

Approved for tabling  
D. Oyler  
04/10/2023



REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

THIRTIETH PARLIAMENT – SECOND SESSION – 2023

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON:

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

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 04 OCT 2023	wed. 4/10/23
TABLED BY:	Chairperson, finance Committee, Hon. Francis Kuma
CLERK AT THE DESK:	Mudo

CLERKS CHAMBERS  
DIRECTORATE OF DEPARTMENTAL COMMITTEES  
PARLIAMENT BUILDINGS  
NAIROBI

OCTOBER 2023

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## **CHAIRPERSON'S FOREWORD**

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

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

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

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

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

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

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

## PART I

### 1 PREFACE

#### 1.1 ESTABLISHMENT OF THE COMMITTEE

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

#### 1.2 MANDATE OF THE COMMITTEE

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

### 1.3 COMMITTEE MEMBERSHIP

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

#### **Chairperson**

Hon. CPA. Kuria Kimani, MP  
Molo Constituency

**UDA Party**

#### **Vice-Chairperson**

Hon. Amb. CPA. Benjamin Langat, CBS, MP  
Ainamoi Constituency

**UDA Party**

Hon. Adan Keynan, MP  
Eldas Constituency

**Jubilee Party**

Hon Andrew A. Okuome, MP  
Karachuonyo Constituency

**ODM Party**

Hon. David Mboni, MP  
Kitui Rural Constituency

**Wiper Party**

Hon. CPA Joseph Oyula, MP  
Butula Constituency

**ODM Party**

Hon. Joseph Kipkoros Makilap, MP  
Baringo North Constituency

**UDA Party**

Hon. Umul Ker Kassim, MP  
Mandera County

**UDM Party**

Hon. CPA Julius Rutto, MP  
Kesses Constituency

**UDA Party**

Hon. Shadrack Ithinji, MP  
South Imenti Constituency

**Jubilee Party**

Hon. Paul Biego, MP  
Chesumei Constituency

**UDA Party**

Hon. Joseph Munyoro, MP  
Kigumo Constituency

**UDA Party**

Hon. Dr. John Ariko, MP  
Turkana South Constituency

**ODM Party**

Hon. Mohamed Machele, MP  
Mvita Constituency

**ODM Party**

Hon. George Sunkuya, MP  
Kajiado West Constituency

**UDA Party**

#### 1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff

Mr. Benjamin Magut  
**Principal Clerk Assistant /Head of Secretariat**

Ms. Jeniffer Ndeto  
**Deputy Director, Legal Services**

Mr. Salem Lorot  
**Legal Counsel I**

Mr. Nebert Ekai  
**Clerk Assistant II**

Mr. Benson Kamande  
**Clerk Assistant III**

Mr. George Ndenjeshe  
**Fiscal Analyst III**

Ms. Terry Ondiko  
**Fiscal Analyst III**

Mr. Andrew Jumanne Shangarai  
**Principal Serjeant-At-Arms**

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

Ms. Shamsa A. Abdi  
**Research Officer III**

Ms. Nelly W. N Ondieki  
**Research Officer III**

Ms. Joyce Wachera  
**Hansard Officer III**

Mr. Benson Muchiri  
**Audio Officer II**

Mr. James Macharia  
**Media Relation Officer**

## PART II

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

#### 2.1 INTRODUCTION

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

#### 2.2 ANALYSIS OF THE BILL

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

*(1) Where upon examination of a return, reinsurance document or other document of or furnished by an insurer, it appears to the Commissioner that a deposit made under section 32, or the value of the assets of the insurer in Kenya, is disproportionately low in relation to the amount of insurance business carried on by that insurer in Kenya, or that it is in the opinion of the Commissioner desirable for the protection of policy-holders, the Commissioner may, after giving the insurer a reasonable opportunity of making representations, require the insurer to make an additional deposit of such sum as he shall specify not exceeding in the case of general insurance business twenty per cent, and in the case of long term insurance business ten per cent, of the premiums paid or payable in respect of policies of insurance issued in the financial year of the insurer immediately preceding the year in which the additional deposit is required to be made:*

*Provided that the total deposits including the additional deposit shall not exceed three million shillings in the case of general insurance business and three million shillings in the case of long-term insurance business.*

10. Clause 3 of the Bill seeks to insert a new section 67H providing for offences relating to the management of an insurer. It provides as follows—

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

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

commits an offence under this Act.

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

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

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

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

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

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

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

70. *Limitation of management expenses*

(1) No insurer shall spend in any financial year as expenses of management an amount in excess of the prescribed limits, and in prescribing those limits regard shall be had to the size and age of the insurer and the provision generally made for management expenses in the premium rates of insurers.

(2) The Commissioner may, in any year, after consultation with the **Advisory** Board, fix for the succeeding year the extent to which the limits prescribed in regulations may be relaxed, and an

*insurer shall not be deemed to have contravened the provisions of subsection (1) if his expenses of management referred to in that subsection are within those, relaxed limits.*

12. The definition “Advisory Board” was deleted by section 2 (a) of the Insurance (Amendment) Act, 2006. Section 3B of the Insurance Act provides for the establishment of Board of Directors of the Insurance Regulatory Authority. Further, section 2 of the Insurance Act defines “Board” to mean the Board of Directors of the Authority constituted under section 3B.
13. Clause 5 of the Bill seeks to amend section 150 of the Insurance Act in the marginal note by deleting the word “surveyors” and substituting it with the words “insurance surveyor”. Section 150 of the principal Act provides as follows—

*150. Only registered brokers, agents, risk managers, motor assessors, insurance investigators, loss adjusters, **surveyors**, medical insurance provider and claims setting agents to carry on business*

*(1) No person shall, after the expiry of three months from the appointed date, commence, transact or carry on in Kenya the business of a broker, agent, risk manager, motor assessor, insurance investigator, loss adjuster, **insurance surveyor**, medical insurance provider, or claims settling agent unless he is registered under this Act.*

*(2) No person shall, after the expiry of three months from the appointed date, use the name of broker, agent, risk manager, motor assessor, insurance investigator, loss adjuster, **insurance surveyor**, medical insurance provider or claims settling agent in a manner to give the impression that he is registered to commence, transact or carry on any such business, unless he is so registered.*

*(3) Nothing in this Act shall prohibit or otherwise render unlawful the continuance of the business of a risk manager, motor assessor, insurance investigator, loss adjuster, **insurance surveyor**, medical insurance provider or claims settling agent in Kenya in so far as it is necessary to complete any assignment which was undertaken before the appointed date.*

*(4) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings and, if the offence is a continuing one, to a further fine not exceeding one thousand shilling for every day during which the offence continues or to imprisonment for a term not exceeding one month or both.*

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

## PART III

### 3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

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

#### 3.1 INSURANCE REGULATORY AUTHORITY.

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

##### Section 40

17. The Authority supports the proposed amendment.

##### Justification.

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

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

##### Committee's decision

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

##### Section 67H

18. The Authority supports the proposed amendment.

##### Justification.

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

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

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

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

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

#### **Section 70.**

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

#### **Justification.**

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

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

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

#### **Section 150.**

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

#### **Justification.**

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

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

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

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

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

#### **Section 40**

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

#### **Justification.**

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

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

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

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

23. Delete the proposed amendment.

**Justification.**

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

**Committee's decision**

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

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

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

**Justification.**

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

**Committee's Observation**

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

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

25. The amendment should be deleted.

**Justification.**

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

**Committee's decision**

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

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

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

**Justification.**

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

**Committee's decision**

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

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

27. Delete in its entirety

**Justification**

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

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

**Committee's decision**

The committee rejected the proposal.

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

28. The section should be deleted in its entirety.

**Justification**

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

**Committee's decision**

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

## PART IV

### 4.0 COMMITTEE OBSERVATIONS

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

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

PART V

5.0 COMMITTEE RECOMMENDATION

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

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

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





THE NATIONAL ASSEMBLY  
13TH PARLIAMENT - SECOND SESSION (2023)  
COMMITTEE ON FINANCE & NATIONAL PLANNING  
ADOPTION LIST

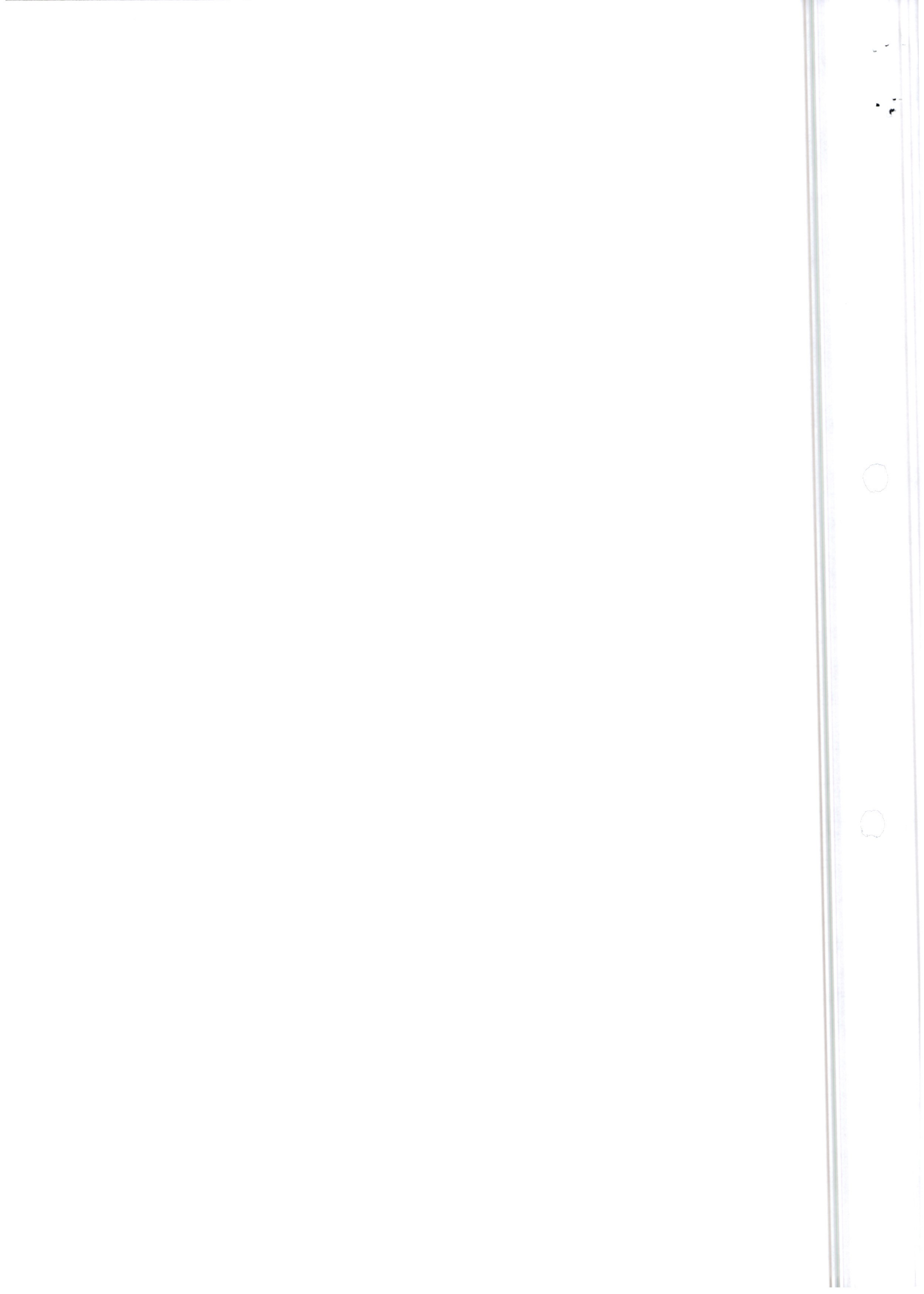
Date: 3/10/2023

Venue: HILTON GARDEN INN

AGENDA:

ADDITION OF THE REPORT ON THE INSURANCE (AMENDMENT) BILL 20

No.	NAME	SIGNATURE
1.	Hon. (CPA). Kuria Kimani, MP - Chairperson	
2.	Hon. (Amb). Benjamin Kipkirui Langat, MP - Vice Chairperson	
3.	Hon. Dr. Adan Keynan Wehliye, MP	
4.	Hon. George Sunkuyia Risa, MP	
5.	Hon. (CPA) Joseph Maero Oyula, MP	
6.	Hon. Andrew Adipo Okuome, MP	
7.	Hon. David Mwalika Mboni, MP	
8.	Hon. Joseph Makilap Kipkoros, MP	
9.	Hon. Joseph Kamau Munyoro, MP	
10.	Hon. (CPA) Julius Kipletting Rutto, MP	
11.	Hon. Paul Kibichiy Biego, MP	
12.	Hon. Umul Ker Sheikh Kassim, MP	
13.	Hon. Dr. Shadrack Mwiti Ithinji, MP	
14.	Hon. Dr. John Ariko Namoit, MP	
15.	Hon. Mohamed Soud Machele, MP	



**MINUTES OF THE 81<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON TUESDAY 3<sup>RD</sup> OCTOBER 2023 IN HILTON GARDEN INN HOTEL, MACHAKOS COUNTY AT 2.30 PM**

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**PRESENT**

1. Hon. CPA. Kuria Kimani, MP - **Chairperson**
2. Hon. Amb. Benjamin Kipkirui Langat, MP - **Vice- Chairperson**
3. Hon. Adan Keynan Wehliye, MP
4. Hon. Andrew Adipo Okuome, MP
5. Hon. CPA. Joseph Maero Oyula, MP
6. Hon. George Sunkuiya Risa, MP
7. Hon. Joseph Kamau Munyoro, MP
8. Hon. Joseph Makilap Kipkoros, MP
9. Hon. CPA. Julius Kipletting Ruto, MP
10. Hon. Mohamed Soud Machele, MP
11. Hon. Dr. Shadrack Mwiti Ithinji, MP
12. Hon. Paul Kibichiy Biego, MP
13. Hon. (Dr.) John Ariko Namoit, MP
14. Hon. Umul Ker Sheikh Kassim, MP

**ABSENT WITH APOLOGY**

1. Hon. David Mwalika Mboni, MP

**SECRETARIAT**

1. Mr. Benjamin Magut - Principal Clerk Assistant II
2. Mr. Nebert Ikai - Clerk Assistant I
3. Mr Salim Lorot - Legal Counsel I
4. Mr. Benson Kamande - Clerk Assistant III
5. Ms. Nelly Ondieki - Research Officer
6. Mr. Simon Ouko - Serjeant-At-Arms
7. Mr. Alfas Mulunda - Intern
8. Ms. Charity Zawadi - Intern

**MIN. NO.301/2023: PRELIMINARIES**

The meeting was called to order at thirty minutes past Two O'clock followed by introductions and a word of prayer.

**MIN. NO. 302/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING**

Confirmations of the minutes of the previous sittings were deferred to the next meeting

**MIN NO. 303/2023: CONSIDERATION AND ADOPTION OF THE REPORT ON THE INSURANCE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 18 OF 2023)**

The Committee Considered report on the Insurance (Amendment) Bill (National Assembly Bill No. 18 of 2022), Clause by Clause, and made the following observations:

1. The Insurance Act was enacted in 1980s and has since been amended a record thirty eight (38) times within the years and therefore there is urgent need to comprehensively review and repeal the Act to be in tandem with the current industry requirement.
2. The Amendment through a piecemeal one will go along way in protecting the companies and its client from governance vices perpetuated by the management.

The Committee having considered the Insurance Amendment Bill (National Assembly Bill No. 18 of 2023) recommends to the House to adopt the bill with the proposed amendment.

**Proposed amendment**

Delete Clause 67H(d)

**Justification**

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

**Adoption**

The Committee unanimously adopted the report on the Insurance (Amendment) Bill (National Assembly Bill No. 18 of 2022) having been proposed by Hon. George Sunkuiya Risa, MP and seconded by Hon. CPA. Julius Kipletting Ruto, MP.

**MIN NO. 304/2023: CONSIDERATION AND ADOPTION OF THE REPORT ON THE ON THE PROPOSED PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2023**

**Consideration**

The Committee considered the report on the Proposed Public Finance Management (Amendment) Bill, 2023 sponsored by Hon John O. Mbadi, EGH, MP and made the following observations:

- I. That the proposal may contradict the Article 223(1) where *Article 223(1) of the Constitution provides that the national government may spend money that has not been appropriated if the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or money has been withdrawn from the Contingencies Fund.* The pre-approval process introduces a layer not contemplated in the Constitution. The approval contemplated under clause 2 of Article 223 of the Constitution is “after the fact” and not “before the fact”. The amendment therefore seeks to provide for approval of Parliament through relevant committees before spending money not appropriated.

The Committee considered the report on the Proposed Public Procurement and asset Disposal (Amendment) Bill, 2023 sponsored by Hon Elijah Memusi, MP and made the following observations:

- a) There is similarity between the proposed Sections of the Bill and Regulations of the Public Procurement and Asset Disposal Regulations, 2020. However, whereas the Bill provides for the timeline of 30 days, the Regulation provides for 60 days subject to availability of funds and after proper certification of goods, services or works.
- b) The Committee further observed that there is a similar legislation in place at the Senate, the Prompt Payment Bill (Senate Bill No. 8 of 2022) which was referred to the Senate Finance and Budget Committee and was due for the Second Reading on 22<sup>nd</sup> March, 2023.

The Committee, having reviewed the Bill to the extent of proposed amendments to Acts committed to it, recommends that the Legislative Proposal be published as a Bill with amendments that revokes regulations in the Public Procurement and Asset Disposal Regulations, 2020 that are similar to the proposed proposal in the Bill.

### **Adoption**

The Committee unanimously adopted the report on the Proposed Public Procurement and asset Disposal (Amendment) Bill, 2023 having been proposed by Hon. Joseph Kamau Munyoro, MP and seconded by Hon. CPA. Julius Kipletting Ruto, MP.

### **MIN. NO. 307/2023: ANY OTHER BUSINESS / ADJOURNMENT**

There being no other business, the meeting was adjourned at Five O'clock. The next meeting will be held on 4<sup>th</sup> October, 2023 at 3. 30pm in the Committee Room 9, Main Parliament Buildings.

Signed.....

Chairperson

Date..... 4<sup>th</sup> October, 2023

- II. That the proposed new section 44(3) dovetails the previous subsection (2) which provides for consideration of pre-approval requests.
- III. That it is not clear as to what would happen if the relevant committee were to reject the pre-approval request.
- IV. That the timeline for Committee deliberations, public participation and the House approval is not adequate.
- V. That the proposal is not clear as to what happens if the relevant committee were not to submit its recommendation to the National Treasury, will the pre-approval request be deemed granted?
- VI. That Article 226(5) of the Constitution seeks to protect any loss of public funds.

The Committee, having reviewed the Bill to the extent of proposed amendments to Acts committed to it, recommends that the legislative proposal should not be published as Bill.

### **Adoption**

The Committee unanimously adopted the report on Proposed Public Finance Management (Amendment) Bill, 2023 having been proposed by Hon. CPA. Julius Kipletting Ruto, MP and seconded by Hon. Dr. Shadrack Mwiti Ithinji, MP.

### **MIN NO. 305/2023: CONSIDERATION AND ADOPTION OF THE REPORT ON THE ON THE PROPOSED TAX PROCEDURE (AMENDMENT) BILL, 2023**

The Committee considered the report on the Proposed Tax Procedure (Amendment) Bill, 2023 sponsored by Hon Antoney Kibagendi, MP and made the following observations:

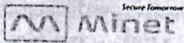
- a) Persons with no business or are not in gainful employment and are expected to file nil tax returns. Therefore, the dormant company is required to file nil returns if it is not receiving any income to avoid being charged penalties.
- b) Persons with no VAT are required to submit a NIL return and therefore the proposal in the Bill to apply for exemption for filing tax returns after six months is not in line with the VAT Act, 2013

The Committee, having reviewed the Bill to the extent of proposed amendments to Acts committed to it, recommends that the Legislative Proposal should not be published as a Bill.

### **Adoption**

The Committee unanimously adopted the report on the on the Proposed Tax Procedure (Amendment) Bill, 2023 having been proposed by Hon. Joseph Kamau Munyoro, MP and seconded by Hon. CPA. Julius Kipletting Ruto, MP.

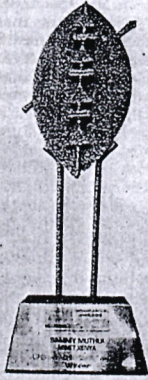
### **MIN NO. 306/2023: CONSIDERATION AND ADOPTION OF THE REPORT ON THE PROPOSED PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2023**



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REPUBLIC OF KENYA

## THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - SECOND SESSION (2023)

### IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION AND

### IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 58 OF 2022);
2. THE INSURANCE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 18 OF 2023);
3. THE NATIONAL GOVERNMENT CO-ORDINATION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 25 OF 2023);
4. THE WATER (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2023); AND
5. THE VOCATIONAL TRAINING BILL (SENATE BILL NO. 3 OF 2022).

### INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 58 of 2022); the Insurance (Amendment) Bill (National Assembly Bill No. 18 of 2023); the National Government Co-ordination (Amendment) Bill (National Assembly Bill No. 25 of 2023); the Water (Amendment) Bill (National Assembly Bill No. 33 of 2023); and the Vocational Training Bill (Senate Bill No. 3 of 2022) have been read a First Time and referred to the relevant Departmental Committees for consideration and reporting to the House;

#### IT IS NOTIFIED that:

1. The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 58 of 2022) is a Bill sponsored by the Hon. Joyce Kamene, MP which seeks to amend the Higher Education Loans Board Act, No. 3 of 1995 to expressly provide that the Higher Education Loans Board shall not deny loans to students who have not attained the age of eighteen years.
2. The Insurance (Amendment) Bill (National Assembly Bill No. 18 of 2023) is a Bill sponsored by the Leader of the Majority Party, the Hon. Kimani Ichung'wah, MGH, MP which seeks to enhance accountability within insurance companies and observance of fiduciary duties as well as professional responsibilities by senior managers of insurance companies by amending the Insurance Act (CAP. 487) to provide for offences and penalties relating to the management of insurance companies. The amendments seek to ensure that Insurance companies take responsibility in case an insurance company fails.
3. The National Government Co-ordination (Amendment) Bill (National Assembly Bill No. 25 of 2023) is a Bill sponsored by the Hon. Moses Malulu Injendi, MP which seeks to amend the National Government Coordination Act to recognize village elders who perform national government functions in village units. The Bill further seeks to recognize the existing village units and provide for establishment of village councils and appointment of village elders and payment of their allowances.
4. The Water (Amendment) Bill (National Assembly Bill No. 33 of 2023) is a Bill sponsored by the Leader of the Majority Party, the Hon. Kimani Ichung'wah, MGH, MP which seeks to amend the Water Act, 2016, to operationalize public private partnerships in the water sector.
5. The Vocational Training Bill (Senate Bill No. 3 of 2022) seeks to put in place a legal framework to govern the establishment and management of vocational education and training institutions in the counties.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below:

BILL	COMMITTEE
1. Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 58 of 2022)	Education
2. Insurance (Amendment) Bill (National Assembly Bill No. 18 of 2023)	Finance and National Planning
3. National Government Co-ordination (Amendment) Bill (National Assembly Bill No. 25 of 2023)	Administration and Internal Security
4. Water (Amendment) Bill (National Assembly Bill No. 33 of 2023)	Blue Economy, Water and Irrigation
5. Vocational Training Bill (Senate Bill No. 3 of 2022)	Education

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [cna@parliament.go.ke](mailto:cna@parliament.go.ke) to be received on or before Tuesday, 22nd August 2023 at 5.00 p.m.

S. NJOROGE  
CLERK OF THE NATIONAL ASSEMBLY

8<sup>th</sup> August, 2023

**For the Welfare of Society and the just Government of the People**





THE NATIONAL ASSEMBLY  
OFFICE OF THE CLERK

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Main Parliament Buildings

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When replying, please quote  
REF: NA/DDC/F&NP/2023/092

17<sup>th</sup> August, 2023

**Mr. Anthony M. Mwangi**  
National Chairperson  
Association of Insurance Brokers  
College of Insurance Building  
South C, Red Cross Road  
**NAIROBI**

**Mr. Tim Gichui**  
Executive Director  
Association of Kenya Insurers (AKI)  
AKI Centre, Mimosa Road Mucai Drive Off Ngong Road  
**NAIROBI**

Dear *Mr. Mwangi*:

**RE: STAKEHOLDER ENGAGEMENT ON THE INSURANCE (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 18 OF 2023), BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING**

The Departmental Committee on Finance and National Planning is established pursuant to National Assembly Standing Order 216 which mandates it *inter alia*, to ***study and review all the legislation referred to it.***

The Insurance (Amendment) Bill, 2023 (*National Assembly Bill No. 18 of 2023*), underwent the First Reading pursuant to Standing Order 127(3) on **Tuesday, 25<sup>th</sup> July, 2023** and was committed to the Departmental Committee on Finance and National Planning for consideration and reporting back to the House. The Bill seeks to enhance accountability within the insurance companies and observance of fiduciary duties as well as professional responsibilities by senior managers of insurance companies.

Pursuant to the provisions of Article 118(1) (b) of the Constitution and Standing Order 127 (3), the Committee hereby invites you for a meeting to hear your submission and comments on the said Bill. The meeting will be held on **Wednesday, 23<sup>rd</sup> August, 2023** in **Committee Room, 5<sup>th</sup> Floor Continental House** as per the schedule attached below: -

S/NO	ENTITY	TIME
1	The National Treasury	10.00 a.m.
2	Insurance Regulatory Authority	11.00 a.m.
3	Association of Kenya Insurance (AKI) and Association of Insurance Brokers	12.00 p.m.

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings, or on <http://www.parliament.go.ke/the-national-assembly/house-business/bills>

You are requested to prepare a comprehensive submission on any representations you may have on the Bill and email a soft copy to the [cna@parliament.go.ke](mailto:cna@parliament.go.ke) on or before the day of the meeting.

The Committee's Liaison Officers for the meeting are **Mr. Benjamin Magut**, who may be contacted on **Tel. No. 0712974966** or **email address: [benjamin.magut@parliament.go.ke](mailto:benjamin.magut@parliament.go.ke)**; **Mr. Nebert Ikai** on **Tel. No 0716085705** or email address [nerbert.lomechu@parliament.go.ke](mailto:nerbert.lomechu@parliament.go.ke) or **Mr. Benson Kamande** of telephone number **0789459387** or email address: [benson.kamande@parliament.go.ke](mailto:benson.kamande@parliament.go.ke)

Yours



**JEREMIAH W. NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**



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South C, Red Cross Road  
**NAIROBI**

**Mr. Tim Gichui**  
Executive Director  
Association of Kenya Insurers (AKI)  
AKI Centre, Mimosa Road Mucai Drive Off Ngong Road  
**NAIROBI**

Dear *Mr. Gichui*

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Yours



**JEREMIAH W. NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**



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17<sup>th</sup> August, 2023

**Dr. Chris K. Kiptoo, CBS**

Principal Secretary  
National Treasury  
Treasury Buildings  
**NAIROBI**

**Mr. Godfrey K. Kiptum, MBS**

Chief Executive Officer/Commissioner of Insurance  
Insurance Regulatory Authority  
ZEP-RE Place, Longonot Road  
**NAIROBI**

Dear

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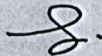
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Yours

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**For: CLERK OF THE NATIONAL ASSEMBLY**

Copy to: Prof. Njuguna Ndung'u, CBS  
Cabinet Secretary  
Ministry of National Treasury and Economic Planning  
**NAIROBI**

Hon. Mwambu Mabongah  
Chairperson of Board  
Insurance Regulatory Authority  
ZEP-RE Place, Longonot Road  
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Principal Secretary  
National Treasury  
Treasury Buildings  
**NAIROBI**

**Mr. Godfrey K. Kiptum, MBS**  
Chief Executive Officer/Commissioner of Insurance  
Insurance Regulatory Authority  
ZEP-RE Place, Longonot Road  
**NAIROBI**

Dear

*D. Kiptoo*

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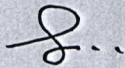
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Ministry of National Treasury and Economic Planning  
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Principal Secretary  
National Treasury  
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**NAIROBI**

Mr. Godfrey K. Kiptum, MBS  
Chief Executive Officer/Commissioner of Insurance  
Insurance Regulatory Authority  
ZEP-RE Place, Longonot Road  
**NAIROBI**

Dear

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Yours

**JEREMIAH W. NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

Copy to: Prof. Njuguna Ndung'u, CBS  
Cabinet Secretary  
Ministry of National Treasury and Economic Planning  
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Hon. Mwambu Mabongah  
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Principal Secretary  
National Treasury  
Treasury Buildings  
**NAIROBI**

**Mr. Godfrey K. Kiptum, MBS**  
Chief Executive Officer/Commissioner of Insurance  
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ZEP-RE Place, Longonot Road  
**NAIROBI**

Dear *Mr. Kiptum*

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The Insurance (Amendment) Bill, 2023 (*National Assembly Bill No. 18 of 2023*), underwent the First Reading pursuant to Standing Order 127(3) on **Tuesday, 25<sup>th</sup> July, 2023** and was committed to the Departmental Committee on Finance and National Planning for consideration and reporting back to the House. The Bill seeks to enhance accountability within the insurance companies and observance of fiduciary duties as well as professional responsibilities by senior managers of insurance companies.

Pursuant to the provisions of Article 118(1) (b) of the Constitution and Standing Order 127 (3), the Committee hereby invites you for a meeting to hear your submission and comments on the said Bill. The meeting will be held on **Wednesday, 23<sup>rd</sup> August, 2023** in **Committee Room, 5<sup>th</sup> Floor Continental House** as per the schedule attached below: -

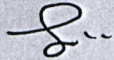
S/NO	ENTITY	TIME
1	The National Treasury	10.00 a.m.
2	Insurance Regulatory Authority	11.00 a.m.
3	Association of Kenya Insurance and Insurance Brokers	12.00 p.m.

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings, or on <http://www.parliament.go.ke/the-national-assembly/house-business/bills>

You are requested to prepare a comprehensive submission on any representations you may have on the Bill and email a soft copy to the [cna@parliament.go.ke](mailto:cna@parliament.go.ke) on or before the day of the meeting.

The Committee's Liaison Officers for the meeting are Mr. Benjamin Magut, who may be contacted on Tel. No. 0712974966 or email address: [benjamin.magut@parliament.go.ke](mailto:benjamin.magut@parliament.go.ke); Mr. Nebert Ikai on Tel. No 0716085705 or email address [nerbert.lomechu@parliament.go.ke](mailto:nerbert.lomechu@parliament.go.ke) or Mr. Benson Kamande of telephone number 0789459387 or email address: [benson.kamande@parliament.go.ke](mailto:benson.kamande@parliament.go.ke)

Yours



**JEREMIAH W. NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

Copy to: Prof. Njuguna Ndung'u, CBS  
Cabinet Secretary  
Ministry of National Treasury and Economic Planning  
**NAIROBI**

Hon. Mwambu Mabongah  
Chairperson of Board  
Insurance Regulatory Authority  
ZEP-RE Place, Longonot Road  
**NAIROBI**

**ASSOCIATION OF KENYA INSURERS (AKI)**

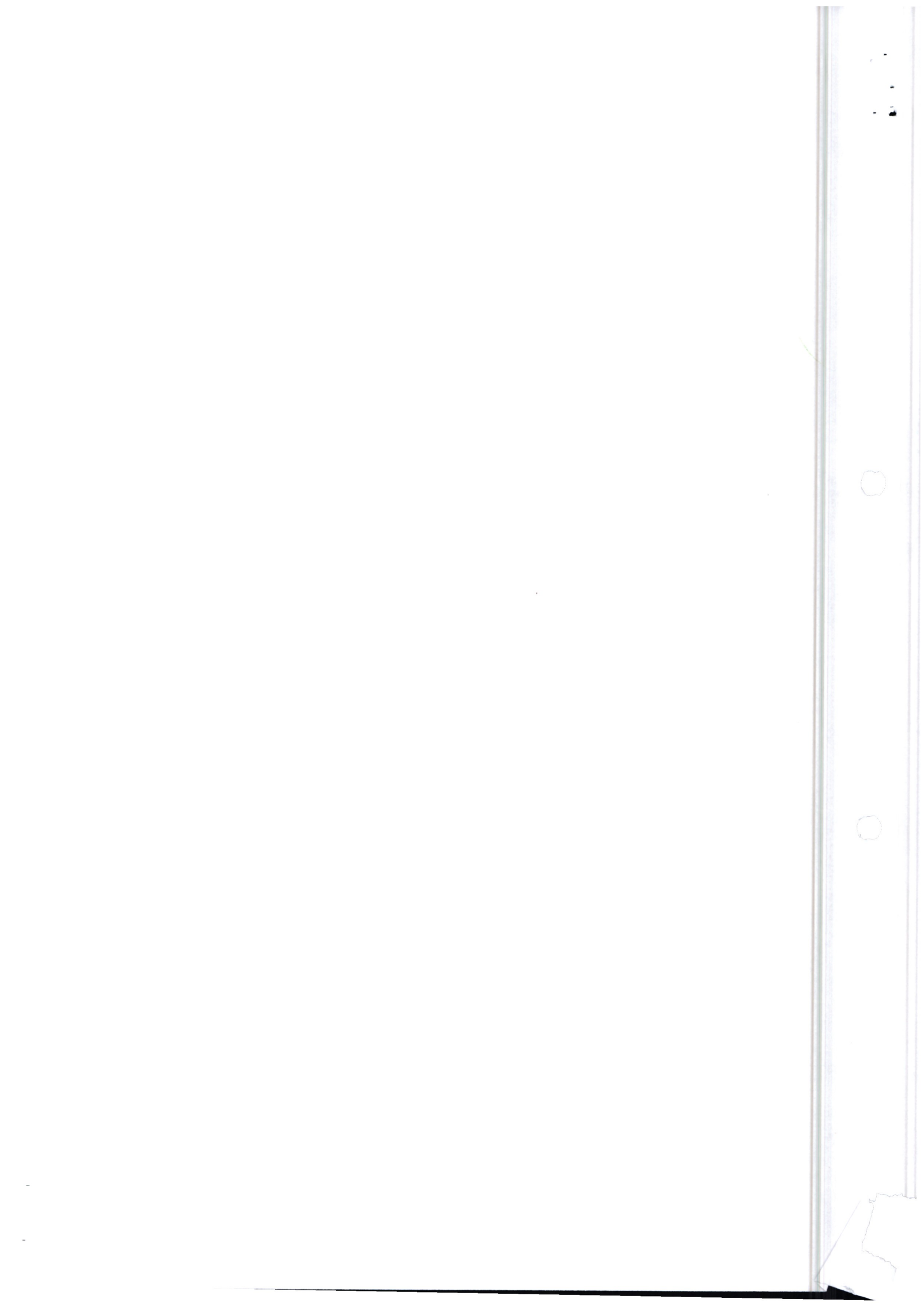
**INSURANCE (AMENDMENT) BILL 2023**

The object of this bill is to enhance accountability within insurance companies and observance of fiduciary duties as well as professional responsibilities by senior managers of insurance companies by amending the Insurance Act to provide for offences and penalties relating to the management of insurance companies. Our proposals show that the Insurance Act has many provisions where Shareholders, Directors, Principal Officer and management staff are held personally responsible for non-compliance and the penalties for the offences are adequate to address the offences.

#	Issue	Challenges of the provisions of the law	proposal	Best practice/justification
1.	<b>Section 40</b> <b>Deletion of the proviso in respect of sub section (1) of section 40</b>	In the absence of a prescribed limit, the clause is left to interpretation on the quantum demanded which can impact an insurer's ability to comply with the Act.	We propose that there should be a consideration of providing a cap on maximum amount of the additional deposit pegged on a defined ratio.	
2	<b>67H (1) (a)</b> <b>Any shareholder, director, principal</b>	This section creates an extra layer of offences, noting that the Act contains variety of provisions on offences each	a) This proposed amendment should be deleted as there are many other provisions that hold the company as a registered body and individuals in	There are various provisions in the Insurance Act that provide for penalties in case of non-compliance of a registered person or licensed person in the Act. The penalties are sufficient and amending the



#	Issue	Challenges of the provisions of the proposal law	Best practice/justification
	<p>officer or management staff of an insurer who</p>	<p>of which relate to the management of the insurance companies.</p>	<p>Act to provide for individual penalties is punitive. It would be unfair to hold the shareholders, directors, principal officers or management staff liable in case of non-compliance.</p> <p><b>Examples of the section that provide penalties in case of non-compliance.</b></p>
a)	<p><i>Fails to take all reasonable steps to secure the compliance of a registered or licensed person with this Act</i></p>	<p>b) If the proposed amendment is retained, it will be punitive to the insurers and the individuals that will be held liable.</p>	<p>a) <b>Section 19</b> on registration of Insurers provides for penalties in the event of a person carrying on business in non-compliance of the Act.</p>
		<p>c) Review the various penalties and offences created from enactment of the insurance and remove any areas of overlaps in the law.</p>	<p>b) <b>Section 23 (5)</b> on minimum capital requirements. A registered insurer who permits his paid-up share capital to fall below the minimum prescribed commits offence and is liable on conviction to a penalty of one hundred thousand shillings and if an offence is continuing on to a further fine of five thousand shillings for each day.</p>
		<p>d) Review the scope of the persons to whom the section applies. The offences relate to the management of an insurer.</p>	<p>There are various sections that provide for non-compliance and attached penalties to responsible individuals and holding individual shareholders, directors, principal officer, senior managers for compliance would cause an issue of double penalties.</p>
		<p>e) It will not be clear which penalty will be meted because of the various penalties that also hold natural persons liable to non-compliance.</p>	
		<p>f) If the law is to be amended the provisions in the act to be maintained and where there is a natural person to be penalized then it can be amended to specify that it will be director, shareholder,</p>	



#	Issue	Challenges of the provisions of the law	proposal	Best practice/justification
3.	<p><b>67 H b)</b></p> <p><b>Any shareholder, principal director, officer or management staff of an insurer who fails to take all reasonable steps to secure the accuracy and correctness of any statement or report submitted under this Act or any other applicable written law.</b></p>	<p>There are several sections in the Insurance Act that provide for penalties directly to persons responsible in the event of submissions of statements/reports that are not accurate therefore this section would be rendered ambiguous.</p>	<p>principal officer and senior management.</p> <p>This should be deleted as there are a number of sections that deal with specific areas of non-submission.</p>	<p>This will be noted also in our proposals in the various proposed amendments below.</p> <p>There are several sections in the Insurance Act that provide for penalties directly to persons responsible in the event of submissions of statements/reports that are not accurate.</p> <p>The following are some of the sections that provides for submission of inaccurate reports and the penalties related to them;</p> <p><b>a) Section 7- Power to call for information and production of books or papers</b></p> <p>for anyone who furnishes incorrect information shall be guilty of offence and liable to a fine not exceeding <b>two hundred thousand shillings or imprisonment for a term not exceeding twelve months</b> or both.</p> <p><b>b) Sec 65- Rectification of returns</b></p> <p>In this case the commissioner may if it appears to him that any account, balance sheet, abstract, certificate, statement, return, report or other documents deposited with him are inaccurate/defective, he may require the defect to be rectified within ten days.</p>

