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NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE CONSIDERATION OF THE INSURANCE (AMENDMENT) BILL, 2018

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THE NATIONAL ASSEMBLY  
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## **ABBREVIATIONS**

- IRA - Insurance Regulatory Authority
- ICP's - Insurance Core Principles
- BIAK - BIMA Intermediary Association of Kenya

## **CHAIRPERSON'S FOREWORD**

This report contains the Committee's proceedings of the consideration of the Insurance (Amendment) Bill, 2018, National Assembly Bill No. 21 which was published on 19<sup>th</sup> June, 2018 and read a First Time on 3<sup>rd</sup> July, 2018. In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard Newspapers on Friday, 6<sup>th</sup> July, 2018 pursuant to Article 118 of the Constitution. Five institutions submitted memoranda for consideration by the Committee. The Committee has since adopted the stakeholders' amendments for introduction into the Bill during the Committee Stage of the Bill.

In considering the Bill, the Committee noted that the Bill seeks to amend Insurance Act to address the adverse selection and high costs of loss assessment related to traditional indemnity-based agriculture insurance by providing for index based insurance as an alternative with an intention to reduce moral hazard, adverse selection, underwriting and claim assessment costs while speeding up claim settlements. In addition, the Bill seeks to amend the Act by introducing a legal provision creating offences on insurance fraud, including penalties intended to address the problem of insurance fraud that continues to be a major challenge to the stability of the insurance industry in the country. The amendment further ensures that the Act complies with International Association of Insurance Supervisors (IAIS) standards on countering insurance fraud.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the stakeholders for their participation in scrutinizing the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

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, 2018.

**THE HON. JOSEPH LIMO, MP,**

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

## EXECUTIVE SUMMARY

The Insurance (Amendment) Bill, 2018, was published on 19<sup>th</sup> June, 2018 and read a First Time on 3<sup>rd</sup> July, 2018 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127. The Insurance (Amendment) Bill, 2018 seeks to amend Insurance Act to address the adverse selection and high costs of loss assessment related to traditional indemnity-based agriculture insurance by providing for index based insurance as an alternative with an intention to reduce moral hazard, adverse selection, underwriting and claim assessment costs while speeding up claim settlements.

In addition, the Bill seeks to amend the Act by introducing a legal provision creating offences on insurance fraud, including penalties intended to address the problem of insurance fraud that continues to be a major challenge to the stability of the insurance industry in the country. The amendment further ensures that the Act complies with International Association of Insurance Supervisors (IAIS) standards on countering insurance fraud.

The Bill delegates legislative powers to the Cabinet Secretary. It does not limit any fundamental rights and freedoms. The Bill does not affect the functions of the county governments as set out in the Fourth Schedule of the Constitution. The Bill is a money Bill within the meaning of Article 114 of the Constitution.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on Friday, 6<sup>th</sup> July, 2018 pursuant to Article 118 of the Constitution. On expiry of the period to submit memoranda, the Committee had received memoranda from five stakeholders for consideration. All their proposals were discussed in a stakeholder's meeting held on Thursday 9<sup>th</sup> August, 2018 in Parliament pursuant to Article 118 of the Constitution. The following stakeholders submitted their memoranda:

1. Kipkenda & Co. Advocates
2. BIMA Intermediaries Association of Kenya (BIAK)
3. APA Insurance Limited
4. Britam Holdings PLC
5. Association of Insurance Brokers of Kenya

## 1.0 PREFACE

### 1.1 ESTABLISHMENT OF THE COMMITTEE

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:

- a) 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;
- b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) **To study and review all the legislation referred to it;**
- d) 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;
- e) 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;
- f) 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);
- (fa) To examine treaties, agreements and conventions;
- g) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) To examine any questions raised by Members on a matter within its mandate.

### 1.2 MANDATE OF THE COMMITTEE

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.

In executing its mandate, the Committee oversees the following government Ministries;

- i. The National Treasury

- ii. Ministry of Devolution and Planning
- iii. Office of the Controller of Budget
- iv. Salaries and Remuneration Commission
- v. Commission on Revenue Allocation

### 1.3 COMMITTEE MEMBERSHIP

The Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members:-

- 1. The Hon. Joseph K. Limo, MP – **Chairperson**
- 2. The Hon. Isaac W. Ndirangu – **Vice-Chairperson**
- 3. The Hon. Jimmy O. Angwenyi, MP
- 4. The Hon. Christopher Omulele, MP
- 5. The Hon. Enoch Kibunguchy, MP
- 6. The Hon. Shakeel S. Ahmed, MP
- 7. The Hon. Abdul R. Dawood, MP
- 8. The Hon. Daniel E. Nanok, MP
- 9. The Hon. Andrew A. Okuome, MP
- 10. The Hon. David M. Mboni, MP
- 11. The Hon. Francis K. Kimani, MP
- 12. The Hon. Joseph M. Oyula, MP
- 13. The Hon. Joshua C. Kandie, MP
- 14. The Hon. Lydia H. Mizighi, MP
- 15. The Hon. Mohamed A. Mohamed, MP
- 16. The Hon. Purity W. Ngirici, MP
- 17. The Hon. Samuel Atandi, MP
- 18. The Hon. Stanley M. Muthama, MP
- 19. The Hon. Edith Nyenze, MP

### 1.4 COMMITTEE SECRETARIAT

- 1. Ms. Leah W. Mwaura – **Senior Clerk Assistant/Lead Clerk**
- 2. Ms. Jennifer Ndeto – **Principal Legal Counsel**
- 3. Ms. Laureen Wesonga – **Third Clerk Assistant**
- 4. Mr. Josephat Motonu – **Fiscal Analyst III**
- 5. Mr. Chelang'a Maiyo – **Research & Policy Analyst III**

## **2.0 COMMITTEE CONSIDERATION OF THE BILL**

### **2.1 BACKGROUND INFORMATION**

The Insurance (Amendment) Bill, 2018, was published on 19<sup>th</sup> June, 2018 and read a First Time on 3<sup>rd</sup> July, 2018 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127.

In processing the Bill, the Committee invited comments from the stakeholders pursuant to Article 118 of the Constitution. Five institutions responded by sending their memoranda to the Committee for consideration. The Committee held a stakeholder's meeting on Thursday, 9<sup>th</sup> March, 2018 in Parliament to engage stakeholders on their memoranda pursuant to Article 118 of the Constitution. The following stakeholders appeared before the Committee during the stakeholder's conference:-

1. Kipkenda & Co. Advocates
2. BIMA Intermediaries Association of Kenya (BIAK)
3. APA Insurance Limited
4. Britam Holdings PLC
5. Association of Insurance Brokers of Kenya

### **2.2 CLAUSE BY CLAUSE ANALYSIS**

Clause 2: Introduction of new definitions

Clause 3: New section to provide supervision on insurance groups.

Clause 4: Remove requirement for approval of the Minister before the commissioner issues directives. It gives the Commissioner administrative autonomy.

Clause 6: The Board is mandated under section 31 to approve application for registration. Therefore, the amendment corrects an error.

Clause 7: It is the function of the Authority to ascertain if an insurer has ceased to carry on business in Kenya and not the Minister.

Clause 8: Amendment has the effect of reducing the process of issuing a special policy by deleting the one month's gazette notice and instead requiring the policyholder or beneficiary to swear an affidavit.

Clause 10: The amendment repeals and replaces the existing provision on advance payment of premiums. It further prohibits intermediaries or third parties receiving premiums on behalf of insurance companies.

Clause 12: It provides new clauses to provide the Commissioner the power to settle complaints and introduces offences on insurance fraud.

### **3.0 SUBMISSION BY THE STAKE HOLDERS**

Following the call for memoranda from the public on 6<sup>th</sup> July, 2018, the Committee received memoranda from six organizations. All their proposals were deliberated on and considered by the Committee. Below are the views of the stakeholders:

#### **3.1 KIPKENDA & CO. ADVOCATES**

The representative from Kipkenda & Co. Advocates made the following submission;

##### **Clause 12, Section 204A.**

An addition that the clause should include the manner of presenting such complaints or that the Cabinet Secretary shall prescribe the manner of presenting such complaints.

##### **Justification**

The procedure should be simple and convenient to policy holders as a way of ensuring access to justice.

##### **Committee Observation & Recommendation**

This proposal is meant to strengthen the ability of the Insurance Regulatory Authority to conclusively deal with consumer complaints and the introduction of mediation makes it difficult to have a conclusive resolution. The Committee agreed with the proposal.

##### **Change “Minister” to “Cabinet Secretary”**

The Insurance Act, (in this Act referred to as the “principal Act”), is amended by deleting the word “Minister” wherever it appears and substituting therefor the words “Cabinet Secretary”

##### **Justification**

To bring legislative harmony in the interpretation of the law and certainty in referring to the head of a ministry. This can also be achieved by amending the definition section to state that “Minister” means “Cabinet Secretary” in order to bring clarity to the terminology.

### **3.2 BIMA INTERMEDIARIES ASSOCIATION OF KENYA (BIAK)**

#### **Clause 10, Section 156 (1-4)**

They rejected repealing and replacement of section 156 of Cap 487.

## **Justification**

BIMA Intermediaries Association of Kenya (BIAK) submitted the following memorandum to the Committee:-

They cited several measures taken by Insurance Core Principals (ICP's) to counter insurance premiums mishandlings including:

1. Working with relevant industry or trade associations to encourage and maintain an industry wide approach to deterring, preventing, detecting, reporting and remedying fraud; and
2. Establishment of anti-fraud committees consisting of industry or trade organizations, law enforcement agencies, other supervisors, other authorities, and possibly consumer organizations as platform to address fraud in insurance- for example, by discussing trends, risks, policy issues, profiles and modus operandi.

They submitted that this proposal will erode the gains that have been made in the insurance industry. They further submitted that premium holders have for a long time dealt with the brokers and had built up portfolios and trust over time. As such, the new proposal has the potential to erode confidence in the brokers. The proposal not to receive premiums on behalf of the insurer will make it hard for them to continue being in business. They argued that not all clients can issue cheques as most of them prefer cash based transactions. They further argued that any premium paid for via mobile money transfer services or other cashless means takes a long time to be reconciled in the books of the insurer hence inconveniencing the clients.

In conclusion, they stated that majority of the brokers have conducted themselves professionally except for a few of them who are known to engage in insurance fraud. They noted that BIMA had not been empowered to deal with any errant brokers hence inability to take action against perpetrator of insurance fraud. IRA has also not managed to reign on these errant brokers.

They proposed that the government should complement their efforts on capacity building of the insurance brokers in order to counter fraud. They proposed that a program could be rolled out by IRA to continuously educate the brokers in conjunction with BIAK so that they can inculcate professional values amongst the insurance agents.

## **Committee Observation & Recommendation**

The repealing of the current Section 156 and replacement with a new Section 156 will properly operationalize the principal of cash and carry (advance payment of premiums). Additionally, those

commissions payable to all intermediaries are paid by insurers within thirty (30) days. Currently according to the statistics held by Insurance Regulatory Authority on premium payment, there is a large amount owed to the insurers, accounting for approximately 20% of the premiums written in 2017. Further a significant proportion of complaint handled by Insurance Regulator relates to policies where the premiums were paid to brokers who failed to remit the same to insurers thus leaving the policyholders exposed when a risk occurs. This amendment is intended to safeguard the interest of policyholders by ensuring that premiums are remitted within thirty days and the effective date is upon receipt of the money by the insurance. The interests of the intermediaries are also safeguarded by ensuring that the insurer will pay commissions within 30 days of receiving premiums.

Based on the above, the Committee rejected the proposal by BIMA.

### **3.3 APA INSURANCE**

APA Insurance submitted that they were in full support of the amendments in the following section:-

#### **Clause 10, Section 156 (1-4)**

Amend section 10 of the Insurance (Amendment) Bill by repealing section 156 and replacing it with the following new section-

1. No insurer shall assume a risk in Kenya in respect of insurance business unless and until the premium payable thereon is received by insurer.
2. An intermediary shall not receive any premiums on behalf of an insurer.
3. An intermediary who contravenes subsection (2) shall be liable to a penalty of one million shillings on each contravention, payable to the Policy Holders Compensation fund.
4. Any officer or director of an intermediary who contravenes subsection (2) shall be guilty of an offence, and upon conviction shall be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment term of three months, or to both.

#### **Justification**

1. The amendments will ensure that all insured premium is received by the underwriters, risk coverage confirmed and in case of a loss, the issues surrounding premium payments and validity of cover are avoided. This amendment foremost protects the insured 'Mwananchi'.

