

L A W S O F K E N Y A

The Insurance Act

CHAPTER 487

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CHAPTER 487

THE INSURANCE ACT

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CHAPTER 487

THE INSURANCE ACT

Commencement: 1st January, 1987

1 of 1985,
18 of 1986,
L.N. 363/1986

An Act of Parliament to amend and consolidate the law relating to insurance and to regulate the business of insurance and for connected purposes

PART I - PRELIMINARY

1. This Act may be cited as the Insurance Act.

Short title.
L.N. 363/1986.

2. (1) In this Act, unless the context otherwise requires:

Interpretation.
18 of 1986, Sch.

“**Actuary**” means –

- (a) a Fellow of the Institute of Actuaries in England or of the Faculty of Actuaries in Scotland or of the Society of Actuaries of the United States of America; or
- (b) such other person having actuarial knowledge as the Commissioner may, on application of a member of the insurance industry, approve;

“**Admitted asset**” means any property, security, item or interest of a person permitted or required by or under section 42 to be regarded as an admitted asset;

“**Admitted liability**” means any obligation, whether actual, contingent or prospective, permitted or required by or under section 43 to be regarded as an admitted liability;

“**Affairs**”, in relation to a person or to a person associated with another person, includes-

- (a) The promotion, formation, membership, control, trading, dealings, business and property of the person;
- (b) The ownership of shares in, debentures of and interests made available by the person;
- (c) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the person or are or have been able to control or to influence materially the policy of the person; and
- (d) the circumstances under which a person acquired or disposed of, or become entitled to acquire or dispose of, shares in, debentures of or interests made available by the person;

“**Agent**” means a person, not being a salaried employee of an insurer who in consideration of a commission, solicits or procures insurance business for an insurer or broker;

“**Appointed date**” means the date specified in section 1 for the coming into force of this Act;

“**Asset**” includes any property, security, item or interest of a person;

“**Assessment report**” means any report in respect of a claim;

“**Auditor**” means a person who is qualified to be appointed an auditor of a company under section 161 of the Companies Act;

“**Authority**” means the Insurance Regulatory Authority established by section 3;

“**Bank**” has the meaning assigned to it in the Banking Act;

“**Board**” means the Board of Directors of the Authority constituted under section 3B;

“**Bond Investment Business**” means the business of issuing bonds or endowment certificates by which a company in return for subscriptions payable at periodic intervals contracts to pay the bond holder a sum or series of sums at a future date, not being life assurance business but including sinking fund or capital redemption insurance business;

“**Broker**” means an intermediary concerned with the placing of insurance business with an insurer or reinsurer for or in expectation of payment by way of brokerage, commission for or on behalf of an insurer, policy holder or proposer for insurance or reinsurance and includes a health management organization; but does not include a person who canvasses and secures reinsurance business from or to an insurer or broker in Kenya so long as that person does not undertake direct insurance business and does not have a place of business, or a resident representative, in Kenya;

“**Certified**” means certified by a principle officer to be true and correct, a true copy or a correct translation (as the case may be) by endorsement on or attached to the document to be certified;

“**Chairman**” means the person for the time being presiding over the board of directors or other governing body of the member of the insurance industry;

“**Child’s Advancement Policy**” means a policy effected, before a child has attained the age of eighteen years, by a person other than the child, which contains both of the following provisions-

- (a) provision for payment of a sum not exceeding the premiums paid and accumulated with interest to the executors, administrators or assigns of the child on his death before attaining the vesting age;
- (b) Provision for payment of a sum to the child or his assigns on his attaining an age not less than the vesting age;

“**Claims Settling Agent**” means a person who engages in the business of settling or negotiating insurance claims under policies issued by insurers whether in Kenya or outside Kenya;

“**Commissioner**” means the officer appointed under section 3E;

“**Contract Of Insurance**” includes a contract of reinsurance;

“**Corporation**” means the Kenya Reinsurance Corporation established under section 129;

“**Court**” means the High Court;

“**Dependent**”, in relation to a company, means-

- (a) that another company, either alone or with any associate, is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of the first-mentioned company; or
- (b) that the first-mentioned company is a dependent of a company which is that other company’s dependant;

“**Director**” means a person occupying the position of a director by whatever name he may be called;

“**Document**” includes accounts, deeds, letters, writings, books and any other records of information, however compiled, recorded or stored and whether in written or printed form, on microfilm or in any other form;

“**Financial Institution**” has the meaning assigned to it in the Banking Act and includes a mortgage finance company within the meaning of that Act;

“**Financial Year**” means the calendar year;

“**General Insurance Business**” means insurance business of any class or classes not being long term insurance business;

“**Gross Direct Premium**” means the premiums after deductions of discounts, refunds and rebates of premium written by an insurer excluding any reinsurance premium accepted and before deduction of –

- (a) any premium payable in respect of mandatory cessions falling under section 145 of this Act; and
- (b) any other reinsurance premium ceded.

“**Gross Liability**” means liability before deducting any part of it which is reinsured;

“**Gross Premium**” means the premium after deduction of discounts, refunds and rebates of premium but before deduction therefrom of any premium paid or payable by an insurer for reinsurance ceded, and includes premiums receivable by the insurer under reinsurance contracts accepted by the insurer and any premium in respect of annuity contracts;

“**Group Life Insurance And Group Business**” means insurance on the lives of groups of persons formed for purposes other than that of purchasing a group life insurance policy;

“**Industrial Life Assurance Business**” means the business of effecting assurance on human life, premiums in respect of which are payable, at intervals not exceeding two months in each case, to collectors sent by the insurer to each owner of a policy, or to his residence or place of work;

“**Insurance Business**” means the business of undertaking liability by way of insurance (including reinsurance) in respect of any loss of life and personal injury and any loss or damage, including liability to pay damage or compensation, contingent upon the happening of a specified event, and includes-

- (a) the effecting and carrying out by a person not carrying on a banking business, of contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, being contracts effected by way of business (and not merely incidental to some other business carried out by the person effecting them) in return for the payment of one or more premiums;
- (b) the effecting and carrying out, by a body (not being a body carrying on a banking business) that carries on which is insurance business apart from this paragraph, of capital redemption contracts;
- (c) the effecting and carrying out of contracts to pay annuities on human life; and any business incidental to insurance business as so defined but does not include-
 - (i) business in relation to the benefits provided by a friendly society or trade union for its members or their dependants;
 - (ii) business in relation to the benefits provided for its members or their dependants by an association of employees;
 - (iii) deleted
 - (iv) Business in relation to a scheme or arrangement for the provision of benefits consisting of-
 - (A) the supply of funeral, burial or cremation services, with or without the supply of goods connected with any such service; or
 - (B) Deleted

And no other benefits, except benefits incidental to the scheme or arrangement;

- (v) business consisting of the effecting and carrying out, by a person carrying on no other insurance business, of contracts of such description as may be prescribed, being contracts under which the benefits provided are exclusively or primarily benefits in kind;
- (vi) business declared by the Minister by notice in the Gazette not to be insurance business for the purposes of this Act;

“Insurance Surveyors” means a person who engages in surveying risks and in advising on the rate and terms and conditions of premiums including making suggestions for improvement of the risks; and, in the marine insurance business, includes a person who surveys or assesses the losses on behalf of the insured;

“Insurance Training And Education Trust” means the insurance training and education trust declared as such by instruments of the trustees dated 3rd May, 1988;

“Insurance Training Levy” means the insurance training levy payable under section 197H;

“Insurance Premium Levy” means the insurance premium levy payable under section 197A.

“Insurer” means a person registered under this Act carries on insurance business and includes a reinsurer;

“Intermediary” means a person who in the course of any business or profession invites other persons to make offers or proposals or to take other steps with a view to entering into contracts of insurance with an insurer, but does not include a person who merely publishes invitations on behalf of, or to the order of, some other person;

“Investigator” means the Commissioner or an investigator appointed under section 9;

“Kenya business” and **“Kenya reinsurance business”** mean insurance business carried on by an insurer in respect of any person, human life, property or interest situated in Kenya, or in respect of which premiums are ordinarily payable in Kenya and include insurance business in respect of any vessel, hovercraft or aircraft registered or ordinarily located in Kenya, including marine cargo insurance policies for commercial imports but excludes marine cargo insurance policies issued on personal effects, goods and items imported into Kenya by returning residents or passengers entering Kenya for permanent or temporary residence.

Provided that, if any doubt arises as to whether on a policy of insurance the premiums are ordinarily payable in Kenya or outside Kenya, the Commissioner shall decide the question and his decision shall be final;

“Kenya Government securities” means the securities charged on the revenue of the Government or guaranteed fully as regards principal and interest by the Government;

“**Kenya Reinsurance Corporation Limited**” has meaning assigned to it in section 2 of Kenya Reinsurance Act 1997;

“**Life Assurance**” and “**Life Assurance Business**” mean the business of, or in relation to, the issuing of, or the undertaking of liability to pay money on death (not being death by accident or in specified sickness only) or on the happening of any contingency dependent on the termination or continuance of human life (either with or without provision for a benefit under a continuous disability insurance contract), and include a contract which is subject to the payment of premiums for term dependent on the termination or continuance of human life and any contract securing the grant of an annuity for a term dependent upon human life;

“**Long Term Insurance Business**” includes insurance business of all or any of the following classes, namely, ordinary life assurance business, industrial life assurance business and bond investment business and includes, in relation to any insurer, business carried on by the insurer as incidental to any such class of business;

“**Loss Adjuster**” and “**Loss Assessor**” mean persons who do the business of assessing, investigating, negotiating, and settling losses, on behalf of the insurer or the assured;

“**Management Expenses**” means expenses incurred in the administration of an insurer which are not commission payable and, in the case of general insurance business, are not included in claims paid, claims outstanding, expenses for settling claims and expenses for settling claims outstanding;

“**Managing Agent**” means a person, firm or company entitled to the management of the whole affairs of the an insurer, by virtue of an agreement with the insurer, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes a person, firm or company occupying that position, by whatever name called;

“**Medical Insurance Provider**” means an intermediary, other than a broker, concerned with the placing of medical insurance business with an insurer for, or in expectation of, payment by way of a commission, fee or other remuneration.

“**Member Of The Insurance Industry**” includes an insurer, reinsurer, broker, agent, insurance surveyor, risk manager, loss assessor, loss adjuster and claims settling agent, whether registered under this act or not;

“**Net Liability**” means the liability assessed by an actuary at a valuation made by him and approved by the Commissioner.

“**Net Premium**” means the balance of the gross premium after deduction therefrom of any premium paid or payable by the insurer for reinsurance ceded;

“**Ordinary Life Assurance Business**” means life assurance business, being business of, or in relation to, the issuing of, or the undertaking of liability under, ordinary life policies;

“**Ordinary Life Policy**” means a policy of life assurance other than a policy of industrial life assurance;

“**Person**” includes a company, corporate body (whether incorporated by or under statute or statutory authority), association, association of underwriters, fund, natural person, partnership and scheme;

“**Policy**”-

- (a) in relation to ordinary life assurance business or industrial life assurance business, includes an instrument evidencing a contract to pay an annuity upon human life;
- (b) In relation to bond investment business, includes a bond, certificate, receipt or other instrument evidencing the contract with the insurer; and
- (c) In relation to other classes of business, includes an instrument under which there is for the time being an existing liability already accrued or under which any liability may accrue;

“**Policy Holder**” means the person who for the time being is the legal holder of the policy for securing the contract with the insurer;

“**Premium**” includes the consideration for the granting of an annuity;

“**Principal Officer**” means an officer appointed under section 68;

“**Registration**” means registration under this Act and includes a renewal of registration;

“**Regulations**” and “rules” mean regulations and rules made under this Act;

“**Reinsurer**” means a person who carries on reinsurance business and includes a retrocessionaire;

“**Reinsurance Business**” means the business of undertaking liability to pay money to insurers or reinsurers in respect of contractual liabilities in respect of insurance business incurred by insurers or reinsurer and includes a retrocession;

“**Related**”, in relation to an insurer, means-

- (a) a dependant of that insurer;
- (b) a company of which the insurer is a dependant; or
- (c) a dependant of a company of which the insurer is dependant;

“**Retrocession**” means the reinsurance of reinsurance business accepted by a reinsurer;

“**Retrocessionaire**” means a person reinsuring a reinsurer;

“**Risk Manager**” means a person, his clients or employer with regard to a programme of minimizing losses arising through unforeseen events, and of minimizing the cost of such protection by physical or financial measures through insurance or any other means.

“**Statutory Fund**” means the fund established under section 45;

“**Subsidiary**” has the meaning assigned to it in section 154 of Companies Act;

“**Tribunal**” means the tribunal established under section 169;

“**Vesting Age**” means-

- (a) the age of eighteen years; or
 - (b) an age of not less than ten years on or after the attainment of which by the child it is specified in the policy that sums payable in respect of the policy by the insurer who issued it shall be paid to the child or his executors, administrators or assigns.
- (2) An insurer shall be deemed to be carrying on business of a particular class so long as any liability in respect of that class of business remains unsatisfied and is not otherwise provided for, and shall be subject to all the provisions of this Act, save as is specifically provided in any other section thereof, in relation to that class of business.

PART II - THE INSURANCE REGULATORY AUTHORITY

3. (1) There is established an Authority to be known as the Insurance Regulatory Authority.
- (2) The Authority shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of
- (a) suing and being sued;
 - (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
 - (c) borrowing or lending money, and
 - (d) doing or performing all other things or acts for the furtherance of its functions under the provisions of this Act, which may be lawfully done or performed by a body corporate.

Establishment of the Authority

3A. The objects and functions of the Authority shall be to –

- (a) ensure the effective administration, supervision, regulation and control of insurance and reinsurance business in Kenya;

Objects and functions of the authority

- (b) formulate and enforce standards for the conduct of insurance and reinsurance business in Kenya;
- (c) license all persons involved in or connected with insurance business, including insurance and reinsurance companies, insurance and reinsurance intermediaries, loss adjusters and assessors, risk surveyors and valuers;
- (d) protect the interests of insurance policy holders and insurance beneficiaries in any insurance contract;
- (e) promote the development of the insurance sector;
- (f) advise the Government on the national policy to be followed in order to ensure adequate insurance protection and security for national assets and national properties; and
- (g) undertake such other functions as may be conferred on it by this Act or by any other written law.

3B. (1) The management of the Authority shall vest in the Board of Directors of the Authority which shall comprise-

Board of Directors

- i. a chairman to be appointed by the President on the recommendation of the Minister;
 - ii. the Commissioner of Insurance appointed under section 3E;
 - iii. the Permanent Secretary in the Ministry for the time being responsible for matters relating to finance or his representative;
 - iv. the Chief Executive Officer of the Retirement Benefits Authority;
 - v. the Chief Executive Officer of the Capital markets Authority;
 - vi. the Governor of the Central Bank of Kenya or his representative, and
 - vii. a nominee of the Insurance Institute of Kenya;
 - viii. four other members, not being public officers, appointed by the Minister.
- (2) The chairman and every member appointed under paragraphs (a), (g) or (h) of subsection (1) shall be appointed from amongst persons who have knowledge or experience in matters relating to insurance, finance, banking or actuarial science.
- (3) A person shall not be eligible for appointment under paragraphs (a), (g) or (h) of subsection (1) if such person-

- a) has at any time been convicted of any offence involving fraud, theft, dishonesty, breach of trust or moral turpitude;
- b) was previously involved in the management or administration of a financial institution which was deregistered, wound up or placed under statutory management for any failure on the part of the management or the administration thereof;
- c) is a director, officer, employee or shareholder of any insurer, broker, insurance agent or any other member of the insurance industry; or
- d) is disqualified under any other written law from holding public office or being a director of any institution.

3C.(1) The Board shall have all the powers necessary for the performance of its functions under this Act, and, without prejudice to the generality of the foregoing, shall have power to-

Powers of the Board

- (a) control, supervise and administer the assets of the Authority in such manner and for such purposes as best promote the purpose for which the Authority is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (c) received any grants, gifts, donations or endowments on behalf of the Authority and make legitimate disbursements therefrom;
- (d) enter into association with such other bodies or organizations, within or outside Kenya, as it may consider desirable or appropriate and in furtherance of the purpose for which the Authority is established;
- (e) open a banking account or banking accounts for the funds of the Authority; and
- (f) invest the funds of the Authority not currently required for its purposes in the manner provided in this Act.

(2) The conduct and regulation of the business and affairs of the Board shall be provided in the Schedule, but subject thereto, the Board may regulate its own procedure.

(3) The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Authority, the exercise of any of the powers, or the performance of any of the functions or duties of the Authority under this Act, or under any other written law.

3D. The Authority, in consultation with the Minister, shall pay the members of the Board such remuneration, fees or allowances for expenses as it may determine.

Remuneration of the
Board members

- 3E.** (1) There shall be a Commissioner of Insurance who shall be the chief executive officer of the Authority and who shall be appointed by the Board, in consultation with the Minister, on such terms and conditions of services as may be determined by the board in the instrument of appointment, or otherwise in writing from time to time.
- (2) The Commissioner shall be an *ex officio* member of the Board but shall have no right to vote at any meeting of the Board.
- (3) The Commissioner shall, subject to the directions of the Board, be responsible for the day-to-day management of the affairs of the Authority.
- (4) A person shall be qualified to be appointed under this section if such person-
- a. has considerable knowledge, competence and at least ten years' experience in a managerial capacity in insurance, accounting, finance, actuarial science or banking; and
 - b. is not engaged in the insurance business as a director, employee, officer or shareholder of any insurer, broker, insurance agent, or in any other sector of the insurance industry, and if appointed shall be disqualified if he, his spouse or dependent child becomes such director, employee, officer or shareholder.
- 3F.** (1) The Board shall appoint a secretary to the Board on such terms and conditions of service as it may determine.
- (2) The Board may appoint such officers or servants as are necessary for the proper discharge of the functions of the Authority under this Act or any other written law, upon such terms and conditions of service as it may determine.
- 3G.** (1) The common seal of the Authority shall be kept in such custody as the Board may direct, and shall not be used except on the order of the Board.
- (2) The common seal of the Authority, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and, unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.
- 4.** (1) The Authority shall establish a general fund to be known as the Insurance Regulatory Authority Fund, hereafter referred to as "the Fund", which shall vest in the Authority.
- (2) There shall be paid into the Fund-
- a) all proceeds of the insurance premium levy imposed by section 197A;
 - b) such moneys as may accrue to or vest in the Authority in the course of the performance of its functions under this Act;

Commissioner of insurance

Appointment of Secretary and other staff

Common seal of the Authority

The Insurance Regulatory Authority Fund Act 11/06

- c) such sums as may be payable to the Authority pursuant to this Act or any other written law, or pursuant to any gift or trust;
 - d) such sums as may be granted to the Authority by the Minister pursuant to subsection (3); and
 - e) all moneys from any other source provided for, donated to or borrowed by the Authority.
- (3) There shall be made to the Authority, out of moneys provided by parliament for that purpose, grants towards the expenditure incurred by the Board in the exercise of its functions under this Act.
- (4) The Authority may invest any of its funds in securities which trustees are by law allowed to invest trust funds, or in any other securities which the Treasury may, from time to time approve.
- (5) There shall be paid out of the fund all such sums of money required to defray the expenditure incurred by the Authority in the exercise of powers and performance of its functions and duties.
- 4A.** (1) The financial year of the Authority shall be the period of twelve months ending on the thirtieth of June in each year.
- (2) At least four months before the commencement of each financial year, the Board shall prepare estimates of revenue and expenditure of the Authority for that year.
- (3) The annual estimates shall make provision for all the estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for-
- (a) The payment of salaries, allowances and other charges in respect of the staff of the Authority;
 - (b) The payment of pensions, gratuities and other charges in respect of the retirement benefits which are payable out of the funds of the Authority;
 - (c) The proper maintenance of the buildings and grounds of the Authority;
 - (d) The maintenance, repair and replacement of the equipment and other property of the Authority;
 - (e) The creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.
- (4) the annual estimates shall be prepared at least three months before the commencement of the financial year to which they relate and shall be submitted to the minister for approval and after such approval, the Authority shall not increase

Financial Year and
annual Estimates

the annual estimates without the consent of the Minister.

- (5) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under this section or in pursuance of an authorization by the Minister.

4B. (1) The Authority shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Authority.

Account and audit

- (2) Within a period of four months after the end of each financial year, the Board shall submit to the Controller and Auditor-General or an auditor appointed by the board under the authority of the Controller and Auditor-General, the accounts of the Authority together with –

- (a) a statement of income and expenditure during that year; and
- (b) a statement of the assets and liabilities of the Authority on the last day of that year.

- (3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2003.

4C. Where there is a conflict between the provisions of this Act and the provisions of any written law with regard to the powers or functions of the Board or the Authority under this Act, the provisions of this Act shall prevail.

Supersession

5. (1) Subject to this Act, the duties of the Commissioner shall include-

Particular duties of the Commissioner

- (a) deleted
- (b) directing insurers and reinsurers on the standardization of contracts of compulsory insurance;
- (c) directing an insurer or a reinsurer, where he is satisfied that the wording of a particular contract of insurance issued by the insurer or reinsurer is obscure or contains ambiguous terms or terms and conditions which are unfair or oppressive to the policy-holders, to clarify, simplify, amend or delete the wording, terms or conditions, as the case may be, in respect of future contracts;
- (d) the approval of tariffs and rates of insurance in respect of any class or classes of insurance;
- (e) such other duties as the Board may assign to him.

(1A) The Board may, with the approval of the Minister make regulations for the purpose of giving effect to the provisions of this Part.

- (2) The Board shall, as soon as reasonably practicable after each year ending on 31st December, furnish to the Minister a report on the working of this Act during that year together with summaries of returns and documents deposited with the board

under Part VI during that year; and the Minister shall lay the report before the National Assembly as soon as reasonably practicable thereafter.

6. Repealed

7. (1) The Commissioner may, by notice in writing require a member of the insurance industry to supply him with information relating to his insurance business, and that person shall comply with the requirement within such period after receipt of the notice as may be specified therein failing which he shall be deemed to have failed to comply with the provisions of this Act.

Power to call for
information and
production of books
or papers

(2) Information supplied under this section shall be certified by a principal officer of the member of the insurance industry in question and, if the notice so requires, also by an auditor.

(3) The Commissioner may by notice in writing-

(a) require a member of the insurance industry to produce, at such a time and place as he may specify, such books or documents as he may specify; or

(b) authorize any person, on producing (if required to do so) evidence of his authority, to require a member of the insurance industry to produce to him forthwith any books or documents which that person may specify.

(4) Where by virtue of subsection (3) the Commissioner or a person authorized by him has power to require the production of books or documents from a member of the insurance industry, the Commissioner or that person shall have the same power to require production of those books or documents from any person who appears to him to be in possession of them.

(5) Where any person from whom production of a document is required claims a lien on the document produced by him, the production shall be without a prejudice to the lien.

(6) The power conferred by or by virtue of subsections (3) and (4) to require a member of the insurance industry or other person to produce books or documents shall include power:-

(a) if the books or documents are produced-

(i) to take copies of them or extracts of or from them; and

(ii) to require that person, or any other person who is a present or past director of, auditor of, or is or was at any time employed by, the member of the insurance industry in question, to provide an explanation of any of them;

(b) if the books or documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(7) A person who in purported compliance with a requirement imposed under this section furnishes information which he knows to be false in a material particular, or who recklessly furnishes information which is false in a material particular, or who, having been required to produce a book or document for examination, alters, mutilates, damages, destroys, conceals, or removes it without the written consent of the Commissioner, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding twelve months or to both.

8. (1) The commissioner may-

- (a) call upon an insurer to submit for his examination at his office all reinsurance treaties and other reinsurance contracts entered into by the insurer;
- (b) by notice in writing, require an insurer to supply him with copies of any of the documents referred to in paragraph (a) certified by a principal officer of the insurer.

Examination of
reinsurance
treaties

(2) If on the scrutiny of a document referred to in subsection (1) or otherwise the Commissioner considers that any reinsurance treaty, contract or arrangement or any terms or conditions therein are not favourable to the insurer or are not in the interests of the economy or the insurance industry or in the public interest, he may in writing direct the insurer either-

- (a) to make, at the time when the renewal of that treaty or contract next becomes due, such modifications in its terms and conditions as he may specify; or
- (b) not to renew that treaty, contract or arrangement.

(3) A 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 twelve months or to both, and if the offence is a continuing one, to a further fine not exceeding two hundred shillings for every day during which the offence continues.

9. (1) Where the Commissioner-

(a) has reason to believe that-

- (i) an offence under this Act or default in complying with any of the provisions of this Act or any subsidiary legislation made thereunder has been or is likely to be committed by a member of the insurance industry; or
- (ii) the affairs of any member of the insurance industry are being conducted in a manner which is detrimental or prejudicial to the interests of that member, any policy holder, the economy or the insurance industry; or

Directions and
investigations.

- (iii) an insurer may be unable or is likely to become unable to meet his obligations or, in the case of long-term insurance business, to fulfill the reasonable expectation of policy holders or potential policy holders; or
 - (b) receives a requisition signed by not less than ten percent of policy holders holding policies of life assurance in force respectively for not less than three years with an insurer and which on maturity will be for a total value of not less than one million shillings, that an investigation be held into the affairs of that insurer; or
 - (c) receives a requisition signed by not less than one-tenth of the shareholders holding not less than one-tenth of the issued share capital of an insurer, that an investigation be held into his affairs, the Commissioner may exercise any one or more of the powers set out in subsection (2).
- (2) The powers referred to in subsection (1) are that the Commissioner may-
 - (a) by notice in writing served on the person concerned, direct him to furnish to the Commissioner within such period after service of the notice, being not less than seven days, as he specifies in the notice, information in writing about such matters in relation to the affairs of the person as he so specifies;
 - (b) by notice in writing served on the person concerned direct him not to dispose of or otherwise deal with or remove from Kenya an asset in Kenya specified in the notice during such period after service of the notice, being not more than six months, as he specifies in the notice;
 - (c) after giving the member of the insurance industry a reasonable opportunity of being heard, and with the written approval of the Board, give such directions in writing as he considers necessary, to be effective from a specified date;
 - (d) after giving the member of the insurance industry a reasonable opportunity of being heard, and with the written approval of the Board, prohibit that member of the insurance industry from entering into any particular transaction or class of transactions;
 - (e) after giving the member of the insurance industry a reasonable opportunity of showing cause why, on such grounds as he so specifies, an investigation should not be conducted in respect of that member, with the approval in writing of the Board, investigate, or by instrument in writing appoint any person other than a person in the employ of that member, to investigate the affairs of that member.
- (3) With regard to a requisition made under paragraph (b) or (c) of subsection (1) the Commissioner may, before ordering an investigation, require the persons making the requisition to furnish security in such amount as he considers sufficient to meet the costs to be incurred by the member of the insurance industry by the Commissioner in respect of the investigation.

- (4) A person who fails to comply with a direction issued or who contravenes a prohibition imposed under subsection (2) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings; and if the offence is a continuing one, to a further fine not exceeding one hundred shillings for every day during which the offence continues.
 - (5) The Commissioner or other person appointed by him to investigate the affairs of a member of the insurance industry may, wherever necessary, employ an auditor, actuary or other person to assist him in the investigation.
 - (6) All expenses of, and incidental to, an investigation under this section shall be defrayed by the member of the insurance industry and if they are not paid by him within a period of one month after the Commissioner makes a demand to him, shall constitute a civil debt recoverable summarily by the Commissioner.
- 10.** (1) Where an insurer carrying on long term insurance business has not issued a new policy of that category of insurance for a period of twelve months from the appointed date, or from the date of issue of the last policy, whichever is later, the Commissioner may, with the approval of the Board, direct the insurer to frame proposals for transfer or amalgamation of its business to or with an insurer.
- (2) Where an insurer fails to comply with a direction under subsection (1), or if the proposals framed by the insurer are in the opinion of the Commissioner unsatisfactory, the Commissioner may himself frame a scheme for the transfer of the business to another insurer specified the first mentioned insurer and approved by the Board.
 - (3) Where an insurer fails to implement a scheme framed by the Commissioner under subsection (2) and the Commissioner considers that the continuance in business of that insurer is likely to lead to insolvency, or is otherwise contrary to the interests of policy holders he may, with the prior approval of the Minister –
 - (a) order an investigation of that insurer; or
 - (b) apply to the court for the winding up the business of the insurer in terms of section 123(1)(b).
 - (4) An insurer who, upon an investigation ordered under section (3)(a) is found to have disposed any assets from a closed fund contrary to the provisions of Section 21 or to have misappropriated such assets commits an offence and is liable on conviction, to a fine not exceeding one hundred thousand shillings or, where the insurer is a natural person, to imprisonment for a term not exceeding five years or to both.
 - (5) An insurer convicted under subsection (4) shall forthwith be liable to refund the assets misappropriated from the closed fund.
 - (6) An insurer who fails to refund any assets under subsection (5) commits an offence and is liable to a fine not exceeding five thousand shillings, or, if the insurer is a natural person, to imprisonment for a term not exceeding five years or both.

Particular powers of
Commissioner with
regard to long term
insurance business

- (7) If an offence under subsection (6) is a continuing one, the insurer shall be liable to a further fine of five thousand shillings for every day during which the offence continues.
- (8) In this section the expression Closed fund means a closed fund within the meaning of section 21.

