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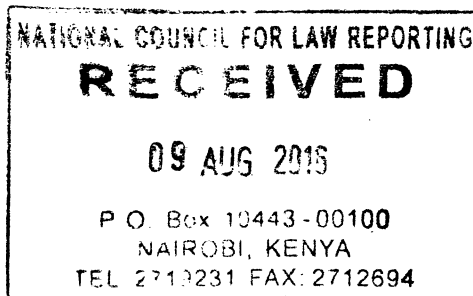
NAIROBI, 24th June, 2016

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THE INSURANCE (AMENDMENT) BILL, 2016

A Bill for

AN ACT of Parliament to amend the Insurance Act

ENACTED by Parliament of Kenya, as follows—

1. This Act may be cited as the Insurance (Amendment) Act, 2016.

Short title.

2. Section 2 of the Insurance Act, in this Act referred to as the “principal Act”, is amended in the definition of the expression “insurance business” by inserting the following new paragraph immediately after paragraph (c)—

Amendment of section 2 of Cap. 487.

(d) *takaful* insurance business based on group participation guaranteeing each of the members against defined loss or damage.

3. The principal Act is amended by inserting the following new section immediately after 19—

Insertion of new section 19A to Cap. 487.

Takaful insurance business.

19A. (1) A person shall not undertake *takaful* insurance business unless that person is licensed under this Act except where that person is exempted in accordance with this Act.

(2) The Cabinet Secretary may, after consultation with the Authority, make Regulations providing for the licensing and supervision by the Authority of persons carrying on *takaful* insurance business.

4. Section 25 of the principal Act is amended in subsection (1)—

Amendment of section 25 of Cap. 487.

(a) by deleting paragraph (a) and substituting therefor the following paragraph—

(a) that the capital of the insurer may consist of—

(i) in the case of a new company, ordinary shares each of which has a single face value with voting rights and shall be irredeemable, and non-cumulative preference shares; and

(ii) in the case of existing insurers, in addition to the capital in subparagraph (1), subordinated loans as may be approved by the Authority, share premiums, reserves and any other form of capital as may be determined by the Authority from time to time.

(b) by inserting the following new subsection immediately after subsection (1)—

(1A) The capital provided under subsection (1)(a) shall not rank in priority to policyholders' interest at the time of liquidation.

5. The principal Act is amended by repealing section 41 and substituting therefor the following section—

Repeal and replacement of section 41 of Cap. 487.

Capital adequacy.

41. (1) An insurer carrying on insurance business in Kenya shall at all times maintain the capital adequacy ratio of one hundred per centum.

(2) An insurer carrying on both long term and general insurance business shall at all times maintain separate capital adequacy ratios.

6. The principal Act is amended by repealing section 42 and replacing it with the following new section—

Repeal and replacement of section 42 of Cap. 487.

Determination of capital required.

42. (1) In determining the capital required, an insurer shall—

(a) take into consideration the capital for insurance risk, market risk, credit risk and operational risk; and

(b) apply such capital charges on assets and liabilities as shall be determined by the Authority from time to time.

(2) For the purpose of this section, "capital charge" means the proportion of capital required to take care of the potential deterioration of the economic value of an asset and the uncertainty in estimating

liability due to the occurrence of an adverse event.

43. 7. The principal Act is amended by repealing section

Repeal of section 43 of Cap.487.

8. Section 57 of the Insurance Act is amended—

Amendment of section 57 of Cap.487.

(a) in subsection (1)—

- (i) by deleting the words “who carries on long term insurance business”;
- (ii) by inserting the words “by the Authority” immediately after the words “prescribed” appearing in paragraph (b);
- (iii) by deleting the proviso appearing immediately after paragraph (b);

(b) in subsection (2)—

- (i) by deleting the words “to his long term” appearing in paragraph (a);
- (ii) by deleting paragraph (b) and substituting therefor the following paragraph—

(b) in respect to long-term insurance business or any other funded insurance business, a determination of any excess over those liabilities of the assets representing the fund or funds maintained by the insurer in respect of that business; and where any rights of any long term policyholders to participate in profits relate to particular parts of such a fund, a determination of any excess of assets over liabilities in respect of each of those parts.