2. The premium paid is used to buy reinsurance protection, pay for claims, pay service providers, pay commissions, meet management expenses, pay taxes etc. From IRA statistics, approximately 60% of the premiums are used to settle claims and hence it is paramount to ensure the premium is promptly received by the insurer.
3. The role of the intermediary should be to provide technical advice to the clients both for the risks to be covered and in the claims process and not handling the monies. The intermediary's compensation as defined in the Insurance Act is commissions which the insurers pay to them and that is what the Insurance Act behooves.
4. It is public knowledge that some insurance brokers have misused client's premiums leaving them unduly exposed in the event of a loss. Some of the brokers have gone down with huge premium sums unremitted whilst others move from one insurer to the other leaving a trail of debts. This has also been reported for some counties and parastatals and indeed there are cases pending in courts and at IRA for arbitration. This Bill not only cures the premium remittance issue but also any corruption tendencies that might be abated through channeling premium via intermediaries.
5. Under the Risk Based Capital regime, insurance companies are required to maintain a certain level of Capital Adequacy Ratios (200% CAR by June 2020). In arriving at the solvency levels, outstanding premiums attracts nearly 100% capital charge. At the moment, the industry is owed close to Kshs. 40 Billion (capital required from insurers). These solvency requirements have driven many insurance companies to the verge of being closed down and the Amendment Bill will secure the future of the insurance industry as it brings back public confidence, solvency levels will be strengthened and forestall any closures that leave policyholders and claimants unduly exposed.
6. They anticipate growth in the insurance penetration if the Bill is enacted as the insuring public will have their confidence restored as the ambiguity of insurance premium payment will be done away with and claims will be considered expeditiously as per the policy issued.
7. They therefore fully supported the amendments which they said were timely in implementing Risk Based Capital, IFRS 9 (Financial Instruments) and the impending IFRS 17 (Insurance Contracts) and strongly believe will further transform the insurance sector. Kenya will be joining other countries like Nigeria, Ghana, Tanzania and Uganda that have adopted similar insurance payment legislations.

## **Committee Observation & Recommendation**

The Committee did not support their view based on the fact that an intermediary will be rendered irrelevant in the insurance business. The Committee has put in a safeguard to take care of the interest of the insurance companies and also the policy holders. The Committee noted that these will reduce risks associated with insurance fraud.

### **3.4 BRITAM HOLDINGS PLC**

#### **Clause 3, Cap 476, Section 5A**

Britam Holdings PLC proposed that Clause 3 of the Bill be deleted in its entirety and replaced therefor with the following:

**5(A) (1) The Commissioner may direct the Insurance Group through the regulated entity's Principal Officer to provide any information necessary for effective group-wide supervision save for where the Insurance Group is already a regulated entity in which case the Commissioner shall request for this information through the respective regulator.**

**(2) Information necessary shall relate to information that demonstrably relates to the safeguarding of the policyholders' interests.**

**(3) The provision of this section shall not limit a Commissioner from requesting for information on an Insurance Groups capital adequacy in so far as it's regulated entity is non-compliant to the Risk Based Capital Framework.**

#### **Justification**

Section 5A(1) and (2) authorizes the Commissioner of Insurance to direct any member of the group to provide any information necessary for effective group wide supervision and penalizes such member or holding company with penalties under the Insurance Act for any breach or failure to comply to such directive.

They proposed the deletion of this section in its entirety as it creates ambiguity as it does not define who a member of the group refers to. In addition, it does not define the nature and type of information requested for.

The proposed amendments seek to provide clarity on the nature of information and the mode in which such information will be collected including appointing the contract officer as the Principal Officer of the regulated entity.

### **Committee Observation & Recommendation**

The Committee observed that the amendment seeks to insert a new Section 5A empowering the Commissioner to give direction to any member of an insurance group under the group wide supervision model. The Committee noted the need to limit the powers of the Commissioner to only cover the regulated entity's Principal Officer for purposes of provision of information.

Based on the observations, the Committee proposed the following amendment in subsection (1)

THAT, clause 3 of the Bill be amended in the proposed new section 5A by deleting subsection (1)—

(1) The Commissioner may direct an Insurance Group through the regulated entity's Principal Officer to provide any information necessary for effective group-wide supervision.

### **Clause 12, Cap 476, Section 204(A)**

Britam Holdings PLC proposed that Clause 12 of the Bill be deleted in its entirety the proposed new Section 204(A) on the Power of the Authority to Settle because the amendment:

- (i) Does not properly define the nature and scope of the complaint to be lodged i.e. is it a service complaint or a contract complaint.
- (ii) Usurps arbitration which is the dispute resolution mechanism proposed in the Insurance Contracts.
- (iii) Does not define the qualification of the officers charged with resolving disputes.
- (iv) Negates the right to appeal to a tribunal that is not set up and therefore governed by specific rules and procedures. Tribunals are set up through an Act of the Parliament. In addition, the appeal from a decision of a Tribunal takes the form of a Judicial Review. This is not explicitly in place and thus would be prejudicial to the insurance company.

### **Committee Observation & Recommendation**

The Committee observed that the proposed amendment in the Bill seeks to introduce a new Section 204A giving the Commissioner power to determine a dispute between a customer and a regulated entity.

This means that insurance customers may lodge a complaint with the Commissioner of Insurance for determination and such determination shall be binding on the parties. This is to enable consumer disputes on the provision of services be conclusively determined and to enhance consumer protection. The argument that the Bill doesn't clearly state the nature of the complaint, the Committee is of the view that the Bill clearly states that the complaint will be those that are related to provision of services. Based on the above observation, the Committee rejected the proposal by the Britam Holdings PLC

### **Clause 2, Cap 487 Section 2**

Britam Holdings PLC proposed the following amendments new definitions under Section 2:

- (i) By deleting the current definition of a broker and intermediary and inserting the following new definition:

**Broker**, in relation to an insurer or reinsurer, means a person-

- a) Who carries on the business of arranging contracts of insurance (whether or not the business is the person's principal business or carries on in connection with any other business); and
- b) Who is not an employee of the insurer or reinsurer; and
- c) who is not appointed, under signed agreement and agent of the insurer for the purposes of receiving money due to the insurer from the insured and due from the insured to the insurer; and
- d) Whose fiduciary duty is to the client.

### **Committee Observation & Recommendation**

The Committee observed that the term broker had been explicitly defined in the principal act and covers all aspects of brokerage hence no need to provide another definition. The definition will reverse the common law principle of the law of agency where the principal is responsible for the acts of omission or commission by the agents since the principle enjoys the fruits of the agents. This also poses a risk to consumers who will not have recourse with the underwriter who is the principal of an insurance agent.

The proposal further puts a strain on the operation of the proposed independent agents as they will be required to have capital and take a professional indemnity cover in order to protect their clients. This goes against the government policy of ease of doing business.

**Intermediary** refers to a broker, Independent Agent or tied agent.

- (ii) By deleting the definition of an agent.
- (iii) By introducing the following new definitions:

#### **Committee Observation & Recommendation**

Committee observed that the term broker had been explicitly defined in the principal act and covers all aspects of who an intermediary hence no need to provide another definition. The Committee therefore rejected the definition as proposed by Britam Holdings PLC. The definition is to reverse the common law principle of the law of agency where the principal is responsible for the acts of omission or commission by the agents since the principle enjoys the fruits of the agents. This also poses a risk to consumers who will not have recourse with the underwriter who is the principal of an insurance agent.

**Commission** refers to the payments to an intermediary made by an insurer or reinsurer to reward the intermediary for selling and servicing its products. The commission amount varies and depends on the type and size of the contract as defined in the Eleventh Schedule. A commission can be paid when the contract is take out (initially) and/ or over the duration of the contract (renewal) as a proportion of the premium, contribution, deposit or the fund size.

#### **Committee Observation & Recommendation**

The Committee rejected the proposal to define the term *Commission* as it is not necessary to define it in the Act.

**Independent Agent** refers to a person, corporate or a natural, who not being a salaried employee of an insurer or reinsurer who in consideration of a commission, solicits or procures insurance business for one or more insurer(s); broker(s) or insured(s) and subsequently owes such persons a fiduciary duty.

#### **Committee Observation & Recommendation**

The Committee rejected the proposal to define the term *independent agent* as it is not necessary to define it in the Act. The proposal puts a strain on the operation of the proposed independent agents as they will be required to have capital and take a professional indemnity cover in order to protect their clients. This goes against the government policy of ease of doing business.

**Tied Agent** refers to a natural person, who not being a salaried employee of an insurer or reinsurer and who in consideration of a commission, solicits or procures insurance business for a single insurer or a single insurance group and subsequently owes such a person a fiduciary duty.

**Justification**

They stated that the new definitions of broker, independent agent and tied agent provide greater clarity on distinguishing on whose authority each class on intermediary acts. This defines a formidable fiduciary obligation on whose behalf on intermediary works for and subsequently promotes accountability amongst the intermediary network. The other definition of commission also seeks to define the definition of commission which is ardently missing from the Principal Act.

**Committee Observation & Recommendation**

The Committee rejected the proposal to define the term *tied agent* as the definitions will reverse the common law principle of the law of agency where the principal is responsible for the acts of omission or commission by the agents since the principle enjoys the fruits of the agents. This also poses a risk to consumers who will not have recourse with the underwriter who is the principal of an insurance agent.

**Clause 13, Cap 487**

They proposed inserting a new clause 13 which states that:

- a) Section 69(1) of the Principal Act is amended by deleting the following words, “Subject to subsection (2)” and “or bonus or of a share in the valuation surplus in respect of long term insurance business”
- b) Section 69(2) of the Principal Act is deleted in entirety.

**Justification**

The Amendment deletes part of Subsection 1 on restriction on the payment of bonuses or payments from a share in the valuation surplus in respect of long term business. These restrictions were principally only applicable to long term insurance companies and are not technically (actuarial calculations) supported.

The definition of subsection (2) seeks to create uniformity and negate a contradiction to the proposed amendments under Sub-section (1).

These amendments thus ensure uniformity in long term and short term insurance.

## **Committee Observation & Recommendation**

The surplus restricted is out of estimated liabilities. It is a matter of prudence not to allow the distribution of bonus or such a surplus since it is not based on actual liabilities. It is to protect the fund from depletion due to economic fluctuation. The proposal if accepted will lead to depletion of the fund to the detriment of the policyholders. Based on the above observations, the Committee rejected the proposed new amendment by Britam Holdings PLC.

## **Clause 14, Cap 487**

They proposed an amendment in the Bill by inserting a new clause as follows:-

- a) Section 87(2) of the Principal Act is amended by inserting the following words immediately after the word post "... e-mail or other electronic or telecommunication mode"
- b) Section 199 of the Principal Act is amended by inserting the following words immediately after the word post "... e-mail or other electronic or telecommunication mode"
- c) Inserting a new section 199A as follows:  
199A. An insurer may offer insurance in electronic (e) or telecommunication (t) mode through e/t-applications and e/t-proposals. In such instances, an applicant for insurance will consent to such application through e/t-signature.
- d) Inserting a new section 199B as follows:  
199B. The Cabinet Secretary may make regulations, prescribing all matters which are required and permitted to govern e/t-transactions in the insurance sector, or which in his opinion are necessary, desirable or convenient to be prescribed, to give full effect to this Section 199.

## **Justification**

The amendment seeks to align the Act to modern market trends that recognize electronic contracts. With regard to the business environment and specific interest on the insurance business, information technology and communication has and should continue to have a significant impact. It is therefore not definite that the insurance sector is not insulated from the rise in technologies and improving the connectivity between business and customers with each other.

In Kenya, the Insurance Regulatory Authority (IRA) is mandated to promote the development of the insurance sector and has continued to adopt new technologies. However, the IRA has not been

successful as other sectors, for instance banking, in exploiting the use of technological devices such as use of mobile phones and internet which have experienced a high penetration to increase the insurance penetration.

One major technological advancement in the insurance sector that seek to exploit the above technological devices and increase insurance penetration while moving towards less or zero paper include the use of e-signatures and e-documents.

### **Committee Observation & Recommendation**

The amendments will ensure that the industry embraces ICT especially in delivery of contract and also going with the market trends. The Committee therefore supported the proposal by Britam Holdings PLC.

### **Clause 15, Cap 487**

They proposed an amendment in the Bill by inserting a new clause 15 that amends the Principal Act as follows:

- a) Section 151(A) of the Principal Act is amended by inserting the word **“Tied”** immediately before the word Agent.
- b) Section 154 of the Principal Act is amended by inserting the following word **“Agent”** wherever it appears and substituting thereof with the word **“Independent Agent”**

### **Justification**

The current Act has no reference to a tied or independent agent. To align with the definitions that were proposed, they also aligned the nature of the contractual appointment by defining that of a Tied Agent in Section 151(1A) and Section 154.