- 11.** (1) Where an investigator believes on reasonable grounds that it is necessary for the purposes of an investigation under section 9 to investigate the whole or some part of the affairs of another person that is, or has at some relevant time been, associated with the person in respect of which he is appointed, he may, with the consent in writing of the Board, investigate the whole or that part of the affairs of that other person.
- (2) Before commencing the investigation, the investigator shall, if requested, serve on the associated person a copy of the consent in writing of the Board.
 - (3) For the purposes of this section, a person is associated with another person if the two persons are related to each other and-
 - (a) the first-mentioned person is a member of the insurance industry; and
 - (b) either of those persons is, or has directors who are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the other person or of its directors.

Investigation of
Associated
Persons

- 12.** (1) An investigator may, by notice in writing, require any person who is or has at any time been a director, managing director, secretary, principal officer, manager, officer or employee, agent, accountant, broker, auditor or actuary of the person being investigated to-
- (a) Give to the investigator all reasonable assistance in connection with the investigation; or
 - (b) Appear before the investigator for examination concerning matters relevant to the investigation; or
 - (c) Produce any books or documents that relate to the affairs of the person being investigated.
- (2) Where books or documents are produced to an investigator under this section, the investigator may take possession of them for such period as he thinks necessary for the purposes of the investigation and may make copies of and take extracts from them, but shall permit a person who would be entitled to inspect any of them, if they were not in the possession of the investigator, to inspect at all reasonable times such of those books as that person would be so entitled to inspect.
- (3) No person shall-
- (a) refuse or fail to comply with a requirement of an investigator that is applicable to him, to the extent to which he is able to comply with it; or

Powers of
investigator.

- (b) in purported compliance with such a requirement, furnish information or make a statement that he knows to be false or misleading in a material particular; or
 - (c) when appearing before an investigator for examination in pursuance of such a requirement, make a statement that he knows to be false or misleading in a material particular; or
 - (d) obstruct or hinder an investigator in the exercise of his powers under this Act.
- (4) A person who acts in contravention of subsection (3) shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.
- (5) A person being examined by an investigator shall not be excused from answering a question put to him by an investigator on the ground that the answer might tend to incriminate him but, where the person informs the investigator before answering the questions that the answer might tend to incriminate him, neither the question nor the answer shall be admissible in evidence against him in criminal proceedings other than proceedings in relation to an offence under subsection (4).
- 13.** A person who complies with a requirement of an investigator under this Act shall not incur any liability to any other person by reason only of that compliance. Protection for persons complying.
- 14.** An advocate acting for a person being examined by an investigator- Person may be Represented by An advocate
- (a) may attend the examination; and
 - (b) may-
 - (i) address the investigator; and
 - (ii) examine the person,
- in relation to matters in respect of which the investigator has questioned the person.
- 15.** (1) An investigator may cause notes of an investigation of a person to be recorded and read to or by that person and may require that person to sign the notes and, subject to section 12 (5), notes signed by that person may be used in evidence in proceedings under this Act against that person. Notes of Examination of person
- (2) A copy of the notes signed by a person shall be furnished without charge to that person upon request made by him in writing to the investigator.
- (3) Where notes are recorded under this section, the notes shall be furnished to the Commissioner with the report of the investigation to which they relate.
- 16.** (1) An investigator may make one or more reports in writing to the Commissioner during the investigation of the whole or a part of the affairs of a person and shall, if so directed in writing by the Commissioner, make such reports as are specified in the direction. Report of Investigator
- (2) A report made on the completion of the investigation shall include-

- (a) a statement of the opinion of the investigator in relation to the grounds for investigation and the facts on which that opinion is based and recommendations thereon;
 - (b) the recommendations of the investigator with respect to-
 - (i) the question whether the person investigated should continue to be permitted to carry on business;
 - (ii) any directions that should be given under section 17 to the person investigated;
 - (iii) the question whether the affairs of the investigated person should be reorganized; and
 - (iv) such other matters, affecting the person investigated or otherwise in the public interest in relation to the business carried on by the person investigated, as he thinks fit.
 - (3) An investigator shall not include in a report a recommendation relating to the institution of criminal proceedings or a statement to the effect that, in his opinion, a specified person has committed a criminal offence.
 - (4) The Commissioner shall give a copy of a report made to him under this section to the person investigated.
 - (5) The Minister may, if he considers it is in the public interest to do so and after taking into consideration any advice he has received from the Attorney General, cause the whole or some part of the report to be published.
- 17.** (1) The Commissioner may, by notice in writing, require a person investigated to comply by such date or within such period as may be specified therein, with such directions as he considers necessary in connection with any matter arising out of a report made under section 16.
- (2) Without prejudice to the generality of subsection (1), the Commissioner may, where the person investigated is an insurer, with the approval of the Minister, issue any one or more of the following directions-
- (a) that the insurer shall not issue new policies or undertake liability under new contracts of insurance;
 - (b) that the insurer shall not renew existing policies;
 - (c) that the insurer shall not issue policies in respect of a class of insurance business specified in the direction or undertake liability under contracts of insurance included in a class of contracts of insurance so specified;
 - (d) that the insurer shall not renew existing policies in respect of a class of insurance business specified in the direction.

Directions to persons
Investigated

- (3) Without prejudice to the generality of subsection (1), the Commissioner may, where the person investigated is an insurer, issue any one or more of the following directions-
- (a) that the insurer shall not dispose of or otherwise deal with an asset of the insurer or an asset of the insurer included in a class of assets specified in the direction;
 - (b) that the insurer shall dispose of an asset of the insurer in a class of assets specified in the direction, in such a manner and within such period after the giving of the direction, not being less than twenty one days, as the Commissioner so specifies;
 - (c) that the insurer shall, within such period after the giving of the direction, not being less than twenty one days, as the Commissioner specifies in the direction, make in his accounts such provision or further provision as Commissioner so specifies in respect of unearned premiums or claims or in respect of both unearned premiums and claims;
 - (d) that the insurer shall, within such period after the giving of the direction, not being less than twenty one days, as the Commissioner specifies in the direction, adjust one or more of his reserves and make up appropriate investment in connection with such reserve or reserves, as the case may be;
 - (e) that the insurer shall make such arrangements with respect to reinsurance or retrocession as he so specifies;
 - (f) that the insurer shall increase, so far as he is able to do so, his paid up capital whether by calling up such uncalled capital as is available to be called up or otherwise;
 - (g) that the insurer shall not, except with the consent of the Commissioner-
 - (i) enter into an arrangement or agreement for the sale or disposal of his business by amalgamation or otherwise or for the carrying on of his business in partnership with another body corporate; or
 - (ii) effect a reconstruction of the insurer;
 - (h) that the insurer shall, within such period after the giving of the directions, not being less than six months, as the Commissioner specifies in the direction, effect a reconstruction, of the insurer.
- (4) Where a body corporate in respect of which a direction has been given under subsections (1), (2) or (3) is commenced to be wound up, the direction shall cease to have effect unless the court directs otherwise.
- (5) If, as a result of a report by an investigator, the Commissioner considers that it is necessary in the interest of policy holders that the person investigated be wound up, or if the person investigated fails to comply with any direction issued under this

section, the Commissioner may, after giving the person investigated a reasonable opportunity of making representations, apply to the court for an order for the winding up of person investigated, in which case then provisions of the Companies Act relating to the winding up of a company (as varied by Part XII of this Act) shall apply.

- (6) Where, after reading a report made under section 16, the Commissioner considers that a requisition under paragraphs (b) or (c) of subsection (1) of section 9 has been made without reasonable cause, he may order that the whole or any part of the amount furnished as security under subsection (3) of that section shall be forfeited and paid to the person investigated and the Commissioner in order to defray the respective costs incurred by them.

18. (1) This section applies to every person who is or has been the Commissioner of Insurance or a member of the staff assisting the Commissioner or an investigator or any other person appointed by or assisting the Commissioner.

Secrecy

- (2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act, make a record of or divulge or communicate to any person, any information concerning the affairs of any other person acquired by him by reason of his office or employment under or for purposes of this Act.

- (3) Nothing in this section shall prevent the communication of information or the production of a document, by the Commissioner or by a member of the staff or other person assisting the Commissioner or by an investigator authorized by the Commissioner in that behalf, to a person to whom, in the opinion of the Minister, it is in the public interest that the information be communicated or the document produced.

- (4) The Commissioner or a member of the staff or other person assisting the Commissioner and authorized by him in that behalf may furnish to the Director of Statistics or the Advisory Board information obtained from a member of the insurance industry or policy holder:

Provided that any information furnished to the Director of Statistics or the Advisory Board under this subsection shall be treated as confidential and used solely for the purposes of this Act.

- (5) A person who contravenes the provisions of 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 twelve months or to both.

PART III - REGISTRATION OF INSURERS

19. (1) Except as otherwise provided in or under this Act, only a person registered under this Act shall, on or after the appointed date, carry on insurance business-

Only authorized
Persons to carry on
Insurance business

- (a) in Kenya, whether in respect of Kenya insurance or reinsurance business or otherwise; or
- (b) outside Kenya in respect of Kenya business, except Kenya business which is solely reinsurance business;

Provided that, notwithstanding this subsection, an insurer carrying on insurance business immediately before the appointed date may continue to carry on insurance business without being registered under this Act-

- (i) for a period of three months beginning with that date; and
 - (ii) if before the expiration of that period he applies for registration under this Act, until he is registered or registration is refused or his application is withdrawn.
- (2) A person resident in Kenya or an association of persons or body corporate established in Kenya who or which carries on insurance business in any part of the world other than Kenya shall for the purposes of this Act be deemed to be an insurer carrying on that business within Kenya.
 - (3) A person who carries on insurance business in contravention of subsection (1) 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 of one thousand shillings for every day during which the offence continues.
 - (4) Where a person guilty of an offence under subsection (3) 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.
 - (5) Where a person guilty of an offence under subsection (3) is a body corporate, then notwithstanding the imposition of any penalty, the commission of that offence shall constitute grounds whereby the Commissioner may apply to the court for the winding up of that body corporate.
- 20.** (1) No insurer, broker, agent or other person shall directly or indirectly place any Kenya business other than reinsurance business with an insurer not registered under this Act without the prior approval, whether individually or generally, in writing of the Commissioner.
- (2) No insurer, broker, agent or other person shall directly or indirectly place any reinsurance of Kenya business with an insurer not registered under this Act except under the following conditions-
- (a) in the case of a treaty reinsurance, with the approval of the Commissioner to the treaty, and subject to such restrictions as he may specify;
 - (b) in the case of the facultative reinsurance, subject to the prior approval in writing of the Commissioner to the placing of each particular risk with insurers or reinsurers not registered under this Act.

Placing of risks with Insurers and reinsurers not registered under this Act.

- (3) Paragraph (a) of subsection (2) shall be deemed to have been complied with in respect of any reinsurance treaty or contract in force on the appointed date until the date of the next renewal of registration or the date of the renewal of the treaty or contract, whichever is earlier, if the treaty or contract is certified by the Kenya Reinsurance Corporation as having been approved by that Corporation.
- (4) A person who contravenes the provisions of the subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment not exceeding one year or to both.
- (5) A policy or contract of insurance or reinsurance effected or renewed in contravention of subsection (1) of section 19, or subsection (1) of this section, shall not be invalid, void or unenforceable solely on the grounds of that contravention.
- 21.** (1) Nothing in section 19 shall prohibit, without registration under this part, the continuance, subject to section 10 and 123 (1) (b), of insurance business in Kenya by an insurer, in so far as it is necessary to maintain, without renewal, any policy or contract of insurance, issued before the appointed date (in this section called “closed fund business”); but so long as any liability upon such a policy or contract of insurance remains unpaid or un-discharged, all the provisions of this Act shall apply to that insurer, unless the Minister, in writing, specifically grants exemption therefrom or from any provision thereof.
- (2) Where an insurer was on the appointment date carrying only closed fund business and does not intend to apply for registration under this part, he shall, within three months after the appointed date, notify the Commissioner in writing that he does not so intend.
- (3) The Commissioner may, by notice in writing served on the insurer, require him to furnish within such period, not being less than three months, as he specifies, the particulars of the insurer’s business in Kenya requested in the notice.
- (4) A person who fails to comply with the provisions of subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings and, if the offence is a continuing one, to a further fine of five hundred shillings for every day during which the offence continues.
- (5) No person shall dispose of any assets from a closed fund except with the prior written approval of the Commissioner.
- (6) A person who contravenes the provisions of subsection (5) commits an offence.
- 22.** Subject to section 23, no person shall be registered as an insurer under this Act unless that person is a body corporate incorporated under the Companies Act and at least one third of the controlling interest, whether in terms of shares, paid up share capital or voting rights, as the case may be, are held by citizens of Kenya or by partnership whose partners are all citizens of Kenya or by a corporate body whose shares are wholly owned by citizens of Kenya or is wholly owned by the Government.

Closed fund
Business

Prohibition of
Registration of
Certain persons

23. (1) No person shall be registered as an insurer or if registered shall have his registration renewed unless he meets the minimum capital requirements specified in the schedule.
- (2) The Minister may, by order published in the Gazette, amend the schedule.
- (3) Every order made under this section or under section 28 shall be laid before the National Assembly without unreasonable delay and unless a resolution approving the order is passed by the Assembly within twenty days on which it next sits after the order is laid, it shall henceforth be void by without prejudice to anything previously done thereunder or to the issuing of a new order.
- (4) Out of the amount of the paid-up capital under subsection (1), not less than one third shall be owned by Kenya citizens or by a partnership whose partners are all citizens of Kenya or wholly owned by citizens of Kenya or is wholly owned by the Government.
- (5) A registered insurer who permits his paid-up capital to fall below the minimum prescribed under subsection (1) commits an offence and is liable on conviction to a penalty of one hundred thousand shillings and if an offence is a continuing one, to a further fine of five thousand shillings for every day during which the offence continues.
- (6) Notwithstanding any other penalty imposed under this section, the convicted insurer shall be liable to having its registration cancelled.

Minimum capital
Requirements and
Holding by Kenya
Citizens,

24. (1) A person carrying on insurance business on the appointed date who does not meet the requirements of section 22 and 23 (regarding controlling interests and paid up capital) may be registered, or his registration may be renewed, as the case may be, without complying with the requirements of those sections subject to the following conditions-

Extension of time.

- (a) he shall comply with the requirements of section 22 and 23 before the expiry of three years from the appointed date:

Provided that the Minister may, if satisfied that in spite of his best efforts he has not been able to comply with the necessary requirements, grant extension of the period by a period or periods not exceeding one year at a time, but the total length of those extended periods shall not exceed two years;

- (b) he shall not, in respect of the period up to the period stated above including all the extended periods, where he has paid up share capital, declare a dividend exceeding ten percent per annum on the paid up value of the shares.
- (2) On the expiry of the period mentioned in subsection (1), including the total of any extended periods, if the person has failed to comply with the requirements of sections 22 and 23 which may be applicable to him, his registration shall stand cancelled with immediate effect and the provisions of subsections (3), (4) and (5) of section 196 shall apply as if the registration has been cancelled under paragraph (a)

of subsection (2) of that section and the cancellation has taken effect as on the expiry of that period, including the total of an extended periods.

25. (1) No insurer being a company limited by shares shall be registered to carry on insurance business unless he satisfies all the following conditions-

Requirements as to
Capital structure and
voting rights

- (a) that the capital of the company consists only of ordinary shares each of which has a single face value;
- (b) that, except during any period not exceeding one year allowed by the company for payments of calls on shares, the paid-up amount is the same for all shares, whether existing or new:

Provided that the conditions specified in this subsection shall not apply to an insurer who has, before the commencement of the Act, issued shares other than ordinary shares each of which has a single face value, or shares the paid-up amount whereof is not the same of all of them, for a period of three years from that commencement.

- (2) Notwithstanding anything to the contrary contained in any law for the time being in force or in the memorandum or articles of association of an insurer referred to in subsection (1), but subject to other provisions of this section, the voting rights of every shareholder of the insurer shall in all cases be strictly proportionate to the paid-up amount of the shares held by him.
- (3) No insurer shall after the commencement of this Act be newly registered for carrying on any class of insurance business if he has issued shares other than ordinary shares of the nature specified in subsection (1).
- (4) Subject to the other provisions contained in this Act, but notwithstanding anything contained in the Companies Act, or in the memorandum or articles of association of an insurer referred to in (1), no insurer shall, except with the prior written approval of the Commissioner, register the transfer of any shares where the transfer has the effect of reducing the proportion of share holding of citizens of Kenya in the required by section 22 or 23.

26. (1) A person registered as an insurer under this Act shall be entitled to carry on only the class or classes of insurance business for which he has been registered.

Provisions relating
To Carrying on of
Both long Term and
general Insurance
business

- (2) In the case of an insurer registered to carry on both long term insurance business and general insurance business, the assets of the statutory funds established under section 45 in respect of long term insurance business shall be as absolutely the security of the policy holders of the long term insurance business as though the statutory funds belonged to an insurer carrying on no other business than long term insurance business and shall not be liable for any contracts of the insurer for which of the statutory funds would not have been liable had the business of the insurer been only long term insurance business and, notwithstanding the Companies Act, shall not be applied directly or indirectly, either during the winding up or otherwise, for any purpose other than those of the long term insurance business of the insurer.

27. A person being a body corporate incorporated in Kenya with or without a share capital shall not be registered or shall not have his registration renewed, as the case may be, and if registered shall have his registration cancelled, if at least one third of the members on this board of directors or managing board are not citizens of Kenya. One third of boards
To be citizens of
Kenya.
- 27A. A person shall not be registered under section 31 unless- Qualification of
Board members
- (a) the board of directors or managing board of such person comprises at least five members; and
 - (b) the Commissioner is satisfied that all members of such board have knowledge and experience in matters relating to insurance, actuarial studies, accounting, finance or banking.
 - (c) all the members of such Board have in writing addressed to the commissioner signifying their acceptance to serve on the Board.
28. (1) No person shall be registered under section 31, or if registered shall have the registration renewed except a person having in Kenya the minimum admitted assets prescribed in the Schedule. Minimum assets in
Kenya.
- (2) The Minister may, by order published in the Gazette, amend the schedule.
29. (1) Subject to subsection (3) of this section, no person shall be registered under section 31 except a person who has arrangements, being arrangements approved by the Commissioner for reinsurance of liabilities in respect of which persons, property or interests are, or are to be, insured by the insurer in the course of carrying on insurance business. Appropriate
reinsurance
arrangements.
- (2) The Commissioner shall not approve arrangements for reinsurance made or proposed to be made unless the amount of the premium and commission to be paid or the manner in which the amount of the premium and commission are to be ascertained are specified in the contract of reinsurance.
- (3) The Commissioner shall not approve arrangements for reinsurance, where in the opinion of the Commissioner the retention limits are too low or too high.
- (4) The Commissioner may, in determining whether to approve the arrangements for reinsurance made, or proposed to be made, by an insurer have regard to all matters that he considers relevant and in particular to-
- (a) the class or classes of insurance business carried on or proposed to be carried on by the insurer;
 - (b) the amount of premiums received by or due to the insurer during his last preceding financial year in respect of each class of insurance business carried on by him;

- (c) the amount of premiums expected by the insurer during the next financial year in respect of each class of insurance business to be carried on by the insurer;
 - (d) the size of contingency loading which can be built into the premium rates of the insurer;
 - (e) the amount of the reinsurance commissions received by or due to the insurer during his last preceding financial year in respect of each class of insurance business carried on by the insurer;
 - (f) the amount of the reinsurance commissions expected to be received by the insurer during the next financial year in respect of each class of insurance business to be carried on by the insurer;
 - (g) the price of reinsurance;
 - (h) the nature and value of the assets of the insurer;
 - (i) the capital reserves of the insurer and cost of servicing capital, investment policy and the investment income;
 - (j) probability, number and size of losses expected and risks characteristics of the insurer's portfolio;
 - (k) inter-dependence of exposure units; and
 - (l) the person or persons by whom the reinsurance is or is proposed to be undertaken.
- (5) The Minister, having regard to such matters as he considers relevant, may, by notice in writing, exempt an insurer, subject to such terms and conditions and for such period as he specifies in the notice, from the requirements of subsection (1).
- 30.** An application for registration as an insurer shall be in the prescribed form and shall be accompanied by-

Application for
registration

- (a) a copy of the memorandum of association or other instrument or document by which the applicant is constituted;
- (b) a copy of the articles of association or other rules of the applicant;
- (c) a certified copy of the published prospectus, if any;
- (d) a copy of each of the proposal and the policy forms, endorsements and any form of written matter describing the terms or conditions of or the benefit to or likely to be derived from policies or intended to be used by the applicant;
- (f) statements of the premium rates, advantages and terms and conditions to be offered in connection with insurance policies and details of the bases and

formulae from which those rates have been calculated together with a certificate in connection with long term insurance business by an actuary that such rates, advantages, terms and conditions are sound and workable;

- (f) a detailed statement of assets and liability in Kenya at the date of application;
- (g) a description of all reserves made by the insurer with detailed descriptions of the method, basis and formula for calculating each of the reserves.
- (h) a certificate from the Central Bank of Kenya specifying the amounts and details of deposits under section 32 made by the applicant;
- (i) certified copies of reinsurance contracts;
- (j) the prescribed fee;
- (k) such proposals as to the manner in which it proposes to carry on business and such financial forecasts and other documents and information, if any, as may be prescribed.

31. Where the Board is satisfied that-

Registration

- (a) the applicant has the share capital and the assets, as the case may be, required by sections 22 and 23;
- (b) the deposit required by section 32 has been made;
- (c) the applicant has adequate reinsurance arrangements or has been granted an exemption under section 29;
- (d) the applicant has adequate reserves and the methods of calculating the reserves are satisfactory;
- (e) the applicant has adequate assets in Kenya;
- (f) the volume of business which is likely to be available to, and the earning prospects of, the applicant are adequate;
- (g) the applicant is, and is likely to continue to be, able to comply with such of the provisions of this Act and regulations and directions made or issued under this Act as are applicable to the applicant;
- (h) the applicant has an adequate number of technically qualified and otherwise competent staff, including-
 - (i) a fit and proper principal officer who holds a technical or professional qualification in insurance, accounting or banking approved by the Commissioner, and who has more than ten years' experience in a managerial capacity in the respective sector; and

- (ii) a management staff comprising persons who hold technical or professional qualifications in insurance, accounting or banking approved by the commissioner and who have more than five years' experience in the respective sector;

The Board shall, subject to such terms and conditions as it may consider necessary, approve the registration of the applicant in respect of such class or classes of insurance as it may direct, and shall notify the Minister accordingly.

PART IV - DEPOSITS

32. (1) Subject to subsection (2), an insurer applying for registration under this Act shall deposit and keep deposited with the Central Bank of Kenya (in this part called the Bank), in Kenya Government securities estimated at the market value of the securities on the day of deposit-

Deposits

- (a) where the application is in respect of long term insurance business, a sum of one million shillings or five per centum of admitted assets, whichever is the higher;
- (b) where the application is in respect of general insurance business, a sum of four million shillings or five per centum of the admitted assets whichever is the higher.

(2) Where an applicant under section (1) was carrying on insurance business immediately prior to the appointed date he may deposit with the Bank in Kenya Government securities a sum of one hundred and fifty thousand shillings in respect of long term business and a sum of fifty thousand shillings in respect of general business; and if the applicant is registered he shall deposit annually thereafter further Kenya Government securities of the same amounts in respect of each of the two classes of business aforesaid, until the deposit reaches the value specified in subsection (1) for the class or classes of business for which the applicant is registered.

(3) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such additional sum in securities (estimated at the market value of the securities on the day of deposits) as will make up the amount so used and, unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is used for discharge of liabilities, the insurer shall be deemed to have failed to comply with the requirements of subsection (1).

33. (1) A deposit made under section 32 shall be returned by the Bank if the application for registration as an insurer is not approved by the Board.

Return of deposit if
unregistered

(2) Subject to section 40 (2), no deposit made in respect of a class of insurance business shall be refunded so long as the insurer carries on that business.

34. Where the Minister approves an application for registration under section 31, a deposit made under section 32 shall be held by the Bank on behalf of the insurer and any interest due and collected by the Bank on a deposit shall be paid to the insurer. Deposit to be kept by bank on behalf of insurer
35. An insurer may at any time replace any securities deposited by him under this Part by other securities so long as the value of the other securities estimated at the market rates prevailing at the time of replacement is not less than the value of the securities replaced estimated at the market rates prevailing when they were deposited. Substitution of Deposits
36. The Bank shall, on the written application of an insurer, invest in Kenya Government securities the whole or any part of the amount received on the redemption of a deposited security. Investment of amount deposited
37. (1) An insurer may require the Bank to sell any deposited security and to invest the net proceeds of the sale in such Kenya Government security as the insurer may direct and the new security shall be deemed to form part of the deposit under section 32. Variation of deposits
- (2) If the amount realized by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) falls short of the market value of the securities at the date on which they were deposited with the Bank, the insurer shall make good the deficiency by a further deposit in securities estimated at the market value of securities on the day on which they are deposited, within a period of two months from the date on which the securities matured or were sold, and unless he does so the insurer shall be deemed to have failed to comply with the requirements of section 32 as to deposits.
38. (1) A deposit made by an insurer shall be deemed to be part of the assets of the insurer, but shall not-
- (a) be capable of being transferred, assigned, or encumbered with a mortgage or other charge, by the insurer;
 - (b) be available for the discharge of a liability of the insurer other than liability in respect of a policy of insurance issued in Kenya by the insurer;
 - (c) be liable to attachment in execution of a judgment except a judgment obtained by a policyholder of the insurer in respect of a debt due upon a policy of insurance issued in Kenya and which debt the policy holder has been unable to recover in any other way.
- (2) Where a deposit is made in respect of long term insurance business, it shall not be available for the discharge of a liability of the insurer other than a liability arising out of a policy of long term insurance issued by the insurer.
39. Where the Minister is satisfied that an insurer has ceased to carry on in Kenya any class of insurance business in respect of which he has been registered and that all his liabilities in Kenya in respect of that business have been satisfied or otherwise provided for, the Bank shall on the application by that insurer and on the approval of the Minister Return of deposits

return to the insurer such part of the deposit as is not required in respect of any other class of insurance business carried on by the insurer.

40. (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 the 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 reasonably opportunity of making presentations, 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.

Increase of deposit

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.

- (2) An additional deposit made in accordance with subsection (1), or any part thereof, which is in the opinion of the Commissioner no longer required, shall be refunded to the insurer either on the application of the insurer or on the initiative of the Commissioner.
- (3) Subject to subsection (2), an additional deposit required to be made under subsection (1) shall be deemed to be a deposit made under section 32 and the provisions of this Part applicable to deposits shall apply to that additional deposit.

PART V - ASSETS, LIABILITIES, SOLVENCY MARGINS AND INVESTMENTS

41. (1) An insurer carrying on in Kenya long term insurance business but not general insurance business shall keep at all times **total admitted assets of not less than his total admitted liabilities and ten million shillings or five per centum of the total admitted liabilities, whichever is higher.**
- (2) An insurer carrying on in Kenya general insurance business but not long term insurance business shall keep at all times admitted assets of not less than the aggregate value of his admitted liabilities and ten million shillings, or fifteen per cent of his net premium income during his last preceding financial year, whichever is the greater.
- (3) An insurer carrying on both long term and general insurance business shall at all times maintain separate margins of solvency in accordance with subsections (1) and (2):

Margin of Solvency

Provided that assets other than those representing the fund or funds maintained by the insurer in respect of his long term insurance business, if they are not included among the

assets covering the liabilities and the margin of solvency relating to the insurer's general insurance business, may be included among the assets taken into account in covering the liabilities and the margin of solvency for the insurer's long term insurance business.

- (4) For the purposes of this section, in the case of long term insurance business, the amount of liabilities in respect of the policies of the business at any time shall be the amount of the liabilities at that time as determined by an actuary, which shall not be less than that calculated on the minimum bases prescribed.
- (5) An insurer failing to comply with the requirements of subsection (1), (2) or (3), as the case may be, shall be deemed to be unable to pay his debts within the meaning of section 219 of the Companies Act.
- (6) The Minister, having regard to such matters as he considers relevant, including the date of incorporation of an insurer, may by notice in writing allow time for an insurer, subject to such terms and conditions as may be specified in the notice, to comply with the requirements of subsection (1), (2) or (3).
- (7) Nothing in this section shall be taken as affecting the manner in which, on a winding up, any assets or liabilities are required to be dealt with whether by virtue of section 46 or otherwise.
- (8) Where the assets of an insurer include an investment in the form of cash with, loan to, debenture of, share in, or other form of investment in, an organization and where in respect of long term insurance business or general insurance business the total value of all such investments in that organization together with the value of such investments in all other organizations related to it exceeds five per cent of the total value of all the admitted assets of the insurer in particular class of insurance referred to, any excess of the total value of all the investments over five per cent shall, for the purpose of ascertaining the value of the admitted assets of the insurer relating to the particular class of insurance business for the purpose of ascertaining compliance with the requirements of subsection (1), (2) or (3), as the case may be, be ignored:
Provided that this subsection shall not apply to-
 - (i) buildings and other real property owned by the insurer jointly with any organization;
 - (ii) investments referred to in section 50 (3);
 - (iii) cash held by banks on behalf of the insurer in current or savings accounts, or, subject to section 50 (4) (g), fixed deposits.

