

REPUBLIC OF KENYA



Approved
RSMB
20/6/2019

Ha. speaker
as oppose and
in debate, today
20/6/19.

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION – 2019

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE CONSIDERATION OF THE PRESIDENT'S RESERVATIONS ON THE
INSURANCE (AMENDMENT) BILL, 2018

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 20 JUN 2019	DAY:
TABLED BY:	
CLERK-AT-THE-TABLE:	

JUNE, 2019

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CHAIRPERSON'S FOREWARD

The Insurance (Amendment) Bill, 2018 was passed by the National Assembly on **Thursday, 28th February, 2019**. On **Thursday, 23rd May, 2019** and in accordance with Article 115(1) (b) the H.E the President referred the Insurance (Amendment) Bill, 2018 back to Parliament for reconsideration. The President's reservations were subsequently submitted to the Committee for consideration in line with the provisions of the Constitution and the Standing Orders.

The Committee thanks the Office of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the process of considering the President's reservations to the Insurance (Amendment) Bill, 2018.

The Chairperson thanks all the Members of the Committee and the secretariat for their sacrifice and commitment in considering the President's reservations to the Insurance (Amendment) Bill, 2018.

Hon. Speaker, it is now my pleasant duty and privilege to present and commend this report of the Departmental Committee on Finance and National Planning, for consideration and approval by the House pursuant to Article 115 of the Constitution.

EXECUTIVE SUMMARY

The Insurance (Amendment) Bill, 2018 was passed by the National Assembly on Thursday, 28th February, 2019. The Bill was seeking to amend the Insurance Act to address the adverse selection and high costs of loss assessment related to traditional indemnity-based agriculture insurance by providing for index based insurance as an alternative with an intention to reduce moral hazard, adverse selection, underwriting and claim assessment costs while speeding up claim settlements.

In line with the powers conferred by Article 115 of the Constitution, H.E the President expressed his reservation to assent to the Insurance (Amendment) Bill, 2018. Consequently, the Memorandum was sent to the National Assembly on Monday, 27th May, 2019 detailing the reasons for his reservations. Thereafter, the Speaker vide a communication dated **Tuesday, 4th June, 2019** conveyed the President's Memorandum on the Insurance (Amendment) Bill, 2018 and subsequently referring it to the Departmental Committee on Finance and National Planning for consideration. H.E expressed his reservations together with recommendations as follows: -

1. Deletion of the proposed new definitions of "independent agent"; "tied agent"; "broker"; and intermediary.
2. Deletion of Clause 3 of the Bill and substituting with New Clause 5A
3. Deletion of Clause 11 and substituting with New Clause 156.

In line with the Speakers Communication, the Departmental Committee proceeded to consider the President's Memorandum in a meeting held on Thursday, 20th June, 2019. The deliberations formed the basis on which the Committee made its decisions.

The Committee having considered the President's Memorandum and recommendations therein adopts the President's proposed amendments to the Insurance (Amendment) Bill, 2018.

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:

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

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.

3. In executing its mandate, the Committee oversees the following government Ministries and departments;
 - a. The National Treasury and Ministry of Planning
 - b. Ministry of Devolution and ASAL
 - c. The Commission on Revenue Allocation
 - d. Office of the Controller of Budget
 - e. Salaries and Remuneration Commission

