

SPECIAL ISSUE

Kenya Gazette Supplement No. 67 (National Assembly Bills No. 18)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

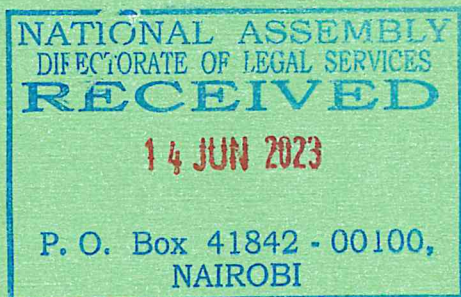
NATIONAL ASSEMBLY BILLS, 2023

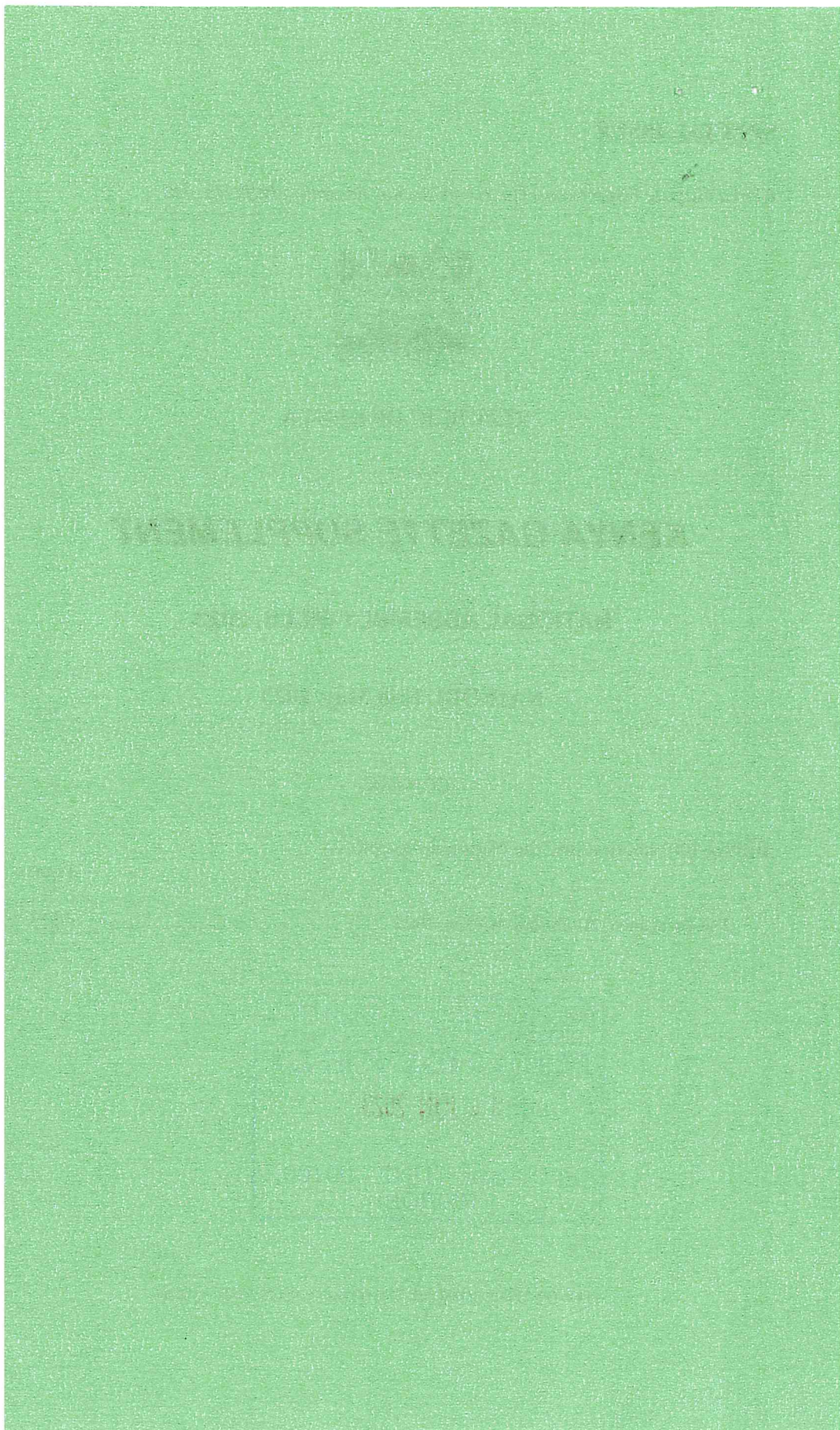
NAIROBI, 12th May, 2023

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THE INSURANCE (AMENDMENT) BILL, 2023**A Bill for****AN ACT of Parliament to amend the Insurance Act**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Insurance (Amendment) Act, 2023.

Short title.

2. Section 40 of the Insurance Act is amended by deleting the proviso to subsection (1).

Amendment of section 40 of Cap. 487.

3. The Insurance Act is amended by inserting the following new section immediately after section 67G—

Insertion of a new section 67H of Cap. 487.

Offences relating to the management of an insurer.

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 be 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.

4. Section 70 of the Insurance Act is amended by deleting the word “advisory” appearing in subsection (2).

Amendment of section 70 of Cap. 487.

5. Section 150 of the Insurance Act is amended in the marginal note by deleting the word “surveyors” and substituting therefor the words “insurance surveyor”.

Amendment of section 150 of Cap. 487.

MEMORANDUM OF OBJECTS AND REASONS

This Bill has been submitted by the Cabinet Secretary for the National Treasury as part of the proposals for the Budget for 2023/2024. The object of this 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. The amendments will also ensure that insurance companies take responsibility in case an insurance company fails.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill does not concern County Governments in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 3rd May, 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

Section 40(1) of Cap. 487 which it is intended to amend—

(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.

Section 70(2) of Cap. 487 which it is intended to amend—

(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.

section 150 of Cap. 487 which it is intended to amend—

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.