REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

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KENYA

When replying please quote

REF. No. CONF/MOF/180/02

10th March, 2020

Mr. Michael R. Sialai, EBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
NAIROBI

① DLSP TNA cmt 12/3/20

Dear Michael

RE: LEGAL NOTICES NOS. 23, 24, 25 AND 26 ON:-

1. **THE INSURANCE (ANTI-MONEY LAUNDERING AND COMBATING FINANCING OF TERRORISM) GUIDELINES, 2020,**
2. **THE BANCASSURANCE REGULATIONS, 2020,**
3. **THE INSURANCE (GROUP-WIDE SUPERVISION) REGULATIONS, 2020**
4. **THE MICROINSURANCE REGULATIONS, 2020.**

The above Guidelines and Regulations have been issued under Legal Notices Nos. 23, 24, 25 and 26 and the notification of the same made vide the Kenya Gazette Vol. CXXII No.42 of 6th March, 2020.

Attached herewith please find the above Guidelines, Regulations and the explanatory memoranda together with the cover page of the Kenya Gazette Vol. CXXII- No. 42 of 6th March, 2020, for your necessary action, pursuant to section 11 of the Statutory Instruments Act, 2013.

Yours Sincerely

JULIUS MUIA, PhD, CBS
PRINCIPAL SECRETARY/ NATIONAL TREASURY

② HOD, Table Office
For Tabling: after registering.
13/3/20

③ ML
please register and ensure tabling
16/03/2020

12 MAR 2020

LEGAL NOTICE NO. 24

THE INSURANCE ACT

(Cap. 487)

THE INSURANCE (BANCASSURANCE) REGULATIONS, 2020

IN EXERCISE of the powers conferred by section 180 of the Insurance Act, the Cabinet Secretary for the National Treasury and Planning makes the following regulations—

Citation.

1. These guidelines may be cited as the Insurance (Bancassurance) Regulations, 2020.

Interpretation.

2. In these regulations, unless the context requires—

"bancassurance business" means an intermediary business that involves collaboration between a bank, a microfinance bank or a financial institution, and an insurance company to market and distribute insurance products;

"bancassurance intermediary" means a person registered to carry out bancassurance business; and

"microfinance bank" has the meaning assigned to it in the Microfinance Act, 1996. No. 19 of 1996.

Scope of the regulations.

3. These regulations shall apply to bancassurance intermediaries.

Objective of the regulations.

4. The objective of these regulations is to provide for the registration of bancassurance intermediaries and supervision of bancassurance business.

Application for bancassurance business.

5. A person who intends to carry on Bancassurance business shall—

(a) be incorporated in Kenya;

(b) wholly owned by a bank, microfinance bank or other financial institution regulated in Kenya;

(c) apply in writing to the Authority to be registered as a bancassurance intermediary;

(d) have a minimum paid up capital of five million shillings;

(e) have at all times a minimum of ten million shillings in the form of—

(i) a bank guarantee as set out in the First Schedule hereto:

Provided that the bank, microfinance bank or financial institution owning the applicant shall not provide the guarantee; or

(ii) a Government bond with a maturity of at least two years issued by the Central Bank of Kenya in favour of the Authority; and

(f) meet any other requirements that may be prescribed by the Act or these regulations.

Registration requirements.

6. An application for registration as a bancassurance intermediary shall be accompanied by—

(a) an application fee of twenty thousand shillings;

(b) a collaboration agreement with any insurer whose products the applicant intends to market or distribute;

(c) a bancassurance business plan;

(d) a letter of no objection from the regulator of the bank, microfinance bank or financial institution;

(e) a written application for approval of the principal officer of the applicant; and

(f) constitutive documents including a certificate or registration or certificate of incorporation.

Market conduct by bancassurance intermediaries.

7. (1) A person registered as a bancassurance intermediary shall act as an insurance intermediary and shall not—

(a) undertake or engage in the business of the underwriting of risks or engaging in any other insurance business and

(b) give the impression of being the underwriter of the insurance products it is marketing or distributing on behalf of the insurer on whose behalf it is acting as a bancassurance intermediary.

(2) All bancassurance advertisements by the bancassurance intermediary shall prominently display or mention the name of the insurer underwriting the product.

Insurance products to be in the name of the underwriter.

8. A bancassurance intermediary shall ensure that the product is in the name of the underwriter and shall disclose to its customers that the insurer shall be responsible for the settlement of claims relating to the insurance product.

Debiting of client accounts.

9. A bancassurance intermediary shall ensure that the bank, microfinance bank or financial institution does not debit the client's bank accounts for premiums without the prior written authority or consent of the operator of the account held at the bank, microfinance bank or financial institution.

Role of bancassurance intermediaries.

10. A bancassurance intermediary shall—

(a) inform in writing a customer that the customer has the right to select any underwriter from among the underwriters licensed by the Authority;

(b) not advise or coerce a customer to cancel an existing policy from an underwriter licensed by the Authority; and

(c) not infringe on the freedom of the customer to use any other bancassurance intermediary of his or her choice or to directly deal with an underwriter.

Distribution of products.

11. A bancassurance intermediary shall only distribute products approved by the Authority.

Confidentiality of information.

12. A bancassurance intermediary shall ensure the confidentiality of consumer data and information.

Complaints redress mechanism.

13. A bancassurance intermediary shall develop and implement a complaints redress mechanism to address any complaints from its customers.

Reporting requirements.

14. (1) A bancassurance intermediary shall submit to the Authority an annual report on the performance of the bancassurance business activities in the form set out in the Second Schedule hereto

(2) The report under paragraph (1) shall be submitted within three months after the end of the year to which it relates.

Technical staff.

15. A bancassurance intermediary shall ensure that technical staff handling insurance matters possess at least a certificate of proficiency in insurance.

Qualifications of principal officer.

16. A Principal Officer of a bancassurance intermediary shall—

(a) be fit and proper as prescribed by the Act;

(b) hold a technical or professional qualification in insurance, actuarial, accounting, banking or such other qualification as may be prescribed by the Commissioner; and

(c) be approved by the Commissioner.

Governance of a bancassurance intermediary.

17. A bancassurance intermediary shall have a board of directors of at least three members possessing diverse qualifications and skills who shall oversee its operation.

Reporting by principal officers.

18. The principal officer of a bancassurance intermediary shall report to the board of directors of the bancassurance intermediary and shall be an *ex officio* member of the board without the right to vote during the meetings of the board.

Disqualification or cancellation of registration.

19. A bancassurance intermediary shall not be registered or have its registration renewed if—

(a) the applicant or any of its directors has, within a period of five years preceding the date of the application, been convicted of an offence involving fraud or dishonesty;

(b) the applicant or any of its directors has, within a period of five years preceding the date of the application become insolvent or compounded with its creditors;

(c) the principal officer or the applicant's staff do not have sufficient knowledge, skill or experience to satisfactorily discharge their functions; or

(d) the applicant or any of its directors has been found convicted of, or warned or cautioned in writing by the Commissioner on at least three occasions with regard to, unethical business practices.

Penalty for violation.

20. Where a bancassurance intermediary breaches any provision of these regulations, the bancassurance intermediary shall be liable to a penalty of twenty thousand shillings for each day or part thereof during which the violation continues, which shall be payable to the Policyholders Compensation Fund.

Transitional matters.

21. A bancassurance intermediary in operation immediately before the commencement of these regulations shall comply with the requirements of regulations 5, 7 and 17 within one year from the date of such commencement.

FIRST SCHEDULE *(r. 5 (e))*

FORM OF GUARANTEE

1. .....
(Name of Bank)

in this Guarantee referred to as "the Bank" hereby guarantees to the Commissioner of Insurance (in this Guarantee referred to as the Commissioner) that in the event of any insurance client of

.....
(Name of the Bancassurance Intermediary)

this guarantee (referred to as the Bancassurance) or any insurance company obtaining, while this Guarantee is in force, a court decree in respect of unsatisfied debts of the Bancassurance to the insurance client or the insurance company, as the case may be, in respect of insurance business, which debt the client or the insurance company is unable to recover in any other way, the Bank will pay on demand to the order of the Commissioner the sum of

.....
(Amount of guarantee)

2. This Guarantee is a continuing Guarantee and may be revoked —

(a) with the consent in writing of the Commissioner; or
(b) after the expiration of twelve months after notice in writing of the intention of the Bank to revoke this Guarantee has been given to the Commissioner.