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members:-
 1. The Hon. Joseph K. Limo, MP (**Chairperson**) – Kipkelion East Constituency – Jubilee Party
 2. The Hon. Isaac W. Ndirangu (**Vice-Chairperson**) – Roysambu Constituency – Jubilee Party
 3. The Hon. Jimmy O. Angwenyi, MP – Kitutu Chache North Constituency – Jubilee Party
 4. The Hon. Christopher Omulele, MP – Luanda Constituency – ODM Party
 5. The Hon. Dr. Enoch Kibunguchy, MP – Likuyani Constituency – FORD-K
 6. The Hon. Shakeel Shabbir Ahmed, MP – Kisumu Town East – Independent
 7. The Hon. Abdul Rahim Dawood, MP – North Imenti Constituency – Jubilee Party
 8. The Hon. Daniel E. Nanok, MP – Turkana West Constituency – Jubilee Party
 9. The Hon. Andrew A. Okuome, MP – Karachuonyo Constituency – ODM Party
 10. The Hon. David M. Mboni, MP – Kitui Rural Constituency – CCU Party
 11. The Hon. Francis K. Kimani, MP – Molo Constituency – Jubilee Party
 12. The Hon. Joseph M. Oyula, MP – Butula Constituency – ODM Party
 13. The Hon. Joshua C. Kandie, MP – Baringo Central Constituency – MCC Party
 14. The Hon. Lydia H. Mizighi, MP – Taita Taveta County – Jubilee Party
 15. The Hon. Mohamed A. Mohamed, MP – Nyali Constituency – Independent
 16. The Hon. Purity W. Ngirici, MP – Kirinyaga County – Jubilee Party
 17. The Hon. Samuel Atandi, MP – Alego Usonga Constituency – ODM Party
 18. The Hon. Stanley M. Muthama, MP – Lamu West Constituency – MCC Party
 19. The Hon. Edith Nyenze, MP – Kitui West Constituency – WDM-K

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Secretariat:-

- | | | | |
|------|---------------------|---|--|
| i. | Ms. Leah W. Mwaura | - | Senior Clerk Assistant/Lead Clerk |
| ii. | Ms. Jennifer Ndeto | - | Principal Legal Counsel 1 |
| iii. | Ms. Laureen Wesonga | - | Third Clerk Assistant |
| iv. | Mr. Josephat Motonu | - | Fiscal Analyst I |
| v. | Mr. Chelang'a Maiyo | - | Research Officer III |

2 PRESIDENT'S RESERVATIONS TO THE INSURANCE(AMENDMENT) BILL, 2018

6. H.E the President expressed his reservation to assent to the Insurance (Amendment) Bill, 2018. Consequently, the Memorandum was sent to the National Assembly on Monday, 27th May, 2019 detailing the reasons for his reservations. Thereafter, the Speaker vide a communication dated Tuesday, 4th June, 2019 conveyed the President's Memorandum on the Insurance (Amendment) Bill, 2018. In his Memorandum, H.E the President objected to Clauses 2, 3 and 11 as passed by the House.
7. In Clause 2, the House had passed to amend the definition for the terms broker, intermediary and to insert a new definition of independent agent and tied agent. In his memorandum, H.E the President observed that the new definitions would reverse the common law principle of agency where the principal is responsible for the acts of commissions and omissions of his agents since the principal enjoys the fruits of the agents. In addition, the licensing regime under the Act did not recognize the proposed classification. The definitions as had been passed by the House, would strain on the operations of the proposed independent agents as they will be required to have capital and take out professional indemnity cover in order to protect their clients going against the Government policy of ease of doing business. The issue of whether an agent is independent or a tied agent should be a matter of business relations and not legislation. The term "intermediary" is already comprehensively defined in the Act and the proposed new definition shall lead to confusion. The definition of the term "broker" offends the provisions of section 191 of the Act which prohibits registered persons from carrying on any other business other than the registered business under the Act.
8. In view of the above justification by H.E the President, he recommended that the House reconsiders Clause 2 by deleting the proposed new definitions of independent agent, tied agent, broker and intermediary.
9. In Clause 3 , H.E the President raised an issue with the insertion of a new section 5A which was providing powers of the Commissioner on the group-wide supervision, He observed that the amendment as passed by the House was requiring the Commissioner to seek information from the Principal officer of the group. He noted however, that the group does not have a principal officer like a registered insurance company. He further noted that the proposed amendment by the House will hamper the powers of the commissioner to seek information directly from any

member of the group where such information may be necessary for the protection of the interests of policy holders and such information may not be obtained from the regulated entity. The proposed amendment removes the requirement for enforcement where a request for information by the commissioner is not complied with the Insurance Act provides more elaborate definitions of insurance group and non-operating holding company. The proposed changes will make implementation of group wide supervision untenable under the existing law.

