THE PREFERENTIAL TRADE AREA RE-INSURANCE COMPANY (MANDATORY RE-INSURANCE CESSIONS) ACT, 1993

No. 3 of 1993

Date of Assent: 17th August, 1993

Date of Commencement: 1st January, 1993

ARRANGEMENT OF SECTIONS

Section

An Act of Parliament to provide for mandatory re-insurance cessions to the Preferential Trade Area Re-insurance Company and for connected purposes

WHEREAS by the Agreement establishing the Preferential Trade Area Re-insurance Company (in this Act referred to as the "Company") which came into force on 23rd November, 1990, the Government of Kenya undertakes to guarantee that all insurance and re-insurance institutions registered or authorized to carry on insurance business in Kenya shall offer to place with the company a minimum of ten per cent of each of their re-insurance cessions, both present and future, including re-insurance cessions in life or any other type of insurance business, and also to ensure that national and foreign establishments engaged in direct insurance activities in Kenya conclude separate re-insurance arrangements for the local risks;

AND WHEREAS under the said Agreement the Company may accept or decline all or part of such minimum re-insurance cessions offered to be placed with it;

AND WHEREAS it is expedient to make provisions giving legal effect to articles 20 and 21 of the said Agreement;

NOW, THEREFORE, BE IT ENACTED by the Parliament of Kenya as follows:—

Short title and commencement.

1. This Act may be cited as the Preferential Trade Area Re-insurance Company (Mandatory Re-insurance Cessions) Act, 1993 and shall be deemed to have come into operation on the 1st January, 1993.

Interpretation.

2. In this Act, unless the context otherwise requires—

"Agreement" means the Agreement establishing the Preferential Trade Area Re-insurance Company;

"Company" means the Preferential Trade Area Re-insurance Company established by article 2 of the Agreement;

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"Commissioner of Insurance" means the Commissioner of Insurance appointed under section 3 of the Insurance Act;

"insurance business" has the meaning assigned to it in section 2 of the Insurance Act;

"insurance and re-insurance institutions" means any insurance and re-insurance institution of any kind, public or private, registered or authorized to carry on insurance business in Kenya, and includes national insurance and re-insurance institutions;

"Minister" means the Minister for the time being responsible for insurance;

"sub-region" means the Eastern and Southern African sub-region.

Mandatory re-insurance cessions to the Company.

3. (1) Any insurance or re-insurance institution shall, on or after the commencement of this Act, offer to place with the Company a minimum of ten per cent of each of its re-insurance cessions, both present and future, placed in the international insurance market.

(2) Subsection (1) shall not restrict the right of the Company to accept re-insurance cessions in life or any other type of insurance business.

(3) The minimum re-insurance cessions prescribed in subsection (1) of this section are independent of any mandatory cessions prescribed under section 145 of the Insurance Act.

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(4) Subject to any amendment to article 20 of the Agreement in respect of the minimum re-insurance cessions, the Minister may by order published in the Gazette vary the minimum re-insurance cessions specified in subsection (1) of this section.

Reinsurance arrangements for local risks.

4. (1) Where local insurance business is covered by global re-insurance arrangements outside the sub-region, every national, local or foreign establishment engaged in insurance and re-insurance activities in Kenya shall, on or after the commencement of this Act, conclude separate re-insurance arrangements for the local risks.

(2) Nothing in subsection (1) shall prevent any insurance or re-insurance institution from entering into direct re-insurance arrangements with the company in respect of the whole or part of the risks undertaken by such institution or from making such other arrangements as are mutually acceptable to the Company and such institution.

Company to accept or decline business.

5. (1) Where the Company deems it necessary or prudent, the Company shall exercise the right to accept or decline all or part of the business offered to be placed with it under this Act, and in that case the Company shall furnish the insurance or re-insurance institution concerned, as the case may be, if so requested, with the reasons for its refusal.

(2) The ceding insurance or re-insurance institution may appeal against the refusal to the Board of Directors of the Company in accordance with article 21 of the Agreement.

(3) Where re-insurance cessions are refused under this section any liability of the insurance or re-insurance institution concerned under this Act in respect of such re-insurance cessions shall cease.

Commissioner of Insurance to administer Act.

6. (1) The Commissioner of Insurance shall administer this Act.

(2) The Commissioner of Insurance may, in the discharge of his functions under subsection (1), with the prior approval of the Minister issue such directions as he deems necessary or expedient for carrying out the purposes of this Act.

(3) A person aggrieved by any direction issued by the Commissioner under subsection (2) may, within thirty days from the date the direction is issued to him, appeal against such direction to the Tribunal established under section 169 of the Insurance Act, and the Tribunal may, subject to such terms and conditions as it may consider necessary, confirm, reverse, cancel or vary any such direction.

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Offences and penalties.

7. (1) Any person who fails—

(*a*) to comply with section 3; or

(*b*) to comply with any directions issued by the Commissioner of Insurance under section 6,

shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings and, if the offence continues to a further fine of two thousand shillings for every day during which the offence continues.

(2) Where a person guilty of an offence under subsection (1) is a natural person that person shall be liable, in addition to, or in lieu of, a fine, to imprisonment for a term not exceeding three years.

(3) Where a person guilty of an offence under subsection (1) of this section is a body corporate, then notwithstanding the imposition of any penalty, the commission of that offence shall constitute sufficient grounds whereby the Commissioner may apply to the court for the winding-up of that body corporate, if such body is incorporated in Kenya.