paragraph (b), be the same as if there had been no declaration under the provisions of this subsection.

Section 68A of Cap. 487 which it is proposed to amend

68A. (1) Notwithstanding any other provisions of this Act, the Authority shall upon receipt of a requisition signed by not less than ten percent of policy holders with the insurers, carry out an assessment of the integrity and moral suitability of the persons managing, controlling or having a significant ownership or significant beneficial interest in a person licensed under this Act.

(2) An assessment under subsection (1) shall be in accordance with the rules of natural justice, the principles of fair trial and such criteria as may be prescribed in regulations.

(3) Upon an assessment under this section, the Authority shall, within reasonable time, convey its findings to the insurer and the person licensed under this Act on whom an assessment has been carried out.

Subsection (2) of section 146 of Cap. 487 which is proposed to delete—

(2) An insurer may, within fourteen days after receiving reasons for refusal under this section, appeal to the Tribunal against the refusal, and thereupon the Tribunal may confirm the refusal or may direct the Company to accept the reinsurance concerned, and any decision of the Tribunal on an appeal shall be final and conclusive.

Section 153 of Cap. 487 which it is proposed to amend—

153. (1) Where the Commissioner is satisfied that -

(a) volume of business which is likely to be available to, and the earning prospects of, an applicant are adequate;

(b) the business in respect of which the application is made will be conducted in accordance with accepted professional standards;

(c) in the case of a corporate person the financial standing of the applicant is sound:
(d) the knowledge, skill and experience of the applicant or, in the case of a corporate person, the knowledge, skill and experience of the principal officer in Kenya, are adequate;

(e) in the case of a broker, the professional indemnity policy of insurance is satisfactory;

(f) the applicant is not disqualified under this Act:

(g) the applicant is, and is likely to continue to be, able to comply with such of the provisions of this Act and regulations and directions made or issued under this Act as are applicable to the applicant;

(h) the prescribed fee has been paid:

(i) it is otherwise in the public interest that the applicant should be registered,

he may, subject to such terms and conditions as he considers necessary, including in the case of a broker the provision of such bank guarantee as may be prescribed, register or renew the registration of an applicant under this Part.

(2) Subject to subsection (3) and notwithstanding anything to the contrary contained in this Act, no broker shall be registered under this Act unless he is a company incorporated under the companies Act with a paid up capital of not less than one million shillings of which not less than sixty percent is owned by Kenya citizens or by a partnership whose partners are all citizens of Kenya or by a corporate body whose shares are wholly owned by citizens of Kenya or which is wholly owned by the Government:

Provided that a broker who is not incorporated under the Companies Act on the appointed date may be registered as on that date but his registration shall not be renewed at the time of the next renewal unless he is incorporated under the Companies Act at that time.

(3) The provisions of subsection (1) shall, in the case of insurers registered prior to the 10th June, 1999, apply with effect from 11th June, 2002.
(3) A broker already carrying on business as an insurance broker on
the appointed date without complying with the provisions of subsection
(2) relating to paid up capital may be registered as a broker, but at the time
of each subsequent renewal of the registration until he complies fully with
the requirement his registration shall not be renewed unless he has
acquired after the immediately preceding registration or renewal of
registration, as the case may be, paid up capital or additional paid up
capital equal to not less than one-third of the deficiency which existed on
the appointed date.

(4) Subject to subsection (3), a broker already carrying on business
as an insurance broker on the appointed date without complying with the
minimum shareholding by Kenya citizens as required under subsection (2)
shall comply with that requirement before the expiry of three years from
the appointed date.

(5) Notwithstanding anything to the contrary contained in this Act,
no insurance agent shall be registered under this Act unless -

(a) if an individual, he is a citizen of the East African Community; or

(b) if a partnership, all the partners are citizens of the East African
Community; or

(c) if a company incorporated under the Companies Act, it is wholly
owned by citizens of the East African Community.

*Subsection (2) and (3) of Section 169 of Cap. 487 which it is proposed to amend—*

(2) The Tribunal shall consist of a chairman and not less than two
and not more than four other members who shall be appointed by the
Minister and shall hold office for such period and upon such terms and
conditions as the Minister may determine.

(3) The quorum for a meeting of the Tribunal shall be the chairman
and two other members.

*Subsection (1) of Section 170 of Cap. 487 which it is proposed to amend—*

(1) On the hearing of an appeal the Tribunal shall have all the
powers of a subordinate court of the first class to summon witnesses, to
take evidence upon oath or affirmation and to call for the introduction of books and other documents.

Subsection (2) of section 174 of Cap. 487 which it is proposed to amend—

(2) No proceedings for an offence under this Act shall be instituted without the written sanction thereto of the Attorney-General.

Subsection (1) and (2A) of Section 179 of Cap. 487 which it is proposed to amend—

(1) The Minister shall, for the protection of policy holders, establish a policy holders' compensation fund, in this section referred to as "the Fund", to provide compensation to policy holders of an insurer wound up under section 123(2).

(2A) The functions of the Board shall be to-

(a) provide compensation to the policyholders of an insolvent insurer;

(b) monitor, in consultation with the Commissioner where necessary, the risk profile of any insurer;

(c) advise the Minister on the national policy to be followed with regard to matters relating to compensation of policyholders and to implement all government policies relating thereto; and

(d) perform such other functions as may be conferred on it by this Act or by any other written law.

Subsection (2) of section 197A of Cap. 487 which it proposed to amend—

(2) The tax shall be computed as a percentage of the gross direct premiums written by an insurer or a re-insurer registered or authorised to carry on insurance business in Kenya or reinsurance premiums ceded to reinsurance business outside of Kenya, as the case may be.

The opening statement of Section 203 of Cap. 487 which it is proposed to amend—

(1) Where the claimant has submitted all the relevant documents, every insurer shall, in respect of claims arising out of policies of insurance issued by it—.
Section 204 of Cap. 487 which it is proposed to amend –

204. The Attorney-General may, pursuant to the provisions of the Criminal Procedure Code, appoint public prosecutors for the purposes of cases arising under this Act.