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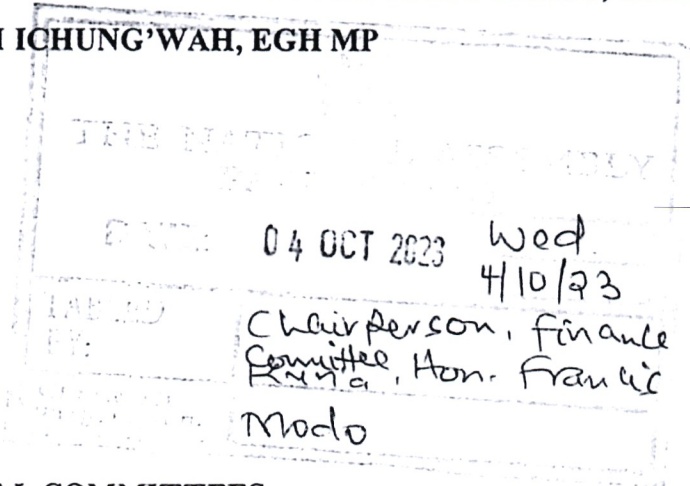


REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

THIRTIETH PARLIAMENT – SECOND SESSION – 2023  
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON:

THE CONSIDERATION OF THE INSURANCE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 18 OF 2023) BY THE LEADER OF MAJORITY PARTY, THE HON. KIMANI ICHUNG'WAH, EGH MP



CLERKS CHAMBERS  
DIRECTORATE OF DEPARTMENTAL COMMITTEES  
PARLIAMENT BUILDINGS  
NAIROBI

OCTOBER 2023

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## **CHAIRPERSON'S FOREWORD**

This report contains the proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Insurance (Amendment) Bill (National Assembly Bill No. 18 of 2023). The Bill was published on 12<sup>th</sup> May, 2023 and Read for a First Time in the House on Wednesday, 12<sup>th</sup> July, 2023. The Bill was after the First Reading committed to the Departmental Committee on Finance and National Planning for review and reporting to the House pursuant to Standing Order 127 (1).

The principal object of the Bill is to enhance accountability within insurance companies and observance of fiduciary duties as well as professional responsibilities by senior managers of insurance companies by amending the Insurance Act (Cap.487) to provide for offences and penalties relating to the management of insurance companies.

While conducting Public participation, the Committee placed an advertisement in the print media on 8<sup>th</sup> July, 2023 requesting comments from the general public and relevant stakeholders pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3). Further, vide letter Ref No. NA/DDC/F&NP/2023/110 dated Thursday, 24<sup>th</sup> August, 2023 the Committee sought views of the Association of Kenya Insurers, Association of the Insurance Brokers, PricewatersCoopers, Kenya Institute Certified Public Accountants (ICPACK) and Insurance Regulatory Authority.

The Committee held stakeholder hearings on Wednesday 30<sup>th</sup> August, 2023 in Parliament Buildings where it received oral submissions from the stakeholders.

I take this opportunity to thank and commend Committee Members for their devotion and commitment to duty, the Office of the Speaker and the Clerk of the National Assembly for providing leadership and direction and finally the Committee Secretariat for exemplary performance in the provision of technical and logistical support.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Insurance (Amendment) Bill (National Assembly Bill No.18 Of 2023).

**HON. CPA KURIA KIMANI, MP**

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING**

## PART I

### 1 PREFACE

#### 1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:
  - i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
  - ii. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
  - iii. **To study and review all the legislation referred to it;**
  - iv. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
  - v. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
  - vi. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on Appointments);
  - vii. To examine treaties, agreements and conventions;
  - viii. To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;
  - ix. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
  - x. To examine any questions raised by Members on a matter within its mandate.