(c) by inserting the following new paragraph immediately after paragraph (b)—

(c) a financial condition report in the form prescribed by the Authority providing an assessment of material risks and issues impacting on the financial condition of the insurer;

(d) in subsection (3)—

- (i) by inserting the words “by the Authority” immediately after the word “prescribed”;
- (ii) by deleting the words “of its long term insurance business as on the date on which the investigation is made”;
- (e) in subsection (5) by deleting the words “determined in accordance with regulations” and substituting therefor the words “as prescribed by the Authority”.

9. Section 58 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “long term”;

Amendment of
section 58 of Cap.
487.

- (b) by deleting subsection (2) and substituting therefor the following subsection—

(2) The basis of valuation of technical reserves adopted shall be as prescribed by the Authority;

- (c) in subsection (3)—

- (i) by deleting the words “of a statutory fund”;
- and

- (ii) by deleting the words “the minimum basis prescribed” and substituting therefor the words “the prescribed basis”;

- (d) in subsection (4)—

- (i) by deleting the words “relating to a statutory fund”; and

- (ii) by deleting the words “the minimum basis prescribed” and substituting therefor the words “the prescribed basis”; and

- (e) in subsection (8) by deleting the words “long term”.

10. Section 115 of principal Act is amended in subsection (7) by deleting the words “minimum basis prescribed” appearing in the definition of the term “proper basis” and substituting therefor the words “basis prescribed by the Authority”.

Amendment of
section 115 of Cap.
487.

11. Section 203 of the principal Act is amended in

Amendment of
section 203 of Cap.

subsection (1) by deleting the words “ninety days” wherever they appear and substituting therefor the words “thirty days”. 487.

12. The Second Schedule to the principal Act is amended in paragraph (2)(b) by deleting the word “minimum” and substituting therefor the word “maximum”.

Amendment of the
Second Schedule to
Cap 487.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

This Bill has been submitted by the Cabinet Secretary for the National Treasury in line with the proposals announced in the Budget for 2016/2017. The object of this Bill is to amend the Insurance Act to enhance insurance business in Kenya.

The Bill proposes to provide for the licensing and regulation of *takaful* insurance business in Kenya in order to encourage international investment in this sector, which is a target area for the Nairobi International Financial Centre.

The Bill further proposes to amend the Act to enable the operationalisation of risk-based solvency requirements for insurers that were introduced in the Finance Act, 2013. Among those proposals is a requirement that an insurer should maintain a 100% capital adequacy ratio at all time.

Statement of the delegation of legislative powers and the limitation of fundamental rights and freedoms.

The Bill does not delegate any legislative power nor limit any fundamental right or freedom.

Statement of how the Bill concerns county governments.

The Bill does not concern county governments in terms of Article 109(4) of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution.

The Bill is a money Bill within the meaning of Article 114 of the Constitution.

Dated the 9th June, 2016.

ADEN DUALE,
Leader of the Majority Party, National Assembly.

Section 25 of Cap. 487 which is intended to amend—

The provisions of this Act shall apply to every contract for the design, financing, construction, operation, equipping, management or maintenance of a project or for the provision of public services undertaken as a public private partnership.

25. (1) No insurer being a company limited by shares shall be registered to carry on insurance business unless he satisfies all the following conditions—

(a) that the capital of the company consists only of ordinary shares each of which has a single face value;

Section 41 of Cap. 487 which it is intended to amend—

41. (1) An insurer carrying on in Kenya long term insurance business but not general insurance business shall keep at all times total admitted assets of not less than his total admitted liabilities and ten million shillings or five percentum of the total admitted liabilities, whichever is the higher.

(2) An insurer carrying on in Kenya general insurance business but not long term insurance business shall keep at all times admitted assets of not less than the aggregate value of his admitted liabilities and ten million shillings, or fifteen per cent of his net premium income during his last preceding financial year, whichever is the greater.

(3) An insurer carrying on both long term and general insurance business shall at all times maintain separate margins of solvency in accordance with subsection (1) and (2):

Provided that assets other than those representing the fund or funds maintained by the insurer in respect of his long term insurance business, if they are not included among the assets covering the liabilities and the margin of solvency relating to the insurer's general insurance business, may be included among the assets taken into account in covering the liabilities and the margin of solvency for the insurer's long term insurance business.

(4) For the purposes of this section, in the case of long term insurance business the amount of liabilities in respect of the policies of the business at any time shall be the amount of the liabilities at that time as determined by an actuary, which shall not be less than that calculated on the minimum bases prescribed.