This amendment provides clarity on the appointment of a tied agent and independent agent.

### **Committee Observation & Recommendation**

The new amendment by Britam Holdings PLC is not supported by the Committee because it will reverse the common law principle of the law of agency where the principal is responsible for the acts of

omission or commission by the agents since the principle enjoys the fruits of the agents. This also poses a risk to consumers who will not have recourse with the underwriter who is the principal of an insurance agent.

### **3.5 ASSOCIATION OF INSURANCE BROKERS OF KENYA**

They proposed the following amendments:-

#### **Clause 2**

Definition of '*Index based insurance*'.

AIBK proposed that either the indices be explicitly mentioned and/or the specific examples or categories be mentioned but in a way that leaves the categories open to permit addition of new typologies in future. The justification for the proposed changes is to provide additional clarity and eliminate the possibility of inappropriate indices and/or typologies being added through interpretation by the courts on a case by case basis.

#### **Committee Observation & Recommendation**

The indices will be explicitly set out under regulations that will be agreed upon by the industry. The amendment is therefore not supported by the Committee.

#### Definition of '*Micro-Insurance*'

They proposed that the term low income population be removed and replaced by a terminology that has precise meaning. Low-income is a relative term. While for some people annual salary of Kshs. 600,000 is high, for others an annual salary of Kshs. 12,000,000 is too low. They suggested the use of the term insurance policies accessible to persons with annual income of Kshs. 300,000 and below.

#### **Justification**

Lack of terminological clarity in legislations opens the door for gross interpretational in ways that undermine the utility of the legislation.

#### **Committee Observation & Recommendation**

The term low income population is a generally accepted definition from the Insurance Core Principles. It does not limit access to the products but rather takes into account the needs and expectation of the low income population. It further broadens access to insurance by the low income population.

## Definition of '*Insurance fraud*'.

The word "**unfair**" is subjective and therefore amenable to different interpretations depending on the persons concerned. It is not defined in the Act itself. What is classified as "**unlawful gain**" may also give rise to different interpretations. Where for example a person presents a false claim in the name of another person can it be said that the person presenting the false claims has received a gain when the payment is actually sent to someone else? Finally, the use of the term "victim" is also unclear. Where, for example, a policy is insured with A, but re-insured with B, and where a fraudulent claim is lodged in connection therewith, who is the victim?

### **Committee Observation & Recommendation**

The proposal exempts members registered under the Insurance Act. This is not tenable as fraud can be committed by any person whether registered under the Act or not.

In Subsection (1) insert the following Proviso thereto: *Provided that where the premium guaranteed to be paid by such person and in such manner as may be prescribed is not paid within the prescribed time or in the prescribed manner, then the Insurer shall be entitled to cancel the insurance policy upon giving the Insured a thirty (30) day notice which notice shall be sent to the Insured directly and shall not be sent through postal or other address belonging to a Broker; and provided also that no Insurer shall give Insurance Credit for a period exceeding Fourteen (14) Days*

### **Justification**

They proposed to have the definition amended to simplify but broaden the meaning of Insurance Fraud to cover forms of deception, as well as fraudulent activities and representations designed to secure unlawful advantage in connection with an insurance claim.

### **Clause 10**

AIBK proposed to retain the current section 156 of the Insurance Act but review it in line with the revised insurance cash-and-carry policy and also to entrench new rules designed to effectuate and strictly enforce the insurance cash-and-carry rules but which also take into account the practical realities of the insurance business in Kenya today. we are convinced that criminalization of premium handling by any other intermediary other than the underwriters directly will send a wrong signal to the insurance market and frustrate all efforts aimed at enhancing insurance penetration. They propose new additional provisions to section 156 that are designed to strengthen the legal framework for cash-and-carry rule. These include the proposed subsections (15) (16) and (17) Section 204B (1) A person other than a

person licensed under this Act is guilty of an offence of insurance fraud where knowingly, by act or omission with intent to injure, defraud or deceive: (a) (b) (c) (d) .....

*(4) an Insurer and any officer or director of an Insurer who pays any commission or who gives any rebate or discount to any person pursuant to a contract of insurance which was procured DIRECTLY without the involvement of an Agent or Broker is guilty of an offence and is liable on conviction to a fine not exceeding five million shillings or to a term of imprisonment for three (3) months or both.*

**Justification**

The purported repeal of the current Section 156 of the Insurance Act ignores the fact that the problem of delayed payment of premiums does not result from any demonstrable weakness of Sec.156 as it is currently but rather from the absence of effective enforcement mechanism for the said Sec.156.

**Committee Observation & Recommendation**

The Committee observed that the amendment as proposed in the Bill is meant to deal with perennial problem of outstanding premium and non-payment of claims. This has led to financial instability of some insurers. The Committee noted that the amendment as proposed in the Bill can be further amended to cater for persons who may not be in a position to pay their premiums in lumpsum.

Based on the above, the Committee proposed a further amendment in Clause 10.

**Clause 10(4)**

Any Agent or Broker or any officer or director thereof who contravenes sub-section (6) shall be guilty of an offence and upon conviction shall be liable to a fine of not less than twice the aggregate sum of premiums not remitted within the prescribed time and/or imprisonment for a term of three (3) months or both

**Justification**

This is a tidier way of ensuring adherence to the law and remittance of premium without curtailing operations.

Committee observation

**Clause 10(5)**

An Insurer shall pay a Broker insurance commission due to him within Thirty (30) Days upon receipt of premium. Provided that all commissions payable to a Broker within any calendar month may be aggregated by an Insurer in which case the aggregate commissions due to the Broker shall be paid **not later than the 5th day of each succeeding month.**

**Justification**

The purported amendment did not foresee the impracticability of paying commissions every thirty days on business that is transacted on a daily basis.

### **Committee Observation & Recommendation**

The Committee observed the need to ensure that the Insurer pays out the commission owed to intermediaries within thirty (30) days upon receipt of premiums. This proviso will take care of where the insurer refuses to remit commission owed to intermediaries.

### **Section 204B**

They proposed that section 204B should be amended to separate criminal liability of intermediaries from criminal liabilities of other persons including the insured.

### **Justification**

The justification for the proposed changes is that if the criminal liability of intermediaries is not separated from that of other unlicensed persons including the insured's them. As it is currently, the brokers end up with a situation in which any fraudulent activity, involving an intermediated transaction will always implicate the intermediary even in situations where the intermediary may not have had any role in the crime and even in situations where the intermediary cannot prevent the commission of the crime.

### **New Clause**

They proposed to introduce a new clause which reads as follows: "*an insurer and any officer or director of an insurer who pays any commission or who gives any rebate or discount to any person pursuant to a contract of insurance which was procured directly without the involvement of an agent or broker is guilty of an offence and is liable on conviction to a fine not exceeding five million shillings or to a term of imprisonment for three months or both*".

### **Justification**

The justification for the proposed amendment is to ensure that fraudulent and corrupt activities associated with direct procurement are brought within regulation.

### **3.6 NATIONAL HOSPITAL INSURANCE FUND**

The NHIF submitted that:-

The National Hospital Insurance Fund (NHIF) was the primary provider of social health insurance in Kenya, established under the National Hospital Insurance Act, No. 9 of 1998 with a mandate to enable all Kenyans to access quality and affordable health services.

In the recent past the NHIF has moved not only to offer social insurance schemes but also the conventional insurance especially to the civil servants. The Authority has given advise on the handling of conventional insurance by NHIF and expressed the concern that there is need to regulate such activities to protect the interest of the policyholders. This therefore means that the move to insure as currently done by NHIF need to be managed in accordance with generally acceptable insurance practice.

Further to the foregoing NHIF has been identified by the Government as key driver to the attainment of the universal health care. This calls for more proactive regulatory approach to ensure the success of this vital government agenda. The Authority has also been receiving complaints on the services being offered by NHIF which at the moment we are unable to resolve since our mandate does not extend to regulating NHIF.

Report of the Presidential Taskforce on Parastatal Reforms recommended the following measures to ensure the implementation of universal health care:

- (a) The National Hospital Insurance Fund should be allowed to operate like any other medical insurance service provider for its members and should be restructured to fully comply with the Insurance Act; and
- (b) The Fund should be regulated by Insurance Regulatory Authority.

#### **Challenges**

This has thus raised two challenges;

1. The conventional insurance that is currently being offered by NHIF is not being regulated. This may pose danger to the insuring public if certain regulatory requirements are not met.
2. The policyholders who take up this insurance cover are not adequately protected as the provider is not obliged to adhere to market conduct guidelines as issued by the Authority.

## RECOMMENDATION

It is thus recommended that:

Insurance Act be amended in section 2 of the insurance Act in the definition of the term "**insurance business**" by introducing a new paragraph (e) as follows:

(e) Social insurance schemes.

**The Committee supported the proposal by NHIF to ensure that the conventional insurance offered by NHIF is also regulated.**

#### 4.0 PROPOSED AMENDMENTS

The Committee has proposed the following amendments for consideration at the Committee Stage:-

##### CLAUSE 2

**THAT**, clause 2 of the Bill be amended —

(a) by deleting the definition of the term “insurance fraud”;

**JUSTIFICATION: the offence has been clearly defined in the proposed section 204 B and the definition is going to contradict what is contained under section 204 B**

(b) by deleting paragraph (b) and substituting therefor the following paragraph—

(b) in the definition of “insurance business” by inserting the following new paragraph immediately after paragraph (d)—

- (e) micro-insurance business;
- (f) social insurance schemes.

**JUSTIFICATION: The amendment is meant to include additional definition to insurance business to also introduce a new form of insurance business i.e social insurance schemes so that they can be regulated by IRA. This is also meant to also widen scope of coverage to also include micro insurance business.**

##### CLAUSE 3

**THAT**, clause 3 of the Bill be amended in the proposed new section 5A by deleting subsection (1)—

(1) The Commissioner may direct an Insurance Group through the regulated entity’s Principal Officer to provide any information necessary for effective group-wide supervision.

**JUSTIFICATION: The amendment is meant to ensure that only the Principal Officer of An Insurance Group is duly authorized to provide information whenever required by the Commissioner.**

##### NEW CLAUSE

**THAT**, the bill be amended by inserting the following new clause-

**7A.** Section 87 of the principal Act is amended in subsection (2) by inserting the words “or email or other electronic or telecommunication mode” immediately after the word “post”.

**JUSTIFICATION: The amendment is meant to also take care of other forms of communication especially in the advent of growth of technology. This will allow policy holders to also receive their insurance policy via email or any other electronic mode.**

**CLAUSE 10**

**THAT**, the Bill be amended by deleting clause 10 and substituting therefor the following new clause-

**10.** The principal Act is amended by repealing section 156 and replacing it with the following new sections—

Advance payment  
of premiums.

**156.** (1) No insurer shall assume a risk in Kenya in respect of insurance business unless and until the premium payable thereon is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed, or unless and until a deposit, of a prescribed amount, is made in advance in the prescribed manner.

(2) Where an insurer engages or, is approached by an intermediary intending to transact insurance business and receive premiums for that insurer, the insurer shall enter into a contract with the particular intermediary.

(3) A contract made between an insurer and intermediary under subsection (2) shall contain such mechanisms or terms as to guarantee that the premiums received by the intermediary are remitted to the insurer.

(4) A premium collected by an intermediary or a cheque received by an intermediary shall be deposited with, or dispatched and received by the insurer within thirty days of receipt by the intermediary.

(5) Subject to subsection (4), an insurance cover shall commence immediately a premium is collected or received by an intermediary.

(6) An intermediary who contravenes subsection (4) shall be guilty of an offence and shall pay a penalty equivalent to twenty percent of the unremitted premiums on each contravention, payable to the Policy Holder Compensation Fund.

(7) A director or employee of an intermediary who contravenes subsection (4) shall on conviction be liable to a fine not exceeding one hundred thousand or to imprisonment for a term of three months or to both.

(8) The Cabinet Secretary may make regulations to give effect to this section.

**JUSTIFICATION:** The proposed amendment serves to guarantee premium holders that once the money has been received by the intermediary on behalf of insurers, the insurance cover is effective from the date of receipt of such monies by the intermediary. The second part of the amendment is meant to ensure that the intermediary remits the monies to the insurance companies within thirty days of receipt of that money from the premium holders. A further amendment has been proposed to ensure that the Insurance Company draws a contract with the intermediaries to take of risks associated with the insurance especially in failure to remit the money to the insurance company. This is so in the case of an accident, the risk shall have been covered.