(9) For the purposes of this section-

- (a) the amount of liabilities shall be determined in accordance with regulations; and

(b) subject to subsection (8), the assets that may be taken into account and their value shall be determined in accordance with regulations, which may prescribe the extent, if any, to which any particular asset may be taken into account, the depreciation that should be provided for each category of asset and any other relevant factor.

- (10) The paid-up capital of an insurer shall at all times, be not less than ten per cent of the total gross premium written by an insurer in respect of general insurance business during the financial year in question:

Provided that if at any time the insurer does not meet the minimum ratio of paid-up capital to the total gross premium, the insurer shall, within six months after the end of the financial year to which it relates, increase the paid-up capital to restore the prescribed minimum ratio.

- (11) An insurer who fails to increase the paid-up capital as required under subsection (10) shall be liable to a penalty of one hundred thousand shillings and to a further penalty of five thousand shillings for every day after the expiry of the period prescribed during which such failure continues, which penalty shall be paid by a crossed banker's draft or cheque drawn in favour of the **Permanent Secretary to the Treasury**.

- (12) For the purposes of determining the solvency of an insurer, every registered insurer shall, for the period ending on the 31st December of each year, make a return on the prescribed form, showing his total assets, total admitted assets, total liabilities and such other details as may be prescribed, which shall be signed by the principal officer of the insurer and an auditor and submitted to the Commissioner on before the 30th April the following year.

42. (1) For the purposes of this Act, a reference to admitted assets includes a reference to any property, security, item or interest of a person approved by the Commissioner but does not include a reference to_

Admitted assets

(a) an unsecured or, in the opinion of the Commissioner, inadequately secured loan;

(b) an asset that is mortgaged or charged for the benefit of a person other than the insurer to the extent that it is so mortgaged;

(c) a loan to, debenture of, or share in any insurer who is related to such a person,

(d) an unpaid premium that became due to the insurer more than three months previously except in so far as that premium is secured under automatic non-forfeiture conditions against the surrender value of a life assurance policy;

(e) a guarantee given to an insurer other than a bank guarantee issued by a bank licensed under the Banking Act or a guarantee given by a reinsurer in the course of reinsurance transactions.

(f) an intangible asset;

- (g) unsecured loans to intermediaries;
- (h) prepaid preliminary and organizational expenses;
- (i) deleted
- (j) such other assets as may be prescribed.

(2) Where an insurer requests the Commissioner to approve as an admitted asset the whole or part of an asset excluded in subsection (1), the Commissioner may by notice in writing given to the insurer approve the asset, or such part thereof as he determines, accordingly.

43. (1) For the purposes of this Act, a reference to admitted liabilities of an insurer means liabilities shown as current, contingent and prospective liabilities in the accounts of an insurer and includes, in the case of long term insurance business, the liabilities in respect of the policies of long term insurance business.

Admitted liabilities

(2) For the purposes of this Act, a reference to admitted liabilities does not include a reference to:

- (a) a liability in respect of a share capital or a reserve in lieu of capital approved by the Commissioner;
- (b) a liability in respect of such matters as the Commissioner may by notice in writing direct;
- (c) a liability prescribed.

(3) An insurer shall make adequate provision in his accounts for liabilities in respect of unexpired risks and outstanding and incurred claims, including provision for claims incurred but not reported, computed in accordance with a method approved by the Commissioner.

44. (1) The Commissioner may, by notice in writing served on an insurer, require the insurer to furnish him with such information with respect to any liability of the insurer or value of an asset of the insurer as he specifies in the notice.

Assessment of assets
and liabilities

(2) Where the Commissioner is not satisfied that the value of a liability or asset of the insurer as determined by the insurer has been correctly determined, he may, after giving the insurer an opportunity of making representations, by notice in writing served on the insurer, require the insurer to produce a valuation of the liability or asset worked out by an independent valuer approved by the Commissioner.

45. (1) An insurer carrying on long term business in Kenya on the appointed date shall, as at the date of commencement of his financial year next after the appointed date, and every insurer commencing long term Insurance business in Kenya after the appointed date shall, as at the date of commencement of that business, establish

Establishment of
statutory fund.

and maintain a statutory fund under an appropriate name in respect of the long term insurance business carried on by him.

- (2) An insurer may establish and maintain a separate statutory fund, under an appropriate name, in respect of any class or classes of his long term Insurance business:
- (3) Where an insurer carries on long term insurance business of more than one class, the Commissioner may in writing direct the insurer-
 - (a) to establish, maintain and appropriately name one or more separate statutory funds in respect of any class or classes of long term insurance business carried on by him;
 - (b) to maintain an account in respect of each of those classes of long term insurance business and to carry and enter the receipts of each of those classes of business in the account maintained by him.
- (4) All amounts received by an insurer in respect of any class of long term insurance business, after the establishment by the insurer of a statutory fund under this section, shall be carried to that fund.
- (5) Where, at any time-
 - (a) an insurer is maintaining more than one statutory fund in respect of his long term insurance business; and
 - (b) a particular policy cease to be included in the class of the long term insurance business of the insurer in respect of which one of the statutory funds is maintained (in this subsection referred to as “the first fund”) and commences to be included in the class of the long term insurance business of the insurer in respect of which another of the statutory funds is maintained (in this subsection referred to as “the second fund”), the insurer shall forthwith transfer from the first fund to the second fund assets equal to the liability on the policy at that time as ascertained by an actuary and approved by the Commissioner.
- (6) The income arising from the investment of the assets of a statutory fund shall be carried to and form part of that fund
- (7) The assets of each statutory fund shall be kept distinct and separate from all other assets of the insurer.
- (8) An insurer carrying on long term insurance business shall maintain such books of accounts and other records as are necessary for identifying-
 - (a) the assets representing each statutory fund maintained by the insurer under this section;
 - (b) the liabilities attributable to that class or as the case may be, each of those classes of long term insurance business.

46. (1) Subject to this Act, no part of the assets of a statutory fund shall, so long as the insurer carries on the class or classes of long term insurance business in respect of which the fund was established-
- (a) be available to meet any liabilities or expenses of the insurer other than-
 - (i) liabilities or expenses referable to that class of long term insurance business; and
 - (ii) liabilities charged on those assets or any of them immediately prior to the appointed date, or be otherwise directly or indirectly applied for any purpose other than the purpose of that class of long term insurance business;
 - (b) be-
 - (i) paid, applied or allocated as dividends or otherwise as profits to shareholders; or
 - (ii) Transferred to another statutory fund.
- (2) A mortgage or charge (including charge imposed by a court on the application of the judgement creditor) shall be void to the extent to which it contravenes subsection (1).
- (3) A person who contravenes subsection (1) shall be guilty of an offence and liable to a penalty not exceeding twenty thousand shillings and, if he is a natural person, additionally or in the alternative to imprisonment for a term not exceeding two years.
- (4) Every director and principal officer of an insurer shall be under the same liability, in the event of contravention of subsection (1), as if he had been a trustee under a trust for the execution of those provisions in respect of that fund, and as if the appropriate policy holders had been beneficiaries of such a trust, unless the director or principal officer proves that the contravention occurred without his knowledge and he used all due diligence to prevent the contravention.
- (5) Notwithstanding subsection (1), an insurer may, for the purpose of declaring or paying a dividend to shareholders or a bonus to policy holders, utilize the surplus disclosed in the valuation balance sheet of a statutory fund set out in the actuary's abstract relating to an investigation made in pursuance of section 57 and accepted by the Commissioner, subject to the condition that the amount allocated or paid to the shareholders out of a statutory fund shall not exceed thirty per cent of the surplus disclosed therein after making the necessary adjustments to the surplus.
- (6) The adjustments referred to in subsection (5) are-
- (a) the actual amount of income tax deducted at a source during the period following the date on which the last preceding investigation was made and preceding the date on which the investigation in question is made may be added to the surplus after deducting an estimated amount

the addition and deduction being shown in the abstract prepared by the actuary;

(b) the surplus may be increased by contributions out of a reserve fund subject to the condition and only to the extent that the reserve fund has been made up solely of transfers from similar surpluses disclosed by investigations in respect of which the returns have been accepted by the Commissioner.

(7) Notwithstanding anything to the contrary contained in this section, an insurer carrying on long term insurance business may declare an interim bonus or bonuses to policy holders whose policies mature for payment by reason of death or otherwise during the inter-investigation period on the recommendation of the investigating actuary made at the last preceding investigation.

47. (1) Unless the Minister directs otherwise, none of the assets in Kenya of an insurer shall, except in the case of assets required by law or by a requirement imposed by the Minister under subsection (3) to be vested in trustees, be kept otherwise than in the name of the insurer.

Assets to be in the name of insurer.

(2) Nothing contained in subsection (1) shall be deemed to prohibit the endorsement in favour of a bank of any security or other document solely for the purpose of collection or realization of any interest, bonus or dividend.

(3) The Minister may direct that the whole or a specified portion of the assets of an insurer shall be held by a person approved by him as trustee of the insurer.

(4) Assets of an insurer held by a person as trustee for an insurer shall be held by him in compliance with a direction given under this section if, and only if, they are assets in whose case the insurer has given him written notice that they are to be held by him in compliance with such a requirement, or they are assets into which the first-mentioned assets have been transposed by him on the instructions of the insurer.

(5) No assets held by a person as trustee for an insurer in compliance with a direction given under this section shall, so long as the direction is in force, be released except with the consent of the Minister.

(6) If a mortgage or charge is created by an insurer at a time when there is in force a direction imposed on the insurer by virtue of this section, being a mortgage or charge conferring a security on any assets which are held by a person as trustee for the insurer in compliance with the direction, the mortgage or charge shall, to the extent that it confers such a security, be void against the liquidator and any creditor of the insurer.

48. (1) Subject to subsection (2) of this section and sections 41 and 50 and subject to any provisions in the instruments constituting the insurer or in the articles of association or other rules of the insurer which impose restrictions upon the manner in which the assets of the insurer may be invested, the assets of an insurer shall, with sufficient regards to considerations of security, liquidity and income, be invested in Kenya in such a manner as the insurer thinks fit.

Investment of assets.

Provided that the assets of a statutory fund shall not, without the written approval of the Commissioner, be invested directly or indirectly in any share or interest in any other insurer.

(2) Notwithstanding the provisions of subsection (1), the Commissioner, with the prior approval of the Minister may, if he deems it appropriate and subject to sufficient considerations of security, liquidity income and diversification and to such further conditions as he considers necessary, authorize the assets of an insurer to be invested outside Kenya.

49. If at any time the Commissioner considers an investment constituting an insurer's assets to be unsuitable or undesirable, he may after giving notice to the insurer stating the grounds on which he proposes to exercise his powers under this section and giving the insurer an opportunity of being heard, direct the insurer to realize the investment, and the insurer shall comply with the direction within such a time as may be specified in that behalf by the Commissioner.

Unsuitable investments.

50. (1) Subject to subsection (5), the admitted assets of an insurer carrying on long term insurance business shall be invested and kept invested in the following manner-

Specified investments. 18 of 1986, Sch.

(a) twenty per cent of the total admitted assets, in one or more of the securities set out in subsection (3);

Provided that fifty per cent of such securities are securities of the Government of duration of two or more years;

(b) a further proportion, amounting to not less than sixty five per cent, in one or more of the investments set out in subsection (4);

(c) the balance, subject to section 48 and the other provisions of this section, in such investments in Kenya as the insurer thinks fit.

(2) Subject to subsection (5), the admitted assets of an insurer carrying on general insurance business required by section 41 (2) to be maintained by the insurer shall be invested and kept invested in the following manner-

(a) ten percent in one or more of the securities set out in subsection (3);

(b) a further proportion, amounting to not less than thirty percent, in one or more of the investments set out in subsection (4);

(c) the balance, subject to section 48 and the other provisions of this section, in such investments in Kenya as the insurer thinks fit.

(3) The securities referred to in subsections (1) (a) and (2) (a) are securities of-

(a) the Government;

- (b) prescribed statutory bodies;
- (c) local authorities;
- (d) any other prescribed organization.

(4) The investments referred to in subsection (1) (b) and (2) (b) are as follows-

- (a) the securities set out in subsection (3);
- (b) mortgages on unencumbered immovable property in Kenya;
- (c) debentures secured by a mortgage on unencumbered immovable property in Kenya;
- (d) debentures, commercial paper, preference shares or ordinary shares of public companies whose shares are quoted on the stock exchange in Kenya;
- (e) instruments of title to immovable property in Kenya;
- (f) loans on life assurance policies constituting a liability on Kenya business within their surrender values;
- (g) deposits in banks or financial institutions licensed under the Banking Act:

Provided that-

- (i) where the insurer carries on long term insurance, the deposits in any one bank or financial institution shall not exceed five per cent the total value of the assets of the insurer relating to that business;
- (ii) where the insurer carries on general insurance business, the deposits in any one bank or financial institution shall not exceed ten per cent of the total value of the assets of the insurer relating to that business;
- (h) any other prescribed securities.
- (i) promissory notes, bills of exchange or other instruments issued by a company incorporated under the Companies Act:

Provided that the promissory notes, bills of exchange or other instruments are guaranteed by a bank licensed under the Banking Act.

(5) In respect of an investment falling under paragraph (c) of subsection (1) or paragraph (c) of subsection (2) which does not also come under paragraph (a)

or (b) of subsection (1) or paragraph (a) or (b) of subsection (2), the investment shall be made after the appointed date, or, if already existing on the appointed date, shall be continued after one year from the appointed date, only with the consent of all the directors present at a meeting and eligible to vote, special notice of which has been given to all the directors, and all such investments, including investments in which any director is interested, shall be reported without delay to the Commissioner with full details of the investments and the extent of the director's interest therein.

- (6) Deleted
- (7) For the purposes of compliance with the provisions of this section, cash in accounts with banks shall be excluded.
- (8) Where an insurer has carried on insurance business in Kenya immediately prior to the appointed date, the provisions of subsections (1) and (2) shall in respect of that insurer come into operation as at the date of the commencement of the financial year next after the appointed date or, upon the application in writing of any insurer, such other date as the Minister may, subject to such terms and conditions as he considers necessary, in writing notify.
- (9) An insurer shall not invest any part of his assets in the shares or debentures or loans of any one company or group of related companies more than-
 - (a) in the case of long term insurance business, five per cent of the total admitted assets relating to that business; and
 - (b) in the case of general insurance business, five per cent of the total admitted assets relating to that business:

Provided that the investments shall be adequately secured by a first legal charge on unencumbered property in Kenya.

- (10) Where a company or group of related companies referred to in subsection (9) is a bank or a financial institution or group of banks or financial institutions, the percentage under paragraph (b) of that subsection shall be five percent:

Provided that where an insurer has investments referred to in subsection (9) on the appointed date, he may continue holding those investments notwithstanding that they represent more than five percent of the subscribed share capital and debentures of the company or group of companies after a period of two years from the appointed date with the approval in writing of the Minister; and that approval shall be for a period of not more five years, but may be renewed by the Minister on its expiry for a further period or further periods of five years.

- (11) Nothing in subsection (9) shall apply to an investment made by an insurer in the shares of another insurer if that other insurer is a company within the meaning of section 2 of the Companies Act and carries on insurance or reinsurance business in Kenya.
- (12) Where an investment is in partly paid-up shares the uncalled liability on those shares shall be added to the amount invested for the purpose of computing the percentage referred to in paragraph (a) of subsection (9).
- (13) For the purposes of subsections (1) and (2), the amount of any deposit made under section 32 shall be deemed to be assets invested or kept invested in the securities set out in subsection (3).

- 51.** (1) An insurer may, to secure temporary loans or bank overdrafts, mortgage or charge assets not exceeding ten percent of the total value of the admitted assets of the insurer.
- (2) Subject to subsection (1), an insurer shall not mortgage or charge any of his assets.

Restrictions on
Mortgages, etc of
assets

PART VI - ACCOUNTS, BALANCE SHEETS, AUDIT AND ACTUARIAL INVESTIGATIONS

- 52.** Where an insurer carries on more than one class of long term insurance business or more than one class of general insurance business, he shall keep separate accounts of receipts and payments in respect of each prescribed class of insurance business carried on by him.
- 53.** Where a single amount received or paid, whether in respect of premiums, investment income, claims, commissions, reinsurance costs, administration costs, taxes or otherwise, is received or paid in respect of more than one class of business prescribed under section 52, and the amount is not otherwise allocatable between the different classes, the insurer shall, for the purposes of this part, apportion the amount in an equitable manner between the classes of insurance business in respect of which it is received or paid.
- 54.** (1) Subject to subsection (3), every insurer incorporated in Kenya shall, in respect of all insurance business wherever carried on by the insurer, after the end of each financial year, prepare for the year, in accordance with the prescribed forms a revenue account for the year, a balance sheet as at the end of the year and a profit and loss account for the year or, in the case of a company not trading for profit, an income and expenditure account of the year.

Separate accounts
for each class

apportionment
between
classes

Accounts and
balance sheets.

- (1A) the revenue account, balance sheet, profit and loss account and financial statement required to be prepared under subsection (1) shall be prepared in accordance with International Financial Reporting Standards and such accepted Kenyan reporting standards as may be prescribed.

Provided that an insurer shall, in respect of every quarter, prepare and submit to the commissioner, within forty-five days of the end of the quarter to which it relates, an un-audited revenue account, balance sheet, profit and loss account and statement of admitted assets and admitted liability.

- (2) Every reserve shall be calculated in accordance with the method approved for the purpose by the Commissioner.
- (3) All amounts which are required to be shown in any account or balance sheet shall be shown in Kenya currency to the nearest shilling.
- (4) Notwithstanding the definition of “financial year” in section 2, the first financial after the appointed date of an insurer shall mean the period ending on 31st December next after the appointed date.
- (5) In subsection (1A), “International Financial Reporting Standards” means-
 - (a) The standards issued by the International Accounting Standards Board of London; or
 - (b) Kenyan accepted standards developed by the Institute of Certified Public Accountants of Kenya.

55. (1) An insurer shall-

Accounting records.

- (a) Keep such accounting records as correctly record and explain the transactions and financial position of the insurer with respect to his insurance business;
 - (b) So keep his accounting records as to enable the accounts, reports and statements required under this Part to be prepared;
 - (c) So keep his accounting records as to enable those accounts and statements to be conveniently and properly audited in accordance with this Act.
- (2) An insurer shall retain his accounting records kept in accordance with subsection (1) for at least seven years after the completion of the transactions to which they relate.

(3) Deleted

56. (1) The accounts of every insurer shall be audited annually by an auditor.

Audit and auditor's
certificate

- (2) The auditor shall in a certificate relating to the accounts and statements in respect of a financial year of an insurer, state whether-
- (a) The accounts and statements to which it relates appear to him to be in accordance with the Act and give particulars of any matters that do not appear to be so in accordance;

- (b) The accounting records of the insurer in respect of that year appear to him to have been properly kept and to record and explain correctly the transactions and financial position of the insurer and give particulars of accounting records that appear to him not to have been so recorded;
 - (c) In respect of that year, he has obtained the information and explanations that he requested and give particulars of information and explanations he requested but did not obtain;
 - (d) he is satisfied that the accounts and statements referred to in paragraph (a) agree with the accounting records of the insurer and appear to him truly to represent the transactions and financial position, of the insurer in respect of the financial year to which they relate and, if any of them appear to him to fail so to represent the transactions and financial position, give particulars of the failure; (e)
 - (e) amounts required by section 53 to be apportioned have been equitably apportioned and if they have not been so apportioned give particulars of the failure;
 - (f) all management expenses wherever incurred in respect of the insurer's business, whether directly or indirectly, have been fully debited in the revenue account or profit and loss account as expenses and, if they have not been so debited, give particulars of the amount not so debited;
 - (g) every reserve has been calculated in accordance with the method approved for the reserve by the Commissioner and, if they have not been so calculated, give particulars of the reserves not so calculated.
- (3) The auditor shall in addition issue in relation to the accounts the certificate required under the Companies Act.
 - (4) For the purposes of this section, every insurer shall appoint annually an auditor qualified under section 161 of the Companies Act and approved by the Commissioner.
 - (5) If an insurer fails to appoint an approved auditor under subsection (4), or to fill any vacancy for an auditor, which may arise, the Commissioner may appoint an auditor and fix the remuneration to be paid by the insurer to him.
 - (6) The Commissioner may require an auditor to undertake the following duties in addition to those prescribed under subsections (2) and (3) –
 - (a) to submit such additional information in relation to his audit as the Commissioner may consider necessary;
 - (b) to carry out any other special audit or investigations; and
 - (c) to submit a report on any of the matters referred to in paragraphs (a) and (b); and the insurer concerned shall remunerate the auditor in respect of the discharge by him of all or any of such additional duties.

- (7) If the auditor of an insurer fails to comply with the requirements of this Act, the Commissioner may remove him from office and appoint another person in his place.
- (8) A person shall not be qualified for appointment as an auditor of an insurer if he is –
- (a) a director, auditor or employee of that insurer, or
 - (b) a person who is a partner of a director, officer or employee of that insurer, or
 - (c) a person who is an employee or employee of a director, officer or employee of that insurer, or
 - (d) a person who is a director, officer or employee, of a person related to that insurer, or
 - (e) a person who, by himself, or his partner or his employee regularly performs the duties of secretary or accountant for that insurer, or
 - (f) a firm or member of a firm of auditors of which any partner or employee falls within the above categories.
- (9) (a) No duty to which an auditor of an insurer may be subject shall be regarded as contravened by reason of his communicating in good faith to the Commissioner, whether or not in response to a request made by him, any information or opinion on a matter to which this Act applies.
- (b) This subsection applies to any matter of which an auditor becomes aware in his capacity as an auditor or in the discharge of his duties under this Part and which relates to the business or affairs of the insurer.

57. (1) An insurer who carries on long term insurance business-

- (a) shall on the 31st December every year and irrespective of any contrary provision in the articles of association or deed of settlement, cause an investigation to be made into his financial condition in accordance with section 58; and,
- (b) when such an investigation has been made, or when at any other time an investigation into the financial condition of the insurer is made with a view to the distribution of profits, or the results of which are made public, shall cause an abstract of the actuary's report of the investigation to be made in such form and containing such form as may be prescribed:

Provided that in the case of an insurer who was carrying on long term insurance business in Kenya immediately prior to the appointed date, the last date as at which the first investigation after the appointed date, should be made shall be a date not later than three years from the appointed date or the date of expiration of five years from the date as at which the last investigation was made by an actuary before the appointed date, whichever is earlier.

Actuarial
investigation
18 of 1986, Sch.

- (2) An investigation to which subsection (1) relates shall include-
- (a) a valuation of the liabilities of the insurer attributable to his long term insurance business; and
 - (b) a determination of any excess over those liabilities of the assets representing the fund or funds maintained by the insurer in respect of that business and, where any rights of any long term policy holders to participate in profits relate to particular parts of such a fund, a determination of any excess of assets over liabilities in respect of each of those parts.
- (3) Whenever an investigation to which subsection (1) relates is made, the insurer shall prepare a statement, in such form and containing such matters as may be prescribed, of its long term insurance business as on the date on which the investigation is made.
- (4) When an investigation to which subsection (1) relates is made as at a date other than the expiry of a financial year of the insurer, the accounts for the period since the expiry of the last year of account and the balance sheet on the date as at which the investigation is made shall be prepared and audited in the manner provided under sections 54 and 56.
- (5) Subject to section 58, for the purposes of an investigation to which this section relates, the value of any assets and the amount of any liabilities shall be determined in accordance with regulations.

- 58.** (1) The provisions of this section apply in relation to valuation made, in respect of an insurer carrying on long term insurance business, in pursuance of section 57.
- (2) the basis of valuation adopted shall be such as to place a proper value upon the liabilities having regard to the mortality experience among the persons whose lives have been insured by the insurer, to the average rate of interest from investments and the expenses of management (including commission), and shall be such as to ensure that no policy is treated as an asset.
- (3) the value placed upon the aggregated liabilities of a statutory fund of policies by reasons of the adoption of any basis of valuation shall not be less than it would have been if it had been calculated on the minimum basis prescribed.
- (4) The actuary who makes the valuation shall certify whether in his opinion the value placed upon the aggregate liabilities relating to a statutory fund in respect of policies by the valuation is not less than the value which would have been placed upon those aggregate liabilities if it had been calculated on the minimum basis prescribed.
- (5) In making a determination in terms of section 57(2)(b), the actuary shall-
- (a) take necessary steps to ensure that any sum representing expenses of organization or extension, or the purchase of business or goodwill or other intangible assets, are equitably allocated between the different

Actuarial valuation

statutory funds and are appropriately deducted from the surplus disclosed in each fund or appropriately added to the deficiency disclosed in each fund, as the case may be;

- (b) satisfy himself that the value of the assets adopted by him are, on the basis of the auditor's certificates appended to the balance sheet, fully of the value so adopted; and
- (c) certify in regard to the matters specified in subsections (2) and (3) and paragraphs (a) and (b) of this subsection in the prescribed forms.

(6) If the Commissioner considers that an investigation under section 57 does not properly indicate the state of affairs of the insurer due to a faulty basis having been adopted in the valuation, the Commissioner may, after giving the insurer a reasonable opportunity of making representations, cause a further investigation in accordance with section 57 and this section as at a date which he may specify to be made at the expense of the insurer by an actuary appointed by the Commissioner or, if the Commissioner so agrees, by an actuary appointed by the insurer and approved by the Commissioner.

(7) The insurer shall make available to the actuary all documents and information required by him for the purpose of the further investigation or valuation under subsection (6) within such period, not being less than three months, as the Commissioner may specify.

(8) An actuary making an investigation or valuation under subsection (6) shall prepare and attach to his report an abstract and a statement of the long term business of the insurer as for an investigation under section 57.

59. An insurer shall prepare as at the end of each financial year, in respect of that year, statements and certificates in the prescribed form relating to the business carried on during the year and the business in force at the end of the year and shall furnish those statements and certificates signed in the prescribed manner, to the Commissioner within such time as may be prescribed.

Returns

60. (1) The audited balance sheet, profit and loss account and revenue account required to be prepared under this Part shall be signed by two directors and the principal officer of the insurer or, if there is only one director, by that director and by the principal officer.

Accounts and statements

(2) A report or abstract of an actuary made under this Part shall be signed by the actuary who made the investigation or valuation.

(3) A statement or return other than a balance sheet, profit and loss account, revenue account or actuarial report or abstract shall be signed by the principal officer.

61. (1) Every account, balance sheet, certificate, abstract, return or statement required to be prepared or prepared under sections 54, 56, 57, 58, and 59 shall be printed, and four copies thereof authenticated and certified in the prescribed manner shall be deposited

Submission of accounts

with the Commissioner within four months after the end of the period to which they relate.

Provided that the insurer shall cause a copy of the audited balance sheet deposited with the commissioner to be published in at least two daily newspapers of national circulation, within thirty days of such deposit.

- (2) The Commissioner may on the application of an insurer extend or further extend the time specified in subsection (1) for a period not exceeding three months.
- (3) Where on receipt of any of the documents submitted under subsection (1), any account, balance sheet, certificate, abstract, return or statement is found to be incomplete or erroneous or misleading, the Commissioner may reject it and the insurer shall be deemed not to have complied with the requirements of subsection (1), as the case may be, unless the document is resubmitted within the period specified under those subsections.
- (4) Where an insurer fails to submit any document under subsection (1) within the specified period prescribed in that subsection or in subsection (2), the insurer may make a late submission of the document upon payment of a penalty of two hundred thousand shillings and a further penalty of ten thousand shillings for every day after the expiry of the prescribed period during which the document remains unsubmitted.
- (5) The penalty under subsection (4) shall be paid by a crossed banker's draft drawn in favour of the **"Policy Holders Compensation Fund"**.

62. (1) An insurer shall, if so required by the Commissioner by notice in writing served on him, furnish, within such period after service of the notice, not being less than ten days, as the Commissioner specifies in the notice, information with respect to such matters relating to an account, balance sheet, certificate, abstract, return or statement deposited (2) An insurer, being a body corporate incorporated in Kenya, shall deposit with the Commissioner a certified copy of the minutes of the proceedings of every general meeting, as entered in the minute book of the body corporate, within thirty days from the holding of the meeting to which those minutes relate.

Further information.

63. (1) An insurer shall deposit with the Commissioner a certified copy of every report on the affairs of concern which is submitted to the members or policy holders of the insurer immediately after the its submission to the members or policy holders, as the case may be.

Other reports.

64. Where an insurer in any year deposits his accounts and balance sheet in accordance with the provisions of section 61 then, if the company at the same time sends a copy of the accounts and balance sheets to the registrar of Companies under the Companies Act-

Returns sufficient
Compliance with
Companies Act.

(a) section 128 (1) of that Act (which requires certain documents to be included in the annual return made by a company) shall not apply to that Company; and

(b) the copy of the accounts and balance sheets so sent shall be dealt with in all respects as if it had been sent in compliance with that subsection.

65. (1) The Commissioner may, if it appears to him that any account, balance sheet, abstract, certificate, statement, return, report or other document deposited with him under the provisions of this Act is inaccurate or defective in any respect, require the inaccuracy or defect to be rectified within such time, not being less than ten days, as he may specify in writing

Rectification of returns

(2) Where a person fails to comply with a direction given under subsection (1), the Commissioner may decline to accept the document required to be rectified, whereupon the document shall be deemed to have not been deposited in terms of this Act.

