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THE INSURANCE (AMENDMENT) BILL, 2018

A Bill for

AN ACT of Parliament to amend the Insurance Act

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Insurance (Amendment) Act, 2018. Short title.

2. Section 2 of the Insurance Act, (in this Act referred to as the “principal Act”), is amended— Amendment of section 2 of Cap. 487.

(a) by inserting the following new definitions in their proper alphabetical sequence—

“index-based insurance” means an insurance contract—

(a) under which the liability of the insurer to make a payment to the policyholder is triggered by, and the amount of that payment is determined in accordance with, one or more indices, rather than on an assessment of the policyholder’s actual loss; and

(b) where the payment is designed to provide a level of compensation, although not necessarily an indemnity, to the policyholder in respect of either or both of the following—

(i) losses, including consequential losses, that the policyholder is expected to suffer; or

(ii) costs, including mitigation costs, that the policyholder is expected to incur, in the event that payment is triggered by the index.

“insurance fraud” refers to a deliberate deception to secure unfair or unlawful gain or to deprive a victim of a legal right in an insurance transaction;

“micro-insurance business” means insurance that is accessed by or accessible to the low income population, including the underserved markets provided by a variety of different entities and managed in accordance with generally accepted insurance principles.

(b) in the definition of “insurance business” by inserting the following new paragraph immediately after paragraph (c) —

“(d) micro-insurance business.”

3. The principal Act is amended by inserting the following new section immediately after section 5—

Insertion of new section in Cap.487.

Powers of the Commissioner on group-wide supervision.

5A (1) The Commissioner may direct any member of the group to provide any information necessary for effective group-wide supervision.

(2) In the event of any breach or failure to comply with the directives of the Commissioner or safeguard the interests of the policyholders, the Commissioner shall impose any of the sanctions provided in the Act on the holding company or any member of the group.

4. Section 17 of the principal Act is amended in subsection (2) by deleting the words “with the approval of the Minister”.

Amendment of section 17 of Cap. 487.

5. Section 31 of the principal Act is amended by deleting the words “and shall notify the Cabinet Secretary accordingly” appearing immediately after the words “insurance as it may direct” in paragraph “h”.

Amendment of section 31 of Cap. 487.

6. Section 34 of the principal Act is amended by deleting the word “Cabinet Secretary” and substituting therefor the word “Board”.

Amendment of section 34 of Cap. 487.

7. Section 39 of the principal Act is amended by deleting the word “Cabinet Secretary” wherever it appears and substituting therefor with the word “Authority”.

Amendment of section 39 of Cap. 487.

8. Section 106 of the principal Act is amended in subsection (3) by deleting the words appearing after the word “shillings” and substituting therefor the words “require the policyholder or beneficiary to swear an affidavit regarding the loss of the original policy.

Amendment of section 106 of Cap. 487.

9. Section 113 of principal Act is amended in subsection (1)—

Amendment of section 113 of Cap. 487.

(a) by deleting the words “at least one of whom is” appearing in paragraph (a); and

(b) by deleting the words “and at least one of those insurers is” appearing in paragraph (b).

10. The principal Act is amended by repealing section 156 and replacing it with the following new section—

Repeal and replacement of section 156 of Cap. 487.

Advance payment of premiums.

156. (1) No insurer shall assume a risk in Kenya in respect of insurance business unless and until the premium payable thereon is received by insurer.

(2) An intermediary shall not receive any premiums on behalf of an insurer.

(3) An intermediary who contravenes subsection (2) shall be liable to a penalty of one million shillings on each contravention, payable to the Policy Holders Compensation fund.

(4) Any officer or director of an intermediary who contravenes subsection (2) shall be guilty of an offence, and upon conviction shall be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment term of three months, or to both.

(5) An insurer shall pay an intermediary insurance commission due within thirty days upon receipt of premium.

(6) An insurer who contravenes subsection (5) shall be liable to a penalty of five

million shillings on each contravention, payable to the Policyholders Compensation Fund.

11. Section 203 of the principal Act is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of section 203 of Cap. 487.

“(1A) Subsection (1) shall not apply to the settlement of index-based insurance or micro-insurance claims.”

12. The principal Act is amended by inserting the following new sections immediately after section 204—

Insertion of sections 205 and 206 into Cap. 487.

Power of the Authority to settle

204A. (1) Any insurance customer may lodge a complaint with the Commissioner against a regulated entity in relation to the provision of its services.

(2) Subject to subsection (3), where the Commissioner determines a dispute such determination shall be binding on the parties to the dispute.

(3) A party that is dissatisfied with the determination of the dispute by the Commissioner may appeal the determination to the Tribunal.

Offences on Insurance Fraud disputes.

204B. (1) A person is guilty of an offence of insurance fraud where knowingly, by act or omission with intent to injure, defraud or deceive—

- (a) presents, causes to be presented, prepares, assists, abets, solicits, or conspires with another or makes any oral or written statement with knowledge or belief that it will be presented to an insurer in connection with, or in support of, any application for issuance of an insurance policy, containing false or misleading information concerning any fact material to the application for issuance of an insurance policy with intent of committing a fraud;

- (b) prepares, presents or causes to be presented to any insurer, any oral or written statement including computer generated documents as part of a claim for payment or other benefit pursuant to an insurance policy, containing false or misleading information concerning any fact material to such claims;
- (c) assists, abets, solicits or conspires with another to prepare or present any oral or written statement, including computer-generated documents, that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, which contains false or misleading information concerning any fact material to the claim; or
- (d) makes, alters, introduces, signs, affixes any digital signature or transmits any record including computer-generated documents with an intention of fraudulently benefitting from an insurance contract or claim.

(2) A person licensed under this Act or any person who offers any service in relation to insurance business or any other professional is guilty of an offence of insurance fraud where that person knowingly and willfully assists, conspires with, or urges any person to violate any of the provisions of this Act or for any person who due to such assistance, conspiracy or urging by the said person, knowingly or willfully benefits from the proceeds derived from the use of fraud.

(3) An insurer, any person acting on behalf of such insurer, a person registered

under the Act, garages, or any person involved in the insurance claims process, is guilty of an offence of insurance fraud where knowingly, by act or omission, with intent to injure, defraud or deceive—

- (a) presents or causes to be presented to an insurance prospect, false or misleading information regarding the nature, extent and terms of insurance coverage which may or might be available to such prospect under any policy of insurance, whether first or third party; or
 - (b) presents or causes to be presented in any insurance claim, false or misleading information regarding or affecting in any manner the extent of any claimant's right to benefit under, or to make a claim against, any policy of insurance.
- (4) Any person who knowingly or willfully, hinders, prevents or obstructs investigations under this section shall be guilty of an offence.
- (5) A person who is guilty of an offence under this section shall on conviction be liable to a fine of ten times the amount defrauded or intended to be defrauded or to imprisonment for a term not exceeding five years or both.
- (6) Notwithstanding subsection (4), any person who is responsible for the loss of any moneys, property or assets shall be liable for recovery in a civil suit.

MEMORANDUM OF OBJECTS AND REASONS

This Bill has been submitted by the Cabinet Secretary for the National Treasury and Planning in line with the proposals announced in the Budget from 2018/19. The principal object of the Bill is to amend the Insurance Act to address the adverse selection and high costs of loss assessment related to traditional indemnity-based agriculture insurance by providing for index based insurance as an alternative with an intention to reduce moral hazard, adverse selection, underwriting and claim assessment costs while speeding up claim settlements.

In addition, the Bill seeks to amend the Act by introducing a legal provision creating offences on insurance fraud, including penalties intended to address the problem of insurance fraud that continues to be a major challenge to the stability of the insurance industry in the country. The amendment further ensures that the Act complies with International Association of Insurance Supervisors (IAIS) standards on countering insurance fraud.

This Bill is not a Bill concerning county government.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 18th June, 2018

JOSEPH LIMO,
Chairperson, Committee on Finance and National Planning.