#### **NEW CLAUSE**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 10-

10A. The principal Act is amended by inserting the following new section immediately after section 156-

Payment of intermediary insurance commission. **156A.** (1) An insurer shall pay an intermediary an intermediary insurance commission within thirty days of receipt of premiums.

(2) An insurer who contravenes this section shall be guilty of an offence and shall pay a penalty equivalent to twenty percent of the unpaid intermediary insurance commission on each contravention.

(3) A penalty under this section shall be paid into the Policy Holders Compensation Fund.

**JUSTIFICATION:** The proposed amendment is meant to ensure that Insurance Companies remit commission payable to intermediaries is paid within thirty days of receipts of premiums. This will cure the issue of delays arising from non-payment of commissioned dues.

**NEW CLAUSE**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 11-

**11A.** Section 119 of the principal Act is amended by inserting the words “or email or other electronic mode”

**JUSTIFICATION: The amendment is meant to also take care of other forms of communication especially in the advent of growth of technology.**

**CLAUSE 12**

**THAT,** clause 12 of the Bill be amended in the proposed section 204A in subsection (1) by inserting the word “written” immediately after the words “lodge a”;

**JUSTIFICATION: The amendment is meant to ensure that all complaints arising out of the Insurance Act are lodged in a written form.**

SIGNED..........DATE.....28/11/18.....

**THE HON. JOSEPH LIMO, MP - CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING**

## **Annextures**

**1. Minutes of the Proceedings**

**2. Adoption Schedule**

REPUBLIC OF KENYA



NATIONAL ASSEMBLY  
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING  
ADOPTION SCHEDULE

**ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE INSURANCE (AMENDMENT) BILL, 2018**

**DATE: 27<sup>TH</sup> NOVEMBER, 2018**

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN	
3. HON. JIMMY O. ANGWENYI, MP	
4. HON. CHRISTOPHER OMULELE, MP	
5. HON. SHAKEEL SHABBIR AHMED, MP	
6. HON. DR. ENOCH KIBUNGUCHY, MP	
7. HON. ABDUL RAHIM DA WOOD, MP	
8. HON. DANIEL E. NANOK, MP	
9. HON. ANDREW A. OKUOME, MP	
10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
14. HON. LYDIA H. MIZIGHI, MP	
15. HON. MOHAMED ALI, MP	
16. HON. PURITY NGIRICI, MP	
17. HON. SAMUEL ATANDI, MP	
18. HON. STANLEY M. MUTHAMA, MP	
19. HON EDITH NYENZE, MP	



**MINUTES OF THE 76<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON TUESDAY, 27<sup>TH</sup> NOVEMBER, 2018 IN THE BOARD ROOM, 9<sup>TH</sup> FLOOR, HARAMBEE SACCO PLAZA AT 11.00 AM**

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**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. David M. Mboni, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Joseph M. Oyula, MP
11. Hon. Edith Nyenze, MP
12. Hon. Francis K. Kimani, MP
13. Hon. Purity Ngirici, MP
14. Hon. Samuel Atandi, MP

**APOLOGY**

1. Hon. Christopher Omulele, MP
2. Hon. Stanley M. Muthama, MP

**ABSENT**

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Mohamed A. Mohamed, MP
3. Hon. Lydia H. Mizighi, MP

**INATTENDANCE - SECRETARIAT**

- |                        |   |                                   |
|------------------------|---|-----------------------------------|
| 1. Ms. Leah Mwaura     | - | Senior Clerk Assistant/Lead Clerk |
| 2. Ms. Jennifer Ndeto  | - | Principal Legal Counsel I         |
| 3. Ms. Laureen Wesonga | - | Third Clerk Assistant             |
| 4. Mr. Chelang'a Maiyo | - | Research and Policy Analyst       |

- |                        |   |                  |
|------------------------|---|------------------|
| 5. Mr. Collins Mahamba | - | Audio Officer    |
| 6. Mr. John Njoro      | - | Serjeant-At-Arms |
| 7. Mr. Vitalis Augo    | - | Office Assistant |

## **Agenda**

### **AGENDA**

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Confirmation of Minutes of the proceedings of the 69<sup>th</sup> to 75<sup>th</sup> sittings
5. Matters Arising
6. **Consideration and adoption of reports on the following Bills:-**
  - (i) **Government Contracts Bill, 2018**
  - (ii) **Insurance (amendment) Bill, 2018**
7. Adjournment/ Date of the next meeting

### **MIN.NO.NA/F&NP/2018/426: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 11.27 am with prayer from the Chairperson. The Chairperson then welcomed the meeting to deliberate on the day's agenda.

### **MIN.NO.NA/F&NP/2018/427: CONFIRMATION OF MINUTES**

Agenda deferred

### **MIN.NO.NA/F&NP/2018/428: CONSIDERATION OF THE GOVERNMENT CONTRACTS BILL, 2018**

The Committee adopted the report on the consideration of the Government Contracts Bill, 2018 after being proposed and seconded by Hon. Jimmy Angwenyi, MP and Hon. Joshua Kandie, MP respectively.

The Committee proposed the following amendments to be considered during the Committee Stage:-

#### **CLAUSE 2**

**THAT**, clause 2 of the Bill be amended in the definition of the term "contracting authority" by deleting the word "and" wherever it appears in paragraph (b) and substituting therefor the word "or";

#### **JUSTIFICATION**

**The amendment seeks to ensure that the provisions contained in the paragraph are referred to as alternatives and not collectively. The paragraph will therefore provide that a**

**“contracting authority” means a national or county government department or agency with the legal authority to enter into a contract.**

**CLAUSE 4**

**THAT**, clause 4 of the Bill be amended by deleting the word “interim” wherever it appears and substituting therefor the word “emergency”;

**JUSTIFICATION**

**The amendment seeks to guard against any possible abuse of the exception of defence supplies from the application of the Act once enacted. The use of the term “interim” is ambiguous and may be subject to various interpretations, therefore it is prudent to use the more clearer term “emergency” since an emergency situation can be determined with sufficient clarity.**

**CLAUSE 6**

**THAT**, clause 6 of the Bill be amended in sub-clause (1) by deleting the words “All contracts made for” and substituting therefor the words “Every contract made by”;

**JUSTIFICATION**

**This amendment is necessary for purposes of conforming to the House drafting style and also for correction of grammatical errors.**

**CLAUSE 7**

**THAT**, clause 7 of the Bill be amended—

- (a) in sub-clause (1), by deleting the words “All contracts made for” and substituting therefor the words “Every contract made by”;
- (b) in sub-clause (2), by inserting the word “that” immediately after the words “contracts made on behalf of”;

**JUSTIFICATION**

**The amendment is necessary for purposes of conforming to the House drafting style as well as for purposes of proper grammatical flow.**

**CLAUSE 9**

**THAT**, clause 9 of the Bill be amended in sub-clause (2) by deleting the word “authorities” and substituting therefor the word “authority”

**JUSTIFICATION**

**The amendment is necessary for purposes of proper grammatical flow.**

## **CLAUSE 12**

**THAT**, clause 12 of the Bill be amended in sub-clause (2)–

(a) by renumbering the current paragraph (c) as paragraph (d); and

(b) by inserting the following new paragraph immediately after paragraph (b)–

“(c) the bidder consents to public disclosure of basic information other than information limited by the provisions of section 6(1)(e) of the Access to Information Act relating to the commercial interests;”

## **JUSTIFICATION**

**The amendment is necessary for purposes of correct numbering as well to include a new paragraph providing for the requirement of disclosure by the bidder, since this paragraph was inadvertently left out of the Bill but is referred to as one of the conditions that must be met in regard to every bid contract involving the government.**

## **MIN.NO.NA/F&NP/2018/429: CONSIDERATION OF THE INSURANCE ( AMENDMENT) BILL, 2018**

The Committee adopted the report on the consideration of the Government Contracts Bill, 2018 after being proposed and seconded by Hon. David Mboni, MP and Hon. Joseph Oyula, MP respectively.

The Committee dropped the amendment that they had earlier proposed to Clause 2 on the definition of “micro-insurance business.”

The Committee proposed the following amendments to be considered during the Committee Stage:-

## **CLAUSE 2**

**THAT**, clause 2 of the Bill be amended —

(a) by deleting the definition of the term “insurance fraud”;

**JUSTIFICATION: the offence has been clearly defined in the proposed section 204 B and the definition is going to contradict what is contained under section 204 B**

(b) by deleting paragraph (b) and substituting therefor the following paragraph—

(b) in the definition of “insurance business” by inserting the following new paragraph immediately after paragraph (d)—

- (e) micro-insurance business;
- (f) social insurance schemes.

**JUSTIFICATION: The amendment is meant to include additional definition to insurance business to also introduce a new form of insurance business i.e social insurance schemes so that they can be regulated by IRA. This is also meant to also widen scope of coverage to also include micro insurance business.**

### **CLAUSE 3**

**THAT**, clause 3 of the Bill be amended in the proposed new section 5A by deleting subsection (1)—

- (1) The Commissioner may direct an Insurance Group through the regulated entity's Principal Officer to provide any information necessary for effective group-wide supervision.

**JUSTIFICATION: The amendment is meant to ensure that only the Principal Officer of An Insurance Group is duly authorized to provide information whenever required by the Commissioner.**

### **NEW CLAUSE**

**THAT**, the bill be amended by inserting the following new clause-

7A. Section 87 of the principal Act is amended in subsection (2) by inserting the words "or email or other electronic or telecommunication mode" immediately after the word "post".

**JUSTIFICATION: The amendment is meant to also take care of other forms of communication especially in the advent of growth of technology. This will allow policy holders to also receive their insurance policy via email or any other electronic mode.**

### **CLAUSE 10**

**THAT**, the Bill be amended by deleting clause 10 and substituting therefor the following new clause-

10. The principal Act is amended by repealing section 156 and replacing it with the following new sections—

Advance payment  
of premiums.

**156. (1) No insurer shall assume a risk in Kenya in respect of insurance business unless and until the premium payable thereon is received by him or is guaranteed to be paid by such person in such manner and within such**

time as may be prescribed, or unless and until a deposit, of a prescribed amount, is made in advance in the prescribed manner.

(2) Where an insurer engages or, is approached by an intermediary intending to transact insurance business and receive premiums for that insurer, the insurer shall enter into a contract with the particular intermediary.

(3) A contract made between an insurer and intermediary under subsection (2) shall contain such mechanisms or terms as to guarantee that the premiums received by the intermediary are remitted to the insurer.

(4) A premium collected by an intermediary or a cheque received by an intermediary shall be deposited with, or dispatched and received by the insurer within thirty days of receipt by the intermediary.

(5) Subject to subsection (4), an insurance cover shall commence immediately a premium is collected or received by an intermediary.

(6) An intermediary who contravenes subsection (4) shall be guilty of an offence and shall pay a penalty equivalent to twenty percent of the unremitted premiums on each contravention, payable to the Policy Holder Compensation Fund.

(7) A director or employee of an intermediary who contravenes subsection (4) shall on conviction be liable to a fine not exceeding one hundred thousand or to imprisonment for a term of three months or to both.

(8) The Cabinet Secretary may make regulations to give effect to this section.

**JUSTIFICATION: The proposed amendment serves to guarantee premium holders that once the money has been received by the intermediary on behalf of insurers, the insurance cover is effective from the date of receipt of such monies by the intermediary. The second part of the amendment is meant to ensure that the intermediary remits the monies to the**

**failure to remit the money to the insurance company. This is so in the case of an accident, the risk shall have been covered.**

## **NEW CLAUSE**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 10-

10A. The principal Act is amended by inserting the following new section immediately after section 156-

Payment of **156A.** (1) An insurer shall pay an intermediary an intermediary insurance commission within thirty days of receipt of premiums.  
intermediary insurance commission.

(2) An insurer who contravenes this section shall be guilty of an offence and shall pay a penalty equivalent to twenty percent of the unpaid intermediary insurance commission on each contravention.

(3) A penalty under this section shall be paid into the Policy Holders Compensation Fund.

**JUSTIFICATION: The proposed amendment is meant to ensure that Insurance Companies remit commission payable to intermediaries is paid within thirty days of receipts of premiums. This will cure the issue of delays arising from non payment of commissioned dues.**

## **NEW CLAUSE**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 11-

**11A.** Section 119 of the principal Act is amended by inserting the words “or email or other electronic mode”

**JUSTIFICATION: The amendment is meant to also take care of other forms of communication especially in the advent of growth of technology.**

## **CLAUSE 12**

**THAT**, clause 12 of the Bill be amended in the proposed section 204A in subsection (1) by inserting the word “written” immediately after the words “lodge a”;

**JUSTIFICATION: The amendment is meant to ensure that all complaints arising out of the Insurance Act are lodged in a written form.**

**MIN.NO.NA/F&NP/2018/430: ADJOURNMENT/ DATE OF THE NEXT MEETING**

There being no other business to deliberate on, the meeting was adjourned at 2.00 p.m. The date of the next meeting will be communicated.