66. If any account, balance sheet, abstract, return, certificate, statement or other document required to be deposited or deposited under any provision of this Act is false in any material particular to the knowledge of any person who signs it, that 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 or to both.

Penalty for false statements.

67. (1) An insurer who fails to comply with any requirement under this Part shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings; and if the offence is a continuing one, to a further fine of five thousand shillings for every day during which the offence continues.

Penalty for Failure to Comply with Requirements of part.

(2) 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.

(3) Where a person guilty of an offence under this Part is a body corporate, then notwithstanding the imposition of any penalty, the commission of that offence shall constitute grounds whereby the Commissioner may apply to the court for the winding up of that body corporate.

PART VIA - INSPECTION AND CONTROL OF INSURERS

67A. (1) The Commissioner may, at any time and from time to time, and shall, if so directed by the Minister cause an inspection to be made by any person authorized by him in writing, of any insurer and any other person registered under this Act and of his books, accounts and records.

Inspection of insurers

(2) When an inspection is made under subsection (1), the insurer and any other person registered under this Act concerned and every officer and employee thereof shall produce and make available to the person making the inspection all the books, accounts, records and other documents of the insurer and such correspondence, statements and information relating to the insurer, its business and the conduct as thereof the person as making the inspection may require and within seven days or such longer times as he may direct in writing.

- (3) any failure to produce any books, accounts, records document, correspondence, statements, returns or other information within the period specified in the direction under subsection (2) constitutes a contravention of the provisions of this Act:

Provided that –

- (a) the books, accounts and other documents required to be produced shall not, in the course of inspection, be removed from the premises at which they are produced;
 - (b) the person making the inspection may make copies of any books, accounts and other documents required for the purposes of his report; and
 - (c) all information obtained in the course of the inspection shall be treated as confidential and used solely for the purposes of this Act.
- (4) The person making the inspection shall submit his report to the Commissioner; and the report shall draw attention to any breach or non-observance of the requirements of this Act and any regulations made thereunder, any irregularity in the manner of conduct of the business of the insurer and any other person registered under this Act or any apparent mismanaging or lack of management skills in that insurer and any other matter revealed or discovered in the course of the inspection warranting, in the opinion of the person making the inspection, remedial action or further investigation.

67B. The Commissioner may, by notice in writing, and after giving the insurer and any other person registered under this Act reasonable opportunity of being heard, require the inspected person to comply by such date or within such period as may be specified therein, with such directions as he considers necessary in connection with any matter arising out of a report made under section 67A.

Directions to
Persons inspected

67C. (1) This section applies and the powers conferred by subsection (2), may be exercised in the following circumstances

Power of the
commissioner to
intervene in
management

- (a) if the insurer is found to have failed to meet the minimum solvency margin required under section 41 of the Act;
- (b) if the insurer has failed to submit any of the accounts, returns, statements, actuarial valuations or other reports under part VI for over six months after the end of the financial year to which they relate;
- (c) if the insurer having failed to comply with any requirement of this Act, has continued that failure, or having contravened any provision of this Act, has continued that contravention for a period of six months after notice of such failure or contravention has been given to him by the Commissioner;
- (d) where, having regard to the financial circumstances of the person registered, the Commissioner is satisfied that the person cannot carry on the business, or any part of the business, for which he is registered, as the case may be, in a satisfactory or efficient manner;

- (e) if an amount due by an insurer under a judgement entered into in an action in Kenya arising out of a policy of insurance issued by the insurer or a contract of reinsurance entered into by the reinsurers has remained unpaid for three months after the date of the final adjudication in that action;
 - (f) if the business of the reinsurer is wholly or un-proportionately reinsured with another person;
 - (g) if an insurer unable to pay his debts within the meaning of section 220 of the Companies Act;
 - (h) if the insurer is found not to have made adequate reserves or to have understated the level of his liabilities;
 - (i) if the insurer is discovered to have submitted or provided any accounts, returns, statements, books, records, correspondence, documents or other information relating to his business which is false or misleading; or
 - (j) if the Commissioner discovers, whether on inspection or otherwise, or becomes aware of any fact or circumstance which, in his opinion, warrants the exercise of the relevant power in the interests of the insurer, its shareholders, or reinsurer or in the public interest.
- (2) The Commissioner may, with the approval of the Board –
- (i) appoint any person (in this Act referred to as “a manager”) to assume the management, control and conduct of the affairs and business of an insurer to exercise all the powers of the insurer to the exclusion of the board of directors, including the use of the company seal;
 - (ii) remove any officer or employee of an insurer who, in the opinion of the Commissioner, has caused or contributed to any contravention of any provisions of this Act, or any regulations or directions made thereunder or to any deterioration in the financial stability of the insurer or has been guilty of conduct detrimental to the interests of policy- holders or other creditors of the insurer;
 - (iii) appoint three competent persons familiar with the business of insurers to the board of directors to hold office as directors who shall not be removed from office without the approval of the commissioner.
 - (iv) by notice in the Gazette, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the insurer in favour of any officer, employee or any other person.
- (3) The appointment of a manager shall be for such period, not exceeding twelve months, as the Commissioner may specify in his instrument of appointment and may be extended by the High Court, upon the application of the Commissioner if such extension appears to the High Court to be justified.

- (4) A manager shall, upon assuming the management control and conduct of the affairs and business of an insurer discharge his duties with diligence and in accordance with sound insurance, actuarial and financial principles and, in particular, with due regards to the interests of the insurer, its policy-holders and insuring public in general.
- (5) The responsibilities of a manager shall include –
 - (a) tracing, preserving and securing all the assets and property of the insurer;
 - (b) recovering all debts and other sums of money due to and owing to the insurer;
 - (c) evaluating the solvency and liquidity of the insurer;
 - (d) assessing the insurer's compliance with the provisions of this Act and regulations made or directions issued thereunder;
 - (e) determining the adequacy of the capital and reserves and the management of the insurer and recommending to the Commissioner any restructuring or reorganization which he considers necessary and which, subject to the provisions of any written law, may be implemented by him on behalf of the insurer; and
 - (f) obtaining from any former principal officer, director, secretary, officer or employee of the insurer any documents, records, accounts, statements, correspondence or information relating to its business.
- (6) The manager shall, within a period of twelve months from the date of his appointment, prepare and submit to the Commissioner a report on the financial position and the management of the insurer with recommendation as to whether -
- (7) The Commissioner shall, after taking into account the report of the manager, make appropriate recommendations to the Board, who shall then take a decision on the matter.
- (8) Where the Board decides that the insurer should be liquidated, the provisions of section 23 shall apply.
- (9) Neither the Commissioner or any other officer or employee of the Commissioner, nor the manager nor any other person appointed, designated or approved by the Commissioner under the provisions of this Part shall be liable in respect of any act or omission done in good faith in the execution of the duties undertaken by him.
- (10) For the purposes of discharging his duties, a manager shall have power to declare a moratorium on the payment by the insurer of its policy holders and other creditors and the declaration of a moratorium shall;

- (a) be applied equally to all classes of policyholders and creditors, subject to such exemptions in respect of any class of insurance as the manager may, by notice in the Gazette specify;
- (b) suspend the running of time for the purposes of any Law of limitation in respect of any claim by any policyholder or creditor of the insurer;
- (c) cease to apply upon determination of the manager's appointment whereupon the rights and obligations of the insurer, its policyholders and creditors shall, save to the extent provided in paragraph (b), be the same as if there had been no declaration under the provisions of this subsection.

67D. (1) Without prejudice to the provisions contained under section 19, the provisions of this Part shall apply to any person who, in the opinion of the Commissioner, is, or is deemed or suspected to be carrying on or transacting insurance or reinsurance business without registration, renewal of registration or authorization under this Act.

Part to apply
to unregistered
and unauthorized
Persons

(2) Without prejudice to the provisions of this part, a person who upon inspection, is found to be-

- (a) transacting insurance business without registration, renewal of registration or authorization, under this Act or with persons not so registered or authorized; or
- (b) charging a rate of premium other than that filed with the Commissioner under section 75, shall, in addition to any other penalty prescribed under this Act, be liable to pay a penalty of two hundred thousand shillings, which shall be paid by a crossed banker's draft made in favor of the "**Policy Holders Compensation**".
- (c) committing any other business malpractices.

67E. (1) An inspector may, by notice in writing, require any person who is or has at any time been a director, managing director, secretary, principal officer, manager, officer or employee, agent, accountant, broker, auditor or actuary of the person being inspected to -

Powers of inspector

- (a) give to the inspector all reasonable assistance in connection with the inspection; or
- (b) appear before the inspector for examination concerning matters relevant to the inspection; or
- (c) produce any books or documents that relate to the affairs of the person being inspected; or

(2) A person who -

- (a) refuses or fails to comply with requirement of an inspector which is applicable to him, to the extent to which he is able to comply with it; or
 - (b) obstructs or hinders an inspector in the exercise of his powers under this Act; or
 - (c) furnishes information or makes a false statement which he knows to be false or misleading in any material particular; or
 - (d) when appearing before an inspector for examination pursuant to such requirement, makes a statement which he knows to be false or misleading in any material particular, commits an offence.
- (3) A person convicted of an offence under subsection (2) shall be liable to a fine not exceeding five thousand shillings or, in the case of a natural person, to imprisonment for a term not exceeding three years, or to both.
- (4) Where an offence under subsection (2) is a continuing one, the person shall, in addition to the penalty prescribed under subsection (3), be liable to a further fine of one thousand shillings for every day during which the offence continues.
- (5) Where a person convicted under subsection (3) is a body corporate, the Commissioner may, notwithstanding any other penalty imposed under that subsection, apply to court for the winding up of the person.
- 67F.** Any expenses incurred by reason of the exercise of any of the powers conferred by this Part in respect of an insurer shall be met by that insurer. Expenses under part

PART VII - MANAGEMENT AND EXPENSES

- 68.** (1) For the purposes of this section “registered person” means a person registered under this Act as an insurer, reinsurer, broker, agent, medical insurance provider, insurance surveyor, risk manager, loss assessor, loss adjuster or claims settling agent. Approved principal
Officer to be
Appointed
- (2) Every registered person shall, at all times while he is so registered, have a principal officer.
- (3) The principal officer appointed under subsection (2) shall be ordinarily resident in Kenya and shall be responsible for the general control, direction and supervision of the Kenya insurance business of the registered person and shall represent the registered person for the purposes of this Act.
- (4) Everything done by the principal officer or a person acting as the principal officer of the registered person in his representative capacity shall for the purposes of this Act, be deemed to have been done by the registered person, but this subsection shall not affect any liability of the principal officer or person acting as the principal officer under this Act.

- (5) Where the principal officer is, or is about to be, absent from Kenya for a period exceeding three months or for any reason unable to perform his duties as principal officer, the registered person shall, if he does not revoke the appointment and appoint another person under subsection (2), appoint another person (not being a body corporate) resident in Kenya to Act as the principal officer of the person registered for the purpose of this Act during the absence or inability.
 - (6) An appointment under this section shall be deemed not to have been duly made or revoked until the registered person has given notice in writing of the appointment or revocation to the Commissioner specifying the name and, in the case of an appointment, the place of residence of the person appointed.
 - (7) Every notice to the Commissioner regarding the appointment of a principal officer shall contain the following particulars-
 - (a) full name;
 - (b) date and place of birth;
 - (c) citizenship;
 - (d) academic and professional qualifications;
 - (e) work experience giving dates and nature of previous employment;
 - (f) Whether he has ever been convicted of an offence involving fraud or dishonesty and if so details of the offence, place and date;
 - (g) whether he has ever been adjudicated bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his creditors or made an assignment of his remuneration for their benefit and, if so, details.
 - (8) If it appears to the Commissioner that the person appointed as the principal officer is not a fit and proper person to be a principal officer, the Commissioner may, after giving the person concerned an opportunity of being heard, object to the appointment.
 - (9) Where the Commissioner objects to the appointment of a principal officer he shall record the reasons for his decision and furnish a copy thereof to the registered person, who shall forthwith revoke the appointment.
- 69.** (1) Subject to subsection (2), no insurer shall be directed or managed by, and no insurer shall employ in any capacity, a person whose remuneration or any person thereof takes the form of commission or bonus or of a share in the valuation surplus in respect of long term insurance business.
- (2) The prohibition contained in subsection (1) shall not apply to the employment of agents or brokers, or to the employment of persons who share in the profits of general insurance business by way of bonus payments or otherwise.

Directors, managers,
employees and their
remuneration.

- (3) A managing director or employee of an insurer shall not be a managing director or an employee of another insurer or of a bank or financial institution.
- (4) After the expiry of two years from the appointed date no agent, and where the agent is a company or firm, no managing or other director of an agent, and no broker, or managing or other director of a broker shall-
 - (a) be appointed or continue as a director of an insurer registered under this Act;
 - (b) directly or indirectly acquire or hold more than one per cent of the shares or controlling interest in an insurer registered under this Act.
- (5) After the expiry of two years from the appointed date, no insurer and no director or employee of an insurer shall directly or indirectly hold shares in or have any other financial or controlling interest in the affairs of an agent or broker.
- (6) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding five thousand shillings, and if the offence is a continuing one to a further fine of one hundred shillings for every day during which the offence continues.

- 70.** (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.

Limitation of
Management
Expenses

- 71.** (1) No insurer shall, in Kenya-
- (a) grant any loan, advance, financial guarantee or other credit facility against the security of his own shares; or
 - (b) grant to or permit to be outstanding without adequate security any loan, advance, financial guarantee or other credit facility not being a loan against and within the surrender value on a policy of life assurance issued by that insurer, to any shareholder, director, officer or employee or member of his family, or to any company of which the shareholder, director, officer or employee or member of his family is a shareholder, director, officer or employee:

Restrictions on
Loans, advances, by
insurer

Provided that an insurer may grant to an officer or employee, on compassionate grounds, an unsecured loan or advance not exceeding twenty thousand shillings subject to the condition that no further loan or advance shall, at any time, be granted if any previous loan or advance has not been fully repaid.

- (2) The provisions of section 191 of the Companies Act shall not apply to a loan granted to a director of an insurer if the loan is one granted on the security of a policy of life assurance on which the insurer bears the risk and the policy was issued to the director on his own life and the loan is within the surrender value of the policy.
- (3) Any loan, advance, credit facility, financial guarantee or other liability granted or permitted to be outstanding in contravention of the provisions of this section and existing on the appointed date shall be notified by the insurer to the Commissioner within thirty days of that date and shall, notwithstanding any contract to the contrary, be repaid or discharged within one year from that date.
- (4) Where an event occurs giving rise to circumstances the existence of which at the time of the grant of a subsisting loan, advance, credit facility, financial guarantee or other liability would have made that grant a contravention of this section, the loan, advance, credit facility, financial guarantee or other liability shall, notwithstanding anything in the contract to the contrary, be repaid or discharged within three months from the occurrence of that event.
- (5) In case of default in complying with the provisions of subsection (3) or subsection (4), a director, officer or employee who may be concerned shall, without prejudice to any other penalty which he may incur, cease to hold office under, be employed by or act for, the insurer granting the loan, advance, credit facility, financial guarantee or other liability on the expiry of the period of one year or three months, as the case may be.
- (6) The Commissioner may extend the period of one year referred to in subsection (3) by periods of not more than six months at a time and, where any such extension has been granted, the reference to the period of one year in subsection (5) shall be granted construed as a reference to the extended period.

- 72.** (1) No insurer shall on or after the appointed date appoint a managing agent for the conduct of his business.
- (2) Where an insurer engaged in the business of insurance before the appointed date has employed a managing agent for the conduct of his business then, notwithstanding anything to the contrary contained in the Companies Act, and notwithstanding anything to the contrary contained in the articles of the insurer, or in any agreement entered into by the insurer, the managing agent shall cease to hold office on the expiry of his contract of employment or of two years from the appointed date, whichever is earlier, and no compensation shall be payable to him by the insurer by reason only of the premature termination of his employment as managing agent under this subsection.

Limitations on
Employment of
Managing agents

PART VIII - RATES, POLICY TERMS AND CLAIMS SETTLEMENT

- 73.** (1) No person shall offer, either directly or indirectly, as an inducement to any person to take out or renew or continue a contract of insurance, any rebate of the whole or part of any brokerage, commission or premium except such rebate as

Restrictions on
Rebates, brokerage
e.t.c.

may be allowed in accordance with a published prospectus or manual or schedule of rates of an insurer.

- (2) No insurer shall, in respect of Kenya business, pay to a broker or agent as brokerage, commission, any sum in excess of the amounts prescribed class of business class of placed by that broker or agent with that insurer.
- (3) No broker shall, in respect of Kenya business pay to an agent any commission, in excess of what would have been payable had the agent been paid by an insurer instead of by the broker.
- (4) Nothing in this section shall prohibit a person obtaining the benefit of the commission payable by an insurer to a broker or agent under the relevant prospectus or agent's manual or broker's agreement where he takes out life assurance on his own life or on the lives of his dependants directly with the insurer without the services of an intermediary
- (5) A person who contravenes any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings.

- 74.** (1) An insurer carrying on long term insurance business shall not issue, after the expiry of three months from the appointed date, any policy of insurance unless the rate of premium chargeable under the policy is a rate which has been approved by an actuary as suitable for the class of policies to which that policy belongs and that rate and the actuarial bases therefore together with the actuary's certificate have been filed by the Commissioner at least thirty days before giving effect to the rate.
- (2) The Commissioner may require the insurer to obtain, and to furnish him, within such a time as he may specify, with a report by an actuary as to the suitability of the rate of premium chargeable under any class of policy issued by the insurer and, if the actuary considers that the rate is not suitable, a report as to the rate of premium which the actuary approves as suitable in respect of that class of policy.
 - (3) Where a requirement is made under subsection (2) in respect of the rate of premium chargeable under any class of policy the insurer shall not issue, after the expiry of the period specified by the Commissioner, any policy of that class until the insurer has in accordance with the requirement obtained the approval of the actuary to the rate of premium, and notified the Commissioner that that approval has been obtained.
 - (4) An actuary in approving a rate of premium in respect of a class of policy in this section shall have regard to the maximum rate of commission or rebate proposed to be paid or allowed to any person in respect of that class of policy.
 - (5) Where a rate of premium is approved by an actuary in respect of a class of policy, the insurer shall not, except with the approval of the Commissioner, pay or allow in respect of any policy of that class a commission or rebate at a greater rate than –

Premium rates
of life insurers.
18 of 1986, Sch.

- (a) the maximum rate of commission or rebate to which the actuary had regard when approving the rate of premium; or
 - (b) the maximum rate of commission or rebate payable by the insurer immediately prior to the appointed date in respect of policies of that class (if any) issued at the rate of premium so approved, whichever is less.
- (6) A person who contravenes any of 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 of two thousand shillings for every day during which the offence continues.
75. (1) An insurer carrying on general insurance business shall file with the Commissioner, before commencing to carry on that business or before the expiry of three months
- from the appointed date, whichever is later, a schedule or manual of rates of premium proposed to be used by the insurer for each class of business.
- (2) Where a schedule or manual of rates of premium filed under subsection (1) is proposed to be altered or revised, the insurer shall file with the Commissioner the details of and the
- (3) If an insurer carrying on general insurance business issues any insurance cover outside the scope of the schedule or manual of the rates of the premium filed with the Commissioner or considers it necessary, while using the rate contained in the schedule or manual as the basing point, to deviate therefrom to take account of the proponent's or policy holder's past and anticipated loss experience, the physical characteristics of the subject matter of the insurance, the nature of the exposure and other relevant factors, the insurer shall file with the Commissioner, within a period of thirty days full details of the rate charged.
- (4) The Commissioner may, at any time, require an insurer to furnish him with statistical data and other information on the basis of which any rate or schedule or manual of rates filed with the Commissioner has been computed.
- (5) The Commissioner may, at any time, require an insurer to modify or revise, within such time as he may specify, the schedule or manual of rates filed with the Commissioner or the practice of deviating therefrom or the practice of rating risks outside the scope of the schedule or manual and the insurer shall carry out the required modification or revision within the stipulated time and get them approved by the Commissioner.
- (6) A person who contravenes any of 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 of two thousand shillings for every day during which the offence continues.

76. (1) The holder of a policy of insurance issued by an insurer in respect of insurance business carried on by him in Kenya on or after the appointed date shall have the right, notwithstanding any agreement to the contrary contained in the policy of insurance or in any agreement relating thereto, to receive payment of any sum secured thereby in Kenya and to sue for any relief in respect of the policy in Kenya; and if action on the policy is instituted in Kenya, any question of law in connection with the policy or proceedings shall be heard and determined according to the law in force in Kenya.
- (2) Nothing in this section shall apply to a policy of marine insurance.
77. Subject to this Act, failure on the part of an insurer, broker or agent to comply with any provision of this Act shall not invalidate any policy issued by an insurer.
78. A contract of insurance entered into after the appointed date shall be void if-
- (a) it is a contract under which the insurer undertakes a liability the amount or maximum amount of which is uncertain at the time when the contract is entered into; and
 - (b) it is not a contract of insurance or a contract of a class or description exempted by regulations or by the Commissioner in writing from the operation of this section.
79. (1) The sum insured, the premium and every other sum of money mentioned in a policy of insurance issued or renewed on or after the appointed date shall be stated in the currency of Kenya unless the parties to the policy have at or subsequent to the time of issue of the policy, expressly otherwise agreed to, and where the policy was issued or renewed on or after the appointed date, the Commissioner has in writing approved, the statement of any sum in some other currency: Provided that, notwithstanding the provisions of this subsection, an insurer may issue a policy of insurance, or a reinsurer may enter into a reinsurance contract in respect of –
- (a) aviation insurance; or
 - (b) marine insurance; or
 - (c) engineering insurance; or
 - (d) any class or classes declared by the Minister by notice in the Gazette, in which the sum insured, the premium and every other sum of money mentioned in the policy of insurance is stated in currencies other than the currency of Kenya.
- (2) If the insurer and policy holder have agreed, and, in the case of a policy issued on or after the appointed date, the Commissioner has approved, that the sum insured, the premium or other sum of money mentioned in a policy of insurance shall be expressed in a currency other than the currency of Kenya, the fact that

Laws applicable to contracts of insurance and place of payments

Defaults of insurer, broker, or agent not to invalidate policy

Avoidance of contracts for unlimited amounts.

Amounts and values in policies to be expressed in Kenya currency.

the parties have agreed and the fact that the approval of the Commissioner has been obtained and the currency adopted shall be stated in or endorsed on the policy in distinct terms and in printed or typed letters no smaller than and as legible as the letters of the other provisions of the policy.

- (3) The continued payment in respect of a policy relating to long term insurance business shall not constitute a renewal for the purposes of subsection(1).

- 80.** (1) A form of proposal for insurance or a policy or an endorsement or any form of written matter used by an insurer describing the terms or conditions of, or the benefits to be or likely to be derived from, a policy of insurance shall not contain anything in accurate or incomplete or likely to mislead a proponent or policy.

Proposal and policy documents not to be misleading

- (2) If the Commissioner is of opinion that an insurer has contravened the provisions of subsection (1) he may, after giving the insurer an opportunity of making representations, notify the insurer in writing that he objects to the form.

- (3) An insurer shall not accept a proposal or issue any policy or written matter if the proposal, policy or written matter is in a form to which the Commissioner has objected under this section to the extent that the objection has not been varied or set aside as a result of an appeal under section 173.

- (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.

- 81.** (1) Notwithstanding anything contained in or incorporated in a contract of life assurance issued before, on or after the appointed date, a policy of life assurance shall not be avoided by reason only of an incorrect statement made in a proposal or other document on the faith of which the policy was issued or reinstated by the insurer, unless the statement was material to the risk of the insurer and-

Incorrect statements in proposals

- (a) was made in the knowledge that it was untrue or with no reasonable belief that it was true; or

- (b) was made within the period of three years immediately preceding the date on which the policy is sought to be avoided or the date of the death of the life insured, whichever is the earlier.

- (2) Where an agent or servant of an insurer writes or fills in, or has before the appointed date written or filled in, any particulars in a proposal for a policy of insurance with the insurer, then, notwithstanding any law and any agreement to the contrary between the proposer and the insurer, a policy issued in pursuance of the proposal shall not be avoided by reason only of an incorrect or untrue statement contained in the particulars so written or filled in, unless the incorrect or untrue statement was in fact made by the proposer to the agent or servant for the purposes of the proposal; and the burden of proving that the statement was so made shall lie upon the insurer.

82. A policy of life assurance shall not be avoided merely on the ground that the person whose life is assured died by his own hand or act, sane or insane, or suffered capital punishment, if, upon the true construction of the policy, the insurer has thereby agreed to pay the sum assured in the events that have happened. Effect of Suicide or Capital punishment on policy
83. A form of proposal shall be framed so as to require a person making a proposal for a policy of life assurance to specify the place and date of birth of the person whose life is proposed to be assured, and the person making the proposal shall supply those particulars to the best of his knowledge and belief. Particulars as to age of proposer for life assurance
84. Where an insurer issues a policy of life assurance which provides the proof of age of the life insured is a condition precedent to the payment of the sum assured, the insurer shall, unless the age of the life assured has already been admitted by it, issue with the policy a printed notice stating that proof of age of the life assured may be required prior to the payment of the sum assured. Notice regarding proof of age
85. (1) If an insurer declines to accept the proof of age tendered in respect of a policy of life assurance, whether issued before, on or after the appointed date, the policy holder may apply to the Commissioner for an order directing the insurer to accept the proof tendered. Procedure where insurer declines to accept proof of age
- (2) On any such application, the Commissioner may, after giving the insurer a reasonable opportunity of being heard, make such order in relation to the application as he thinks just.
- (3) An order under this section shall be binding on the insurer and shall be complied with on his part.
86. (1) A policy of life assurance shall not be avoided by reason only of a misstatement of the age of the life assured. Misstatement of age
- (2) Where the true age as shown by the proofs is greater than that on which the policy was based, the insurer may vary the sum assured by, and the bonuses (if any) allotted to, the policy so that, as varied they bear the same proportion to the sum assured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would become payable if the policy has been based on the true age.
- (3) Where the true age, as shown by the proofs, is less than that on which the policy was based, the insurer shall either-
- (a) vary the sum assured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age; or
- (b) reduce, as from the date of issue of the policy, the premium payable to the amount that would have been payable if the policy had been

sed on the true age and repay to the policy owner the amount of over-payments of premiums less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the policy had been based on the true age.

- (4) Notwithstanding subsection (2) and (3), where the correct age is found to be beyond the limits within which the insurer, according to his published prospectus, issues the type of policies in question, the policy shall be void *ab initio* and the insurer shall refund to the insured all the premiums received on the policy after deducting the commission payments and expenses incurred by him on the policy; but nothing in this subsection shall apply to annuities and other policies where the insured has already received any payment under the policy.

- 87.** (1) If within twenty eight days after the delivery of an industrial life assurance policy or an ordinary life assurance policy, where the sum assured is ten thousand shillings or less, by an insurer to the policy holder, or, at the place of abode of the policy holder, to some other person who is an inmate of that place apparently not less than eighteen years of age and by whom any premium in respect of the policy is paid on behalf of the policy holder, the policy holder returns the policy to the insurer with an objection to any term or condition of the policy or a statement that he does not require the policy, the insurer shall forthwith refund any premium which has been paid in respect of the policy which shall thereupon be cancelled.

Objection to and
return of life policy

- (2) For the purposes of this section, where a policy is sent by post by an insurer to the person to whom it is issued, it shall, unless the contrary is proved, be deemed to have been delivered to him at the time at which it would reach him in the ordinary course of post.

- (3) For the purposes of this section, a policy shall be deemed to have been returned with an objection or statement, as the case may be, if the policy and objection or statement is posted for transmission to the insurer by registered post.

- 88.** (1) A policy holder who desires to discontinue further premium payments on a policy of life on which not less than three years' premium have been paid in cash shall on application to the insurer, be entitled to receive, in lieu of that policy, a paid-up policy for an amount not less than that determined in accordance with the rules.

Paid up policies

- (2) the paid up policy shall be payable upon the happening of the contingency upon the happening of which the amount assured under the original policy would have been payable.

- 89.** (1) The owner of a policy of life assurance which has been in force for at least three years shall on application to the insurer, be entitled to surrender the policy and to receive not less than the surrender value of the policy less the amount of any debt owing to the insurer under, or secured by, the policy.

Surrender of policies

- (2) In the application of subsection (1) to a paid-up policy which has been issued in lieu of another policy, the period of three years shall be calculated from the date of issue of the original policy.
- (3) For the purposes of this section the surrender value of a policy shall be the amount calculated in accordance with the rules.
- (4) The Commissioner may, on application by an insurer, if, in his opinion, the payment in cash of surrender values as required by this section would be prejudicial to the financial stability of the insurer or to the interests of the policy holders of that insurer, suspend or vary for such period and subject to such conditions as the Commissioner thinks fit, the obligation of the insurer to pay those surrender values.

90. (1) An ordinary life policy shall not be forfeited by reason only of the non-payment of any premium (in this section referred to as “the overdue premium”) if-

Non forfeiture of ordinary life Policies in certain cases of non-payment of premiums

- (a) not less than three years’ premiums have been paid in cash on the policy; and
- (b) the surrender value of the policy (calculated as at the day immediately preceding that on which the overdue premium falls due) exceeds the sum of the amount of the debts owing to insurer under, or secured by, the policy, and the amount of the overdue premium.