10. In view of the above, H.E the President recommended that the House reconsiders this proposed amendment in Clause 3 by deleting the proposed clause and substituting therefor the following new clause - 3. The Principal Act is amended by inserting the following new section immediately after section 5-

5A. (1) The Commissioner may direct any member of the group to provide any information necessary for effective group-wide supervision.

(2) In the event of any breach or failure to comply with the directives of the Commissioner or safeguard the interests of the policyholders, the Commissioner shall impose any of the sanctions provided in the Act on the holding company or any member of the group.

11. In Clause 11, H.E the President raised an issue with the Clause as passed by the House. The clause as proposed in the Bill was seeking to repeal and replace section 156 of the Act which provides for the advance payment of premium. He stated that provision was negating the principle of cash and carry and was likely to aggravate the problem of delayed settlement of claims. He further stated that with the advancement in technology, it is now possible to pay premiums directly to insurers. This will guarantee their financial stability and prompt payments of claims to policyholders. The requirement in sub-clauses (2) and (3) that the intermediary can enter into a contract with insurers of policyholders who are not parties to such contract. The premium is the consideration of insurance contract and if not remitted shall affect the validity of the contract

12. In view of this reservations, H.E recommended that the House reconsiders its decision in clause 11 by deleting the clause and substituting therefore the following the new clause –

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 insurer.

(2) An intermediary shall not receive any premiums on behalf of an insurer.

(3) An intermediary who contravenes subsection (2) shall be liable to a penalty equivalent to twenty (20) percent of the unremitted premium on each contravention, payable to the Policyholders Compensation Fund.

(4) Any officer or director of an intermediary who contravenes subsection (2) shall be guilty of an offence, and upon conviction shall be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment term of three months, or both.

(5) An insurer shall pay an intermediary insurance commission due within thirty days upon receipt of premium.

(6) An insurer who contravenes subsection (5) shall be liable to a penalty of five million shillings on each contravention, payable to the Policyholders Compensation Fund.

3 COMMITTEE CONSIDERATION OF THE PRESIDENT'S RESERVATIONS TO THE INSURANCE (AMENDMENT) BILL, 2018

13. The Committee held a meeting on 20th June, 2019 to deliberate on the President's reservations to the Finance Bill, 2018 and resolved as follows:-

3.1 Deletion of the proposed new definitions in clause 2 – As proposed by the President

14. Deletion of the proposed new definitions of “independent agent”; “tied agent”; “broker”; and “intermediary”.

3.1.1 The Committee's recommendation

15. The Committee agreed to the President's recommendation to delete the proposed new definitions of “independent agent”; “tied agent”; “broker”; and “intermediary”.

3.1.2 Justification

The Committee had already considered these definitions and rejected them and the amendment as passed by the House was not a consequential amendment.

3.2 Clause 3 – As proposed by the President

16. Deletion of clause 3 of the Bill and substituting therefor the following new clause-

3. The Principal Act is amended by inserting the following new section immediately after section 5-

5A. (1) The Commissioner may direct any member of the group to provide any information necessary for effective group-wide supervision.

(2) In the event of any breach or failure to comply with the directives of the Commissioner or safeguard the interests of the policyholders, the Commissioner shall impose any of the sanctions provided in the Act on the holding company or any member of the group.

3.2.1 The Committee's Recommendation

17. The Committee agreed to the President's recommendation to delete Clause 3 and substitute the new clause.

3.2.2 Justification

18. The amendment will give the Commissioner power to seek for information from any member of the insurance group where such information may be necessary for protection of the interests of the policyholders and such information may not be obtained from the regulated entity.

3.3 Clause 11 – As proposed by the President

19. Deletion of clause 11 and substituting therefor the following new clause-

11. The principal Act is amended by repealing section 156 and replacing it with the following new section-

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 insurer.

(2) An intermediary shall not receive any premiums on behalf of an insurer.

(3) An intermediary who contravenes subsection (2) shall be liable to a penalty equivalent to twenty (20) percent of the unremitted premium on each contravention, payable to the Policyholders Compensation Fund.