#### 1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments:
  - i. The National Treasury
  - ii. State Department for Economic Planning
  - iii. Commission on Revenue Allocation
  - iv. Office of the Controller of Budget



### 1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was constituted by the House in October, 2022 and comprises the following Members:

#### **Chairperson**

Hon. CPA. Kuria Kimani, MP  
Molo Constituency  
**UDA Party**

#### **Vice-Chairperson**

Hon. Amb. CPA. Benjamin Langat, CBS, MP  
Ainamoi Constituency  
**UDA Party**

Hon. Adan Keynan, MP  
Eldas Constituency  
**Jubilee Party**

Hon Andrew A. Okuome, MP  
Karachuonyo Constituency  
**ODM Party**

Hon. David Mboni, MP  
Kitui Rural Constituency  
**Wiper Party**

Hon. CPA Joseph Oyula, MP  
Butula Constituency  
**ODM Party**

Hon. Joseph Kipkoros Makilap, MP  
Baringo North Constituency  
**UDA Party**

Hon. Umul Ker Kassim, MP  
Mandera County  
**UDM Party**

Hon. CPA Julius Rutto, MP  
Kesses Constituency  
**UDA Party**

Hon. Shadrack Ithinji, MP  
South Imenti Constituency  
**Jubilee Party**

Hon. Paul Biego, MP  
Chesumei Constituency  
**UDA Party**

Hon. Joseph Munyoro, MP  
Kigumo Constituency  
**UDA Party**

Hon. Dr. John Ariko, MP  
Turkana South Constituency  
**ODM Party**

Hon. Mohamed Machele, MP  
Mvita Constituency  
**ODM Party**

Hon. George Sunkuya, MP  
Kajiado West Constituency  
**UDA Party**

#### 1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff

Mr. Benjamin Magut  
Principal Clerk Assistant /Head of Secretariat

Ms. Jeniffer Ndeto  
Deputy Director, Legal Services

Mr. Salem Lorot  
Legal Counsel I

Mr. Nebert Ekai  
Clerk Assistant II

Mr. Benson Kamande  
Clerk Assistant III

Mr. George Ndenjeshe  
Fiscal Analyst III

Ms. Terry Ondiko  
Fiscal Analyst III

Mr. Andrew Jumanne Shangarai  
Principal Serjeant-At-Arms

Mr. Simon O. Ouko  
Assistant Serjeant-At-Arms

Ms. Shamsa A. Abdi  
Research Officer III

Ms. Nelly W. N Ondieki  
Research Officer III

Ms. Joyce Wachera  
Hansard Officer III

Mr. Benson Muchiri  
Audio Officer II

Mr. James Macharia  
Media Relation Officer



## PART II

### 2.0 OVERVIEW OF THE INSURANCE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.18 OF 2023).

#### 2.1 INTRODUCTION

6. The principle object of the Bill is to amend the Insurance Act (Cap.487) to provide for offences and penalties relating to the management of insurance companies and seeks to enhance accountability within insurance companies and observance of fiduciary duties as well as professional responsibilities by senior managers of insurance companies.

#### 2.2 ANALYSIS OF THE BILL

7. The Bill has been submitted by the Cabinet Secretary for the National Treasury as part of the proposals for the Budget for 2023/2024 Financial Year.
8. The object of the Bill is to enhance accountability within insurance companies and observance of fiduciary duties as well as professional responsibilities by senior managers of insurance companies by amending the Insurance Act (Cap. 487) to provide for offences and penalties relating to the management of insurance companies.
9. Clause 2 seeks to amend section 40 of the Insurance Act by deleting the proviso to subsection (1). Section 40(1) provides as follows-
  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.*
10. Clause 3 of the Bill seeks to insert a new section 67H providing for offences relating to the management of an insurer. It provides as follows—

*67H. (1) Any shareholder, director, principal officer or management staff of an insurer who-*

- (a) fails to take all reasonable steps to secure the compliance of a registered or licensed person with this Act;
- (b) fails to take all reasonable steps to secure the accuracy and correctness of any statement or report submitted under this Act or any other applicable written law;
- (c) fails to supply any information required or effect any directive issued under this Act;
- (d) fails, without lawful justification, to settle a judgment or any claim under this Act; or
- (e) without claim of right takes or converts any property of the insurer to his or her personal or associate's use or gain, including-
  - (i) permanently depriving the insurer of the property;
  - (ii) using the property as a pledge or security;
  - (iii) receiving the insurer's property and failing to remit or reasonably account to the insurer; or
  - (iv) dealing with the property of an insurer in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion,

commits an offence under this Act.

(2) A person who commits an offence under this section shall be liable on conviction—

- (a) on a first offence-
  - (i) in the case of an individual, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years; or
  - (ii) in the case of a company, to a fine not exceeding ten million shillings; and
- (b) on any subsequent offence-
  - (i) in the case of an individual, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years; or
  - (ii) in the case of a company, to a fine not exceeding thirty million shillings.