(2) The insurer may, until payment of the overdue premium, charge compound interest on it, on terms not less favourable to the policy holder than such terms (if any) as are prescribed.

(3) The overdue premium and any interest charged on it under this section and unpaid shall, for the purposes of this Act be deemed to be a debt owing to the insurer under the policy.

(4) Without affecting the generality of subsection (1), an ordinary life policy on which not less than three years’ premiums have been paid in cash shall not be forfeited by reason only of the non-payment of a premium unless, on or after the day on which the premium fell due, the insurer liable under the policy serves a notice on the policy holder stating-

- (a) the amount due or payable to the insurer at the date of the notice in respect of the policy; and
- (b) that the policy will be forfeited at the expiration of twenty eight days after service of the notice if a sufficient sum is not paid to the insurer in the meantime.

91. (1) An industrial life assurance policy on which less than one year’s premiums have been paid shall not be forfeited by reason only of the non-payment of any

Non-forfeiture of industrial policies in certain cases of non-payment of premiums

premium unless the premium has remained unpaid for not less than four weeks after it became due.

- (2) An industrial life assurance policy on which not less than one year's premiums have been paid shall not be forfeited by reason only of the non-payment of any premium unless the premium has remained unpaid for not less than eight weeks after it became due.
- (3) An industrial life assurance policy on which not less than two years' premiums have been paid shall not be forfeited by reason only of the non-payment of any premium unless the premium has remained unpaid for not less than twelve weeks after it became due.
- (4) In the event of an industrial life assurance policy on which not less than three years' premiums have been paid being forfeited by reason of non-payment of any premium, the insurer shall, without requiring any application from the policy holder, grant a paid-up policy for an amount not less than that calculated in accordance with the rules.
- (5) The paid-up policy shall be payable upon the happening of the contingency upon which the amount insured under the original policy would have been payable.

92. Where in pursuance of any provision in this Part a policy holder is entitled to receive, or an insurer is required to grant, a paid-up policy and there is any debt owing to the insurer under or secured by the policy, the insurer may elect-

Treatment of debts
On grant of paid-up
policies

- (a) To treat the debt so owing as a debt secured by the paid-up policy and thereupon the paid-up policy shall be a security for the debt so owing; or
- (b) in the ascertainment of the amount of the paid-up policy, to reduce the amount by taking into account, upon a basis approved by the Commissioner, the debt so owing to the insurer, and thereupon the debt shall cease to be owing to the insurer.

93. (1) The provisions of section 88 to 92 (inclusive) shall not apply to-

Certain policies
Exempted from
Operation of
Sections 88 to 92.

- (a) an instrument securing the grant of an annuity for a term dependent upon human life, not being a deferred annuity during the period of deferment; or
 - (b) a policy which provides insurance against contingencies none of which may happen, not being a policy which provides for the payment of a sum of money if the life insured by the policy survives a specified period.
- (2) Subject to subsection (1), the Minister may, on the recommendation of the Commissioner, by notice in the Gazette, declare that the provisions of sections 88 to 92 shall apply in respect of any policy or class of policies with such

modifications as are declared in the notice, and those provisions shall apply in respect of that policy or class of policies accordingly.

- 94.** (1) Subject to this Act, no policy of insurance shall be issued on the life or the lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policy or policies shall be made, shall have no insurable interest.
- (2) An insurable interest shall be deemed to be had by-
- (a) a parent of a child under eighteen years of age, or a person in *loco parentis* of such child, in the life of the child to the extent of funeral expenses which may be incurred by him on the death of the child;
 - (b) a husband, in the life of his wife;
 - (c) a wife, in the life of her husband;
 - (d) any person, in the life of another upon whom he is wholly or in part dependent for support or education;
 - (e) a corporation or other person, in the life of an officer or employee thereof; and
 - (f) a person who has a pecuniary interest in the duration of the life of another person, in the life of that person.
- (3) A child's advancement policy effected either before, on, or after the appointed date shall not be void by reason only that the person effecting the policy had not at the time the policy was effected an insurable interest in the life of the child.

Insurable interest
Essential for all
Policies

- 95.** (1) The provisions of this section shall apply to every child's advancement policy, whether effected before, on, or after the appointed date.
- (2) Where a child whose life is insured under a child's advancement policy has, whether before, on, or after the appointed date, attained the vesting age, the policy shall be deemed to have been, or, as the case may be, shall become, as on and after the date on which the child attained the vesting age, the absolute property of the child both at law and in equity, subject-
- (a) to any debt owing to the insurer under, or secured by, the policy;
 - (b) to any dealing done, prior to the attainment by the child of the vesting age, by the owner of the policy; and
 - (c) to any dealing done, after the attainment by the child of the vesting age and prior to the appointed date, by the owner of the policy.

Property in child's
advancement policy

- (3) On the death or bankruptcy, during the child’s life time and before he attains the vesting age, of the person effecting the policy, the executors, administrators, official receiver or trustee in bankruptcy of the person effecting the policy as the case may be (in this subsection referred to as “the representative”) shall, subject to any dealings other than testamentary by the person effecting the policy before his death or bankruptcy, hold the policy in trust for the child until he attains the vesting age, or dies before attaining the vesting age, and the representative may assign, mortgage, charge, surrender, vary or otherwise deal with the policy and apply the proceeds as he thinks fit for the maintenance or benefit of the child and the upkeep of the policy, and the insurer issuing the policy shall be under no obligation to see to the application of the proceeds.
- (4) Nothing in this section shall invalidate a payment made before the appointed date in respect of a child’s advancement policy if the payment, but for this Act, would have been valid.

96. (1) An insurer shall not, by a policy effected on the life of a child, contract to pay on the death of the child under ten years of age a sum of money (apart from repayment of premiums) which amount payable (apart from repayment of, added to any premiums) on the death of the child under ten years of age by any other insurer, exceeds one thousand shillings.

Limitation of amount payable on death of child

(2) In a policy to which subsection (1) refers there shall be clearly set out that the total sum recoverable as insurance moneys or other benefits from any one or more insurers (apart from repayment of premiums) shall not exceed one thousand shillings.

97. An insurer shall not pay any sum (apart from repayment of premiums) on the death of a child under ten years of age except upon the production a certificate of death issued in accordance with the provision of the Births and Deaths Registration Act.

Production of prescribed certificate of death

98. Section 96 and 97 shall not apply to the policy on the life of a child when the person effecting the insurance has an insurable interest, apart from the mere interest under section 94 (2) (a), in the life of the child.

Savings as to insurable interest

99. (1) Subject to any written law relating to bankruptcy, the property and interest of a person in a policy effected (whether before, on, or after the appointed date) upon his own life shall not be liable to be applied or made available in payment of his debts by a judgement, order or process of any court.

Protection of insured interest

(2) In the event of a person whose life is insured dying after the appointed date, the moneys payable upon his death under or in respect of a policy effected upon his life shall not, subject to any written law relating to bankruptcy, be liable to be applied or made available in payment of his debts by a judgement, order or process of any court, or by retainer by an executor or administrator, or in any other manner, except by virtue of a contract or charge made by the person whose life is insured or by virtue of an express direction contained in his will or other testamentary instrument executed by him that the moneys arising from the policy shall be so applied.

- (3) A direction to pay debts, or a charge of debts upon the whole or any part of the testator's estate, or a trust for the payment of debts, shall not be deemed to be such an express direction.

100.

- (1) Subject to any written law relating to bankruptcy, a policy effected (whether before, on, or after the appointed date) by a man upon his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by a woman upon her own life and expressed to be for the benefit of her husband or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects named in the policy, and the moneys payable under that policy shall not, so long as any object of the trust remains unperformed, form any part of the estate of the person whose life is insured, or be subject to his or her debts.
- (2) The person whose life is assured may, by the policy, or by a memorandum under his or her hand, appoint trustees of the moneys payable under the policy, and from time to time appoint new trustees of the moneys and may make provision for the appointment of new trustees of the moneys, and for the investment of the moneys payable under the policy.
- (3) Subject to subsection (4), if at any time there is no trustee, the policy shall vest in the person whose life is assured, and his personal representatives, in trust for the purposes referred to in, and subject to, subsection (1).
- (4) If at any time there is no trustee and the policy is not vested in any person in pursuance of subsection (3) and it is expedient to appoint trustees or new trustees, may be appointed by the court.
- (5) The receipt of a trustee, or if there is no trustee or in default of notice to the insurer of the existence of a trustee, the receipt of the person whose life is insured or of his personal representative, or, if the policy has been assigned in pursuance of the power to borrow money conferred by subsection (6), the receipt of the owner for the time being of the policy, shall be a discharge to the insurer for the sum payable under the policy, or for the value of the policy, in whole or in part.
- (6) A trustee, or if there is no trustee or in default of notice to the insurer of the existence of a trustee, the person whose life is insured or his personal representative, may vary the terms of the policy in any manner permitted by the insurer, surrender the policy in whole or in part or borrow money upon the policy, and any money obtained by any such variation, surrender or borrowing shall be subject to the same trusts as those upon which the policy was or is held.
- (7) Except as expressly provided by this section, nothing in this section shall affect the operation of the law in force in Kenya relating to trustees.
- (8) In this section, "children" in relation to a person, includes-
- (a) a person adopted by the first-mentioned person under the law of Kenya relating to the adoption of children; or

Family insurance
policies

- (b) a person adopted by the first-mentioned person under the law of any country relating to the adoption of children if the validity of the adoption would be recognized under the law of Kenya; or
- (c) a step-child of that person.

101. (1) Where-

- (a) there is only one policy under which moneys are payable by a particular insurer to the personal representative of a deceased person and those moneys do not, excluding bonus additions, exceed One Hundred Thousand Shillings, or
- (b) there are two or more policies under which moneys are so payable and the aggregate of those moneys does not, excluding bonus additions, exceed five thousand shillings, the insurer may, without requiring the production of any probate or letters of administration, pay the moneys, together with the bonuses (if any) which have been added to the policy or policies, to a person-
 - (i) who is the husband, wife, father, mother, child, brother, sister, nephew or niece of the deceased person; or
 - (ii) who satisfies the insurer that he is entitled to the property of the deceased person under his will or under the law relating to the disposition of the property of the deceased person under his will or under the law relating to the disposition of the property of the deceased person or that he is entitled to obtain probate of the will of the deceased person or to take out letters of administration of his estate.

Probate or administration may be dispensed with in certain cases

- (2) The insurer making any such payment shall be thereby discharged from all further liability in respect of the moneys payable under the policy or policies.

102. (1) Subject to this section, where the owner of a policy of life assurance, not being the person whose life is assured by the policy, predeceases the person whose life is so assured, and a person satisfies the insurer that issued the policy that he is entitled-

- (a) under the will or on the intestacy of the deceased owner to the benefit of the policy; or
- (b) to obtain probate of the will, or to take out letters of administration of the estate of the deceased owner, the insurer may, without requiring the production of probate or letters of administration, endorse on the policy a declaration that that person has so satisfied the insurer and is the owner of the policy, and thereupon that person shall become, subject to subsection (2), the owner of the policy.

Death of owner of policy not being life insured

- (2) Subsection (1) shall not confer on a person declared to be the owner of a policy any beneficial interest in the policy which he would not otherwise have had.

- (3) This section shall not apply in relation to a policy referred to in subsection (1) whether the deceased owner died before, on, or after the appointed date.
- (4) This section shall not apply in relation to-
- (a) a policy the surrender value of which, at the date of the death of the deceased owner exceeds or exceeded two thousand five hundred shillings; or
 - (b) a policy which is one of two or more policies owned by the deceased owner and issued by the same insurer if the aggregate of the surrender values of those policies at the date of the death of the deceased owner exceeds or exceeded two thousand five hundred shillings.
- (5) For the purposes of subsection (4), the surrender value of a policy is the amount (including any amount in respect of bonus additions) that would be paid by the insurer issuing the policy upon its surrender.
- 103.** An insurer shall not in any circumstances be bound or concerned to see to the application of any money paid by the insurer in respect of any policy. Insurer not Bound to see to Application of Payments
- 104.** (1) An insurer may, subject to any rules of court in that behalf, pay into court any moneys payable by the insurer in respect of a policy for which, in the opinion of the insurer, no sufficient discharge can otherwise be obtained. Power to pay Into court
- (2) The receipt of a registrar of the court for the moneys shall be a good and valid discharge to the insurer for moneys so paid in, and the moneys shall, subject to the rules of the court, be dealt with according to the order of the court.
- 105.** Where a claim arising under a policy is paid, no deductions shall, except with the consent in writing of the claimant, be made on account of premiums or debts due to the insurer under any other policy. No deductions in Respect of other Policies
- 106.** (1) Where an insured person claims that the policy (in this section referred to as “the original policy”) is lost or has been destroyed, the insurer liable under the original policy may, subject to this section, upon application by that person and upon such evidence as to the loss or destruction of the original policy as the insurer deems sufficient, issue to the applicant as a special policy in substitution for the original policy. Lost policies
- (2) A special policy shall -
- (a) be a copy, as nearly as can be ascertained, of the original policy in substitution for which it has been issued;
 - (b) contain copies of every endorsement on the original policy registered by the insurer; and
 - (c) state the reason for the issue of the special policy.

- (3) Before issuing a special policy the insurer shall, if the amount insured, exclusive of bonus additions in the case of a policy of long term insurance, exceeds twenty five thousand shillings, give at least one month's notice of his intention so to do in the Gazette and in at least one newspaper published and circulating in Kenya.
- (4) The expenses of advertisement and all other costs of the issue of special policy shall be paid by the applicant at the time of application.
- (5) The fact of the issue of a special policy and the reason for its issue shall be recorded by the insurer in the register of policies.
- (6) A special policy shall be valid and available for all purposes for which the original policy in substitution for which it has been issued would have been valid and available and, after the issue of the special policy, the original policy substitution for which it has been issued shall be void.
- (7) If the insurer fails to issue a special policy within six months of an application in writing from the insured person the Commissioner may, upon application and upon such evidence as to the loss or destruction of the original policy as the Commissioner deems sufficient, order the insurer, upon such terms and within such time as the Commissioner thinks fit, to issue a special policy.

PART IX - ASSIGNMENTS, MORTGAGES AND NOMINATIONS

- 107.** (1) Subject to section 110, an assignment of a policy of life assurance made after the appointed date -
- (a) shall be by memorandum of transfer and shall be –
 - (i) endorsed upon an annexure to the policy that is referred to in, or in an endorsement on, the policy; and
 - (ii) signed by the transfer or in the presence of a witness; and
 - (b) shall not be recognized by or binding on the insurer until registered in accordance with this Section by the insurer liable under the policy.
- (2) Every assignment shall be registered in a register to be provided by the insurer for that purpose, and the date of registration shall be inserted in the memorandum of transfer, which shall also be signed by the principal officer of the insurer or a person thereto authorized by him in writing.
- (3) The transferee under a duly registered assignment shall have all the powers and be subject to all liabilities of the transferor under the policy, and may sue in his own name on the policy:

Assignments
of policies

Provided that nothing in this section shall be construed to admit the transferee to membership of an insurer or to deprive the transferor of his membership in respect of a policy, except as provided in the instruments constituting the insurer or in his articles of association or other rules.

- (4) the receipt of the transferee shall be a discharge to the insurer for all moneys paid by the insurer under the policy.
 - (5) Every memorandum of transfer shall, as between the insurer and any person claiming any moneys under the policy, be conclusive evidence for all purposes that transferee was at the time of registration the absolute owner of the policy free from all trusts, rights, equities and interests (except liens or charges which the insurer has upon the policy), and legally entitled to receive and give a discharge for those moneys.
 - (6) Any discharge or surrender of or security over the policy given to the insurer by the transferee shall be valid and effectual, notwithstanding the existence of any trust, right, equity or interest of any other person.
 - (7) The insurer taking the discharge, surrender or security shall not be required or concerned to inquire or ascertain the circumstances in which or the consideration for which the transferee or any previous transferee became a transferee or, except as provided by section 108, be affected by express, implied or constructive notice of any trust, right, equity or interest.
 - (8) This section shall not-
 - (a) impose on a minor any liability to which he would not, but for this section, be subject;
 - (b) confer on a minor any power or capacity which, but for this section, he would not have; or
 - (c) validate a receipt or discharge or a surrender of, or security over, a policy given by a minor, if, but for this section, that receipt, discharge, surrender or security would not be valid.
- 108.** (1) Notwithstanding anything contained in Section 107, an insurer shall not be entitled to any protection under that Section or to rely upon any of the provisions of that section if the insurer has not acted in good faith or has received express notice in writing of any trust, right equity or interest of any person.
- (2) In case of the receipt of any such notice, the insurer may pay into the court any moneys payable under the policy, and shall be a good and valid discharge to the insurer for the moneys so paid in.
- 109.** The rights and liabilities arising under a policy shall not be deemed, either at law or in equity, to be merged or extinguished by reason only of an assignment of the policy, whether at law or in equity, to the insurer that issued the policy.

Effect of notice of trust.

Assignment of Policy to insurer Issuing it not to Merge rights, etc Under policy

110. Where an insurer is satisfied that-

- (a) a policy has been issued or transferred to, or the ownership of a policy is otherwise vested in, person as trustees; and
- (b) those persons are no longer the trustees for purposes of the trust,

Nomination by
policy holder.

The insurer may, at the request in writing of the person claiming to be the trustees for the time being for the purpose of the trust and on the evidence of a statutory declaration by one of those persons verifying the claim, record the names of those persons as the owners of the policy, and thereupon those persons shall become the owners of the policy.

- 111.** (1) The holder of a policy of life assurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy in the event of his death:

Policies held by
trustees

Provided that, where the nominee is a minor, the policy holder may appoint, in the manner prescribed, any person to receive the money secured by the policy in the event of death during the minority of the nominee.

- (2) Any nomination under subsection (1), in order to be effectual, shall either be incorporated in the text of the policy itself or be made by endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy, and the nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bonafide by him to a nominee mentioned in the text of the policy or registered in the books of the insurer.
- (3) The insurer shall furnish to the policy holder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may charge the prescribed fee not exceeding ten shillings, for registering a nomination, or its cancellation or change.
- (4) A transfer or assignment of a policy made in accordance with this Act shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of assignment, in consideration of a loan granted by the insurer on the security of the policy within its surrender value, or its assignment on repayment of the loan, shall not cancel a nomination but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

- (5) Where the policy matures for payment during the life-time of the person whose life is insured, or where the nominee dies, or if there are more nominees than

one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

- (6) Where the nominee survives, or if there are more nominees than one, one or more nominees survive the person whose life is insured, the amount secured by the policy shall be payable to the survivor or survivors, as the case may be.
- (7) The provisions of this Section shall not apply to policy to which Section 100 (1) applies.

PART X - CLAIMS ON SMALL LIFE POLICIES

- 112.** (1) In the event of a dispute relating to the settlement of a claim on a policy of life assurance assuring a sum not exceeding one hundred thousand shillings (exclusive of any profit or bonus not being a guaranteed profit or bonus) issued by an insurer in respect of life assurance business transacted in Kenya, arising between a claimant under the policy and the liability in respect thereof, the dispute may at the option of the claimant be referred to the Commissioner for decision, and the Commissioner may, after giving an opportunity to the parties to be heard and after making such further enquiries as he may think fit, decide the matter.
- (2) The decision of the Commissioner under this Section shall be final and shall not be called in question in any court, and may be executed by the court which would have been competent to decide the dispute if it had not been referred to the Commissioner as if it were a decree passed by that court.
- (3) There shall be charged and collected in respect of an adjudication under this section such fees whether by way of percentage or otherwise as may be prescribed.

Claims on small life policies

PART XI - TRANSFERS AND AMALGAMATIONS.

- 113.** (1) Subject to this Act, where-
- (a) two or more insurers, at least one of whom is registered under this Act, intend to amalgamate, or
 - (b) an insurer intends to transfer insurance business of any class to another insurer and at least one of those insurers is registered under this Act, both the insurers jointly in the former case, and the transferor in the latter case, shall apply to the Minister through the Commissioner for his approval of the amalgamation or transfer, as the case may be.
- (2) An application to amalgamate or transfer insurance business be accompanied by –

Application to amalgamate or transfer

- (a) the draft of the document under which the proposed amalgamation or transfer is to take effect;
 - (b) audited accounts and balance sheets of both insurers as on the date of the proposed amalgamation or transfer;
 - (c) any other report or document on which the proposed amalgamation or transfer is founded or prepared as at the date of the proposed amalgamation or transfer, as the case may be.
 - (d) actuarial reports and abstract in respect of long-term insurance business of both the insurers, such reports and abstracts of the transferor, prepared in conformity with the provisions of section 115, as read with the requirements prescribed in the regulations as at the date of the proposed amalgamation or transfer, as the case may be.
 - (3) Where the proposed amalgamation or transfer is in respect of long term insurance business, an application under this section shall, in addition to the documents mentioned in subsection (2), be accompanied by a report on the terms of the scheme and likely effects of the scheme on policy holders of the insurers concerned as a result of the proposed scheme of amalgamation or transfer, prepared by an actuary who has not been professionally connected with any of the insurers at any time during the five years immediately preceding the application and prepared as at the date of the proposed amalgamation or transfer, as the case may be.
 - (4) The audited accounts and balance sheets, reports and abstracts referred to in subsections (2) and (3) shall be prepared as at the date at which the amalgamation or transfer is intended to be effected, which date shall not be more than twelve months before the date of the application.
- 114.** (1) The Minister shall not determine an application under this part unless-
- (a) notice of the intention to apply for amalgamation or transfer , approved by the Minister for the purpose, has been published in the Gazette and in at least two newspapers published and circulating in Kenya;
 - (b) except in so far as he has been sent to every affected policy holder and every other person who claims an interest in a policy included in the amalgamation or transfer and has given written notice of his claim to one of the insurers involved in the amalgamation or to the transferor, as the case may be; and
 - (c) copies of a statement setting out particulars of the amalgamation or transfer, including in the case of long term insurance business the report of the actuary, and approved by the Minister, have been available for inspection at one or more places in Kenya for a period of not less than thirty days

Notice

beginning with the date of the first publication of the notice in a accordance with paragraph (a).

- (2) The notice referred to in subsection (1) shall invite any person (including an employee, director, shareholder or policy holder) who has reasonable grounds for believing that he would be adversely affected by the carrying out of the scheme to write or make oral representations to the Minister within thirty days of the publication of the notice, stating the grounds on which he believes he would be adversely affected by the carrying out of the scheme of amalgamation or transfer.

115. (1) The Minister shall not determine an application under this Part which involves or includes a transfer of long term insurance business, unless the scheme involves a transfer of assets relating to the long term insurance business proposed to be transferred in accordance with the provisions of this section.

Conditions for
approval in relation
to long term
insurance business

- (2) If the transfer covers all the long term insurance business of the transferor, all the assets representing the statutory fund maintained by the transferor shall, subject to subsection (4), be transferred.

- (3) If the transfer applies to a part only of the long term insurance business of the transferor, the approved proportion of the assets representing statutory fund maintained by the transferor shall, subject to subsection (4), be transferred.

- (4) For the purposes of subsections (2) and (3)-

- (a) subject to paragraphs (b) and (c) of this subsection, assets of not less than the actuarial value of the liabilities on all the policies, after making adequate provision for maintenance for bonuses at current levels, and for the reasonable expectations of policy holders, liabilities being calculated on a proper basis, shall be transferred;

- (b) where the total assets available in terms of subsection (2) or (3) are less in value than the figure arrived at under paragraph (a) of this subsection, the whole of the assets so available shall be transferred, and the Minister shall decide, after taking into account the relevant actuarial considerations, whether any other assets of the insurer shall also be transferred and whether any provision for reduction of contracts shall be made in the scheme of transfer;

- (c) where the total assets available in terms of subsection (2) or (3) exceed the figure arrived at under paragraph (a) of this subsection, the assets transferred shall be of value equal to the figure arrived at under paragraph (a) plus the following proportions of the excess of the assets in terms of subsection (2) or (3) over the figure arrived at under paragraph (a) namely-

- (i) if the excess is equal to or less than forty per cent of the figure arrived at under paragraph (a), ninety per cent of such excess; and

- (ii) if the excess is more than forty per cent of the figure arrived at under paragraph (a), ninety per cent of the portion of the excess amounting to forty per cent of the figure arrived at under paragraph (a) plus fifty per cent of the balance of the excess; except that where the transferor does not have a share capital, the entire excess of the assets in terms of subsection (2) or (3) over the figure arrived at under paragraph (a) shall be transferred in addition to the assets of value equal to the figure arrived at under paragraph (a).
- (5) For the purposes of subsections (2) and (3), the total assets shall include all assets held by the insurer in Kenya which are applicable to, or were built out of, all the long term insurance business carried on in the past irrespective of whether they are shown against long term insurance business and irrespective of whether the business was carried on in the past solely in Kenya or elsewhere.
- (6) In determining the “value of the assets” due provisions should be made for any possible tax liabilities arising on account of the value placed on the assets or on account of the transfer of the assets.
- (7) In this section –

“proper basis” means the minimum basis prescribed or the basis applicable in the case of a bonus reserve valuation, allowing provision for the maintenance of bonuses at current levels and for the reasonable expectation of policyholders in that context, or the basis adopted at the latest preceding valuation, whichever brings out the highest figure of liability.

“approved proportion” means the proportion which is approved by the Minister as reasonable in the circumstances of the case.

116. The Minister shall not approve an amalgamation or transfer on an application under section 113 unless he is satisfied that-

Further
conditions for
approval

- (a) every policy included in the amalgamation or transfer evidence a contract which-
 - (i) was entered into before the date of the application; and
 - (ii) imposes on the insurer obligations the performance of which will constitute the carrying on of insurance business in Kenya; and
- (b) the amalgamated insurer or transferee, as the case may be, is, or immediately after the approval will be, authorized under this Act to carry on in Kenya insurance business of the appropriate class or classes, and unless in his opinion

the amalgamated insurer's or transferee's financial resources and the other circumstances of the case justify the giving of his approval.

- 117.** (1) The Minister may, after considering the documents and reports deposited with him under this Part and the representations, if any, made under section 114 (2), subject to such terms and conditions as he considers necessary, approve the scheme of amalgamation or transfer.
- (b) send a copy of that notice to the parties to the amalgamation or the transferor and the transferee and every person who made representations in accordance with the notice referred to in section 114,

Approval or
refusal

and if he refuses the application he shall inform the parties to the amalgamation or the transferor and the transferee in writing of the reasons for his refusal.

- 118.** (1) Subject to subsection (2), an instrument giving effect to an amalgamation or transfer approved by the Minister under section 117 shall be effectual in law-
- (a) to transfer to the amalgamated insurer or the transferee all the transferor's rights and obligations under the policies included in the instruments; and
- (b) if the instruments so provides, to secure the continuation by or against the amalgamated insurer or the transferee of any legal proceedings by or against either party to the amalgamation or against the transferor which relate to those rights or obligations,

Effect of
approval under
section 117

Notwithstanding the absence of any agreement or consent which would otherwise be necessary for it to be effectual in law for those purposes.

- (2) Except in so far as the Minister may otherwise direct, a policy holder whose policy is included in such an instrument shall not be bound by it unless he has been given written notice of its execution by either of the insurers involved in the amalgamation or transfer.
- (3) Where an amalgamation or transfer has been approved, the amalgamated insurer or the transferee insurer shall within ten days from the date of completion of the amalgamation or transfer deposit with the Minister certified copies of-
- (a) statements of his respective assets and liabilities; and
- (b) the documents under which the amalgamation or transfer was effected.

PART XII - INSOLVENCY AND WINDING UP

- 119.** In this Part “insurer” means an insurer carrying on insurance business in Kenya. Insurer defined for this part
- 120.** Notwithstanding anything to the contrary in the Companies Act, an insurer carrying on long term business shall not be wound up voluntarily. Voluntary Liquidation Cap. 486
- 121.** Where a petition for the winding up of an insurer is presented by a person other than the Commissioner, a copy of the petition shall be served on the Commissioner and the Commissioner shall be entitled to be heard on the petition. Winding up by court
- 122.** For the purpose of section 219 of the Companies Act, an insurer shall be deemed to be unable to pay his debts if at any time the requirements of section 41 (which relate to margins of solvency) are not observed by the insurer. Insolvency
- 123.** (1) The Commissioner may, with the prior approval of the Board, unless the insurer is already being wound up by the court, present an application to the court for winding up the insurer in accordance with the Companies Act under any of the following circumstances- Petitions for winding up.
- (a) in terms of section 19(5) or section 67(3) of this Act;
 - (b) in the case of an insurer carrying on long term insurance business as a closed fund within a meaning of that term in section 21, on the grounds that the business has continued as a closed fund for a period of more than five years (excluding any period before the appointed date), that the insurer has failed to implement a scheme approved or framed by the Commissioner under section 10, and that the continuance of the insurer without winding up is detrimental to the interests of the policy holders;
 - (c) on the ground that the insurer is unable to pay his debts within the meaning of section 219 of the Companies Act;
 - (d) on the ground that the insurer, having failed to comply with any requirement of this Act, has continued that failure, or having contravened any provision of this Act, has continued that contravention for a period of six months after notice of failure or contravention has been given to the insurer by the Commissioner;
 - (e) on the ground that the insurer is unable to fulfill the reasonable expectations of policy holders or potential policy holders;
 - (f) on the ground that it is just and equitable in the interests of the policy holders that the insurer should be wound up.
 - (g) on the ground that the insurer has failed to pay tax that is due and outstanding.