3. The revocation of this Guarantee does not release the Bank from, or affect, any liability of the Bank under this Guarantee existing immediately before the revocation.

Dated the.....20 ...

THE SEAL OF ..... WAS AFFIXED
TO THIS GUARANTEE BY .....
IN THE PRESENCE OF .....

SECOND SCHEDULE *(r. 14(1))*

STATEMENT OF BUSINESS OF A BANCASSURANCE INTERMEDIARY

Name of Bancassurance Intermediary

All amounts in Kenya Shillings
Year ending 31st December, 20....

Insurance Business	Number Insurers (1)	Number policies (2)	Total commission earned (3)	Total premium under the policies placed (4)	Largest percentage commission from any one insurer (5)
Long-Term Direct					
TOTAL					
General Insurance-Direct					
TOTAL					
TOTAL					

Date *Principal Officer*

Dated the 7th February, 2020.

UKUR YATANI,
Cabinet Secretary,
for National Treasury and Planning.

EXPLANATORY MEMORANDUM

BANCASSURANCE REGULATIONS, 2020

PART I

Name of Statutory Instrument:	Bancassurance Regulations, 2020
Name of the Parent Act:	The Insurance Act, (Cap. 487)
Enacted Pursuant to:	Section 180 of the Insurance Act
Name of the Ministry/Department:	The National Treasury and Planning
***Gazetted* on**:	28th February, 2020
Tabled on:	

PART II

1. Purpose of Statutory Instrument

The Authority recognizes the need to increase insurance penetration of insurance services in the Country through the use of alternative distribution channels such as financial institutions licensed by the Central Bank of Kenya. These financial institutions have a wide branch network and customer base which can be harnessed to promote accessibility of insurance services and therefore deepen insurance penetration.

In October 2013, the Central Bank of Kenya issued the Guideline on Incidental Business Activities (CBK/PG/23). This made it possible for Banks to form partnerships with one or more financial service providers for purposes of cross-selling authorized financial services and products through their branch network.

The collaboration between Banks and insurance companies to distribute or cross-sell insurance products, commonly referred to as "Bancassurance", will provide a one-stop-shop platform whereby customers can access insurance services among other financial solutions.

The purpose of this statutory instrument is to provide a framework for the registration and supervision of bancassurance business in Kenya.

2. Legislative Context

The Insurance Act was amended through the Statute Law (Miscellaneous Amendments) Act, No. 11 of 2017 that expanded the objects and functions of the Authority to include regulating the business of bancassurance offered by banks in the same manner as the ordinary insurance business including capital requirements and disclosures.

The Bancassurance Regulations, 2019, are made pursuant to Section 180 of the Insurance Act which empowers the Cabinet Secretary to formulate such rules and regulations which are necessary for giving effect the Insurance Act.

3. Policy Background

Section 3A (1)(hb) of the Insurance Act requires the Authority to regulate the business of bancassurance offered by banks in the same manner as the ordinary insurance business including capital requirements and disclosures.

These Regulations fulfil this mandate by providing a framework for the registration and supervision of bancassurance business in Kenya. In particular, the Regulations prescribe the capital requirements for a bancassurance intermediary, the role of the intermediary which includes disclosing to the customer that they have a right to select an underwriter from a list of underwriters licensed by the Authority. Also included are confidentiality and reporting requirements.

4. Consultation Outcome

As provided for in Articles 10 and 118 of the Constitution of Kenya, the Insurance Regulatory Authority, consulted the stakeholders and the general public on the effect of the regulations. The responses informed the policy behind the draft regulation.

The following consultations and stakeholder forums were held.

Date	Venue	Workshops / Forums
20/02/2018	Insurance Regulatory Authority's Training Room	Exposure of the regulations to the Authority's staff
23/02/2018	College of Insurance	Stakeholder's Workshop for insurance companies

08/03/2018	Insurance Regulatory Authority's Training Room	Bancassurance Stakeholders.

The outcome of stakeholder and public consultation was in favour of the issuance of the Regulation.

The Draft Regulation was availed on the Insurance Regulatory Authority website https://www.ira.go.ke for pubic consultation and input received on actreview@ira.go.ke

The Authority will also engage in further stakeholder education and dissemination through both the print and electronic media, and other activities for public awareness, to ensure that all parties are aware of the existence of the Regulations and its effect.

5.0 Impact

5.1 Rights and Freedoms

The coming into effect of these Regulations will have no negative impact on the fundamental Rights and Freedoms of the citizens and residents of Kenya.

The Regulations will ensure penetration and inclusiveness of insurance services to the underserved in the market. This will enhance both the economic and social rights of the people of Kenya.

5.2 The Impact on the Private Sector

The coming into force of the Regulations will have the effect of promoting insurance business and ensuring penetration and wider coverage to the most underserved in the market while maintaining a fair, safe and stable insurance industry.

5.3 The Impact on the Public Sector

The coming into force of the Regulations will allow the public to have access to insurance products through the use of branches of banks, microfinance banks and financial institutions. This will ensure inclusiveness and penetration of in the insurance services aiding in;

1. Enhancing business in the 47 County Governments;

2. Insurance as a tool of financial inclusion to Kenyan citizens;
3. Achievement of Kenya's Vision 2030.

5. Monitoring and Review

The Regulations will come into effect immediately upon publication.
The implementation of these Regulations will be monitored through the supervision by Authority.

These Regulations will be reviewed in line with the Authority's periodic assessment of the impact of these Regulations on the insurance industry.

The undersigned can be contacted for queries on the statutory instrument.

6. Contact

Hon. (Amb.) Ukur K. Yatani, EGH
Cabinet Secretary for the National Treasury and Treasury
P.O Box 30007-00100
NAIROBI
9th March, 2020

SPECIAL ISSUE

Kenya Gazette Supplement No. 13

(Legislative Supplement No. 10)

LEGAL NOTICE NO. 23

THE INSURANCE ACT

(Cap. 487)

THE INSURANCE (ANTI-MONEY LAUNDERING AND COMBATING FINANCING OF TERRORISM) GUIDELINES, 2020

IN EXERCISE of the powers conferred by section 3A (g) of the Insurance Act, the Insurance Regulatory Authority issues the following guidelines—

Citation.

1. These guidelines may be cited as the Insurance (Anti-Money Laundering and Combating Financing of Terrorism) Guidelines, 2020.

Interpretation.

2. In these guidelines, unless the context otherwise requires—

"Act" means the Insurance Act;

"Authority" refers to Insurance Regulatory Authority;

"beneficiary" refers to the beneficiary to the insurance contract;

No. 9 of 2009.

"Centre" refers to the Financial Reporting Centre established under section 21 of Proceeds of Crime and Anti-Money Laundering Act, 2009;

"customer" refers to a policyholder or prospective policyholder;

"money laundering" has the same meaning as provided for under the Proceeds of Crime and Anti-Money Laundering Act, 2009;

L.N. 59/2013.

"politically exposed persons" has the same meaning as defined in the Proceeds of Crime and Anti Money Laundering Regulations, 2013; and

"regulated entity" refers to insurers, takaful operators and microinsurers underwriting life assurance; brokers and agents licensed under the Act.

Object of the guidelines.

3. (1) The object of these guidelines shall be to outline the requirements for regulated entities to develop programmes to effectively combat money laundering and financing of terrorism activities.

Application of the guidelines.

4. These guidelines shall apply to regulated entities.

General requirements for regulated entities.

5. (1) A regulated entity shall establish and maintain a anti-money laundering and combating financing of terrorism program including comprehensive risk assessment, screening process and controls to mitigate any risks arising from money laundering or financing of terrorism.

(2) A regulated entity shall adopt policies on anti-money laundering and combating financing of terrorism for the prevention of transactions that may facilitate money laundering or financing of terrorism.

(3) A regulated entity shall formulate and implement internal procedures and other controls to deter criminals from using its services and products for money laundering and financing of terrorism.

Responsibilities of the board of a regulated entity

6. The board of a regulated entity shall—

(a) establish policies and procedures for the prevention, detection, reporting and control of money laundering and financing of terrorism activities; and

(b) promote a strong risk and compliance culture and develop monitoring and reporting mechanisms to support anti-money laundering and combating financing of terrorism controls.