**HON. JOSEPH K. LIMO, MP**  
**(CHAIRPERSON)**

SIGNED .....  ..... DATE 28/11/18 .....

**MINUTES OF THE 75<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 22<sup>ND</sup> NOVEMBER,  
2018 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 AM**

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**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Christopher Omulele, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. Joshua C. Kandie, MP
9. Hon. Joseph M. Oyula, MP
10. Hon. Edith Nyenze, MP
11. Hon. Francis K. Kimani, MP
12. Hon. Purity Ngirici, MP
13. Hon. Samuel Atandi, MP
14. Hon. Lydia H. Mizighi, MP

**APOLOGY**

1. Hon. Shakeel Shabbir Ahmed, MP
2. Hon. Stanley M. Muthama, MP
3. Hon. David M. Mboni, MP

**ABSENT**

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Mohamed A. Mohamed, MP

**INATTENDANCE - SECRETARIAT**

- |                           |   |                                   |
|---------------------------|---|-----------------------------------|
| 1. Ms. Leah Mwaura        | - | Senior Clerk Assistant/Lead Clerk |
| 2. Ms. Christine Odhiambo | - | Legal Counsel II                  |
| 3. Mr. Collins Mahamba    | - | Audio Officer                     |
| 4. Mr. John Njoro         | - | Serjeant-At-Arms                  |
| 5. Mr. Vitalis Augo       | - | Office Assistant                  |

## Agenda

### AGENDA

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Confirmation of Minutes of the proceedings of the 69<sup>th</sup> to 74<sup>th</sup> sittings
5. Matters Arising
6. **Bills**
  - (i) **Government Contracts Bill, 2018**
  - (ii) **Insurance (amendment) Bill, 2018**
7. Adjournment/ Date of the next meeting

### **MIN.NO.NA/F&NP/2018/421: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 10.25 am with prayer from the Chairperson. The Chairperson informed the meeting that due to the upcoming long recess, the House Business Committee had directed that the two Bills namely; the Government Contract Bill, 2018 and the Insurance (Amendment), Bill 2018 be concluded.

### **MIN.NO.NA/F&NP/2018/422: CONFIRMATION OF MINUTES**

Agenda deferred

### **MIN.NO.NA/F&NP/2018/423: CONSIDERATION OF THE GOVERNMENT CONTRACTS BILL, 2018**

The Committee was taken through the policy brief on the above mentioned Bill as follows: -

- (i) The Government Contracts Bill, 2018 is a Bill of the Act of Parliament that was seeking to repeal and re-enact the Government Contracts Act and provide for the powers of the Government to enter into contracts and for connected purposes;
- (ii) The Bill is also seeking to repeal the Government Contracts Act, Cap 25 so as to align the management of government contracts to the Constitution of Kenya, Public Finance Management Act, 2012, Public Procurement and Asset Disposal Act, 2015 and the Public private partnerships Act, 2013;
- (iii) The Bill is further proposing to empower a contracting authority to enter into government contracts for acquisition of works, goods and services in a manner that enhances access, competition and results in best value or, if appropriate the optimal balance of overall benefits to the government and the public;
- (iv) The Bill in Clause 6(1) reiterates that all contracts made for or on behalf of the National Government shall be in writing and signed by an Accounting Officer or by any public officer duly authorized in writing by the accounting officer, either specifically in

- particular case, or generally for all contracts below a certain value in his or her contracting entity or agency or otherwise as may be specified in such authorization;
- (v) Furthermore the Bill is seeking to provide for recognition of contracts entered outside Kenya for or on behalf of national government by authorized person in writing shall be deemed to be contracts made on behalf of the national government;
  - (vi) The same contractual obligation would be applicable for county governments where contracts entered on behalf of county governments are recognizable with respect to the specific authorization as that of national government;
  - (vii) The first schedule is meant to set out the form of Authorization that each contract would bind the Accounting Officer of government department or county government as the contracting entity and the supplier of works, goods and services as relate to Clause 6(1) and 7(1);
  - (viii) Clause 9(1) stipulates that for a contract for the performance of legal services on behalf of the national government shall be entered into only by or under the authority of the Attorney – General and the County Attorney for county government contracts for the performance of legal services; this provision does not apply in respect to Parliament and Judiciary as stipulated in the second schedule of the Bill. (Respect for separation of powers and the independence of the Judiciary);
  - (ix) The Bill further emphasizes that contracts were a product of public procurement processes and that all contracts shall be subjected to the due process of the law particularly the Public procurement and Asset Disposal Act, 2015 and the Regulations made there under, the Public Private Partnership Act, 2013 and any other applicable law;
  - (x) The Bill further provides that in order to safeguard the performance and delivery of contracts a contracting authority may require the supplier for work, goods and services to provide contract security; this security requirement shall be dealt with in the manner set out in the Public Procurement and Asset Disposal Act, 2015 and the Regulations made there under and the Public Finance Management Act, 2012;
  - (xi) Clause 12 of the Bill provides for the terms that were implied in every contract to warrant for the payment of any money by the Government; This included the declaration that the contractor had not directly or indirectly, paid or agreed to pay, and shall not, directly or indirectly, pay a contingency fee to any individual for the solicitation, negotiation or obtaining of the contract contrary to the provisions of the Anti- Corruption and Economic Crimes Act, 2003 or other applicable Anti- Corruption and Anti-Bribery Laws;
  - (xii) The above provision is seeking to discourage the possibility of influencing the outcome of contract arrangements with the Contracting Authority through undue practices;
  - (xiii) Additionally, the Bill is providing for the limitation of personal liability and indemnity of Government and Public Officers acting on behalf of Government. This is a protection for the officers acting for government given that the officer is not liable under section 202 and 203 of the Public Finance Management Act, 2012;

- (xiv) Clause 15 of the Bill provides that the Attorney General may make Regulations for the better carrying out of the provisions of the Act and as well may issue guidelines to facilitate the implementation of the Government Contracts Act. This is in accordance with the provisions of Article 94(5) and (6) of the Constitution regarding to delegation of legislative Authority by an Act of parliament; and
- (xv) The Government Contracts Act, Cap.25 would be repealed as soon as the Bill is enacted.

**The Committee was taken through the clauses and the schedules of the Bill as follows:-**

- (i) Clause 3 - agreed to
- (ii) Clause 4 - proposed amendments
- (iii) Clause 5 - agreed to
- (iv) Clause 6- proposed amendments
- (v) Clause 7 - proposed amendments
- (vi) Clause 8 - agreed to
- (vii) Clause 9 - proposed amendments
- (viii) Clause 10 - agreed to
- (ix) Clause 11- agreed to
- (x) Clause 12- proposed amendments
- (xi) Clause 13 - agreed to
- (xii) Clause 14 - agreed to
- (xiii) Clause 15 - agreed to
- (xiv) Clause 16 - agreed to
- (xv) First Schedule - agreed to
- (xvi) Second Schedule - agreed to
- (xvii) Clause 2 – proposed amendments
- (xviii) Title – agreed to

**Proposed Committee amendments for consideration during the Committee Stage:-**

**(i) CLAUSE 2**

**THAT**, clause 2 of the Bill be amended in the definition of the term “contracting authority” by deleting the word “and” wherever it appears in paragraph (b) and substituting therefor the word “or”;

**JUSTIFICATION**

**The amendment seeks to ensure that the provisions contained in the paragraph are referred to as alternatives and not collectively. The paragraph will therefore provide that a “contracting authority” means a national or county government department or agency with the legal authority to enter into a contract.**

**(ii) CLAUSE 4**

**THAT**, clause 4 of the Bill be amended by deleting the word “interim” wherever it appears and substituting therefor the word “emergency”;

**JUSTIFICATION**

**The amendment seeks to guard against any possible abuse of the exception of defence supplies from the application of the Act once enacted. The use of the term “interim” is ambiguous and may be subject to various interpretations, therefore it is prudent to use the more clearer term “emergency” since an emergency situation can be determined with sufficient clarity.**

**(iii) CLAUSE 6**

**THAT**, clause 6 of the Bill be amended in sub-clause (1) by deleting the words “All contracts made for” and substituting therefor the words “Every contract made by”;

**JUSTIFICATION**

**This amendment is necessary for purposes of conforming to the House drafting style and also for correction of grammatical errors.**

**(iv) CLAUSE 7**

**THAT**, clause 7 of the Bill be amended—

- (a) in sub-clause (1), by deleting the words “All contracts made for” and substituting therefor the words “Every contract made by”;
- (b) in sub-clause (2), by inserting the word “that” immediately after the words “contracts made on behalf of”;

**JUSTIFICATION**

**The amendment is necessary for purposes of conforming to the House drafting style as well as for purposes of proper grammatical flow.**

**(v) CLAUSE 9**

**THAT**, clause 9 of the Bill be amended in sub-clause (2) by deleting the word “authorities” and substituting therefor the word “authority”

**JUSTIFICATION**

**The amendment is necessary for purposes of proper grammatical flow.**

**(vi) CLAUSE 12**

**THAT**, clause 12 of the Bill be amended in sub-clause (2)—

- (a) by renumbering the current paragraph (c) as paragraph (d); and
- (b) by inserting the following new paragraph immediately after paragraph (b)–
  - “(c) the bidder consents to public disclosure of basic information other than information limited by the provisions of section 6(1)(e) of the Access to Information Act relating to the commercial interests;”

**JUSTIFICATION**

**The amendment is necessary for purposes of correct numbering as well to include a new paragraph providing for the requirement of disclosure by the bidder, since this paragraph was inadvertently left out of the Bill but is referred to as one of the conditions that must be met in regard to every bid contract involving the government.**

**MIN.NO.NA/F&NP/2018/424: CONSIDERATION OF THE INSURANCE ( AMENDMENT) BILL, 2018**

The Committee also considered clauses 4 and 5 that were not concluded during the consideration of the Insurance (Amendment), Bill. Having considered the comments by the National Treasury and Planning, the Committee further agreed with the two Clauses as proposed in the Bill.

**MIN.NO.NA/F&NP/2018/425: ADJOURNMENT/ DATE OF THE NEXT MEETING**

There being no other business to deliberate on, the meeting was adjourned at 1.20 p.m. The date of the next meeting is Tuesday, 27<sup>th</sup> November, 2018 at 11.00am.

**HON. JOSEPH K. LIMO, MP**  
**(CHAIRPERSON)**

SIGNED ..........DATE.....*28/11/18*.....

**MINUTES OF THE 4<sup>TH</sup> SITTING OF THE REPORT WRITING RETREAT OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON SATURDAY, 20<sup>TH</sup> OCTOBER, 2018 AT GRAND ROYAL SWISS HOTEL, KISUMU COUNTY AT 2.30PM**

---

**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Christopher Omulele, MP
3. Hon. Daniel E. Nanok, MP
4. Hon. Andrew A. Okuome, MP
5. Hon. David M. Mboni, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Joseph M. Oyula, MP
8. Hon. Joshua C. Kandie, MP
9. Hon. Purity W. Ngirici, MP
10. Hon. Samuel Atandi, MP
11. Hon. Stanley M. Muthama, MP

**APOLOGY**

1. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
2. Hon. Jimmy O. Angwenyi, MP
3. Hon. Shakeel Shabbir Ahmed, MP
4. Hon. Abdul Rahim Dawood, MP
5. Hon. Dr. Enoch Kibunguchy, MP
6. Hon. Mohamed A. Mohamed, MP
7. Hon. Lydia H. Mizighi, MP
8. Hon. Edith Nyenze, MP

**INATTENDANCE**

**SECRETARIAT**

- |                               |   |                                  |
|-------------------------------|---|----------------------------------|
| 1. Ms. Florence Atenyo-Abonyo | – | Director, Committee Services     |
| 2. Ms. Leah Mwaura            | – | First Clerk Assistant/Lead Clerk |
| 3. Ms. Jennifer Ndeto         | – | Principal Legal Counsel 1        |
| 4. Ms. Laureen Wesonga        | – | Third Clerk Assistant            |
| 5. Mr. Josephat Motonu        | – | Fiscal Analyst                   |
| 6. Ms. Beatrice Auma          | – | Administration Assistant         |
| 7. Mr. John Njoro             | – | Serjeant-At-Arms                 |
| 8. Mr. Vitalis Augo           | – | Office Assistant                 |

**MIN.NO.NA/F&NP/2018/13: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 2.40 p.m with prayer from the Chairperson. He then welcomed the meeting to deliberate on the agenda.

