LEGAL NOTICE NO. 47

THE INSURANCE ACT
(Cap. 487)

IN EXERCISE of the powers conferred under section 180 of the Insurance Act, the Cabinet Secretary for National Treasury and Planning makes the following Regulations—

THE INSURANCE (SUITABILITY OF KEY PERSONS) REGULATIONS, 2021

PART I—PRELIMINARY

1. These Regulations may be cited as the Insurance (Suitability of Key Persons) Regulations, 2021.
   
2. In these Regulations, unless the context otherwise requires—
   “key persons” include significant owners, board members, management and heads of control functions;
   “regulated entity” means a person registered under the Act and includes insurance groups; and
   “significant owner” means a person who directly or indirectly holds more than ten per cent of the controlling or beneficial interest in a person licensed under the Act.

3. The purpose of these Regulations is to ensure that all key persons are suitable at all times to fulfil their respective roles and shall apply to persons registered under the Act and insurance groups.

4. A regulated entity shall put in place appropriate procedures and shall assess, as and when required, the suitability of key persons on the following grounds—
   (a) competence which shall be judged from the level of an individual’s professional qualifications, knowledge, skills and relevant experience;
   (b) financial soundness which shall be ascertained through an assessment of the source of financing and future access to capital; and
   (c) integrity which shall be demonstrated through evidence in character, personal behaviour and business conduct.

5. Where a regulated entity makes any changes or envisages circumstances that may adversely affect the suitability of a key person or where a key person resigns or is replaced, that regulated entity shall, within seven days of making the changes or resignation or replacement of that key person, notify the Authority giving reasons thereof.
6. (1) A regulated entity shall not appoint any key person without prior written approval of the Authority.

(2) A regulated entity shall duly fill and submit the fit and proper Form as specified in the Schedule to these Regulations when seeking approval for appointment of a key person.

(3) A regulated entity shall at the point of seeking approval of appointment of key persons, submit a formal statement that each of the tests provided for under regulation 4 on competence, financial soundness and integrity has been performed and, where necessary, further investigations have been conducted.

7. (1) Where the Authority determines non-compliance with the provisions of these Regulations, it may take any intervention prescribed in the Act and may also—

(a) direct that a regulated entity takes appropriate remedial action;

(b) reject, suspend or revoke the appointment of a key person;

(c) prohibit from declaring and paying dividends;

(d) withdraw or impose conditions on the business license taking into account the nature of the breach; and

(e) take other action as may be deemed necessary.

(2) The Authority may impose the following additional sanctions to significant owners who do not meet or no longer meet suitability requirements—

(a) require them to dispose of their interests in the regulated entity within a specified period of time;

(b) suspend the exercise of their corresponding voting rights;

(c) nullify any votes cast or the possibility of their annulment; and

(d) prohibit them from receiving dividends.
SCHEDULE  
(r.6(2))  
FIT AND PROPER ASSESSMENT FORM

Please answer all the questions

1. THE INSTITUTION

Name of Institution: _______________________________________

Position Applied for: _______________________________________

2. PERSONAL INFORMATION

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| (a) | Surname  
Other names |
| (b) | Previous Names (if any) by which you have been known (evidence of change of name to be attached): |
| (c) | Year and place of birth |
| (d) | Nationality and how acquired |
| (e) | Personal identification number |
| (f) | Identification card number and date of issue |
| (g) | Passport number and date of issue |
| (h) | Postal Address |
| (i) | Previous Postal address |
| (j) | Physical address: |
| (k) | Email address: |
| (l) | Telephone Number |

3. ACADEMIC QUALIFICATIONS

<table>
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<tr>
<th>NO</th>
<th>Period</th>
<th>INSTITUTE</th>
<th>COURSE</th>
<th>FINAL SCORE</th>
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4. PROFESSIONAL QUALIFICATIONS

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<tr>
<th>NO</th>
<th>Period</th>
<th>INSTITUTE</th>
<th>MEMBERSHIP No</th>
<th>QUALIFICATION</th>
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5. EMPLOYMENT/ BUSINESS RECORDS

<table>
<thead>
<tr>
<th>Period</th>
<th>Name of Employer/ Business &amp; Address</th>
<th>Position Held &amp; Dates</th>
<th>Responsibilities</th>
<th>Reasons for leaving (where applicable)</th>
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### 6. DESCRIPTION OF YOUR PAST AND CURRENT ACTIVITIES IN KENYA AND ABROAD

