



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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**INSURANCE ACT**

CHAPTER 487

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**CHAPTER 487**

**INSURANCE ACT**

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**CHAPTER 487**  
**INSURANCE ACT**

[Date of assent: 8th January, 1985.]

[Date of commencement: 1st January, 1987.]

**An Act of Parliament to amend and consolidate the Law relating to insurance, and to regulate the business of insurance and for connected purposes**

[Act No. 1 of 1985, L.N. 363/1986, Act No. 18 of 1986, Act No. 12 of 1987, Act No. 13 of 1988, Act No. 9 of 1989, Act No. 20 of 1989, Act No. 8 of 1991, Act No. 9 of 1992, Act No. 11 of 1992, Act No. 4 of 1993, Act No. 5 of 1993, Act No. 12 of 1994, Act No. 13 of 1995, Act No. 8 of 1996, Act No. 7 of 1997, Act No. 8 of 1997, Act No. 5 of 1998, Act No. 4 of 1999, L.N. 76/1999, Act No. 9 of 2000, Act No. 6 of 2001, Act No. 7 of 2002, Act No. 9 of 2003, Act No. 4 of 2004, Act No. 6 of 2005, Act No. 11 of 2006, Act No. 7 of 2007, Act No. 9 of 2007, L.N. 97/2007, Act No. 8 of 2008, Act No. 8 of 2009, Act No. 10 of 2010, Act No. 4 of 2012, L.N. 58/2012, Act No. 57 of 2012, L.N. 51/2013, Act No. 1 of 2014, Act No. 14 of 2015, Act No. 19 of 2015, Act No. 50 of 2016, Act No. 11 of 2017, Sch., L.N. 105/2017, Act No. 22 of 2017, Act No. 11 of 2019, Act No. 28 of 2019, Act No. 8 of 2020.]

PART I – PRELIMINARY

**1. Short title**

This Act may be cited as the Insurance Act.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires—

“**actuary**” means—

- (a) a Fellow of the Institute of Actuaries in England or of the Faculty of Actuaries in Scotland or of the Society of Actuaries of the United States of America; or
- (b) such other person having actuarial knowledge as the Commissioner may, on the application of a member of the insurance industry, approve;

“**admitted asset**” *deleted by Act No. 22 of 2017, s. 2(a);*

“**admitted liability**” *deleted by Act No. 22 of 2017, s. 2(a);*

“**Advisory Board**” *deleted by Act No. 11 of 2006, s. 2(a);*

“**affairs**”, in relation to a person or to a person associated with another person, includes—

- (a) the promotion, formation, membership, control, trading, dealings, business and property of the person;
- (b) the ownership of shares in, debentures of and interests made available by the person;
- (c) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the person or are or have been able to control or to influence materially the policy of the person; and
- (d) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of or interests made available by the person;

“**agent**” means a person, not being a salaried employee of an insurer who, in consideration of a commission, solicits or procures insurance business for an insurer or broker;

“**appointed date**” means the date specified in section 1 for the coming into force of this Act;

“**assessment report**” means any report in respect of a claim;

“**asset**” includes any property, security, item or interest of a person;

“**auditor**” has the meaning assigned to it under section 3(1) of the Companies Act, 2015;

“**Authority**” means the Insurance Regulatory Authority established by section 3;

“**bank**” has the meaning assigned to it in the Banking Act (Cap. 488);

“**Board**” means the Board of Directors of the Authority constituted under section 3B;

“**bond investment business**” *deleted by Act No. 28 of 2019, s. 2(a)(i)*;

“**broker**” means an intermediary concerned with the placing of insurance business with an insurer or reinsurer for or in expectation of payment by way of brokerage, commission, for or on behalf of an insurer, policy-holder or proposer for insurance or reinsurance and includes a health management organisation; but does not include a person who canvasses and secures reinsurance business from or to an insurer or broker in Kenya so long as that person does not undertake direct insurance business and does not have a place of business, or a resident representative, in Kenya;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for the National Treasury;

“**capital adequacy ratio**” means a measure of the available capital in relation to the required capital;

“**certified**” means certified by a principal officer to be true and correct, a true copy or a correct translation (as the case may be) by endorsement on or attached to the document to be certified;

“**Chairman**” means the person for the time being presiding over the Board of Directors or other governing body of the member of the insurance industry;

“**child’s advancement policy**” means a policy effected, before a child has attained the age of eighteen years, by a person other than the child, which contains both of the following provisions—

- (a) provision for payment of a sum not exceeding the premiums paid and accumulated with interest to the executors, administrators or assigns of the child on his death before attaining the vesting age;
- (b) provision for payment of a sum to the child or his assigns on his attaining an age not less than the vesting age;

“**claims settling agent**” means a person who engages in the business of settling or negotiating insurance claims under policies issued by insurers whether in Kenya or outside Kenya;

“**Commissioner**” means the officer appointed under section 3E;

**“Company”** means the Kenya Reinsurance Corporation Limited;

**“contract of insurance”** includes a contract of reinsurance;

**“Corporation”** *repealed by Act No. 7 of 1997, s. 13*;

**“court”** means the High Court;

**“dependent”**, in relation to a company, means—

- (a) that another company, either alone or with any associate, is entitled to exercise or control the exercise of one-third or more of the voting power at any general meeting of the first-mentioned company; or
- (b) that the first-mentioned company is a dependent of a company which is that other company’s dependent;

**“director”** means a person occupying the position of a director by whatever name he may be called;

**“document”** includes accounts, deeds, letters, writings, books and any other records of information, however compiled, recorded or stored and whether in written or printed form, on microfilm or in any other form;

**“financial institution”** has the meaning assigned to it in the Banking Act (Cap. 488) and includes a mortgage finance company within the meaning of that Act;

**“financial year”** means the calendar year;

**“general insurance business”** means insurance business of any class or classes not being long term insurance business;

**“gross direct premium”** means the premium after deductions of discounts, refunds and rebates of premium written by an insurer excluding any reinsurance premium accepted and before deduction of—

- (a) any premium payable in respect of mandatory cessions falling under section 145 of this Act;
- (b) any other reinsurance premium ceded;

**“gross liability”** means liability before deducting any part of it which is re-insured;

**“gross premium”** means the premium after deduction of discounts, refunds and rebates of premium but before deduction therefrom of any premium paid or payable by an insurer for reinsurance ceded, and includes premiums receivable by the insurer under reinsurance contracts accepted by the insurer;

**“group life insurance and group business”** means insurance on the lives of groups of persons formed for purposes other than that of purchasing a group life insurance policy;

**“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;

**“industrial life assurance business”** *deleted by Act No. 28 of 2019, s. 2(a)*  
(ii);

**“insurance business”** means the business of undertaking liability by way of insurance (including reinsurance) in respect of any loss of life and personal injury and any loss or damage, including liability to pay damage or compensation, contingent upon the happening of a specified event, and includes—

- (a) the effecting and carrying out by a person not carrying on a banking business, of contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, being contracts effected by way of business (and not merely incidental to some other business carried out by the person effecting them) in return for the payment of one or more premiums;
- (b) the effecting and carrying out, by a body (not being a body carrying on a banking business) that carries on business which is insurance business apart from this paragraph, of capital redemption contracts;
- (c) the effecting and carrying out of contracts to pay annuities on human life;
- (d) *takaful* insurance business based on group participation guaranteeing each of the members against defined loss or damage;
- (e) micro-insurance business;
- (f) social insurance schemes.

and any business incidental to insurance business as so defined but does not include—

- (i) business in relation to the benefits provided by a friendly society or trade union for its members or their dependants;
- (ii) business in relation to the benefits provided for its members or their dependants by an association of employees;
- (iii) *deleted by Act No. 9 of 2003, s. 2*;
- (iv) business in relation to a scheme or arrangement for the provision of benefits consisting of—
  - (A) the supply of funeral, burial or cremation services, with or without the supply of goods connected with any such service; or
  - (B) *deleted by Act No. 9 of 2003, s. 2*,

and no other benefits, except benefits incidental to the scheme or arrangement;

- (v) business consisting of the effecting and carrying out, by a person carrying on no other insurance business, of contracts of such description as may be prescribed, being contracts under which the benefits provided are exclusively or primarily benefits in kind;
- (vi) business declared by the Minister by notice in the *Gazette* not to be insurance business for the purposes of this Act;

**“insurance group”** includes a registered insurer and its a subsidiary, or an insurer's holding company, whether operating or non-operating, and its subsidiary;

**“insurance surveyors”** means a person who engages in surveying risks and in advising on the rate and terms and conditions of premiums including making suggestions for improvement of the risks; and, in the marine insurance business, includes a person who surveys or assesses the losses on behalf of the insured;

**“Insurance Training and Education Trust”** means the Insurance Training and Education Trust declared as such by instruments of the trustees dated 3rd May, 1988;

**“Insurance Training Levy”** means the insurance training levy payable under section 197H;

**“Insurance Premium Levy”** means the insurance premium levy payable under section 197A;

**“insurer”** means a person, registered under this Act, who carries on insurance business and includes a reinsurer;

**“intermediary”** means a person who in the course of any business or profession invites other persons to make offers or proposals or to take other steps with a view to entering into contracts of insurance with an insurer, but does not include a person who merely publishes invitations on behalf of, or to the order of, some other person;

**“investigator”** means the Commissioner or an investigator appointed under section 9;

**“Kenya business”** and **“Kenya reinsurance business”** means insurance business carried on by an insurer in respect of any person, human life, property or interest situated in Kenya, or in respect of which premiums are ordinarily payable in Kenya and include insurance business in respect of any vessel, hovercraft or aircraft registered or ordinarily located in Kenya and includes marine cargo insurance policies on all imports entering Kenya, including marine cargo insurance policies for commercial imports, but excludes marine cargo insurance policies issued on personal effects, goods and items imported into Kenya by returning residents or passengers entering Kenya for permanent or temporary residence;

**“Kenya Government securities”** means securities charged on the revenue of the Government or guaranteed fully as regards principal and interest by the Government;

**“Kenya Reinsurance Corporation”** *repealed by Act No. 7 of 1997, s. 13;*

**“Kenya Reinsurance Corporation Limited”** has the meaning assigned to it in section 2 of the Kenya Reinsurance Corporation Act, 1997 (No. 7 of 1997);

**“life assurance”** and **“life assurance business”** mean the business of, or in relation to, the issuing of, or the undertaking of liability to pay money on death (not being death by accident or specified sickness only) or on the happening of any contingency dependent on the termination or continuance of human life (either with or without provision for a benefit under a continuous disability insurance contract), and include a contract which is subject to the payment of premiums for a term dependent on the termination or continuance of human life and any contract securing the grant of an annuity for a term dependent upon human life;

**“long term insurance business”** includes insurance business of all or any of the following classes—

- (a) life assurance;
- (b) annuities;
- (c) pensions (personal pension or deposit administration);
- (d) group life;
- (e) group credit;
- (f) permanent health;
- (g) investment (unit link and linked investments or non-linked investments), and

includes, in relation to any insurer, business carried on by the insurer as incidental to any such class of insurance business.

**“loss adjuster”** and **“loss assessor”** mean persons who do the business of assessing, investigating, negotiating and settling losses on behalf of the insurer or the insured;

**“management expenses”** means expenses incurred in the administration of an insurer which are not commission payable and, in the case of general insurance business, are not included in claims paid, claims outstanding, expenses for settling claims and expenses for settling claims outstanding;

**“managing agent”** means a person, firm or company entitled to the management of the whole affairs of an insurer, by virtue of an agreement with the insurer, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes a person, firm or company occupying that position, by whatever name called;

**“medical insurance provider”** means an intermediary, other than a broker, concerned with the placing of medical insurance business with an insurer for, or in expectation of, payment by way of a commission, fee or other remuneration;

**“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;

**“member of the insurance industry”** includes an insurer, reinsurer, broker, agent, insurance surveyor, risk manager, loss assessor, loss adjuster and claims settling agent, whether registered under this Act or not;

**“Minister”** means the Cabinet Secretary for the time being responsible for matters relating to finance;



**“net liability”** means the liability assessed by an actuary at a valuation made by him and approved by the Commissioner;

**“net premium”** means the balance of the gross premium after deduction therefrom of any premium paid or payable by the insurer for reinsurance ceded;

**“non-operating holding company”** means a company, other than the insurer, which has control of an insurer and whose activities are limited to—

- (a) holding investments in its subsidiary;
- (b) holding property used by group members;
- (c) raising funds to—
  - (i) invest in, or to provide support to its subsidiary;
  - (ii) conduct its own activities;
  - (iii) provide administrative functions to;
  - (iv) support risk management; and
  - (v) provide financial services for efficient operation of the group.

**“ordinary life assurance business”** means life assurance business, being business of, or in relation to, the issuing of, or the undertaking of liability under, ordinary life policies;

**“ordinary life policy”** means a policy of life assurance other than a policy of industrial life assurance;

**“person”** includes a company, corporate body (whether incorporated by or under statute or statutory authority), association, association of underwriters, fund, natural person, partnership and scheme;

**“policy”**—

- (a) in relation to ordinary life assurance business or industrial life assurance business, includes an instrument evidencing a contract to pay an annuity upon human life;
- (b) in relation to bond investment business, includes a bond, certificate, receipt or other instrument evidencing the contract with insurer; and
- (c) in relation to other classes of business, includes an instrument under which there is for the time being an existing liability already accrued or under which any liability may accrue;

**“policy-holder”** means the person who for the time being is the legal holder of the policy for securing the contract with the insurer;

**“premium”** includes the consideration for the granting of an annuity;

**“principal officer”** means an officer appointed under section 68;

**“registration”** means registration under this Act and includes a renewal of registration;

**“regulations”** and **“rules”** mean regulations and rules made under this Act;

**“reinsurer”** means a person who carries on reinsurance business and includes a retrocessionaire;

**“reinsurance business”** means the business of undertaking liability to pay money to insurer or reinsurers in respect of contractual liabilities in respect of insurance business incurred by insurers or reinsurer and includes a retrocession;

**“related”**, in relation to an insurer, means—

- (a) a dependant of that insurer;
- (b) a company of which the insurer is a dependant; or
- (c) a dependant of a company of which the insurer is a dependant;

**“retrocession”** means the reinsurance of reinsurance business accepted by a reinsurer;

**“retrocessionaire”** means a person reinsuring a reinsurer;

**“risk manager”** means a person, his clients or employer with regard to a programme of minimizing losses arising through unforeseen events, and of minimizing the cost of such protection by physical or financial measures through insurance or any other means;

**“significant owner”** means a person who directly or indirectly holds more than ten percent of the controlling or beneficial interest in a person licenced under this Act;

**“statutory fund”** means the fund established under section 45;

**“subsidiary”** means a subsidiary company as defined by section 4 of the Companies Act, 2015;

**“tax”** *deleted by Act No. 11 of 2006, s. 2(b);*

**“Tribunal”** means the tribunal established under section 169;

**“vesting age”** means—

- (a) the age of eighteen years; or
- (b) an age of not less than ten years on or after the attainment of which by the child it is specified in the policy that sums payable in respect of the policy by the insurer who issued it shall be paid to the child or his executors, administrators or assigns.

(2) An insurer shall be deemed to be carrying on business of a particular class so long as any liability in respect of that class of business remains unsatisfied and is not otherwise provided for, and shall be subject to all the provisions of this Act, save as is specifically provided in any other section thereof, in relation to that class of business.

[Act No. 18 of 1986, Sch., Act No. 12 of 1987, s. 2, Act No. 9 of 1989, Second Sch., Act No. 20 of 1989, Sch., Act No. 7 of 1997, s. 13, Act No. 4 of 1999, s. 72, Act No. 9 of 2003, s. 2, Act No. 11 of 2006, s. 2, Act No. 57 of 2012, s. 31, Act No. 1 of 2014, s. 2, Act No. 14 of 2015, Act No. 19 of 2015, s. 31, Act No. 50 of 2016, s. 2, Act No. 11 of 2017, Sch., Act No. 22 of 2017, s. 2, Act No. 11 of 2019, s. 2, Act No. 28 of 2019, s. 2 (a)(b).]

## PART II — THE INSURANCE REGULATORY AUTHORITY

[Act No. 11 of 2006, s. 3.]

### 3. Establishment of the Authority

(1) There is established an Authority to be known as the Insurance Regulatory Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable or immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing all other things or acts for the furtherance of its functions under the provisions of this Act, which may be lawfully done or performed by a body corporate.

[Act No. 11 of 2006, s. 4.]

### **3A. Objects and functions of the Authority**

(1) The objects and functions of the Authority shall be to—

- (a) ensure the effective administration, supervision, regulation and control of insurance and reinsurance business in Kenya;
- (b) formulate and enforce standards for the conduct of insurance and reinsurance business in Kenya;
- (c) license all persons involved in or connected with insurance business, including insurance and reinsurance companies, insurance and reinsurance intermediaries, loss adjusters and assessors, risk surveyors and valuers;
- (d) *deleted by Act No. 1 of 2014, s. 3;*
- (e) *deleted by Act No. 1 of 2014, s. 3;*
- (f) advise the Government on the national policy to be followed in order to ensure adequate insurance protection and security for national assets and national properties;
- (g) issue supervisory guidelines and prudential standards from time to time, for the better administration of the insurance business of persons licensed under this Act;
- (h) conduct inquiries and share information with other regulatory authorities and to carry out any other related activities in furtherance of its supervisory role;
- (ha) educate the public regularly on the right to independently select an underwriter or broker from a list of underwriters or brokers licensed by the Authority;
- (hb) regulate the business of bacc assurance offered by banks in the same manner as the ordinary insurance business including capital requirements and disclosures;
- (i) undertake such other functions as may be conferred on it by this Act or by any other written law.

(2) For better clarity, the objects of the supervision of insurers and reinsurers by the Authority under this Act shall be—

- (a) to promote the maintenance of a fair, safe and stable insurance sector;
- (b) to protect the interest of the insurance policyholders and beneficiaries; and
- (c) generally to promote the development of the insurance sector.

(3) The Authority shall publish the standards formulated under subsection (1) (b) and may provide for the punishment of a person who contravenes any of the standards by a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

[Act No. 11 of 2006, s. 4, Act No. 10 of 2010, s. 51, Act No. 57 of 2012, s. 32, Act No. 1 of 2014, s. 3, Act No. 11 of 2017, Sch.]

### **3AA. Assistance in investigation**

(1) The Authority may, where it receives a request from a regulatory body, whether established within or outside Kenya, for assistance in investigating a person specified by the regulatory body who has contravened or is contravening any legal or regulatory requirements which—

- (a) are enforced or administered by that regulatory body; or
- (b) relate to insurance transactions regulated by that regulatory body,

and where it is of the opinion that the request meets the requirements of subsection (3), provide the assistance requested for by exercising any of its powers under this Act or by providing such other assistance as the Authority may consider necessary.

(2) For the purposes of subsection (1), the provisions of this Act shall, with such modifications as may be necessary, apply and have effect as if the contravention of the legal or regulatory requirement referred to in subsection (1) were an offence under this Act.

(3) A regulatory body which requests for assistance under subsection (1) shall demonstrate that—

- (a) it is desirable or expedient that the assistance requested should be provided in the interest of the public; or
- (b) the assistance shall assist the regulatory body in the discharge and performance of its functions.

(4) The Authority shall, in deciding whether the requirements under subsection (3) have been satisfied in a particular case, take into account whether the regulatory body shall—

- (a) pay the Authority any of the costs and expenses incurred in providing the assistance; and
- (b) be able and willing to provide reciprocal assistance within its jurisdiction in response to a similar request for assistance from Kenya.

(5) Nothing in this section shall be construed as limiting the powers of the Authority to co-operate or co-ordinate with any other regulatory body in the exercise of its powers under this Act, in so far as any such co-operation or co-ordination is not contrary to the objectives of this Act.

[Act No. 1 of 2014, s. 4.]

### **3B. Board of Directors**

(1) The management of the Authority shall vest in the Board of Directors of the Authority which shall comprise—

- (a) a chairman to be appointed by the President on the recommendation of the Minister;
- (b) the Commissioner of Insurance appointed under section 3E;
- (c) the Permanent Secretary in the Ministry for the time being responsible for matters relating to finance or his representative;

- (d) the Chief Executive Officer of the Retirement Benefits Authority;
- (e) the Chief Executive Officer of the Capital Markets Authority;
- (f) the Governor of the Central Bank of Kenya or his representative;
- (g) a nominee of the Insurance Institute of Kenya; and
- (h) four other members, not being public officers, appointed by the Minister.

(2) The chairman and every member appointed under paragraph (a), (g) or (h) of subsection (1) shall be appointed from amongst persons who have knowledge or experience in matters relating to insurance, finance, banking or actuarial science.

(3) A person shall not be eligible for appointment under paragraph (a), (g) or (h) of subsection (1) if such person—

- (a) has at any time been convicted of any offence involving fraud, theft, dishonesty, breach of trust or moral turpitude;
- (b) was previously involved in the management or administration of a financial institution which was deregistered, wound up or placed under statutory management for any failure on the part of the management or the administration thereof;
- (c) is a director, officer, employee or shareholder of any insurer, broker, insurance agent or any other member of the insurance industry; or
- (d) is disqualified under any other written law from holding public office or being a director of any institution.

[Act No. 11 of 2006, s. 4.]

### **3C. Powers of the Board**

(1) The Board shall have all the powers necessary for the performance of its functions under this Act and, without prejudice to the generality of the foregoing, shall have power to—

- (a) control, supervise and administer the assets of the Authority in such manner and for such purposes as best promote the purpose for which the Authority is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (c) receive any grants, gifts, donations or endowments on behalf of the Authority and make legitimate disbursements therefrom;
- (d) enter into association with such other bodies or organisations, within or outside Kenya, as it may consider desirable or appropriate and in furtherance of the purpose for which the Authority is established;
- (e) open a banking account or banking accounts for the funds of the Authority; and
- (f) invest the funds of the Authority not currently required for its purposes in the manner provided in this Act.

(2) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule, but subject thereto, the Board may regulate its own procedure.

(3) The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Authority, the exercise of any of the powers, or the performance of

any of the functions or duties of the Authority under this Act, or under any other written law.

[Act No. 11 of 2006, s. 4.]

### **3D. Remuneration of Board members**

The Authority, in consultation with the Minister, shall pay the members of the Board such remuneration, fees or allowances for expenses as it may determine.

[Act No. 11 of 2006, s. 4.]

### **3E. Commissioner of Insurance**

(1) There shall be a Commissioner of Insurance who shall be the Chief Executive Officer of the Authority and who shall be appointed by the Board, through an open and competitive process, on such terms and conditions of service as may be determined by the Board in the instrument of appointment.

(2) The Commissioner shall be an *ex officio* member of the Board but shall have no right to vote at any meeting of the Board.

(3) The Commissioner shall, subject to the directions of the Board, be responsible for the day-to-day management of the affairs of the Authority.

(4) A person shall be qualified to be appointed under this section if such person

- (a) has satisfied the requirements of Chapter Six of the Constitution;
- (b) holds at least a postgraduate degree in insurance, audit, accounting, finance, actuarial science, business studies or banking;
- (c) is a member of a professional body recognized in Kenya;
- (d) has considerable knowledge, competence and at least ten years' experience in a managerial capacity in insurance, accounting, finance, actuarial science or banking; and
- (e) is not engaged in the insurance business as a director, employee, officer or shareholder of any insurer, broker, insurance agent, or in any other sector of the insurance industry, and if appointed shall be disqualified if he, his spouse or dependent child becomes such director, employee, officer or shareholder.

(5) A person appointed as a Commissioner under subsection (1) shall serve for a term of three years and shall be eligible for re-appointment for a further term of three years.

(6) On the coming into force of this Act, a person who immediately before the commencement of this Act held the office of a Commissioner of the Authority shall, subject to the provisions of this Act, serve as a Commissioner for the remainder of that person's term, and shall not be eligible for a further re-appointment.

[Act No. 11 of 2006, s. 4, Act No. 1 of 2014, s. 5.]

### **3F. Appointment of Secretary and other staff**

(1) The Board shall appoint a Secretary to the Board on such terms and conditions of service as it may determine.

(2) The Board may appoint such officers or servants as are necessary for the proper discharge of the functions of the Authority under this Act or any other written law, upon such terms and conditions of service as it may determine.

[Act No. 11 of 2006, s. 4.]

**3G. Common seal of the Authority**

(1) The common seal of the Authority shall be kept in such custody as the Board may direct, and shall not be used except on the order of the Board.

(2) The common seal of the Authority, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and, unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

[Act No. 11 of 2006, s. 4.]

**4. The Insurance Regulatory Authority Fund**

(1) The Authority shall establish a general fund to be known as the Insurance Regulatory Authority Fund, hereafter referred to as “the Fund”, which shall vest in the Authority.

(2) There shall be paid into the Fund—

- (a) all proceeds of the insurance premium levy imposed by section 197A;
- (b) such moneys as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
- (c) such sums as may be payable to the Authority pursuant to this Act or any other written law, or pursuant to any gift or trust;
- (d) such sums as may be granted to the Authority by the Minister pursuant to subsection (3); and
- (e) all moneys from any other source provided for, donated to or borrowed by the Authority.

(3) There shall be made to the Authority, out of moneys provided by Parliament for that purpose, grants towards the expenditure incurred by the Board in the exercise of its powers and the performance of its functions under this Act.

(4) The Authority may invest any of its funds in securities which trustees are by law allowed to invest trust funds, or in any other securities which the Treasury may, from time to time, approve.

(5) There shall be paid out of the Fund all such sums of money required to defray the expenditure incurred by the Authority in the exercise of powers and performance of its functions and duties.

[Act No. 11 of 2006, s. 5.]

**4A. Financial year and annual estimates**

(1) The financial year of the Authority shall be the period of twelve months ending on the thirtieth of June in each year.

(2) At least four months before the commencement of each financial year, the Board shall prepare estimates of revenue and expenditure of the Authority for that year.

(3) The annual estimates shall make provision for all the estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Authority;
- (b) the payment of pensions, gratuities and other charges in respect of the retirement benefits which are payable out of the funds of the Authority;

- (c) the proper maintenance of the buildings and grounds of the Authority;
- (d) the maintenance, repair and replacement of the equipment and other property of the Authority;
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(4) The annual estimates shall be prepared at least three months before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval and after such approval, the Authority shall not increase the annual estimates without the consent of the Minister.

(5) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under this section or in pursuance of an authorisation by the Minister.

[Act No. 11 of 2006, s. 5.]

#### **4B. Accounts and audit**

(1) The Authority shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Authority.

(2) Within a period of four months after the end of each financial year, the Board shall submit to the Controller and Auditor-General or an auditor appointed by the Board under the Authority of the Controller and Auditor-General, the accounts of the Authority together with—

- (a) a statement of income and expenditure during that year; and
- (b) a statement of the assets and liabilities of the Authority of the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2003 (Act No. 12 of 2003).

[Act No. 11 of 2006.]