(4) Any officer or director of an intermediary who contravenes subsection (2) shall be guilty of an offence, and upon conviction shall be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment term of three months, or both.

(5) An insurer shall pay an intermediary insurance commission due within thirty days upon receipt of premium.

(6) An insurer who contravenes subsection (5) shall be liable to a penalty of five million shillings on each contravention, payable to the Policyholders Compensation Fund.

3.3.1 The Committee's recommendation

20. The Committee did not agree with H.E the President's recommendation to delete clause 11.

3.3.2 Justification

21. The amendment as passed by was protecting all parties involved in the insurance business by providing clauses on offences for all parties. The proposed clause as per the Bill was making it


illegal for the brokers to receive premiums on behalf of the insurer. Owing to the challenges of paying full amounts, the Committee observed that subclause 1 is punitive as it obligates premium holders to pay full amount failure to which no insurer shall assume a risk in respect of insurance business unless and until the premium payable thereon is received by insurer. The amendment as passed by the House protects insurers by providing that a premium collected by an intermediary or a cheque received by intermediary shall be deposited with or dispatched and received by the insurer within thirty days of receipt by the intermediary. The new 156A also protects the intermediary by providing that the insurer must pay intermediaries their commission within thirty days of receipt of premiums.

4 COMMITTEE RECOMMENDATIONS

The Committee having considered the President's reservations to the Insurance (Amendment) Bill, 2018 and pursuant to Article 115 of the Constitution, recommends as follows:-

22. Approve the deletion of the proposed new definitions of "independent agent"; "tied agent"; "broker"; and intermediary.
23. Approve the deletion of clause 3 of the Bill and substituting with new clause 5A.
24. Reject the deletion of clause 11 of the Bill and retaining the clause as passed by the House.

For Chair.

SIGNED.......... DATE.....*20th June 2019.*.....

THE HON. JOSEPH LIMO, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE
PRESIDENT'S RESERVATIONS TO THE INSURANCE (AMENDMENT) BILL, 2018

DATE: 20TH JUNE, 2019

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

**MINUTES OF THE 28TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 20TH JUNE, 2019 ON
5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 11.30 AM**

PRESENT

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

ABSENT WITH APOLOGY

1. Hon. Christopher Omulele, MP
2. Hon. Francis K. Kimani, MP

ABSENT

1. Hon. Dr. Enoch Kibunguchy, MP

INATTENDANCE

COMMITTEE SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Lead Clerk
2. Ms. Jennifer Ndeto - Principal Legal Counsel 1
3. Ms. Laureen Wesonga - Third Clerk Assistant
4. Mr. Chelang'a Maiyo - Research Officer III
5. Ms. Christine Maeri - Audio Officer
6. Mr. John Njoro - Serjeant-At-Arms
7. Mr. Vitalis Augo - Office Assistant

CAPITAL MARKETS AUTHORITY

- | | | |
|------------------------|---|--|
| 1. Mr. Paul Mutahura | - | Chief Executive Officer |
| 2. Mr. Wycliffe Shemu | - | Director, Market Operations |
| 3. Mr. Abubakar Hassan | - | Manager, Investigation and Enforcement |
| 4. Mr. Nyale Yanga | - | Ag. Manager, Corporate Affairs |
| 5. Ms. Esther Manthi | - | Assistant Manager, Licensing and Approvals |
| 6. Ms. Leah Muli | - | Corporate Communications Officer |
| 7. Mr. Timothy Kaama | - | Officer |

AGENDA

1. Prayers
2. Preliminaries/Introductions/Communication from the Chair
3. Confirmation of Minutes
4. Matters Arising
5. **Meeting to consider:-**
 - i. **Hon. Tom Odiege, MP's Statement on the acquisition of National Bank of Kenya by Kenya Commercial Bank with the Capital Markets Authority; and**
 - ii. **The President's reservations to the Insurance (Amendment) Bill, 2018**
6. Adjournment/ Date of the next meeting

MIN.NO.NA/F&NP/2019/157: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The Chairperson called the meeting to order at 11.45 am and a prayer was said. Agenda of the day was adopted having been proposed and seconded by Hon. Joshua Kandie, MP and Hon. Rahim Dawood, MP respectively.

