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THE INSURANCE (AMENDMENT) ACT, 2014

No. 1 of 2014

Date of Assent: 19th March, 2014

Date of Commencement: See Section 1

An Act of Parliament to amend the Insurance Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Insurance (Amendment) Act, 2014 and shall come into operation upon publication in the Gazette.

Short title.

2. Section 2 of the Insurance Act, in this Act referred to as “the principal Act”, is amended by inserting the following new definition in its proper alphabetical sequence—

Amendment to section 2 of Cap. 487.

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

3. Section 3A of the principal Act, in this Act referred to as “the principal Act”, is amended—

Amendment to section 3A of Cap.487.

- (a) by deleting paragraph (d) and (e);
- (b) by renumbering the existing provision as subsection (1) and adding the following new subsection—

“(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.”

Insertion of a new section 3AA in Cap. 487.

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

Assistance in investigation.

3AA. (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.

5. Section 3E of the principal Act is amended—

Amendment to
section 3E of Cap.
487

(a) in subsection (1), by—

- (i) deleting the words “in consultation with the Minister” and substituting therefor the words “through an open and competitive process”;
- (ii) deleting the words “or otherwise in writing from time to time”;

(b) in subsection (4), by—

(i) inserting the following new paragraphs immediately before paragraph (a)—

“(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”;

(ii) renumbering paragraphs (a) and (b) as paragraphs (d) and (e), respectively;

(c) by inserting the following new subsections immediately after subsection (4)—

“(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 reappointment.”

Amendment of
section 7 of Cap.
487.

6. The principal Act is amended in section 7 by deleting the words “ten thousand shillings” appearing in subsection (7) and substituting therefor the words “two hundred thousand shillings”.

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7. Section 22 of the principal Act is amended by deleting the word “Kenya” wherever it occurs and substituting therefor the words “a Partner State of the East African Community”.

Amendment to
section 22 of
Cap.487.

8. Section 23 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection –

Amendment to
section 23 of
Cap.487.

“(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.”

9. Section 29 of the principal Act is amended –

Amendment to
section 29 of
Cap.487.

(a) by deleting subsection (1) and substituting therefor the following new subsection –

“(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.”

(b) in subsection (2), by inserting the words “strategies or” immediately after the word “arrangements”.

(c) in subsection (3), by inserting the words “strategies or” immediately after the word “arrangements”.

(d) in subsection (4), by inserting the words “strategies and” immediately before the word “arrangements”.

Amendment to
section 54 of Cap.
487

10. Section 54 of the principal Act is amended by inserting the following new subsection immediately after subsection (5)—

“(6) A person who contravenes the provisions of this section commits an offence”.

Amendment to
section 61 of
Cap.487.

11. Section 61 of the principal Act is amended in subsection (1) by deleting the word “four months” and substituting therefor the words “three months”.

Amendment to
section 67C of
Cap.487.

12. Section 67C of the principal Act is amended –

(a) in subsection (2) by deleting the words “any person” appearing in paragraph (i) and substituting therefor the words “a competent person familiar with the business of the insurer”.

(b) in subsection 10 by inserting a proviso at the end as follows –

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

Repeal and
replacement of
section 68A of
Cap. 487

13. The principal Act is amended by repealing section 68A and replacing it with the following new section—

Authority to carry
out assessment.

68A. (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.

14. Section 153 of the principal Act is amended -

- (a) in subsection (2), by deleting the expression "Kenya citizens" wherever it occurs and substituting with the words "citizens of the East African Community Partner States";
- (b) by deleting subsection (5).

Amendment to
section 153 of
Cap.487.

15. Section 169 of the principal Act is amended -

- (a) in subsection (2), by inserting the words "and vice- chairman" immediately after the word "chairman";
- (b) in subsection (3), by inserting the words "or vice- chairman" immediately after the word "chairman".

Amendment to
section 169 of
Cap.487.

Amendment to
section 170 of
Cap.487.

16. Section 170 of the principal Act is amended in subsection (1) by deleting the word “subordinate court” and substituting therefor the words “Resident Magistrate’s Court”.

Amendment to
section 174 of
Cap.487

17. Section 174 of the principal Act is amended in subsection (2) by deleting the words “Attorney-General” and substituting therefor the words “Director of Public Prosecutions”.

Amendment to
section 179 of
Cap.487

18. Section 179 of the principal Act is amended—

(a) by deleting subsection (1) and substituting therefor the following new subsection—

“(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 insolvent insurers”;

(b) in subsection (2A), by renumbering paragraph (d) as paragraph (f) and inserting the following new paragraphs—

“(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.”

Amendment to
section 180 of
Cap. 487.

19. Section 180 of the principal Act is amended by renumbering the existing provision as subsection (1) and inserting the following new subsection immediately after the renumbered subsection (1)—

No. 23 of 2013.

“(2) The regulations, subsidiary legislation or other instrument prescribed under this Act and which has the force of law shall be subject to the provisions of the Statutory Instruments Act, 2013”.

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Amendment to
section 197A of
Cap. 487.

20. Section 197A of the Insurance Act is amended in subsection (2), by deleting paragraph (b).

Amendment to
section 204 of
Cap.487.

21. Section 204 of the principal Act is amended by deleting the expression "Attorney-General" and substituting therefor the expression "Director of Public Prosecutions".