#### **4C. Supersession**

Where there is a conflict between the provisions of this Act and the provisions of any written law with regard to the powers or functions of the Board or the Authority under this Act, the provisions of this Act shall prevail.

[Act No. 11 of 2006, s. 5.]

#### **5. Particular duties of Commissioner**

(1) Subject to this Act, the duties of the Commissioner shall include—

- (a) *deleted by Act No. 11 of 2006, s. 6(a)(i)*;
- (b) directing insurers and reinsurers on the standardisation of contracts of compulsory insurance;
- (c) directing an insurer or a reinsurer, where he is satisfied that the wording of a particular contract of insurance issued by the insurer or reinsurer is obscure or contains ambiguous terms or terms and conditions which are unfair or oppressive to the policy-holders, to clarify, simplify, amend or delete the wording, terms or conditions, as the case may be, in respect of future contracts;
- (d) the approval of tariffs and rates of insurance in respect of any class or classes of insurance;



(e) such other duties as the Board may assign to him.

(1A) The Board may, with the approval of the Minister make regulations for the purpose of giving effect to the provisions of this Part.

(2) As soon as reasonably practicable after each year ending on 31st December, the Board shall provide the Cabinet Secretary with a report on the operation of this Act during that year, together with summaries of returns and documents deposited with the Cabinet Secretary in accordance with Part VI during that year.

(3) Within one month after receiving the report and summaries under subsection (2), the Cabinet Secretary shall arrange for them to be laid before the National Assembly.

[Act No. 12 of 1994, s. 2, Act No. 11 of 2006, s. 6, Act No. 19 of 2015, s. 32.]

#### **5A. Powers of the Commissioner on group-wide supervision**

(1) The Commissioner may direct any member of the group to provide any information necessary for effective groupwide 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.

[Act No. 11 of 2019, s. 3.]

**6. Repealed by Act No. 11 of 2006, s. 7.**

#### **7. Power to call for information and production of books or papers**

(1) The Commissioner may, by notice in writing, require a member of the insurance industry to supply him with information relating to his insurance business, and that person shall comply with the requirement within such period after receipt of the notice as may be specified therein failing which he shall be deemed to have failed to comply with the provisions of this Act.

(2) Information supplied under this section shall be certified by a principal officer of the member of the insurance industry in question and, if the notice so requires, also by an auditor.

(3) The Commissioner may by notice in writing—

- (a) require a member of the insurance industry to produce, at such time and place as he may specify, such books or documents as he may specify; or
- (b) authorize any person, on producing (if required to do so) evidence of his authority, to require a member of the insurance industry to produce to him forthwith any books or documents which that person may specify.

(4) Where by virtue of subsection (3) the Commissioner or a person authorized by him has power to require the production of books or documents from a member of the insurance industry, the Commissioner or that person shall have the same power to require production of those books or documents from any person who appears to him to be in possession of them.

(5) Where any person from whom production of a document is required claims a lien on the document produced by him, the production shall be without prejudice to the lien.

(6) The power conferred by or by virtue of subsections (3) and (4) to require a member of the insurance industry or other person to produce books or documents shall include power—

- (a) if the books or documents are produced—
  - (i) to take copies of them or extracts of or from them; and
  - (ii) to require that person, or any other person who is a present or past director of, auditor of, or is or was at any time employed by, the member of the insurance industry in question, to provide an explanation of any of them;
- (b) if the books or documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(7) A person who in purported compliance with a requirement imposed under this section furnishes information which he knows to be false in a material particular, or who recklessly furnishes information which is false in a material particular, or who, having been required to produce a book or document for examination, alters, mutilates, damages, destroys, conceals or removes it without the written consent of the Commissioner, shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding twelve months or to both.

[Act No. 1 of 2014, s. 6.]

## **8. Examination of reinsurance treaties**

(1) The Commissioner may—

- (a) call upon an insurer to submit for his examination at his office all reinsurance treaties and other reinsurance contracts entered into by the insurer;
- (b) by notice in writing, require an insurer to supply him with copies of any of the documents referred to in paragraph (a) certified by a principal officer of the insurer.

(2) If on the scrutiny of a document referred to in subsection (1) or otherwise the Commissioner considers that any reinsurance treaty, contract or arrangement or any terms or conditions therein are not favourable to the insurer or are not in the interests of the economy or the insurance industry or in the public interest, he may in writing direct the insurer either—

- (a) to make, at the time when the renewal of that treaty or contract next becomes due, such modifications in its terms and conditions as he may specify; or
- (b) not to renew that treaty, contract or arrangement.

(3) A person who fails to comply with, or contravenes any requirement imposed under, this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding twelve months or to both, and if the offence is a continuing one, to a further fine not exceeding two hundred shillings for every day during which the offence continues.

## **9. Directions and investigations**

(1) Where the Commissioner—

- (a) has reason to believe that—

- 
- (i) an offence under this Act or default in complying with any of the provisions of this Act or any subsidiary legislation made thereunder has been or is likely to be committed by a member of the insurance industry; or
  - (ii) the affairs of any member of the insurance industry are being conducted in a manner which is detrimental or prejudicial to the interests of that member, any policy-holder, the economy or the insurance industry; or
  - (iii) an insurer may be unable or is likely to become unable to meet his obligations or, in the case of long term insurance business, to fulfil the reasonable expectation of policy-holders or potential policy-holders; or
- (b) receives a requisition signed by not less than ten per cent of policy-holders holding policies of life assurance in force respectively for not less than three years with an insurer and which on maturity will be for a total value of not less than one million shillings, that an investigation be held into the affairs of that insurer; or
  - (bb) receives a request to conduct an inquiry or investigation by a regulatory authority on a person licensed under this Act; or
  - (c) receives a requisition signed by not less than one-tenth of the shareholders holding not less than one-tenth of the issued share capital of an insurer, that an investigation be held into his affairs,

the Commissioner may exercise any one or more of the powers set out in subsection (2).

(2) The powers referred to in subsection (1) are that the Commissioner may—

- (a) by notice in writing served on the person concerned, direct him to furnish to the Commissioner within such period after service of the notice, being not less than seven days, as he specifies in the notice, information in writing about such matters in relation to the affairs of the person as he so specifies;
- (b) by notice in writing served on the person concerned direct him not to dispose of or otherwise deal with or remove from Kenya an asset in Kenya specified in the notice during such period after service of the notice, being not more than six months, as he specifies in the notice;
- (c) after giving the member of the insurance industry a reasonable opportunity of being heard, and with the written approval of the Board, give such directions in writing as he considers necessary, to be effective from a specified date;
- (d) after giving the member of the insurance industry a reasonable opportunity of being heard, and with the written approval of the Board, prohibit that member of the insurance industry from entering into any particular transaction or class of transactions;
- (e) after giving the member of the insurance industry a reasonable opportunity of showing cause why, on such grounds as he so specifies, an investigation should not be conducted in respect of that member, with the approval in writing of the Board, investigate, or, by instrument in writing appoint any person, other than a person in the employ of that member, to investigate the affairs of that member.

(3) With regard to a requisition made under paragraph (b) or (c) of subsection (1) the Commissioner may, before ordering an investigation, require the persons making the requisition to furnish security in such amount as he considers sufficient to meet the costs to be incurred by the member of the insurance industry and by the Commissioner in respect of the investigation.

(4) A person who fails to comply with a direction issued or who contravenes a prohibition imposed under subsection (2) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings; and if the offence is a continuing one, to a further fine not exceeding one hundred shillings for every day during which the offence continues.

(5) The Commissioner or other person appointed by him to investigate the affairs of a member of the insurance industry may, wherever necessary, employ an auditor, actuary or other person to assist him in the investigation.

(6) All expenses of, and incidental to, an investigation under this section shall be defrayed by the member of the insurance industry and if they are not paid by him within a period of one month after the Commissioner makes a demand to him, shall constitute a civil debt recoverable summarily by the Commissioner.

[Act No. 11 of 2006, s. 8, Act No. 57 of 2012, s. 33.]

#### **10. Particular powers of Commissioner with regard to long term insurance business**

(1) Where an insurer carrying on long term insurance business has not issued a new policy of that category of insurance for a period of twelve months from the appointed date, or from the date of issue of the last policy, whichever is later, the Commissioner may, with the approval of the Board, direct the insurer to frame proposals for transfer or amalgamation of its business to or with another insurer.

(2) Where an insurer fails to comply with a direction under subsection (1), or if the proposals framed by the insurer are in the opinion of the Commissioner unsatisfactory, the Commissioner may himself frame a scheme for the transfer of the business to another insurer specified by the first-mentioned insurer and approved by the Commissioner.

(3) Where an insurer fails to implement a scheme framed by the Commissioner under subsection (2) and the Commissioner considers that the continuance in business of that insurer is likely to lead to insolvency, or is otherwise contrary to the interests of policy-holders he may with the prior approval of the Minister—

- (a) order an investigation of that insurer; or
- (b) apply to the court for winding up the business of the insurer in terms of section 123(1)(b).

(4) An insurer who, upon an investigation ordered under subsection (3)(a) is found to have disposed of any assets from a closed fund contrary to the provisions of section 21, or to have misappropriated such assets, commits an offence and is liable on conviction, to a fine not exceeding one hundred thousand shillings or, where the insurer is a natural person to imprisonment for a term not exceeding five years, or to both.

(5) An insurer convicted under subsection (4) shall forthwith be liable to refund the assets misappropriated from the closed fund.

(6) An insurer who fails to refund any assets under subsection (5) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand

shillings, or, if the insurer is a natural person, to imprisonment for a term not exceeding five years, or to both.

(7) If an offence under subsection 6 is a continuing one, the insurer shall be liable to a further fine of five thousand shillings for every day during which the offence continues.

(8) In this section the expression “**closed fund**” means a closed fund within the meaning of section 21.

[Act No. 12 of 1987, s. 3, Act No. 12 of 1994, s. 3, Act No. 8 of 1996, s. 48, Act No. 11 of 2006, s. 9.]

#### **11. Investigations of associated persons**

(1) Where an investigator believes on reasonable grounds that it is necessary for the purposes of an investigation under section 9 to investigate the whole or some part of the affairs of another person that is, or has at some relevant time been, associated with the person in respect of which he is appointed, he may, with the consent in writing of the Board, investigate the whole or that part of the affairs of that other person.

(2) Before commencing the investigation, the investigator shall, if requested, serve on the associated person a copy of the consent in writing of the Board.

(3) For the purposes of this section, a person is associated with another person if the two persons are related to each other and—

- (a) the first-mentioned person is a member of the insurance industry; and
- (b) either of those persons is, or has directors who are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the other person or of its directors.

[Act No. 11 of 2006, s. 10.]

#### **12. Powers of investigator**

(1) An investigator may, by notice in writing, require any person who is or has at any time been a director, managing director, secretary, principal officer, manager, officer, employee, agent, accountant, broker, auditor or actuary of the person being investigated to—

- (a) give to the investigator all reasonable assistance in connection with the investigation; or
- (b) appear before the investigator for examination concerning matters relevant to the investigation; or
- (c) produce any books or documents that relate to the affairs of the person being investigated.

(2) Where books or documents are produced to an investigator under this section, the investigator may take possession of them for such period as he thinks necessary for the purposes of the investigation and may make copies of and take extracts from them, but shall permit a person who would be entitled to inspect any of them, if they were not in the possession of the investigator, to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(3) No person shall—

- (a) refuse or fail to comply with a requirement of an investigator that is applicable to him, to the extent to which he is able to comply with it; or

- (b) in purported compliance with such a requirement, furnish information or make a statement that he knows to be false or misleading in a material particular; or
- (c) when appearing before an investigator for examination in pursuance of such a requirement, make a statement that he knows to be false or misleading in a material particular; or
- (d) obstruct or hinder an investigator in the exercise of his powers under this Act.

(4) A person who acts in contravention of subsection (3) shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

(5) A person being examined by an investigator shall not be excused from answering a question put to him by an investigator on the ground that the answer might tend to incriminate him but, where the person informs the investigator before answering the questions that the answer might tend to incriminate him, neither the question nor the answer shall be admissible in evidence against him in criminal proceedings other than proceedings in relation to an offence under subsection (4).

### **13. Protection for persons complying**

A person who complies with a requirement of an investigator under this Act shall not incur liability to any other person by reason only of that compliance.

### **14. Person may be represented by an advocate**

An advocate acting for a person being examined by an investigator—

- (a) may attend the examination; and
- (b) may—
  - (i) address the investigator; and
  - (ii) examine the person,

in relation to matters in respect of which the investigator has questioned the person.

### **15. Notes of examination of person**

(1) An investigator may cause notes of an examination of a person to be recorded and read to or by that person and may require that person to sign the notes and, subject to section 12(5), notes signed by that person may be used in evidence in proceedings under this Act against that person.

(2) A copy of the notes signed by a person shall be furnished without charge to that person upon request made by him in writing to the investigator.

(3) Where notes are recorded under this section, the notes shall be furnished to the Commissioner with the report of the investigation to which they relate.

### **16. Report of investigator**

(1) An investigator may make one or more reports in writing to the Commissioner during the investigation of the whole or a part of the affairs of a person and shall, if so directed in writing by the Commissioner, make such reports as are specified in the direction.

(2) A report made on the completion of the investigation shall include—

- (a) a statement of the opinion of the investigator in relation to the grounds for investigation and the facts on which that opinion is based and recommendations thereon;

- (b) the recommendations of the investigator with respect to—
  - (i) the question whether the person investigated should continue to be permitted to carry on business;
  - (ii) any directions that should be given under section 17 to the person investigated;
  - (iii) the question whether the affairs of the investigated person should be reorganized; and
  - (iv) such other matters, affecting the person investigated or otherwise in the public interest in relation to the business carried on by the person investigated, as he thinks fit.

(3) An investigator shall not include in a report a recommendation relating to the institution of criminal proceedings or a statement to the effect that, in his opinion, a specified person has committed a criminal offence.

(4) The Commissioner shall give a copy of a report made to him under this section to the person investigated.

(5) The Cabinet Secretary may, if he considers it is in the public interest to do so and after taking into consideration any advice he has received from the Attorney-General, cause the whole or some part of the report to be published.

[Act No. 19 of 2015, s. 33.]

#### **17. Directions to person investigated**

(1) The Commissioner may, by notice in writing, require a person investigated to comply by such date or within such period as may be specified therein, with such directions as he considers necessary in connection with any matter arising out of a report made under section 16.

(2) Without prejudice to the generality of subsection (1), the Commissioner may, where the person investigated is an insurer, issue any one or more of the following directions—

- (a) that the insurer shall not issue new policies or undertake liability under new contracts of insurance;
- (b) that the insurer shall not renew existing policies;
- (c) that the insurer shall not issue policies in respect of a class of insurance business specified in the direction or undertake liability under contracts of insurance included in a class of contracts of insurance so specified;
- (d) that the insurer shall not renew existing policies in respect of a class of insurance business specified in the direction.

(3) Without prejudice to the generality of subsection (1), the Commissioner may, where the person investigated is an insurer issue any one or more of the following directions—

- (a) that the insurer shall not dispose of or otherwise deal with an asset of the insurer or an asset of the insurer included in a class of assets specified in the direction;
- (b) that the insurer shall dispose of an asset of the insurer included in a class of assets specified in the direction, in such manner and within such period after the giving of the direction, not being less than twenty-one days, as the Commissioner so specifies;

- (c) that the insurer shall, within such period after the giving of the direction, not being less than twenty-one days, as the Commissioner specifies in the direction, make in his accounts such provision or further provision as the Commissioner so specifies in respect of unearned premiums or claims or in respect of both unearned premiums and claims;
- (d) that the insurer shall, within such period after the giving of the direction, not being less than twenty-one days, as the Commissioner specifies in the direction, adjust one or more of his reserves and make appropriate investment in connection with such reserve or reserves, as the case may be;
- (e) that the insurer shall make such arrangements with respect to reinsurance or retrocession as he so specifies;
- (f) that the insurer shall increase, so far as he is able to do so, his paid up capital whether by calling up such uncalled capital as is available to be called up or otherwise;
- (g) that the insurer shall not, except with the consent of the Commissioner—
  - (i) enter into an arrangement or agreement for the sale or disposal of his business by amalgamation or otherwise or for the carrying on of his business in partnership with another body corporate; or
  - (ii) effect a reconstruction of the insurer.
- (h) that the insurer shall, within such period after the giving of the directions, not being less than six months, as the Commissioner specifies in the direction, effect a reconstruction of the insurer.

(4) If a body corporate in respect of whom a direction has been given under subsection (1), (2) or (3) is placed in liquidation, the direction ceases to have effect unless the court directs otherwise.

(5) If the person under investigation is a body corporate and—

- (a) as a result of a report by an investigator, the Commissioner considers that it would be in the interests of policy holders for the body to be placed in liquidation; or
- (b) the body has failed, or is failing, to comply with a direction issued under this section,

the Commissioner may, after giving the body a reasonable opportunity of making representations, apply to the court for an order for the liquidation of the body, in which case the provisions of Part VI of the Insolvency Act, 2015 (as modified by Part XII of this Act) apply to the body.

(6) Where, after reading a report made under section 16, the Commissioner considers that a requisition under paragraphs (b) or (c) of subsection (1) of section 9 has been made without reasonable cause, he may order that the whole or any part of the amount furnished as security under subsection (3) of that section shall be forfeited and paid to the person investigated and the Commissioner in order to defray the respective costs incurred by them.

[Act No. 19 of 2015, s. 34, Act No. 11 of 2019, s. 4.]



**18. Secrecy**

(1) This section applies to every person who is or has been the Commissioner of Insurance or a member of the staff assisting the Commissioner or an investigator or any other person appointed by or assisting the Commissioner.

(2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act, make a record of or divulge or communicate to any person, any information concerning the affairs of any other person acquired by him by reason of his office or employment under or for purposes of this Act.

(3) Nothing in this section shall prevent the communication of information or the production of a document, by the Commissioner or by a member of the staff or other person assisting the Commissioner or by an investigator authorized by the Commissioner in that behalf, to a person to whom, in the opinion of the Minister, it is in the public interest that the information be communicated or the document produced.

(4) The Commissioner or a member of the staff or other person assisting the Commissioner and authorized by him in that behalf may furnish to the Director of Statistics or to a regulatory authority information obtained from a member of the insurance industry or policy-holder:

Provided that any information furnished to the Director of Statistics or to a regulatory authority under this subsection shall be treated as confidential and used solely for the purposes of this Act.

(5) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding twelve months or to both.

[Act No. 12 of 1994, s. 4, Act No. 57 of 2012, s. 34.]

**PART III – REGISTRATION OF INSURERS****19. Only authorized persons to carry on insurance business**

(1) Except as otherwise provided in or under this Act, only a person registered under this Act may carry on insurance business —

- (a) in Kenya (whether in respect of Kenya insurance or reinsurance business or otherwise); or
- (b) outside Kenya in respect of Kenya business, except Kenya business that is solely reinsurance business.

(2) A person resident in Kenya or an association of persons or body corporate established in Kenya who or which carries on insurance business in any part of the world other than Kenya is, for the purposes of this Act, taken to be an insurer carrying on that business within Kenya.

(3) A person who carries on insurance business in contravention of subsection (1) commits an offence and on conviction is liable to a fine not exceeding five million shillings.

(4) If, after being convicted of an offence under subsection (3), a person continues to carry on insurance business in contravention of subsection (1), the person commits a further offence on each day on which the contravention continues and on conviction is liable to a fine not exceeding five hundred thousand shillings for each such offence.

(5) If a person found guilty of an offence under subsection (3) is a natural person, the person is liable, in addition to, or instead of, a fine, to imprisonment for a term not exceeding two years.

(6) If a body corporate is convicted of an offence under subsection (3), the commission of the offence constitutes grounds on which the Commissioner may apply to the court for the liquidation of the body corporate.

[Act No. 19 of 2015, s. 35.]

### **19A. *Takaful* insurance business**

(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.

[Act No. 50 of 2016, s. 3.]

### **20. Placing of risks with insurers and reinsurers not registered under this Act**

(1) No insurer, broker, agent or other person shall directly or indirectly place any Kenya business other than reinsurance business with an insurer not registered under this Act without the prior approval, whether individually or generally, in writing of the Commissioner.

(2) No insurer, broker, agent or other person shall directly or indirectly place any reinsurance of Kenya business with an insurer not registered under this Act except under the following conditions—

- (a) in the case of treaty reinsurance, with the approval of the Commissioner to the treaty, and subject to such restrictions as he may specify;
- (b) in the case of facultative reinsurance subject to the prior approval in writing of the Commissioner to the placing of each particular risk with insurers or reinsurers not registered under this Act.

(3) Paragraph (a) of subsection (2) shall be deemed to have been complied with in respect of any reinsurance treaty or contract in force on the appointed date or the date of the renewal of the treaty or contract, whichever is earlier, if the treaty or contract is certified by the Kenya Reinsurance Corporation Limited as having been approved by that company.

(4) A person who contravenes the provisions of subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

(5) A policy or contract of insurance or reinsurance effected or renewed in contravention of subsection (1) of section 19, or subsection (1) of this section, shall not be invalid, void or unenforceable solely on the grounds of that contravention.

[Act No. 7 of 1997, s. 14, Act No. 11 of 2017, Sch., Act No. 22 of 2017, s. 3.]

**21. Repealed by Act No. 19 of 2015, s. 36.**

### **22. Prohibition of registration of certain persons**

Subject to section 23, a person may be registered as an insurer under this Act only if—

- (a) the person is a body corporate registered under the Companies Act, 2015; and

- (b) at least one third of the controlling interest in the body (whether in terms of shares, paid up share capital or voting rights) is wholly under the control of—
- (a) citizens of a Partner State of the East African Community;
  - (b) a partnership whose partners are all citizens of a Partner State of the East African Community; or
  - (c) a body corporate whose shares are wholly owned by citizens of a Partner State of the East African Community or the Government, or a combination of them.

[Act No. 18 of 1986, Sch., Act No. 11 of 2006, s. 11,  
Act No. 1 of 2014, s. 7, Act No. 19 of 2015, s. 37.]

### 23. Minimum capital requirements and holding by Kenya citizens

(1) No person shall be registered as an insurer unless he meets the minimum capital requirements specified in the Schedule.

(2) The Authority may, by order published in the *Gazette*, amend the Schedule.

(3) Every order made under this section shall be laid before the National Assembly without unreasonable delay and unless a resolution approving the order is passed by the Assembly within twenty days on which it next sits after the order is so laid, it shall thenceforth be void by without prejudice to anything previously done thereunder or to the issuing of a new order.

(3A) If the Authority considers it appropriate, having regard to the nature, scale and complexity of the insurance business carried on or proposed to be carried on by an insurer, and to the insurer's risk profile, the Authority may issue—

- (a) a directive requiring the insurer to increase its paid-up capital to an amount higher than the minimum specified in the Regulations; or
- (b) a directive increasing the minimum capital adequacy requirement applicable to an insurer to a higher sum than that specified in the Regulations.

(4) Out of the amount of the paid-out capital under subsection (1), not less than one third shall be owned by citizens of the East African Community Partner States, by a partnership whose partners are all citizens of such states, wholly owned by citizens of such states or by the Government.

(4A) No person shall—

- (a) control, or be beneficially entitled, directly or indirectly, to more than twenty-five per cent of the paid up share capital or voting rights of an insurer; or
- (b) be entitled to appoint more than twenty-five per cent of the board of directors of an insurer; or
- (c) be entitled to receive more than twenty-five per cent of the aggregate dividends of an insurer in any given financial year:

Provided that this subsection shall not apply to—

- (i) a corporate entity licensed by an insurance, banking, pensions or securities regulator in Kenya; or
- (ii) a foreign corporate entity licensed by an insurance, banking, pensions or securities regulator in its country of origin; or
- (iii) the Government of Kenya;

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- (iv) a state corporation within the meaning of the State Corporations Act (Cap. 446);
- (v) a company listed in a stock exchange.

(4B) No person shall be appointed as an executive director, managing director, principal officer or other senior management official of an insurer if such person

- (i) controls, or is beneficially entitled, directly or indirectly, to more than twenty per cent of the paid up share capital or voting rights of the insurer; or
- (ii) is entitled to appoint more than twenty per cent of the Board of Directors of the insurer; or
- (iii) is entitled to receive more than twenty per cent of the aggregate dividends of the insurer in any given financial year.

(4C) A person who, at the commencement of subsections (4A) and (4B), holds any right, interest or office in an insurer contrary to the provisions of those subsections, shall comply with the requirements thereof by the 31st December, 2011.

(4D) For the purposes of subsection (4A), indirect control or beneficial entitlement to the paid up share capital or voting rights of an insurer, means control or entitlement—

- (a) in the case of a company or body corporate, through—
  - (i) a holding company or its subsidiary;
  - (ii) a subsidiary or its holding company;
  - (iii) a holding company or its subsidiary;
  - (iv) nominees; or
- (b) in the case of an individual, through—
  - (i) any member of his family;
  - (ii) a company or other body corporate controlled directly or indirectly by him, whether alone or with his associates;
  - (iii) any associate of his associates,

and a person shall be deemed to be a member of a family if he is the parent, spouse, brother, sister, child, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild or adopted child of the person concerned, and in the case of an adopted child his adoptive parents.

(5) A registered insurer who permits his paid up share capital to fall below the minimum prescribed under subsection (1) commits an offence and is liable on conviction to a penalty of one hundred thousand shillings and if the offence is a continuing one, to a further fine of five thousand shillings for every day during which the offence continues.

(6) Notwithstanding any other penalty imposed under this section, the convicted insurer shall be liable to having its registration cancelled.

[Act No. 18 of 1986, Sch., Act No. 12 of 1994, s. 5, Act No. 8 of 2009, s. 46, Act No. 10 of 2010, s. 52, Act No. 1 of 2014, s. 8, Act No. 14 of 2015, s. 24, Act No. 19 of 2015, s. 38, Act No. 22 of 2017, s. 4.]

**24. Repealed by Act No. 22 of 2017, s. 5.**

**25. Requirements as to capital structure and voting rights**

(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 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) that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid up amount is the same for all shares, whether existing or new:

Provided that the conditions specified in this subsection shall not apply to an insurer who has, before the commencement of this Act, issued shares other than ordinary shares each of which has a single face value, or shares the paid up amount whereof is not the same for all of them, for a period of three years from that commencement.

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

(2) Notwithstanding anything to the contrary contained in any law for the time being in force or in the memorandum or articles of association of an insurer referred to in subsection (1), but subject to the other provisions of this section, the voting rights of every shareholder of the insurer shall in all cases be strictly proportionate to the paid up amount of the shares held by him.

(3) No insurer shall after the commencement of this Act be newly registered for carrying on any class of insurance business if he has issued shares other than ordinary shares of the nature specified in subsection (1).