- (2) The court may, after considering the petition presented by the Commissioner, order the winding up of the insurer if it is of the opinion that there are sufficient grounds and it is just and equitable for the insurer to be wound up.

- 124.**
- (1) Where the insurance business or any part of the insurance business of an insurer has been transferred to an insurer to which the Act applies under an arrangement in pursuance of which the first-mentioned insurer (in this section called the secondary company) or the creditors thereof has or have claims against the insurer to which the transfer was made (in this section called the principal company) then, if the principal company is being wound up by or under the supervision of the court, the court shall, subject to the provisions of this section, order the secondary company to be wound up in conjunction with the principal company and may by the same or any subsequent order appoint the same person to be liquidator for the two insurers and make provision for the such other matters as may seem to the court necessary, with a view to the insurers being wound up as if they were one insurer.
 - (2) The commencement of the winding up of the principal company shall, except as otherwise ordered by the court, be the commencement of the winding up of the secondary company.
 - (3) In adjusting the rights and liabilities of the members of the several insurers between themselves, the court shall have regard to the constitution of the insurers, and to the arrangements entered into between the insurers in the same manner as the court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single insurer or as near thereto as circumstances admit.
 - (4) Where an insurer alleged to be the secondary company is not in process of being wound up at the same time as the principal company to which the insurer is secondary, the court shall not direct the secondary company to be wound up unless, after hearing any objections that may be urged by or on behalf of the insurer against being wound up, the court is of the opinion that the insurer is secondary to the principal company and that the winding up of the insurer in conjunction with the principal company is just and equitable.
 - (5) An application may be made in relation to the winding up of a secondary company in conjunction with a principal company by any creditor of, or person interested in, the principal or secondary company.
 - (6) Where an insurer stands in the relation of a principal company to one insurer, and in relation of a secondary company to another insurer, or where there are several insurers standing in the relation of secondary companies to one principal company, the court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

Secondary
companies

125. (1) Where an insurer is a subsidiary of a company which is not an insurer, and the latter company is wound under the Companies Act or otherwise-
- Insurers being
Subsidiaries of
Non-insurers
- (a) the subsidiary shall not be wound up except on the basis of a separate application for winding up; and
 - (b) where the subsidiary carries on long term insurance business, whether with or without other classes of insurance business, and is ordered to be wound up, all the admitted assets of the statutory funds together with any other assets of the subsidiary which have been included in a separate balance sheet relating to the long term insurance business, and together also with any assets which, though not shown against the statutory funds or in that balance sheet, should in the opinion of the court be equitably related to the long term policy holders, shall be treated as exclusively reserved for the benefit of the policy holders of the long term insurance business, and those assets shall not be utilized directly or indirectly for any purpose other than for the benefit of the long term insurance policy holders as long as those policy holders have not been fully discharged or otherwise provided for.
126. (1) In any proceedings upon a petition to wind up an insurer presented by the Commissioner under section 123 (1), evidence that the insurer was insolvent at the close of the close of the period to which the accounts and balance sheet of the insurer last deposited under section 61 relate, or at any date as at which an investigation was last made under section 57 or 58, shall be evidence that the insurer continues to be unable to pay his debts, unless the contrary is proved.
- Supplementary
Provisions as to
Winding up.
- (2) Rules made under section 344 of the Companies Act may regulate the procedure and the practice to be followed in proceedings with respect to the winding up of insurers under this Act.
127. (1) Subject to any direction which may be given by the court-
- Valuation of
Assets and
liabilities
- (a) the value of the assets and liabilities shall be ascertained in such manner and upon such basis as the liquidator thinks fit;
 - (b) the liabilities of an insurer in respect of the current policies of long term insurance business shall, as far as practicable, be calculated by the method and upon the basis to be determined by an actuary appointed by the court;
 - (c) the liabilities of an insurer in respect of the current policies of general insurance business shall, as far as practicable, be such portion of the last premium paid as is proportionate to the unexpired portion of the policy in respect of which the premium was paid.

- (2) The actuary appointed under subsection (1) shall, in the determination of liabilities, take into account any special directions which may be given to him by the court.

128. (1) The liquidator shall, so far as it may be possible and unless the court otherwise orders, carry on the insurance business of an insurer with a view to it being transferred as a going concern to another insurer, whether an existing company or a company formed for the purpose; and, in carrying on that business, the liquidator may agree to the variation of any contracts of insurance in existence when the winding up order is made but shall not effect any new contracts of insurance.

Continuation of
Business of
Insurer in
liquidation

- (2) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer attributable to his business require the appointment of a special manager of the business, he may apply to the court, and the court may on the application appoint a special manager of that business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

- (3) The court may require the special manager to give such security as it considers necessary.

- (4) The court may make such order as it considers appropriate with regard to the payment of remuneration to the special manager.

- (5) The court may, subject to such conditions (if any) as it may determine, reduce the amount of the contracts made by an insurer in the course of carrying on his business as an alternative to winding up or otherwise.

PART XIII - THE KENYA REINSURANCE CORPORATION

129. (1) There is hereby established a corporation which shall be a body corporate known by the name of the Kenya Reinsurance Corporation.

establishment
of Corporation

- (2) The Corporation shall have perpetual succession and shall in its corporate name be capable of suing and being sued, taking, purchasing or otherwise acquiring, holding, charging and disposing of movable or immovable property, borrowing or lending money and doing or performing all such other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

- (3) The Corporation shall not be subject to any of the provisions of the Companies Act.

130. 1) The Corporation is the successor to the Kenya Reinsurance Corporation established by the Kenya Reinsurance Corporation Act (now repealed) and, subject to this Act, all rights, duties, obligations, assets and liabilities of the Kenya Reinsurance Corporation existing at the appointed date shall be automatically and fully transferred to the Corporation and any reference to the

Corporation to
be successor
to Kenya
Reinsurance
Corporation
Cap.485 (1970)

Kenya Reinsurance Corporation in any contract or document shall for all purposes be deemed to be a reference to the Corporation established under section 129.(2) Notwithstanding subsection (1), the Corporation shall be liable for taxation of income or profits in accordance with the provisions of the Income Tax Act.

- 131.** (1) The Corporation shall have a common seal. Seal and execution of documents
- (2) The common seal of the Corporation shall be affixed in the presence of two persons, generally or specially authorized thereto by the Board, who shall sign in token of their presence.
- (3) All documents, other than those required by law to be under seal, and all decisions of the Board, may be attested, signified or certified under the hand of the Chairman.
- 132.** The functions of the Corporation shall be to undertake, carry on and transact in any manner whatsoever, whether in Kenya or elsewhere, reinsurance business of all kinds, classes, nature and descriptions whatsoever on such direct insurance business as may be prescribed. Functions of Corporation.
- 133.** (1) There shall be a board of directors of the Corporation (in this part referred to as “the board”) which shall, subject to the provisions of this Act, be responsible for the direction and control of the operations of the Corporation. Board of Directors
- 134.** (1) Subject to this section, a director shall hold office for such period as the Minister shall specify at the time of his appointment, and a retiring member shall be eligible for re-appointment. Tenure of Office
- (2) If the Minister is satisfied that a director-
- (a) is guilty of improper conduct; or
 - (b) is incapacitated by prolonged physical or mental illness; or
 - (c) is unable or unfit, for any other reason, to discharge the duties of his office, and that it would be in the interests of the Corporation so to do, he may be agreed, after the date upon which the Minister receives a written notice, signed by the director of his intention to resign.
- (3) The office of a director shall become vacant-
- (a) upon the expiry of the term of his appointment;
 - (b) upon the termination of his appointment under subsection (2);
 - (c) upon the expiry of one month, or such shorter period as may be agreed, after the date upon which the Minister receives a Written notice, signed by the Director of his intension to resign.

- (d) if he is absent without the permission of the Board for three consecutive meetings of the Board of which he has had reasonable notice.

135. The directors shall be paid by the Corporation such remuneration and allowances as the Minister may from time to time determine. Remuneration.

136. (1) The quorum necessary for the transaction of any business by the Board shall be the chairman and such number of other directors as together constitute not less than two-thirds of the total membership of the Board: Procedure

Provided that in the case of the absence of the chairman from Kenya, or of his incapacity to act, the quorum shall be any directors making up the required number.

(2) Where a director has an interest in any business for consideration at a meeting of the Board he shall, at the commencement of the consideration of that business, declare his interest.

(3) Subject to this Act, the Board shall regulate its own procedure and the conduct of the Corporation in such manner as the Board may think fit.

137.(1) The Minister shall appoint, from among the directors on such terms and conditions of service as the Board may determine, a managing director who shall undertake, subject to the directions of the Board, executive responsibility for the effective functioning of the Corporation and who shall perform such other functions as the Board may determine. Staff

(2) The Board may, on such terms and conditions of service as the Minister may approve, appoint or secure on secondment of such staff as may be necessary or desirable for the efficient conduct and the operation of the affairs of Corporation.

138. (1) No director, and no officer or servant of the Corporation shall in any manner disclose any information which he has acquired in the performance of his functions as director, officer or servant to any person except in so far as it may be necessary for the performance of those functions or due compliance with any requirements of or proceedings under this Act or with the order of a court. Secrecy

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.

139. (1) The capital of five million shillings of the Kenya Reinsurance Corporation established under the Kenya Reinsurance Corporation Act (now repealed) shall constitute the initial capital of the Corporation. Capital of Corporation
Cap.485(1970)

- (2) The capital of the Corporation may be increased out of its own funds by the Board with the prior approval in writing of the Minister.
- 140.** (1) The Corporation shall establish and maintain such reserves as are required by or under this Act or are usually provided for by the insurance companies and such other reserves as are necessary or desirable for the proper functioning of the Corporation under this Act. Reserves and Application of profits
- (2) The reserves to be maintained and amounts transferred to or from reserves from time to time shall be reasonably adequate and not unreasonably excessive:
- Provided that if any doubt arises about the adequacy, inadequacy or excess of any reserve or transfer to or from a reserve, the Commissioner shall decide the question and his decision shall be final.
- (3) If, for any financial year, a surplus in terms of section 46 (5) becomes available for the benefit of the shareholders in respect of long term insurance business carried on by the Corporation, the surplus, and in the latter case the balance of the profits after making provision for reserves and other matters for which provision is necessary or expedient, shall be paid to the Treasury.
- 141.** Subject to this Act, and to the approval of the Minister in writing, given either generally or in respect of particular investments, the funds of the Corporation shall be invested as the Board may think fit. Investment
- 142.** The financial year of the Corporation shall be the calendar year and the accounts of the Corporation shall be closed at the end of each financial year. Financial year
- 143.** (1) The Board shall cause to be kept all proper books and record of account of the income, expenditure, assets and liabilities of the Corporation. Accounts and audit
- (2) At the end of each financial year the accounts of the Corporation shall be audited by the Controller and Auditor General.
- (3) The Minister may, at any time, direct an extraordinary audit of the accounts of the Corporation.
- (4) Upon completion of audit under this section the auditor shall make a report thereon to the Board and shall at the same time furnish a copy of the report to the Minister.
- 144.** (1) The provisions of this Act, shall subject to section (2), be applicable mutatis mutandis to the corporation. Application of Provisions of Act to Corporation
- (2) The provisions of Parts IV, XII and XIV shall not apply to the Corporation.

PART XIV - MANDATORY REINSURANCE CESSIONS

- 145.** (1) Subject to this Act, every insurer shall reinsure with the Kenya Reinsurance Corporation such proportion of each policy of insurance issued or renewed in Kenya by the insurer, in such proportion and in such manner and subject to such terms and conditions as are prescribed. Certain business to be ceded to Kenya Reinsurance Corporation
- (2) Subject to this Act, every insurer shall also place with the Corporation, in addition to the reinsurance specified under subsection (1), such proportion of its reinsurance business from Kenya placed in the international reinsurance market, excluding facultative reinsurance, in such proportion and in such manner and subject to such terms and conditions as are prescribed.
- 146.** (1) The Corporation may refuse to accept any reinsurance offered pursuant to this Part, and in that case the Corporation shall furnish the insurer concerned, if so requested, the reasons for its refusal. Power to decline business
- (2) An insurer may, within fourteen days after receiving reasons for refusal under this section, appeal to the Tribunal against the refusal, and thereupon the Tribunal may confirm the refusal or may direct the Corporation to accept the reinsurance concerned, and any decision of the Tribunal on an appeal shall be final and conclusive.
- (3) Where reinsurance is refused under this section any liability of the insurer under this Part in respect of that reinsurance shall cease.
- 147.** Payment by the insurers to the Company in respect of reinsurance effected under this Part shall be made within such period as the Minister may, by notice in the Gazette, prescribe. Payment
- 148.** An insurer required to effect reinsurance under this Part shall produce or submit to the Corporation all returns, statements, books, records, accounts, or other documents, or true copies thereof, and shall furnish any information, which may be required by the Corporation for the purpose of this Part. Returns and information
- 149.** An insurer who- Offences and penalty
- (a) fails to effect reinsurance or make any payments, and in such manner as, is required or under this Part;
 - (b) fails to comply with a requirement of the Corporation under section 148 within a reasonable time after the making thereof; or
 - (c) furnishes information which is false in whole or in part, or produces or submits as true and correct any document or copy thereof which is not true and correct, in purported compliance with any such requirement, shall be guilty of an offence and liable to a fine.

PART XV - INTERMEDIARIES, RISK MANAGERS, LOSS ASSESSORS, LOSS ADJUSTERS, INSURANCE SURVEYORS, MEDICAL INSURANCE PROVIDER AND CLAIMS SETTLING AGENTS

- 150.** (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 a 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 subsection (1) 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 shillings for every day during which the offence continues.
- 150A** (1) 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.
- (2) Subject to this Act, the provisions of this Act or of any regulations made there under with respect to the registration and regulation of brokers shall, *mutatis mutandis*, apply to medical insurance providers.
- 151.** (1) An application for registration under section 150 or renewal of registration under section 188 shall be in the form required by the Commissioner and shall be accompanied by-
- (a) Where the application is for registration as a broker, a professional indemnity policy of insurance in such form as may be prescribed and for such amount as may be prescribed whether as a single sum or according to a specific formula;
- (b) Where the application is for registration as an agent, a document under the hand of the principal officer of the insurer for whom he proposes to function as an agent certifying that the person has been appointed as an agent by the insurer through an agreement or appointment letter, and

Only registered
Brokers, agents,
Risk managers,
Loss adjusters,
Loss assessors,
Surveyors and
Claims settling
Agents to carry
On business

Registration of
medical insurance
providers

Application for
registration

that the insurer is satisfied that the applicant has the knowledge and experience necessary to act an agent;

- (c) a statement of business transacted in the preceding financial year in the prescribed form;
- (d) the prescribed fee;
- (e) such other documents as may be prescribed.

(2) No person shall-

- (a) make a statement in an application, account, written information or document submitted under this section; or
- (b) give to the commissioner a certificate under subsection (1) (b), that is false or misleading.

152. The commissioner shall not register or renew the registration of or keep registered any person as a broker, agent manager, loss assessor, loss adjuster, insurance surveyor, medical insurance provider or claims settling agent if-

Disqualification

- (a) the applicant has been found to be of unsound mind by a court of competent jurisdiction;
- (b) he has within the five years preceding the date of application been convicted of an offence relating to fraud or dishonesty;
- (c) he has at any time within the five years preceding the date of his application become bankrupt, applied to take the benefit of the law for the relief of bankrupt or insolvent debtors, compounded with his creditors or made an assignment of his remuneration for their benefit;
- (d) the applicant, being a broker, is a director, employee or holds more than one per cent of the shares or controlling interest in a registered insurer.
- (e) the applicant is a natural person, the applicant, or where the applicant is a corporate person, the principal officer in Kenya of the applicant responsible for the transaction of business-
 - (i) does not, in the opinion of the Commissioner, have sufficient knowledge, skill and experience to satisfactorily discharge his duties and functions; or
 - (ii) has been found guilty of, or warned or cautioned in writing by the Commissioner on at least three separate occasions with regard to, unethical business practices.

153. (1) Where the Commissioner is satisfied that-

Registration and
Re-registration.
18 of 1986, Sch.

- (a) the volume of business which is likely to be available to, and the earning prospects of, an applicant are adequate;
- (b) the business in respect of which the application is made will be conducted in accordance with accepted professional standards;
- (c) in the case of a corporate person the financial standing of the applicant is sound;
- (d) the knowledge, skill and experience of the applicant is, or, in the case of a corporate person, the knowledge, skill and experience of the Principal Officer in Kenya, are adequate;
- (e) in the case of a broker, the professional indemnity policy of insurance is satisfactory;
- (f) the applicant is not disqualified under this Act;
- (g) the applicant is, and is likely to continue to be, able to comply with such of the provisions of this Act and regulations and directions made or issued under this Act as are applicable to the applicant;
- (h) the prescribed fees has been paid;
- (i) it is otherwise in the public interest that the applicant should be registered,

he may, subject to such terms and conditions as he considers necessary, including in the case of a broker the provision of a guarantee by the Central Bank of Kenya, in such amount as may be prescribed, register or renew the registration of an applicant under this Part.

- (2) Subject to subsection (3) and notwithstanding anything to the contrary contained in this Act, no broker shall be registered under this Act unless he is a Company incorporated under the Companies Act with a paid up capital of not less than one million shillings of which not less than sixty per cent is owned by Kenya citizens or by a partnership whose partners are all citizens of Kenya or by a corporate body whose shares are wholly owned by citizens of Kenya or which is wholly owned by the Government:

Provided that a broker who is not incorporated under the Companies Act on the appointed date may be registered as on that date but his registration shall not be renewed at the time of the next renewal unless he is incorporated under the Companies Act at that time.

- (3) A broker already carrying on business as an insurance broker on the appointed date without complying with the provisions of subsection (2) relating to paid up capital may be registered as a broker, but at the time of each subsequent renewal of the registration until he complies fully with the requirement his registration shall not be renewed unless he has acquired after immediately preceding

registration or renewal of registration, as the case may be, paid up capital or additional paid up capital equal to not less than one-third of the deficiency which existed on the appointed date.

- (4) Subject to subsection (3), a broker already carrying on business as an insurance broker on the appointed date without complying with the minimum share holding by Kenya citizens as required under subsection (2) shall comply with that requirement before the expiry of three years from the appointed date.
- (5) Notwithstanding anything to the contrary contained in this Act, no insurance agent shall be registered under this Act unless-
 - (a) if an individual, he is a citizen of Kenya; or
 - (b) If a partnership, all the partners are citizens of Kenya; or
 - (c) if a company is incorporated under the Companies Act, it is wholly owned by citizens of Kenya.

154. Subject to the terms and conditions contained in the agreement or appointment letter referred to in section 151 (1) (b), an agent may enter into a contract which has the effect of enabling him to solicit or procure insurance business of the same class or sub-class of insurance business or other classes of insurance business for more than one insurer, or to solicit or procure insurance business of the same class or sub-class of insurance business for more than one insurer.

Business by agents

- 155.** (1) Every corporate person registered under this part shall furnish such audited accounts, statements and returns relating to its business at such time and in such form as may be required by the Commissioner.
- (2) If it appears to the Commissioner that any account statement or return furnished to him under the provisions of this Act is inaccurate or incomplete in any respect, he may-
- (a) require further information , which shall be certified , if he so directs, by an auditor or other person, as he may consider necessary; or
 - (b) require any document for his examination.
- (3) Where-
- (a) a person registered under this Part fails to comply with a requirement made under subsection (2); or
 - (b) deleted.

Returns.

that person shall be deemed to have failed to comply with section (1)

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

Advance Payment of premiums

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) **Deleted.**
- (3) No agent shall collect the premium of a policy of insurance canvassed or solicited by him, and no agent shall signify acceptance of the risk on a policy of insurance canvassed or solicited by him, except in so far as to the extent that he has been authorized by an insurer to collect the premium or to issue cover notes, as the case may be; but nothing in this section shall prohibit an agent from collecting and transmitting to an insurer a cheque drawn in favour of an insurer.
- (4) A premium collected by an agent or a cheque received by him shall be deposited with, or dispatched and received by the insurer before the commencement of the insurance cover.
- (5) The requirements of this section may be relaxed by regulations in respect of particular categories of the policies.
- (6) A broker shall prepare, as at 30th June and 31st December of each financial year, a statement in the prescribed form showing the premium due to insurers from the broker for the prescribed durations and shall furnish each statement, duly signed in the prescribed manner, to the Commissioner within two months after the end of the period to which it relates.
- (7) If on examination of any statement prepared under subsection (6), it is found that the brokers in breaching of the provisions of subsection (2) he shall be liable to a penalty equal to five per cent per month of the amount of premium outstanding per quarter in excess of the period under section 156 (2) which shall be paid by a crossed banker's draft made in favour of the Permanent Secretary to the Treasury.
- (8) All moneys received by a broker from a client or an insurer shall be deposited in a separate client account in a bank licensed under the Banking Act, which shall be held in trust and under no circumstances be mixed with moneys or working capital belonging to a broker:

Provided that the broker may draw money from the client account for the purpose of remitting premium payments to insurers or payments to insurers or payment of claim money received from an insurer on behalf of his client.
- (9) In effecting the premium payments under subsection (8), the broker may deduct the brokerage commission due to him under the specific risks in respect of which the payment is made and shall prepare a statement showing such details with respect to the remittance, as the Commissioner may prescribe.
- (10) Any moneys earned by way of interest on sums deposited in a client account under this section shall accrue to the benefit of the broker.

- (11) The client account of a broker shall be audited annually by an auditor qualified under section 161 of the Companies Act, who shall issue a certificate to the Commissioner certifying whether or not the account is managed in accordance with the provisions of this Act.
- (12) An auditor's certificate under subsection (11) shall be a mandatory requirement for the renewal of a broker's registration.
- (13) If the auditor's certificate under subsection (9) indicates that the client account is not managed in accordance with the provisions of this Act, the Commissioner shall forthwith cancel the registration of the broker.
- (14) Where the Commissioner cancels the registration of a broker under sub-section (13) he shall cause notice of the cancellation to be published in the Gazette without undue delay.

PART XVI - THE INSURANCE ADVISORY BOARD

Section 157-163: Repealed

PART XVII - ADVERTISEMENTS AND STATEMENTS

- 164.** (1) A person who, by an advertisement, statement, or deceptive, or by dishonest concealment of material facts, or by reckless making (dishonestly or otherwise) of an advertisement, statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into a contract, transaction or arrangement with a member of the insurance industry relating to insurance business, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings. Misleading advertisements, etc. prohibited
- (2) For the purpose of this section, including proceedings under this section, an advertisement, statement, promise or forecast issued by a person on behalf of or on the order of another person shall be treated as an advertisement, statement, forecast or promise issued by that other person.
- 165.** (1) Where an advertisement, notice or other official publication of an insurer or broker to whom this Act applies contains a statement of the amount of the authorized capital of the insurer or broker, the publication shall also contain a subscribed and the amount paid up. Advertisements relating to capital
- (2) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.
- 166.** (1) No person shall publish in respect of an insurer or broker proposed to be formed, a prospectus, notice, circular, advertisement or other invitation offering to the public for subscription any shares in, or debentures of, the company or proposed company unless the prospectus, notice circular, advertisement or other invitation offering to the public for subscription of any shares in, or debentures of, the company or proposed company unless the Issues of Share or debentures by companies

prospectus, notice, circular, advertisement or other invitation is first submitted to and approved by the Commissioner.

- (1A) No person shall transfer or dispose of and no person shall acquire more than ten per cent of the paid-up share capital or voting rights of an insurer without the prior written approval of the Commissioner; and any such transfer, disposal or acquisition effected in a manner contrary to this subsection shall be null and void *ab initio*.
- (2) A person acting as promoter of a proposed insurer or broker shall not accept an office of profit in the insurer or broker or the offer of a pecuniary advantage, other than as provided in the prospectus, notice, circular, advertisement or other invitation.
- (3) In this section-
“debenture”, in relation to a company, includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of the company, whether constituting a charge on the property of the company or not;
“share”, in relation to a company, means a share in the capital of the company, and includes stock.
- (4) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

- 167.** (1) No person shall publish an account, abstract, report or other document deposited with or required to be deposited with the Commissioner by or under this Act in a form other than that in which it has been furnished to the Commissioner:

Publication of returns

Provided that nothing in this subsection shall prevent a person from publishing a true and accurate summary from any such account, abstract, report or other document for the purpose of publicity.

- (2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

PART XVIII - LEGAL PROCEEDINGS AND APPEALS

- 168.** (1) No legal proceedings shall be instituted in any court against the Minister or Board or any person authorized by the Minister or Board for anything done or intended to be done in good faith under this Act.

Protection for
Officials acts.

- (2) No compensation shall be payable to any person for any loss, damage or harm directly or indirectly caused by anything done or intended to be done in good faith by the Minister or Board or any person authorized by the Minister or Board under this Act.

- 169.** (1) The Minister may, by notice in the Gazette, establish a tribunal for the purpose of hearing appeals under this Act.

The Tribunal

- (2) The tribunal shall consist of a chairman and not less than two and not more than four other members who shall be appointed by the Minister and shall hold office for such period and upon such terms and conditions as the Minister may determine.
- (3) The quorum for a meeting of the tribunal shall be the chairman and two other members.
- (4) The members of the tribunal shall be entitled to receive such allowances as the Minister may determine.
- (5) The members of the tribunal shall not be personally liable for any act or default of the Tribunal done or committed in good faith in the course of exercising the powers conferred by this Act.
- (6) The Minister may make rules-
 - (a) prescribing the manner in which an appeal shall be made to the Tribunal and the fees to be paid in respect of an appeal;
 - (b) prescribing the procedure to be adopted by the Tribunal in hearing an appeal and the records to be kept by the Tribunal.
 - (c) prescribing the manner in which the Tribunal shall be convened and the places where and the time at which sittings shall be held;
 - (d) prescribing a scale of costs which may be awarded by the Tribunal; and
 - (e) generally for the better carrying out of the provisions of this Act relating to the Tribunal and appeals thereto.

- 170.**
- (1) On the hearing of an appeal the Tribunal shall have all the powers of a subordinate court of the first class to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.
 - (2) Where the Tribunal considers it desirable for the purpose of avoiding expenses or delay or any other special reason so to do, it may receive evidence by affidavit and administer interrogatories and require the person to whom interrogatories are administered to make a full and true reply to the interrogatories within the time specified by the Tribunal.
 - (3) In its determination of any matter the Tribunal may take into consideration any evidence which it considers relevant to the subject of an appeal before it, notwithstanding that such evidence would not otherwise be admissible under the law relating to evidence.
 - (4) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be taxed in accordance with any scale prescribed.

Powers of tribunal

(5) All summonses, notices or other documents issued under the hand of the chairman of the Tribunal shall be deemed to be issued by the Tribunal.

171. (1) Where the Tribunal awards costs in any appeal, the Tribunal shall, on application by the person to whom the costs are awarded, issue to him a certificate stating the amount of costs.

Enforcement of orders for costs

(2) Every certificate issued under subsection (1) may be filed, in the court by the person in whose favour the costs have been awarded and, upon being so filed, shall be deemed to be a decree of the court and may be executed as such; but an order for costs against the Government shall not be enforced except in the manner provided for by the Government Proceedings Act.

172. Any person summoned by the Tribunal to attend and give evidence or to produce any records, books of account, statements, or other documents, or required to answer interrogatories and who, without sufficient cause-

Penalty for disobedience of summons to give evidence etc.

(a) refuses or fails to attend at the time and place mentioned in the summons served on him;

(b) Refuses or fails to answer, or to answer fully and satisfactorily, to the best of his knowledge and belief all questions lawfully put to him by or with the concurrence of the Tribunal; or

(c) refuses or fails to produce any records, books of account, statements or other documents which are in his possession or under his control mentioned or referred to in any summons served on him, shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

173. (1) A person aggrieved by a decision of the Commissioner under this Act may, within one month from the date on which the decision is intimated to him, appeal to the Tribunal which may, subject to such terms and conditions as it may consider necessary, uphold, reverse, revoke or vary that decision.

Appeals from Commissioner's decisions

(2) Except as provided in this section the decision of the Tribunal on an appeal made to it under subsection (1) shall be final and conclusive.

(3) A person aggrieved by a decision of the Tribunal made under subsection (1) may, if it involves a question of law, within one month from the date on which the decision is intimated to him, appeal therefrom to the court.

(4) A reference in this section to a question of law does not include a reference to a question whether there is sufficient evidence to justify a finding.

(5) The Chief Justice may make rules for regulating the practice and procedure in connection with an appeal under subsection (3) and for the better carrying into effect the provisions of the subsection.

- 174.** (1) No court inferior to that of a magistrate's court of the first class shall hear and determine any matter relating to an offence under this Act.
- (2) No proceedings for an offence under this Act shall be instituted without the written sanction thereto of the Attorney-General.

Cognizance of
Offences and
Restrictions on
Institution of
proceedings

Proceedings for an offence under this Act may (without prejudice to any jurisdiction apart from this subsection) be taken against a body corporate at any place at which the body corporate has a place of business, and against any other person at any place at which he has a place of business or is for the time being resident.

