



THE BULLETIN

A NEWSLETTER OF THE ASSOCIATION OF KENYA INSURERS

Quarterly Issue, July 2020

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Word from the Executive Director

The year 2020 has thrown a curve ball to the whole world. We all had to first stop and assess the very fluid situation since we were, and still are, being faced with a health pandemic that is morphing at a fast rate.

Similar to other economic sectors in the country, the insurance industry has not been spared. We do not have the exact figures yet, but we do know that business has slowed down.

Be that as it may, this pandemic instantly ejected us out of our comfort zone and has forced us to think of creative ways of running insurance business. The industry has had to quickly shift to online platforms to ensure that business continues to run. I believe that some of these changes will be implemented in the long-term for the benefit of the industry.

This pandemic has also affected the customer in a number of ways. The purse strings have tightened

for a majority of Kenyans, but at the same time, it has made them more attuned to risk and the need to protect themselves. Businesses especially, may have come to the realisation that insurance is not a luxury but a necessary tool in risk management.

This presents us as an industry with a willing market. We have an opportunity to educate the public and especially businesses on the types of insurance available for risk management. It is also an opportunity to review our product portfolio and to tailor products that meet the needs of customers in this changed world.

We have also witnessed a raft of legal and regulatory changes during this period. This edition of the Bulletin gives a snapshot of these changes with highlights of their impact on the insurance industry.

Data Protection Act, 2019

The aim of the Data Protection Act No. 24 of 2019 is to provide a legal framework that enables regulation of the processing of personal data. Insurance companies collect, retain and process a lot of personal data from their customers and as such, we need to clearly understand the obligations the Act presents.

The Act provides for the rights of data subjects (the public). They have to be informed of the use of the data, they have a right to access their data, object to processing of all or part of their data, consent to their data being collected and withdraw the consent that was earlier granted among others.

The Data Act also requires that Data Processors (the person who collects, records, organizes, disseminates any personal data) or Data Controller (the person who determines the purpose of the data) to register with the Data Commissioner who will provide for a threshold for registration based on the nature of the industry, volumes of data processed and sensitivity of the data processed.

The office of the Data Commissioner is yet to be established. However, insurance companies need to come up with data policies that reflect compliance with the Data Protection Act.

The most important area members should note in the Act are the principles and obligations of personal data protection. If one is a data controller or data processor they shall ensure that personal data is;

- a.) Processed in accordance with the right to privacy of the data subject;
- b.) Processed lawfully, fairly and in a transparent manner in relation to any data subject;
- c.) Collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes;
- d.) Adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed;
- e.) Collected only where a valid explanation is provided whenever information relating to family or private affairs is required;
- f.) Accurate and, where necessary, kept up to date, with every reasonable step being taken to ensure that any inaccurate personal data is erased or rectified without delay;

- g.) Kept in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected; and not transferred outside Kenya, unless there is proof of adequate data protection safeguards or consent from the data subject.

To that end, Section 41(1) of the Act states that; every data controller or data processor (insurance companies) shall implement appropriate technical and organizational measures which are designed to implement the data protection principles in an effective manner and to integrate necessary safeguards for that purpose into the processing.

The Data Commissioner may issue guidelines or codes of practice and develop sector specific guidelines in consultation with relevant stakeholders in areas such as health, financial services etc.

Members are encouraged to familiarize themselves with this Act and understand its implication.

Regulations on Group Supervision, Takaful, Bancassurance and Micro Insurance gazetted ▼

The following guidelines and regulations were gazetted on 6th March 2020: The Insurance (Anti-Money Laundering and combating financing Terrorism) Guidelines 2020; The Insurance (Bancassurance) Regulations 2020; The Insurance (Group-wide Supervision) Regulations, 2020; The Insurance (Micro Insurance) Regulations, 2020 and Takaful Regulations, 2020.

National Insurance Policy Framework ▼

The Government is in the process of developing a National Insurance Policy Framework. This is expected to strengthen the policy, legal and regulatory environment with a view to improve access, usage and affordability of insurance products and services in Kenya. The policy framework will also facilitate further development of insurance services in Kenya in line with the broader Government public policy objectives.

The insurance industry players have been consulted and involved in the development of the policy.

The appointed consultant completed drafting the Policy and the same was shared with AKI Member companies for review with a request for comments. Feedback from members was shared with the consultant for drafting the final policy document.

The Tax Laws (Amendment) Act, 2020 ▼

The Tax Laws (Amendment) Act, 2020 amended the Value Added Tax Act, 2015 under the First Schedule to remove insurance agency and insurance brokerage services from the list of exempt services. This means that, services provided by insurance agents and insurance brokers are now subject to Value Added Tax (VAT) at the rate of 14%.

AKI filed a constitutional petition on 18th June 2020 together with a certificate of urgency seeking interim orders to suspend or stay further implementation of the Tax Laws (Amendment), 2020 which was effective from 25th April 2020.

On 16th July 2020, the Court granted conservatory orders staying and/or suspending further implementation, administration, application and/or enforcement of paragraph 10 of part II of the First Schedule as amended by the Tax Laws (Amendment) Act, 2020 pending hearing and determination of the main Petition on 3rd November 2020.

The Business Laws (Amendment) Act, 2019 ▼

The Business Laws (Amendment) Act, 2019 was passed into law on 19th March 2020. The law amends sixteen laws and is aimed at enhancing the ease of doing business in the country

The following amendments may affect the insurance industry directly or indirectly;

- a.) Stamp duty Act- through the amendment, stamp duty can now be stamped electronically, this is a positive amendment especially on insurance policies.
- b.) The electronic signatures are now recognised, this will ease the signing of insurance documents such as policy documents and insurance certificates.
- c.) Companies Act-seal no longer required for execution of documents.