Responsibilities of the management of a regulated entity.

7. The management of a regulated entity shall—

(a) develop, implement and issue to its staff instruction manuals setting out procedures for—

(i) customer acceptance and identification;

(ii) customer due diligence;

(iii) record-keeping;

(iv) identification and reporting of suspicious transactions;

(v) staff screening and training; and

(vi) establishing legitimate sources of funds;

(b) ensure that the internal audit or compliance function regularly verifies compliance with anti-money laundering and financing of terrorism policies, procedures and controls;

(c) assess and ensure that the risk mitigation procedures and controls work effectively;

(d) register with the Centre and comply with the any reporting requirements;

(e) report to the Centre suspicious transactions; and

(f) appoint a Money Laundering Reporting Officer.

Money laundering reporting officers.

8. (1) A regulated entity shall appoint a person in management as a Money Laundering Reporting Officer who shall have relevant competence, authority and independence.

(2) Other than in the case of a sole proprietor, a principal officer and internal auditor of a regulated entity shall not qualify to be appointed as a Money Laundering Reporting Officer.

Functions of the money laundering officer.

9. A Money Laundering Reporting Officer of a regulated entity shall—

(a) co-ordinate the development of a programme on anti-money laundering and combating financing of terrorism compliance;

(b) monitor, review and co-ordinate the implementation of the anti-money laundering and combating financing of terrorism compliance program;

(c) receive and vet suspicious transaction reports from the regulated entity's staff;

(d) submit suspicious transaction reports to the Centre;

(e) co-ordinate the training of staff in anti-money laundering and combating financing of terrorism awareness, detection methods and reporting requirements;

(f) together with the human resources function, ensure that new members of staff are screened; and

(g) act as a liaison officer for the Authority and Centre and a point of contact for all employees on issues relating to money laundering and financing of terrorism.

Access to information.

10. A regulated entity shall ensure that the Money Laundering Reporting Officer has access to other information that may be of assistance to the officer in respect of suspicious or unusual transaction reports.

Independent audits.

11. (1) The board of a regulated entity shall ensure that—

(a) annual independent audits of the internal anti-money laundering and combating financing of terrorism measures are undertaken to determine their effectiveness;

(b) that the roles and responsibilities of the auditor are clearly defined and documented including—

(i) checking and testing compliance with relevant legislations on money laundering and financing of terrorism; and

(ii) assessing whether current measures are consistent with developments and changes of anti-money laundering and combating financing of terrorism requirements.

(2) The auditor shall submit a written report on the audit findings to the board highlighting any inadequacies in internal anti-money laundering and combating financing of terrorism measures and controls and the board shall ensure that necessary measures are taken to rectify the inadequacies.

(3) A board of a regulated entity shall ensure that audit findings and reports are submitted to the Authority within thirty days of receiving the findings or reports but in any event not later than the 31st January of every year.

Anti-money laundering and combating financing of terrorism programme.

12. (1) A regulated entity shall establish and maintain an anti-money laundering and combating financing of terrorism program that sets out the internal policies, procedures and controls necessary to detect money laundering and financing of terrorism and to manage and mitigate the risk of money laundering and financing of terrorism.

(2) An anti-money laundering and combating financing of terrorism program shall include—

(a) the appointment of a Money Laundering Reporting Officer;

(b) the development and regular review of internal policies, procedures and controls;

(c) assessment and documentation of risks related to money laundering and financing of terrorism, and the documentation and implementation of mitigation measures to deal with the risks;

(d) continuing training for employees and agents; and

(e) an independent review of the policies, procedures and internal controls to test their effectiveness and efficiency.

(3) A money laundering and financing of terrorism program shall take into account the nature, scale and complexity of the regulated entity and the nature and degree of money laundering and financing of terrorism risks facing the entity.

(4) The money laundering and financing of terrorism program shall be documented, approved by the board and communicated to all levels of the regulated entity.

Elements of anti-money laundering and combating financing of terrorism

13. A regulated entity shall develop and maintain an anti-money laundering and combating financing of terrorism policy which including—

(a) a high-level summary of key controls and objectives of the policy;

(b) a statement that the anti-money laundering and combating financing of terrorism policy applies to all areas of the business including on a global basis—

(i) to waivers and exceptions; and

(ii) to operational controls.

Key operational controls of an anti-money laundering and combating financing of terrorism policy.

14. The operational controls of an anti-money laundering and combating financing of terrorism policy shall include—

(a) a statement of responsibility for compliance with the anti-money laundering and combating financing of terrorism policy;

(b) customer due diligence including—

(i) customer identification and verification;

(ii) additional Know Your Customer information;

(iii) high-risk customers;

(iv) non-face-to-face business, where applicable;

(v) reinsurance arrangements;

(vi) the handling of politically exposed persons;

(vii) monitoring and reporting of suspicious transactions;

(vii) co-operation with other relevant authorities;

(ix) record-keeping;

(x) screening of transactions and customers;

(xi) employee training and awareness; and

(xii) adoption of risk management practices and use of a risk-based approach.

Compliance policy statement.

15. A regulated entity shall develop a compliance policy statement on the commitment of senior management and board of the entity to develop anti-money laundering and combating financing of terrorism objectives and implementation of measures to deter the use of its services and products for money laundering and financing of terrorism.

Content of compliance policy statement.

16. (1) An anti-money laundering and financing of terrorism policy shall establish clear responsibilities and accountabilities within the regulated entity to ensure that policies, procedures and controls are developed and maintained to deter criminals from using their services and products for money laundering and financing of terrorism.

(2) An anti-money laundering and financing of terrorism policy shall include—

(a) standards and procedures for compliance with applicable laws and regulations;

(b) a description of the role of the Money Laundering Reporting Officer and other relevant employees;

(c) screening programs for hiring employees;

(d) incorporating anti-money laundering compliance in job descriptions and performance evaluations of appropriate employees;

(e) mechanisms for program continuity when there are changes in management or employee composition or structure; and

(f) any other issue as may be required by the Authority

Compliance policy.

17. The compliance policy statement shall include a statement that—

(a) employees shall comply with applicable laws and regulations and corporate ethical standards;

(b) activities by the regulated entity shall comply with applicable laws and regulations;

(c) directs staff to a compliance officer or other knowledgeable individual when there is a question regarding compliance matters; and

(d) employees shall be held accountable for carrying out their compliance responsibilities.

Staff vetting.

18. A regulated entity shall establish—

(a) screening procedures when hiring employees and agents taking into account the risks identified in the entity's risk assessment; and

(b) policies, procedures and controls for the regular vetting senior managers, the Money Laundering Reporting Officer and any other employee whose role involves anti-money laundering and combating financing of terrorism duties.

Training.

19. (1) A regulated entity shall establish measures to ensure that the members of the board, employees and agents are regularly trained on—

(a) anti-money laundering and combating financing of terrorism laws and regulations;

(b) prevailing techniques, methods and trends in money laundering and financing of terrorism; and

(c) the entity's internal policies, procedures and controls on anti-money laundering and financing of terrorism.

(2) A regulated entity shall document and maintain the following in respect of training—

(a) scope and nature of the training;

(b) the tasks to be undertaken by staff who have had anti-money laundering and financing of terrorism training;

(c) application of the anti-money laundering and financing of terrorism training, including frequency and delivery methods;

(d) monitoring to ensure that members of staff have completed the required training;

(e) tailoring training for different employees based on tasks carried out and degree of anti-money laundering and financing of terrorism risk the entity faces from members of staff in their positions; and

(f) whether and how employees are assessed for knowledge, application and retention of the anti-money laundering and financing of terrorism training.

Risk assessment.