- 175.** (1) 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 or other similar officer of the body corporate or any person who was purporting to act in such capacity, he, as well as the body corporate, shall be guilty of that offence unless he proves that he did not know of the commission of the offence and was not reasonably in a position to know of it, or that he took all reasonable steps to prevent the commission of the offence.
- (2) A person convicted of an offence under subsection (1) shall be liable to a fine not exceeding one hundred thousand shillings, or, in the case of a natural person, to imprisonment for a term not exceeding five years, or to both.
- (3) Where a person convicted under this section is a body corporate, then notwithstanding any other penalty imposed under subsection (2), the conviction shall constitute sufficient grounds for cancellation of its registration and the appointment of a manager under section 67C.

Criminal liability of
directors, etc.

- 176.** (1) Proceedings for an offence to have been committed under this Act by an unincorporated body shall be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents shall have effect as if that body were a corporation.
- (2) A fine imposed on an unincorporated body on its conviction of an offence under this Act shall be paid out of the funds of that body.

Criminal
Proceedings against
Unincorporated
bodies

- 177.** (1) Every document purporting to be certified by the Commissioner to be a document deposited with him under the provisions of this Act, and every document purporting to be similarly certified to be a copy of that document, shall be deemed to be such a document or copy, as the case may be, and shall be received in evidence as if it were the original document is proved.
- (2) The Board may direct any documents deposited with the Commissioner under this Act, or certified copies thereof, to be kept open for inspection, and copies thereof may be procured by any person on payment of such fees as may be prescribed.

Documents to be
Received in evidence

- (3) Every document purporting to be certified by the Registrar of Companies to be a copy of a document deposited with him under this Act, shall be deemed to be a copy of that document, and shall be received in evidence as if it were the original document, unless some variation between it and the original is proved.

178. 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 thousand shillings.

General penalty

PART XIX - MINISTER'S POWERS

179. (1) The minister shall, for the protection of policyholders, establish a policyholders' Compensation Fund, in this section referred to as "The Fund", to provide compensation to policyholders of an insolvent insurer.

Policyholders
compensation
Fund

(2) Where a Fund is established under subsection (1), the Minister shall appoint a board of trustees, in this section referred to as "the Board", for the management and administration of the Fund.

(3) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporation name, be capable of-

(a) suing and being sued;
taking, purchasing or otherwise acquiring, holding, charging or disposing of movable

(b) or immovable property;

(c) borrowing or lending money; and

(d) doing or performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(4) The Board shall comprise-

(a) a chairman, who shall be a person not connected with any insurer, broker or insurance agency;

(aa) the commissioner of insurance or his designated representative;

(b) one person nominated by insurers carrying on general insurance business;

(c) one person nominated by insurers carrying on long term insurance business;

(d) one person nominated by insurance brokers;

- (e) one person representing interests which the Minister considers should be represented on the Board; and
 - (f) one person nominated by persons carrying on the business of assessing losses in insurance.
- (5) The Minister shall prescribe the qualifications and terms of service of the chairman and members of the Board, including the procedure for their appointment.
- (5A) The Minister shall, in consultation with the board, appoint a Managing Trustee who shall be the Chief Executive and Secretary to the Board, and who shall hold office for such period and on such terms and conditions of service as may, from time to time, be determined in writing by the Minister in consultation with the board.
- (6) The Minister may require payment of a monthly contribution to the Fund to be paid by every policyholder and insurer, in such amount and at such times as the Minister may in consultation with the Board, prescribe.
- (7) A contribution required under subsection (6) shall be remitted to the Board by the insurer, in such manner as may be prescribed.
- (8) If an insurer, for any reason, fails to pay its contribution to the Board within the prescribed period, the insurer shall be liable to pay to the Board a penalty interest charge, which shall be prescribed by the Minister in consultation with the Board.
- (9) If an insurer fails to pay the prescribed contribution to the Board and any outstanding penalty interest charge-
- (a) the Board shall terminate the protection of the policyholders of the insurer and as soon as reasonably practicable after terminating such protection, cause the name of the insurer to be published in the gazette;
 - (b) such insurer shall be liable to having its registration cancelled.
- (10) A contribution paid by an insurer to the Board may be treated as an item of the expenses of management of the insurer for the financial year in which the amount is paid.
- (11) The Minister may, in consultation with the Board, make regulations generally for the better carrying out the provisions of this section.
- 180.** The Minister may prescribe all matters which by this Act are required or permitted to be prescribed, or which are necessary, desirable or convenient to be prescribed, for giving effect to this Act.

Power to prescribe

181. The Minister may, by notice in the Gazette, subject to such terms and conditions as he may on the advice of the board specify, exempt any person from any of the provisions of this Act.

Power of exemption

PART XX - GENERAL PROVISIONS RELATING TO REGISTRATIONS AND CERTIFICATES

182. In this Part-

“Applicant” means a person applying for registration, renewal of registration or alteration of registration under this Act;

“Register” means a register required to be kept and maintained under section 183;

“Registered person” means a person registered under this Act as an insurer, reinsurer, broker, agent, insurance surveyor, risk manager, loss assessor, loss adjuster or claims settling agent.

Interpretation of Part.

183. (1) For the purpose of this Act, the Commissioner shall cause to be kept and maintained one or more registers in respect of persons required to be registered thereunder.

Registers of Authorized persons To be kept by Commissioner.

(2) Subject to this Act and to any regulations made thereunder, a register shall be kept and maintained in such form and manner as the Commissioner directs.

184. The Commissioner shall notify in the Gazette, within one year of the appointed date or soon as practicable thereafter, and at intervals of not more than one year thereafter, the names of registered persons and the type of business in respect of which they are registered.

Notification of registered persons.

185. Any person may, on application in accordance with the directions of the Commissioner and on payment of the prescribed fee (if any), inspect a register.

Inspection of registers

186. A certificate under the hand of the Commissioner certifying as to any matter relating to the contents of a register shall be received in all courts as evidence of the matter certified.

Evidence of matters in register.

187. Where a registered person-

Alteration of registration

(a) in accordance with this Act ceases to carry on business of the type in respect of which he is registered; or

(b) being an insurer, gives notice in writing to the Commissioner that he wishes to carry on insurance business of a class not previously undertaken,

the Commissioner may, subject in the case of additional registration to compliance with the provisions relating thereto and to such terms and conditions as he considers necessary-

(i) cancel the registration, except that, in the case of an insurer, such cancellation shall be made only with the prior approval in writing of the Minister.

- (ii) alter the relevant register;
- (iii) cancel the certificate of registration;
- (iv) alter the certificate of registration;
- (v) issue a new certificate of registration,

as the circumstances require.

- 188.** (1) Subject to this Act, the registration of a registered person shall expire on the 31st December of the year of registration.

Expiry and renewal
of registration

Provided that where an application for its renewal is made under this section, the registration shall be deemed to continue in force until the application for the renewal is determined and the registration is renewed.

- (2) Subject to subsection (3), an application for the renewal of registration for a year shall be made on or before the 30th November of the preceding year in the prescribed form and shall be accompanied by the prescribed fee.
- (3) The Commissioner may extend the time for making an application for renewal of registration on payment of such penalty, not exceeding the prescribed fee for registration as he may require.

- 189.** (1) Upon the registration or renewal of any registration, the Commissioner shall issue a certificate of registration which shall be prominently displayed by the registered person at his principal place of business in Kenya in a part thereof to which the public have access, and a copy thereof shall be similarly displayed at each of the branches of the registered person in Kenya.

Issue, display and
Surrender of
certificates

- (2) The Commissioner may, on payment of the prescribed fee, issue a duplicate certificate to replace a certificate which has been lost, destroyed or damaged or in any case where he considers it necessary.
- (3) Upon the cancellation of a registration the person who was registered shall forthwith return his certificate of registration to the Commissioner.
- (4) A registered person shall not display a certificate of registration after the cancellation or expiry of the registration in respect of which it is issued.
- (5) A person who contravenes the provisions of subsection (3) or (4) shall be guilty of an offence and liable to a fine exceeding one thousand shillings.

- 190.** (1) If the name of a registered person who has been registered is identical to a name by which another registered person has already been registered, or so nearly resembles it as to be likely to deceive, the second registered person shall, if directed in writing to do so by the Commissioner and subject to the companies Act, change his name within a time to be specified in the direction.

Name of registered
person

- (2) No insurer shall, after the expiry of six months from the appointed date, use, or carry on business under, a name which is likely to mislead the public or to give the impression that the insurer is carrying on any business other than insurance business.
- (3) No broker, agent, insurance surveyor, loss assessor, loss adjuster, risk manager or claims settling agent shall, after the expiry of six months from the appointment date, use, or carry on business under, a name which includes the word; insurance; or; assurance; in such a way as to mislead the public or to give the impression that he carries on insurance business.
- (4) A person who contravenes the provisions of subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings, and where the offence is a continuing one, to a further fine of one hundred shillings for every day during which the offence continues.

191. (1) No person shall be registered under this Act as an insurer, reinsurer or broker if he carries on or intends to carry on in Kenya any business other than the business in respect of which he applies for registration.

Prohibition of
Other business

(2) No person registered under this Act as an insurer, reinsurer or broker shall carry on in Kenya any business other than the business in respect of which he is registered.

(3) For the purposes of this section, an insurer shall not be deemed to be carrying on a business other than that in respect of which he is registered merely by reason of his having a subsidiary which is registered for a class of insurance business for which the insurer is not registered;

Provided that nothing in this subsection shall allow an insurer not registered for long term insurance business to own a subsidiary registered for any class of long term insurance business.

(4) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

192. The Commissioner may in writing require an applicant for registration or renewal of registration under this Act to furnish him with such written information as he may require relating to the applicant or his business in respect of which registration or renewal thereof is sought, and the Commissioner shall not proceed with an application until that information has been furnished.

Further information

193. (1) Whenever any circumstances arise which affect the application or the contents of a document furnished under this Act to the Commissioner with or in support of or in connection with an application for registration, the applicant or registered person, as the case may be, shall in writing, within seven days of those circumstances arising, furnish full details of the circumstances to the Commissioner.

Alterations in
particulars furnished

- (2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

194. A person who makes a false or misleading statement in an application for registration or renewal of registration or alteration of registration, or in any document furnished under this Act to the Commissioner with or in support of or in connection with an application for registration or renewal of registration, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

False or misleading statements

195. Where the Board refuses an application for registration, renewal or alteration of registration, the Board shall record the reasons for its decision and shall furnish copies thereof to the applicant and the Minister.

Refusal to register

196. (1) Where a registered person requests, by notice in writing given to the Commissioner, that his registration be cancelled either totally or in respect of any particular part of his business, the Commissioner may, subject to such terms and conditions as he considers necessary, by notice in writing, cancel the registration of the person, either totally or in respect of any particular part of his business.

Cancellation of registration

- (2) The Commissioner, after giving a registered person a reasonable opportunity of making representations may by notice in writing cancel the registration of that person, either totally or in respect of any particular part of his business-

(a) if the person fails to comply with or acts in contravention of this Act, or any regulation or direction made or issued under this Act;

(b) in the case of an insurer, if the Commissioner has reason to believe that an amount due by the insurer under a judgement entered in an action in Kenya arising out of a policy of insurance issued by the insurer has remained unpaid for three months after the date of the final adjudication in that action;

(c) if the Commissioner is satisfied that the business of the person registered is not being conducted in accordance with sound insurance or business principles;

(d) where, having regard to the financial circumstances of the person registered, the Commissioner is satisfied that the person cannot carry on the business, or a part of the business, for which he is registered, as the case may be, in a satisfactory and efficient manner;

(e) where, having regard to the nature and quality of the staff of the registered person, including the professional qualifications, knowledge and experience of the staff, the Commissioner is satisfied that the person cannot carry on the business, or a part of the business, for which he is registered, as the case may be, in a satisfactory and efficient manner;

(f) if the person is in liquidation;

- (g) if the business of the registered person has been transferred to or amalgamated with the business of another person without the approval of the commissioner.
 - (h) in the case of an insurer, if the business of the insurer is wholly or to an unreasonable extent reinsured with another person;
 - (i) where the Commissioner has reason to believe that the person registered has not commenced to carry on insurance business or any class of business in Kenya within the period of twelve months after he was registered;
 - (j) where the Minister considers it is otherwise in the public interest and so directs the Commissioner in writing.
- (3) A cancellation of registration made by the Commissioner under subsection (2), other than paragraph (f), (g) or (i) thereof, shall take effect thirty days after the date of the notice, and after that time no insurer whose registration has been cancelled shall enter into a new contract of insurance; but all rights and liabilities in respect of contracts of insurance entered into by him before the cancellation takes effect shall, subject to subsection (5), continue as if the cancellation had not taken place.
- (4) The Commissioner may, with the prior approval of the Minister, revive a registration which has been cancelled under the provisions of subsection (2), other than paragraph (f), (g) or (i) thereof, if within six months from the date on which the cancellation took place the registered person concerned satisfies the Commissioner that he has complied with any requirement of this Act or any subsidiary legislation made thereunder and complies with any further directions given to him by the Commissioner.
- (5) Where the registration of an insurer has been cancelled under this section the Commissioner may, with the prior approval of the Minister, after the expiry of six months from the date on which the cancellation took effect, apply to the court to wind up the insurer unless the registration of that insurer has been revived under subsection (4) or an application for winding up the insurer has already been made to the court.
- (6) Where in any case referred to in subsection (1) the default or circumstances relates to one or more, but not all, of the parts of business carried on by the registered person, the Commissioner may, with the prior approval of the Minister, upon the cancellation of the registration of the person, subject to such terms and conditions as he considers necessary, register the person in respect of any part of the business and issue a new certificate in respect of that class of business.
- 196A.** The Commissioner shall, at the beginning of each calendar year, notify in the Gazette and in at least two daily newspapers of national circulation, names of the persons whose registration is cancelled under this Act and the type of business in respect of which the cancellation of registration is done.

Notification of
cancellation of
registration

197. (1) A broker or agent registered under this Act shall keep and maintain at his principle place of business in Kenya a record of the name of every client, policy number, premium paid, subject matter of insurance, date of inception of the policy, date of renewal, sum insured and, in respect of claims settled by the broker on behalf of an insurer, the amount and date of claim made, the date on which the claim was paid, the amount paid, and, in the event of a claim being repudiated, the date and reasons for repudiation, and, in the event of partial settlement, the reasons therefor.
- (2) An insurer registered under this Act for carrying on general insurance business shall keep a record of the name of every policy holder, policy number, premium paid, subject matter of insurance, the date of the inception of the policy, date of renewal, sum insured, the amount paid, and, in the event of a claim being repudiated, the date and reasons for repudiation, and, in the event of partial settlement, the reasons therefor.
- (3) An insurer registered under this Act for carrying on long term insurance business shall keep and maintain a full record of all services undertaken by him in pursuance of his registration.
- (4) A person registered under this Act other than an insurer, broker or agent shall keep and maintain a full record of all the services undertaken by him in pursuance of his registration.
- (5) Every person registered under this Act shall also keep and maintain such further records of information as may be prescribed.

Records to be maintained by registered persons

PART XXA - THE INSURANCE PREMIUM LEVY

- 197A. (1) Subject to this Act, there shall be charged and collected a levy, to be known as the insurance premium levy, which shall be paid by every insurer registered or authorized under this Act to carry on insurance business in Kenya, at such rate and in such manner as the Minister may prescribe.
- (2) The Minister may, in consultation with the Board, by Order published in the Gazette, prescribe the rates of the levy imposed under subsection (1) in respect of-
- (a) gross direct premiums written by all insurers registered or authorized under this Act to carry on insurance business in Kenya; and
 - (b) reinsurance premiums (before deducting commissions, allowances and other payments) paid or credited to reinsurance business outside Kenya by an insurer registered or authorized under this Act to carry on insurance business in Kenya in respect of risks ordinarily in Kenya, except for reinsurance premiums relating to marine, aviation, industrial fire, catastrophe excess of loss relating to marine, aviation and industrial risks, and any other category of insurance as the Minister may prescribe upon recommendation of the Authority.

Imposition of Insurance Premium Levy

- (3) The levy shall be computed as a percentage of the gross direct premiums written by an insurer or reinsurer under subsection (2)(a) or reinsurance premium paid or credited to a reinsurance business outside of Kenya, as the case may be, under subsection (2)(b).
- (4) An order under this section may contain provisions as to the time at which any amount payable by way of the levy shall become due.
- (5) All moneys received in respect of the levy shall be paid into the Insurance Regulatory Authority Fund.
- (6) If a person fails to pay any amount payable by him by way of the levy on or before the date prescribed by the order, a sum equal to five per cent of the amount shall be added to the amount due for each month or part thereof during which it remains unpaid.
- (7) Any amounts of money which are outstanding on the date prescribed by the Order issued under this section shall be a civil debt recoverable summarily by the Authority.

PART XXB – INSURANCE TRAINING LEVY

- 197B.** (1) Subject to this Act, there is imposed a levy to be known as the insurance training levy which shall be charged on policyholders and collected by the insurer, and which shall be paid in accordance with this section.
- (2) The Minister may, in consultation with the Board, by Order published in the Gazette, prescribe the rates of levy, which shall be calculated as a percentage of the gross direct premiums written by the insurer in respect of general insurance business.
 - (3) The levy shall be paid by every insurer who shall, after the end of each calendar month, submit to the Authority a monthly return thereof in the prescribed form, showing the total levy due to him from policyholders for that particular month.
 - (4) The levy shall become payable at the end of each month in which the premium was received by the insurer and shall be paid not later than the last day of the month immediately succeeding that in which the levy became due.
 - (5) Where any amount of the levy remains unpaid as specified in subsection (4), a penalty equal to five per cent of the unpaid levy or part thereof shall become due and payable by the insurer concerned.
 - (6) Any penalty payable under this subsection shall be deemed to be a levy for the purpose of this Part.
 - (7) All monies realized under this section shall be charged on the gross direct premiums written by every insurer and shall be used by the Insurance Training

Imposition of
Insurance Training
Levy

and Educational Trust which is responsible for the management of the College of Insurance for the purpose of running the affairs of that College.

- 197C.** (1) Any insurer who fails to pay any levy or penalty due from him on or before the day upon which the same are payable shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings and, if the offence is a continuing one, to a further fine of one thousand shillings for every day during which the offence continues. Offences and penalties
- (2) Where an insurer is guilty of an offence under this section, then notwithstanding the imposition of any penalty under section 197C, the commission of that offence shall constitute grounds whereby the Commissioner may apply to the Court under section 123(g) for the winding-up of that insurer.
- (3) The amount of any levy or penalty payable under this Act shall not be abated by reason only of the conviction of the insurer liable for the payment, or by reason of any payment of a fine imposed by the court on the insurer for an offence under subsection (1).
- 197D.** (1) The Commissioner may, for the purpose of obtaining full information in respect of the levy liability of any insurer, require the production of such records, books of account, statements and other documents as he may consider necessary for examination and retention for such period as may be reasonable for the purpose. Examination and production of documents
- (2) The Commissioner may require any person to attend at such time and place as may be specified for the purpose of being examined in respect of any matter or transaction appearing to be relevant to the levy liability of any insurer.
- 197E.** The Minister may make regulations, prescribing all matters which are required or permitted under part XXA and Part XXB to be prescribed, or which in his opinion are necessary, desirable or convenient to be prescribed, for giving full effect to this Part of the Act. Regulations under Part XXA and XXB
- PART XXI - SUPPLEMENTARY PROVISIONS**
- 198.** (1) A notice, direction or document issued under this Act may be served by delivering it or by sending it by registered post to the address mentioned in an application for registration under this Act as the principal place of business of that person or, if the Commissioner has been notified of a change of address, to the new address. Service of notice on registered persons
- (2) A notice, direction or document served by post in accordance with the provisions of subsection (1) shall be deemed to have been served on the date on which it would have been delivered in the ordinary course of post.
- 199.** A document which is by this Act required to be sent to a policy holder may be addressed and sent by post to the person to whom notices in respect of the policy are usually sent, and a document so addressed and sent shall be deemed, unless the Service of notice on policyholder

contrary is proved, to have been received by the policy holder in the normal course of transit:

Provided that where a person claiming an interest under a policy has given notice in writing thereof to the insurer, a copy of any such document shall also be sent to that person at the address specified by him in his notice.

200. Where this Act has effect with respect to an amount or value in relation to a person and in relation to a particular day and that amount or value is in a currency other than Kenya currency, the amount or value shall be converted into Kenya currency at the rate of exchange that is, at the close of business on that day, the telegraphic transfer buying rate of exchange of the principal banker of the person or, if there is no such rate on that day, at the telegraphic transfer buying rate of exchange of the banker at the close of business on the last day on which there was such a rate.

Conversion of
currency

201. (1) Subject to this section and notwithstanding the provisions of any other written law or any agreement, on or after the appointed date, no remittance or transfer of any sum of money or securities out of Kenya in excess of the amounts from time to time prescribed by the Central Bank of Kenya, in respect of or by way of premium, reserve, value, claim, management expense, profit, surplus, investment income, or other payment or sum of money which directly or indirectly arises out of insurance business, shall be made without the prior written approval of the Commissioner.

Consent of
Commissioner
required for
insurance remittances

(2) An application for the approval of the Commissioner under this section shall be in the prescribed form and contain the prescribed particulars.

(3) Approval granted by the Commissioner under this section shall not exempt a bank or any person from compliance with any other law regulating the remittance or transfer of money or securities out of Kenya.

202. Where a document is by this Act required to be printed, the Commissioner may permit it to be typewritten, or to be reproduced by any mechanical means approved by him.

Printing of
documents

203. (1) Every insurer shall, in respect of claims arising out of policies of insurance issued by it, pay the claims within sixty days of the admission of liability and settlement of the amount due and establishment of the identity of the claimant:

Settlement of claims

Provided that if for any reason the insurer is unable to pay the claim within the period specified under this subsection he shall apply to the Commissioner for an extension of time and the Commissioner may grant thirty days.

(2) Where the Commissioner is satisfied that undue delays are being or are likely to be experienced by claimants in the settlement of their claims, he shall, after giving the insurer a reasonable opportunity of being heard, direct the insurer to expedite the settlement of claims.

SCHEDULE

ss 23 and 28

MINIMUM CAPITAL REQUIREMENT

This order shall, in the case of insurers registered prior to the 14th June, 2007, apply with effect from 14th June, 2010

Minimum capital requirements

No person shall be registered as an insurer unless-

- (a) in the case of an insurer dealing with general insurance business, its paid-up capital is at least three hundred million Kenya shillings;
- (b) in the case of an insurer dealing with life insurance business, its paid-up capital is at least one hundred and fifty million Kenya shillings;
- (c) in the case of an insurer dealing with composite insurance business, the paid-up capital is at least four hundred and fifty million Kenya shillings.

MINIMUM ASSET IN KENYA

No person shall be registered as an insurer unless:

Minimum assets in Kenya

- (a) in the case of an insurer, its admitted assets in Kenya are worth not less than twenty million shillings; or
- (b) in the case of a reinsurer, its admitted assets in Kenya are worth not less than two hundred million Kenya shillings.

SUBSIDIARY LEGISLATION

Regulations under section 180

THE INSURANCE REGULATIONS

PART I - PRELIMINARY

1. These Regulations may be cited as the Insurance Regulations. Citation
2. These Regulations shall apply to all members of the insurance industry, *mutatis mutandis*, unless otherwise specified. Applicability
3. (1) In these Regulations-

“Kenya citizen” means an individual, being a natural person, who is a citizen of Kenya;

“Kenya Company” means a company, incorporated under the Companies Act whose shares are wholly owned by the Kenya citizens;

“Kenya partnership” means a partnership whose partners are all Kenya citizens.

(2) For the purposes of these regulations and the management of the insurance industry the classes and sub-classes of insurance business shall be serialized according to the serial numbers specified in these Regulations. Interpretation
4. For the purposes of the definition of “insurance business” in section 2 of the Act the following are declared not to be insurance business for the purposes of the Act- Excluded business
 - (a) business undertaken by a person being a carrier, carrier’s agent, forwarding agent, wharfinger, warehouse man or shipping agent, relating only to his liability in respect of goods belonging to another person and in his possession or under his control for the purpose of carriage, storage or sale of those goods;
 - (b) business undertaken by a person being an inn-keeper or lodging-house keeper relating only to his liability in respect of goods belonging to another person and in the possession or under the control of a guest at the inn or lodging house of which the first-mentioned person is the inn-keeper or lodging-house keeper for safe custody.

PART II - REGISTRATION OF INSURERS

5. The application for registration or renewal of registration as an insurer under section 30 of the Act shall be submitted in FORM NO. INS. 30-1 in the First Schedule together with all the information required to be submitted in the appendices to that form specified in that Schedule. Insurer’s application
for Registration and
Renewal of
registration

6. The fee for registration as an insurer under section 30 of the Act, shall be-
- (i) in case of an insurer, one hundred and fifty thousand shillings; and
 - (ii) in the case of a reinsurer, two hundred and fifty thousand shillings, and the same fee shall be payable for renewal of registration under section 188 (2).

Registration fees
L.N.189/94

7. For the purpose of section 30 (k) of the Act, every insurer shall, at the time of the first making application for registration under one or more of the classes of insurance business prescribed under regulations 9 and 10, lodge with the Commissioner the following statements-

Statement to be
submitted under
section 30(k) of the
Act

- (a) A photo copy of the certificate of incorporation;
- (b) in the case of an insurer who has not transacted insurance business prior to making the application or where authorization is sought to transact a class of business not transacted before, a copy of the feasibility study report carried out in this regard, showing estimates of premium, expenses and claims for each of the first three financial years following the year in which the application is made, separately on a year by year basis and separately for each such year on both optimistic and pessimistic bases and such feasibility study report shall contain the following information-
 - (i) estimates relating to-
 - (A) premiums both gross and net of reinsurance and broken down between business in Kenya and elsewhere; and
 - (B) claims, after all reinsurance recoveries;
 - (ii) a forecast balance sheet;
 - (iii) estimates relating to the financial resources to cover underwriting liabilities and the margin of solvency;
 - (iv) In the case of long-term insurance business, the number of contracts, and the total sums assured or amounts of annuity per annum expected to be issued;
- (c) the source of business (for example, insurance brokers, agents, own employees or direct selling) and the approximate percentage expected from each source;
- (d) a summary (that is to say a treaty slip) of reinsurance treaties arranged for each class of business containing all the terms and conditions;
- (e) copies of drafts of any agreements with persons (other than employees of the insurer) who will manage the business of the insurer;

- (f) copies or drafts of any standard agreements which the insurer may have with brokers or agents;
- (g) in the case of long-term insurance business , a certificate by an actuary, supported by calculations or projections by the actuary, that he considers the financing of the insurer to be sufficient to cover both technical reserves and the required margin of solvency during the first three financial years following the financial year in which application is made.
- (h) in the case of an insurer who has not transacted insurance business prior to making the application or where authorization is sought to transact a class of business not transacted before, the estimated costs of installing the administrative services and organization for securing business, and the financial resources intended to cover those costs;
- (i) accounts, statements and reports laid before the shareholders at the last three annual general meetings or, if less than three annual general meetings have been held, the accounts, statements and reports laid before the annual general meetings which have been held and the minutes of the annual general meetings shall also be lodged;
- (j) in the case of an insurer who was carrying on or transacting long-term insurance business immediately prior to the date of commencement of the Act, copies of the last three valuation reports of the actuary.

PART III - ADMITTED ASSETS AND ADMITTED LIABILITIES

- 8.** (1) For the purposes of section 41 (9) of the Act the value and extent of the assets and liabilities shall be determined in accordance with provisions of Part A of the Second Schedule.
- (2) In the event of any dispute as to the valuation of any asset or liability, the Commissioner may refer the dispute to a panel of three or five persons at least one of whom shall be a member of the Institute of Surveyors of Kenya or an actuary as defined in section 2 of the Act or a person qualified to be appointed an auditor under section 161 of the Companies Act; and the Commissioner may direct that the costs or any part of the costs of such a dispute settlement process shall be borne by such party or parties as he may specify.

Admitted Assets and
Admitted liabilities

PART IV - ACCOUNTS, BALANCE SHEETS, AUDIT AND ACTUARIAL INVESTIGATIONS

- 9.** (1) An insurer carrying on long-term insurance business, shall maintain separate accounts in respect of the following classes of long-term insurance business-

Classes of long term insurance business in respect of which separate accounts to be maintained

LONG-TERM INSURANCE BUSINESS CLASSES OF BUSINESS

<u>Serial No.</u>	<u>Brief Description of classes</u>
31.	Bond investment business
32.	Industrial life assurance business

- 33. Ordinary life assurance business
- 34. Superannuation business

(2) For the purposes of these Regulations “superannuation business” means life assurance business, being business of, or in relation to, the issuing of or the undertaking of liability under superannuation, group life and permanent health insurance policy-

(a) that is vested in the trustees of a fund established or maintained by a person, being a fund the terms and conditions applicable to which provide for-

(i) the payment of contributions to the fund by that person; and

(ii) payments being made from the fund, on account of injury, sickness, retirement or death of the employees of that person or of a company in which that person has a controlling interest; or

(b) that was-

(i) effected for the purposes of a superannuation or retirement scheme; or

(ii) accepted by the person maintaining such a scheme for the purpose of the scheme.