(3) The court may make an order for the payment by the person convicted of an offence under this section of compensation to a person who suffered loss by reason of the offence.

(4) An order under subsection (3) may in addition to or in substitution of any other penalty or remedy available to that person.

(5) The amount of compensation under subsection (3) shall be—

- (a) the loss sustained or adverse suffered by the person claiming compensation; or
- (b) the profits that have accrued to the person liable to pay the compensation.

11. Clause 4 of the Bill seeks to amend section 70 of the Insurance Act by deleting the word "advisory" appearing in subsection (2). Section 70 of the Act provides as follows—

*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.*

12. The definition "Advisory Board" was deleted by section 2 (a) of the Insurance (Amendment) Act, 2006. Section 3B of the Insurance Act provides for the establishment of Board of Directors of the Insurance Regulatory Authority. Further, section 2 of the Insurance Act defines "Board" to mean the Board of Directors of the Authority constituted under section 3B.

13. Clause 5 of the Bill seeks to amend section 150 of the Insurance Act in the marginal note by deleting the word "surveyors" and substituting it with the words "insurance surveyor". Section 150 of the principal Act provides as follows—

*150. Only registered brokers, agents, risk managers, motor assessors, insurance investigators, 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.*

14. The amendment seeks to clean up the marginal note which refers to "surveyor" yet subsections (1), (2) and (3) of section 150 refer to "insurance surveyor".

## PART III

### 3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

15. Following the call for memoranda from members of the public through the placement of advertisement in the print media on 8<sup>th</sup> July 2023 requesting comments on the Bill and an invitation of stakeholders vide letter REF: NA/DDC/F&NP/2023/110 dated 24<sup>th</sup> August, 2023 the following stakeholders:

#### 3.1 INSURANCE REGULATORY AUTHORITY.

16. The Insurance Regulatory Authority appeared before the Committee on 30<sup>th</sup> of August, 2023 and submitted as follows:

##### Section 40

17. The Authority supports the proposed amendment.

##### Justification.

Under Section 32 of the Insurance Act, insurance companies are required to maintain a deposit with the Central Bank of Kenya of at least Kenya Shillings five million for micro-insurers and twenty million for insurers. Section 40(1) of the Act empowers the Commissioner to require insurers to increase the deposit under section 32 where it appears to the Commissioner that the deposit is disproportionately low.

The proviso under Section 40(1) restricts the total deposit including the additional deposits to not more than Kenya shillings three million. This proviso is outdated since the deposits currently held are already more than the Kenya shillings three million provided in the proviso.

##### Committee's decision

The Committee agrees with the Insurance Regulatory Authority that the proviso is provided for extensively in Section 32 of the Insurance Act.

##### Section 67H

18. The Authority supports the proposed amendment.

##### Justification.

In the exercise of its supervisory mandate over the years, the Authority has noted that the conduct of directors of the insurance companies has a direct correlation with the failure of the company, more so where supervision is up-scaled and requiring a higher a higher degree of intervention. In situations where the company is financially troubled, it is expected that directors develop rescue plans, remedial measures and strategies that enhance the profitability of the company.

Most times it has been noted that the directors do not act in line with their fiduciary duties by allowing themselves to operate in silos, failing to attend meetings and at times making decisions



driven by vested interest. This trend is cascaded to senior management and leads to low compliance with the Authority's directives. There is a lack of deterrent measures under the Insurance Act to motivate accountability and observance of the director's fiduciary duties as well as senior managers' professional responsibilities.

#### **Committee's decision**

The Committee agreed to the proposal as this will create stringent measures to ensure accountability in the sector.

#### **Section 70.**

19. Amend section 70 by deleting the word "advisory"

#### **Justification.**

This was a clean-up of the Act as the Advisory Board was replaced by the "Board of the Authority".

#### **Committee's decision**

The Committee agreed to the proposal as the Advisory Board was replaced by the Board of the Authority.

#### **Section 150.**

20. Amend section 150 by deleting the word "surveyor" and substituting thereof with the words "insurance surveyor".

#### **Justification.**

This amendment intends to create clarity that the surveyor being licensed is an insurance surveyor. The Authority supports the proposed amendment.

#### **Committee's decision**

The Committee agreed to the proposal to specify the surveyor in this case is the insurance surveyor.

