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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.

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)—

“(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—

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

(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—

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—

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.

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

8. Section 57 of the Insurance Act is amended—

(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".

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 section 58 of Cap. 487.

Amendment of section 115 of Cap. 487.