10. An insurer carrying on general insurance business shall maintain separate accounts in respect of the classes of business listed in Part A of the Third Schedule and defined for the purposes of these Regulations in Part B of that Schedule.

Classes of general insurance business in respect of which separate accounts to be maintained.

11. (1) For the purposes of section 54 of the Act, the forms of accounts shall be the following forms set out in Part C of the Third Schedule-

Forms of accounts.

(a) the general insurance business revenue account. Form No. INS. 54-1;

(b) the long-term insurance business revenue account, Form No. INS. 54-2;

(c) the additional statement in respect of general insurance business, Form No. INS.54-3;

(d) the profit and loss account, Form No. INS. 54-4;

(e) the balance sheet, Form No. INS. 54-5.

(2) The forms shall be prepared in accordance with the directions specified in Part D of the Third Schedule and such other directions as the Commissioner may from time to time in writing issue to members of the insurance industry.

12. For the purposes of section 57 (1) of the Act, the actuarial abstracts and statements in respect of long-term insurance business shall be prepared in accordance with the provisions of the Fourth Schedule. Actuarial abstracts.
13. For the purposes of section 57 (3) of the Act, the statement required of an insurer following an investigation under section 57 (1) of the Act shall be prepared in accordance with the provisions of the Fifth Schedule. Statement of long-term insurance business.
14. For the purposes of section 57 (5) of the Act, the value of assets and the amount of liabilities for purposes of an actuarial investigation shall, subject to section 58 of the Act, be determined in accordance with the provisions of the Sixth Schedule. Actuarial valuation of liabilities
15. For the purposes of section 58 (3) of the Act, the calculation on the minimum basis of the value of liability of a statutory fund in respect of its policies, shall be according to the provisions of the Seventh Schedule. Minimum basis
16. For the purposes of section 58 (5) (c) of the Act, an actuary's certificate shall be in form set out in the Eighth Schedule. Actuarial certificate
17. For the purposes of section 59 of the Act, every insurer carrying on long-term insurance business shall, within four months after the end of the period to which they relate, lodge with the Commissioner, in respect of every financial year-
- (a) a statement of admitted assets and admitted liabilities in Form INS. 41-1 in the Second Schedule signed by the principal officer and by auditor on a quarterly basis, not later than forty-five days after the end of the quarter to which it relates and
 - (b) the following statements in the forms set out in the Ninth Schedule signed by the principal officer and also by an auditor in the case of those under (i), (ii), (iii), (iv) and (v)-
 - (i) statement of premium income, Form No. INS. 59-1A;
 - (ii) statement of incurred claims, Form No. INS. 59-3A,
 - (iii) statement of commission and management expenses, Form No. INS 59-5;
 - (iv) particulars of inward and outward reinsurance treaties, Form No. INS 59-6;
 - (v) particulars of brokers, reinsurers, and reinsured under inward and outward reinsurance treaties, Form No. INS 59-7
 - (vi) particulars of insurance business not covered by any reinsurance arrangement, Form No. INS. 59-8;
 - (vii) particulars of inward and outward reinsurance treaties,

- (viii) statement of commission, Form No. INS. 59-10A
- (ix) statement of long-term insurance business, Form No. INS. 59-11;
- (x) statement of movement in long-term insurance business,
Form No. INS. 59-12

18. For the purposes of section 59 of the Act, every insurer carrying on general insurance business shall, within four months after the end of the period to which they relate, lodge with the Commissioner, in respect of every financial year-

Annual Returns:
General insurance
business

- (a) Statement of admitted assets and admitted liabilities in Form INS. 41-1 in the Second Schedule signed by the principal officer and an auditor on a quarterly basis, not later than forty-five days after the end of the quarter to which it relates and
- (b) the following statements in the forms set out in the Ninth Schedule, signed by the principal officer and also by an auditor in the case of the statements under (i), (ii), (iii), (iv), (v), (vi), (vii)-
 - (i) statement of premium income, Form No. INS. 59-1B;
 - (ii) statement of incurred claims in respect of incidents occurring in previous years, Form No. INS. 59-2;
 - (iii) statement of incurred claims in respect of incidents occurring in the current year and total incurred claims, Form No. INS. 59-3B;
 - (iv) statement of underwriting balances, Form No. INS. 59-4;
 - (v) statement of commission and management expenses,
Form NO. INS. 59-5;
 - (vi) particulars of inward and outward reinsurance treaties,
Form No. INS. 59-6;
 - (vii) particulars of brokers, reinsurers, and reinsured under inward and outward reinsurance treaties, Form No. INS. 59-7;
 - (viii) particulars of insurance business not covered by any reinsurance arrangement, Form No. INS. 59-8;
 - (ix) statement of reinsurance premium, Form NO. INS. 59-10B.
 - (x) statement of reinsurance commission, Form No. INS. 59-10B.

19. (1) The statements required under regulation 17 and 18 shall be submitted separately in respect of Kenya business and outside Kenya business.

Annual returns
Supplementary
provisions

- (2) In case an insurer does not have any information to submit in respect of any of the classes of business under regulation 17 and 18 the statement required shall be submitted indicating that the insurer has no information to submit.
- (3) “Class of business” and “sub-class of business” wherever shown in the statements required to be furnished under regulations 17 and 18 are those specified in regulation 9 in respect of long-term insurance business and in Part A of the Third Schedule in respect of general insurance business.

- 20.** (1) The four copies of the accounts, balance sheets, certificates, abstracts, returns or statements, required to be deposited with the Commissioner under section 60 of the Act, have printed thereupon by the insurer a certificate of authentication signed by the principal officer and the person who prepared the account, balance sheet, certificate, abstract, return or statement in this form:

Authentication and certification of accounts and statements

“CERTIFIED ON THE20....
 TO BE AN AUTHENTIC COPY FOR THE PURPOSES OF
 SECTION 61 OF THE INSURANCE ACT, 1984.....
“

- (2) The name of the person signing any statement, document, return, abstract, report, submitted to the Commissioner under the provisions of the Act or these Regulations shall be printed just below the signature and any one signing in the name of a firm shall print his own name and also that of his firm below the signature.

PART V - MANAGEMENT AND EXPENSES

- 21.** (1) For the purposes of section 70 (1) of the Act the limits of management expenses shall be as set out in Part A of the Tenth Schedule.
- (2) Every insurer shall submit statements in Forms Nos. INS. 70-3, INS. 70-A, INS. 70-4 set out in part B of the tenth schedule as may be applicable, within six months of the period to which they relate, duly certified by the principal officer.

Management Expense

- 22.** For the purposes of section 73 (2) of the act, the maximum rates of brokerage, commission, payable by an insurer shall be those specified in the eleventh schedule in respect of the classes of business specified in that schedule.

Restriction of commission

PART VI - POLICY TERMS

- 23.** The following categories of contracts shall be exempt from the operation of section 78 of the Act, namely-
- (a) contracts of insurance covering the liability under the insurance (motor vehicles Third Party Risks) Act;

Exemption Form the provision regarding avoidance of contracts of unlimited amounts
Cap 405

(b) contracts of insurance covering the liability of an employer to the employee under common law.

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| <p>24. For the purposes of section 88 (1) of the Act, the rules on paid-up policies shall be those specified in the twelfth schedule.</p> | <p>Paid up policies</p> |
| <p>25. For the purposes of section 89 of the Act, the surrender value of a policy shall be calculated in accordance with the rules set out in the Thirteen Schedule.</p> | <p>Surrender values</p> |
| <p>26. For the purposes of section 90(2) of the Act the prescribed terms shall be terms under which the amount of interest chargeable in respect of an overdue premium would be an amount calculated at a rate of interest not exceeding ten per cent per annum on the overdue premium compounded annually.</p> | <p>Payment of interest on overdue premiums</p> |
| <p>27. For the purposes of section 91 (4) of the Act the prescribed rules shall be those set out in the Twelfth Schedule.</p> | <p>Paid up industrial life policies</p> |
| <p>28. In accordance with subsection (2) of section 93 of the Act, it is declared that the provisions of section 88 to 92 (inclusive) of the Act shall apply in respect of each of the classes of policies specified in this regulation, subject to the modifications declared in the paragraph of this regulation in which that class is specified-</p> | <p>Certain policies to which sections 88-92 do not apply</p> |

(a) *Family Income Policies and Policies which provide other additional benefits on death within a specified term-*

If a policy provides income or other additional life insurance benefits so that the amount payable (exclusive of bonuses) in the event of death or survival after the expiry of the specified term (which latter amount is hereinafter referred to as the basic sum assured), the paid-up policy to which the policy owner is entitled shall be payable on the same contingencies as the basic sum insured only, and shall not carry such additional benefits.

(b) *Policies which include certain contingent additional benefits-*

If a policy includes provisions for benefit payable in an event other than death or survival, or a benefit payable in the event of death by accident or in the event of a specified sickness only (either or both of which benefits are hereinafter referred to as additional benefits), the paid-up policy to which the policy owner shall be entitled shall be calculated in accordance with the rules set out in the Twelfth Schedule; and for the purpose of that calculation the additional benefits shall be ignored, and the paid up policy shall not provide any part of the additional benefits

(c) *Option Policies-*

If a policy contains provision for the contract there-under to be varied at the option of the owner of the policy on a specified date or on the happening of a specified event and the policy owner becomes entitled to a paid-up policy before that option has been exercised, the paid-up policy to which the

policy owner shall be entitled shall be that to which he would be entitled if the policy did not include provisions for that optional variation.

(d) *Altered Ordinary Life policies-*

In cases where, since the issue of any ordinary policy, the contract there-under has been varied at the request of the policy owner in such a manner that either the date upon which the sum insured becomes payable, or the term during which premium payments are to be made, or both have been altered, the paid up value of the policy shall be calculated according to the rules determined for the purposes by the insurer's actuary.

(e) *Policies providing for endowment insurance payable in installments depending on survival with level premiums until the last installment is paid-*

If an endowment insurance policy provides for payment of the sum assured by installments depending on survival and full sum assured or any unpaid balance at death, premiums being payable at a level rate until the balance of the sum insured has been paid, the paid up policy value of such a policy shall be calculated according to rule 2 instead of rule 1 of the rules set out in the Twelfth Schedule:

Provided that-

- i) if, according to the practice of the insurer, on the policy being made paid up, the paid- up amount is payable in one lump sum on death or at maturity instead of instalments as provided in the original contract, this factor shall be allowed for in the calculation of the paid-up value of the policy under rule 2 of the Twelfth Schedule; and
- ii) for the actual calculation of paid-up values of policies referred to in this paragraph an insurer may use, with the approval of the Commissioner, working rules framed by the insurer's actuary consistent with the provision of the paragraph.

(f) *Paid-up Policies-*

Where a policy has been rendered paid-up (whether by the grant of a paid-up policy as required by the Insurance Act or otherwise) and a calculation of the surrender value of the policy is subsequently required to be made, the calculation shall be made according to the rules set out in the Thirteenth Schedule, and the amount of the paid-up policy of which the present value is to be found in terms of rule 1 of those rules shall be the actual amount of the paid-up policy.

PART VII – NOMINATIONS

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| <p>29. For the purposes of the provision to section 111 (1) of the Act, the appointment of a person to receive the money secured by a policy in the event of the death of the holder of a policy during the minority of the nominee shall be in the form set out in the Fourteenth Schedule.</p> | <p>Nomination of minors</p> |
| <p>30. An insurer may charge a policyholder ten shillings for registering a nomination or its cancellation or change pursuant to section 111 (3) of the Act.</p> | <p>Fee for registering canceling or changing a nomination</p> |

PART VIII - CLAIMS ON SMALL LIFE POLICIES

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| <p>31. The fee to be charged and collected for adjudication under section 112 of the Act shall be two per centum of the sum assured of the policy in dispute or one hundred shillings, whichever is the greater amount.</p> | <p>Fee for adjudication</p> |
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PART IX - MANDATORY REINSURANCE CESSIONS

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| <p>32. For the purposes of section 145 of the Act, the proportions of the business which shall be ceded to the Corporation by insurers, the manner of cessions and the terms and conditions applicable shall be those set out in the Fifteenth Schedule for the various classes of insurance business specified in that schedule.</p> | <p>Mandatory cessions</p> |
| <p>33. Payment by insurers to the Corporation in respect of reinsurance effected under Part XIV of the Act shall be made within the periods of payment specified in the Fifteenth Schedule.</p> | <p>Payment of reinsurance cession</p> |

PART X-INTERMEDIARIES, CLAIMS SETTling AGENTS, INSURANCE SURVEYORS, LOSS ADJUSTERS, LOSS ASSESSORS, AND RISK MANAGERS

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| <p>34. (1) The forms set out in the Sixteenth Schedule shall be used by brokers, agents, risk managers, loss assessors, loss adjusters, insurance surveyors and claims settling agents when applying for registration under the Act and shall be submitted together with the appendices thereto prescribed in that schedule.</p> <p>(2) For the purposes of registration and renewal of registration of insurers under sections 31 and 188 of the Act and the registration and renewal of registration of agents, brokers, risk managers, loss assessors, loss adjusters, insurance surveyors, and claims settling agents under section 153, and 188 of the Act the registration certificates to be issued on registration shall be in forms set out in the Twenty-Second Schedule.</p> | <p>Forms of application for registration of intermediaries</p> |
| <p>35. For the purposes of section 151 (1) (a) of the Act, the policy of professional indemnity insurance to be taken out by a broker shall be as prescribed in the Seventeenth Schedule.</p> | <p>Policy of professional indemnity for a broker</p> |
| <p>36. For the purposes of section 151 (1) (c), every agent, broker, claims settling agent, insurance surveyor, loss adjuster, loss assessor, and risk manager, shall submit a statement of business in the appropriate form prescribed in the Eighteenth Schedule and in accordance with the notes thereto.</p> | <p>Statement of business</p> |

37. The fees for registration and renewal of registration under sections 151 (1) (d) and 188 (2) of the Act shall be as follows-

Fees payable

Insurance Broker ...	...	...	...	...	10,000
Risk manager	...	...	...	...	3,000
Loss assessor	...	...	...	...	3,000
Loss adjuster	...	...	...	...	3,000
Insurance surveyor	...	...	...	...	3,000
Claims settling agent	...	...	...	...	3,000
Insurance Agent ...	...	...	...	...	1,000

38. For the purposes of section 151 (1) (e) of the Act, a broker who is already carrying on business on the appointed date shall, at the time of the application for the first registration under the Act, submit-

Other documents

- (a) an audited profit and loss account;
 - (b) an audited balance sheet;
 - (c) a report from an auditor as to whether-
 - (i) proper accounting records have been kept;
 - (ii) proper returns adequate for audit have been received;
 - (iii) the balance sheet and profit and loss accounts are in accordance with the accounting records:
- Provided that-
- (i) if the auditor is unable to make a positive opinion in respect of the matters specified in this paragraph he shall state that the fact in his report and shall qualify the report if he fails to obtain all the information and explanations which are necessary for the purpose of the audit; and
 - (ii) if the broker carries on any other business, he shall attach a supplementary statement-
 - (A) showing the total revenue of the business divided between revenue directly derived from insurance broking and all other revenue and stating the nature of each type of business carried on;
 - (B) classifying expenditure and grouping it under appropriate headings;
 - (C) showing the total brokerage income contained in the accounts unless this figure is already stated in the accounts.

39. (1) For the purposes of section 153 (1) of the Act, the form of guarantee which may be required of a broker by the Commissioner shall be as set out in Form 153-1 in the Nineteenth Schedule or in the form of a two-year Government bond held by the Commissioner, and the minimum amount of the guarantee shall be, at the time of the first registration of the broker and at the time of subsequent renewals, five million shillings.
- (2) At renewal of registration, the broker shall submit, where applicable, an additional bank guarantee or Government bond calculated at twenty-five percentum of the amount of outstanding premium in excess of the period permitted under section 156(2) of the Act, due from the broker to all insurance companies in Kenya as at 30th June previous to the date of application for renewal, less existing minimum bank guarantee.

Bank guarantee for
broker's registration

Provided that a broker who is registered before the commencement of this provision shall provide the guarantee referred to herein within a period of eighteen months from the date of such commencement.

40. For the purposes of section 155 of the Act, every corporate person registered under part XV of the Act, shall furnish to the Commissioner, within six months after the end of the period to which they relate, such audited accounts and statements together with the auditors' report as are required to be prepared under the Companies Act and every broker shall, in addition, furnish, within sixty days from the end of each half year, audited statements showing the total amount of premium due from the broker to all insurers in Kenya remaining outstanding as at 30th June and 31st December of every year in respect of risks placed with the insurers before the respective dates and also separately, in respect of risks placed more than sixty days prior to the respective dates, in Form No. INS. 153-1 in the Nineteenth Schedule.

Returns by corporate
persons under the Act

PART XI - ADVANCE PAYMENT OF PREMIUM

41. For the purposes of section 156 (1) of the Act, a risk in respect of a policy may be assumed before the premium payable in respect thereof is received-
- (a) if the entire amount of premium is guaranteed to be paid by a bank licensed under the Banking Act before the end of the calendar month next succeeding the month in which the risk is assumed, if the premium due is not paid by the insured before that date;
- (b) if an advance deposit is made with the insurer to the credit of the insured sufficient to cover the payment of the entire amount of the premium together with the premium, if any due from the insured in respect of any other risk already assumed against such deposit, such deposit being agreed to be adjusted towards the premium before the end of the calendar month next succeeding the month in which the risk is assumed, if the premium due is not paid by the insured before that date.
42. For the purposes of section 156 (4) of the Act, the premium collected by an agent or a cheque received by him shall be deposited with or dispatched to the insurer within

Advance payment of
premium

Dispatch of premium

seven days of the receipt thereof or within such extended time as the insurer may permit but in no case shall the period exceed thirty days from the receipt thereof.

43. For the purposes of section 156 (5) of the Act, in respect of the categories of insurance policies mentioned hereunder the provisions of subsection (1) of section 156 of the Act and regulation 41 shall stand relaxed to the extent and in the manner mentioned in respect of each category of policy, subject to the conditions mentioned therein-

Relaxations

(a) *Policies under Sickness Insurance Scheme-*

Premiums on such policies may be accepted in installments provided that the installment covering a particular period shall be received on or before the date of commencement of the period.

(b) *Declaration Policies-*

Risks in respect of such policies may be insured if at least the premium calculated on 75 per centum of the sum insured has been received before assumption of the risk.

(c) *Policies issued on the basis of adjustable premiums-*

Risks in respect of policies issued on the basis of adjustable premium such as workmen's compensation, cash in transit, and others, may be assumed on receipt of provisional premiums based on a fair estimate.

(d) *Annual insurances connected with aircraft hulls and marine hull-*

Facilities for delayed payment of premium on such policies, or the payment of premiums by means of instalment not exceeding four in number and on the basis of an approved clause, may be allowed at the discretion of the insurer, provided that such clause is endorsed on the policy.

(e) *Short period covers in respect of insurance connected with aircraft hulls and marine hulls-*

Short period covers may be granted on such risks on a held covered basis, subject to the condition that the premium or additional premium in respect of risks assumed in a calendar month shall be paid by the end of the next calendar month.

(f) *Policies issued for long term-*

In the case of policies issued for long term such as contract performance bonds or guarantees, contractors' all risk policies, machinery erection policies and the like, the premium may be staggered as necessary according to custom, over the period of the cover, provided that the first instalment is higher than any other instalment by at least five per centum of the total premiums payable and each instalment is paid in advance, but where the

premium is payable by declaration, it may be paid within fifteen days from the effective date of such declaration.

(g) Schedule and consequential Loss Policies-

In such cases a provisional amount towards the premium shall be collected before the date of inception or renewal of risk on the basis of the previous year's premium.

(h) Marine covers other than hulls-

- i. In the case of inland shipments and transit risks, risk may be assumed under open policies in respect of seasonal crops such as tea, on the payment of a provisional premium based on a fair estimate.
- ii. In the case of exports overseas, risk may be assumed subject to the condition that the premium shall be paid within fifteen days from the date of sailing of the overseas vessel.
- iii. In the case of imports, risk may be assumed subject to the condition that the premium shall be paid within fifteen days of the receipt of declaration in Kenya from the insurer's or insured's representative overseas:

Provided that the relaxations under subparagraphs (ii) and (iii) shall apply to marine cover notes only and not to marine policies.

(i) Policies relating to co-insurances-

The premiums shall be deemed to have been duly paid if paid on the full insurance to any one of the co-insurers.

(j) Policies of reinsurance-

Risks may be assumed without payment of premium in advance in insurances accepted under automatic reinsurance contracts.

PART XII - GENERAL PROVISIONS

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|---|--------------------------------|
| 44. For the purposes of section 177 (2) of the Act the fee per page of a document deposited with the Commissioner copied and furnished and furnished shall be two shillings. | Folio copies |
| 45. The fee for inspection of a register under section 185 of the Act shall be ten shillings. | Inspection fee |
| 46. The fee for a duplicate certificate under section 189 (2) of the Act shall be five 1 hundred shillings. | Fees for duplicate certificate |

PART XIII - SUPPLEMENTARY PROVISIONS

47. An application for the Commissioner's approval under section 201 of the Act to remit money or securities out of Kenya shall be made in Form No. INS. 201-1 in the twentieth Schedule and every insurer shall also furnish to the Commissioner a statement in respect of reinsurance business ceded abroad and reinsurance in Form No. INS. 201-2 in the Twentieth Schedule showing separately business accepted from abroad and also separately in respect of long-term insurance business reinsurance and general insurance business reinsurances, the total amount (in equivalent Kenya shillings) remitted abroad and the total amount of recoveries (in equivalent Kenya shillings) made from foreign reinsurers and insurers each of the quarters ending on the last day of March, June, September and December within one month from the close of the quarter to which it relates; and every such statement shall be signed by the principal officer of the insurer.
- Application for remittance
48. For the purposes of section 203 of the Act, an insurer shall furnish the following statements to the Commissioner duly certified by the principal officer-
- Claims
- (i) a statement in Form No. INS. 203-1A in the Twenty-First Schedule in respect of the long-term insurance business within three months after the end of the period to which it relates; and
 - (ii) a statement in Form No. INS. 203-1B in the Twenty-First Schedule in respect of the general insurance business within three months after the end of the period to which it relates; and
 - (iii) a statement in Form No. INS. 203-2 in the Twenty-First Schedule in respect of the long-term and general insurance business within 15 days after the end of the period to which it relates.
49. 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 by crossed banker's draft drawn in favour of "The Permanent Secretary to the Treasury".
- Manner of payment of fees
50. A reference to these Regulations to a Schedule shall be a reference to the particular Schedule set out in the "Schedules to the Insurance Regulations, 1986" published by the Government Printer, which shall be construed as one of these regulations.
51. For the purposes of section 197A (2), the rates of Levy shall be-
- Computation of the insurance premium levy
- (a) gross direct premiums written by such insurers, one and a half percent (1.5%); and
 - (b) in case of reinsurance premiums paid or credited to a reinsurer outside of Kenya, five percent (5%)
52. For the purposes of section 197A (4), the levies payable under regulation 51 shall:
- Payment of levy
- (a) become payable at the end of each calendar month in case of the gross direct premiums:

- (b) become payable at the end of each quarter in case of the reinsurance premiums, in which the premiums were received or paid by the insurer and shall be payable by such insurer not later than the last day of the first month succeeding that in which the levies become due.

53. For the purposes of section 197E every insurer registered or authorized to carry on insurance business in Kenya shall-

Monthly, quarterly &
annual premium levy
return

- (a) at the end of each calendar month, prepare a monthly premium levy return, showing the total premiums due from the insurer for that particular month as set out in the Twenty fourth Schedule;
- (b) at the end of each quarter, prepare quarterly reinsurance levy return, showing the total insurance premiums due from the insurer for that particular quarter as set out in the Twenty Seventh schedule: and
- (c) at the end of each calendar year and not later than the third month following the end of that year, prepare- an annual premium levy return as set out in the Twenty Fifth Schedule; and
 - (i) an annual reinsurance premium levy return as set out in the Twenty Eighth Schedule.
 - (ii) For the purposes of section 197B (2), the rates of the levy shall be calculated at the rate of zero point two percent (0.2%) of the gross direct premiums written by the insurer in respect of general insurance business.

54. For the purposes of section 197E, an insurer carrying on general insurance business in Kenya shall, at the end of each calendar year and not later than the third month following that year, prepare an annual insurance training levy return as set out in the Twenty Ninth Schedule.

Annual training levy
return

55. For the purposes of section 197E, the levy payable under section 197 B shall be paid by crossed banker's draft drawn in favour of the "Insurance Training and Education Trust".

Manner of payment-
training levy

56. For the purposes of section 4(2), all monies payable into the Fund shall be paid by crossed banker's draft drawn in favour of the "Insurance Regulatory Authority".

Manner of payment-
premium levy

FIRST SCHEDULE (S.3C)

**PROVISIONS AS TO THE CONDUCT
OF BUSINESS AND AFFAIRS OF
THE BOARD**

1. (1) a member of the Board other than an ex officio member shall, subject to the provisions of this Schedule, hold office for a period not exceeding three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for reappointment one further term of not more than three years. Tenure of office
- (2) The members of the Board shall be appointed at different times so that the respective expiry dates of their terms fall at different times.
2. A member other than an ex officio member may- Vacation of office
- (a) at any time resign from office by notice in writing to the Minister;
 - (b) be removed from office by the Minister if the member-
 - (i) has been absent from three consecutive meetings of the Board without permission from the chairman; or
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (iii) is convicted of an offence involving dishonesty, fraud or moral turpitude;
 - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (v) is incapacitated by prolonged physical or mental illness, or
 - (vi) is otherwise unable or unfit to discharge his functions.
3. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting. Meetings
- (2) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
- (3) The quorum for the conduct of the business of the Board shall be five (5) members excluding the Commissioner of Insurance, **of whom at least two shall**

be from amongst the members of the board appointed under paragraph (g) of Section 3B.

- (4) The chairman shall preside at every meeting of the Board at which he is present but in his absence, the members present shall elect one of their member who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.
- (5) Unless unanimous decision is reached a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the chairman or the person presiding shall have a casting vote.
- (6) Subject to paragraph (3), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.
- (7) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make standing orders in respect thereof.

4. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Disclosure of interest

Provided that if the majority of the members present are of the opinion that the experience or expertise of that member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose.

- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

5. The affixing of the common seal of the Authority shall be authenticated by the signatures of the Chairman and the Commissioner, and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairman and the Commissioner:

The common seal

Provided that the Board shall in the absence of either the chairman or the Commissioner, in any particular matter nominate one member to authenticate the seal of the Board on behalf of either the chairman or the Commissioner.

6. Any contract or instrument which, if entered into or executed by a person other than a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Authority by any person generally or specially authorized by the authority for that purpose.

Contracts and instruments

- 7 The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books kept for that purpose.

Minutes

The transitional provisions set out in the Schedule hereunder shall apply with respect to the authority.

SCHEDULE TRANSITIONAL PROVISIONS

1. In This Schedule-

Interpretation

“appointment day” means the day appointed for the coming into operation of the Insurance (Amendment) Act 2006;

“Department” means the Department of Insurance in the Ministry of Finance existing immediately before the appointed day.

2. (1) On the appointment day, all the assets and other property, movable, which immediately before that day, were held for and on behalf of the Department in the name of the Permanent Secretary Treasury shall by virtue of this paragraph and without further assurance, vest in the authority.

Transfer of assets

- (2) Every public officer having the power or duty to effect or amend any entry in a register relating to property or to issue or amend any certificate or other document effecting or evidencing title to property, shall without payment of a fee or other charge and upon request made by or on behalf of the Authority, do all such things as are by law necessary to give final effect to the transfer of the property mentioned in sub-paragraph (1).

3. On the appointment day, all rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the appointment day were vested in, imposed on or enforceable by or against the Government for and on behalf of the Department shall, by virtue of this paragraph, be transferred to, vested in, imposed on or become enforceable by or Against the Authority.

Transfer, rights,
powers and
liabilities

4. On and after the appointed day, all actions, suits or legal proceedings pending by or against the Government for and on behalf of the Department shall be carried on or prosecuted by or against the Authority.

Legal proceedings

5. (1) Subject to sub-paragraph (2), the Commissioner, officers and servants of the Department in office on the appointed day shall be deemed to be officers and servants on secondment to the Authority

Employees

- (2) Notwithstanding the provisions of sub-paragraph (1), within twelve months after the appointed day, the Board shall review the qualifications of all persons deemed to be on secondment, and may retain those found suitably qualified for employment by the Authority under sections 3E and 3F of the Act subject to-

- (a) such persons opting to remain in the service of the Authority; and

- (b) such terms and conditions of service(not being to the disadvantage of such persons) as may be agreed with the board.
 - (3) Any employee not retained by the Authority under sub-paragraph (2) may exercise his option to either:-
 - (a) retire from the service of the Government; or
 - (b) in cases where the employee has not reached retirement age, be redeployed within the public service.
 - (4) Where an employee enters into an agreement with the Authority under subparagraph (2), his service with the Government shall be deemed to be terminated without the right to severance pay but without prejudice to all other remuneration and benefits payable upon the termination of his appointment with the Government.
6. The annual estimates for the Department for the financial year in which the appointed day occurs shall be deemed to be the annual estimates of the Authority for the remainder of that financial year:

Provided that such estimates may be varied by the Authority in such manner as the Minister may approve.