(5) An insurer failing to comply with the requirements of subsection (1), (2) or (3), as the case may be, shall be deemed to be unable to pay his debts within the meaning of section 219 of the Companies Act (Cap. 486).

(6) The Minister, having regard to such matters as he considers relevant, including the date of incorporation of an insurer, may by notice in writing allow time for an insurer, subject to such terms and conditions as may be specified in the notice, to comply with the requirements of subsection (1), (2) or (3).

(7) Nothing in this section shall be taken as affecting the manner in which, on a winding up, any assets or liabilities are required to be dealt with whether by virtue of section 46 or otherwise.

(8) Where the assets of an insurer include an investment in the form of cash with, loan to, debenture of, share in, or other form of investment in, an organisation and where in respect of long term insurance business or general insurance business the total value of all such investments in that organization together with the value of such investments in all other organisations related to it exceeds five per cent of the total value of all the admitted assets of the insurer in the particular class of insurance referred to, any excess of the total value of all the investments over five per cent shall, for the purpose of ascertaining the value of the admitted assets of the insurer relating to the particular class of insurance business for the purpose of ascertaining compliance with the requirements of subsection (1), (2) or (3), as the case may be, be ignored:

Provided that—

(a) this subsection shall not apply to—

- (i) buildings and other real property owned by the insurer jointly with any organisation;
 - (ii) investments referred to in section 50(3);
 - (iii) cash held by banks on behalf of the insurer in current or savings accounts, or, subject to section 50(4)(g), fixed deposits; and
- (b) investments of long term insurance business or a general insurance business in a company or a group of companies which is a bank or a financial institution, or a group of banks or financial institutions shall, pursuant to section 50(10), not exceed ten per cent.

(9) For the purposes of this section—

- (a) the amount of liabilities shall be determined in accordance with regulations; and
- (b) subject to subsection (8), the assets that may be taken into account and their value shall be determined in accordance with regulations, which may prescribe the extent, if any, to which any

particular asset may be taken into account, the depreciation that should be provided for each category of assets and any other relevant factor.

(10) The paid up capital of an insurer shall at all times, be not less than ten per cent of the total gross premium written by an insurer in respect of general insurance business during the financial year in question:

Provided that if at any time the insurer does not meet the minimum ratio of paid up capital to the total gross premium, the insurer shall, within six months after the end of the financial year to which it relates, increase the paid up capital to restore the prescribed minimum ratio.

(11) An insurer who fails to increase the paid up capital as required under subsection (10) shall be liable to a penalty of one hundred thousand shillings and to a further penalty of five thousand shillings for every day after the expiry of the period prescribed during which such failure continues, which penalty shall be paid by a crossed banker's draft or cheque drawn in favour of the Permanent Secretary to the Treasury.

(12) For the purposes of determining the solvency of an insurer, every registered insurer shall, for the period ending on the 31st December in each year, make a return in the prescribed form, showing his total assets, total admitted assets, total liabilities and such other details as may be prescribed, which shall be signed by the principal officer of the insurer and an auditor and submitted to the Commissioner on or before the 30th June of the following year.

Section 42 of Cap.487 which it is intended to amend—

42. (1) For the purposes of this Act, a reference to admitted assets includes a reference to any property, security, item or interest of a person approved by the Commissioner but does not include a reference to—

- (a) an unsecured or, in the opinion of the Commissioner, inadequately secured loan;
- (b) an asset that is mortgaged or charged for the benefit of a person other than the insurer to the extent that it is so mortgaged or charged;
- (c) a loan to, debenture of, or share in any insurer who is related to such a person;
- (d) *deleted by Act No. 10 of 2010, s. 53;*
- (e) a guarantee given to the insurer other than a bank guarantee issued by a bank licensed under the Banking Act or a guarantee given by a reinsurer in the course of re-insurance transactions;

- (f) an intangible asset;
- (g) unsecured loans to intermediaries;
- (h) prepaid preliminary and organisational expenses;
- (i) *deleted by Act No. 4 of 2004, s. 76;*
- (j) such other assets as may be prescribed.

(2) Where an insurer requests the Commissioner to approve as an admitted asset the whole or part of an asset excluded in subsection (1), the Commissioner may by notice in writing given to the insurer approve the asset, or such part thereof as he determines, accordingly.

Section 43 of Cap.487 which it is proposed to delete—

43. (1) For the purposes of this Act, a reference to admitted liabilities of an insurer means liabilities shown as current, contingent and prospective liabilities in the accounts of an insurer and includes, in the case of long term insurance business, the liabilities in respect of the policies of long term insurance business.