**MIN.NO.NA/F&NP/2018/14: CONFIRMATION OF MINUTES**

Agenda deferred.

**MIN.NO.NA/F&NP/2018/15: CONSIDERATION OF COMMITTEE STAGE AMENDMENTS TO THE INSURANCE (AMENDMENT) BILL, 2018**

The meeting proposed the following amendments to the remaining Clauses of the Bill:-

**Clause 10**

Section 156(1) – delete

(2) – the Legal Counsel was tasked to redraft the sub-clause and present it to the Committee for approval.

(3) amend as follows:-

“An intermediary who contravenes subsection (2) shall be liable to a penalty not exceeding one million shillings on each contravention, payable to the Policy Holders Compensation fund.”

(4) – Agreed to

(5) – Agreed to

(6) – Amend by inserting the following new paragraph, “pay the commission due.”

**Clause 11** – Agreed to

**Clause 12**

Section 204A

(1) - Agreed to

(2) – Agreed to

(3) – Agreed to

Section 204B

(1)(a) – Agreed to

(b) – Agreed to

(c) – Agreed to

- (d) – Agreed to
- (2) – Agreed to
- (3) (a) – Agreed to
- (b) – Agreed to
- (4) – Agreed to
- (5) – Agreed to
- (6) – Agreed to

## **NEW CLAUSES**

1. The Secretariat was directed to seek for Insurance Regulatory Authority's comment and do further research on Britam's proposal to amend Section 69. They had proposed that:-
  - a. Section 69 of the Principal Act is amended (a) in subsection (1) by deleting the words "subject to subsection (2)" and the words "or bonus or share in the valuation surplus in respect of long term insurance business"
  - b. (b) by deleting subsection (2)
2. Britam's proposal to amend section 87(2) by inserting the words "or email or other electronic or telecommunication mode" immediately after the word post was agreed to by the Committee.
3. Britam's proposal to insert the words "tied agents" in Sections 151 and 154 was rejected by the Committee as it would edge brokers out of business.
4. Britam's proposal to amend section 199 by inserting the words "or email or other electronic mode" was agreed to by the Committee.
5. The Secretariat was tasked to find a suitable place where Association of Insurance Brokers of Kenya's proposal can be contained in the Bill. They had proposed the following new clause:-

"an insure and any officer or director of an insurer who pays any commission or who gives any rebate or discount to any person pursuant to a contract of insurance which was procured directly without the involvement of an agent or broker is guilty of an offence and is liable on conviction to a fine not exceeding five million shillings or to a term of imprisonment for three months or both."
6. On the National Hospital Insurance Fund's proposal that "the National Hospital Insurance Fund should be allowed to operate like any other medical insurance service provider for its members and should be restructured to fully comply with the Insurance Act Chapter 487", the secretariat was tasked to:-
  - a. Find out whether the NHIF Act allows them to operate as conventional insurance companies.

- b. Find out from the Insurance Regulatory Authority and the National Treasury what NHIF is doing that is attracting many Kenyans to them.

**MEMBERS' DELIBERATIONS**

The meeting agreed that all pending matters on the Bill will be considered in the next meeting before adopting the report.

**MIN.NO.NA/F&NP/2018/16: ADJOURNMENT**

There being no other business to deliberate on, the meeting was adjourned at 6.27pm. The next meeting will be held on Tuesday, 23<sup>rd</sup> October, 2018 at 9.30am.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED .....  ..... DATE 28/11/18 .....

**MINUTES OF THE 3<sup>RD</sup> SITTING OF THE REPORT WRITING RETREAT OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON SATURDAY, 20<sup>TH</sup> OCTOBER, 2018 AT GRAND ROYAL SWISS HOTEL, KISUMU COUNTY AT 9.00AM**

---

**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Christopher Omulele, MP
3. Hon. Daniel E. Nanok, MP
4. Hon. Andrew A. Okuome, MP
5. Hon. David M. Mboni, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Joseph M. Oyula, MP
8. Hon. Joshua C. Kandie, MP
9. Hon. Purity W. Ngirici, MP
10. Hon. Samuel Atandi, MP
11. Hon. Stanley M. Muthama, MP

**APOLOGY**

1. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
2. Hon. Jimmy O. Angwenyi, MP
3. Hon. Shakeel Shabbir Ahmed, MP
4. Hon. Abdul Rahim Dawood, MP
5. Hon. Dr. Enoch Kibunguchy, MP
6. Hon. Mohamed A. Mohamed, MP
7. Hon. Lydia H. Mizighi, MP
8. Hon. Edith Nyenze, MP

**INATTENDANCE**

**SECRETARIAT**

- |                               |   |                                  |
|-------------------------------|---|----------------------------------|
| 1. Ms. Florence Atenyo-Abonyo | – | Director, Committee Services     |
| 2. Ms. Leah Mwaura            | – | First Clerk Assistant/Lead Clerk |
| 3. Ms. Jennifer Ndeto         | – | Principal Legal Counsel 1        |
| 4. Ms. Laureen Wesonga        | – | Third Clerk Assistant            |
| 5. Mr. Josephat Motonu        | – | Fiscal Analyst                   |
| 6. Ms. Beatrice Auma          | – | Administration Assistant         |
| 7. Mr. John Njoro             | – | Serjeant-At-Arms                 |
| 8. Mr. Vitalis Augo           | – | Office Assistant                 |

**MIN.NO.NA/F&NP/2018/9: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 9.15 a.m with prayer from the Chairperson. He then welcomed the meeting to deliberate on the agenda.

**MIN.NO.NA/F&NP/2018/10: CONFIRMATION OF MINUTES**

Agenda deferred.

**MIN.NO.NA/F&NP/2018/11: CONSIDERATION OF COMMITTEE STAGE AMENDMENTS TO THE INSURANCE (AMENDMENT) BILL, 2018**

With regards to the above mentioned Bill, the Committee was briefed that the Bill was seeking to amend the Insurance Act to address the adverse selection and high costs of loss assessment related to traditional indemnity-based agriculture insurance by providing for index based insurance as an alternative with an intention to reduce moral hazard, adverse selection, underwriting and claim assessment costs while speeding up claim settlements.

The Committee was further informed that the Bill was seeking to amend the Act by introducing a legal provision creating offences on insurance fraud, including penalties intended to address the problem of insurance fraud that continues to be a major challenge to the stability of the insurance industry in the country. In addition, the amendment would ensure that the Act complies with international Association of insurance Supervisors (IAIS) standards on countering insurance fraud.

The Committee was then taken through the Bill, clause by clause as they proposed amendments.

The Committee considered and proposed the following amendments to the Bill: -

**Clause 2** – Amend Clause 2 by: -

Remove the phrase “low income” from the definition of micro-insurance.

Delete the definition of “insurance fraud”

Sub-clause 2(b) – Agreed to

**Clause 3**

Amend section 5A (1) by replacing the words any member with “the regulated entity’s Principal Officer.”

Section 5A(2) – Agreed to

**Clause 4** – Secretariat was tasked to seek for clarity and research further on the Clause.

**Clause 5** – Secretariat was tasked to seek for clarity and research further on the Clause.

**Clause 6** – Agreed to

**Clause 7** – Agreed to

**Clause 8** – Agreed to

**Clause 9**

Sub-clause 9(a) – Agreed to

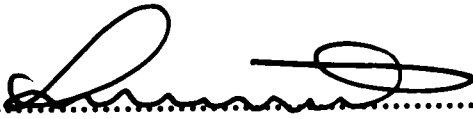
Sub-clause 9(b) – Agreed to

**MIN.NO.NA/F&NP/2018/12: ADJOURNMENT**

There being no other business to deliberate on, the meeting was adjourned at 1.45pm. The next meeting will be held the same day at 2.30pm.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED .....  ..... DATE..... 28/11/18 .....



**MINUTES OF THE 59<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 9<sup>TH</sup> AUGUST, 2018 IN SMALL DINING, NEW WING, MAIN PARLIAMENT AT 9.30 AM**

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**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Dr. Enoch Kibunguchy, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Lydia H. Mizighi, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Purity Ngirici, MP
11. Hon. Samuel Atandi, MP
12. Hon. Stanley M. Muthama, MP

**APOLOGY**

1. Hon. Alfred Sambu, MP
2. Hon. Shakeel Shabbir Ahmed, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. David M. Mboni, MP
6. Hon. Mohamed A. Mohamed, MP

**INATTENDANCE**

**SECRETARIAT**

- |                          |   |                                    |
|--------------------------|---|------------------------------------|
| 1. Ms. Leah Mwaura       | - | Senior Clerk Assistant/ Lead Clerk |
| 2. Ms. Jennifer Ndeto    | - | Legal Counsel                      |
| 3. Ms. Lauren Wesonga    | - | Third Clerk Assistant              |
| 4. Mr. Josephat Motonu   | - | Fiscal Analyst                     |
| 5. Mr. Collins Mahamba   | - | Audio Officer                      |
| 6. Mr. John Njoro        | - | Serjeant-At-Arms                   |
| 7. Mr. Vitalis Augo      | - | Office Assistant                   |
| 8. Ms. Catherine Waireri | - | Intern                             |

**APA INSURANCE LTD.**

- |                           |   |  |
|---------------------------|---|--|
| 1. Mr. Vinod Bharatan     | - | Chief Executive Officer                                |
| 2. Mr. Luke Magambo       | - | GM, Finance, Heritage Insurance                        |
| 3. Mr. George M. Nyambuti | - | Credit Control Manager, Jubilee Insurance Company Ltd. |
| 4. Mr. John Kigochi       | - | Chief Finance Officer                                  |

**INSURANCE REGULATORY AUTHORITY**

- |                        |   |                                     |
|------------------------|---|-------------------------------------|
| 1. Mr. Wilson Wachira  | - | Head Composite Insurers Supervision |
| 2. Mr. Joseph Owuor    | - | Senior Supervision Officer          |
| 3. Ms. Jemimah Mwaniki | - | Senior Legal Officer                |

**BRITAM HOLDINGS PLC**

- |                       |   |                          |
|-----------------------|---|--------------------------|
| 1. Mr. Ambrose Dabani | - | Chief Executive Officer  |
| 2. Mr. Dennis Mworira | - | Chief Operations Officer |
| 3. Ms. Carol Misiko   | - | Group Chief Risk Officer |
| 4. Ms. Rachel Mwenda  | - | Head of Legal            |

#### **BIMA INTERMEDIARIES ASSOCIATION OF KENYA**

- |                          |   |                  |
|--------------------------|---|------------------|
| 1. Mr. Washington Ndegea | - | Chairman         |
| 2. Mr. Benard Oduge      | - | Committee Member |

#### **ASSOCIATION OF INSURANCE BROKERS OF KENYA**

- |                        |   |   |
|------------------------|---|---|
| 1. Mr. N. Omolo        | - | Chairman                                |
| 2. Mr. Eliud Adiedo    | - | CEO                                     |
| 3. Mr. Anthony Mwangi  | - | Vice-Chairman                           |
| 4. Mr. Jocham Arwa     | - | Managing Partner, Rachier & Amollo Adv. |
| 5. Mr. John Lagat      | - | Treasurer                               |
| 6. Mr. Dennis Nyongesa | - | Board Member                            |
| 7. Mr. Ahmed Abdi      | - | Board Member                            |
| 8. Mr. Tom Mulwa       | - | Board Member                            |

#### **KIPKENDA AND CO. ADVOCATES**

- |                          |                   |
|--------------------------|-------------------|
| 1. Mr. Stephen Kipkenda- | Senior Partner    |
| 2. Mr. Ian K. Tum        | - Legal Assistant |

#### **Agenda**

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Stakeholder engagement on the Insurance (Amendment) Bill, 2018 and the Capital Markets (Amendment) Bill, 2018**
11. Adjournment

#### **MIN.NO.NA/F&NP/2018/331: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 9.45a.m. with prayer from the Chairperson. He then called for introductions of those present before welcoming APA Insurance Ltd to present their memorandum to the Committee.

#### **MIN.NO.NA/F&NP/2018/332: CONFIRMATION OF MINUTES**

Agenda deferred

**MIN.NO.NA/F&NP/2018/333: MEETING WITH APA INSURANCE LTD ON THE INSURANCE (AMENDMENT) BILL, 2018**

Mr. Bharatan, the CEO of APA Insurance Ltd informed the meeting that they were in support of the Bill.

