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***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2017**

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**NAIROBI, 6th April, 2017**

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## THE INSURANCE (AMENDMENT) BILL, 2017

### A Bill for

#### AN ACT of Parliament to amend the Insurance Act

ENACTED by Parliament of Kenya, as follows—

1. This Act may be cited as the Insurance (Amendment) Act, 2017.

Short title.

2. Section 2 of the Insurance Act, in this Act referred to as the “principal Act”, is amended by—

Amendment of section 2 of Cap. 487.

- (a) deleting the definitions of the terms “admitted asset” and “admitted liability”;
- (b) inserting the following new definitions in proper alphabetical sequence—

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

“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.

3. Section 20 of the principal Act is amended in subsection (3) by deleting the words “until the date of the next renewal of registration”.

Amendment of section 20 of Cap. 487.

4. Section 23 of the principal Act is amended in subsection (1) by deleting the words “or, if registered, shall have his registration renewed”.

Amendment of section 23 of Cap. 487.

5. The principal Act is amended by repealing section 24. Repeal of section 24 of Cap. 487.
6. Section 27 of the principal Act is amended by deleting the words “or shall not have his registration renewed, as the case may be”. Amendment of section 27 of Cap. 487.
7. The principal Act is amended by repealing section 28. Repeal of section 28 of Cap. 487.
8. Section 31 of the principal Act is amended by renumbering the existing provision as subsection (1) and adding the following new subsection –
- “(2)A licence issued under this section shall remain in force until cancelled under section 196”.
9. Section 32 of the principal Act is amended in subsection (1) by— Amendment of section 32 of Cap. 487.
- (a) deleting the word “admitted” appearing in paragraph (a) and substituting therefor the word “total”;
- (b) deleting the word “admitted” appearing in paragraph (b) and substituting therefor the word “total”.
10. Section 51 of the principal Act is amended in subsection (1) by deleting the word “admitted” and substituting therefor the word “total”. Amendment of section 51 of Cap. 487.
11. Section 54 of the principal Act is amended in the proviso to subsection (1) by deleting the word “admitted” wherever it appears. Amendment of section 54 of Cap. 487.
12. The principal Act is amended by inserting the following new section immediately after section 54— Insertion of section 54A of Cap. 487.
- Group Accounts. **54A.** Where an insurer is a member of a group of companies, the group of companies shall submit audited group accounts.
13. Section 58A of the principal Act is amended by adding the following new subsection immediately after subsection (4)— Amendment of section 58A of Cap. 487.
- (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.

14. Section 125 of the principal Act is amended in subsection (1) by deleting the word “admitted” appearing in paragraph (b).

Amendment of section 125 of Cap. 487.

15. Section 150 of the principal Act is amended in subsection (4) —

Amendment of section 150 of Cap. 487.

- (a) by deleting the expression “subsection (1)” and substituting therefor the words “this section” by adding the words “or to imprisonment” for a term not exceeding one month or both” at the end.

16. Section 180 of the principal Act is amended by inserting the following new subsection immediately after subsection (1) —

Amendment of section 180 of Cap. 487.

(1A) Matters prescribed under subsection (1) may include regulations or guidelines on—

- (a) mitigation of group risk; and
- (b) prudential regulation of insurance groups.

17. Section 188 of the principal Act is amended by adding the following new subsection immediately after subsection (3) —

Amendment of section 188 of Cap. 487.

(4) This section shall not apply to a registered person who is an insurer.

18. Section 197A of the principal Act is amended in subsection (3) by deleting the expression “, or reinsurance premium paid or credited to a reinsurance business outside Kenya, as the case may be, under subsection (2)(b)”.

Amendment of section 197A of Cap. 487.

**MEMORANDUM OF OBJECTS AND REASONS**This Bill has been submitted by the Cabinet Secretary for the National Treasury in line with the proposals announced in the Budget for 2017/2018. The object of this Bill is to amend the Insurance Act (Cap. 487) to harmonize the provisions following recent amendment to the Act. It also seeks to provide for validity of insurer's licence until its revocation, and enhance the penalty for operating without registration.

**Statement of how the Bill concerns county governments.**

The Bill does not concern county governments in terms of Article 109(4) of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Dated the 31st March, 2017.