20. A regulated entity shall—

(a) conduct a risk assessment of its customers to identify the type of customers with a high risk of money laundering and financing of terrorism;

(b) establish measures in its internal policies and procedures to address the different kinds of risks posed by its customers;

(c) apply a risk-based approach in the assessment of risks associated with money laundering and financing of terrorism in respect to—

(i) customers and business relationships;

(ii) products and services;

(iii) distribution channels;

(iv) geographical location; and

(v) other relevant factors;

(d) take into consideration the following factors when conducting risk assessment of customers or type of customers—

(i) the origin of the customer and location of business;

(ii) background of the customer;

(iii) nature of the customer's business;

(iv) structure of ownership for a corporate customer; and

(v) any other information that may indicate whether or not the customer is of higher risk;

(e) monitor the patterns of each customer's transactions to ensure it is in line with the customer's profile and reassess the customer's risk profile if there are material changes;

(f) incorporate the following in its risk assessment and profiling processes—

(i) documentation on risk assessment and findings;

(ii) consider all relevant factors before determining the level of overall risk and appropriate level and type of mitigation to be applied;

(iii) ensure that risk assessment procedures are up to date; and

(iv) conduct an assessment at least once every two years;

(g) take enhanced measures to manage and mitigate high risks;

(h) apply simplified mitigation measures for low risks;

(i) document the outcome of risk assessment and submit the report the Authority upon request.

Customer due diligence.

21. (1) A regulated entity shall—

(a) conduct customer due diligence and establish the identity and legal existence of customers based on reliable and independent source documents; and

(b) conduct customer due diligence when—

(i) establishing business relationship with a customer;

(ii) carrying out cash or occasional transactions;

(iii) the entity suspects money laundering or financing of terrorism activities; or

(iv) the entity doubts the correctness or adequacy of previously obtained information.

(2) The customer due diligence shall comprise of—

(a) identifying and verifying relevant customer details;

(b) identifying and verifying beneficial ownership and control of transactions;

(c) identifying and verifying any natural persons behind a legal person or legal arrangement including the nature of business, ownership and control structure in relation to a customer that is a legal person or legal arrangement;

(d) obtain information on the purpose and intended nature of the business relationship or transaction; and

(e) conduct on-going due diligence and scrutiny to ensure that the information provided is up to date and relevant.

(3) A regulated entity shall—

(a) take reasonable steps to ascertain the true identity of its customers or beneficiaries;

(b) identify and verify details of proposed recipients where claims and other monies are payable to persons or companies other than customers or beneficiaries; and

(c) not commence business relationships or perform any transactions or, in the case of existing business relationships, renew such business relationships where customers fail to comply with customer due diligence requirements and file suspicious transaction reports with the Centre where necessary.

(4) A regulated shall conduct customer due diligence for not more than fourteen days after the business relationship has been established where the risks of money laundering and financing of terrorism are low or where measures are already in place to effectively manage the risk to enable the customer to furnish the relevant documents.

(5) Where a regulated entity has already commenced the business relationship and is unable to ascertain the identity of the customer or beneficiary, it shall terminate the business relationship and make a suspicious transaction report to the Centre.

Simplified customer due diligence.

22. A regulated entity may apply simplified customer due procedures where there is no suspicion of money laundering or financing of terrorism and—

(a) where the risk profile of the customer is low;

(b) there is adequate public disclosure in relation to the customer; or

(c) there are adequate checks and controls from the customer's country of origin or source of funds.

Enhanced customer due diligence.

23. (1) A regulated entity shall apply enhanced customer due diligence procedures in order to—

(a) obtaining further information that may assist the entity in ascertaining the customer's identity;

(b) verify the documents furnished by the customer;

(c) obtain senior management approval for establishing business relationship;

(d) obtain comprehensive customer profile information including the purpose for the insurance cover, the occupation of the customer and source of funds;

(e) assign a member of staff to serve, and conduct continuous due diligence of, the customer;

(f) request other documents to complement those which are otherwise required; and

(g) request certification of submitted documents by appropriate authorities or professionals.

Information on natural person.

24. (1) A regulated entity shall, in the case of a natural person, require the customer to produce an official record to ascertain the true identity seeking to enter into a business relationship, such as—

(a) a birth certificate;

(b) a national identity card;

(c) a driver's licence;

(d) passport; or

(e) such other particulars as may be required by the Financial Reporting Centre under section 44 of the Proceeds of Crime and Anti Money Laundering Act, 2009. No. 9 of 2009.

(2) A regulated entity may take additional measures to identify and verify the identity of the customer including the customer's—

(a) postal address;

(b) physical or residential address;

(c) utility bills including electricity or water bills;

(d) occupation or employment details;

(e) source of income;

(f) nature and location of business activity;

(g) personal identification number issued under a tax law;

(h) where applicable, written references attesting to the customer's identity;

(i) such other particulars as may be required by the Financial Reporting Centre under section 44 of the Proceeds of Crime and Anti Money Laundering Act, 2009 or any other written law.

Information on legal persons.

25. A regulated entity shall obtain the following documents from a legal person or a body corporate when conducting customer due diligence—

(a) its registered name;

(b) a certified copy of its Certificate of Registration or Certificate of Incorporation, or Memorandum and Articles of Association or other similar documentation;

(c) a certified copy of its board's resolution granting authority to transact business with the regulated entity and designating persons having signatory authority thereof;

(d) the names, dates of birth, identity card or passport numbers and addresses of the natural persons managing, controlling or owning the body corporate or legal entity;

(e) in the case of corporate bodies, the audited financial statements for the year preceding the transaction with the regulated entity;

(f) its personal identification number issued under a tax law; or

(g) where applicable, written confirmation from the customer's prior regulated entity, attesting to the customer's identity and previous business relationship.

Information on partnerships.

26. A regulated entity shall obtain the following particulars to ascertain the identity of a partnership—

(a) the name of the partnership or its registered name;

(b) the partnership deed;

(c) the registered address or principal place of business or office;

(d) the registration number;

(e) the names, dates of birth, identity card numbers or passport numbers and addresses of the partners;

(f) the partner who exercises executive control in the partnership;

(g) the name and particulars of the natural person who has been authorised to establish a business relationship or to enter into a transaction with the regulated entity on behalf of the partnership; or

(h) the un-audited financial statements for the year preceding the transaction with the regulated entity.

Information on trusts.

27. A regulated entity shall obtain the following particulars to ascertain the identity of a trust—

(a) its registered name, if any;

(b) its registration number, if any;

(c) its Certificate of Incorporation or registration, where relevant;

(d) the trust deed;

(e) official returns indicating its registered office and, where different from the registered office, the principal place of business;

(f) the names and details of the management company of the trust or legal arrangement, if any;

(g) the names of the persons having senior management position in the legal person or trustees of the legal arrangement;

(h) names of the trustees, beneficiaries or any other natural person exercising ultimate effective control over the trust;

(i) the name of the founder of the trust;

(j) any other documentation from a reliable independent source proving the name, form and current existence of the customer; and

(k) such other documents or particulars as may be required by the Financial Reporting Centre under section 44 of the Proceeds of Crime and Anti Money Laundering Act, 2009. No. 9 of 2009.

Ascertainment of ultimate beneficiaries.

28. (1) A regulated entity shall ascertain the beneficial owners, nature of business ownership and control structure of corporate customers and sources of funds of the customer.

(2) A regulated entity shall obtain the following particulars to ascertain the beneficial owners and control structure of corporate customers—

(a) details of incorporation;

(b) partnership agreements;

(c) deeds of trust;

(d) particulars of directors and shareholders;

(e) names of relevant persons holding senior management positions;

(f) names of trustees, beneficiaries or any other natural person exercising ultimate effective control; and

(g) any other documentation obtained from a reliable independent source ascertaining the name, form and existence of the customer.

(3) A regulated entity shall conduct customer due diligence on any natural person who ultimately owns or controls the customer's transaction if it suspects that a transaction is conducted on behalf of a beneficial owner and not the person who is conducting the transaction.

Reliance on intermediaries for customer due diligence.

29. (1) A regulated entity may rely on customer due diligence conducted by intermediaries if it is satisfied that the intermediary—

(a) has adequate customer due diligence procedures;

(b) has reliable mechanisms for verifying customer identities;

(c) can provide the customer due diligence information and readily make copies of relevant documentation available on request; and

(d) is regulated and supervised for the purpose of preventing money laundering and financing of terrorism.

(2) A regulated entity that relies on an intermediary for customer due diligence shall not be required to retain copies of customer identification documentation where the documentation can be obtained from the intermediary on request.

(3) Where a regulated entity relies on an intermediary for customer due diligence, ultimate responsibility for customer due diligence shall remain with the regulated entity.

New technologies and non-face-to-face transactions.