They proposed the following amendments:-

**Clause 10**

**Comments/Proposals**

1. The amendments will ensure all insured premium is received by the underwriters, risk coverage confirmed and in case of a loss, the issues surrounding premium payments and validity of cover are avoided. This amendment foremost protects the insured Mwananchi and should be supported by all the insurance stakeholders of goodwill.
2. The premium paid is used to buy reinsurance protection, pay for claims, pay service providers, pay commissions, meet management expenses, pay taxes etc. From IRA statistics, approximately 60% of the premiums are used to settle claims and hence it is paramount to ensure the premium is promptly received by the insurer.
3. The role of the intermediary should be technical advice to the clients both for the risks to be covered and in the claims process and not handling the monies. The intermediary's compensation as defined in the Insurance Act is commissions which the insurers pay to them and that is what the Insurance Act behooves.
4. It is public knowledge that some insurance brokers have misused client's premium leaving them unduly exposed in the event of a loss. Some of the brokers have gone down with huge premium sums unremitted whilst others move from one insurer to the other leaving a trail of debts. This has also been reported for some counties and parastatals and indeed there are cases pending in courts and at IRA for arbitration. This bill not only cures the premium remittance issue but also any corruption tendencies that might be abated through channeling premium via intermediaries.
5. Under the Risk Based Capital regime, insurance companies are required to maintain a certain level of Capital Adequacy Ratios (200% CAR by June 2020). In arriving at the solvency levels, outstanding premiums attracts near 100% capital charge. At the moment, the industry is owed close to Kshs 40 Billion (read capital required from insurers). These solvency requirements have driven many insurance companies to the verge of being closed down and the Amendment Bill will secure the future of our insurance industry as it brings back public confidence, solvency levels will be strengthened and forestall any closures that leave policyholders and claimants unduly exposed.
6. By enacting the Bill, we anticipate growth in the insurance penetration as insuring public will have their confidence restored as the ambiguity of insurance premium payment will be done away with and claims will be considered expeditiously as per the policy issued.
7. They therefore fully support the amendments that are timely at this critical moment of implementing Risk Based Capital, IFRS 9 (Financial Instruments) and the impending IFRS 17 (Insurance Contracts) and strongly believe will further transform the insurance sector. We will be joining other countries like Nigeria, Ghana, Tanzania and Uganda that have adopted similar insurance payment legislations.

**MEMBERS' DELIBERATIONS**

1. They supported Clause 10 because, if the excise duty of 0.05% on money transfer of Kshs. 500,000 becomes law, money passing through intermediaries will result in increased costs.
2. If Clause 10 becomes law, brokers will not be eliminated, they will offer investment advice to their clients and act as a link between the clients and insurance companies.
3. Currently, some brokers deduct their commissions while others do not. It depends on the agreement between the broker and the insurance company.
4. IRA officials informed the meeting that it was only in Kenya that intermediaries were receiving premiums on behalf of the client. They promised to do a substantive analysis on the same and present their findings to the Committee.

**MIN.NO.NA/F&NP/2018/334: MEETING WITH BRITAM HOLDINGS PLC ON THE INSURANCE (AMENDMENT) BILL, 2018**

The Chairperson called for introductions of those present before inviting Britam Holdings PLC to make their submissions.

Britam Holdings PLC proposed the following amendments:-

**Clause 2**

Britam Holdings PLC proposed the following amendments under Section 2:

- (i) By deleting the current definition of a broker and intermediary and inserting the following new definition:

**Broker**, in relation to an insurer or reinsurer, means a person-

- a) Who carries on the business of arranging contracts of insurance (whether or not the business is the person's principal business or is carried on in connection with any other business); and
- b) Who is not an employee of the insurer or reinsurer; and
- c) Who is not appointed, under signed agreement and agent of the insurer for the purposes of receiving money due to the insurer from the insured and due from the insured to the insurer; and
- d) Whose fiduciary duty is to the client.

**Intermediary** refers to a broker, Independent Agent or tied agent.

- (ii) By deleting the definition of an agent.
- (iii) By introducing the following new definitions:

**Commission** refers to the payments to an intermediary made by an insurer or reinsurer to reward the intermediary for selling and servicing its products. The commission amount varies and depends on the type and size of the contract as defined in the Eleventh Schedule. A commission can be paid when the contract is taken out (initially) and/ or over the duration of the contract (renewal) as a proportion of the premium, contribution, deposit or the fund size.

**Independent Agent** refers to a person, corporate or a natural, who not being a salaried employee of an insurer or reinsurer who in consideration of a commission, solicits or procures insurance business for one or more insurer(s); broker(s) or insured(s) and subsequently owes such persons a fiduciary duty.

**Tied Agent** refers to a natural person, who not being a salaried employee of an insurer or reinsurer and who in consideration of a commission, solicits or procures insurance business for a single insurer or a single insurance group and subsequently owes such a person a fiduciary duty.

**Justification**

They stated that the new definitions of broker, independent agent and tied agent provide greater clarity on distinguishing on whose authority each class on intermediary acts. This defines a formidable fiduciary obligation on whose behalf on intermediary works for and subsequently promotes accountability amongst the intermediary network. The other definition of commission also seeks to define the definition of commission which is ardently missing from the Principal Act.

### **Clause 3**

They proposed that Section 5(A) is deleted in its entirety and replaced therewith by the following:

5(A) (1) The Commissioner may direct the Insurance Group through the regulated entity's Principal Officer to provide any information necessary for effective group-wide supervision save for where the Insurance Group is already a regulated entity in which case the Commissioner shall request for this information through the respective regulator.

(2) Information necessary shall relate to information that demonstrably relates to the safeguarding of the policyholders' interests.

(3) The provision of this section shall not limit a Commissioner from requesting for information on an Insurance Groups capital adequacy in so far as it's regulated entity is non-compliant to the Risk Based Capital Framework.

### **Justification**

Section 5A(1) and (2) authorizes the Commissioner of Insurance to direct any member of the group to provide any information necessary for effective group wide supervision and penalizes such member or holding company with penalties under the Insurance Act for any breach or failure to comply to such directive.

They proposed the deletion of this section in its entirety as it creates ambiguity as it does not define who a member of the group refers to- Is it a Director? Officer? Managing Director? In addition, it does not define the nature and type of information requested for.

The proposed amendment seeks to provide clarity on the nature of information and the mode in which such information will be collected including appointing the contract officer as the Principal Officer of the regulated entity.

### **Clause 12**

They proposed deleting in its entirety the proposed new Section 204(A) on the Power of the Authority to Settle

### **Justification**

They proposed to delete the section in its entirety as the amendment:

- (i) Does not properly define the nature and scope of the complaint to be lodged- is it a service complaint or a contract complaint?
- (ii) Usurps arbitration which is the dispute resolution mechanism proposed in the Insurance Contacts
- (iii) Does not define the qualification of the officers charged with resolving disputes- do they have the requisite qualifications to resolve disputes?
- (iv) Negates the right to appeal to a tribunal that is not set up and therefore governed by specific rules and procedures. Tribunals are set up through an Act of the Parliament. In

addition, the appeal from a decision of a Tribunal takes the form of a Judicial Review. This is not explicitly in place and thus would be prejudicial to the insurance company.

### **Clause 13**

They proposed inserting a new clause 13 which states that:

- a) Section 69(1) of the Principal Act is amended by deleting the following words, “Subject to subsection (2)” and “or bonus or of a share in the valuation surplus in respect of long term insurance business”
- b) Section 69(2) of the Principal Act is deleted in entirety.

### **Justification**

The Amendment deletes part of Subsection 1 on restriction on the payment of bonuses or payments from a share in the valuation surplus in respect of long term business. These restrictions were principally only applicable to long term insurance companies and are not technically (actuarial calculations) supported.

The definition of subsection (2) seeks to create uniformity and negate a contradiction to the proposed amendments under Sub-section (1).

These amendments thus ensure uniformity in long term and short term insurance.

### **Clause 14**

They proposed an amendment in the Bill by inserting a new clause 14 that introduces e-policies:

- a) Section 87(2) of the Principal Act is amended by inserting the following words immediately after the word post “... e-mail or other electronic or telecommunication mode”
- b) Section 199 of the Principal Act is amended by inserting the following words immediately after the word post “... e-mail or other electronic or telecommunication mode”
- c) Inserting a new section 199A as follows:  
199A. An insurer may offer insurance in electronic (e) or telecommunication (t) mode through e/t-applications and e/t-proposals. In such instances, an applicant for insurance will consent to such application through e/t-signature.
- d) Inserting a new section 199B as follows:  
199B. The Cabinet Secretary may make regulations, prescribing all matters which are required and permitted to govern e/t-transactions in the insurance sector, or which in his opinion are necessary, desirable or convenient to be prescribed, to give full effect to this Section 199.

### **Justification**

The amendment seeks to align the Act to modern market trends that recognize electronic contracts. With regard to the business environment and specific interest on the insurance business, information technology and communication has and should continue to have a significant impact. It is therefore not definite that the insurance sector is not insulated from the rise in technologies and improving the connectivity between business and customers with each other.

In Kenya, the Insurance Regulatory Authority (IRA) is mandated to promote the development of the insurance sector and has continued to adopt new technologies. However, the IRA has not been successful as other sectors, for instance banking, in exploiting the use of technological

devices such as use of mobile phones and internet which have experienced a high penetration to increase the insurance penetration.

One major technological advancement in the insurance sector that seek to exploit the above technological devices and increase insurance penetration while moving towards less or zero paper include the use of e-signatures and e-documents.

### **Clause 15**

They proposed an amendment in the Bill by inserting a new clause 15 that amends the Principal Act as follows:

- a) Section 151(A) of the Principal Act is amended by inserting the word “**Tied**” immediately before the word Agent.
- b) Section 154 of the Principal Act is amended by inserting the following word “**Agent**” wherever it appears and substituting thereof with the word “**Independent Agent**”

### **Justification**

The current Act has no reference to a tied or independent agent. To align with the definitions that were proposed, they also aligned the nature of the contractual appointment by defining that of a Tied Agent in Section 151(1A) and Section 154.

This amendment provides clarity on the appointment of a tied agent and independent agent.

### **Clause 16**

They proposed an amendment in the Bill by inserting a new clause 16 that amends the Subsidiary Legislation as follows:

The Eleventh Schedule of the Principal Act is amended by deleting parts of Section 4: Superannuation Business (Including Group Life Policies) on entirety in relation to Term Assurances and Deposit Administration as follows

- (i) Term Assurances - 10% of premium
- (ii) Deposit Administration - 1% procuration commission on amounts deposited on the first year and every successive year up to the tenth year.

### **Justification**

Currently the 11<sup>th</sup> schedule allows for a commission rate of 8% of premium and a Deposit Administration commission of 1% on amounts deposited on the first year.

This amendment seeks to create uniformity by advancing a similar compensation structure for superannuation business as is payable under Ordinary Life and General Insurance business and accords equity to intermediaries servicing superannuation business.

### **MEMBERS' DELIBERATIONS**

1. On why they had left out Section 5A(2) of the Bill, they informed the Committee that IRA has the powers to enact the provisions of the Sub-clause even if it is not in law.
2. They proposed the deletion of Section 5A(1) because information about the group is still accessible to IRA through public filings and submissions made in terms of corporate governance. The provision in the Bill is not clear on who in the insurance company can provide information to the Commissioner.
3. Britam officials informed the meeting that a broker is appointed by the client to source for the appropriate insurance that they need from the market.

4. Emailing policies to clients will not affect the work of brokers because policies are currently sent directly to clients via post and not through brokers. The emailing will be in addition to the hard copies sent via post.
5. Britam officials informed the meeting that there are independent and tied agents. If a premium is paid through the tied agent it is as good as paid to the insurance company and the insurer will take responsibility of it if it is not submitted. The reverse is true in the case of an independent agent.
6. On limiting the amount paid to managers, CEO's or directors, they informed the meeting that market forces should take their course but this should not be provided for in the law.
7. In a scenario where a client pays premiums in instalments, they informed the meeting that the policy document will spell out how payments can be made in a way that the client will be covered within the period.
8. They were of the opinion that a penalty of Kshs. 5,000,000 is too high.

**MIN.NO.NA/F&NP/2018/335: MEETING WITH BIMA INTERMEDIARIES ASSOCIATION OF KENYA ON THE INSURANCE (AMENDMENT) BILL, 2018**

The Chairperson called for introductions of those present before inviting BIAK to make their submissions.

They proposed the following amendments:-

**Clause 10**

They rejected repealing and replacement of section 156 of Cap 487.

**Justification**

They quoted the measures taken by Insurance Core Principals (ICP's) to counter insurance premiums mishandlings including:

1. Working with relevant industry or trade associations to encourage and maintain an industry wide approach to deterring, preventing, detecting, reporting and remedying fraud AND
2. The establishment of antifraud committees consisting of industry or trade organizations, law enforcement agencies, other supervisors, other authorities, and possibly consumer organizations as platform to address fraud in insurance- for example, by discussing trends, risks, policy issues, profiles and modus operandi.