(4) Subject to the other provisions contained in this Act, but notwithstanding anything contained in the Companies Act, 2015, or in the memorandum or articles of association of an insurer referred to in subsection (1), no insurer shall, except with the prior written approval of the Commissioner, register the transfer of any shares where the transfer has the effect of reducing the proportion of share holding of citizens of Kenya in the insurer required by section 22 or 23. The Authority may, by order published in the *Gazette*, amend the Schedule.

[Act No. 19 of 2015, s. 40, Act No. 50 of 2016, s. 4.]

**26. Provisions relating to carrying on of both long term and general insurance business**

(1) A person registered as an insurer under this Act shall be entitled to carry on only the class or classes of insurance business for which he has been registered.

(2) In the case of an insurer registered to carry on both long term insurance business and general insurance business, the assets of the statutory funds established under section 45 in respect of long term insurance business shall be as absolutely the security of the policy-holders of the long term insurance business as though the statutory funds belonged to an insurer carrying on no other business than long term insurance business and shall not be liable for any contracts of the insurer for which the statutory funds would not have been liable had the business of the insurer been only long term insurance business and, notwithstanding the

Companies Act, shall not be applied directly or indirectly, either during the winding up or otherwise, for any purpose other than those of the long term insurance business of the insurer.

### **27. One-third of boards to be citizens of Kenya**

A person being a body corporate incorporated in Kenya with or without a share capital shall not be registered and if registered shall have his registration cancelled, if at least one third of the members of his board of directors or managing board are not citizens of Kenya.

[Act No. 12 of 1994, s. 6, Act No. 22 of 2017, s. 6.]

### **27A. Qualifications of board members**

A person shall not be registered under section 31 unless—

- (a) the Board of Directors or managing board of such person comprises at least five members; and
- (b) the Commissioner is satisfied that all members of such board have knowledge and experience in matters relating to insurance, actuarial studies, accounting, finance or banking;
- (c) all the members of such Board have in writing addressed to the Commissioner signifying their acceptance to Serve on the Board.

[Act No. 9 of 2003, s. 3, Act No. 9 of 2007, s. 55.]

**28. Repealed by Act No. 22 of 2017, s. 7.**

### **29. Appropriate reinsurance arrangements**

(1) Subject to subsection (3), no person shall be registered under section 31 except a person who has re-insurance strategies and arrangements, being strategies and arrangements approved by the Commissioner, for insurance of liabilities in respect of which persons, property or interests are, or are to be, insured by the insurer in the course of carrying on insurance business.

(2) The Commissioner shall not approve arrangements strategies or for reinsurance made or proposed to be made unless the amount of premium and commission to be paid or the manner in which the amount of premium and commission are to be ascertained are specified in the contract of reinsurance.

(3) The Commissioner shall not approve arrangements strategies or for reinsurance where, in the opinion of the Commissioner, the retention limits are too low or too high.

(4) The Commissioner may, in determining whether to approve strategies and arrangements for reinsurance made, or proposed to be made, by an insurer, have regard to all matters that he considers relevant and in particular to—

- (a) the class or classes of insurance business carried on or proposed to be carried on by the insurer;
- (b) the amount of premiums received by or due to the insurer during his last preceding financial year in respect of each class of insurance business carried on by him;
- (c) the amount of premiums expected by the insurer during the next financial year in respect of each class of insurance business to be carried on by the insurer;
- (d) the size of contingency loading which can be built into the premium rates of the insurer;

- (e) the amount of reinsurance commissions received by or due to the insurer during his last preceding financial year in respect of each class of insurance business carried on by the insurer;
- (f) the amount of reinsurance commissions expected to be received by the insurer during the next financial year in respect of each class of insurance business to be carried on by the insurer;
- (g) the price of reinsurance;
- (h) the nature and value of the assets of the insurer;
- (i) the capital reserves of the insurer and cost of servicing capital, investment policy and investment income;
- (j) probability, number and size of losses expected and risk characteristics of the insurer's portfolio;
- (k) inter-dependence of exposure units; and
- (l) the person or persons by whom the reinsurance is or is proposed to be undertaken.

(5) The Cabinet Secretary, having regard to such matters as he considers relevant, may, by notice in writing, exempt an insurer, subject to such terms and conditions and for such period as he specifies in the notice, from the requirements of subsection (1).

[Act No. 1 of 2014, s. 9, Act No. 19 of 2015, s. 42.]

### **30. Application for registration**

An application for registration as an insurer shall be in the prescribed form and shall be accompanied by—

- (a) a copy of the memorandum of association or other instrument or document by which the applicant is constituted;
- (b) a copy of the articles of association or other rules of the applicant;
- (c) a certified copy of the published prospectus, if any;
- (d) a copy of each of the proposal and policy forms, endorsements and any form of written matter describing the terms or conditions of or the benefits to or likely to be derived from policies or intended to be used by the applicant;
- (e) statements of the premium rates, advantages and terms and conditions to be offered in connection with insurance policies and details of the bases and formulae from which those rates have been calculated together with a certificate in connection with long term insurance business by an actuary that such rates, advantages, terms and conditions are sound and workable;
- (f) a detailed statement of assets and liabilities in Kenya at the date of application;
- (g) a description of all reserves made by the insurer with detailed descriptions of the method, basis and formula for calculating each of the reserves;
- (h) a certificate from the Central Bank of Kenya specifying the amounts and details of deposits under section 32 made by the applicant;
- (i) certified copies of reinsurance contracts;
- (j) the prescribed fee;

- (k) such proposals as to the manner in which it proposes to carry on business and such financial forecasts and other documents and information, if any, as may be prescribed;
- (l) an investment plan for the following period of not less than three years.

[Act No. 14 of 2015, s. 26.]

### **30A. Opening of a branch**

(1) An insurer registered under this Act wishing to open a branch or a new place of business in Kenya, or to change the location of a branch, or an existing place of business, shall apply to the Authority for approval to do so.

(2) In considering an application under subsection (1), the Authority shall take into account—

- (a) the history and financial condition of the insurer;
- (b) the adequacy of the capital base and the structure of the insurer;
- (c) the viability and earning prospects of the branch; and
- (d) such other matter as may have a bearing on the insurer or the proposed branch.

(3) There shall be payable, in respect of every application under subsection (1), a fee of twenty thousand shillings.

(4) For the purposes of this section “branch” means any permanent premises, other than its head office, at which an insurer transacts business in Kenya.

[Act No. 4 of 2012, s. 33.]

### **31. Registration**

(1) Where the Board is satisfied that—

- (a) the applicant has the share capital and assets, as the case may be, required by sections 22 and 23;
- (b) the deposit required by section 32 has been made;
- (c) the applicant has adequate reinsurance arrangements or has been granted an exemption under section 29;
- (d) the applicant has adequate reserves and the methods of calculating the reserves are satisfactory;
- (e) the applicant has adequate assets in Kenya;
- (f) the volume of business which is likely to be available to, and the earning prospects of, the applicant are adequate;
- (g) the applicant is, and is likely to continue to be, able to comply with such of the provisions of this Act and regulations and directions made or issued under this Act as are applicable to the applicant;
- (h) the applicant has an adequate number of technically qualified and otherwise competent staff, including—
  - (i) a fit and proper principal officer who holds a technical or professional qualification in insurance, accounting or banking approved by the Commissioner, and who has more than ten years’ experience in a managerial capacity in the respective sector; and
  - (ii) a management staff comprising persons who hold technical or professional qualifications in insurance, accounting or banking



approved by the Commissioner and who have more than five years' experience in the respective sector, and suitable premises and facilities in Kenya to satisfactorily serve the public in respect of the class or classes of business specified in the application,

the Board shall, subject to such terms and conditions as it may consider necessary, approve the registration of the applicant in respect of such class or classes of insurance as it may direct.

(2) A licence issued under this section shall remain in force until cancelled under section 196.

[Act No. 12 of 1987, s. 4, Act No. 9 of 2003, s. 4, Act No. 11 of 2006, s. 12, Act No. 19 of 2015, s. 43, Act No. 22 of 2017, s. 8, Act No. 11 of 2019, s. 5.]

#### PART IV – DEPOSITS

### 32. Deposits

(1) Subject to subsection (2), an insurer applying for registration under this Act shall deposit and keep deposited with the Central Bank of Kenya (in this Part called "the Bank") in Kenya Government securities estimated at the market value of the securities on the day of deposit—

- (a) where the application is in respect of long term insurance business, a sum of five million shillings or five percentum of the total assets, whichever is higher;
- (b) where the application is in respect of general insurance business, a sum of five million shillings or five percentum of the total assets, whichever is higher;
- (c) *deleted by Act No. 7 of 2002, s. 54.*

(2) Where an applicant under subsection (1) was carrying on insurance business immediately prior to the appointed date he may deposit with the Bank in Kenya Government securities a sum of one hundred and fifty thousand shillings in respect of long term business and a sum of fifty thousand shillings in respect of general business; and if the applicant is registered he shall deposit annually thereafter further Kenya Government securities of the same amounts in respect of each of the two classes of business aforesaid, until the deposit reaches the value specified in subsection (1) for the class or classes of business for which the applicant is registered.

(3) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such additional sum in securities (estimated at the market value of the securities on the day of deposit) as will make up the amount so used and, unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is used for discharge of liabilities, the insurer shall be deemed to have failed to comply with the requirements of subsection (1).

[Act No. 8 of 1996, s. 50, Act No. 6 of 2001, s. 60, Act No. 7 of 2002, s. 54, Act No. 22 of 2017, s. 9.]

### 33. Return of deposits if unregistered

(1) A deposit made under section 32 shall be returned by the Bank if the application for registration as an insurer is not approved by the Board.

(2) Subject to section 40(2), no deposit made in respect of a class of insurance business shall be refunded so long as the insurer carries on that business.

[Act No. 12 of 1987, s. 11, Act No. 11 of 2006, s. 13.]

#### **34. Deposits to be kept by Bank on behalf of insurer**

Where the Board approves an application for registration under section 31, a deposit made under section 32 shall be held by the Bank on behalf of the insurer and any interest due and collected by the Bank on a deposit shall be paid to the insurer.

[Act No. 12 of 1987, s. 11, Act No. 19 of 2015, s. 44, Act No. 11 of 2019, s. 6.]

#### **35. Substitution of deposits**

An insurer may at any time replace any securities deposited by him under this Part by other securities so long as the value of the other securities estimated at the market rates prevailing at the time of replacement is not less than the value of the securities replaced estimated at the market rates prevailing when they were deposited.

#### **36. Investment of amount deposited**

The Bank shall, on the written application of an insurer, invest in Kenya Government securities the whole or any part of the amount received on the redemption of a deposited security.

#### **37. Variation of deposits**

(1) An insurer may require the Bank to sell any deposited security and to invest the net proceeds of the sale in such Kenya Government security as the insurer may direct and the new security shall be deemed to form part of the deposit under section 32.

(2) If the amount realized by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) falls short of the market value of the securities at the date on which they were deposited with the Bank, the insurer shall make good the deficiency by a further deposit in securities estimated at the market value of the securities on the day on which they are deposited, within a period of two months from the date on which the securities matured or were sold, and unless he does so the insurer shall be deemed to have failed to comply with the requirements of section 32 as to deposits.

#### **38. Use of deposits**

(1) A deposit made by an insurer shall be deemed to be part of the assets of the insurer, but shall not—

- (a) be capable of being transferred, assigned, or encumbered with a mortgage or other charge, by the insurer;
- (b) be available for the discharge of a liability of the insurer other than liability in respect of a policy of insurance issued in Kenya by the insurer;
- (c) be liable to attachment in execution of a judgment except a judgment obtained by a policy-holder of the insurer in respect of a debt due upon a policy of insurance issued in Kenya and which debt the policy-holder has been unable to recover in any other way.

(2) Where a deposit is made in respect of long term insurance business, it shall not be available for the discharge of a liability of the insurer other than a liability arising out of a policy of long term insurance issued by the insurer.

### **39. Return of deposits**

Where the Authority is satisfied that an insurer has ceased to carry on in Kenya any class of insurance business in respect of which he has been registered and that all his liabilities in Kenya in respect of that business have been satisfied or otherwise provided for, the bank shall on the application by that insurer and on the approval of the Authority return to the insurer such part of the deposit as is not required in respect of any other class of insurance business carried on by the insurer.

[Act No. 12 of 1987, s. 11, Act No. 11 of 2019, s. 7.]

### **40. Increase of deposit**

(1) Where upon examination of a return, reinsurance document or other document of or furnished by an insurer, it appears to the Commissioner that a deposit made under section 32, or the value of the assets of the insurer in Kenya, is disproportionately low in relation to the amount of insurance business carried on by that insurer in Kenya, or that it is in the opinion of the Commissioner desirable for the protection of policy-holders, the Commissioner may, after giving the insurer a reasonable opportunity of making representations, require the insurer to make an additional deposit of such sum as he shall specify not exceeding in the case of general insurance business twenty per cent, and in the case of long term insurance business ten per cent, of the premiums paid or payable in respect of policies of insurance issued in the financial year of the insurer immediately preceding the year in which the additional deposit is required to be made:

Provided that the total deposits including the additional deposit shall not exceed three million shillings in the case of general insurance business and three million shillings in the case of long term insurance business.

(2) An additional deposit made in accordance with subsection (1), or any part thereof, which is in the opinion of the Commissioner no longer required shall be refunded to the insurer either on the application of the insurer or on the initiative of the Commissioner.

(3) Subject to subsection (2), an additional deposit required to be made under subsection (1) shall be deemed to be a deposit made under section 32 and the provisions of this Part applicable to deposits shall apply to that additional deposit.

## **PART V – ASSETS, LIABILITIES, SOLVENCY MARGINS AND INVESTMENTS**

### **41. Capital adequacy**

(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.

(3) The following assets shall neither be included in the capital available computation nor be used for the purposes of determining the insurer's capital adequacy under this section—

- (a) goodwill and other intangible assets that exceed five percent of total assets;

- (b) deferred tax income or expenses and deferred tax assets;
- (c) assets pledged to support credit facilities obtained by an insurer or other specific purposes;
- (d) assets over their concentration limits;
- (e) all credit facilities granted by an insurer and secured by its own shares;
- (f) prepayments;
- (g) one hundred per cent of fixed assets and computer equipment;
- (h) unsecured loans;
- (i) receivables from insurers;
- (j) merchandise inventory;
- (k) such other assets as may be prescribed.

[Act No. 12 of 1994, s. 8, Act No. 8 of 1996, s. 51, Act No. 7 of 2002, s. 55, Act No. 9 of 2007, s. 56, Act No. 8 of 2009, s. 47, Act No. 14 of 2015, s. 27, Act No. 19 of 2015, ss. 46 & 47, Act No. 50 of 2016, s. 5, Act No. 22 of 2017, s. 10.]

#### **42. Determination of capital required**

(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.

[Act No. 12 of 1994, s. 9, Act 4 of 2004, s. 76, Act No. 10 of 2010, s. 53, Act No. 50 of 2016, s. 6.]

**43. Repealed by Act No. 50 of 2016, s. 7.**

#### **43A. Admitted liabilities**

*Repealed by Act No. 28 of 2019, s. 3.*

[Act No. 28 of 2019, s. 3.]

#### **44. Assessment of assets and liabilities**

(1) The Commissioner may, by notice in writing served on an insurer, require the insurer to furnish him with such information with respect to any liability of the insurer or value of an asset of the insurer as he specifies in the notice.

(2) Where the Commissioner is not satisfied that the value of a liability or asset of the insurer as determined by the insurer has been correctly determined, he may, after giving the insurer an opportunity of making representations, by notice in writing served on the insurer, require the insurer to produce a valuation of the liability or asset worked out by an independent valuer approved by the Commissioner.

#### **45. Establishment of statutory fund**

(1) An insurer carrying on long term insurance business in Kenya on the appointed date shall, as at the date of commencement of his financial year next after the appointed date, and every insurer commencing long term insurance business in Kenya after the appointed date shall, as at the date of commencement of that business, establish and maintain a statutory fund under an appropriate name in respect of the long term insurance business carried on by him.

(2) An insurer may establish and maintain a separate statutory fund, under an appropriate name, in respect of any class or classes of his long term insurance business.

(3) Where an insurer carries on long term insurance business of more than one class, the Commissioner may in writing direct the insurer—

- (a) to establish, maintain and appropriately name one or more separate statutory funds in respect of any class or classes of long term insurance business carried on by him;
- (b) to maintain an account in respect of each of those classes of long term insurance business and to carry and enter the receipts of each of those classes of business in the account maintained by him.

(4) All amounts received by an insurer in respect of any class of long term insurance business, after the establishment by the insurer of a statutory fund under this section, shall be carried to that fund.

(5) Where, at any time—

- (a) an insurer is maintaining more than one statutory fund in respect of his long term insurance business; and
- (b) a particular policy ceases to be included in the class of the long term insurance business of the insurer in respect of which one of the statutory funds is maintained (in this subsection referred to as “the first fund”) and commences to be included in the class of the long term insurance business of the insurer in respect of which another of the statutory funds is maintained (in this subsection referred to as “the second fund”),

the insurer shall forthwith transfer from the first fund to the second fund assets equal to the liability on the policy at that time as ascertained by an actuary and approved by the Commissioner.

(6) The income arising from the investment of the assets of a statutory fund shall be carried to and form part of that fund.

(7) The assets of each statutory fund shall be kept distinct and separate from all other assets of the insurer.

(8) An insurer carrying on long term insurance business shall maintain such books of account and other records as are necessary for identifying—

- (a) the assets representing each statutory fund maintained by the insurer under this section;
- (b) the liabilities attributable to that class or, as the case may be, each of those classes of long term insurance business.

[Act No. 12 of 1994, s. 10.]

#### **46. Application of statutory fund**

(1) Subject to this Act, no part of the assets of a statutory fund shall, so long as the insurer carries on the class or classes of long term insurance business in respect of which the fund was established—

- (a) be available to meet any liabilities or expenses of the insurer other than—
  - (i) liabilities or expenses referable to that class of long term insurance business; and

- (ii) liabilities charged on those assets or any of them immediately prior to the appointed date,  
or be otherwise directly or indirectly applied for any purpose other than the purpose of that class of long term insurance business;

(b) be—

- (i) paid, applied or allocated as dividends or otherwise as profits to shareholders; or
- (ii) transferred to another statutory fund.

(2) A mortgage or charge (including a charge imposed by a court on the application of a judgment creditor) shall be void to the extent to which it contravenes subsection (1).

(3) A person who contravenes subsection (1) shall be guilty of an offence and liable to a penalty not exceeding twenty thousand shillings and, if he is a natural person, additionally or in the alternative to imprisonment for a term not exceeding two years.

(4) Every director and principal officer of an insurer shall be under the same liability, in the event of a contravention of subsection (1), as if he had been a trustee under a trust for the execution of those provisions in respect of that fund, and as if the appropriate policy-holders had been beneficiaries of such a trust, unless the director or principal officer proves that the contravention occurred without his knowledge and that he used all due diligence to prevent the contravention.

(5) Notwithstanding subsection (1), an insurer may, for the purposes of declaring or paying a dividend to shareholders or a bonus to policy-holders, utilize the surplus disclosed in the valuation balance sheet of a statutory fund set out in the actuary's abstract relating to an investigation made in pursuance of section 57 and accepted by the Commissioner, subject to the condition that the amount allocated or paid to the shareholders out of a statutory fund shall not exceed thirty per cent of the surplus disclosed therein after making the necessary adjustments to the surplus.

(6) The adjustments referred to in subsection (5) are—

- (a) the actual amount of income tax deducted at source during the period following the date on which the last preceding investigation was made and preceding the date on which the investigation in question is made may be added to the surplus after deducting an estimated amount of income tax on the surplus, the addition and deduction being shown in the abstract prepared by the actuary;
- (b) the surplus may be increased by contributions out of a reserve fund subject to the condition and only to the extent that the reserve fund has been made up solely of transfers from similar surpluses disclosed by investigations in respect of which the returns have been accepted by the Commissioner.

(7) Notwithstanding anything to the contrary contained in this section, an insurer carrying on long term insurance business may declare an interim bonus or bonuses to policy-holders whose policies mature for payment by reason of death

or otherwise during the inter-investigation period on the recommendation of the investigating actuary made at the last preceding investigation.

[Act No. 8 of 1991, s. 81, Act No. 9 of 1992, s. 59, Act No. 12 of 1994, s. 11, Act No. 8 of 1996, s. 52, Act No. 4 of 1999, s. 12.]

#### **47. Assets to be in the name of insurer**

(1) Unless the Cabinet Secretary direct otherwise, none of the assets in Kenya of an insurer shall, except in the case of assets required by law or by a requirement imposed by the Cabinet Secretary under subsection (3) to be vested in trustees, be kept otherwise than in the name of the insurer.

(2) Nothing contained in subsection (1) shall be deemed to prohibit the endorsement in favour of a bank of any security or other document solely for the purpose of collection or realisation of any interest, bonus or dividend.

(3) The Cabinet Secretary may direct that the whole or a specified portion of the assets of an insurer shall be held by a person approved by him as trustee of the insurer.

(4) Assets of an insurer held by a person as trustee for an insurer shall be held by him in compliance with a direction given under this section if, and only if, they are assets in whose case the insurer has given him written notice that they are to be held by him in compliance with such a requirement, or they are assets into which the first-mentioned assets have been transposed by him on the instructions of the insurer.

(5) No assets held by a person as trustee for an insurer in compliance with a direction given under this section shall, so long as the direction is in force, be released except with the consent of the Cabinet Secretary.

(6) If a mortgage or charge is created by an insurer at a time when there is in force a direction imposed on the insurer by virtue of this section, being a mortgage or charge conferring a security on any assets which are held by a person as trustee for the insurer in compliance with the direction, the mortgage or charge shall, to the extent that it confers such a security, be void against the liquidator and any creditor of the insurer.

[Act No. 14 of 2015, s. 28, Act No. 19 of 2015, s. 48.]

#### **48. Investments of the Assets of Insurer**

Subject to the provision of section 41 and 50 and to any provisions in the instruments constituting the insurer or in the articles of association or other rules of the insurer which impose restrictions upon the manner in which the assets of the insurer may be invested, the assets of an insurer shall, with sufficient regard to considerations of security, liquidity and income, be invested in accordance with the provisions of such investment guidelines as may be issued by the Authority.

[Act No. 14 of 2015, s. 29, Act No. 19 of 2015, s. 49.]

#### **49. Unsuitable investments**

If at any time the Commissioner considers an investment constituting an insurer's assets to be unsuitable or undesirable, he may after giving notice to the insurer stating the grounds on which he proposes to exercise his power under this section and giving the insurer an opportunity of being heard, direct the insurer to realize the investment, and the insurer shall comply with the direction within such time as may be specified in that behalf by the Commissioner.

**50. Insurer to submit investment policy**

(1) Every insurer shall invest its assets in accordance with the investment guidelines issued under section 48.

(2) Every insurer shall submit to the Authority an investment policy in such manner, form and for period not less than three years or such longer period as the Authority may determine from time to time.

[Act No. 18 of 1986, Sch., Act No. 12 of 1994, s. 13, Act No. 5 of 1998, s. 52, Act No. 8 of 2008, s. 61, Act No. 14 of 2015, s. 30, Act No. 19 of 2015, s. 50.]

**51. Restriction on mortgages, etc. of assets**

(1) An insurer may, to secure temporary loans or bank overdrafts, mortgage or charge assets not exceeding ten per cent of the total value of the total assets of the insurer.

(2) Subject to subsection (1), an insurer shall not mortgage or charge any of his assets.

[Act No. 22 of 2017, s. 12.]

PART VI – ACCOUNTS, BALANCE SHEETS,  
AUDIT AND ACTUARIAL INVESTIGATIONS

**52. Separate accounts for each class**

Where an insurer carries on more than one class of long term insurance business or more than one class of general insurance business, he shall keep separate accounts of receipts and payments in respect of each prescribed class of insurance business carried on by him.

**53. Apportionment between classes**

Where a single amount received or paid, whether in respect of premiums, investment income, claims, commissions, reinsurance costs, administration costs, taxes or otherwise, is received or paid in respect of more than one class of business prescribed under section 52, and the amount is not otherwise allocatable between the different classes, the insurer shall, for the purposes of this part, apportion the amount in an equitable manner between the classes of insurance business in respect of which it is received or paid.

**54. Accounts and balance sheets**

(1) Subject to subsection (3), every insurer incorporated in Kenya shall, in respect of all insurance business wherever carried on by the insurer; after the end of each financial year, prepare for the year, in accordance with the prescribed forms, a revenue account for the year, a balance sheet as at the end of the year and a profit and loss account for the year, or, in the case of a company not trading for profit, an income and expenditure account of the year:

Provided that an insurer shall, in respect of every quarter, prepare and submit to the Commissioner, within thirty days of the end of the quarter to which it relates, an unaudited revenue account, balance sheet, profit and loss account and statement of assets and liability.

(1A) The revenue account, balance sheet, profit and loss account and financial statement required to be prepared under subsection (1) shall be prepared in accordance with International Financial Reporting Standards and such accepted Kenyan reporting standards as may be prescribed.



(2) Every reserve shall be calculated in accordance with the method approved for the purpose by the Commissioner.

(3) All amounts which are required to be shown in any account or balance sheet shall be shown in Kenya currency to the nearest shilling.

(4) Notwithstanding the definition of “financial year” in section 2, the first financial year after the appointed date of an insurer shall mean the period ending on 31st December next after the appointed date.

(5) In subsection (1A), “**International Financial Reporting Standards**” means—

- (a) the standards issued by the International Accounting Standards Board of London; or
- (b) Kenyan accepted standards developed by the Institute of Certified Public Accountants of Kenya.

(6) An insurer that fails to comply with subsection (1) shall be liable to a penalty of two hundred thousand shillings and a further penalty of ten thousand shillings for each day after the expiry or the prescribed period during which the insurer remains non-compliant.

(7) The penalty imposed under subsection (6) shall be payable into the Policyholders Compensation Fund.

[Act No. 9 of 2003, s. 5, Act No. 9 of 2007, s. 57, Act No. 57 of 2012, s. 35, Act No. 1 of 2014, s. 10, Act No. 22 of 2017, s. 13, Act No. 28 of 2019, s. 4. (a),(b).]

#### **54A. Group Accounts**

Where an insurer is a member of a group of companies, the group of companies shall submit audited group accounts.

[Act No. 22 of 2017, s. 14.]

#### **55. Accounting records**

(1) An insurer shall—

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the insurer with respect to his insurance business;
- (b) so keep his accounting records as to enable the accounts, reports and statements required under this Part to be prepared;
- (c) so keep his accounting records as to enable those accounts and statements to be conveniently and properly audited in accordance with this Act.

(2) An insurer shall retain his accounting records kept in accordance with subsection (1) for at least seven years after the completion of the transactions to which they relate.

(3) *Deleted by Act No. 9 of 2003, s. 6.*

[Act No. 9 of 2003, s. 6.]

#### **56. Audit and auditor’s certificate**

(1) The accounts of every insurer shall be audited annually by an auditor.