(2) For the purposes of this Act, a reference to admitted liabilities does not include a reference to—

- (a) a liability in respect of share capital or a reserve in lieu of capital approved by the Commissioner;
- (b) a liability in respect of such matters as the Commissioner may by notice in writing direct;
- (c) a liability prescribed.

(3) An insurer shall make adequate provision in his accounts for liabilities in respect of unexpired risks and outstanding and incurred claims, including provision for claims incurred but not reported, computed in accordance with a method approved by the Commissioner.

Section 57 of Cap.487 which it is intended to amend—

57. (1) An insurer who carries on long term insurance business—

- (a) shall on the 31st December in every year and irrespective of any contrary provision in the articles of association or deed of settlement, cause an investigation to be made into his financial condition in accordance with section 58; and
- (b) when such an investigation has been made, or when at any other time an investigation into the financial condition of the insurer is made with a view to the distribution of profits, or the results of which are made public, shall cause an abstract of the actuary's

report of the investigation to be made in such form and containing such matters as may be prescribed:

Provided that in the case of an insurer who was carrying on long term insurance business in Kenya immediately prior to the appointed date, the last date as at which the first investigation after the appointed date should be made shall be a date not later than three years from the appointed date or the date of expiration of five years from the date as at which the last investigation was made by an actuary before the appointed date, whichever is earlier.

(2) An investigation to which subsection (1) relates shall include—

- (a) a valuation of the liabilities of the insurer attributable to his long term insurance business; and
- (b) a determination of any excess over those liabilities of the assets representing the fund or funds maintained by the insurer in respect of that business and, where any rights of any long term policy-holders to participate in profits relate to particular parts of such a fund, a determination of any excess of assets over liabilities in respect of each of those parts.

(3) Whenever an investigation to which subsection (1) relates is made, the insurer shall prepare a statement, in such form and containing such matters as may be prescribed, of its long term insurance business as on the date on which the investigation is made.

(5) Subject to section 58, for the purposes of an investigation to which this section relates, the value of any assets and the amount of any liabilities shall be determined in accordance with regulations.

Section 58 of Cap. 487 which it is intended to amend—

58. (1) The provisions of this section apply in relation to valuation made, in respect of an insurer carrying on long term insurance business, in pursuance of section 57.

(2) The basis of valuation adopted shall be such as to place a proper value upon the liabilities having regard to the mortality experience among the persons whose lives have been insured by the insurer, to the average rate of interest from investments and the expenses of management (including commission), and shall be such as to ensure that no policy is treated as an asset.

(3) The value placed upon the aggregate liabilities of a statutory fund in respect of policies by reason of the adoption of any basis of valuation shall not be less than it would have been if it had been calculated on the minimum basis prescribed.

(4) The actuary who makes the valuation shall certify whether in his opinion the value placed upon the aggregate liabilities relating to a statutory fund in respect of policies by the valuation is not less than the value which would have been placed upon those aggregate liabilities if it had been calculated on the minimum basis prescribed.

(8) An actuary making an investigation or valuation under subsection (6) shall prepare and attach to his report an abstract and a statement of the long term business of the insurer as for an investigation under section 57.

The definition of "proper basis" in section 115(7) of Cap. 487 which it is intended to amend—

"proper basis" means the minimum basis prescribed or the basis applicable in the case of a bonus reserve valuation, allowing provision for the maintenance of bonuses at current levels and for the reasonable expectations of policy-holders in that context, or the basis adopted at the latest preceding valuation, whichever brings out the highest figure of liability

Section 203 of Cap. 487 which it is intended to amend—

203. (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—

- (a) admit or deny liability;
- (b) determine the amount due;
- (c) establish the identity of the claimant; and
- (d) pay the claim,

within ninety days of the date of the reporting of the claim or where the determination of liability is by a court, within ninety days of such determination:

Provided that if, for any reason, the insurer is unable to pay the claim within the period specified in this subsection, the insurer shall apply to the Commissioner for extension of time, and the Commissioner may grant extension for a period not exceeding thirty days.

The Second Schedule to Cap 487 which it is intended to amend—

(2) The minimum capital requirement specified in paragraph (a), (b), (c) and (d) shall consist—

- (b) deposits and cash with a minimum of 10% in any one bank or group of banks.