### **3.2 ASSOCIATION OF KENYA INSURERS (AKI).**

21. The Association of Kenya Insurers appeared before the Committee on 30<sup>th</sup> August, 2023 and submitted as follows:

#### **Section 40**

22. Amend by deleting the proviso in respect of subsection (1) of section 40.

#### **Justification.**

In the absence of a prescribed limit, the clause is left to interpretation on the quantum demanded which can impact an insurer's ability to comply with the Act. They proposed that there should be a consideration of providing a cap on the maximum amount of the additional deposit pegged on a defined ratio.

#### **Committee's decision**

The Committee was of a different opinion that the proviso is provided for extensively in Section 32 of the Insurance Act. The proposal was rejected.

**Section 67H (1)(a).**

23. Delete the proposed amendment.

**Justification.**

The proposed amendment should be deleted as there are many other provisions that hold the company as a registered body and individuals in the company liable for non-compliance. If the proposed amendment is retained, it will be punitive to the insurers and the individuals who will be held liable. It would be unfair to hold the shareholders, directors, principal officers and management staff liable in case of non-compliance.

**Committee's decision**

The Committee rejected the proposal since the new section will create stringent measures to ensure accountability within the sector.

**Section 67H (1) (b).**

24. Delete the section as there are a number of sections that deal with specific areas of non-submission.

**Justification.**

Several sections in the Insurance Act provide for penalties directly to persons responsible in the event of submissions of statements/reports that are not accurate. If the amendment is retained, it will be punitive because the penalties attached to the amendment are higher and not specific to a particular offence.

**Committee's Observation**

The Committee rejected the proposal since the new section will create stringent measures to ensure accountability within the sector.

**Section 67H (1) (c)**

25. The amendment should be deleted.

**Justification.**

The proposed amendment will not serve its required purpose as the Insurance Act provides for various instances where the Commissioner can request for supply of information or give a directive and where the insurers fail to comply, there are penalties attached to the provisions.

**Committee's decision**

The Committee rejected the proposal since the new section will create stringent measures to ensure accountability within the sector.

**Section 67H (1) (d)**

26. Delete the amendment. It has been addressed in Section 203 of the Insurance Act comprehensively.



**Justification.**

The amendment is not relevant as it is addressed comprehensively under section 203 of the Insurance Act. The section provides that where a claim remains unpaid on the expiry of the period subscribed, a penalty equal to five percent of the unpaid amount shall forthwith become due.

**Committee's decision**

The Committee agreed to their proposal as the proviso has been addressed under Section 203 of the Insurance Act.

**Section 67H (5) (a)**

27. Delete in its entirety

**Justification**

The clause is very ambiguous and broad. The reference to “profits that have accrued to the person liable” is also ambiguous and very broad. There are legal remedies under the Civil Procedure Act and rules which would cater to any applications to court for damages.

The reference to profits without distinction as to which profits are being referenced creates a lacuna in interpretation.

**Committee's decision**

The committee rejected the proposal.

**Section 67H (2) & (3).**

28. The section should be deleted in its entirety.

**Justification**

The proposed section provides for a potential overlap of sections. The proposed offences are punitive and the Insurance Act already provides for penalties for offences.

**Committee's decision**

The Committee rejected the proposal since the new sections will create stringent measures to ensure accountability within the sector.

## PART IV

### 4.0 COMMITTEE OBSERVATIONS

29. Upon considering the Bill, the Committee observed the following:

- (i) The Insurance Act Cap was enacted in the 1980s and has since been amended a record thirty-eight (38) times within the years. Therefore there is an urgent need to comprehensively review and repeal the Act to be in tandem with current industry requirement;
- (ii) The amendment through a piecemeal one will go a long way in protecting the companies and their client from governance vices perpetuated by the management

PART V

5.0 COMMITTEE RECOMMENDATION

30. The Committee having considered the Insurance (Amendment) Bill (National Assembly Bill No. 18 of 2023) recommends to the House that adopts the Bill with the proposed amendments to section 70 by deleting the word “advisory” and substituting it with “Board of the Authority” since the Advisory Board was replaced by the Board of Authority, and Section 150 by inserting the term insurance surveyor to bring clarity.

SIGNED.......... DATE..... 4<sup>th</sup> October, 2023.....

HON. CPA KURIA KIMANI, MP  
CHAIRPERSON  
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING