

Following the reading of the Budget Speech by the Deputy Prime Minister and the Minister for Finance on the 10<sup>th</sup> of June, 2010, the following amendments were proposed

## **THE PROVISIONAL COLLECTION OF TAXES AND DUTIES ACT, CAP 415**

The following amendments have been proposed:-

### **A. INCOME TAX ACT CAP 470**

**Vide Legal Notice No 83 Kenya Gazette Supplement 2010, the Income Tax Act, Cap 470 has been amended as follows:-**

Effective 1<sup>st</sup> of March, 2010, the Minister for Finance exempted the funds contributed directly by members of the Association of Kenya Insurers in respect of the Integrated Motor Data System from Income tax for a period of one year ending on 28<sup>th</sup> February, 2011. The amounts specified for such exemption are Kenya shillings One Million, One hundred and Seventeen Thousand, Six Hundred and Forty Seven (Kshs.1,117,647/=) as well as the amount of Kshs. thirty (Kshs.30/=) levied on every insurance certificate. The income to be exempt should however not exceed the cost of the project.

### **B. THE INSURANCE ACT CAP 487**

**The Insurance (Amendment) Regulations 2010**

The following amendments took effect on 10<sup>th</sup> June, 2010:-

**Vide Legal Notice No 85, Kenya Gazette Supplement 2010, the Insurance Regulations, have been amended as follows:-**

1. Under Regulation 20, Four copies of accounts, balance sheets, certificates returns or statements shall now be deposited with the Commissioner accompanied by a certificate of authentication signed by both the principal officer as well as the person who prepared the accounts.

A new paragraph (3) which allows the Commissioner to prescribe insurance formalities for the submission of such documents through the use of Information Technology has been inserted.

2. Regulation 39 (2) has been deleted. Under this proviso a broker was required to submit additional bank guarantee or government bond being 25% of outstanding premium due from the broker to the Insurer in excess of the period permitted upon renewal of registration, under Section 156 (2). Section 156(2) of the Act had earlier been deleted in the Finance Act, 2007 following the introduction of cash and carry.

3. Under Regulation 40 Corporate persons registered under Part XV of the Act shall now be required to furnish the Commissioner with audited accounts and statements within a period of **four months** as opposed to six months previously, at the end of each period to which they relate.

Part XV of the Act refers to Intermediaries, Risk Managers, Loss Assessors, Loss Adjusters, Insurance Surveyors and Claims Settling Agents.

4. Regulation 49 has been amended to read as follows: "The fees payable by the members of the Insurance industry for registration or renewal of registration under the act and the regulations shall be **paid to** "The Permanent Secretary to the Treasury".
5. Item 3(vii) under the Second Schedule, Form NO INS.41-1, Part B has been deleted. The item within the statement deleted makes reference to premiums outstanding for not more than three months and those secured under automatic non forfeiture conditions against the surrender values of life assurance policies as being admitted assets. This amendment in the regulations corresponds to an amendment proposed to Section 42(1)(d)
6. The definition of medical insurance business has been introduced under Part B of the Third Schedule as follows:

(12) " **Medical Insurance Business means the insurance business of paying for medical expenses, including the business of covering disability or long term nursing or custodial care needs.**"

7. **Vide Legal Notice No 86 , Kenya Gazette Supplement , 2010.**

Legal Notice No 105 of 2004 which relates to the Insurance (Policyholders Compensation Fund) Regulations 2004 has been revoked effective 10<sup>th</sup> June, 2010. The same has been replaced with new regulations which are broader and more comprehensive, referred to as the **Insurance (Policyholders Compensation Fund) Regulations 2010.**

8. Apart from the amendment proposed to Section 23 , the following amendments proposed to the Insurance Act , Cap 487 shall take effect on 1<sup>st</sup> January, 2011 as follows:-

**(a) Section 3A: Objects and functions of the Authority**

The functions of the Insurance Regulatory Authority have been expanded to allow the Authority to issue supervisory guidelines, come up with prudential standards and share information with the other regulatory authorities all aimed at strengthening the regulators role.

There are similar amendments to both the Capital Markets Act Cap 485 and the Retirement Benefits Act, where emphasis appears to be on sharing of information amongst the Regulators.

(b) **Section 23: Minimum Capital Requirements**

The Finance Act, 2009 introduced Corporate Governance by amending Section 23 of the Insurance Act to restrict ownership and management of insurers to 25% and 20% respectively. The amendment which was set to take effect on 31<sup>st</sup> December, 2010 was however silent on the issue of indirect control or beneficial shareholding by natural persons or family members.

Under the Finance Bill, 2010 an amendment has been proposed to section 23, where both direct and Indirect ownership by an individual in an insurer will be capped at 25% of **paid up** share capital or voting rights of an insurer.

Companies listed at the stock exchange are however exempt from this proviso. This means that shareholding by listed entities in an insurer in excess of 25% is permitted.

The other 'persons' exempt from this proviso include the Government of Kenya, both Corporate and Foreign Corporate entities licensed by an insurance, banking, pensions or securities regulator in Kenya as well as State Corporations.

Indirect control or beneficial entitlement to the paid up share capital or voting rights of an insurer has now been defined.:-

- (a) In the case of a company or body corporate to mean control or entitlement through a holding company, or its subsidiary, a subsidiary or its holding company, or nominees.
- (b) In the case of an individual to mean control or entitlement through any member of his family, a company or other body corporate controlled directly or indirectly by him whether alone or with his Associates. A person shall be deemed to be a family member if he is the parent, spouse, brother, sister, child, uncle, aunt, nephew, niece, stepfather, step mother, stepchild or adopted child of the person concerned and in the case of an adopted child, his adoptive parents.

The commencement date has also been extended from 31<sup>st</sup> December, 2010 to **31<sup>st</sup> December, 2011**.

**(c) Section 42(1): Admitted Assets**

Section 42(1) (d) has been deleted. The item removed refers to unpaid premium due to the insurer for more than three months, and that previously secured under automatic non forfeiture against the surrender value of a life insurance policy as an inadmissible asset. **Note** There is also a corresponding amendment under the regulations where outstanding premiums have been deleted from the statement of admitted assets under the Part B of the Second Schedule, item 3(vii).

**(d) Section 61: Submission of Accounts**

A new section 4A has been introduced to allow for the submission of the annual accounts and statements by an insurer through the use of Information technology or in such form as the Authority may prescribe from time to time

The penalty for the late submission of returns being Kenya Shillings Two hundred thousand as well as the further penalty of Kenya shillings ten thousand for each day thereafter for continuing non submission shall now be paid into the Policyholders Compensation Fund in the manner prescribed by the Authority from time to time. Previously it was payable by a crossed bankers cheque drawn in favour of the Policyholders Compensation Fund

**(e) Section 67D (2) Dealing with Unregistered and unauthorized persons**

The prescribed penalty of Kenya Shillings two hundred thousand prescribed for persons carrying on insurance or reinsurance business without registration, renewal of registration or authorization, persons charging a rate of premium other than that filed with the Commissioner, as well as persons found to be engaging in business malpractices shall **now be paid to the Policyholders Compensation Fund in such manner as may from time to time be prescribed by the Authority.** It was previously payable by the crossed bankers draft in favour of the Policyholders Compensation Fund.

**(f) Section 71 : Restriction on Loans, Advances etc by Insurer**

Under this head the unsecured loan or advance that an insurer may grant to an employee on compassionate grounds has been increased from Kenya

Shillings twenty Thousand (Kshs.20,000/= ) to Kenya Shillings One hundred Thousand( Kshs.100,000/=).

**(g) Section 76A: Insurance Cover upon Change of Ownership**

Section 76A introduced under the Finance Act, 2009, has been amended. Upon change of ownership of a motor vehicle, an insurer shall only issue a temporary **cover** (as opposed to a temporary **policy**) for a period of three months. The insurer shall further not renew the temporary cover or issue any **annual** policy (which replaces the word **new** policy used previously) unless the owner provides proof of the registration of the motor vehicle in his name by the Registrar of Motor vehicles.

**(h) Section 150A: Registration of Medical Insurance Providers**

Medical Insurance Providers have been acting as Risk takers in direct competition with Insurers. It was recommended that there be a clear distinction between medical insurers and medical service providers in order to prevent the direct conflict of interest because of the current wording of this proviso which reads:-

**“Every person engaged in the business of undertaking liability by way of insurance in respect of funding private medical care shall, within twelve months of the commencement of this section, apply to the Commissioner for registration as a medical insurance provider under this Act.”**

Under the Finance Bill, 2010 it is proposed to delete the above proviso and substitute it with a new clause to read as follows:-

**“Every person engaged in the business of placing medical insurance business with an insurer in expectation of payment by way of a commission, fee or remuneration shall apply to the Authority for registration as a Medical Insurance Provider under this Act.”**

**(i) Section 153(5) : Registration and Re-registration**

Following the signing of the East African Community Common Market protocol that is set to take effect on 1<sup>st</sup> July, 2010, insurance agents will be in a position to sell insurance and insurance related products anywhere across the various member partner states within the region.

In order to facilitate this, Section 153(5) which currently limits registration of insurance agency business to citizens of Kenya or to a partnership or company, wholly owned by Kenyans, has now been expanded to include

citizens of the East African Community or to a partnership or company wholly owned by the citizens of the East African Community.