#### 6.1 SHAREHOLDING (DIRECTLY OWNED OR THROUGH NOMINEES)

<table>
<thead>
<tr>
<th>Company's Name</th>
<th>Date of incorporation</th>
<th>Amount of Shareholding</th>
<th>% of shareholding</th>
<th>Past shareholding</th>
<th>Beneficial ownership</th>
<th>Remarks</th>
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<tr>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
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</table>
A: Refers to Date of closure or surrender of shares
B: Refers to reasons for closure or surrender
C: Refers to Beneficial Ownership Commencement Date
D: Refers to Beneficial Ownership Termination Date

Note: 'Beneficial Owner' refers to an individual (natural person) who:
holds at least ten percent of the issued shares in the company either directly or indirectly;
exercises at least ten percent of the voting rights in the company either directly or indirectly;
holds a right, directly or indirectly, to appoint or remove a director of the company; or
exercises significant influence or control, directly or indirectly, over the company.

6.2 DIRECTORSHIP

<table>
<thead>
<tr>
<th>Company's Name</th>
<th>Date of Appointment</th>
<th>Executive or Non-Executive</th>
<th>Position held in case of Executive</th>
<th>Past Directorships</th>
<th>Remarks</th>
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E: Refers to Date of retirement
F: Refers to reasons for retirement

6.3 SOCIAL CLUBS

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<tr>
<th>Club Name</th>
<th>Membership No.</th>
<th>Position held</th>
<th>Past club memberships</th>
<th>Remarks</th>
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6.4 BORROWINGS

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<tr>
<th>Name of borrower*</th>
<th>Name of lending institution</th>
<th>Type of Facility</th>
<th>Amount borrowed</th>
<th>Date of offer</th>
<th>Terms of offer</th>
<th>Security offered</th>
<th>Value of security</th>
<th>Current outstanding balance</th>
<th>Remarks</th>
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*Borrower to indicate both individually and the private company where he holds more than 5% of the shareholding

7. SOURCES OF FUNDS

Please provide details of the source(s) of funds that you, as a shareholder, would like to invest or use in the acquisition of shares in the institutions.

a) ..............................................................

..............................................................

..............................................................

b) ..............................................................

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..............................................................

c) ..............................................................

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8. ADDITIONAL INFORMATION

8.1 Have you or any entity with which you are associated as director, shareholder or manager, ever held or applied for a licence or equivalent authorization to carry on any business activity in any country? If so, give particulars. If any such application was rejected or withdrawn after it was made or any authorization revoked, give particulars.

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8.2 Have you at any time been convicted of any criminal offence in any jurisdiction? If so, give particulars of the court in which you were convicted, the offence, the penalty imposed and the date of conviction.

8.3 Have you, or any entity with which you have been involved, been censured, disciplined, warned as to future conduct, or publicly criticized by any regulatory authority or any professional body in any country? If so give particulars.

8.4 Have you, or has any entity with which you are, or have been associated as a director, shareholder or manager, been the subject of an investigation, in any country, by a government department or agency, professional association or other regulatory body? If so, give particulars.

8.5 Have you, in any country, ever been dismissed from any office or employment, been subject to disciplinary proceedings by your employer or barred from entry of any profession or occupation? If so, give particulars.

8.6 Have you failed to satisfy debt adjudged due and payable by you on order of court, in any country, or have you made any compromise arrangement with your creditors within the last 10 years? If so, give particulars.

8.7 Have you ever been declared bankrupt by a court in any country or has a bankruptcy petition ever been served on you? If so, give particulars.
8.8 Have you ever been held liable by a court, in any country, for any fraud or other misconduct? If so, give particulars.

8.9 Has any entity with which you were associated as a director, shareholder or manager in any country made any compromise or arrangement with its creditors, been wound up or otherwise ceased business either while you were associated with it or within one year after you ceased to be associated with it? If so, give particulars.

8.10 Are you presently, or do you, other than in a professional capacity, expect to be engaged in any litigation in any country? If so, give particulars.