# Issue

Challenges of the provisions of the proposal law

Best practice/justification

			<p><b>c) Sec 66 -Penalty for false statements</b></p> <p>In this case the commissioner may if it appears to him that any account, balance sheet, abstract, certificate, statement, return, report or other documents deposited with him are false in any material particular to the knowledge of any person who signs it, <b><i>the person shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months.</i></b></p> <p><b>d) Sec 80- proposal and policy documents not to be misleading</b></p> <p>(1) A policy of insurance shall not contain anything inaccurate or incomplete to mislead a proponent or policy.</p> <p>(2) If the commissioner is of the opinion that an insurer has contravened sub section (1), he may give the insurer an opportunity of making representations, notify the insurer in writing that he objects to the form.</p> <p>(3) An insurer shall not accept or issue any policy that the commissioner has objected</p>
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			<p>(4) An insurer who contravenes the provisions of subsection (3) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.</p> <p>If this amendment is retained it would be punitive because the penalties attached to the amendment are higher and not specific to a particular offence. The sections in the Insurance Act also provides steps on the action the commissioner would take before the penalties are meted out.</p> <p>To have different types of penalties in the law may cause unfairness on how they would be dispensed.</p>
<p>4</p> <p>67 H (c)</p> <p><b>Any shareholder, director, principal officer or management staff of an insurer who fails to supply any information required or effect any directive issued under this Act</b></p>	<p>This proposed amendment will not serve its required purpose as the Insurance Act provides for various instances where the commissioner can request for supply of information or give a directive and where the insurers fails to comply there are penalties attached to the provisions.</p>	<p>This amendment should be deleted as it in been addressed in various sections of the insurance Act.</p>	<p>Examples in the Insurance Act where request of information by the commissioner is sanctioned in the event of non-compliance by the insurers.</p> <p><b>a) Section 8- Examination of insurance Treaties</b></p> <p>The commissioner may call upon an insurer to submit for his examination at his office all reinsurance treaties and other reinsurance contracts entered into by the insurer.....</p>

# Issue

Challenges of the provisions of the proposal law

Best practice/justification

It will be unfair to have penalties in different provisions

Penalty –

Any person who fails to comply with, or contravenes any requirement imposed under, this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding 12 months or both

**b) Sec 67 PART IV- ACCOUNTS, BALANCE SHEETS, AUDIT AND ACTUARIAL INVESTIGATION**

Where a person guilty of an offence under this part is a natural person, that person shall be liable, in addition to or in the alternative to, a fine, to imprisonment for a term not exceeding two years.

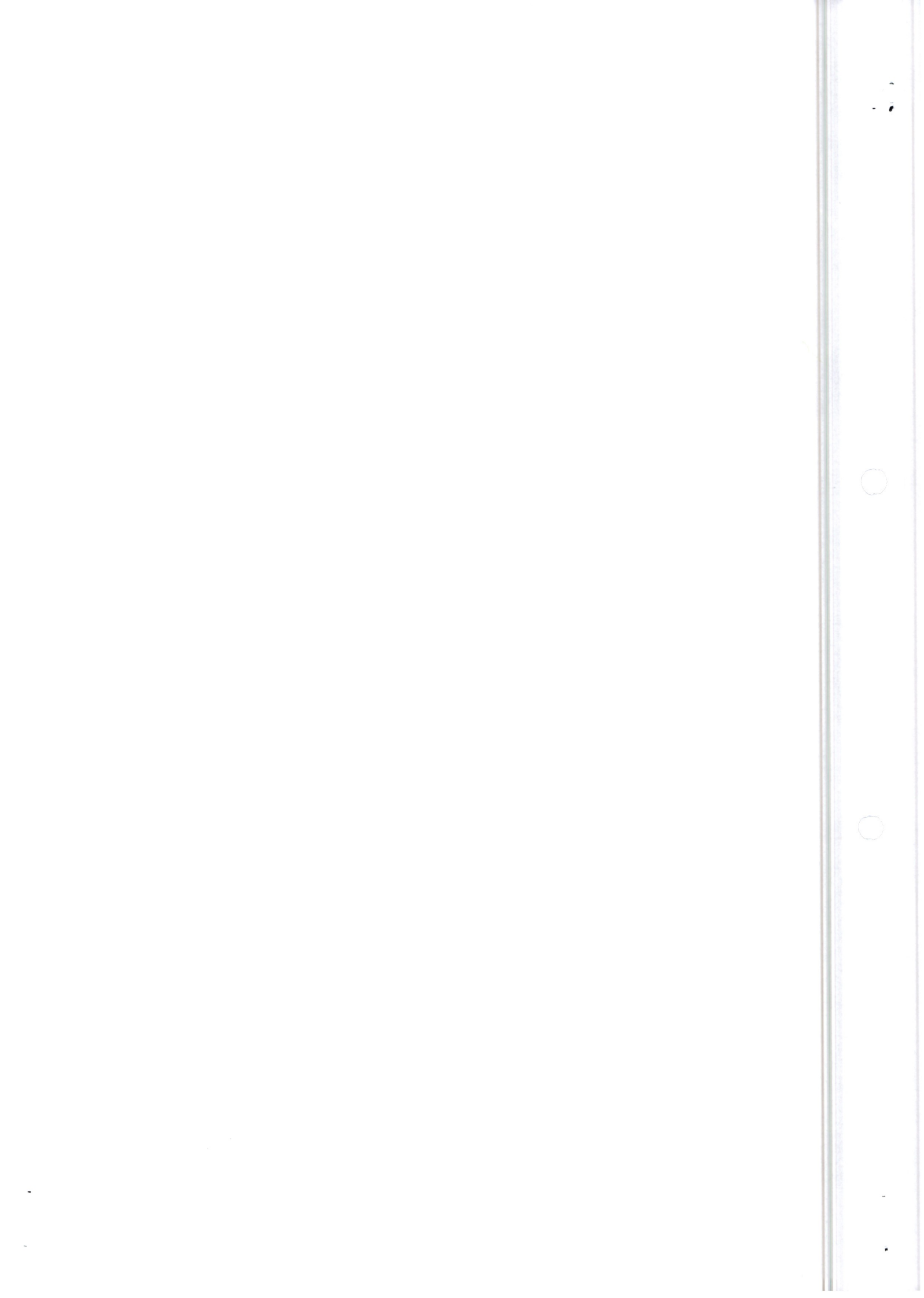
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**Any shareholder, director, principal officer or management staff of an insurer who Fails without lawful justification, to settle judgement or any claim under this act**

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

This amendment should be deleted as it has been addressed in section 203 of the Insurance Act Comprehensively.