(2) The auditor shall in a certificate relating to accounts and statements in respect of a financial year of an insurer, state whether—

- (a) the accounts and statements to which it relates appear to him to be in accordance with the Act and give particulars of any matters that do not appear to him to be so in accordance;
- (b) the accounting records of the insurer in respect of that year appear to him to have been properly kept and to record and explain correctly the transactions and financial position of the insurer and give particulars of accounting records that appear to him not to have been so kept and of transactions that appear to him not to have been so recorded;
- (c) in respect of that year, he has obtained the information and explanations that he requested and give particulars of information and explanations he requested but did not obtain;
- (d) he is satisfied that the accounts and statements referred to in paragraph (a) agree with the accounting records of the insurer and appear to him truly to represent the transactions and financial position of the insurer in respect of the financial year to which they relate and, if any of them appear to him to fail so to represent the transactions and financial position, give particulars of the failure;
- (e) amounts required by section 53 to be apportioned have been equitably apportioned and if they have not been so apportioned give particulars of the failure;
- (f) all management expenses wherever incurred in respect of the insurer's business, whether directly or indirectly, have been fully debited in the revenue account or profit and loss account as expenses and, if they have not been so debited, give particulars of the amounts not so debited;
- (g) every reserve has been calculated in accordance with the method approved for the reserve by the Commissioner and, if they have not been so calculated, give particulars of the reserves not so calculated.

(3) The auditor shall in addition issue in relation to the accounts the certificate required under the Companies Act (Cap. 486).

(4) Every insurer shall, for the purposes of this section, appoint annually an auditor who is approved by the Commissioner.

(5) If an insurer fails to appoint an approved auditor under subsection (4), or to fill any vacancy for an auditor which may arise, the Commissioner may appoint an auditor and fix the remuneration to be paid by the insurer to him.

(6) The Commissioner may require an auditor to undertake the following duties in addition to those prescribed under subsections (2) and (3)—

- (a) to submit such additional information in relation to his audit as the Commissioner may consider necessary;
- (b) to carry out any other special audit or investigations; and
- (c) to submit a report on any of the matters referred to in paragraphs (a) and (b);

and the insurer concerned shall remunerate the auditor in respect of the discharge by him of all or any of such additional duties.

(7) If the auditor of an insurer fails to comply with the requirements of this Act, the Commissioner may remove him from office and appoint another person in his place—

(8) A person shall not be qualified for appointment as an auditor of an insurer if he is—

- (a) a director, officer or employee of that insurer; or
- (b) a person who is a partner of a director, officer or employee of that insurer; or
- (c) a person who is an employee or employee of a director, officer or employee of that insurer; or
- (d) a person who is a director, officer or employee, of a person related to that insurer; or
- (e) a person who, by himself, or his partner or his employee, regularly performs the duties of secretary or accountant for that insurer; or
- (f) a firm or member of a firm of auditors of which any partner or employee falls within the above categories.

(9) No duty to which an auditor of an insurer may be subject shall be—

- (a) regarded as contravened by reason of his communicating in good faith to the Commissioner, whether or not in response to a request made by him, any information or opinion on a matter to which this Act applies.
- (b) This subsection applies to any matter of which an auditor becomes aware in his capacity as an auditor or in the discharge of his duties under this Part and which relates to the business or affairs of the insurer.

[Act No. 12 of 1994, s. 14, Act No. 19 of 2015, s. 51.]

## **57. Actuarial investigation**

(1) An insurer—

- (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 by the Authority.

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

- (a) a valuation of the liabilities of the insurer attributable insurance business;
- (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; and
- (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.

(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 by the Authority.

(4) When an investigation to which subsection (1) relates is made as at a date other than the expiry of a financial year of the insurer, the accounts for the period since the expiry of the last year of account and the balance sheet on the date as at which the investigation is made shall be prepared and audited in the manner provided under sections 54 and 56.

(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 as prescribed by the Authority.

[Act No. 18 of 1986, Sch., Act No. 12 of 1994, s. 15, Act No. 50 of 2016, s. 8.]

### **58. Actuarial valuations**

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

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

(3) The value placed upon the aggregate liabilities 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 prescribed basis.

(4) The actuary who makes the valuation shall certify whether in his opinion the value placed upon the aggregate liabilities 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 prescribed basis.

(5) In making a determination in terms of section 57(2)(b), the actuary shall—

- (a) take necessary steps to ensure that any sum representing expenses of organisation or extension, or the purchase of business or goodwill or other intangible assets, are equitably allocated between the different statutory funds and are appropriately deducted from the surplus disclosed in each fund or appropriately added to the deficiency disclosed in each fund, as the case may be;
- (b) satisfy himself that the value of the assets adopted by him are, on the basis of the auditor's certificates appended to the balance sheet, fully of the value so adopted; and
- (c) certify in regard to the matters specified in subsections (2) and (3) and paragraphs (a) and (b) of this subsection in the prescribed form.

(6) If the Commissioner considers that an investigation under section 57 does not properly indicate the state of affairs of the insurer due to a faulty basis having been adopted in the valuation, the Commissioner may, after giving the insurer a reasonable opportunity of making representations, cause a further investigation in accordance with section 57 and this section as at a date which he may specify to be made at the expense of the insurer by an actuary appointed by the Commissioner or, if the Commissioner so agrees, by an actuary appointed by the insurer and approved by the Commissioner.

(7) The insurer shall make available to the actuary all documents and information required by him for the purpose of the further investigation or valuation under subsection (6) within such period, not being less than three months, as the Commissioner may specify.

(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 business of the insurer as for an investigation under section 57.

[Act No. 5 of 1998, s. 53, Act No. 50 of 2016, s. 9.]

### **59. Returns**

An insurer shall prepare as at the end of each financial year, in respect of that year, statements and certificates in the prescribed form relating to the business carried on during the year and the business in force at the end of the year and shall furnish those statements and certificates, signed in the prescribed manner, to the Commissioner within such time as may be prescribed.

[Act No. 5 of 1998, s. 54.]

### **60. Accounts and statements to be signed**

(1) The audited balance sheet, profit and loss account and revenue account required to be prepared under this Part shall be signed by two directors and the principal officer of the insurer or, if there is only one director, by that director and by the principal officer.

(2) A report or abstract of an actuary made under this Part shall be signed by the actuary who made the investigation or valuation.

(3) A statement or return other than a balance sheet, profit and loss account, revenue account or actuarial report or abstract shall be signed by the principal officer.

[Act No. 12 of 1994, s. 16.]

### **61. Submission of accounts and statements**

(1) Every account, balance sheet, certificate, abstract, return or statement required to be prepared or prepared under sections 54, 56, 57, 58 and 59 shall be deposited with the Commissioner within three months after the end of the period to which they relate:

Provided that the insurer shall cause a copy of the audited balance sheet deposited with the Commissioner to be published in at least two daily newspapers of national circulation, within thirty days of such deposit.

(2) The Commissioner may on the application of an insurer extend or further extend the time specified in subsection (1) for a period not exceeding three months.

(3) Where on receipt of any of the documents submitted under subsection (1), any account, balance sheet, certificate, abstract, return or statement is found to be incomplete or erroneous or misleading, the Commissioner may reject it and the insurance shall be deemed not to have complied with the requirements of subsection (1) or (2), as the case may be, unless the document is resubmitted within the period specified under those subsections.

(4) Where an insurer fails to submit any document under subsection (1) within the period prescribed in that subsection or in subsection (2), the insurer may make a late submission of the document upon payment of a penalty of two hundred thousand shillings and a further penalty of ten thousand shillings for every day after the expiry of the prescribed period during which the document remains unsubmitted.

(4A) The annual accounts and statement of an insurer shall be in such form as the Authority may, from time to time, require and subject to such conditions as

the Commissioner may prescribe, may be submitted through the use of information technology.

(5) The penalty under subsection (4) shall be paid to the Policy-holders Compensation Fund in such manner as may, from time to time, be prescribed by the Authority.

[Act No. 12 of 1994, s. 17, Act No. 9 of 2003, s. 7, Act No. 9 of 2007, s. 58, Act No. 10 of 2010, s. 54, Act No. 57 of 2012, s. 36, Act No. 1 of 2014, s. 11.]

## **62. Further information**

(1) An insurer shall, if so required by the Commissioner by notice in writing served on him, furnish, within such period after service of the notice, not being less than ten days, as the Commissioner specifies in the notice, information with respect to such matters relating to an account, balance sheet, certificate, abstract, return or statement deposited by him under this section as he so specifies.

(2) Where a person fails to comply with the requirements of subsection (1), the Commissioner may decline to accept the document in respect of which the further information was sought, whereupon the document shall be deemed not to have been deposited in terms of this Act.

[Act No. 12 of 1994, s. 18.]

## **63. Other reports**

(1) An insurer shall deposit with the Commissioner a certified copy of every report on the affairs of the concern which is submitted to the members or policy-holders of the insurer immediately after its submission to the members or policy-holders, as the case may be.

(2) An insurer, being a body corporate incorporated in Kenya, shall deposit with the Commissioner a certified copy of the minutes of the proceedings of every general meeting, as entered in the minute book of the body corporate, within thirty days from the holding of the meeting to which those minutes relate.

## **64. Returns sufficient compliance with Companies Act (Cap. 486)**

Where an insurer in any year deposits his accounts and balance sheet in accordance with the provisions of section 61 then, if the company at the same time sends a copy of the accounts and balance sheet to the Registrar of companies under the Companies Act (Cap. 486)—

- (a) section 128(1) of that Act (which requires certain documents to be included in the annual return made by a company) shall not apply to that company; and
- (b) the copy of the accounts and balance sheets so sent shall be dealt with in all respects as if it had been sent in compliance with that subsection.

## **65. Rectification of returns**

(1) The Commissioner may, if it appears to him that any account, balance sheet, abstract, certificate, statement, return, report or other document deposited with him under the provisions of this Act is inaccurate or defective in any respect, require the inaccuracy or defect to be rectified within such time, not being less than ten days as he may specify in writing.

(2) Where a person fails to comply with a direction given under subsection (1), the Commissioner may decline to accept the document required to be rectified,

whereupon the document shall be deemed to have not been deposited in terms of this Act.

[Act No. 12 of 1994, s. 19.]

#### **66. Penalty for false statements**

If any account, balance sheet, abstract, return, certificate, statement or other document required to be deposited or deposited under any provision of this Act is false in any material particular to the knowledge of any person who signs it, that person shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

#### **67. Penalty for failure to comply with requirements of Part**

(1) An insurer who fails to comply with any requirement under this Part shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings; and if the offence is a continuing one, to a further fine of five thousand shillings for every day during which the offence continues.

(2) Where a person guilty of an offence under this Part is a natural person, that person shall be liable, in addition to, or in the alternative to, a fine, to imprisonment for a term not exceeding two years.

(3) Where a person guilty of an offence under this Part is a body corporate, then notwithstanding the imposition of any penalty, the commission of that offence shall constitute grounds whereby the Commissioner may apply to the court for the winding up of that body corporate.

[Act No. 12 of 1994, s. 20, Act No. 8 of 1996, s. 53.]

### **PART VIA – INSPECTION AND CONTROL OF INSURERS**

#### **67A. Inspection of Insurers**

(1) The Commissioner may, at any time and from time to time, and shall, if so directed by the Minister, cause an inspection to be made by any person authorized by him in writing, of any insurer and any other person registered under this Act, and of his books, accounts and records.

(2) When an inspection is made under subsection (1), the insurer and any other person registered under this Act, concerned and every officer and employee thereof shall produce and make available to the person making the inspection all the books, accounts, records and other documents of the insurer and any other person registered under this Act, and such correspondence, statements and information relating to the insurer, and any other person registered under this Act, its business and the conduct as thereof as the person as making the inspection may require and within seven days or such longer times as he may direct in writing.

(3) Any failure to produce any books, accounts, records, documents, correspondence, statements, returns or other information within the period specified in the direction under subsection (2) constitutes a contravention of the provisions of this Act:

Provided that—

- (a) the books, accounts and other documents required to be produced shall not, in the course of inspection, be removed from the premises of the insurer or reinsurer or other premises at which they are produced;
- (b) the person making the inspection may make copies of any books, accounts and other documents required for the purposes of his report; and

- (c) all information obtained in the course of the inspection shall be treated as confidential and used solely for the purposes of this Act.

(4) The person making the inspection shall submit his report to the Commissioner; and the report shall draw attention to any breach or non-observance of the requirements of this Act and any regulations made thereunder, any irregularity in the manner of conduct of the business of the insurer and any other person registered under this Act or any apparent mismanaging or lack of management skills in that insurer and any other person registered under this Act, and any other matter revealed or discovered in the course of the inspection warranting, in the opinion of the person making the inspection, remedial action or further investigation.

[Act No. 12 of 1994, s. 21, Act No. 9 of 2003, s. 8.]

#### **67B. Directions to person inspected**

The Commissioner may, by notice in writing, and after giving the insurer and any other person registered under this Act, a reasonable opportunity of being heard, require the inspected person to comply by such date or within such period as maybe specified therein, with such directions as he considers necessary in connection with any matter arising out of a report made under section 67A.

[Act No. 12 of 1994, s. 21, Act No. 9 of 2003, s. 9.]

#### **67C. Power of the Commissioner to intervene in management**

(1) This section applies and the powers conferred by subsection (2), may be exercised in the following circumstances—

- (a) if the insurer is found to have failed to meet the capital adequacy ratios required under section 41 of the Act;
- (b) if the insurer has failed to submit any of the accounts, returns, statements, actuarial valuations or other reports under Part VI for over six months after the end of the financial year to which they relate;
- (c) if the insurer having failed to comply with any requirement of this Act, has continued that failure, or having contravened any provision of this Act, has continued that contravention for a period of six months after notice of such failure or contravention has been given to him by the Commissioner;
- (d) where, having regard to the financial circumstances of the person registered, the Commissioner is satisfied that the person cannot carry on the business, or any part of the business, for which he is registered, as the case may be, in a satisfactory and efficient manner;
- (e) if an amount due by the insurer under a judgement entered into in an action in Kenya arising out of a policy of insurance issued by the insurer or a contract of reinsurance entered into by a reinsurer, has remained unpaid for three months after the date of the final adjudication in that action;
- (f) if the business of the insurer is wholly or is unproportionately reinsured with another person;
- (g) if an insurer is unable to pay its debts within the meaning of section 384 of the Insolvency Act, 2015;
- (h) if the insurer is found to have made adequate reserves or to have understated the level of his liabilities;



- (i) if the insurer is discovered to have submitted or provided any accounts, returns, statements, books, records, correspondence, documents or other information relating to his business which is false or misleading; or
- (j) if the Commissioner discovers, whether on an inspection or otherwise, or becomes aware of any fact or circumstance which, in his opinion, warrants the exercise of the relevant power in the interests of the insurer, its shareholders, policy-holders, or reinsurer or in the public interest.

(2) The Commissioner may, with the approval of the Board—

- (i) appoint a competent person familiar with the business of the insurer (in this Act referred to as “a manager”) to assume the management, control and conduct of the affairs and business of an insurer to exercise all the powers of the insurer to the exclusion of its Board of Directors, including the use of its corporate seal;
- (ii) remove any officer or employee of an insurer who, in the opinion of the Commissioner, has caused or contributed to any contravention of any provisions of this Act, or any regulations or directions made thereunder or to any deterioration in the financial stability of the insurer or has been guilty of conduct detrimental to the interests of policy-holders or other creditors of the insurer;
- (iii) appoint three competent persons familiar with the business of insurers to its Board of Directors to hold office as directors who shall not be removed from office without the approval of the Commissioner;
- (iv) by notice in the *Gazette*, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the insurer in favour of any officer, employee or any other person.

(3) The appointment of a manager shall be for such period, not exceeding twelve months, as the Commissioner shall specify in his instrument of appointment and may be extended by the High Court, upon the application of the Commissioner if such extension appears to the High Court to be justified.

(4) A manager shall, upon assuming the management control and conduct of the affairs and business of an insurer, discharge his duties with diligence and in accordance with sound insurance, actuarial and financial principles and, in particular, with due regard to the interests of the insurer, its policy-holders and the insuring public in general.

(5) The responsibilities of a manager shall include—

- (a) tracing, preserving and securing all the assets and property of the insurer;
- (b) recovering all debts and other sums of money due to and owing to the insurer;
- (c) evaluating the solvency and liquidity of the insurer;
- (d) assessing the insurer’s compliance with the provisions of this Act and regulations made or directions issued thereunder;
- (e) determining the adequacy of the capital and reserves and the management of the insurer and recommending to the Commissioner any restructuring or reorganisation which he considers necessary and

which, subject to the provisions of any other written law, may be implemented by him on behalf of the insurer; and

- (f) obtaining from any former principal officer, director, secretary, officer or employee of the insurer any documents, records, accounts, statements, correspondence or information relating to its business.

(5A) For the purpose of this section, preserving the assets of the insurer shall include realization of the assets of the insurer upon the approval of the Authority.

(6) The Manager shall, within a period of twelve months from the date of his appointment, prepare and submit to the Commissioner a report on the financial position and the management of the insurer with recommendations as to whether—

- (i) the insurer is capable of being revived; or
- (ii) the insurer should be liquidated.

(7) The Commissioner shall, after taking into account the report of the manager, make appropriate recommendations to the Board, who shall then take a decision on the matter.

(8) Where the Board decides that the insurer should be liquidated, the provisions of section 123 shall apply.

(9) Neither the Commissioner or any other officer or employee of the Commissioner, nor the manager nor any other person appointed, designated or approved by the Commissioner under the provisions of this Part shall be liable in respect of any act or omission done in good faith in the execution of the duties undertaken by him.

(10) For the purposes of discharging his responsibilities, a manager shall have power to declare a moratorium on the payment by the insurer of its policy-holders and other creditors and the declaration of a moratorium shall—

- (a) be applied equally to all classes of policy-holders and creditors, subject to such exemptions in respect of any class of insurance as the manager may, by notice in the *Gazette* specify;
- (b) suspend the running of time for the purposes of any law of limitation in respect of any claim by any policy-holder or creditor of the insurer;
- (c) cease to apply upon the termination of the manager's appointment whereupon the rights and obligations of the insurer, its policy-holders and creditors shall, save to the extent provided in paragraph (b), be the same as if there had been no declaration under the provisions of this subsection:

Provided that this subsection does not apply to any sum due as contributions or penalties to the Policyholder Compensation Fund.

(11) For the purpose of this section, where a moratorium is declared under subsection (10), a policyholder shall not be liable to pay any claim not payable by the insurer due to the moratorium.

[Act No. 12 of 1994, s. 21, Act No. 8 of 1996, s. 54, Act No. 11 of 2006, s. 14, Act No. 1 of 2014, s. 12, Act No. 19 of 2015, s. 52, Act No. 28 of 2019, s. 5(a)(b)(c).]

#### **67D. Part to apply to unregistered and unauthorized persons**

(1) Without prejudice to the provisions contained under section 19, the provisions of this Part shall apply to any person who, in the opinion of the Commissioner, is, or is deemed or suspected to be carrying on or transacting

insurance or reinsurance business without registration, renewal of registration or authorisation under this Act.

(2) Without prejudice to the provisions of this Part, a person who, upon inspection, is found to be—

- (a) transacting insurance business without registration, renewal of registration or authorisation, under this Act or with persons not so registered or authorized; or
- (b) charging a rate of premium other than that filed with the Commissioner under section 75;
- (c) committing any other business malpractices,

shall, in addition to any other penalty prescribed under this Act, be liable to pay a penalty of two hundred thousand shillings, which shall be paid to the Policy Holders' Compensation Fund in such manner as may, from time to time, be prescribed by the Authority.

[Act No. 12 of 1994, s. 21, Act No. 9 of 2003, s. 10,  
Act No. 9 of 2007, s. 59, Act No. 10 of 2010, s. 55.]

### **67E. Powers of inspector**

(1) An inspector may, by notice in writing, require any person who is or has at any time been a director, managing director, secretary, principal officer, manager, officer or employee, agent, accountant, broker, auditor or actuary of the person being inspected to—

- (a) give to the inspector all reasonable assistance in connection with the inspection; or
- (b) appear before the inspector for examination concerning matters relevant to the inspection; or
- (c) produce any books or documents that relate to the affairs of the person being inspected.

(2) A person who—

- (a) refuses or fails to comply with a requirement of an inspector which is applicable to him, to the extent to which he is able to comply with it; or
- (b) obstructs or hinders an inspector in the exercise of his powers under this Act; or
- (c) furnishes information or makes a false statement which he knows to be false or misleading in any material particular; or
- (d) when appearing before an inspector for examination pursuant to such requirement, makes a statement which he knows to be false or misleading in any material particular,

commits an offence.

(3) A person convicted of an offence under subsection (2) shall be liable to a fine not exceeding fifty thousand shillings or, in the case of a natural person, to imprisonment for a term not exceeding three years, or to both.

(4) Where an offence under subsection (2) is a continuing one, the person shall, in addition to the penalty prescribed under subsection (3), be liable to a further fine of one thousand shillings for every day during which the offence continues.

(5) Where a person convicted under subsection (3) is a body corporate, the Commissioner may, notwithstanding any other penalty imposed under that subsection, apply to court for the winding up of the person.

[Act No. 12 of 1994, s. 21.]

#### **67F. Expenses under Part**

Any expenses incurred by reason of the exercise of any of the powers conferred by this Part in respect of an insurer shall be met by that insurer.

[Act No. 12 of 1994, s. 21.]

#### **67G. Power to protect the assets of an insurer**

(1) The Authority may, for the purpose of protecting the interests of the policyholders, assume control of the whole or part of the insurer's assets, and shall register any instrument under the relevant law or take any other appropriate action it may deem necessary.

(2) The Authority shall hold the directors of the insurer to be jointly and severally liable for the recovery of the assets under subsection (1), where it establishes that the assets of the insurer have been misappropriated.

[Act No. 4 of 2012, s. 34.]

### **PART VII – MANAGEMENT AND EXPENSES**

#### **68. Approved principal officer to be appointed**

(1) For the purposes of this section “**registered person**” means a person registered under this Act as an insurer, reinsurer, broker, agent, medical insurance provider, insurance surveyor, risk manager, loss assessor, loss adjuster or claims settling agent.

(2) Every registered person shall, at all times while he is so registered, have a principal officer.

(3) The principal officer appointed under subsection (2) shall be ordinarily resident in Kenya and shall be responsible for the general control, direction and supervision of the Kenya insurance business of the registered person and shall represent the registered person for the purposes of this Act.

(4) Everything done by the principal officer or a person acting as the principal officer of the registered person in his representative capacity shall, for the purposes of this Act, be deemed to have been done by the registered person, but this subsection shall not affect any liability of the principal officer or person acting as the principal officer under this Act.

(5) Where the principal officer is, or is about to be, absent from Kenya for a period exceeding three months or for any reason unable to perform his duties as principal officer, the registered person shall, if he does not revoke the appointment and appoint another person under subsection (2) appoint another person (not being a body corporate) resident in Kenya to act as the principal officer of the person registered for the purposes of this Act during the absence or inability.

(6) An appointment under this section shall be deemed not to have been duly made or revoked until the registered person has given notice in writing of the appointment or revocation to the Commissioner specifying the name and, in the case of an appointment, the place of residence of the person appointed.

(7) Every notice to the Commissioner regarding the appointment of a principal officer shall contain the following particulars—

- (a) full name;
- (b) date and place of birth;
- (c) citizenship;
- (d) academic and professional qualifications;
- (e) work experience giving dates and nature of previous employment;
- (f) whether he has ever been convicted of an offence involving fraud or dishonesty and if so details of the offence, place and date;
- (g) whether he has ever been adjudicated bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his creditors or made an assignment of his remuneration for their benefit and, if so, details.

(8) If it appears to the Commissioner that the person appointed as principal officer is not a fit and proper person to be a principal officer, the Commissioner may, after giving the person concerned an opportunity of being heard, object to the appointment.

(9) Where the Commissioner objects to the appointment of a principal officer he shall record the reasons for his decision and furnish a copy thereof to the registered person, who shall forthwith revoke the appointment.

[Act No. 9 of 2003, s. 11.]

#### **68A. Authority to carry out assessment**

(1) Notwithstanding any other provision of this Act, the Authority shall, from time to time, carry out an assessment of the suitability of the person managing, controlling or having a significant ownership or significant beneficial interest in a person licensed under this Act.

(2) An assessment under subsection (1) shall be in accordance with such criteria as may be prescribed in regulations.

(3) Where, upon an assessment under this section, the Authority is satisfied as to the suitability of the person managing, controlling or having a significant ownership or significant beneficial interest in a person licensed under this Act, it shall so certify in writing.

(4) A person who, upon an assessment under this section, is not certified by the Authority as suitable to manage or control a person licensed under this Act, shall be deemed to be disqualified from holding such office.

(5) The provisions of this section shall also apply to insurance groups in respect of its significant shareholders, the group directors and management as if they were an insurer.

[Act No. 57 of 2012, s. 37, Act No. 1 of 2014, s. 13, Act No. 22 of 2017, s. 15]

#### **69. Directors, managers, employees and their remuneration**

(1) Subject to subsection (2), no insurer shall be directed or managed by, and no insurer shall employ in any capacity, a person whose remuneration or any part thereof takes the form of commission or bonus or of a share in the valuation surplus in respect of long term insurance business.

(2) The prohibition contained in subsection (1) shall not apply to the employment of agents or brokers, or to the employment of persons who share in the profits of general insurance business by way of bonus payments or otherwise.

(3) A managing director or employee of an insurer shall not be a managing director or employee of another insurer or of a bank or financial institution.

(4) After the expiry of two years from the appointed date no agent, and where the agent is a company or firm, no managing or other director of an agent, and no broker, or managing or other director of a broker shall—

- (a) be appointed or continue as a director of an insurer registered under this Act;
- (b) directly or indirectly acquire or hold more than one per cent of the shares or controlling interest in an insurer registered under this Act.

(5) After the expiry of two years from the appointed date, no insurer and no director or employee of an insurer shall directly or indirectly hold shares in or have any other financial or controlling interest in the affairs of an agent or broker.

(6) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding five thousand shillings, and if the offence is a continuing one, to a further fine of one hundred shillings for every day during which the offence continues.

[Act No. 12 of 1994, s. 22.]

#### **70. Limitation of management expenses**

(1) No insurer shall spend in any financial year as expenses of management an amount in excess of the prescribed limits, and in prescribing those limits regard shall be had to the size and age of the insurer and the provision generally made for management expenses in the premium rates of insurers.

(2) The Commissioner may, in any year, after consultation with the Advisory Board, fix for the succeeding year the extent to which the limits prescribed in regulations may be relaxed, and an insurer shall not be deemed to have contravened the provisions of subsection (1) if his expenses of management referred to in that subsection are within those, relaxed limits.