Provisional license extension for Agents ▼

IRA granted AKI the approval to extend provisional licenses for a period of six months for the sales agents who had enrolled to sit for the Certificate of Proficiency [COP] examination in March 2020. Member companies are encouraged to apply for the extension of the provisional licenses for the affected agents.

Pension Committee participates in amendment of Mortgage Loans Regulations ▼

The AKI Pension Committee, in June this year, participated in the review of draft Retirement Benefits (Mortgage Loans) Amendment Regulations, 2020.

The Committee submitted their comments to the pension's regulator, the Retirement Benefits Authority.

The public engagement followed the amendment of Section 38 of the Retirement Benefits Act to allow members of retirement benefits schemes to utilize a proportion of their accrued benefits to purchase a residential house.

Commercial Building Insurance ▼

Contractors and subcontractors are now required to obtain insurance cover for latent defects on commercial buildings. At the same time, relevant professionals engaged in the construction of commercial buildings are required to take out Professional Indemnity Cover.

These have been provided for through Legal Notice No. 64, The National Construction Authority (Defects Liability) Regulations, 2020 which came into effect from 20th April 2020.

The regulations also require that every owner of a commercial building shall at all times insure the commercial building against structural damage attributable to the owner.

The AKI Property and Engineering Committee in liaison with re-insurers is developing underwriting guidelines for this insurance category.

Insuring Drones ▼

The Civil Aviation (Unmanned Aircraft Systems) Regulations, 2019 was approved, meaning that Kenyans can now buy and operate drones without fear or breaking the law.

This development is critical for businesses and individuals that use the flying devices for a variety of functions such as

photography and general digital content creation, as well as other functions such as mapping or rescue missions.

The Marine and Aviation Committee has been engaging the Kenya Civil Aviation Authority (KCAA) since the regulations were gazetted. The Marine and Aviation technical committee, in consultation with KCAA, is working on insurance guidelines and policy document for the unmanned aircrafts. This will be shared with the industry in due time.





DOSH issues post COVID-19 return to work advisory

The Director of Occupational Safety and Health Services (DOSH) has outlined the basic requirements for all workplaces to ensure that their workers are safe and healthy as they return to work. The advisory, issued in June 2020, aims to guide employers and employees in implementing safety measures to mitigate the spread of COVID-19 in the workplace.

The advisory requires that employers conduct a thorough safety and health audit of their workplaces and file a report with the Director within 30 days of re-opening.

Every employer shall obtain and maintain an insurance policy in respect of any liability that the employer may incur under Work Injury Benefits Act, 2007 to any of his employees.

Employers are expected to develop a COVID-19 preparedness policy that addresses several aspects including, but not limited to: management and communication; Prevention and Mitigation Measures against COVID-19; procedure for dealing with suspected and confirmed COVID-19 cases; guidelines and specific requirements when sick or ill staff may be absent to attend hospital and for staff who are not sick or ill but need to be absent to care for others, especially family members.

Employers are expected to assess work activities and workers who can fulfil their roles from home and communicate effectively on work expectations as well as protocols for working safely from home. For those workers who must be in the workplace, the employers should sensitize them on safety measures when commuting to and from work using both public and private means.

The advisory also notes the impact of the pandemic on mental health of employees. DOSH urges employers and employees to work together to minimize impact on employees. Where possible affected employees should be linked to a mental support programme.

The advisory also warns against discrimination against an employee with respect of the employee's COVID-19 status or if an employee makes a complaint about safety or a health risk. Employees should report any forms of discrimination or attempted discrimination to DOSH in accordance with section 8(1) of the Occupational Safety and Health Act, 2007 and Work Injury Benefits Act, 2007.

COVID-19 and Insurance

We are still in the eye of the COVID-19 storm. It will eventually calm down or become our new way of life. The virus will not bring humanity to an end, so we need to reset our minds and devise ways to live forthwith.

We have devoted the June 2020 issue to addressing Coronavirus; its effects on our livelihoods and possible ways of surviving it in various sectors. Leaders and opinion shapers have come out to lend their voice to adopting in this 'New Normal.'

Mr. Jadhav Mwarania, Kenya RE CEO, looks at how the industry is coping and adjusting to the new environment. Phyllis Wakiaga, CEO Kenya Association of Manufacturers talks of the wins and losses in the manufacturing industry. Dr. Njoki Fernandes addresses issues of healthcare after Covid-19. How we work has changed tremendously and Felix Ochieng looks at what that means for insurance companies. While James Norman talks of how we can be innovative in the face of a pandemic.

Read these and more insightful articles in the [AKI Journal June 2020](#) (click on link to download)



Upcoming Virtual Forums

As we adopt to the new way of doing things, the AKI Secretariat will hold a variety of events, trainings and forums via online platforms. The specific links will be shared for each event.

August
2020

1. August 4th 2020
Pension Managers Forum
10:00am – 12:00noon
2. August 5th 2020
Dissemination of Insurance Sales Agents Retention Study
10:00- 11:00am
3. August 6th 2020
General Claims Managers Forum
4. August 11th 2020
Individual Life Managers Forum
10:00am – 12:00 noon
5. August 13th 2020
Group Life Managers Forum
10:00am – 12:00noon
6. August 18th 2020
General Underwriting Managers Forum



Our vision is to be a leader in championing insurance growth and excellence in Kenya and beyond

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