30. (1) A regulated entity shall take reasonable measures to mitigate money laundering and financing of terrorism risks arising from the use of new technologies in transactions which do not require face-to-face contact.

(2) A regulated entity shall establish measures for customer verification that are as stringent as those for face-to-face interactions and implement monitoring and reporting mechanisms to identify potential money laundering and financing of terrorism activities.

(3) A regulated entity shall, where possible, carry out face to face interviews for high risk customers.

(4) A regulated entity shall only establish business relationships upon completion of the customer due diligence process that have been conducted through face-to-face interactions.

(5) A regulated entity shall apply customer identification procedures and continuing monitoring standards for non-face-to-face customers as for face-to-face customers

(6) A regulated entity shall take any of the following measures to mitigate the risks associated with non-face-to face transactions—

(a) require certification of identity documents by magistrates, legal practitioners, commissioners of oaths or notaries public;

(b) requisition of additional documents to complement those required for face-to-face customers;

(c) use independent contacts to verify customer identities;

(d) require payment of premiums through a bank account in the customer's name;

(e) require more frequent update of information on customers; or

(f) refusal of business relationships without face-to-face contact for high risk customers.

Politically exposed persons.

31. (1) A regulated entity shall have, in addition to its customer due diligence process, a risk management framework to ascertain whether or not customers are politically exposed persons.

(2) A regulated entity shall gather sufficient and appropriate information from the customer and any other source to ascertain whether or not the customer is a politically exposed person.

(3) A regulated entity shall take reasonable measures to establish the source of funds of a politically exposed person with whom it has a business relationship.

(4) A regulated entity shall conduct enhanced continuing customer due diligence on politically exposed persons during its business relationships with politically exposed persons including customer due diligence on the family members or close associates of politically exposed persons.

Higher risk customers.

32. (1) A regulated entity shall conduct enhanced customer due diligence on customers assessed as higher risk including requiring—

(a) more detailed information from the customer and other sources including the purpose of the transaction and source of funds; and

(b) approval from the senior management of the regulated entity before establishing the business relationship with the customer.

(2) Customers assessed as higher risk include—

(a) high net worth individuals;

(b) non-resident customers from locations known for high rates of crime and higher risk jurisdictions as identified under section 45A of the Proceeds of Crime and Anti Money Laundering Act, 2009; No. 9 of 2009.

(c) politically exposed persons;

(d) legal arrangements that are complex including trusts and nominees;

(e) cash-based businesses; and

(f) unregulated industries.

Beneficiaries of life insurance contracts.

33. A regulated entity shall, in addition to customer due diligence on customers and beneficial owners, conduct customer due diligence on beneficiaries of life insurance and other investment related insurance policies as soon as the beneficiaries are identified or designated.

Record-keeping.

34. (1) A regulated entity shall ensure that customer records including the customer profiles are up to date and relevant.

(2) A regulated entity shall regularly review customer records, especially when—

(a) a significant transaction takes place;

(b) there is a material change in the way the customer account is operated;

(c) the customer's documentation standards change substantially; or

(d) the entity discovers that the customer information is or has become inadequate.

(3) A regulated entity shall maintain customer records for at least seven years after the end of the business relationship and ensure that that the information is easy to retrieve.

(4) The customer records to be maintained include—

(a) the risk profile of customers or beneficiaries;

(b) data obtained through customer due diligence;

(c) the nature and date of transactions;

(d) the type and amount of currency involved;

(e) the policy and claims settlement details, statements of account and business correspondence; and

(f) copies of official documents of identity such as passports, identity cards or similar documents.

(5) Where customer records are the subject of ongoing investigations or prosecution in court, they shall be retained beyond the

specified retention period until it is confirmed by the relevant authority that the records are no longer needed.

(6) A regulated entity shall ensure that all documents collected through customer due diligence are up to date and relevant by conducting reviews of existing records.

Audit trails.

35. A regulated entity shall ensure that retained documents and records—

(a) are able to create a traceable audit trail on individual transactions;

(b) can enable the entity to establish the history, circumstances and reconstruction of each transaction including the—

(i) identity of the customer or beneficiary;

(ii) type and form of transaction; and

(iii) amount and type of currency;

(c) are in a form that is acceptable under the Evidence Act; and Cap. 80.

(d) are secure and retrievable in a timely manner.

Ongoing monitoring.

36. (1) A regulated entity shall conduct continuing customer due diligence with regards to its business relationship with its customers, account activities and transaction behaviour based on customer risk assessments.

(2) A regulated entity shall conduct continuing due diligence on existing high-risk customers including endorsements to policies and exercise of rights under terms of insurance contracts.

(3) Transactions which a regulated entity shall be required to conduct continuing due diligence on existing high-risk customers include—

(a) change in beneficiaries to include non-family members;

(b) request for payments to persons other than beneficiaries;

(c) a significant increase in the sum insured or premium payment that appears unusual in the light of the income of the policy holder;

(d) use of cash for payment of large single premiums;

(e) payment by a wire transfer from or to foreign parties;

(f) high frequency of endorsements on a policy;

(g) payment by banking instruments which allow anonymity of the transaction;

(h) change of address or place of residence of the policy holder or beneficiary;

(i) lump sum top-ups to an existing life insurance contract;

(j) lump sum contributions to personal pension contracts;

(k) requests for prepayment of benefits;

(l) unusual use of the policy as collateral other than for the financing of a mortgage by a regulated financial institution;

(m) change of the type of benefit including change of type of payment from an annuity to a lump sum payment; or

(n) early surrender of the policy or change of the duration where this causes penalties or loss of tax relief.

(4) A regulated entity shall conduct continuing customer due diligence to ascertain the economic background and purpose of any transaction or business relationship that appears unusual, does not have any apparent economic purpose or the legality of such transaction is not clear including with regards to complex and large transactions or higher risk customers.

(5) A regulated entity shall conduct continuing due diligence or monitoring of transactions of business relationships and transactions with individuals, businesses, companies and financial institutions from countries which have insufficiently implemented anti-money laundering and combating financing of terrorism measures.

(6) A regulated entity shall make further enquiries on such business relationships and transactions including their background and purpose and document the findings in writing.

Management information system.

37. (1) A regulated entity shall put in place an adequate management information system to complement its customer due diligence and which should provide the entity with timely information on a regular basis to enable the entity to detect any suspicious activity.

(2) The management information system shall be part of the regulated entity's information system that contains its customers' normal transaction and business profile, which is accurate and updated.

Suspicious transactions

38. (1) A regulated entity shall establish internal criteria, hereafter referred to as red flags, to detect suspicious transactions and for conducting enhanced due diligence and continuing monitoring of any transaction that matches the red flags criteria.

(2) Suspicious transactions may fall in any of the categories specified in the Schedule.

Suspicious transactions reporting.

39. A regulated entity shall—

(a) report suspicious transactions to the Centre and maintain a register of reported suspicious transactions;

(b) ensure that the reporting of suspicious transactions is done securely in order to maintain confidentiality and secrecy.

Triggers for submission of suspicious transactions reports.

40. (1) A regulated entity shall submit a suspicious transaction report when—

(a) it is unable to complete the customer due diligence process on a customer who is unreasonably evasive or uncooperative based on normal commercial criteria and its internal policy; or

(b) a customer's transaction or attempted transaction fits the regulated entity's list of red flags.

(2) The Money Laundering Reporting Officer of a regulated entity shall maintain a register of internally generated suspicious transaction reports and supporting documentary evidence thereon.

(3) A regulated entity shall establish reasonable measures to ensure that employees involved in conducting or facilitating customer transactions are aware of suspicious transactions reporting procedures and consequences for the failure to report suspicious transactions.

Reporting on cash transactions.

41. A regulated entity shall report to the Centre any cash transaction equivalent to or exceeding ten thousand United States dollars or its equivalent in any other currency carried out by the entity whether or not the transaction appears to be suspicious.

42. (1) A regulated entity shall maintain a database of names and particulars of listed persons in the United Nations Sanctions List.

(2) A regulated entity shall, upon receipt from the Authority, keep updated the Sanctions List of various resolutions passed by the United Nations Security Council on combating terrorism and other relevant resolutions which require sanctions against individuals and entities.

(3) A regulated entity, upon receipt of the Sanctions List from the Authority, shall conduct regular checks on the names of new customers, as well as regular checks on the names of existing customers and potential customers, against the names in the Sanctions List.

(4) Where a regulated entity matches a name match on the Sanctions List with a name in its Sanction List database, it shall take reasonable and appropriate measures as required by the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2013.

(5) A regulated entity shall ensure that the information contained in its Sanctions List database is up to date and easily accessible by its employees.

Compliance.

41. A regulated entity shall file with the Authority on a quarterly basis a report on compliance with these guidelines within thirty days after the end of the quarter.

42. (1) Where the Authority determines non-compliance with the provisions of these guidelines, it may take any intervention prescribed by the Insurance Act or any other relevant written law.

(2) Where the Authority determines that a regulated entity has not met the requirements of these guidelines, the Authority may impose any or all of the administrative sanctions specified in the Insurance Act to correct the situation including—

(a) directing the regulated entity to take appropriate remedial action;

(b) imposing additional reporting requirements and monitoring activities; and

(c) withdrawing or imposing conditions on the business license of the regulated entity based on the nature of the breach.

SCHEDULE

INDICATORS OF SUSPICIOUS TRANSACTIONS

1. A request by a customer to enter into an insurance contract(s) where the source of the funds is unclear or not consistent with the customer's apparent standing.
2. A sudden request for a significant purchase of a lump sum contract with an existing customer whose current contracts are minimal and of regular payments only.
3. A proposal which has no discernible purpose and a reluctance to divulge a "need" for making the investment.
4. A proposal to purchase and settle by cash.
5. A proposal to purchase by utilizing a cheque drawn from an account other than the personal account of the proposer.
6. The prospective client who does not wish to know about investment performance but does enquire on the early cancellation or surrender of the particular contract.
7. A customer establishes a large insurance policy and within a short time period cancels the policy, requests the return of the cash value payable to a third party.
8. Early termination of a product, especially in a loss.
9. A customer applies for an insurance policy relating to business outside the customer's normal pattern of business.
10. A customer requests for a purchase of insurance policy in an amount considered to be beyond his apparent need.
11. A customer attempts to use cash to complete a proposed transaction when this type of business transaction would normally be handled by cheques or other payment instruments.
12. A customer refuses, or is unwilling, to provide explanation of financial activity, or provides explanation assessed to be untrue.
13. A customer is reluctant to provide normal information when applying for an insurance policy, provides minimal or fictitious information or, provides information that is difficult or expensive for the institution to verify.
14. Delay in the provision of information to enable verification to be completed.
15. Opening accounts with the customer's address outside the local service area.
16. Opening accounts with names similar to other established business entities.
17. Attempting to open or operating accounts under a false name.
18. Any transaction involving an undisclosed party.
19. A transfer of the benefit of a product to an apparently unrelated third party.
20. A change of the designated beneficiaries (especially if this can be achieved without knowledge or consent of the insurer or the right to payment could be transferred simply by signing an endorsement on the policy).
21. Substitution, during the life of an insurance contract, of the ultimate beneficiary with a person without any apparent connection with the policy holder.
22. The customer accepts very unfavourable conditions unrelated to his health or age.
23. An atypical incidence of pre-payment of insurance premiums.

24. Insurance premiums have been paid in one currency and requests for claims to be paid in another currency.
25. Activity is incommensurate with that expected from the customer considering the information already known about the customer and the customer's previous financial activity. For individual customers, consider customer's age, occupation, residential address, general appearance, type and level of previous financial activity. For corporate customers, consider type and level of activity.
26. Any unusual employment of an intermediary in the course of some usual transaction or formal activity e.g. payment of claims or high commission to an unusual intermediary.
27. A customer appears to have policies with several institutions.
28. A customer wants to borrow the maximum cash value of a single premium policy, soon after paying for the policy.
29. The customer who is based in non-co-operative countries designated by the Financial Action Task Force from time to time or in countries where the production of drugs or drug trafficking may be prevalent.
30. The customer who is introduced by an overseas agent, affiliator or other company that is based in non-co-operating countries designated by the Financial Action Task Force from time to time or in countries where corruption or the production of drugs or drug trafficking may be prevalent.
31. A customer who is based in Kenya and is seeking a lump sum investment and offers to pay by a wire transaction or foreign currency.
32. Unexpected changes in employee characteristics including a lavish lifestyle or avoiding taking holidays.
33. Unexpected change in employee or agent performance, e.g. the sales person selling products has a remarkable or unexpected increase in performance.
34. Consistently high activity levels of single premium business far in excess of any average company expectation.
35. The use of an address which is not the client's permanent address, e.g. utilization of the salesman's office or home address for the dispatch of customer documentation.
36. Any other indicator as may be detected by the insurance institutions from time to time.

Dated the 13th February, 2020.

ABDIRAHIN H ABDI,
Chairman,
Insurance Regulatory Authority.

GODFREY K KIPTUM,
Commissioner of Insurance,
Insurance Regulatory Authority.

EXPLANATORY MEMORANDUM

INSURANCE (ANTI-MONEY LAUNDERING AND COMBATING FINANCING OF TERRORISM) GUIDELINES, 2020

PART I

Name of Statutory Instrument	:	Insurance (Anti-Money Laundering and Combating Financing of Terrorism) Guidelines, 2020
Name of the Parent Act	:	The Insurance Act, (Cap. 487)
Enacted Pursuant to	:	Section 3A (g) of the Insurance Act, Section 36A of the Proceeds of Crime and Anti-Money Laundering Act, 2009 and Prevention of Terrorism Act, 2012
Name of the Ministry/Department:		The National Treasury and Planning
***Gazetted* on**	:	28th February, 2020
Tabled on	:	

PART II

1. Purpose of Statutory Instrument

Kenya is a signatory to the international and regional agreements on Anti Money Laundering and Combating Financing of Terrorism. The Proceeds of Crime and Anti Money Laundering Act, 2009 (POCAMLA) and Prevention of Terrorism Act (POTA) (2012) have placed obligations on supervisory bodies and the regulated entities in the fight against money laundering and terrorism financing. The Authority is recognised as a supervisory body under the First Schedule of the Proceeds of Crime and Anti Money Laundering Act, 2009 (POCAMLA).

The purpose of the statutory instrument is to provide a framework for the prevention of money laundering and combating financing of terrorism in the insurance sector. The legal instrument aims to provide a legal guidance for the regulated entities in their attempts to prevent the sector from being misused for money laundering and terrorist financing activities.

Money laundering and terrorism financing portends significant threats to the integrity of economic and financial systems by eroding customer confidence and weakening the role of the financial sector in economic growth. The insurance industry is not immune to money laundering and terrorism financing. Insurance products and services can be used to launder money as well as finance terrorism activities.

2. Legislative Context

The Authority has legal obligations as a supervisory body under section 36A of Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) and the requirement of Prevention of Terrorism Act (POTA) which forms the basis of issuing these Guidelines. The Authority issued the first AML guideline in June 2011 following the enactment of the Proceeds of Crime and Anti-Money Laundering Act, 2009. At the time of issuing the guidelines, the Prevention of Terrorism Act, 2012 (POTA) and the regulations to operationalize POCAMLA and POTA had not been issued.

In addition, Financial Action Task Force (FATF) subsequently developed new requirements on risk-based approach to ML/TF risks, risks caused by new technologies and non- face to face transactions and reliance on intermediaries for customer due diligence. These developments prompted the revision of the AML guideline issued in 2011.

3. Policy Background

Being a member of the International Association of Insurance Supervisors (IAIS), the Authority recognises the Financial Action Task Force (FATF) standards as the global standards on Anti Money Laundering (AML) and Combating Financing of Terrorism (CFT). Some of the proceeds of crime in our country may have found their way to the insurance industry and the same may have been used to finance incidences of terrorism that have been witnessed in our country. This follows from the 1998 bombing of the US Embassy in Nairobi, the Kikambala Terrorist attack, Westgate Terrorist attack to the recent incidence of terrorist attack on Dusit2 in Nairobi. In respect to money laundering, some of the notable example include NYS 1 and 2 cases. Insurers and reinsurers as reporting institutions need to be extra vigilant to ensure that the insurance industry does not provide an avenue for criminals to use the sector for money laundering and terrorism financing

Various amendments to the principal law have been enacted with the most recent being The Proceeds of Crime and Anti Money Laundering (Amendment) Act 2017 which gives the Financial Reporting Centre powers to impose civil penalties for non-compliance with the legal requirements.