#### **71. Restrictions on providing financial accommodation by insurers**

(1) An insurer shall not in Kenya—

- (a) grant financial accommodation on the security of its own shares; or
- (b) grant, or permit to be outstanding without adequate security, other financial accommodation (not being a loan) on and within the surrender value on a policy of life assurance issued by the insurer —
  - (i) to a shareholder, officer or employee of the insurer or to a family member of such a shareholder, officer or employee; or
  - (ii) to a company of which the shareholder, officer or employee or family member is a shareholder, director, officer or employee.

(2) An insurer may, on compassionate grounds, grant to an officer or employee of the insurer an unsecured loan or advance not exceeding one hundred thousand shillings on condition that the officer or employee receive no further loan or advance from the insurer unless the officer or employee has fully repaid any previous loan or advance granted to the officer or employee by the insurer.

(3) Sections 165, 166, 168 and 169 of the Companies Act, 2015 do not apply to a loan granted to a director of an insurer if—

- (a) the loan is one granted on the security of a policy of life assurance on which the insurer bears the risk; and

- (b) the policy was issued to the director on the director's own life and the loan is within the surrender value of the policy.

(4) In this section, "financial accommodation" includes a loan, an advance and a financial guarantee.

(5) In case of default in complying with the provisions of subsection (3) or subsection (4), a director, officer, or employee who may be concerned shall, without prejudice to any other penalty which he may incur, cease to hold office under, be employed by or act for, the insurer granting the loan, advance, credit facility, financial guarantee or other liability on the expiry of the period of one year or three months, as the case may be.

(6) The Commissioner may extend the period of one year referred to in subsection (3) by periods of not more than six months at a time and, where any such extension has been granted, the reference to the period of one year in subsection (5) shall be construed as a reference to the extended period.

[Act No. 10 of 2010, s. 56, Act No. 19 of 2015, s. 53.]

#### **71A. Choice of insurer for loans**

(1) A bank shall—

- (a) inform a loanee, in writing, that the loanee has a right to select an underwriter or broker from a list of underwriters or brokers licensed by the Authority;
- (b) inform a loanee, in writing, that the loanee has an option to forfeit the right to select an underwriter or broker;
- (c) not prescribe or assign an underwriter or broker to a loanee, unless the loanee forfeits in writing the right to select an underwriter or broker; and
- (d) update the list of licensed brokers or underwriters availed to loanees regularly and ensure that underwriters or brokers under statutory management are excluded from the list.

(2) A bank that contravenes the provisions of subsection (1) commits an offence and shall upon conviction be liable to a fine not exceeding five million shillings.

[Act No. 11 of 2017, Sch.]

#### **72. Limitation on employment of managing agents**

(1) No insurer shall on or after the appointed date appoint a managing agent for the conduct of his business.

(2) Where an insurer engaged in the business of insurance before the appointed date has employed a managing agent for the conduct of his business then, notwithstanding anything to the contrary contained in the Companies Act (Cap. 486), and notwithstanding anything to the contrary contained in the articles of the insurer, or in any agreement entered into by the insurer, the managing agent shall cease to hold office on the expiry of his contract of employment or of two years from the appointed date, whichever is earlier, and no compensation shall be payable to him by the insurer by reason only of the premature termination of his employment as managing agent under this subsection.

## PART VIII – RATES, POLICY TERMS AND CLAIMS SETTLEMENT

**73. Restrictions on rebates, brokerage, etc**

(1) No person shall offer, either directly or indirectly, as an inducement to any person to take out or renew or continue a contract of insurance, any rebate of the whole or part of any brokerage, commission or premium except such rebate as may be allowed in accordance with a published prospectus or manual or schedule of rates of an insurer.

(2) No insurer shall, in respect of Kenya business, pay to a broker or agent as brokerage commission, any sum in excess of the amounts prescribed for or in respect of each prescribed class of business placed by that broker or agent with that insurer.

(3) No broker shall, in respect of Kenya business pay to an agent any commission in excess of what would have been payable had the agent been paid by an insurer instead of by the broker.

(4) Nothing in this section shall prohibit a person obtaining the benefit of the commission payable by an insurer to a broker or agent under the relevant prospectus or agent's manual or broker's agreement where he takes out life assurance on his own life or on the lives of his dependants directly with the insurer without the services of an intermediary.

(5) A person who contravenes any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings.

[Act No. 9 of 2003, s. 12, Act No. 4 of 2004, s. 77, Act No. 11 of 2017, Sch.]

**74. Premium rates of life insurers**

(1) An insurer carrying on long term insurance business shall not issue, after the expiry of three months from the appointed date, any policy of insurance unless the rate of premium chargeable under the policy is a rate which has been approved by an actuary as suitable for the class of policies to which that policy belongs and that rate and the actuarial bases therefor together with the actuary's certificate have been filed with the Commissioner at least thirty days before giving effect to the rate.

(2) The Commissioner may require the insurer to obtain, and to furnish him, within such time as he may specify, with a report by an actuary as to the suitability of the rate of premium chargeable under any class of policy issued by the insurer and, if the actuary considers that the rate is not suitable, a report as to the rate of premium which the actuary approves as suitable in respect of that class of policy.

(3) Where a requirement is made under subsection (2) in respect of the rate of premium chargeable under any class of policy the insurer shall not issue, after the expiry of the period specified by the Commissioner, any policy of that class until the insurer has in accordance with the requirement obtained the approval of the actuary to the rate of premium, and notified the Commissioner that that approval has been obtained.

(4) An actuary in approving a rate of premium in respect of a class of policy under this section shall have regard to the maximum rate of commission or rebate proposed to be paid or allowed to any person in respect of that class of policy.

(5) Where a rate of premium is approved by an actuary in respect of a class of policy, the insurer shall not, except with the approval of the Commissioner, pay or allow in respect of any policy of that class a commission or rebate at a greater rate than—



- (a) the maximum rate of commission or rebate to which the actuary had regard when approving the rate of premium; or
- (b) the maximum rate of commission or rebate payable by the insurer immediately prior to the appointed date in respect of policies of that class (if any) issued at the rate of premium so approved,

whichever is less.

(6) A person who contravenes any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings, and if the offence is a continuing one, to a further fine of two thousand shillings for every day during which the offence continues.

[Act No. 18 of 1986, Sch.]

#### **75. Premium rates of general insurers**

(1) An insurer carrying on general insurance business shall file with the Commissioner, before commencing to carry on that business or before the expiry of three months from the appointed date, whichever is later, a schedule or manual of rates of premium proposed to be used by the insurer for each class of business.

(2) Where a schedule or manual of rates of premium filed under subsection (1) is proposed to be altered or revised, the insurer shall file with the Commissioner the details of and the reasons for, the alterations or the revised schedule or manual at least sixty days before giving effect to the alterations or revision.

(3) If an insurer carrying on general insurance business issues any insurance cover outside the scope of the schedule or manual of rates of premium filed with the Commissioner or considers it necessary, while using the rate contained in the schedule or manual as the basing point, to deviate therefrom to take account of the proponent's or policyholder's past and anticipated loss experience, the physical characteristics of the subject matter of the insurance, the nature of the exposure and other relevant factors, the insurer shall file with the Commissioner, within a period of thirty days full details of the rate charged.

(4) The Commissioner may, at any time, require an insurer to furnish him with statistical data and other information on the basis of which any rate or schedule or manual of rates filed with the Commissioner has been computed.

(5) The Commissioner may, at any time, require an insurer to modify or revise, within such time as he may specify, the schedule or manual of rates filed with the Commissioner or the practice of deviating therefrom or the practice of rating risks outside the scope of the schedule or manual and the insurer shall carry out the required modification or revision within the stipulated time and get them approved by the Commissioner.

(6) A person who contravenes any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings, and if the offence is a continuing one to a further fine of two thousand shillings for every day during which the offence continues.

#### **76. Law applicable to contracts of insurance and place of payments**

(1) The holder of a policy of insurance issued by an insurer in respect of insurance business carried on by him in Kenya on or after the appointed date shall have the right, notwithstanding any agreement to the contrary contained in the policy of insurance or in any agreement relating thereto, to receive payment of any sum secured thereby in Kenya and to sue for any relief in respect of the policy in Kenya; and if action on the policy is instituted in Kenya, any question of law in

connection with the policy or proceedings shall be heard and determined according to the Law in force in Kenya.

(2) Nothing in this section shall apply to a policy of marine insurance.

#### **76A. Insurance cover upon change of ownership of motor vehicle**

Upon change of ownership of a motor vehicle, an insurer shall—

- (a) only issue a temporary cover for a period not exceeding three months, pending the registration of the motor vehicle in the name of the new owner;
- (b) not renew the temporary cover or issue any annual policy in respect of the motor vehicle, unless the new owner provides proof of the registration of the motor vehicle in his name by the Registrar of Motor Vehicles.

[Act No. 8 of 2009, s.48, Act No. 10 of 2010, s. 57.]

#### **77. Defaults of insurer, broker or agent not to invalidate policy**

Subject to this Act, failure on the part of an insurer, broker or agent to comply with any provision of this Act shall not invalidate any policy issued by an insurer.

#### **78. Avoidance of contracts for unlimited amounts**

A contract of insurance entered into after the appointed date shall be void if—

- (a) it is a contract under which the insurer undertakes a liability the amount or maximum amount of which is uncertain at the time when the contract is entered into; and
- (b) it is not a contract of insurance or a contract of a class or description exempted by regulations or by the Commissioner in writing from the operation of this section.

#### **79. Amounts and values in policies to be expressed in Kenya currency**

(1) The sum insured, the premium and every other sum of money mentioned in a policy of insurance issued or renewed on or after the appointed date shall be stated in the currency of Kenya unless the parties to the policy have, at or subsequent to the time of issue of the policy, expressly otherwise agreed to, and where the policy was issued or renewed on or after the appointed date, the Commissioner has in writing approved, the statement of any sum in some other currency:

Provided that, notwithstanding the provisions of this subsection, an insurer may issue a policy of insurance, or a reinsurer may enter into a reinsurance contract in respect of—

- (a) aviation insurance; or
- (b) marine insurance; or
- (c) engineering insurance; or
- (d) any class or classes declared by the Cabinet Secretary by notice in the *Gazette*,

in which the sum insured, the premium and every other sum of money mentioned in the policy of insurance is stated in currencies other than the currency of Kenya.

(2) If the insurer and policy-holder have agreed, and, in the case of a policy issued on or after the appointed date, the Commissioner has approved, that the sum insured, the premium or other sum of money mentioned in a policy of insurance

shall be expressed in a currency other than the currency of Kenya, the fact that the parties have agreed and the fact that the approval of the Commissioner has been obtained and the currency adopted shall be stated in or endorsed on the policy in distinct terms and in printed or typed letters no smaller than and as legible as the letters of the other provisions of the policy.

(3) The continued payment in respect of a policy relating to long term insurance business shall not constitute a renewal for the purposes of subsection (1).

[Act No. 12 of 1994, s. 23, Act No. 8 of 1997, s. 56, Act No. 19 of 2015, s. 54.]

#### **80. Proposal and policy documents not to be misleading**

(1) A form of proposal for insurance or a policy or an endorsement or any form of written matter used by an insurer describing the terms or conditions of, or the benefits to be or likely to be derived from, a policy of insurance shall not contain anything inaccurate or incomplete or likely to mislead a proponent or policy-holder.

(2) If the Commissioner is of opinion that an insurer has contravened the provisions of subsection (1) he may, after giving the insurer an opportunity of making representations, notify the insurer in writing that he objects to the form.

(3) An insurer shall not accept a proposal or issue any policy or written matter if the proposal, policy or written matter is in a form to which the Commissioner has objected under this section to the extent that the objection has not been varied or set aside as a result of an appeal under section 173.

(4) An insurer who contravenes the provisions of subsection (3) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

#### **81. Incorrect statements in proposals**

(1) Notwithstanding anything contained in or incorporated in a contract of life assurance issued before, on or after the appointed date, a policy of life assurance shall not be avoided by reason only of an incorrect statement made in a proposal or other document on the faith of which the policy was issued or reinstated by the insurer, unless the statement was material to the risk of the insurer and—

- (a) was made in the knowledge that it was untrue or with no reasonable belief that it was true; or
- (b) was made within the period of three years immediately preceding the date on which the policy is sought to be avoided or the date of the death of the life insured, whichever is the earlier.

(2) Where an agent or servant of an insurer writes or fills in, or has before the appointed date written or filled in, any particulars in a proposal for a policy of insurance with the insurer, then, notwithstanding any law and any agreement to the contrary between the proposer and the insurer, a policy issued in pursuance of the proposal shall not be avoided by reason only of an incorrect or untrue statement contained in the particulars so written or filled in, unless the incorrect or untrue statement was in fact made by the proposer to the agent or servant for the purposes of the proposal; and the burden of proving that the statement was so made shall lie upon the insurer.

#### **82. Effect of suicide or capital punishment on policy**

A policy of life assurance shall not be avoided merely on the ground that the person whose life is assured died by his own hand or act, sane or insane, or suffered capital punishment, if, upon the true construction of the policy, the insurer has thereby agreed to pay the sum assured in the events that have happened.

**83. Particulars as to age of proposer for life assurance**

A form of proposal shall be framed so as to require a person making a proposal for a policy of life assurance to specify the place and date of birth of the person whose life is proposed to be assured, and the person making the proposal shall supply those particulars to the best of his knowledge and belief.

**84. Notice regarding proof of age**

Where an insurer issues a policy of life assurance which provides that proof of age of the life insured is a condition precedent to the payment of the sum assured, the insurer shall, unless the age of the life assured has already been admitted by it, issue with the policy a printed notice stating that proof of age of the life assured may be required prior to the payment of the sum assured.

**85. Procedure where insurer declines to accept proof of age**

(1) If an insurer declines to accept the proof of age tendered in respect of a policy of life assurance, whether issued before, on, or after the appointed date, the policy-holder may apply to the Commissioner for an order directing the insurer to accept the proof tendered.

(2) On any such application, the Commissioner may, after giving the insurer a reasonable opportunity of being heard, make such order in relation to the application as he thinks just.

(3) An order under this section shall be binding on the insurer and shall be complied with on his part.

**86. Misstatement of age**

(1) A policy of life assurance shall not be avoided by reason only of a misstatement of the age of the life assured.

(2) Where the true age as shown by the proofs is greater than that on which the policy was based, the insurer may vary the sum assured by, and the bonuses (if any) allotted to, the policy so that, as varied, they bear the same proportion to the sum assured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would become payable if the policy has been based on the true age.

(3) Where the true age, as shown by the proofs, is less than that on which the policy was based, the insurer shall either—

- (a) vary the sum assured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age; or
- (b) reduce, as from the date of issue of the policy, the premium payable to the amount that would have been payable if the policy had been based on the true age and repay to the policy owner the amount of over-payments of premiums less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the policy had been based on the true age.

(4) Notwithstanding subsections (2) and (3), where the correct age is found to be beyond the limits within which the insurer, according to his published prospectus, issues the type of policies in question, the policy shall be void *ab initio* and the

insurer shall refund to the insured all the premiums received on the policy after deducting the commission payments and expenses incurred by him on the policy; but nothing in this subsection shall apply to annuities and other policies where the insured has already received any payment under the policy.

#### **87. Objection to and return of life policy**

(1) If within twenty eight days after the delivery of an industrial life assurance policy or an ordinary life assurance policy, where the sum assured is ten thousand shillings or less, by an insurer to the policy-holder, or, at the place of abode of the policy-holder, to some other person who is an inmate of that place apparently not less than eighteen years of age and by whom any premium in respect of the policy is paid on behalf of the policy-holder, the policy-holder returns the policy to the insurer with an objection in writing to any term or condition of the policy or a statement that he does not require the policy, the insurer shall forthwith refund any premium which has been paid in respect of the policy which shall thereupon be cancelled.

(2) For the purposes of this section, where a policy is sent by post or email or other electronic or telecommunication mode by an insurer to the person to whom it is issued, it shall, unless the contrary is proved, be deemed to have been delivered to him at the time at which it would reach him in the ordinary course of post.

(3) For the purposes of this section, a policy shall be deemed to have been returned with an objection or statement, as the case may be, if the policy and objection or statement are posted for transmission to the insurer by registered post.

[Act No. 11 of 2019, s. 8.]

#### **88. Paid up policies**

(1) A policy-holder who desires to discontinue further premium payments on a policy of life assurance on which not less than three years' premiums have been paid in cash shall, on application to the insurer, be entitled to receive, in lieu of that policy, a paid up policy for an amount not less than that determined in accordance with the rules.

(2) The paid up policy shall be payable upon the happening of the contingency upon the happening of which the amount assured under the original policy would have been payable.

#### **89. Surrender of policies**

(1) The owner of a policy of life assurance which has been in force for at least three years shall, on application to the insurer, be entitled to surrender the policy and to receive not less than the surrender value of the policy less the amount of any debt owing to the insurer under, or secured by, the policy.

(2) In the application of subsection (1) to a paid up policy which has been issued in lieu of another policy, the period of three years shall be calculated from the date of issue of the original policy.

(3) For the purposes of this section the surrender value of a policy shall be the amount calculated in accordance with the rules.

(4) The Commissioner may, on application by an insurer, if, in his opinion, the payment in cash of surrender values as required by this section would be prejudicial to the financial stability of the insurer or to the interests of the policy-holders of that insurer, suspend or vary for such period and subject to such conditions as the Commissioner thinks fit, the obligation of the insurer to pay those surrender values.

**90. Non-forfeiture of ordinary life policies in certain cases of non-payment of premiums**

(1) An ordinary life policy shall not be forfeited by reason only of the non-payment of any premium (in this section referred to as “the overdue premium”) if—

- (a) not less than three years’ premiums have been paid in cash on the policy; and
- (b) the surrender value of the policy (calculated as at the day immediately preceding that on which the overdue premium falls due) exceeds the sum of the amount of the debts owing to the insurer under, or secured by, the policy, and the amount of the overdue premium.

(2) The insurer may, until payment of the overdue premium, charge compound interest on it, on terms not less favourable to the policy-holder than such terms (if any) as are prescribed.

(3) The overdue premium and any interest charged on it under this section and unpaid shall, for the purposes of this Act, be deemed to be a debt owing to the insurer under the policy.

(4) Without affecting the generality of subsection (1), an ordinary life policy on which not less than three years’ premiums have been paid in cash shall not be forfeited by reason only of the non-payment of a premium unless, on or after the day on which the premium fell due, the insurer liable under the policy serves a notice on the policy-holder stating—

- (a) the amount due or payable to the insurer at the date of the notice in respect of the policy; and
- (b) that the policy will be forfeited at the expiration of twenty eight days after service of the notice if a sufficient sum is not paid to the insurer in the meantime.

**91. Non-forfeiture of industrial policies in certain cases of non-payment of premiums**

(1) An industrial life assurance policy on which less than one year’s premiums have been paid shall not be forfeited by reason only of the non-payment of any premium unless the premium has remained unpaid for not less than four weeks after it became due.

(2) An industrial life assurance policy on which not less than one year’s premiums have been paid shall not be forfeited by reason only of the non-payment of any premium unless the premium has remained unpaid for not less than eight weeks after it became due.

(3) An industrial life assurance policy on which not less than two years’ premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for not less than twelve weeks after it became due.

(4) In the event of an industrial life assurance policy on which not less than three years’ premiums have been paid being forfeited by reason of non-payment of any premium, the insurer shall, without requiring any application from the policy-holder, grant a paid up policy for an amount not less than that calculated in accordance with the rules.

(5) The paid up policy shall be payable upon the happening of the contingency upon which the amount insured under the original policy would have been payable.

**92. Treatment of debts on grant of paid up policies**

Where in pursuance of any provision in this Part a policy-holder is entitled to receive, or an insurer is required to grant, a paid up policy and there is any debt owing to the insurer under or secured by the policy, the insurer may elect—

- (a) to treat the debt so owing as a debt secured by the paid up policy and thereupon the paid up policy shall be a security for the debt so owing; or
- (b) in the ascertainment of the amount of the paid up policy, to reduce the amount by taking into account, upon a basis approved by the Commissioner, the debt so owing to the insurer, and thereupon the debt shall cease to be owing to the insurer.

**93. Certain policies exempted from operation of sections 88 to 92**

(1) The provisions of sections 88 to 92 (inclusive) shall not apply to—

- (a) an instrument securing the grant of an annuity for a term dependent upon human life, not being a deferred annuity during the period of deferment; or
- (b) a policy which provides insurance against contingencies none of which may happen, not being a policy which provides for the payment of a sum of money if the life insured by the policy survives a specified period.

(1A) Every insurer who provides annuities and other insurance investment products shall publish information regarding such annuities and other products on quarterly basis in the manner specified by the Commissioner.

(2) Subject to subsection (1), the Minister may, on the recommendation of the Commissioner, by notice in the *Gazette*, declare that the provisions of sections 88 to 92 shall apply in respect of any policy or class of policies with such modifications as are declared in the notice, and those provisions shall apply in respect of that policy or class of policies accordingly.

[Act No. 8 of 2008, s. 62.]

**94. Insurable interest essential for all policies**

(1) Subject to this Act, no policy of insurance shall be issued on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policy or policies shall be made, shall have no insurable interest.

(2) An insurable interest shall be deemed to be had by—

- (a) a parent of a child under eighteen years of age, or a person in loco parentis of such a child, in the life of the child to the extent of funeral expenses which may be incurred by him on the death of the child;
- (b) a husband, in the life of his wife;
- (c) a wife, in the life of her husband;
- (d) any person, in the life of another upon whom he is wholly or in part dependent for support or education;
- (e) a corporation or other person, in the life of an officer or employee thereof; and
- (f) a person who has a pecuniary interest in the duration of the life of another person, in the life of that person.

(3) A child's advancement policy effected either before, on, or after the appointed date shall not be void by reason only that the person effecting the policy had not at the time the policy was effected an insurable interest in the life of the child.

#### **95. Property in child's advancement policy**

(1) The provisions of this section shall apply to every child's advancement policy, whether effected before, on, or after the appointed date.

(2) Where a child whose life is insured under a child's advancement policy has, whether before, on, or after the appointed date, attained the vesting age, the policy shall be deemed to have been, or, as the case may be, shall become, as on and after the date on which the child attained the vesting age, the absolute property of the child both at law and in equity, subject—

- (a) to any debt owing to the insurer under, or secured by, the policy;
- (b) to any dealing done, prior to the attainment by the child of the vesting age, by the owner of the policy; and
- (c) to any dealing done, after the attainment by the child of the vesting age and prior to the appointed date, by the owner of the policy.

(3) If, during a child's lifetime, a person effecting a policy in respect of the child dies or is adjudged bankrupt before the child has reached the vesting age, the representative of the person holds the policy in trust for the child until the child reaches the vesting age or dies before reaching that age, subject to any dealings other than testamentary ones by the person before death or bankruptcy.

(3A) The representative may assign, mortgage, charge, surrender, vary or otherwise deal with the policy and apply the proceeds (if any) as the representative believes to be appropriate for the maintenance or benefit of the child and the continuation of the policy.

(3B) The insurer issuing the policy is under no obligation to ensure that the proceeds of the policy (if any) are applied for the maintenance or benefit of the child.

(3C) In subsections (3) and (3A), "the representative", in relation to—

- (a) a deceased, means the executor or administrator of the deceased's estate; or
- (b) in relation to a person who has been adjudged bankrupt, means the bankruptcy trustee of the person's estate or the Official Receiver.

(4) Nothing in this section shall invalidate a payment made before the appointed date in respect of a child's advancement policy if the payment, but for this Act, would have been valid.

[ Act No. 19 of 2015, s. 55.]

#### **96. Limitation of amount payable on death of child**

(1) An insurer shall not, by a policy effected on the life of a child, contract to pay on the death of the child under ten years of age a sum of money (apart from repayment of premiums) which, added to any amount payable (apart from repayment of premiums) on the death of the child under ten years of age by any other insurer, exceeds one hundred thousand shillings.

(2) In a policy to which subsection (1) refers there shall be clearly set out that the total sum recoverable as insurance moneys or other benefits from any one or



more insurers (apart from repayment of premiums) shall not exceed one thousand shillings.

[Act No. 9 of 2000, s. 91.]

#### **97. Production of prescribed certificate of death**

An insurer shall not pay any sum (apart from repayment of premiums) on the death of a child under ten years of age except upon production of a certificate of death issued in accordance with the provision of the Births and Deaths Registration Act (Cap. 149).

#### **98. Savings as to insurable interest**

Sections 96 and 97 shall not apply to a policy on the life of a child when the person effecting the insurance has an insurable interest, apart from the mere interest under section 94(2)(a), in the life of the child.

#### **99. Protection of insured's interests**

(1) Subject to any written law relating to bankruptcy, the property and interest of a person in a policy effected (whether before, on, or after the appointed date) upon his own life shall not be liable to be applied or made available in payment of his debts by a judgment, order or process of any court.

(2) In the event of a person whose life is insured dying after the appointed date, the moneys payable upon his death under or in respect of a policy effected upon his life shall not, subject to any written law relating to bankruptcy, be liable to be applied or made available in payment of his debts by a judgment, order or process of any court, or by retainer by an executor or administrator, or in any other manner, except by virtue of a contract or charge made by the person whose life is insured or by virtue of an express direction contained in his will or other testamentary instrument executed by him that the moneys arising from the policy shall be so applied.

(3) A direction to pay debts, or a charge of debts upon the whole or any part of the testator's estate, or a trust for the payment of debts, shall not be deemed to be such an express direction.

#### **100. Family insurance policies**

(1) Subject to any written law relating to bankruptcy, a policy effected (whether before, on, or after the appointed date) by a man upon his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by a woman upon her own life and expressed to be for the benefit of her husband or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects named in the policy, and the moneys payable under that policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the person whose life is insured, or be subject to his or her debts.

(2) The person whose life is assured may, by the policy, or by a memorandum under his or her hand, appoint trustees of the moneys payable under the policy, and from time to time appoint new trustees of the moneys and may make provision for the appointment of new trustees of the moneys, and for the investment of the moneys payable under the policy.

(3) Subject to subsection (4), if at any time there is no trustee, the policy shall vest in the person whose life is assured, and his personal representatives, in trust for the purposes referred to in, and subject to, subsection (1).

(4) If at any time there is no trustee and the policy is not vested in any person in pursuance of subsection (3) and it is expedient to appoint trustees or new trustees, trustees or new trustees may be appointed by the court.

(5) The receipt of a trustee, or if there is no trustee or in default of notice to the insurer of the existence of a trustee, the receipt of the person whose life is insured or of his personal representative, or, if the policy has been assigned in pursuance of the power to borrow money conferred by subsection (6), the receipt of the owner for the time being of the policy, shall be a discharge to the insurer for the sum payable under the policy, or for the value of the policy, in whole or in part.

(6) A trustee, or if there is no trustee or in default of notice to the insurer of the existence of a trustee, the person whose life is insured or his personal representative, may vary the terms of the policy in any manner permitted by the insurer, surrender the policy in whole or in part or borrow money upon the policy, and any money obtained by any such variation, surrender or borrowing shall be subject to the same trusts as those upon which the policy was or is held.