They proposed that better proposals to counter fraud in the insurance sector should be sought than repealing a whole section in the Insurance Act. They would have preferred that proposals be made to work with the various associations in the insurance sector like BIAK to counter fraud perpetrated by agents. They have repeatedly asked for the same since 2014 but have always been rebuffed by the IRA.

1. They stated that this proposal has the capacity to erode the gains that have been made in the insurance industry. The insuring public has long dealt with some of them who have been in the industry for decades and have built up portfolios and trust over time. Their clients trust them explicitly with their business and their premiums, but the new directive has the potential to cast doubt as to their professionalism. Proposals not to receive premiums on behalf of the insurer will make their selling of insurance hard because:
  - i. They don't expect clients to start lining up at the halls of insurance companies to pay premiums.
  - ii. Not every client can issue a cheque and most of them prefer cash transactions.

- iii. An insurance cover paid for by M-pesa or other cashless means takes a long time to be reconciled in the books of the insurer, such that a client can take a whole day before the payments have been located. This is very inconveniencing to say the least.
2. They stated that insurance fraud is perpetrated by a few bad apples in the insurance sector, and people who are known. But they could not take action against them in their association because that exceeds their mandate. Attempts to be empowered to deal with them by IRA has not borne any fruit.
3. They claimed that the Act is criminalizing an act yet the industry has not tackled other friendly means to counter fraud.
4. They noted the aspects of banks having come into the insurance industry and felt that they could be behind the attempts to make life hard for thousands of agents in this country by making proposals that will be hard to meet so that we can leave the industry. The Insurance Act has been repealed and amended in favor of banks and that was also done behind their backs with no stakeholder consultation.
5. The aim of any amendment in the Insurance Act should be to improve insurance penetration, but the latest acts and proposals are seriously going behind the same.
6. Fraud can also be countered by continuous education of the agent, as they do at their organization, however, they need the support of the government in doing that. They proposed that a program could be rolled out by IRA in continuously educating the agent in conjunction with BIAK so that there can be more professional insurance agents who will significantly improve insurance penetration and project a good name for the insurance industry.
7. The principal-agent rules in the Law of Agency say that an agent represents the principal and has the sole mandate of the agents behavior. Insurance companies in Kenya know how they deal with insurance agents for purpose of insurance business, and all that is lacking is an independent organization like BIAK to help in the same.
8. The current proposal on insurance fraud is a kneejerk reaction and over reacting to the problem of fraud, and as we say it's like responding to a mosquito bite with a hammer to kill the mosquito.

#### **MEMBERS' DELIBERATIONS**

1. On whether IRA recognizes the brokers' associations, IRA officials informed the meeting that they collaborate with them and usually have engagements though IRA does not regulate them. They instead provide them with market conduct guidelines to offer guidance to the industry.
2. BIAK informed the meeting that their members are not involved in fraud. They know the bad elements in the industry but they have not been empowered by law to deal with them.

#### **MIN.NO.NA/F&NP/2018/336: MEETING WITH ASSOCIATION OF INSURANCE BROKERS OF KENYA ON THE INSURANCE (AMENDMENT) BILL, 2018**

The Chairperson called for introductions of those present before inviting AIBK to make their submissions.

They proposed the following amendments:-

#### **Clause 2**

Definition of '*Index based insurance*'.

They proposed that either the indices be explicitly mentioned and/or the specific examples or categories be mentioned but in a way that leaves the categories open to permit addition of new typologies in future.

### **Justification**

The justification for the proposed changes is to provide additional clarity and eliminate the possibility of inappropriate indices and/or typologies being added through interpretation by the courts on a case by case basis.

### **Definition of 'Micro-Insurance'**

They proposed that the term low income population be removed and replaced by a terminology that has precise meaning. Low-income is a relative term. While for some people annual salary of Kshs. 600,000 is high, for others a annual salary of Kshs. 12,000,000 is too low. We suggest the use of the term insurance policies accessible to persons with annual income of Kshs. 300,000 and below.

### **Justification**

Lack of terminological clarity in legislations opens the door for gross interpretational abuse by the courts, in ways that undermine the utility of the legislation.

### **Definition of 'Insurance fraud'**

The word "**unfair**" is subjective and therefore amenable to different interpretations depending on the persons concerned. It is not defined in the Act itself. What is classified as "**unlawful gain**" may also give rise to different interpretations. Where for example a person presents a false claim in the name of another person can it be said that the person presenting the false claims has received a gain when the payment is actually sent to someone else? Finally, the use of the term "victim" is also unclear. Where, for example, a policy is insured with A, but re-insured with B, and where a fraudulent claim is lodged in connection therewith, who is the victim? In Subsection (1) insert the following Proviso thereto: *Provided that where the premium guaranteed to be paid by such person and in such manner as may be prescribed is not paid within the prescribed time or in the prescribed manner, then the Insurer shall be entitled to cancel the insurance policy upon giving the Insured a thirty (30) day notice which notice shall be sent to the Insured directly and shall not be sent through postal or other address belonging to a Broker; and provided also that no Insurer shall give Insurance Credit for a period exceeding Fourteen (14) Days*

### **Justification**

They proposed to have the definition amended to simplify but broaden the meaning of Insurance Fraud to cover forms of deception, as well as fraudulent activities and representations designed to secure unlawful advantage in connection with an insurance claim.

### **Clause 10**

They proposed to retain the current section 156 of the Insurance Act but review it in line with the revised insurance cash-and-carry policy and also to entrench new rules designed to effectuate and strictly enforce the insurance cash-and-carry rules but which also take into account the practical realities of the insurance business in Kenya today. we are convinced that criminalization of premium handling by any other intermediary other than the underwriters directly will send a wrong signal to the insurance market and frustrate all efforts aimed at

enhancing insurance penetration. We propose new additional provisions to section 156 that are designed to strengthen the legal framework for cash-and-carry rule. These include the proposed subsections (15) (16) and (17) Section 204B (1) A person other than a person licenced under this Act is guilty of an offence of insurance fraud where knowingly, by act or omission with intent to injure, defraud or deceive: (a) (b) (c) (d) ..... (4) *an Insurer and any officer or director of an Insurer who pays any commission or who gives any rebate or discount to any person pursuant to a contract of insurance which was procured DIRECTLY without the involvement of an Agent or Broker is guilty of an offence and is liable on conviction to a fine not exceeding five million shillings or to a term of imprisonment for three (3) months or both.*

**Justification**

The purported repeal of the current Section 156 of the Insurance Act ignores the fact that the problem of delayed payment of premiums does not result from any demonstrable weakness of Sec.156 as it is currently but rather from the absence of effective enforcement mechanism for the said Sec.156.

**Section 156 of the Principal Act is amended as follows:**

- (a) In subsection (1) by inserting the following proviso thereto provided that where the premium guaranteed to be paid by such person and in such manner, as maybe prescribed is not paid within the prescribed time or in the prescribed manner then the insurer shall be entitled to cancel the insurance policy upon giving the insured a thirty day notice which notice shall be sent to the insured directly and shall not be sent through postal or other address belonging to a broker; and provided also that no insurer shall give Insurance Credit for a period exceeding fourteen days.
- (b) In Sub-section 6 by deleting the current sub-section 6 and replacing it with the following subsection (6).
- (6) Subject to subsection (1) a broker shall remit to the insurer all premium payments received from a client within a period of not more

**Justification**

- 1. The purported repeal of the current Section 156 of the Insurance Act actually criminalizes insurance brokerage business and sends wrong signals to the insuring public in ways that threaten the entire insurance industry including penetration levels.
- 2. There is no distinction between an Insurance Agent and an Insurance Broker with clearly defined roles as is currently the case in the existing Law. The new Sec.156 intended to supplant the current Sec.156 does not properly balance the rights of Insurers.

**Clause 10(4)**

Any Agent or Broker or any officer or director thereof who contravenes sub-section (6) shall be guilty of an offence and upon conviction shall be liable to a fine of not less than twice the aggregate sum of premiums not remitted within the prescribed time and/or imprisonment for a term of three (3) months or both

**Justification**

This is a tidier way of ensuring adherence to the law and remittance of premium without curtailing operations.

**Clause 10(5)**

An Insurer shall pay a Broker insurance commission due to him within Thirty (30) Days upon receipt of premium. Provided that all commissions payable to a Broker within any calendar month may be aggregated by an Insurer in which case the aggregate commissions due to the Broker shall be paid **not later than the 5th day of each succeeding month.**

**Justification**

The purported amendment did not foresee the impracticability of paying commissions every thirty days on business that is transacted on a daily basis.

**Section 204B**

They proposed that section 204B should be amended to separate criminal liability of intermediaries from criminal liabilities of other persons including the insured.

**Justification**

The justification for the proposed changes is that if the criminal liability of intermediaries is not separated from that of other unlicensed persons including the insured's them. We end up with a situation in which any fraudulent activity, involving an intermediated transaction will always implicate the intermediary even in situations where the intermediary may not have had any role in the crime and even in situations where the intermediary cannot prevent the commission of the crime.

**New Clause**

They proposed to introduce a new clause which reads as follows: *"an insurer and any officer or director of an insurer who pays any commission or who gives any rebate or discount to any person pursuant to a contract of insurance which was procured directly without the involvement of an agent or broker is guilty of an offence and is liable on conviction to a fine not exceeding five million shillings or to a term of imprisonment for three months or both"*.

**Justification**

The justification for the proposed amendment is to ensure that fraudulent and corrupt activities associated with direct procurement are brought within regulation.

**MEMBERS' DELIBERATIONS**

1. Currently, brokers enter into agreements with insurance companies on the time within which they are supposed to remit premiums. In some cases, it is the client that delays to pay the premium and not the intermediaries.
2. They suggested that the timeline for the submission of premiums by intermediaries should be set at 14 days and a penalty paid for every single day that an intermediary stays with the money if it is confirmed that the money was paid to them.
3. In their opinion, removing intermediaries from the insurance business is a conspiracy between public bodies and insurance companies where insurance will be sold to companies by tied agencies and the commission shared between the insurance companies and public companies.

**MIN.NO.NA/F&NP/2018/337: MEETING WITH KIPKENDA AND CO. ADVOCATES ON THE INSURANCE (AMENDMENT) BILL, 2018 AND THE CAPITAL MARKETS (AMENDMENT) BILL, 2018**

The Chairperson called for introductions of those present before inviting Kipkenda and Co. Advocates to make their submissions.

They proposed the following amendments:-

**On the Insurance (Amendment) Bill, 2018**

**Clause 12, Section 204A.**

An addition that the clause should include the manner of presenting such complaints or that the Cabinet Secretary shall prescribe the manner of presenting such complaints.

**Justification**

The procedure should be simple and convenient to policyholders as a way of ensuring access to justice.

**Change “Minister” to “Cabinet Secretary”**

The Insurance Act, (in this Act referred to as the “principal Act”), is amended by deleting the word “Minister” wherever it appears and substituting therefor the words “Cabinet Secretary”

**Justification**

To bring legislative harmony in the interpretation of the law and certainty in referring to the head of a ministry. This can also be achieved by amending the definition section to state that “Minster” means “Cabinet Secretary” in order to bring clarity to the terminology.

**Proposed amendments to the Capital Markets (Amendment) Bill, 2018**

**Section 30D**

There is need to recast the section to include the offence of facilitating and/or omitting to prevent the furnishing or publishing of information known to be untrue, incorrect or misleading in a prospectus. This should in turn be harmonized with the provisions of section 34B of the Act.

**Change “Minister” to Cabinet Secretary”**

The Capital Market Authority Act, is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

**Justification**

This is to bring legislative harmony in interpretation of the law and certainty in referring to the head of a ministry.

**MEMBERS’ DELIBERATIONS**

1. Their presentation was clear and to the point.
2. The Chairperson thanked them for being keen and participating in the legislative process.

**MIN.NO.NA/F&NP/2018/338: ADJOURNMENT**

The Chairperson informed the Committee that there will be a meeting with the National Treasury on Tuesday, 14<sup>th</sup> August, 2018 to consider the Finance Bill, 2018, the Insurance (Amendment) Bill, 2018 and the Capital Markets (Amendment) Bill, 2018. The Committee will then proceed to a report writing retreat for the three Bills in Mombasa from Tuesday, 14<sup>th</sup> to Sunday, 19<sup>th</sup> August, 2018.

**MIN.NO.NA/F&NP/2018/338: ADJOURNMENT**

There being no other business to deliberate on, the meeting was adjourned at 1.45pm.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED .....  ..... DATE. 28/11/18 .....