4.0. Consultation Outcome

As provided for in Articles 10 and 118 of the Constitution of Kenya, the Insurance Regulatory Authority, consulted the stakeholders and the general public on the effect of the regulations. The responses informed the policy behind the draft Guidelines.

The following consultations and stakeholder forums were held.

SCHEDULE OF INTERNAL STAKEHOLDERS

Date	Venue	Workshops / Forums
20/02/2018	Insurance Regulatory Authority's Training Room	Exposure of the Guideline to the Authority's staff
23/02/2018	College of Insurance	Stakeholder's Workshop for insurance companies
08/03/2018	Insurance Regulatory Authority's Training Room	Bancassurance Stakeholders.

The outcome of stakeholder and public consultation was in favour of the issuance of the Guidelines.

The Draft Guidelines were availed on the Insurance Regulatory Authority website https://www.ira.go.ke for pubic consultation and input received on actreview@ira.go.ke

5.0 Impact

5.1 Rights and Freedoms

The coming into effect of these Guidelines will have no negative impact on the fundamental Rights and Freedoms of the citizens and residents of Kenya.

The Guidelines will ensure adherence to POCAMLA and POTA requirements. The guidelines will enhance the protections of the insurance sector from the vulnerability of Money Laundering and terrorism financing risks.

5.2 The Impact on the Private Sector

The coming into force of the Guidelines will have the effect of promoting the adherence of the insurance sector with the provisions of POCAMLA and POTA legislation and policies. It will create clear framework of implementation of the AML and prevention of terrorism requirements by the insurance industry.

5.3 The Impact on the Public Sector

These Guidelines helps the Authority to comply with its mandate as provided under section 36A of POCAMLA and the requirements of POTA.

6.0 Monitoring and Review

The Guidelines will come into effect immediately upon publication.
The implementation of these Guidelines will be monitored through the supervision by Authority.

These Guidelines will be reviewed in line with the Authority's periodic assessment of the impact of these Guidelines on the insurance industry and any other amendment to POCAMLA and POTA.

The undersigned can be contacted for queries on the statutory instrument.

7.0 Contact

ABDIRAHIN H ABDI
Chairman,
Insurance Regulatory Authority
NAIROBI

GODFREY K KIPTUM
Commissioner of Insurance & Chief Executive Officer
Insurance Regulatory Authority

LEGAL NOTICE NO. 25

THE INSURANCE ACT

(Cap. 487)

3

THE INSURANCE (GROUP-WIDE SUPERVISION) REGULATIONS, 2020

IN EXERCISE of the powers conferred by section 180 of the Insurance Act, the Cabinet Secretary for the National Treasury and Planning makes the following regulations—

Citation.

1. These Regulations may be cited as the Insurance (Group-Wide Supervision) Regulations, 2020.

Interpretation.

2. In these regulations, unless the context otherwise requires—

Cap. 487.

"Act" means the Insurance Act;

"financial conglomerate" means a group of companies including an insurance group of companies, whether operating or non-operating, under common control or dominant influence, comprised of a financial holding company which conducts material financial activities in at least two of the regulated financial services sectors and includes an un-regulated entity;

"parent company" means the entity which controls or exerts dominant influence over a financial conglomerate and may be the ultimate parent or the head of a conglomerate that is a subset of the wider group;

"unregulated entity" means an entity that is not directly regulated by a financial sector regulator; and

"wider group" means the group to which a financial conglomerate belongs including where the financial conglomerate is part of a larger diversified conglomerate with both financial and non-financial entities.

Objective of the regulations.

3. The objective of these regulations is to—

(a) address regulatory arbitrage from group activities and ensure effective supervision of group risks; and

(b) ensure that supervision has proper regard to all entities which may affect the overall risk profile and financial position of the group or the individual entities within the group.

Scope of the regulations.

4. These regulations shall apply to insurance groups.

Achievement of objectives.

5. A financial conglomerate shall establish and maintain organisational governance and communications structures at group level to facilitate the achievement of the objectives of these regulations.

Compliance by group.

6. An entity regulated under the Act shall facilitate and ensure compliance by the group with these regulations.

Delegation by board.

7. The board of a parent company may delegate certain duties to a committee of the board of the parent company, the board of a subsidiary company or an affiliate company of the parent company.

Delegation by senior management.

8. The senior management of a parent company may delegate certain duties to the senior management of a subsidiary company or an affiliate company of the parent company.

Governance arrangements.

9. A financial conglomerate shall have a transparent organisational and managerial structure that is consistent with its overall strategy.

Governance in wider groups.

10. The board and senior management of the head of a financial conglomerate that is part of a wider group shall establish governance arrangements to enable the relevant regulatory authorities to identify and assess risks arising from the wider group.

Information flows.

11. A financial conglomerate shall have a framework governing information flows within the group.

Distinct operational framework.

12. A financial conglomerate shall ensure that each entity within the group has a distinct operational framework including premises.

Governance framework.

13. A financial conglomerate shall establish a group-wide governance framework that addresses the sound governance of the conglomerate.

Resources.

14. A financial conglomerate shall develop a framework that ensures resources are available for entities in group to meet both the group and entities' governance requirements.

Responsibility for management.

15. The board of a parent company shall be ultimately responsible for the sound and prudent management of a financial conglomerate.

Corporate governance.

16. A financial conglomerate shall establish a corporate governance framework which shall—

(a) balance the interests of shareholders, entities within the group and the conglomerate;

(b) take into consideration the interests of policyholders and other recognised stakeholders of the conglomerate and the financial soundness of entities in the conglomerate;

(c) have adequate policies and processes to manage intra-group conflicts and conflicts of interest;

(d) have a risk management framework, an internal control system, an internal audit function and a compliance function;

(e) have a code of ethical conduct and ensure that the group conducts its affairs with a high degree of integrity; and

(f) address the following issues—

(i) alignment with the organisational structure of the financial conglomerate;

(ii) the financial soundness of the significant owners;

(iii) the suitability of members of the board, senior management and key persons in control functions;

(iv) the fiduciary responsibilities of the boards of directors and senior management of the parent company and subsidiaries; and

(v) the management of conflicts of interest including at the intra-group level; and

(vi) remuneration policies and practices within the conglomerate.

Adherence to corporate governance requirements.

17. Where domestic corporate governance requirements applicable to any particular entity in the conglomerate are below the group standards, the more stringent group corporate governance standards shall apply, except where this would lead to a violation of domestic law.

Remuneration policy.

18. A financial conglomerate shall—

(a) develop and implement a remuneration policy which shall be overseen by the parent company; and

(b) ensure that the management of the risks associated with remuneration arrangements is addressed by the financial conglomerate's risk management framework.

Intra-group conflicts.

19. (1) A financial conglomerate shall establish policies for identifying and managing intra-group conflicts of interest including conflicts of interest arising from intra-group transactions, charges, up-streaming dividends and risk-shifting.

(2) The policies under paragraph (1) shall—

(a) be approved by the board of directors of the head of the conglomerate and be implemented throughout the conglomerate; and

(b) recognise the long-term interests of the financial conglomerate, policyholders, significant entities of the conglomerate, the stakeholders within the financial conglomerate and all applicable laws and regulations.

Suitability of board and management.

20. The significant owners, members of the board of directors, senior management and key persons in control functions of a financial conglomerate shall meet fit and proper requirements prescribed by the Act.

Periodic assessment of suitability.

21. A financial conglomerate shall establish processes for periodically assessing the suitability of significant owners, members of the board of directors, senior managers and key persons in control functions.

Responsibilities of the parent company board.

22. The board of directors of a parent company or a financial conglomerate shall—

(a) exercise adequate oversight of its regulated and unregulated subsidiaries;

(b) define the strategy and risk appetite of the financial conglomerate and ensure that the strategy is implemented in

the entities comprising the parent company or financial conglomerate;

(c) provide relevant information on the strategy, risk appetite and corporate governance framework of the financial conglomerate to the Authority;

(d) establish a monitoring framework for compliance with the strategy and risk appetite across the financial conglomerate;

(e) establish a corporate governance framework to ensure that the strategy is implemented, monitored, and reviewed at least once in every three years; and

(f) establish a system for financial reporting that meets the reporting requirements of the group, entities within the group and relevant written laws.