(7) Except as expressly provided by this section, nothing in this section shall affect the operation of the law in force in Kenya relating to trustees.

(8) In this section, "children" in relation to a person, includes—

- (a) a person adopted by the first-mentioned person under the Law of Kenya relating to the adoption of children; or
- (b) a person adopted by the first-mentioned person under the Law of any country relating to the adoption of children if the validity of the adoption would be recognised under the Law of Kenya; or
- (c) a step-child of that person.

#### **101. Probate or administration may be dispensed with in certain cases**

(1) Where—

- (a) there is only one policy under which moneys are payable by a particular insurer to the personal representative of a deceased person and those moneys do not, excluding bonus additions, exceed one hundred thousand shillings; or
- (b) there are two or more policies under which moneys are so payable and the aggregate of those moneys does not, excluding bonus additions, exceed five thousand shillings,

the insurer may, without requiring the production of any probate or letters of administration, pay the moneys, together with the bonuses (if any) which have been added to the policy or policies, to a person—

- (i) who is the husband, wife, father, mother, child, brother, sister, nephew or niece of the deceased person; or
- (ii) who satisfies the insurer that he is entitled to the property of the deceased person under his will or under the law relating to the disposition of the property of the deceased person or that he is entitled to obtain probate of the will of the deceased person or to take out letters of administration of his estate.

(2) The insurer making any such payment shall be thereby discharged from all further liability in respect of the moneys payable under the policy or policies.

[Act No. 9 of 2000, s. 92.]

**102. Death of owner of policy not being life insured**

(1) Subject to this section, where the owner of a policy of life assurance, not being the person whose life is assured by the policy, predeceases the person whose life is so assured, and a person satisfies the insurer that issued the policy that he is entitled—

- (a) under the will or on the intestacy of the deceased owner to the benefit of the policy; or
- (b) to obtain probate of the will, or to take out letters of administration of the estate of the deceased owner,

the insurer may, without requiring the production of probate or letters of administration, endorse on the policy a declaration that that person has so satisfied the insurer and is the owner of the policy, and thereupon that person shall become, subject to subsection (2), the owner of the policy.

(2) Subsection (1) shall not confer on a person declared to be the owner of a policy any beneficial interest in the policy which he would not otherwise have had.

(3) This section shall apply in relation to a policy referred to in subsection (1) whether the deceased owner died before, on, or after the appointed date.

(4) This section shall not apply in relation to—

- (a) a policy the surrender value of which, at the date of the death of the deceased owner, exceeds or exceeded two thousand five hundred shillings; or
- (b) a policy which is one of two or more policies owned by the deceased owner and issued by the same insurer if the aggregate of the surrender values of those policies at the date of the death of the deceased owner exceeds or exceeded two thousand five hundred shillings.

(5) For the purposes of subsection (4), the surrender value of a policy is the amount (including any amount in respect of bonus additions) that would be paid by the insurer issuing the policy upon its surrender.

**103. Insurer not bound to see to application of payments**

An insurer shall not in any circumstances be bound or concerned to see to the application of any moneys paid by the insurer in respect of any policy.

**104. Power to pay into court**

(1) An insurer may, subject to any rules of court in that behalf, pay into court any moneys payable by the insurer in respect of a policy for which, in the opinion of the insurer, no sufficient discharge can otherwise be obtained.

(2) The receipt of a Registrar of the court for the moneys shall be a good and valid discharge to the insurer for moneys so paid in, and the moneys shall, subject to the rules of the court, be dealt with according to the order of the Court.

**105. No deductions in respect of other policies**

Where a claim arising under a policy is paid, no deductions shall, except with the consent in writing of the claimant, be made on account of premiums or debts due to the insurer under any other policy.

**106. Lost policies**

(1) Where an insured person claims that the policy (in this section referred to as “the original policy”) is lost or has been destroyed, the insurer liable under the original policy may, subject to this section, upon application by that person and upon such evidence as to the loss or destruction of the original policy as the insurer deems sufficient, issue to the applicant a special policy in substitution for the original policy.

(2) A special policy shall—

- (a) be a copy, as nearly as can be ascertained, of the original policy in substitution for which it has been issued;
- (b) contain copies of every endorsement on the original policy registered by the insurer; and
- (c) state the reason for the issue of the special policy.

(3) Before issuing a special policy the insurer shall, if the amount insured, exclusive of bonus additions in the case of a policy of long term insurance, exceeds one hundred thousand shillings, require the policyholder or beneficiary to swear an affidavit regarding the loss of the original policy.

(4) The expenses of advertisement and all other costs of the issue of a special policy shall be paid by the applicant at the time of application.

(5) The fact of the issue of a special policy and the reason for its issue shall be recorded by the insurer in the register of policies.

(6) A special policy shall be valid and available for all purposes for which the original policy in substitution for which it has been issued would have been valid and available and, after the issue of the special policy, the original policy in substitution for which it has been issued shall be void.

(7) If the insurer fails to issue a special policy within six months of an application in writing from the insured person, the Commissioner may, upon application and upon such evidence as to the loss or destruction of the original policy as the Commissioner deems sufficient, order the insurer, upon such terms and within such time as the Commissioner thinks fit, to issue a special policy.

[Act No. 9 of 2000, s. 93, Act No. 11 of 2019, s. 9.]

**PART IX – ASSIGNMENTS, MORTGAGES AND NOMINATIONS****107. Assignments of policies**

(1) Subject to section 110, an assignment of a policy of life assurance made after the appointed date—

- (a) shall be by memorandum of transfer and shall be—
  - (i) endorsed upon the policy, or upon an annexure to the policy that is referred to in, or in an endorsement on, the policy; and
  - (ii) signed by the transferor in the presence of a witness; and
- (b) shall not be recognised by or binding on the insurer until registered in accordance with this section by the insurer liable under the policy.

(2) Every assignment shall be registered in a register to be provided by the insurer for that purpose, and the date of registration shall be inserted in the memorandum of transfer, which shall also be signed by the principal officer of the insurer or a person thereto authorized by him in writing.

(3) The transferee under a duly registered assignment shall have all the powers and be subject to all the liabilities of the transferor under the policy, and may sue in his own name on the policy:

Provided that nothing in this section shall be construed to admit the transferee to membership of an insurer or to deprive the transferor of his membership in respect of a policy, except as provided in the instruments constituting the insurer or in his articles of association or other rules.

(4) The receipt of the transferee shall be a discharge to the insurer for all moneys paid by the insurer under the policy.

(5) Every memorandum of transfer shall, as between the insurer and any person claiming any moneys under the policy, be conclusive evidence for all purposes that the transferee was at the time of registration the absolute owner of the policy free from all trusts, rights, equities and interests (except liens or charges which the insurer has upon the policy), and legally entitled to receive and give a discharge for those moneys.

(6) Any discharge or surrender of or security over the policy given to the insurer by the transferee shall be valid and effectual, notwithstanding the existence of any trust, right, equity or interest of any other person.

(7) The insurer taking the discharge, surrender or security shall not be required or concerned to inquire or ascertain the circumstances in which or the consideration for which the transferee or any previous transferee became a transferee, or, except as provided by section 108, be affected by express, implied or constructive notice of any trust, right, equity or interest.

(8) This section shall not—

- (a) impose on a minor any liability to which he would not, but for this section, be subject;
- (b) confer on a minor any power or capacity which, but for this section, he would not have; or
- (c) validate a receipt or discharge or a surrender of, or security over, a policy given by a minor, if, but for this section, that receipt, discharge, surrender or security would not be valid.

#### **108. Effect of notice of trust**

(1) Notwithstanding anything contained in section 107, an insurer shall not be entitled to any protection under that section or to rely upon any of the provisions of that section if the insurer has not acted in good faith or has received express notice in writing of any trust, right, equity or interest of any person.

(2) In case of the receipt of any such notice the insurer may pay into the Court any moneys payable under the policy, and the receipt of a Registrar of the Court for the moneys shall be a good and valid discharge to the insurer for the moneys so paid in.

(3) The moneys shall be paid out to such person as the Court orders.

#### **109. Assignment of policy to insurer issuing it not to merge rights, etc. under policy**

The rights and liabilities arising under a policy shall not be deemed, either at law or in equity, to be merged or extinguished by reason only of an assignment of the policy, whether at law or in equity, to the insurer that issued the policy.

**110. Policies held by trustees**

Where an insurer is satisfied that—

- (a) a policy has been issued or transferred to, or the ownership of a policy is otherwise vested in, persons as trustees; and
- (b) those persons are no longer the trustees for the purposes of the trust,

the insurer may, at the request in writing of the persons claiming to be the trustees for the time being for the purposes of the trust and on the evidence of a statutory declaration by one of those persons verifying the claim, record the names of those persons as the owners of the policy, and thereupon those persons shall become the owners of the policy.

**111. Nomination by policy holder**

(1) The holder of a policy of life assurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Provided that, where the nominee is a minor, the policy-holder may appoint, in the manner prescribed, any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any nomination under subsection (1) in order to be effectual, shall either be incorporated in the text of the policy itself or be made by endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy, and the nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy or registered in the books of the insurer.

(3) The insurer shall furnish to the policy-holder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may charge the prescribed fee not exceeding ten shillings, for registering a nomination, or its cancellation or change.

(4) A transfer or assignment of a policy made in accordance with this Act shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of assignment, in consideration of a loan granted by the insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan, shall not cancel a nomination but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

(5) Where the policy matures for payment during the life-time of the person whose life is insured, or where the nominee dies, or if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee survives, or if there are more nominees than one, one or more nominees survive the person whose life is insured, the amount secured by the policy shall be payable to the survivor or survivors, as the case may be.

(7) The provisions of this section shall not apply to a policy to which section 100(1) applies.

#### PART X – CLAIMS ON SMALL LIFE POLICIES

##### **112. Claims on small life policies**

(1) In the event of a dispute relating to the settlement of a claim on a policy of life assurance assuring a sum not exceeding one hundred thousand shillings (exclusive of any profit or bonus not being a guaranteed profit or bonus) issued by an insurer in respect of life assurance business transacted in Kenya, arising between a claimant under the policy and the insurer who issued the policy or has otherwise assumed liability in respect thereof, the dispute may at the option of the claimant be referred to the Commissioner for decision, and the Commissioner may, after giving an opportunity to the parties to be heard and after making such further enquiries as he may think fit, decide the matter.

(2) The decision of the Commissioner under this section shall be final and shall not be called in question in any court, and may be executed by the Court which would have been competent to decide the dispute if it had not been referred to the Commissioner as if it were a decree passed by that court.

(3) There shall be charged and collected in respect of an adjudication under this section such fees whether by way of per centage or otherwise as may be prescribed.

[Act No. 9 of 2000, s. 94.]

#### PART XI – TRANSFERS AND AMALGAMATIONS

##### **113. Application to amalgamate or transfer**

(1) Subject to this Act, where—

- (a) two or more insurers, registered under this Act, intend to amalgamate; or
- (b) an insurer intends to transfer insurance business of any class to another insurer and is registered under this Act,

both the insurers jointly in the former case, and the transferor in the latter case, shall apply to the Authority, for his approval of the amalgamation or transfer, as the case may be.

(2) An application to amalgamate or transfer insurance business shall be accompanied by—

- (a) the draft of the document under which the proposed amalgamation or transfer is to take effect;
- (b) audited accounts and balance sheets of both insurers as on the date of the proposed amalgamation or transfer;
- (c) any other report or document on which the proposed amalgamation or transfer is founded or prepared as at the date of the proposed amalgamation or transfer, as the case may be;
- (d) actuarial reports and abstracts in respect of long term insurance business of both the insurers, such reports and abstracts of the transferor, prepared in conformity with the provisions of section 115, as read with the requirements prescribed in the regulations as at the date of the proposed amalgamation or transfer, as the case may be.

(3) Where the proposed amalgamation or transfer is in respect of long term insurance business, an application under this section shall, in addition to the documents mentioned in subsection (2), be accompanied by a report on the terms of the scheme and likely effects of the scheme on policy-holders of the insurers concerned as a result of the proposed scheme of amalgamation or transfer, prepared by an actuary who has not been professionally connected with any of the insurers at any time during the five years immediately preceding the application and prepared as at the date of the proposed amalgamation or transfer, as the case may be.

(4) The audited accounts and balance sheets, reports and abstracts referred to in subsections (2) and (3) shall be prepared as at the date at which the amalgamation or transfer is intended to be effected, which date shall not be more than twelve months before the date of the application.

[Act No. 12 of 1987, s. 5, Act No. 12 of 1994, s. 24, Act No. 4 of 2012, s. 35, Act No. 11 of 2019, s. 10.]

#### **114. Notice**

(1) The Authority shall not determine an application under this Part unless—

- (a) notice of the intention to apply for amalgamation or transfer, approved by the Authority for the purpose, has been published in the *Gazette* and in at least two newspapers published and circulating in Kenya;
- (b) except in so far as he has otherwise directed, a copy of the notice has been sent to every affected policy-holder and every other person who claims an interest in a policy included in the amalgamation or transfer and has given written notice of his claim to one of the insurers involved in the amalgamation or to the transferor, as the case may be; and
- (c) copies of a statement setting out particulars of the amalgamation or transfer, including in the case of long term insurance business the report of the actuary, and approved by the Authority, have been available for inspection at one or more places in Kenya for a period of not less than thirty days beginning with the date of the first publication of the notice in accordance with paragraph (a).

(2) The notice referred to in subsection (1) shall invite any person (including an employee, director, shareholder or policy-holder) who has reasonable grounds for believing that he would be adversely affected by the carrying out of the scheme to write or make oral representations to the Authority within thirty days of the publication of the notice, stating the grounds on which he believes he would be adversely affected by the carrying out of the scheme of amalgamation or transfer.

[Act No. 12 of 1987, s. 11, Act No. 4 of 2012, s. 36.]

#### **115. Conditions for approval in relation to long term insurance business**

(1) The Authority shall not determine an application under this Part which involves or includes a transfer of long term insurance business, unless the scheme involves a transfer of assets relating to the long term insurance business proposed to be transferred in accordance with the provisions of this section.

(2) If the transfer covers all the long term insurance business of the transferor, all the assets representing the statutory fund maintained by the transferor shall, subject to subsection (4), be transferred.



(3) If the transfer applies to a part only of the long term insurance business of the transferor, the approved proportion of the assets representing the statutory fund maintained by the transferor shall, subject to subsection (4), be transferred.

(4) For the purposes of subsections (2) and (3) —

- (a) subject to paragraphs (b) and (c) of this subsection, assets of not less than the actuarial value of the liabilities on all the policies, after making adequate provision for maintenance of bonuses at current levels, and for the reasonable expectations of policy-holders, liabilities being calculated on a proper basis, shall be transferred;
- (b) where the total assets available in terms of subsection (2) or (3) are less in value than the figure arrived at under paragraph (a) of this subsection, the whole of the assets so available shall be transferred, and the Authority shall decide, after taking into account the relevant actuarial considerations, whether any other assets of the insurer shall also be transferred and whether any provisions for reduction of contracts shall be made in the scheme of transfer;
- (c) where the total assets available in terms of subsection (2) or (3) exceed the figure arrived at under paragraph (a) of this subsection, the assets transferred shall be of value equal to the figure arrived at under paragraph (a) plus the following proportions of the excess of the assets in terms of subsection (2) or (3) over the figure arrived at under paragraph (a) namely—
  - (i) if the excess is equal to or less than forty per cent of the figure arrived at under paragraph (a), ninety per cent of such excess; and
  - (ii) if the excess is more than forty per cent of the figure arrived at under paragraph (a), ninety per cent of the portion of the excess amounting to forty per cent of the figure arrived at under paragraph (a) plus fifty per cent of the balance of the excess, except that where the transferor does not have a share capital, the entire excess of the assets in terms of subsection (2) or (3) over the figure arrived at under paragraph (a) shall be transferred in addition to the assets of value equal to the figure arrived at under paragraph (a).

(5) For the purposes of subsections (2) and (3), the total assets shall include all assets held by the insurer in Kenya which are applicable to, or were built out of, all the long term insurance business carried on in the past irrespective of whether they are shown against long term insurance business and irrespective of whether the business was carried on in the past solely in Kenya or elsewhere.

(6) In determining the “value of the assets” due provision should be made for any possible tax liabilities arising on account of the value placed on the assets or on account of the transfer of the assets.

(7) In this section—

“**proper basis**” means the basis prescribed by the Authority 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;

“**approved proportion**” means the proportion which is approved by the Commissioner as reasonable in the circumstances of the case.

[Act No. 12 of 1987, s. 11, Act No. 20 of 1989, Sch., Act No. 12 of 1994, s. 24, Act No. 4 of 2012, s. 37, Act No. 50 of 2016, s. 10.]

#### **116. Further conditions for approval**

The Authority shall not approve an amalgamation or transfer on an application under section 113 unless he is satisfied that—

- (a) every policy included in the amalgamation or transfer evidences a contract which—
  - (i) was entered into before the date of the application; and
  - (ii) imposes on the insurer obligations the performance of which will constitute the carrying on of insurance business in Kenya; and
- (b) the amalgamated insurer or transferee, as the case may be, is, or immediately after the approval will be, authorized under this Act to carry on in Kenya insurance business of the appropriate class or classes,

and unless in his opinion the amalgamated insurer’s or transferee’s financial resources and the other circumstances of the case justify the giving of his approval.

[Act No. 12 of 1987, s. 11 Act No. 4 of 2012, s. 38.]

#### **117. Approval or refusal**

(1) The Authority may, after considering the documents and reports deposited with him under this Part and the representation, if any, made under section 114(2), subject to such terms and conditions as he considers necessary, approve the scheme of amalgamation or transfer.

(2) On determining an application made under subsection (1) the Authority shall—

- (a) publish a notice of his decision in the *Gazette* and in such other manner as he thinks fit; and
- (b) send a copy of that notice to the parties to the amalgamation or the transferor and the transferee and every person who made representations in accordance with the notice referred to in section 114,

and if he refuses the application he shall inform the parties to the amalgamation or the transferor and the transferee in writing of the reasons for his refusal.

[Act No. 12 of 1987, s. 11, Act No. 4 of 2012, s. 39.]

#### **118. Effect of approval under section 117**

(1) Subject to subsection (2), an instrument giving effect to an amalgamation or transfer approved by the Authority under section 117 shall be effectual in law—

- (a) to transfer to the amalgamated insurer or the transferee all the transferor’s right and obligations under the policies included in the instruments; and
- (b) if the instrument so provides, to secure the continuation by or against the amalgamated insurer or the transferee of any legal proceedings by or against either party to the amalgamation or against the transferor which relate to those rights or obligations,

notwithstanding the absence of any agreement or consent which would otherwise be necessary for it to be effectual in law for those purposes.

(2) Except in so far as the Authority may otherwise direct, a policy-holder whose policy is included in such an instrument shall not be bound by it unless he has been given written notice of its execution by either of the insurers involved in the amalgamation or transfer.

(3) Where an amalgamation or transfer has been approved, the amalgamated insurer or the transferee insurer shall within ten days from the date of completion of the amalgamation or transfer deposit with the Commissioner certified copies of—

- (a) statements of his respective assets and liabilities; and
- (b) the documents under which the amalgamation or transfer was effected.

[Act No. 12 of 1987, s. 11, Act No. 4 of 2012, s. 40.]

## PART XII – INSOLVENCY AND WINDING UP

### 119. Insurer defined for this Part

In this Part “insurer” means an insurer carrying on insurance business in Kenya.

### 120. Voluntary liquidation

An insurer carrying on long term business cannot be liquidated voluntarily, despite Part VI of the Insolvency Act, 2015.

[Act No. 19 of 2015, s. 56.]

### 121. Liquidation by the court

(1) If an application for the liquidation of an insurer is presented by a person other than the Commissioner, the applicant shall serve a copy of the application on the Commissioner.

(2) On being served with a copy such an application, the Commissioner becomes a party to the proceedings and is entitled to be heard at the hearing of the application.

[Act No. 19 of 2015, s. 57.]

### 122. Insolvency of insurer

For the purpose of section 384 of the Insolvency Act, 2015, an insurer is taken to be unable to pay its debts if at any time the requirements of section 41 (which relate to margins of solvency) are not observed by the insurer.

[Act No. 19 of 2015, s. 58.]

### 123. Application for the liquidation of insurer by the court

(1) The Commissioner may, with the prior approval of the Board, make an application to the court for the liquidation of the insurer in accordance with Part VI of the Insolvency Act, 2015 in any of the following circumstances:

- (a) as provided by section 19(5) or 67(3) of this Act;
- (b) on the ground that the insurer is unable to pay the insurer's debts within the meaning of section 384 of the Insolvency Act, 2015;

for a period of six months after notice of the failure or contravention has been given to the insurer by the Commissioner;

- 
- (c) on the ground that the insurer is unable to fulfil the reasonable expectations of policy-holders or potential policy-holders;
  - (d) on the ground that it is just and equitable in the interests of the policy holders that the insurer should be wound up;
  - (e) on the ground that the insurer has failed to pay tax that is due and outstanding;
  - (f) on any other ground prescribed by regulations made for the purposes of this section under section 180 of this Act.

(2) Subsection (1) does not apply to an insurer that is already being liquidated by the court.

(3) The court may, after considering the application made by the Commissioner, order the liquidation of the insurer if it is satisfied that —

- (a) there are sufficient grounds for making the order; and
- (b) it is just and equitable for the insurer to be liquidated.
- (c) on the ground that the insurer —
  - (i) having failed to comply with a requirement of this Act, has continued that-failure; or
  - (ii) having contravened a provision of this Act, has continued that contravention.

[Act No. 12 of 1987, s. 6, Act No. 11 of 2006, s. 15, Act No. 19 of 2015, s. 59.]

#### 124. Transfers of insurance businesses

(1) In this section —

**"transferee insurer"** means the insurer to which an insurance business (or part of it) is transferred as referred to in subsection (2); and

**"transferor insurer"** means the insurer or insurers that have transferred that business or part.

(2) If an insurer transfers its insurance business, or any part of it, to another insurer under an arrangement in accordance with which the insurer or its creditors have claims against the other insurer, then, if the other insurer is being liquidated by the court, the court shall, subject to the provisions of this section, order the transferor insurer to be liquidated in conjunction with the other insurer.

(3) The court may by the same or a subsequent order appoint the same person to be liquidator for the two insurers and make provision for such other matters as the court considers necessary, with a view to the insurers being liquidated as if they were a single insurer.

(4) The commencement of the liquidation of the transferee insurer is, unless the court otherwise orders, the commencement of the liquidation of the transferor insurer.

(5) In adjusting the rights and liabilities of the members of the several insurers between themselves, the court shall have regard to —

- (a) the constitution of the insurers; and
- (b) the arrangements entered into between the insurers in the same manner as the court has regard to the rights and liabilities of different classes of contributories in the case of the liquidation of a single insurer or as near as possible as the circumstances allow.

(6) If the transferor insurer is not in the process of being liquidated at the same time as the transferee insurer, the court may order the liquidation of the transferor insurer only if satisfied, after hearing any objections that may be made by or on behalf of that insurer to its being liquidated, that it would be just and equitable for it to be liquidated.

(7) An application may be made for the liquidation of the transferor insurer in conjunction with the transferee insurer by any creditor of, or person interested in, either of the insurers.

(8) If —

- (a) an insurer is the transferee insurer in relation to one insurer and as the transferor insurer in relation to another insurer; or
- (b) several insurers are transferor insurers in relation to a single transferee insurer,

the court may deal with any number of those insurers together or in separate groups, as it considers most appropriate in accordance with the principles set out in this section.

[Act No. 19 of 2015, s. 60.]

### **125. Insurers that are subsidiaries of non-insurers**

(1) If an insurer is a subsidiary of a company that is not an insurer and the company is liquidated under the Insolvency Act, 2015, the subsidiary may be liquidated only on the basis of a separate application for winding up.

(2) If the subsidiary carries on long term insurance business (whether with or without other classes of insurance business) and is ordered to be liquidated, the following assets of the subsidiary are to be reserved exclusively for the benefit of the policy holders of long term insurance business:

- (a) all the admitted assets of the statutory funds;
- (b) any other assets of the subsidiary that have been included in a separate balance sheet relating to the long term insurance business;
- (c) any assets that, though not shown against the statutory funds or in that balance sheet, should in the opinion of the court be equitably apportioned to the long term policy holders.

(3) The assets referred to in subsection (2) may be used for a purpose other than for the benefit of the long term insurance policy holders only if the rights of those policy holders have been fully satisfied or otherwise provided for.

[Act No. 19 of 2015, s. 61, Act No. 22 of 2017, s. 16.]

### **126. Evidence in proceedings for liquidation of insurer**

(1) If, on the hearing of an application for liquidating an insurer made by the Commissioner under section 123(1), evidence is given that the insurer was insolvent at the close of the period to which the accounts and balance sheet of the insurer last deposited under section 61 relate, or at any date as at which an investigation was last made under section 57 or 58, is, unless the contrary is proved, evidence that the insurer continues to be unable to pay its debts.

(2) Rules made under section 697 of the Insolvency Act, 2015 may regulate the procedure and the practice to be followed in proceedings with respect to the liquidation of insurers under this Act.

[Act No. 19 of 2015, s. 62]

**127. Valuation of assets and liabilities**

(1) Subject to any directions which may be given by the court—

- (a) the value of the assets and liabilities shall be ascertained in such manner and upon such basis as the liquidator thinks fit;
- (b) the liabilities of an insurer in respect of the current policies of long term insurance business shall, as far as practicable, be calculated by the method and upon the basis to be determined by an actuary appointed by the court;
- (c) the liabilities of an insurer in respect of current policies of general insurance business shall, as far as practicable, be such portion of the last premium paid as is proportionate to the unexpired portion of the policy in respect of which the premium was paid.

(2) The actuary appointed under subsection (1) shall, in the determination of liabilities, take into account any special directions which may be given to him by the court.

**128. Continuation of business of insurer in liquidation**

(1) The liquidator shall, so far as it may be possible and unless the court otherwise orders, carry on the insurance business of an insurer with a view to it being transferred as a going concern to another insurer, whether an existing company or a company formed for the purpose; and, in carrying on that business, the liquidator may agree to the variation of any contracts of insurance in existence when the winding up order is made but shall not effect any new contracts of insurance.

(2) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer attributable to his business require the appointment of a special manager of the business, he may apply to the court, and the court may on the application appoint a special manager of that business to act during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(3) The Court may require the special manager to give such security as it considers necessary.

(4) The Court may make such order as it considers appropriate with regard to the payment of remuneration to the special manager.

(5) The Court may, subject to such conditions (if any) as it may determine, reduce the amount of the contracts made by an insurer in the course of carrying on his business as an alternative to winding up or otherwise.

**PART XIII**

*Repealed by Act No. 7 of 1997, s. 15.*

**129.** *Repealed by Act No. 7 of 1997, s. 15.*

**130.** *Repealed by Act No. 7 of 1997, s. 15.*

**131.** *Repealed by Act No. 7 of 1997, s. 15.*

**132.** *Repealed by Act No. 7 of 1997, s. 15.*

**133.** *Repealed by Act No. 7 of 1997, s. 15.*

**134.** *Repealed by Act No. 7 of 1997, s. 15.*

135. Repealed by Act No. 7 of 1997, s. 15.

136. Repealed by Act No. 7 of 1997, s. 15.

137. Repealed by Act No. 7 of 1997, s. 15.

138. Repealed by Act No. 7 of 1997, s. 15.

139. Repealed by Act No. 7 of 1997, s. 15.

140. Repealed by Act No. 7 of 1997, s. 15.

141. Repealed by Act No. 7 of 1997, s. 15.

142. Repealed by Act No. 7 of 1997, s. 15.

143. Repealed by Act No. 7 of 1997, s. 15.

144. Repealed by Act No. 7 of 1997, s. 15.

#### PART XIV – MANDATORY REINSURANCE CESSIONS

##### **145. Certain business to be ceded to Kenya Reinsurance Corporation**

(1) Subject to this Act, every insurer shall re-insure with the Kenya Reinsurance Corporation Limited such proportion of each policy of insurance issued or renewed in Kenya by the insurer, in such proportion and in such manner and subject to such terms and conditions as are prescribed.

(2) Subject to this Act, every insurer shall also place with the Company, in addition to the reinsurance specified under subsection (1), such proportion of its reinsurance business from Kenya placed in the international reinsurance market, excluding facultative reinsurance, in such proportion and in such manner and subject to such terms and conditions as are prescribed.

[Act No. 7 of 1997, s. 16.]

##### **146. Power to decline business**

(1) The Company may refuse to accept any reinsurance offered pursuant to this Part, and in that case the Company shall furnish the insurer concerned, if so requested, the reasons for its refusal.

(2) An insurer may, within fourteen days after receiving reasons for refusal under this section, appeal to the Tribunal against the refusal, and thereupon the Tribunal may confirm the refusal or may direct the Company to accept the reinsurance concerned, and any decision of the Tribunal on an appeal shall be final and conclusive.

(3) Where reinsurance is refused under this section any liability of the insurer under this Part in respect of that reinsurance shall cease.

[Act No. 7 of 1997, s. 17.]

##### **147. Payment**

Payment by insurers to the Company in respect of reinsurance effected under this Part shall be made within such period as the Cabinet Secretary may, by notice in the *Gazette*, prescribe.

[Act No. 5 of 1998, s. 55, Act No. 19 of 2015, s. 63.]

##### **148. Returns and information**

An insurer required to effect reinsurance under this Part shall produce or submit to the Company all returns, statements, books, records, accounts or other

documents, or true copies thereof, and shall furnish any information, which may be required by the Company for the purposes of this Part.

[Act No. 7 of 1997, s. 18.]

#### **149. Offences and penalty**

An insurer who—

- (a) fails to effect reinsurance or make any payment as, and in such manner as, is required by or under this Part;
- (b) fails to comply with a requirement of the Company under section 148 within a reasonable time after the making thereof; or
- (c) furnishes information which is false in whole or in part, or produces or submits as true and correct any document or copy thereof which is not true and correct, in purported compliance with any such requirement,

shall be guilty of an offence and liable to a fine.

[Act No. 7 of 1997, s. 19.]

#### **PART XV – INTERMEDIARIES, RISK MANAGERS, MOTOR ASSESSORS, INSURANCE INVESTIGATOR, LOSS ADJUSTERS, INSURANCE SURVEYORS MEDICAL, INSURANCE PROVIDER AND CLAIMS SETTTLING AGENTS**

#### **150. Only registered brokers, agents, risk managers, motor assessors, insurance investigator, loss adjusters, surveyors, medical insurance provider and claims setting agents to carry on business**

(1) No person shall, after the expiry of three months from the appointed date, commence, transact or carry on in Kenya the business of a broker, agent, risk manager, motor assessor, insurance investigator, loss adjuster, insurance surveyor, medical insurance provider, or claims settling agent unless he is registered under this Act.

(2) No person shall, after the expiry of three months from the appointed date, use the name of broker, agent, risk manager, motor assessor, insurance investigator, loss adjuster, insurance surveyor, medical insurance provider or claims settling agent in a manner to give the impression that he is registered to commence, transact or carry on any such business, unless he is so registered.

(3) Nothing in this Act shall prohibit or otherwise render unlawful the continuance of the business of a risk manager, motor assessor, insurance investigator, loss adjuster, insurance surveyor, medical insurance provider or claims settling agent in Kenya in so far as it is necessary to complete any assignment which was undertaken before the appointed date.

(4) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings and, if the offence is a continuing one, to a further fine not exceeding one thousand shilling for every day during which the offence continues or to imprisonment for a term not exceeding one month or both.

[Act No. 9 of 2003, s. 13, Act No. 9 of 2007, s. 60, Act No. 22 of 2017, s.17.]

#### **150A. Registration of medical insurance providers**

(1) Every person engaged in the business of placing medical insurance business with an insurer in expectation of payment by way of a commission, fee,



or other remuneration shall apply to the Authority for registration as a medical insurance provider under this Act.

(2) Subject to this Act, the provisions of this Act or of any regulation made thereunder with respect to the registration and regulation of brokers, shall, *mutatis mutandis*, apply to medical insurance providers.

[Act No. 9 of 2003, s. 14, Act No. 10 of 2010, s. 57.]

### 151. Application for registration

(1) An application for registration under section 150 or renewal of registration under section 188 shall be in the form required by the Commissioner and shall be accompanied by—

- (a) where the application is for registration as a broker, a professional indemnity policy of insurance in such form as may be prescribed and for such amount as may be prescribed whether as a single sum or according to a specific formula;
- (b) *deleted by Act No. 14 of 2015, s. 31(a)*;
- (c) a statement of business transacted in the preceding financial year in the prescribed form;
- (d) the prescribed fee;
- (e) such other documents as may be prescribed.

(1A) Notwithstanding the provisions of subsection (1), a registered agent shall seek to be appointed by an insurer before transacting business on their behalf.

(2) No person shall make a statement in an application, account, written information or document submitted under this section that is false or misleading.

(3) A person who contravenes the provisions of subsection (2) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

[Act No. 14 of 2015, s. 31.]

### 152. Disqualifications

The Commissioner shall not register or renew the registration of or keep registered any person as a broker, agent, risk manager, loss assessor, loss adjuster, insurance surveyor, medical insurance provider, or claims settling agent if—

- (a) the applicant has been found to be of unsound mind by a court of competent jurisdiction;
- (b) he has within the five years preceding the date of application been convicted of an offence relating to fraud or dishonesty;
- (c) he has at any time within the five years preceding the date of his application become bankrupt, applied to take the benefit of the law for the relief of bankrupt or insolvent debtors, compounded with his creditors or made an assignment of his remuneration for their benefit;
- (d) the applicant, being a broker, is a director, employee or holds more than one per cent of the shares or controlling interest in a registered insurer;
- (e) the applicant is a natural person, the applicant, or where the applicant is a corporate person, the principal officer in Kenya of the applicant responsible for the transaction of business—

- (i) does not, in the opinion of the Commissioner, have sufficient knowledge, skill and experience to satisfactorily discharge his duties and functions; or
- (ii) has been found guilty of, or warned or cautioned in writing by the Commissioner on at least three separate occasions with regard to, unethical business practices.

[Act No. 12 of 1994, s. 27, Act No. 9 of 2003, s. 15.]

### **153. Registration and re-registration**

(1) Where the Commissioner is satisfied that—

- (a) the volume of business which is likely to be available to, and the earning prospects of, an applicant are adequate;
- (b) the business in respect of which the application is made will be conducted in accordance with accepted professional standards;
- (c) in the case of a corporate person the financial standing of the applicant is sound;
- (d) the knowledge, skill and experience of the applicant or, in the case of a corporate person, the knowledge, skill and experience of the principal officer in Kenya, are adequate;
- (e) in the case of a broker, the professional indemnity policy of insurance is satisfactory;
- (f) the applicant is not disqualified under this Act;
- (g) the applicant is, and is likely to continue to be, able to comply with such of the provisions of this Act and regulations and directions made or issued under this Act as are applicable to the applicant;
- (h) the prescribed fee has been paid;
- (i) it is otherwise in the public interest that the applicant should be registered,

he may, subject to such terms and conditions as he considers necessary, including in the case of a broker the provision of such bank guarantee as may be prescribed, register or renew the registration of an applicant under this Part.

(2) A broker shall be registered under this Act only if registered as a company under the Companies Act, 2015 and if the company has a paid up capital of not less than one million shillings of which not less than sixty percent is owned —

- (a) by Kenya citizens;
- (b) by a partnership whose partners are all citizens of Kenya; or
- (c) by a corporate body whose shares are wholly owned by citizens of Kenya or which is wholly owned by the Government.

This subsection is subject to subsection (3) and has effect despite any other provision of this Act to the contrary.

(3) A broker already carrying on business as an insurance broker on the appointed date without complying with the provisions of subsection (2) relating to paid up capital may be registered as a broker, but at the time of each subsequent renewal of the registration until he complies fully with the requirement his registration shall not be renewed unless he has acquired after the immediately preceding registration or renewal of registration, as the case may be, paid up capital

or additional paid up capital equal to not less than one-third of the deficiency which existed on the appointed date.

(4) Subject to subsection (3), a broker already carrying on business as an insurance broker on the appointed date without complying with the minimum shareholding by Kenya citizens as required under subsection (2) shall comply with that requirement before the expiry of three years from the appointed date.

(5) *Deleted by Act No. 1 of 2014, s. 14(b).*

[Act No. 18 of 1986, Sch., Act No. 4 of 1999, s. 73, Act No. 10 of 2010, s. 59, Act No. 1 of 2014, s. 14, Act No. 19 of 2015, s. 64.]

#### **154. Business by agents**

Subject to the terms and conditions contained in the agreement or appointment letter referred to in section 151(1)(b), an agent may enter into a contract which has the effect of enabling him to solicit or procure insurance business of the same class or sub-class of insurance business or other classes of insurance business for more than one insurer, or to solicit or procure insurance business of the same class or sub-class of insurance business for more than one insurer.

[Act No. 9 of 2003, s. 16, Act No. 11 of 2006, s. 16.]

#### **155. Returns**

(1) Every corporate person registered under this Part shall furnish such audited accounts, statements and returns relating to its business at such time and in such form as may be required by the Commissioner.

(2) If it appears to the Commissioner that any account, statement or return furnished to him under provisions of this Act is inaccurate or incomplete in any respect, he may—

- (a) require further information, which shall be certified, if he so directs, by an auditor or other person, as he may consider necessary; or
- (b) require any document for his examination.

(3) Where—

- (a) a person registered under this Part fails to comply with a requirement made under subsection (2); or
- (b) the Commissioner is not satisfied as to the truth or accuracy of any account, statement or return supplied under subsection (1), or of any further information or document supplied under subsection (2), and has in writing so informed the person registered, giving his reasons,

that person shall be deemed to have failed to comply with subsection (1).

(4) A person who fails to submit a return within the prescribed period shall be liable to a penalty of ten thousand shillings and a further penalty of one thousand shillings for each day after the expiry of the prescribed period that the return is not submitted.

(5) The penalty referred to in subsection (4) shall be payable into the Policyholders' Compensation Fund.

[Act No. 28 of 2019, s. 6.]

#### **156. Advance payment of premiums**

(1) No insurer shall assume a risk in Kenya in respect of insurance business unless and until the premium payable thereon is received by the 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 equivalent to twenty percent of the unremitted premium on each contravention, payable to the Policyholders 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 imprisonment for a 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.

[Act No. 12 of 1994, s. 28, Act No. 8 of 1996, s. 55, Act No. 4 of 1999, s. 74, Act No. 11 of 2006, s. 17, Act 9 of 2007, s. 61, Act No. 10 of 2010, s. 60, Act No. 19 of 2019, s. 11.]

#### **PART XVI**

*Repealed by Act No. 11 of 2006, s. 18.*

**157.** *Repealed by Act No. 11 of 2006, s. 18.*

**158.** *Repealed by Act No. 11 of 2006, s. 18.*

**159.** *Repealed by Act No. 11 of 2006, s. 18.*

**160.** *Repealed by Act No. 11 of 2006, s. 18.*

**161.** *Repealed by Act No. 11 of 2006, s. 18.*

**162.** *Repealed by Act No. 11 of 2006, s. 18.*

**163.** *Repealed by Act No. 11 of 2006, s. 18.*

#### **PART XVII – ADVERTISEMENTS AND STATEMENTS**

##### **164. Misleading advertisements, etc. prohibited**

(1) A person who, by an advertisement, statement, promise or forecast which he knows to be misleading, false or deceptive, or by dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of an advertisement, statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into a contract, transaction or arrangement with a member of the insurance industry relating to insurance business, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

(2) For the purpose of this section, including proceedings under this section, an advertisement, statement, promise or forecast issued by a person on behalf of or to the order of another person shall be treated as an advertisement, statement, forecast or promise issued by that other person.

(3) A person who in the ordinary course of his business issues and advertisement, statement, promise or forecast to the order of another person, being an advertisement, statement, promise or forecast the issue of which by that other person constitutes an offence under subsection (1) shall not himself be guilty of the offence if he proves that the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control.

**165. Advertisements relating to capital**

(1) Where an advertisement, notice or other official publication of an insurer or broker to whom this Act applies contains a statement of the amount of the authorized capital of the insurer or broker, the publication shall also contain a statement of the amount of capital which has been subscribed and the amount paid up.

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

**166. Issue of shares or debentures by companies**

(1) No person shall publish in respect of an insurer or broker, or in respect of an insurer or broker proposed to be formed, a prospectus, notice, circular, advertisement or other invitation offering to the public for subscription any shares in, or debentures of, the company or proposed company unless the prospectus, notice, circular, advertisement or other invitation is first submitted to and approved by the Commissioner.

(1A) No person shall transfer or dispose of and no person shall acquire more than ten per cent of the paid up share capital or voting rights of an insurer without the prior written approval of the Commissioner; and any such transfer, disposal or acquisition effected in a manner contrary to this subsection shall be null and void *ab initio*.

(2) A person acting as promoter of a proposed insurer or broker shall not accept an office of profit in the insurer or broker or the offer of a pecuniary advantage, other than as provided in the prospectus, notice, circular, advertisement or other invitation.

(3) In this section—

“**debenture**”, in relation to a company, includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of the company, whether constituting a charge on the property of the company or not;

“**share**”, in relation to a company, means a share in the capital of the company, and includes stock.

(4) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

[Act No. 12 of 1994, s. 32.]

**167. Publication of returns**

(1) No person shall publish an account, abstract, report or other document deposited with or required to be deposited with the Commissioner by or under this Act in a form other than that in which it has been furnished to the Commissioner:

Provided that nothing in this subsection shall prevent a person from publishing a true and accurate summary from any such account, abstract, report or other document for the purpose of publicity.

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

## PART XVIII – LEGAL PROCEEDINGS AND APPEALS

**168. Protection for officials acts**

(1) No legal proceedings shall be instituted in any court against the Cabinet Secretary or the Board or any person authorized by the Cabinet Secretary or the Board for anything done or intended to be done in good faith under this Act.

(2) No compensation shall be payable to any person for any loss, damage or harm directly or indirectly caused by anything done or intended to be done in good faith by the Cabinet Secretary or the Board or any person authorized by the Cabinet Secretary or the Board under this Act.

[Act No. 11 of 2006, s. 19, Act No. 19 of 2015, s. 65.]

**169. The Tribunal**

(1) The Cabinet Secretary may, by notice in the *Gazette*, establish a Tribunal for the purpose of hearing appeals under this Act.

(2) The Tribunal shall consist of a chairman and vice-chairman and not less than two and not more than four other members who shall be appointed by the Cabinet Secretary and shall hold office for such period and upon such terms and conditions as the Cabinet Secretary may determine.

(3) The quorum for a meeting of the Tribunal shall be the chairman or vice-chairman and two other members.

(4) The members of the Tribunal shall be entitled to receive such allowances as the Cabinet Secretary may determine.

(5) The members of the Tribunal shall not be personally liable for any act or default of the Tribunal done or committed in good faith in the course of exercising the powers conferred by this Act.

(6) The Cabinet Secretary may make rules—

- (a) prescribing the manner in which an appeal shall be made to the Tribunal and the fees to be paid in respect of an appeal;
- (b) prescribing the procedure to be adopted by the Tribunal in hearing an appeal and the records to be kept by the Tribunal;
- (c) prescribing the manner in which the Tribunal shall be convened and the places where and the time at which sittings shall be held;
- (d) prescribing a scale of costs which may be awarded by the Tribunal; and
- (e) generally for the better carrying out of the provisions of this Act relating to the Tribunal and appeals thereto.

[Act No. 1 of 2014, s. 15, Act No. 19 of 2015, s. 66.]

**170. Powers of Tribunal**

(1) On the hearing of an appeal the Tribunal shall have all the powers of a Resident Magistrate's Court of the first class to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.

(2) Where the Tribunal considers it desirable for the purpose of avoiding expense or delay or any other special reason so to do, it may receive evidence by affidavit and administer interrogatories and require the person to whom interrogatories are administered to make a full and true reply to the interrogatories within the time specified by the Tribunal.

(3) In its determination of any matter the Tribunal may take into consideration any evidence which it considers relevant to the subject of an appeal before it, notwithstanding that such evidence would not otherwise be admissible under the law relating to evidence.

(4) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be taxed in accordance with any scale prescribed.

(5) All summonses, notices or other documents issued under the hand of the Chairman of the Tribunal shall be deemed to be issued by the Tribunal.

(6) Any interested party may be represented before the Tribunal by an advocate or by any other person whom the Tribunal may admit to be heard on behalf of the party.

[Act No. 1 of 2014, s. 16.]

#### **171. Enforcement of orders for costs**

(1) Where the Tribunal awards costs in any appeal, the Tribunal shall, on application by the person to whom the costs are awarded, issue to him a certificate stating the amount of the costs.

(2) Every certificate issued under subsection (1) may be filed in the court by the person in whose favour the costs have been awarded and, upon being so filed, shall be deemed to be decree of the court and may be executed as such; but an order for costs against the Government shall not be enforced except in the manner provided for by the Government Proceedings Act (Cap. 40).

#### **172. Penalty for disobedience of summons to give evidence etc**

Any person summoned by the Tribunal to attend and give evidence or to produce any records, books of account, statements, or other documents, or required to answer interrogatories and who, without sufficient cause—

- (a) refuses or fails to attend at the time and place mentioned in the summons served on him;
- (b) refuses or fails to answer, or to answer fully and satisfactorily, to the best of his knowledge and belief all questions lawfully put to him by or with the concurrence of the Tribunal; or
- (c) refuses or fails to produce any records, books of account, statements or other documents which are in his possession or under his control mentioned or referred to in any summons served on him,

shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

#### **173. Appeals from Commissioner's decisions**

(1) A person aggrieved by a decision of the Commissioner under this Act may, within one month from the date on which the decision is intimated to him, appeal to the Tribunal which may, subject to such terms and conditions as it may consider necessary, uphold, reverse, revoke or vary that decision.

(2) Except as provided in this section the decision of the Tribunal on an appeal made to it under subsection (1) shall be final and conclusive.

(3) A person aggrieved by a decision of the Tribunal made under subsection (1) may, if it involves a question of law, within one month from the date on which the decision is intimated to him, appeal therefrom to the court.

(4) A reference in this section to a question of law does not include a reference to a question whether there is sufficient evidence to justify a finding.

(5) The Chief Justice may make rules for regulating the practice and procedure in connection with an appeal under subsection (3) and for the better carrying into effect the provisions of that subsection.

#### **174. Cognisance of offences and restrictions on institution of proceedings**

(1) No court inferior to that of a magistrate's court of the first class shall hear and determine any matter relating to an offence under this Act.

(2) No proceedings for an offence under this Act shall be instituted without the written sanction thereto of the Director of Public Prosecutions.

(3) Proceedings for an offence under this Act may (without prejudice to any jurisdiction apart from this subsection) be taken against a body corporate at any place at which the body corporate has a place of business, and against any other person at any place at which he has a place of business or is for the time being resident.

[Act No. 1 of 2014, s. 17.]

#### **175. Criminal liability of directors, etc**

(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, chief executive, principal officer, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such capacity, he, as well as the body corporate, shall be guilty of that offence unless he proves that he did not know of the commission of the offence and was not reasonably in a position to know of it, or that he took all reasonable steps to prevent the commission of the offence.

(2) A person convicted of an offence under subsection (1) shall be liable to a fine not exceeding one hundred thousand shillings or, in the case of a natural person, to imprisonment for a term not exceeding five years, or to both.

(3) Where a person convicted under this section is a body corporate, then, notwithstanding any other penalty imposed under subsection (2), the conviction shall constitute sufficient grounds for cancellation of its registration and the appointment of a manager under section 67C.

[Act No. 12 of 1994, s. 33.]

#### **176. Criminal proceedings against unincorporated bodies**

(1) Proceedings for an offence alleged to have been committed under this Act by an unincorporated body shall be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents shall have effect as if that body were a corporation.

(2) A fine imposed on an unincorporated body on its conviction of an offence under this Act shall be paid out of the funds of that body.

#### **177. Documents to be received in evidence**

(1) Every document purporting to be certified by the Commissioner to be a document deposited with him under the provisions of this Act, and every document purporting to be similarly certified to be a copy of that document, shall be deemed to be such a document or copy, as the case may be, and shall be received in evidence as if it were the original document unless some variation between it and the original document is proved.



(2) The Board may direct any documents deposited with the Commissioner under this Act, or certified copies thereof, to be kept open for inspection, and copies thereof may be procured by any person on payment of such fees as may be prescribed.

(3) Every document purporting to be certified by the Registrar of Companies to be a copy of a document deposited with him under this Act, shall be deemed to be a copy of that document, and shall be received in evidence as if it were the original document, unless some variation between it and the original is proved.

[Act No. 11 of 2006, s. 20.]

### 178. General penalty

A person who contravenes any provision of this Act or any regulation made thereunder for which no specific penalty is imposed shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings.

[Act No. 12 of 1994, s. 34.]

## PART XIX – MINISTER’S POWERS

### 179. Policy Holders’ Compensation Fund

(1) The Cabinet Secretary shall, for the protection of policyholders, establish a Policyholders Compensation Fund, in this section referred to as "the Fund", to provide compensation to the claimants of insurer placed under a manager appointed under section 67C (2) or whose license has been cancelled under the Act.

(2) Where a Fund is established under subsection (1), the Cabinet Secretary shall appoint a Board of Trustees, in this section referred to as "the Board", for the management and administration of the Fund.

(2A) The functions of the Board shall be to—

- (a) provide compensation to claimants of insurers as provided under subsection (1);
- (b) monitor, in consultation with the Commissioner where necessary, the risk profile of any insurer;
- (c) advise the Cabinet Secretary on the national policy to be followed with regard to matters relating to compensation of policyholders and to implement all government policies relating thereto; and
- (d) participate in the statutory management of an insurer placed under statutory management by the regulator;
- (e) liquidate an insurer as may be ordered by a court;
- (f) perform such other functions as may be conferred on it by this Act or by any other written law.

(2B) The Board shall have all the powers necessary for the proper performance of its functions under this Act, and without prejudice to the generality of the foregoing, shall have power to—

- (a) control, supervise and administer the assets and liabilities of the Fund in such manner and for such purposes as best promote the interests of policyholders;
- (b) employ such persons and engage the services of such consultants as may be necessary, on such terms and conditions for the proper and efficient exercise of its functions;

- (c) enter into association with such other bodies or organizations, within or outside Kenya, as it may consider desirable or appropriate in furtherance of the purposes for which the Fund is established;
- (d) invest any of its surplus funds in securities which for the time being trustees may by law invest in, or in any other securities which the Treasury may, from time to time, approve;
- (e) receive contributions paid by insurers and policyholders, grants provided by Parliament, gifts, donations or endowments on behalf of the Fund and make legitimate disbursements therefrom;
- (f) subject to the provisions of this Act, regulate its own procedure.

(3) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable or immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(4) The Board shall comprise of—

- (a) a Chairman, appointed by the Cabinet Secretary;
- (b) the Commissioner of Insurance or a representative appointed in writing;
- (c) the Cabinet Secretary responsible for matters relating to finance or a representative appointed in writing;
- (d) the Attorney-General or a representative appointed in writing;
- (e) one person nominated by the body representing the interests of insurers;
- (f) one person nominated by insurance brokers;
- (g) one person representing the general public appointed by the Cabinet Secretary; and
- (h) the Managing Trustee as an *ex officio* member without a right to vote.

(4A) The Cabinet Secretary shall prescribe the qualifications and terms of service of the chairman and members of the Board, including the procedure for their appointment.

(4B) A person shall not be eligible for appointment under paragraphs (4) (e), (f) or (g) if that person —

- (a) has at any time been convicted of any offence involving fraud, theft, dishonesty, breach of trust or moral turpitude;
- (b) was previously involved in the management or administration of a financial institution which was deregistered, wound up or placed under statutory management for any failure on the part of the management or the administration thereof;
- (c) is a director, officer, employee or shareholder of any insurer, broker, insurance agent or any other member of the insurance industry; or

(d) is disqualified under any other written law from holding public office or being a director of any institution.

(5) The Cabinet Secretary shall prescribe the qualifications and terms of service of the chairman and members of the Board, including the procedure for their appointment.

(5A) The Cabinet Secretary shall, in consultation with the Board, appoint a Managing Trustee who shall be the chief executive and secretary to the Board, and who shall hold office for such period and on such terms and conditions of service as may, from time to time be determined in writing by the Cabinet Secretary in consultation with the Board.

(6) The Cabinet Secretary may require payment of a monthly contribution to the Fund to be paid by every policy-holder and insurer, in such amount and at such times as the Cabinet Secretary may, in consultation with the Board, prescribe.

(7) A contribution required under subsection (6) shall be remitted to the Board by the insurer, in such manner as may be prescribed.

(8) If an insurer, for any reason, fails to pay its contribution to the Board within the prescribed period, the insurer shall be liable to pay to the Board a penalty interest charge, which shall be prescribed by the Cabinet Secretary in consultation with the Board.

(9) If an insurer fails to pay the prescribed contribution to the Board and any outstanding penalty interest charge—

(a) the Board shall hold the directors of the insurer who has defaulted in remitting a statutory contribution to be severally and jointly liable for the payment of the outstanding contribution together with the applicable interest; and;

(b) the liability of the directors shall commence on the expiry of ninety days from the due date of the outstanding statutory contribution.

(10) A contribution paid by an insurer to the Board may be treated as an item of the expenses of management of the insurer for the financial year in which the amount is paid.

(11) The Cabinet Secretary may, in consultation with the Board, make regulations generally for the better carrying out the provisions of this section.

[Act No. 6 of 2005, s. 41, Act No. 11 of 2006, s. 21, Act No. 8 of 2008, s. 63, Act No. 10 of 2010, s. 61, Act No. 1 of 2014, s. 18, Act No. 19 of 2015, s. 67.]

#### **179A. Protection from personal liability**

No matter or thing done by a member of the Board, the secretary to the Board, or an officer, employee or agent of the Board shall, if the matter or thing is done *bonafide* for executing the functions, powers, or duties of the Board under this Act, render the member, secretary, officer, employee or agent, or any person acting on their direction personally liable to any action, claim, or demand whatsoever.

[Act No. 10 of 2010, s. 62.]

#### **180. Power of Cabinet Secretary to make regulations for purposes of this Act**

(1) The Cabinet Secretary may make regulations providing for all matters that are required or permitted to be prescribed by this Act, or that are necessary, desirable or convenient to be prescribed for giving effect to this Act.

(1A) Matters prescribed under subsection (1) may include regulations or guidelines on—

- (a) mitigation of group risk; and
- (b) prudential regulation of insurance groups.

[Act No. 1 of 2014, s. 19, Act No. 19 of 2015, s. 68, Act No. 22 of 2017, s. 18.]

### **181. Power of exemption**

The Cabinet Secretary may, by notice in the *Gazette*, subject to such terms and conditions as he may on the advice of the Board specify, exempt any person from any of the provisions of this Act.

[Act No. 11 of 2006, s. 22, Act No. 19 of 2015, s. 69.]

## **PART XX – GENERAL PROVISIONS RELATING TO REGISTRATIONS AND CERTIFICATES**

### **182. Interpretation of this Part**

In this Part—

“**applicant**” means a person applying for registration, renewal of registration or alteration of registration under this Act;

“**register**” means a register required to be kept and maintained under section 183;

“**registered person**” means a person registered under this Act as an insurer, reinsurer, broker, agent, insurance surveyor, risk manager, loss assessor, loss adjuster or claims settling agent.

### **183. Registers of authorized persons to be kept by Commissioner**

(1) For the purposes of this Act, the Commissioner shall cause to be kept and maintained one or more registers in respect of persons required to be registered thereunder.

(2) Subject to this Act and to any regulations made thereunder, a register shall be kept and maintained in such form and manner as the Commissioner directs.

### **184. Notification of registered persons**

The Commissioner shall notify in the *Gazette*, within one year of the appointed date or soon as practicable thereafter, and at intervals of not more than one year thereafter, the names of registered persons and the type of business in respect of which they are registered.

### **185. Inspection of registers**

Any person may, on application in accordance with the directions of the Commissioner and on payment of the prescribed fee (if any), inspect a register.

### **186. Evidence of matters in register**

A certificate under the hand of the Commissioner certifying as to any matter relating to the contents of a register shall be received in all courts as evidence of the matter certified.

### **187. Alteration of registration**

Where a registered person—

- (a) in accordance with this Act ceases to carry on business of the type in respect of which he is registered; or

- (b) being an insurer, gives notice in writing to the Commissioner that he wishes to carry on insurance business of a class not previously undertaken,

the Commissioner may, subject in the case of additional registration to compliance with the provisions relating thereto and to such terms and conditions as he considers necessary—

- (i) cancel the registration, except that, in the case of an insurer, such cancellation shall be made only with the prior approval in writing of the Cabinet Secretary;
- (ii) alter the relevant register;
- (iii) cancel the certificate of registration;
- (iv) alter the certificate of registration;
- (v) issue a new certificate of registration,

as the circumstances require.

[Act No. 12 of 1987, s. 7, Act No. 19 of 2015, s. 70.]

### **188. Expiry and renewal of registration**

(1) Subject to this Act, the registration of a registered person shall expire on the 31st December of the year of registration:

Provided that where an application for its renewal is made under this section, the registration shall be deemed to continue in force until the application for the renewal is determined and the registration is renewed.

(2) Subject to subsection (3), an application for the renewal of registration for a year shall be made on or before the 30th September of the preceding year in the prescribed form and shall be accompanied by the prescribed fee.

(3) The Commissioner may extend the time for making an application for renewal of registration on payment of such penalty, not exceeding the prescribed fee for registration, as he may require.

(4) This section shall not apply to a registered person who is an insurer.

[Act No. 9 of 2007, s. 62, Act No. 8 of 2009, s. 49, Act No. 22 of 2017, s. 19.]

### **189. Issue, display and surrender of certificates**

(1) Upon the registration or renewal of any registration, the Commissioner shall issue a certificate of registration which shall be prominently displayed by the registered person at his principal place of business in Kenya in a part thereof to which the public have access, and a copy thereof shall be similarly displayed at each of the branches of the registered person in Kenya.

(2) The Commissioner may, on payment of the prescribed fee, issue a duplicate certificate to replace a certificate which has been lost, destroyed or damaged or in any case where he considers it necessary.

(3) Upon the cancellation of a registration the person who was registered shall forthwith return his certificate of registration to the Commissioner.

(4) A registered person shall not display a certificate of registration after the cancellation or expiry of the registration in respect of which it is issued.

(5) A person who contravenes the provisions of subsection (3) or (4) shall be guilty of an offence and liable to a fine not exceeding one thousand shillings.

**190. Name of registered person**

(1) If the name of a registered person who has been registered is identical to a name by which another registered person has already been registered, or so nearly resembles it as to be likely to deceive, the second registered person shall, if directed in writing to do so by the Commissioner and subject to the Companies Act, 2015, change his name within a time to be specified in the direction.

(2) No insurer shall, after the expiry of six months from the appointed date, use, or carry on business under, a name which is likely to mislead the public or to give the impression that the insurer is carrying on any business other than insurance business.

(3) No broker, agent, insurance surveyor, loss assessor, loss adjuster, risk manager or claims settling agent shall, after the expiry of six months from the appointed date, use, or carry on business under, a name which includes the word "insurance" or "assurance" in such a way as to mislead the public or to give the impression that he carries on insurance business.

(4) A person who contravenes the provisions of subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings, and where the offence is a continuing one, to a further fine of one hundred shillings for every day during which the offence continues.

[Act No. 19 of 2015, s. 71.]

**191. Prohibition of other business**

(1) No person shall be registered under this Act as an insurer, reinsurer or broker if he carries on or intends to carry on or intends to carry on in Kenya any business other than the business in respect of which he applies for registration.

(2) No person registered under this Act as an insurer, reinsurer or broker shall carry on in Kenya any business other than the business in respect of which he is registered.

(3) For the purposes of this section, an insurer shall not be deemed to be carrying on a business other than that in respect of which he is registered merely by reason of his having a subsidiary which is registered for a class of insurance business for which the insurer is not registered:

Provided that nothing in this subsection shall allow an insurer not registered for long term insurance business to own a subsidiary registered for any class of long term insurance business.

(4) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

**192. Further information**

The Commissioner may in writing require an applicant for registration or renewal of registration under this Act to furnish him with such written information as he may require relating to the applicant or his business in respect of which registration or renewal thereof is sought, and the Commissioner shall not proceed with an application until that information has been furnished.

**193. Alteration in particulars furnished**

(1) Whenever any circumstances arise which affect the application or the contents of a document furnished under this Act to the Commissioner with or in support of or in connection with an application for registration, the applicant

or registered person, as the case may be, shall in writing, within seven days of those circumstances arising, furnish full details of the circumstances to the Commissioner.

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

#### **194. False or misleading statements**

A person who makes a false or misleading statement in an application for registration or renewal of registration or alteration of registration, or in any document furnished under this Act to the Commissioner with or in support of or in connection with an application for registration or renewal of registration, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

#### **195. Refusal to register**

Where the Board refuses to register an application for registration, renewal or alteration of registration, the Board shall record the reasons for its decision and shall furnish copies thereof to the applicant and the Minister.

[Act No. 12 of 1987, s. 8, Act No. 11 of 2006, s. 23.]

#### **196. Cancellation of registration**

(1) Where a registered person requests, by notice in writing given to the Commissioner, that his registration be cancelled either totally or in respect of any particular part of his business, the Commissioner may, subject to such terms and conditions as he considers necessary, by notice in writing, cancel the registration of the person, either totally or in respect of any particular part of his business.

(2) The Commissioner, after giving a registered person a reasonable opportunity of making representations, may by notice in writing cancel the registration of that person, either totally or in respect of any particular part of his business—

- (a) if the person fails to comply with or acts in contravention of this Act, or any regulation or direction made or issued under this Act;
- (b) in the case of an insurer, if the Commissioner has reason to believe that an amount due by the insurer under a judgment entered in an action in Kenya arising out of a policy of insurance issued by the insurer has remained unpaid for three months after the date of the final adjudication in that action;
- (c) if the Commissioner is satisfied that the business of the person registered is not being conducted in accordance with sound insurance or business principles;
- (d) where, having regard to the financial circumstances of the person registered, the Commissioner is satisfied that the person cannot carry on the business, or a part of the business, for which he is registered, as the case may be, in a satisfactory and efficient manner;
- (e) where, having regard to the nature and quality of the staff of the registered person, including the professional qualifications, knowledge and experience of the staff, the Commissioner is satisfied that the person cannot carry on the business, or a part of the business, for which he is registered, as the case may be, in a satisfactory and efficient manner;

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- (f) if the person is in liquidation;
  - (g) if the business of the registered person has been transferred to or amalgamated with the business of another person without the approval of the Cabinet Secretary;
  - (h) in the case of an insurer, if the business of the insurer is wholly or to an unreasonable extent re-insured with another person;
  - (i) where the Commissioner has reason to believe that the person registered has not commenced to carry on insurance business or any class of business in Kenya within the period of twelve months after he was registered;
  - (j) where the Cabinet Secretary considers it is otherwise in the public interest and so directs the Commissioner in writing.

(3) A cancellation of registration made by the Commissioner under subsection (2), other than paragraph (f), (g) or (i) thereof, shall take effect thirty days after the date of the notice, and after that time no insurer whose registration has been cancelled shall enter into a new contract of insurance; but all rights and liabilities in respect of contracts of insurance entered into by him before the cancellation takes effect shall, subject to subsection (5), continue as if the cancellation had not taken place.

(4) The Commissioner may, with the prior approval of the Cabinet Secretary, revive a registration which has been cancelled under the provisions of subsection (2), other than paragraph (f), (g) or (i) thereof, if within six months from the date on which cancellation took place the registered person concerned satisfies the Commissioner that he has complied with any requirement of this Act or any subsidiary legislation made thereunder and complies with any further directions given to him by the Commissioner.

(5) After the expiry of six months from the date on which the cancellation of registration of an insurer has taken effect under this section, the Commissioner may, with the prior approval of the Cabinet Secretary, apply to the court for a liquidation order in respect of the insurer.

(5A) Subsection (5) does not apply if—

- (a) the registration of the insurer has been revived under subsection (4);  
or
- (b) an application for a liquidation order has already been made to the court in respect of the insurer.

(6) Where in any case referred to in subsection (1) the default or circumstances relates to one or more, but not all, of the parts of business carried on by the registered person, the Commissioner may, with the prior approval of the Cabinet Secretary, upon the cancellation of the registration of the person, subject to such terms and conditions as he considers necessary, register the person in respect of any part of the business and issue a new certificate in respect of that class of business.

[Act No. 12 of 1987, s. 9, Act No. 11 of 2006, s. 24, Act No. 19 of 2015, s. 72.]

#### **196A. Notification of cancellation of registration**

The Commissioner shall, at the beginning of each calendar year, notify in the *Gazette* and in at least two daily newspapers of national circulation, names of



persons whose registration is cancelled under this Act and the type of business in respect of which the cancellation of registration is done.

[Act No. 9 of 2003, s. 17.]

### **197. Records to be maintained by registered persons**

(1) A broker or agent registered under this Act shall keep and maintain at his principal place of business in Kenya a record of the name of every client, policy number, premium paid, subject-matter of insurance, the date of the inception of the policy, date of renewal, sum insured and, in respect of claims settled by the broker on behalf of an insurer, the amount and date of claim made, the date on which the claim was paid, the amount paid, and, in the event of a claim being repudiated, the date and reasons for repudiation, and, in the event of partial settlement, the reasons therefor.

(2) An insurer registered under this Act for carrying on general insurance business shall keep record of the name of every policy-holder, policy number, premium paid, subject-matter of insurance, the date of the inception of the policy, date of renewal, sum insured, the amount and date of claim made, the date on which the claim was paid, the amount paid, and, in the event of a claim being repudiated, the date and reasons for repudiation, and, in the event of partial settlement, the reasons therefor.

(3) An insurer registered under this Act for carrying on long term insurance business shall keep and maintain the particulars referred to in subsection (2) and in addition a record of the name of any assignee or other person having an interest in a policy, and the name of every nominee and the dates of assignment or nomination, as the case may be.

(4) A person registered under this Act other than an insurer, broker or agent shall keep and maintain a full record of all services undertaken by him in pursuance of his registration.

(5) Every person registered under the Act shall also keep and maintain such further records of information as may be prescribed.

### **PART XXA — THE INSURANCE PREMIUM LEVY**

[Act No. 12 of 1987, s. 10, Act 11 of 2006, s. 25.]

#### **197A. Imposition of Insurance Premium Levy**

(1) Subject to this Act, there shall be charged and collected a levy to be known as the insurance premium levy, which shall be paid by every insurer registered and authorized under this Act to carry on insurance business in Kenya, at such rate and in such manner as the Minister may prescribe.

(2) The Minister may, in consultation with the Board, by Order published in the *Gazette*, prescribe the rates of the levy imposed under subsection (1) in respect of—

- (a) gross direct premiums written by all insurers registered or authorized under this Act to carry on insurance business in Kenya; and
- (b) *deleted by Act No. 1 of 2014, s. 20,*

and such other category of insurance as the Minister may prescribe upon recommendation of the Authority.

(3) The levy shall be computed as a percentage of the gross direct premiums written by an insurer or reinsurer under subsection (2)(a).

(4) An order under this section may contain provisions as to the time at which any amount payable by way of the levy shall become due.

(5) All moneys received in respect of the levy shall be paid into the Insurance Regulatory Authority Fund.

(6) If a person fails to pay any amount payable by him by way of the levy on or before the date prescribed by the order, a sum equal to five per cent of the amount shall be added to the amount due for each month or part thereof during which it remains unpaid.

(7) Any amounts of money which are outstanding on the date prescribed by the order issued under this section shall be a civil debt recoverable summarily by the Authority.

(8) An insurer shall prepare and submit to the Authority premium levy returns as prescribed.

(9) Where an insurer fails to submit returns as prescribed, the insurer shall pay a penalty of two hundred thousand shillings and a further penalty of ten thousand shillings for every day after the expiry of the prescribed period during which the document remains un-submitted and the penalty shall be payable to the Policyholders Compensation Fund.

[Act No. 12 of 1987, s. 10, Act No. 9 of 1992, s. 59, Act No. 4 of 1993, s. 63, Act No. 8 of 1997, s. 57, Act No. 4 of 1999, s. 75, Act No. 11 of 2006, s. 25, Act No. 1 of 2014, s. 20, Act No. 22 of 2017, s. 20, Act No. 28 of 2019, s. 8.]

## PART XXB – INSURANCE TRAINING LEVY

[Act 11 of 2006, s. 26.]

### 197B. Imposition of Insurance Training Levy

(1) Subject to this Act, there is imposed a levy to be known as the insurance training levy which shall be charged on policy-holders and collected by the insurer, and which shall be paid in accordance with this section.

(2) The Minister may, in consultation with the Board, by Order published in the *Gazette*, prescribe the rates of levy, which shall be calculated as a per centage of the gross direct premiums written by the insurer in respect of general insurance business.

(3) The levy shall be paid by every insurer who shall, after the end of each calendar month, submit to the Authority a monthly return thereof in the prescribed form, showing the total levy due to him from policy holders for that particular month.

(4) The levy shall become payable at the end of each month in which the premium was received by the insurer and shall be paid not later than the last day of the month immediately succeeding that in which the levy became due.

(5) Where any amount of the levy remains unpaid as specified in subsection (4), a penalty equal to five per cent of the unpaid levy or part thereof shall become due and payable by the insurer concerned.

(6) Any penalty payable under this subsection shall be deemed to be a levy for the purpose of this Part.

(7) All monies realized under this section shall be charged on the gross direct premiums written by every insurer and shall be used by the Insurance Training and Educational Trust which is responsible for the management of the College of Insurance for the purpose of running the affairs of that College.

[Act No. 20 of 1989, Act No. 4 of 1993, s. 63, Act No. 13 of 1995, s. 94, Act No. 11 of 2006, s. 26.]

**197C. Offences and penalties**

(1) Any insurer who fails to pay any levy or penalty due from him on or before the day upon which the same are payable shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings and, if the offence is a continuing one, to a further fine of one thousand shillings for every day during which the offence continues.

(2) Where an insurer is guilty of an offence under this section, then notwithstanding the imposition of any penalty under section 197C, the commission of that offence shall constitute grounds whereby the Commissioner may apply to the Court under section 123(g) for the winding up of that insurer.

(3) The amount of any levy or penalty payable under this Act shall not be abated by reason only of the conviction of the insurer liable for the payment, or by reason of any payment of a fine imposed by the court on the insurer for an offence under subsection (1).

**197D. Examination and production of documents**

(1) The Commissioner may, for the purpose of obtaining full information in respect of the levy liability of any insurer, require the production of such records, books of account, statements and other documents as he may consider necessary for examination and retention for such period as may be reasonable for the purpose.

(2) The Commissioner may require any person to attend at such time and place as may be specified for the purpose of being examined in respect of any matter or transaction appearing to be relevant to the levy liability of any insurer.

[Act No. 12 of 1987, s. 10, Act No. 13 of 1995, s. 94(b), Act No. 11 of 2006, s. 26.]

**197E. Regulations under Part XXA and Part XXB**

The Minister may make regulations, prescribing all matters which are required or permitted under Part XXA and Part XXB to be prescribed, or which in his opinion are necessary, desirable or convenient to be prescribed, for giving full effect to this Part of the Act.

**197F.** *Repealed by Act No. 11 of 2006, s. 26.*

**197G.** *Repealed by Act No. 11 of 2006, s. 26.*

**197H.** *Repealed by Act No. 11 of 2006, s. 26.*

**197I.** *Repealed by Act No. 11 of 2006, s. 26.*

**197J.** *Repealed by Act No. 11 of 2006, s. 26.*

**197K** *Repealed by Act No. 11 of 2006, s. 26.*

**PART XXI – SUPPLEMENTARY PROVISIONS****198. Service of notice on registered person**

(1) A notice, direction or document issued under this Act may be served by delivering it or by sending it by registered post to the address mentioned in an application for registration under this Act as the principal place of business of that person or, if the Commissioner has been notified of a change of address, to the new address.

(2) A notice, direction or document served by post in accordance with the provisions of subsection (1) shall be deemed to have been served on the date on which it would have been delivered in the ordinary course of post.

### **199. Service of notice on policy-holder**

A document which is by this Act required to be sent to a policy-holder may be addressed and sent by post or email or other electronic mode to the person to whom notices in respect of the policy are usually sent, and a document so addressed and sent shall be deemed, unless the contrary is proved, to have been received by the policy-holder in the normal course of transit:

Provided that where a person claiming an interest under a policy has given notice in writing thereof to the insurer, a copy of any such document shall also be sent to that person at the address specified by him in his notice.

[Act No. 11 of 2019, s. 12.]

### **200. Conversion of currency**

Where this Act has effect with respect to an amount or value in relation to a person and in relation to a particular day and that amount or value is in a currency other than Kenya currency, the amount or value shall be converted into Kenya currency at the rate of exchange that is, at the close of business on that day, the telegraphic transfer buying rate of exchange of the principal banker of the person or, if there is no such rate on that day, at the telegraphic transfer buying rate of exchange of the banker at the close of business on the last day on which there was such a rate.

### **201. Consent of Commissioner required for insurance**

(1) Subject to this section and notwithstanding the provisions of any other written law or any agreement, on or after the appointed date, no remittance or transfer of any sum of money or securities out of Kenya in excess of the amounts from time to time prescribed by the Central Bank of Kenya, in respect of or by way of premium, reserve value, claim, management expense, profit surplus, investment income, or other payment or sum of money which directly or indirectly arises out of insurance business, shall be made without the prior written approval of the Commissioner.

(2) An application for the approval of the Commissioner under this section shall be in the prescribed form and contain the prescribed particulars.

(3) Approval granted by the Commissioner under this section shall not exempt a bank or any person from compliance with any other law regulating the remittance or transfer of money or securities out of Kenya.

[Act No. 12 of 1994, s. 36.]

### **202. Printing of documents**

Where a document is by this Act required to be printed, the Commissioner may permit it to be typewritten, or to be reproduced by any mechanical means approved by him.

### **203. Settlement claims**

(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.

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

(2) Where an assessment of claim has been carried out, a copy of the assessment report shall be made available to the claimant.

(3) Where the amount of a claim which is due under subsection (1) remains unpaid on expiry of the period prescribed in that subsection, or any extension thereof under subsection (1), a penalty equal to five per cent of the unpaid amount shall forthwith become due and payable.

(4) A penalty due under subsection (3) shall be recoverable as though it were a penalty interest charge payable to the Policy Holders' Compensation Fund Board under section 179, and shall be recovered by the Board in accordance with that section.

(5) If an insurer fails to pay the amount of a claim and any penalty thereon due in accordance with this section, the insurer shall be deemed to be unable to pay his debts under section 123 and liable to be wound up in accordance with that section.

(6) An insurer shall prepare claims payment returns and submit them in a manner prescribed by the Authority.

(7) Where an insurer fails to submit returns as required under subsection (6), the insurer shall pay a penalty of two hundred thousand shillings and a further penalty of ten thousand shillings for every day after the expiry of the prescribed period during which the returns remains un-submitted and the penalty shall be payable to the Policyholders Compensation Fund.

[Act No. 11 of 2006, s. 27, Act No. 7 of 2007, Sch., Act No. 8 of 2008, s. 64, Act No. 8 of 2009, s. 50, Act No. 11 of 2019, s. 13, Act No. 28 of 2019, s. 9.]

#### **204. Appointment of public prosecutors**

The Director of Public Prosecutions may, pursuant to the provisions of the Criminal Procedure Code (Cap. 75), appoint public prosecutors for the purposes of cases arising under this Act.

[Act No. 8 of 2008, s. 65, Act No. 1 of 2014, s. 21.]

#### **204A. Power of the Authority to settle disputes**

(1) Any insurance customer may lodge a written 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 within thirty days appeal the determination to the Tribunal.

[Act No. 11 of 2019, s. 14, Act No. 8 of 2020, s. 32.]

#### **204B. Offences on Insurance Fraud**

(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.

[Act No. 11 of 2019, s. 14.]

## 205. Transitional and savings provision

If —

- (a) any act or thing that was done or omitted to be done by or to the Minister under this Act before the commencement of the Companies and Insolvency Legislation (Consequential Amendments) Act, 2015 had effect immediately before that commencement; and
- (b) that act or thing could be done or be omitted to be done by or to the Cabinet Secretary under this Act after that commencement,

that act or thing is taken to have been done or omitted to be done by or to the Cabinet Secretary.

[Act No. 19 of 2015, s. 73.]

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## SCHEDULES

### FIRST SCHEDULE

[Section 3C, Act No. 12 of 1994, s. 38, Act No. 11 of 2006, s. 28, Act No. 8 of 2009, s. 51.]

#### PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

### 1. Tenure of office

(1) A member of the Board other than an *ex officio* member shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for reappointment one further term of not more than three years.

(2) The members of the Board shall be appointed at different times so that the respective expiry dates of their terms fall at different times.

### 2. Vacation of office

A member other than an *ex officio* member may—

- (a) at any time resign from office by notice in writing to the Minister;
- (b) be removed from office by the Minister if the member—
  - (i) has been absent from three consecutive meetings of the Board without permission from the chairman; or
  - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
  - (iii) is convicted of an offence involving dishonesty, fraud or moral turpitude;
  - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

- (v) is incapacitated by prolonged physical or mental illness; or
- (vi) is otherwise unable or unfit to discharge his functions.

### **3. Meetings**

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(3) The quorum for the conduct of the business of the Board shall be five (5) members excluding the Commissioner of Insurance, of whom at least two shall be from amongst the members of the Board appointed under paragraph (h) of section 3B.

(4) The chairman shall preside at every meeting of the Board at which he is present but in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(5) Unless a unanimous decision is reached a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the chairman or the person presiding shall have a casting vote.

(6) Subject to subparagraph (3), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(7) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make standing orders in respect thereof.

### **4. Disclosure of interest**

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that if the majority of the members present are of the opinion that the experience or expertise of that member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

### **5. The common seal**

The affixing of the common seal of the Authority shall be authenticated by the signatures of the Chairman and the Commissioner, and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairman and the Commissioner:



Provided that the Board shall, in the absence of either the Chairman or the Commissioner, in any particular matter nominate one member to authenticate the seal of the Board on behalf of either the Chairman or the Commissioner.

## **6. Contracts and instruments**

Any contract or instrument which, if entered into or executed by a person other than a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Authority by any person generally or specially authorized by the Authority for that purpose.

## **7. Minutes**

The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books kept for that purpose.

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## SECOND SCHEDULE

[Sections 23 and 28, Act No. 12 of 1994, s. 38, L.N. 76/1999, L.N. 97/2007, r. 2, L.N. 58/2012, s. 4, L.N. 51/2013, s. 2, Act No. 14 of 2015, s. 32, Act No. 50 of 2016, s. 11, Act No. 11 of 2017, Sch.]

### MINIMUM CAPITAL REQUIREMENTS

1. Subject to paragraph (3), no person shall be registered as an insurer unless the persons paid-up capital is—

- (a) in the case of general Insurance business, the higher of—
  - (i) six hundred million shillings;
  - (ii) risk based capital determined from time to time; or
  - (iii) 20% of the net earned premiums of the preceeding financial year;
- (b) in case of long term insurance business, the higher of —
  - (i) four hundred million shillings; or
  - (ii) risk based capital determined by the Authority from time to time; or
  - (iii) 5% of the liabilities of the life business for the financial year.
- (c) in case of reinsurance business (general business), the higher of—
  - (i) one billion shillings; or
  - (ii) risk based capital determined by the Authority from time to time; or
  - (iii) 20% of the net earned premiums of the preceeding financial year;
- (d) in case of reinsurance business (long term business), the higher of—
  - (i) five hundred million shillings; or
  - (ii) risk based capital determined by the Authority from time to time; or
  - (iii) 5% of the liabilities of the life business for the financial year.

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

- (a) government bonds and Treasury Bills;

*Insurance*

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- (b) deposits and cash with a maximum of 10% in any one bank or group of banks; and
- (c) cash and cash equivalent in the case of a new company.

(3) An insurer registered before the commencement of this Schedule shall comply with the foregoing requirement by the 30th June, 2020.

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