

SPECIAL ISSUE

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REPUBLIC OF KENYA

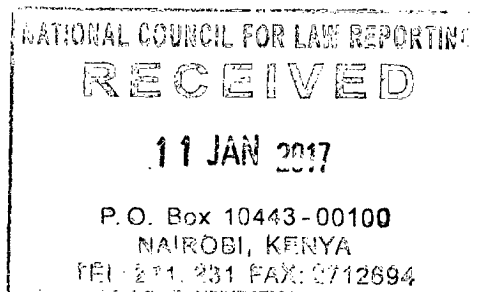
KENYA GAZETTE SUPPLEMENT

ACTS, 2016

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CONTENT

Act—	PAGE
The Insurance (Amendment) Act, 2016	1201



THE INSURANCE (AMENDMENT) ACT, 2016**No. 50 of 2016***Date of Assent: 23rd December, 2016**Date of Commencement: 13th January, 2017***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.

(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), by—

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

(b) in subsection (2), by—

- (i) deleting the words “to his long term” appearing in paragraph (a);
- (ii) 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.”

- (iii) 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), by—

- (i) inserting the words “by the Authority” immediately after the word “prescribed”;
- (ii) 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”;
- (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), by—

- (i) deleting the words “of a statutory fund”; and
- (ii) deleting the words “the minimum basis prescribed” and substituting therefor the words “the prescribed basis”;

- (d) in subsection (4), by—

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