8.11 Indicate the names, addresses, telephone numbers and positions of three individuals of good standing who would be able to provide a reference on your personal and professional integrity. The referees must not be related to you, and should have known you for at least five years.

8.12 Is there any additional information which you consider relevant for the consideration of this application? The omission of material facts may represent the provision of misleading information.
8.13 Have you been licensed or registered under any law which requires licensing or registration in relation to any regulated business? If yes, give particulars.

8.14 Have you been refused the right or restricted in your right to carry on any trade, business or profession for which a specific license, registration or other authorization is required by law in any jurisdiction? If yes, give particulars.

8.15 Have you been issued a prohibition order under any law or has been prohibited from operating in any other jurisdiction by any regulatory authority? If yes, give particulars.

8.16 Have you been censured, disciplined, suspended or refused registration by the Authority or any other regulatory authority, in Kenya or elsewhere? If yes, give particulars.

8.17 Have you been the subject of any complaint made reasonably and in good faith relating to activities regulated by the Authority or under any law in any jurisdiction? If yes, give particulars.
8.18 Have you been the subject of any proceedings of a disciplinary or criminal nature or have been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction; of misfeasance or serious misconduct? If yes, give particulars.

8.19 Have you been convicted of any offence, or been subject to any pending proceedings which may lead to such conviction, under any law in any jurisdiction? If yes, give particulars.

8.20 Have you had any judgement (including a finding of fraud, misrepresentation, or dishonesty) entered against you in any civil proceedings or are you a party to any pending proceedings which may lead to such a judgement, under any law in any jurisdiction? If yes, give particulars.

8.21 Have you had any civil penalty enforcement action taken against you by the Authority or any other regulatory authority under any law in any jurisdiction? If yes, give particulars.

8.22 Have you ever contravened or abetted another person in breach of any laws or regulations, business rules or codes of conduct, in Kenya or elsewhere? If yes, give particulars.
8.23 Have you ever been the subject of any investigations or disciplinary proceedings or been issued a warning or reprimand by any regulatory authority, an operator of a market or clearing facility, professional body or government agency in Kenya or elsewhere? If yes, give particulars.

8.24 Have you ever been refused a fidelity or surety bond in Kenya or elsewhere? If yes, give particulars.

8.25 Have you ever been a director, partner or concerned in the management of a business that has been censured, disciplined, suspended or refused membership or registration by any regulatory authority, professional body or government agency in Kenya or elsewhere? If yes, give particulars.

8.26 Have you ever been a director, partner or involved in the management of a business that has gone into insolvency, liquidation or administration during the period when, or within a period of one year after, you were a director, partner or involved in the management of the business, in Kenya or elsewhere? If yes, give particulars.

8.27 Have you ever been dismissed or asked to resign, from office, employment, a position of trust, or a fiduciary appointment or similar position, in Kenya or elsewhere? If yes, give particulars.

8.28 Have you ever been subject to disciplinary proceedings by your current or former employers(s), in Kenya or elsewhere? If yes, give particulars.
8.29 Have you ever been disqualified from acting as a director or disqualified from acting in any managerial capacity, in Kenya or elsewhere? If yes, give particulars.

8.30 Have you ever been found liable for an offence committed by a body corporate as a result of an offence having proved to have been committed with the consent or connivance or neglect attributable to yourself in Kenya or elsewhere? If yes, give particulars.

8.31 Are you unable to fulfill any financial obligations currently and in the past, in Kenya or elsewhere? If yes, give particulars.

8.32 Are you subject to a judgement debt which is unsatisfied, either in whole or in part, in Kenya or elsewhere? If yes, give particulars.

9. DECLARATION

I am aware that it is an offence to knowingly or recklessly provide any information which is false or misleading in connection with an application for appointment under the Insurance Act.

I am also aware that provision of false information in this regard may result in rejection of this application by the Authority.

I certify that the information given above is complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which the Authority should be aware.

I undertake to inform the Authority of any changes material to the applications which arise while the application is under consideration.
Applicant:

Name: __________________________________________

Signed: _________________________________________

Date: ___________/______________/20_______________

In Presence of:

Commissioner of Oaths

Name: __________________________________________

Signed: _________________________________________

Date: ___________/______________/20_______________

Dated the 7th March, 2022.

UKUR YATANI,

Cabinet Secretary for the National Treasury and Planning.