MIN.NO.NA/F&NP/2019/158: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2019/159: MEETING WITH THE CAPITAL MARKETS AUTHORITY TO CONSIDER THE STATEMENT BY HON. TOM ODIEGE, MP ON THE ACQUISITION OF NATIONAL BANK OF KENYA BY KENYA COMMERCIAL BANK

The CEO responded to the issues raised in the Statement as follows, THAT:-

1. Whether the acquisition is a merger or a takeover

The acquisition is a take-over

2. Whether NBK is properly and professionally valued to safeguard pensioners, employees and taxpayers interests

He responded that NBK will hire an independent adviser to undertake an independent review of the transaction and issue a fairness opinion for the sake of shareholders to help them make an informed decision. Regulation 10 of the Take-over Regulations require the board of directors of the offeree (NBK) to appoint an independent adviser on receipt of the offeror's statement in relation to the take-over offer. The independent adviser appointed shall be an investment bank or stockbroker licensed by CMA.

3. Whether the process of selecting KCB was done competitively and in a transparent manner

He informed the meeting that a party is usually not aware of an offeror's intention to take them over until they are served with the Notice of Intention. The Board of the offeree (NBK) is required to issue a recommendation to its shareholders on whether they are in support of the takeover or not, however, the ultimate decision lies with the individual shareholder. Besides, any other party can make a competing offer at least five (5) days before the offer closes.

4. Whether the government is creating a monopoly in the banking sector

He stated that the takeover process is conditional on approval from CMA and CBK in this case since the two are banks. In this particular case, CMA is working closely with other regulators to ensure any issues are addressed.

5. The process used by both banks to arrive at this deal and whether this is the best option to revive and/or privatize NBK

He responded that CMA was involved in the takeover process as stipulated by the law.

6. Whether the management of both banks applied the law when engaging in the transaction

He stated that the parties have so far complied to the relevant regulations as far as the takeover process is concerned.

MEMBERS' DELIBERATIONS

1. On what the NBK shareholders had approved during their annual AGM held on 14th June, 2019, the CEO stated that the shareholders had only approved the conversion of ordinary shares to preference shares if the takeover goes through. He stated that the shareholders did not have sufficient information during the AGM to decide on whether or not the takeover should take place.
2. On what the Authority had done when they learnt about the mismanagement at NBK in 2014, the CEO stated that the Authority investigated and issued a public reprimand to the Board that was in place in 2014 for allowing the mismanagement to happen. They initiated legal action against individual senior managers that were involved.

Some of the cases are still ongoing. He further stated that since NBK is a bank, CBK is charged with the responsibility to assess on whether the board and management of the bank are competent.

3. On whether the takeover is mandatory, the CEO informed the meeting that it is not. Shareholders will decide on whether or not they will approve it.
4. On what percentage of acceptance of the takeover will be successful to KCB, Mr. Muthaura stated that the takeover will be successful if its accepted by 75% of NBK shareholders.
5. The CEO undertook to avail to the Committee takeover documents that the Authority approved once they are published.

**MIN.NO.NA/F&NP/2019/160: CONSIDERATION OF THE PRESIDENT'S
RESERVATIONS TO THE INSURANCE
(AMENDMENT) BILL, 2018**

The Committee adopted the report on the consideration of the President's reservations to the Insurance (Amendment) Bill, 2018 having been proposed and seconded by Hon. David Mboni, MP and Hon. Jimmy Angwenyi, MP respectively.

The Committee agreed on the following recommendations:-

Clause 2

Agreed to

Justification

The Committee had already considered these definitions and rejected them and the amendment as passed by the House did not have consequential amendment.

Clause 3

Agreed to

Justification

The amendment will give the Commissioner power to seek for information from any member of the insurance group where such information may be necessary for protection of the interests of the policyholders and such information may not be obtained from the regulated entity.

Clause 11

The Presidential memorandum should be amended by deleting the proposed amendment to clause 11.

Justification

The amendment as passed was protecting all parties involved in the insurance business by providing clauses on offences for all parties. The proposed clause as per the Bill was making it illegal for the brokers to receive premiums on behalf of the insurer. Owing to the challenges of paying full amounts, the Committee observed that sub-clause 1 is punitive as it obligates premium holders to pay full amount failure to which no insurer shall assume a risk in respect of insurance business unless and until the premium payable thereon is received by insurer. The amendment as passed by the House protects insurers by providing that a premium collected by an intermediary or a cheque received by intermediary shall be deposited with or dispatched and received by the insurer within thirty days of receipt by the intermediary. The new 156A also protects the intermediary by providing that the insurer must pay intermediaries their commission within thirty days of receipt of premiums.


MIN.NO.NA/F&NP/2019/161: ADJOURNMENT/ DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 2.36 p.m. The next meeting will be held on Tuesday, 25th June, 2019 at 10.00 a.m.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

on behalf

SIGNED
 DATE *25th June 2019*

Handwritten notes:
Hon. Justice P.K. Kariuki
1/5/2019
2/5/2019



NATIONAL ASSEMBLY
RECEIVED
23 MAY 2019
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

THE PRESIDENCY
EXECUTIVE OFFICE OF THE PRESIDENT
HEAD OF THE PUBLIC SERVICE

Telegraphic Address
Telephone: +254-20-2227436
When replying please quote

Handwritten notes:
DLSP
TNA
CNA
20/5/19
23rd May, 2019

STATE HOUSE
P.O. Box 40530-00100
Nairobi, Kenya

Ref. No.
and date
SH/9/7 Vol V

Hon. Justin Muturi, EGH. MP
Speaker of the National Assembly
Parliament Buildings
NAIROBI

Handwritten note:
Noted. CNA to deal as appropriate.

Dear *Handwritten:* Hon. Muturi

Handwritten:
SNA
27/5/19

REF: REFUSAL TO ASSENT TO THE INSURANCE (AMENDMENT) BILL, 2018
MEMORANDUM

In exercise of the power conferred on His Excellency the President by Article 115(b) of the Constitution, the President has refused to assent to the Insurance (Amendment) Bill, 2018 for the reasons set out in the Memorandum.

In this regard, therefore, forwarded herewith for your further necessary action, is a Refusal to Assent to the Insurance (Amendment) Bill, 2018 Memorandum as stated above.

Yours *Handwritten signature:* Sincerely
Handwritten signature: Joseph K. Kinyua

JOSEPH K. KINYUA, EGH
HEAD OF THE PUBLIC SERVICE

Handwritten notes:
3 PMK
Prepare a message
June 4 2019
29/5/19

RECEIVED
27 MAY 2019
CLERK'S OFFICE

Encl.

cc: Hon. Justice (Rtd) P. Kihara Kariuki
Attorney General
Office of the Attorney General and Department of Justice
P.O. Box 40112 - 00100
NAIROBI



THE CONSTITUTION OF KENYA

REFUSAL TO ASSENT TO THE INSURANCE (AMENDMENT) BILL, 2018

MEMORANDUM

By His Excellency the Honourable Uhuru
Kenyatta, President and Commander-in-Chief
of the Kenya Defence Forces.
Submitted to the Speaker of the National
Assembly.

WHEREAS a Bill entitled “An Act of Parliament to amend the Insurance Act”, the short title of which is “The Insurance (Amendment) Bill, 2018” was passed by the National Assembly on the 28th February, 2019;

AND WHEREAS the Insurance (Amendment) Bill, 2018, was presented to me for assent in accordance with the provisions of the Constitution, on the 10th May, 2019;

NOW THEREFORE, in exercise of the powers conferred on me by Article 115 (1) (b) of the Constitution, I refuse to

assent to the Insurance (Amendment) Bill, 2018, for the reasons set out hereunder:

CLAUSE 2

Clause 2 of the Bill is intended to, among others, amend the definitions of “broker” and “intermediary”, and to insert new definitions of “independent agent” and “tied agent”. The effect of the new definitions shall reverse the common law principle of agency where the principal is responsible for the acts of commission and omission of his agents since the principal enjoys the fruits of the agents. The licensing regime under the Act does not recognise the proposed classification. The proposals put a strain on the operations of the proposed independent agents as they will be required to have capital and take out professional indemnity cover in order to protect their clients going against the Government policy of ease of doing business. The issue of whether an agent is independent or a tied agent should be a matter of business relations and not legislation. The term “intermediary” is already comprehensively defined in the Act and the proposed new definition shall lead to confusion. The definition of term “broker” offends the provisions of section 191 of the Act which prohibits registered persons

from carrying on any other business other than the registered business under the Act.

RECOMMENDATION

In view of the foregoing, I recommend that clause 2 of the Bill be amended by deleting the proposed new definitions of “independent agent”; “tied agent”; “broker”; and “intermediary”.

CLAUSE 3

Clause 3 of the Bill provides for the insertion of a new section 5A which shall provide for the powers of the Commissioner on group-wide supervision. The proposed amendment requires the Commissioner to seek information from the Principal Officer of the group. However, the group does not have a Principal Officer like a registered insurance company. The proposed amendment will also hamper the power of the Commissioner to seek information directly from any member of the group where such information may be necessary for the protection of the interests of policyholders and such information may not be obtained from the regulated entity. The proposed amendment removes the requirement for enforcement where a request

for information by the Commissioner is not complied with. The Insurance Act provides more elaborate definitions of “insurance group” and “non-operating holding company”. The proposed changes will make implementation of group-wide supervision untenable under the existing law.

RECOMMENDATION:

In view of the foregoing, I recommend that clause 3 of the Bill be amended by deleting the clause and substituting therefor the following new clause—

Insertion of
new section in
Cap. 487.

3. The principal Act is amended by inserting the following new section immediately after section 5—

Powers of the
Commissioner
on group-wide
supervision.

5A. (1) The Commissioner may direct any member of the group to provide any information necessary for effective group-wide supervision.

(2) In the event of any breach or failure to comply with the directives of the Commissioner or safeguard the interests of the policyholders, the Commissioner shall impose any of the sanctions provided in the Act on the

holding company or any member
of the group.

CLAUSE 11

Clause 11 of the Bill, which is intended to repeal and replace section 156 of the Act which provides for the advance payment of premiums, negates the principle of cash and carry and is likely to aggravate the problem of the delayed settlement of claims. With the advancement in technology, it is now possible to pay premiums directly to insurers. This will guarantee their financial stability and the prompt payment of claims to policyholders. The requirement in subclauses (2) and (3) that the intermediary can enter into a contract with insurers on the collection of premiums will prejudice the interests of policyholders who are not parties to such contract. The premium is the consideration of the insurance contract and, if not remitted, shall affect the validity of the contract. Furthermore, subclause (7) implies that the section shall only be operationalised by publication of regulations. This shall delay the implementation of section and is redundant in the face section 180 of the Act which empowers the Cabinet Secretary to make regulations on any matter that will give effect to the Act.

RECOMMENDATION

In light of the foregoing, I propose that clause 11 be amended by deleting the clause and substituting therefore the following new clause—

Repeal and
replacement of
section 156 of
Cap. 487.

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

Advance
payment of
premiums.

156. (1) No insurer shall assume a risk in Kenya in respect of insurance business unless and until the premium payable thereon is received by insurer.

(2) An intermediary shall not receive any premiums on behalf of an insurer.

(3) An intermediary who contravenes subsection (2) shall be liable to a penalty equivalent to twenty percent of the unremitted premium on each contravention, payable to the Policyholders Compensation Fund.

(4) Any officer or director of an intermediary who contravenes subsection (2) shall be guilty of an offence, and upon conviction shall be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment term of three months, or to both.

(5) An insurer shall pay an intermediary insurance commission due within thirty days upon receipt of premium.

(6) An insurer who contravenes subsection (5) shall be liable to a penalty of five million shillings on each contravention, payable to the Policyholders Compensation Fund.

Dated the 23rd of May....., 2019.



UHURU KENYATTA,
President.