**(j) Section 156: Advance payment of Premium**

Section 156 (7) which prescribed a penalty of 5% on outstanding premium payable by brokers for failure to remit premium under section 156(2) has been deleted.

**(k) Section 179: Ministers powers;**

There is an inclusion of several new clauses as follows:-

**179A: Protection from Personal Liability**

A member of the Board of the Policyholders Compensation fund, Secretary to the Board, an officer, employee or agent of the Board shall not be held liable personally liable for any action, claim or demand whatsoever for any matter or thing done in good faith for executing the functions, powers or duties of the Board.

Others clauses stipulating the functions and powers of the Board of Trustees of the Policyholders Compensation Fund have been included immediately under Section 179(2) as follows:-

**2A: The functions of the Board of Trustees** include:- the provision of compensation to policyholders of an insolvent insurer, monitoring of the risk profile of the insurer, advising the Minister on the national policy to be followed on matters of policyholders compensation , implementation of all government policies and performing other functions as may be conferred on it by the Act or by any other written law.

**2B: The Board of Trustees of the Policyholders Compensation Fund are further given powers to:-** control, supervise and administer the assets and liabilities of the fund, employ persons and engage the services of consultants for proper and efficient exercise of it's function, enter into Association with such other bodies or organizations within or outside Kenya, invest surplus funds in securities that the trustees may by law invest in or other securities that Treasury may approve, receive contributions paid by insurers and policyholders, grants provided by parliament, gifts, donations or endowments on behalf of the fund and make legitimate disbursements therefrom, including regulating it's own procedure.

## **Personal liability of the Insurers Directors**

Further, the Directors of an insurer who fail to pay the prescribed contribution to the Policyholders Compensation Fund and any outstanding penalty interest charge shall be held jointly and severally liable for the payment of the outstanding contribution and applicable interest. The liability of the Directors shall commence on the expiry of ninety (90) days from the due date of the outstanding statutory contribution.

Previously, the Board terminated the protection of the policy holders and the insurer was liable to have it's registration cancelled.

## **C. AMENDMENTS FROM OTHER STATUTES**

### **The Traffic Act, Cap 403**

Effective 1<sup>st</sup> January, 2011, the Registration **Book** in respect of Motor vehicles shall be referred to as Registration **Certificate**, under Sections 6,9 and 13 of the Traffic Act, Cap 403 respectively . There is also a further requirement that when a motor vehicle ceases to be used on the road, the owner is required to return both the registration certificate and the identification plates to the Registrar of Motor vehicles for cancellation.

### **The Insurance Motor vehicle Third Party Risks Act, Cap 405** **Introduction of a Structured Compensation Scheme**

The Minister for Finance has shared his intention to introduce a Structured Compensation Scheme under the Insurance Motor Vehicle Third party Risks Act, Cap 405 but no amendment has been included in the Finance Bill, 2010. The Secretariat will communicate any new developments should any arise in connection with this matter.

### **The Proceeds of Crime and Anti Money Laundering Act, 2009**

Vide Legal Notice No 89, Kenya Subsidiary legislation, 2010, the Minister for Finance has gazetted **Monday, 28<sup>th</sup> June, 2010** as the effective date for the Proceeds of Crime and Anti-Money Laundering Act, 2009.

Guidelines have been prepared for circulation to members by the Secretariat.

## Retirement Benefits Authority Act

The following amendments took effect on **10<sup>th</sup> June, 2010** as follows:-

- The Act has been amended to allow the Retirement Benefits Authority to share information with other regulatory Authorities.
- RBA's income shall be subject to Corporation Tax at 30% after their exemption from paying income tax was revoked by the Minister for Finance.
- Trustees will be required to pay out withdrawal benefits within a period of thirty (30) as opposed to sixty (60) days previously from the date of retirement or giving notice of withdrawal. Schemes will be required to revise their rules to accommodate this amendment.
- In a bid to improve Corporate Governance, Regulation 8 has been amended to bar the Chairman of the Boards of Sponsoring Organizations of a scheme from also Chairing the Boards of Trustees. Further the Chief Executive Officer as well as the Administrator of the Scheme are also not eligible for any appointment as Chairman of the Board of Trustees.
- Members of a scheme which provides for the purchase of annuities at retirement will now have the option of selecting the annuity provider within a period of one year from the date of retirement ( Note : the period for paying retirement benefits has been narrowed to thirty(30) days yet the a retiree has a year to source for an annuity provider. Trustees should be compelled to provide information on annuity providers within two weeks after receiving notice of withdrawal or retirement to enable a retiree make an informed decision)
- A new Regulation 5A has been introduced after Regulation 5 which restricts the appointment of persons as administrators of a scheme if that person is related to the fund manager of the same scheme. This restricts related companies from performing both an investment and administration function for the same scheme. This amendment will affect insurers who have massive investments in pension business.