The penalty of the 5% of the unpaid amount on the insurer would suffice because there are steps in **section 203 (5) where** if an insurer fails to pay the amount of a claim and any penalty thereon due in accordance with this section, the insurer shall be deemed to be unable to pay his debts and liable to be wound up . This provision is enough for compliance , to penalize the shareholders, directors, principal officer or management staff would be an overkill as the provisions in the



# Issue

Challenges of the provisions of the proposal law

Best practice/justification

			<p>act are sufficient and the civil procedure laws.</p> <p>The civil procedure act also provides for steps a claimant/plaintiff can take once a judgement has been issued by the court.</p>
<p>6. <b>67 H (e) (5) (a)</b></p> <p>The amount of compensation under sub section (3) shall be;</p> <p>a) The loss sustained or adverse suffered by the person claiming compensation or</p> <p>The profits that have accrued to the person liable to pay the compensation.</p>	<p>The amendment bill creates both the penalty against the insurer and the remedies available to the person claiming.</p>	<p>The provision under 5 should be expunged in its entirety as sub section 4 already covers the avenue.</p>	<p>This clause is very ambiguous and broad especially if the intention was to cater to section 67H (d).</p> <p>The reference to "profits that have accrued to the person liable" is also ambiguous and very broad.</p> <p>There are legal remedies under the civil procedure Act and rules , which would cater to any applications to court for damages.</p> <p>The clause is meant to reference actions under section 67H (1) some of which may not be applicable in the context of 67 H (5) and therefore opens the provision up for misapplication.</p> <p>The reference to profits without distinction as to which profits are being referenced (is it the profits from the business operations?) or how the profits are determined, creates a lacuna in interpretation, further exposing the</p>

# Issue	Challenges of the provisions of the proposal law	Best practice/justification
7. <b>67 H Sub sections (2) and (3) on offences</b>	<p>The proposed section provides a potential overlap of sanctions as discussed in the above provisions.</p> <p>The proposed offences are punitive and the Insurance act as is already provides for penalties for offences as demonstrated.</p>	<p>insurer and returns to all stakeholders who have an interest in the company/ industry.</p>
	<p>.This section should be deleted in its entirety.</p>	<p>The Insurance Act also provides for criminal liability of directors, Chief Executive, Principal Officer, manager, Secretary as seen below;</p> <p><b>Section 175</b> – Where an offence under this act committed by a body corporate is to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, Chief Executive, Principal Officer, manager, Secretary.....shall be guilty of that offence unless he proves that he did not know of the commission ..</p> <p>A person convicted under this subsection shall be liable to a fine not exceeding one hundred thousand shillings, or in the case of a natural person a term not exceeding five years or to both.</p> <p><b>Section 178</b>- Provides for General Penalty. A person who contravenes any provision of this Act or any regulation made thereunder for which no specific penalty is imposed shall be guilty of an offence and liable to a fine not exceeding one hundred shillings.</p>



**Best practice/justification**

**Challenges of the provisions of the proposal  
law**

**# Issue**

				This provisions are adequate also because they serve the purpose of the proposed amendments by holding the specific individuals liable to non-compliance with the Act.

**NAIROBI**  
Insurance Regulatory Authority  
Board Chairman  
**Hon. Mwangi Mabongah**

**NAIROBI**  
National Treasury and Economic Planning  
Principal Secretary  
P. O. Box 30007 - 00100  
**Dr. Chris Kiptoo, CBS**

**NAIROBI**  
National Treasury and Economic Planning  
Cabinet Secretary  
P. O. Box 30007 - 00100  
**CC: Prof. Njuguna Ndung'u, CBS**

**COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER**  
**GODFREY K. KIPTUM**

Yours faithfully,  


Reference is made to the subject and the letter dated 17<sup>th</sup> August, 2023 inviting the Authority for a meeting on 23<sup>rd</sup> August, 2023 for submission of comments on the captioned Bill. Please find enclosed the Authority's written representation on the provisions of the Bill for consideration.

**RE: STAKEHOLDER ENGAGEMENT ON THE INSURANCE (AMENDMENT) BILL, 2023 BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING**

Dear Sir,

**ATT: JEREMIAH W. NDOMBI, MBS**

**NAIROBI**  
The National Assembly  
Main Parliament Buildings  
P. O. Box 41842 - 00100  
**Clerk of the National Assembly**

**Our Ref: CONF/IRA/00/004/02**  
**Date: 22<sup>nd</sup> August, 2023**

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**INSURANCE REGULATORY AUTHORITY'S JUSTIFICATION TO THE PROPOSED AMENDMENT TO THE INSURANCE ACT, CAP 487 OF THE LAWS OF KENYA THROUGH THE INSURANCE (AMENDMENT) BILL, 2023**

<b>CLAUSE</b>	<b>PROPOSAL</b>	<b>JUSTIFICATION</b>	<b>REMARKS</b>
<b>2</b>	Proviso to subsection 1 section 40	<p>Under Section 32 of the Insurance Act, insurance companies are required to maintain a deposit with the Central Bank of Kenya of at least five per cent of their total assets. This translates to at least Kenya Shillings five million for micro-insurers and twenty million for insurers.</p> <p>Section 40(1) of the Act empowers the Commissioner to require insurers to increase the deposit under Section 32 where it appears to the Commissioner that the deposit is disproportionately low.</p> <p>The proviso under Section 40(1) restricts the total deposits including the additional deposits to not more than Kenya shillings three million.</p> <p>This proviso is outdated since the deposits currently held are already more than the Kenya shillings three million provided in the proviso.</p>	The Authority supports the proposed amendment.

<b>CLAUSE</b>	<b>PROPOSAL</b>	<b>JUSTIFICATION</b>	<b>REMARKS</b>
3	Section 67H Offences relating to the management of an insurer	<p>In exercise of its supervisory mandate over the years the Authority has noted that the conduct of directors of the insurance companies has a direct correlation with the failure of the company, more so where supervision is upscaled and requiring a higher degree of intervention.</p> <p>In situations where the company is financially troubled, it is expected that directors develop rescue plans, remedial measures and strategies that enhance profitability and stability of the company.</p> <p>Most times it has been noted that the directors do not act in line with their fiduciary duties by allowing themselves to operate in silos, failing to attend meetings and at times making decisions driven by vested interest. This trend is cascaded to senior management and leads to low compliance with the Authority's directives.</p> <p>There is lack of deterrent measures under the Insurance Act to motivate accountability and observance of directors' fiduciary duties as well as senior managers' professional responsibilities.</p> <p>In addition, there is no specific provision in the Act that deals with offences relating to the management of an insurer.</p>	<p>The Authority supports the proposed amendment.</p> <p>A comparative analysis of laws regulating the financial services sector was undertaken and in particular:</p> <p>Banking Act Section 35D</p> <p>Capital Markets Act Sections 34A and 34B</p> <p>The proposed amendment is commensurate to what is already in force under the Capital Markets Act and will have a deterrent effect considering the Authority's experience relating to the matter in issue.</p>

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CLAUSE	PROPOSAL	JUSTIFICATION	REMARKS
<b>Clause 4</b>	Section 70 is amended by deleting the word "advisory"	This was a clean up of the Act as the Advisory Board was replaced by the "Board of the Authority".	The Authority supports the proposed amendment.
<b>Clause 5</b>	Section 150 is amended by deleting the word "surveyor" and substituting thereof with the words "insurance surveyor"	This amendment is with a view to creating clarity that the surveyor being licensed is an insurance surveyor	The Authority supports the proposed amendment.

*AS*