ADEN DUALE,  
*Leader of Majority Party.*

*Definitions in Section 2 of Cap 487 which it is intended to delete—*

**“admitted asset”** means any property, security, item or interest of a person permitted or required by or under section 42 to be regarded as an admitted asset;

**“admitted liability”** means any obligation, whether actual, contingent or prospective, permitted or required by or under section 43 to be regarded as an admitted liability;

*Section 20(3) of Cap 487 which it is intended to amend—*

20. (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 until the date of the next renewal of registration 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.

*Section 23(1) of Cap 487 which it is intended to amend—*

23. (1) No person shall be registered as an insurer or if registered shall have his registration renewed unless he meets the minimum capital requirements specified in the Schedule.

*Section 24 of Cap 487 which it is intended to amend—*

24. (1) A person carrying on insurance business on the appointed date who does not meet the requirements of sections 22 and 23 (regarding controlling interests and paid up capital) may be registered, or his registration may be renewed, as the case may be, without complying with the requirements of those sections subject to the following conditions—

- (a) he shall comply with the requirements of sections 22 and 23 before the expiry of three years from the appointed date:

Provided that the Minister may, if satisfied that in spite of his best efforts he has not been able to comply with the necessary requirements, grant extension of the period by a period or periods not exceeding one year at a time, but the total length of those extended periods shall not exceed two years;

- (b) he shall not, in respect of the period up to the period stated above including all the extended periods, where he has paid up share capital, declare a dividend exceeding ten per cent per annum on the paid up value of the shares.

(2) On the expiry of the period mentioned in subsection (1), including the total of any extended periods, if the person has failed to comply with the requirements of sections 22 and 23 which may be applicable to him, his registration shall stand cancelled with immediate effect and the provisions of subsections (3), (4) and (5) of section 196 shall apply as if the registration has been cancelled under paragraph (a) of

subsection (2) of that section and the cancellation has taken effect as on the expiry of that period, including the total of any extended periods.

*Section 27 of cap 487 which it is intended to amend—*

27. A person being a body corporate incorporated in Kenya with or without a share capital shall not be registered or shall not have his registration renewed, as the case may be, 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.

*Section 28 of Cap 487 which it is intended to amend—*

28. (1) No person shall be registered under section 31, or if registered shall have the registration renewed except a person having in Kenya the minimum admitted assets of prescribed in the Schedule.

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

*Section 31 of Cap 487 which it is intended to amend—*

31. 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, and shall notify the Minister accordingly.

*Section 32(1) of Cap 487 which it is intended to amend—*

**32.** (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 admitted 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 admitted assets, whichever is higher;

*Section 51(1) of Cap 487 which it is intended to amend—*

**51.** (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 admitted assets of the insurer.

*Section 54(1) of Cap 487 which it is intended to amend—*

**54.** (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 admitted assets and admitted liability.

*Section 125(1)(b) of Cap 487 which it is intended to amend—*

**125.** (1) Where an insurer is a subsidiary of a company which is not an insurer, and the latter company is wound up under the Companies Act (Cap. 486) or otherwise—

- (b) where the subsidiary carries on long term insurance business, whether with or without other classes of insurance business, and

is ordered to be wound up, all the admitted assets of the statutory funds together with any other assets of the subsidiary which have been included in a separate balance sheet relating to the long term insurance business, and together also with any assets which, though not shown against the statutory funds or in that balance sheet, should in the opinion of the court be equitably related to the long term policyholders, shall be treated as exclusively reserved for the benefit of the policy-holders of long term insurance business, and these assets shall not be utilized directly or indirectly for any purpose other than for the benefit of the long term insurance policy-holders as long as those policy-holders have not been fully discharged or otherwise provided for.

*Section 150(4) of Cap 487 which it is intended to amend—*

**150.** (4) A person who contravenes the provisions of subsection (1) 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.

*Section 188 of Cap 487 which it is intended to amend—*

**188.** (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.

*Section 197A(3) of Cap 487 which it is intended to amend—*

**197A.** (3) The levy shall be computed as a percentage of the gross direct premiums written by an insurer or reinsurer under subsection (2)(a), or reinsurance premium paid or credited to a reinsurance business outside of Kenya, as the case may be, under subsection (2)(b).