Intra-group transactions.

23. A financial conglomerate shall—

(a) develop and implement a policy on related party transactions;

(b) ensure that related party transactions are at arm's length; and

(c) ensure integrity and transparency in respect of related party transactions.

Group shared services.

24. Where a financial conglomerate or parent company uses shared services at the group level, the conglomerate or company shall satisfy the Authority that the head of the shared services function meets the criteria prescribed by the Authority under the Act.

Capital management policies.

25. (1) The board of directors of a parent company of a financial conglomerate shall develop and implement a capital management policy.

(2) The capital management policy shall take into account any additional risks associated with unregulated activities and the complexities related to cross-sectoral activities.

Capital management.

26. A financial conglomerate shall—

(a) maintain adequate capital on a group-wide basis as determined under the Act;

(b) consider and assess the group-wide risk profile when undertaking capital management;

(c) manage its capital through a documented process to ensure it maintains adequate capital within the group and its subsidiaries;

(d) consider double gearing or multiple gearing when conducting capital adequacy assessment;

(e) address excessive leverage and situations where a parent company issues debt and down-streams the proceeds in the form of equity to a subsidiary;

(f) ensure the capital adequacy measurement techniques consider the potential for undue pressure to service debt of a parent company;

(g) ensure that funds treated as available and included in the group-wide capital assessment should be legitimately movable within the group where necessary; and

(h) ensure that the regulatory capital in a subsidiary and the corresponding capital requirements are calculated according to the rules applicable to the financial sector and jurisdiction in question.

Risk management framework.

27. A financial conglomerate shall—

(a) establish a group-wide risk management framework;

(b) set down in writing its group-wide risk management framework;

(c) establish a group-level risk management function that has a direct reporting line to the board of directors; and

(d) establish a policy for reviewing the effectiveness of the group-wide risk management framework and ensuring appropriate aggregation of risks.

Responsibility for risk management.

28. The board of directors of a parent company shall be responsible for the financial conglomerate's group-wide risk management, audit and compliance functions.

Risk reporting.

29. A financial conglomerate shall put in place effective systems and processes to manage and report group risks.

Dated the 7th February, 2020.

UKUR YATANI,
Cabinet Secretary,
for National Treasury and Planning.

LEGAL NOTICE NO. 26

THE INSURANCE ACT

(Cap. 487)

THE INSURANCE (MICROINSURANCE) REGULATIONS, 2020

IN EXERCISE of the powers conferred by section 180 of the Insurance Act, the Cabinet Secretary for the National Treasury and Planning makes the following regulations—

Citation.

1. These Regulations may be cited as the Insurance (Microinsurance) Regulations, 2020.

Interpretation.

2. In these regulations, unless the context otherwise requires—

"bundled microinsurance product" means a microinsurance product that covers one or more classes of—

(a) general insurance business;

(b) long term insurance business; and

(c) general and long-term insurance business;

"general microinsurance product" means a health insurance contract, a contract covering personal belongings including dwellings, livestock, crops or tools of trade, or a personal accident contract, either on individual or group basis, according to the terms specified in the microinsurance criteria of the contract;

"fixed sum insurance" means an insurance contract under which an agreed specified fixed sum is payable or agreed specified fixed benefits shall be provided by the insurer to the policyholder on the occurrence of the insured risk regardless of the actual loss or damage suffered by the policyholder;

"grace period" means a specified period immediately following the premium due date during which a payment can be made to continue a policy in force without interruption;

"life microinsurance product" means a life insurance product designed in accordance with terms stated in the microinsurance criteria;

"master policyholder" in relation to a group microinsurance contract, means a person who is the legal holder of the policy issued in respect of that contract;

"microinsurer" means a person registered under the Act to carry on microinsurance business;

"microinsurance business" means insurance that is accessed by or accessible to the low-income population, including the underserved markets provided by a variety of different entities and managed in accordance with generally accepted insurance principles;

"microinsurance actuary" means a person who holds the qualifications of Certified Actuarial Analyst at a minimum; and

"waiting period" means the period an insured person shall be required to wait before some or all of that person's insurance coverage shall come into effect.

EXPLANATORY MEMORANDUM

INSURANCE (GROUP- WIDE SUPERVISION) REGULATIONS, 2020

PART I

Name of Statutory Instrument:	Insurance (Group-Wide Supervision) Regulations, 2020
Name of the Parent Act:	The Insurance Act, (Cap. 487)
Enacted Pursuant to:	Section 180 of the Insurance Act
Name of the Ministry/Department:	The National Treasury and Planning
***Gazetted* on**:	28th February, 2020
Tabled on:	

PART II

1. Purpose of Statutory Instrument

The purpose of the statutory instrument is to provide a framework for the supervision of insurance groups in Kenya. The formulation of these regulations is borne by the adoption of risk-based supervision. It followed the increase in the number of group of companies that have an impact on the operation of the insurance entity. The insurance entity within a group is often exposed to contagion risk from other group members which needs to be monitored to protect it. Some of the matters that need to be supervised under group-wide supervision include capital adequacy, risk management and financial stability within the group. The regulations also cover the intra-group transactions, communication flow within the group as well as the governance framework.

2. Legislative Context

Group wide supervision was first introduced in the Insurance Act through the Insurance (Amendment) Act, 2017 by defining the terms, insurance groups, and non-operation holding company. The Act further introduced a requirement of submission of group accounts and risk management to be assessed group wide basis. A new subsection (1A) of section 180 of Insurance Act empowered

the Cabinet Secretary to formulate regulations on group wide risk mitigations and prudential supervision of groups.

The Authority is also a member of the International Association of Insurance Supervisors which has issued an Insurance Core Principles which requires the group-wide supervisor should have sufficient authority and power in order to coordinate and disseminate the essential information needed for reviewing and evaluating risks and assessing solvency on a group-wide basis. A group-wide supervisor ultimately should be responsible for ensuring effective and efficient group-wide supervision.

3. Policy Background

The introduction of risk-based supervision by the Authority prompted the need for the supervision of the insurance groups in group wide basis. This is because the insurance entity within the group is exposed to risk from the other members of the group.

Under group wide supervision the Authority is required to identify a group, regarded as an insurance group which covers all relevant entities. In deciding which entities are relevant, consideration should be given to, at least:-

- operating and non-operating holding companies (including intermediate holding companies);
- insurers (including sister or subsidiary insurers);
- regulated entities such as banks and/or securities companies;
- regulated entities (including parent companies, their subsidiary companies and companies substantially controlled or managed by entities within the group); and
- special purpose entities.

In formulating group wide supervision regulations, the following matters should be taken into account in relation to insurance entity:-

- (direct or indirect) participation, influence and/or other contractual obligations;
- interconnectedness;
- risk exposure;
- risk concentration;

- risk transfer; and/or
- intra-group transactions and exposures.

4.0. Consultation Outcome

As provided for in Articles 10 and 118 of the Constitution of Kenya, the Insurance Regulatory Authority, consulted the stakeholders and the general public on the effect of the regulations. The responses informed the policy behind the draft regulations.

The following consultations and stakeholder forums were held.

SCHEDULE OF INTERNAL STAKEHOLDERS

Date	Venue	Workshops / Forums
20/02/2018	Insurance Regulatory Authority's Training Room	Exposure of the regulations to the Authority's staff
23/02/2018	College of Insurance	Stakeholder's Workshop for insurance companies
08/03/2018	Insurance Regulatory Authority's Training Room	Bancassurance Stakeholders.

The outcome of stakeholder and public consultation was in favour of the issuance of the Regulations.

The Draft Regulations were availed on the Insurance Regulatory Authority website https://www.ira.go.ke for pubic consultation and input received on actreview@ira.go.ke

5.0 Impact

5.1 Rights and Freedoms

The coming into effect of these Regulations will have no negative impact on the fundamental Rights and Freedoms of the citizens and residents of Kenya.

The Regulations will ensure penetration and inclusiveness of insurance services to the underserved in the market. This will enhance both the economic and social rights of the people of Kenya.

5.2 The Impact on the Private Sector

The coming into force of the Regulations will have the effect of promoting insurance business and maintaining a fair, safe and stable insurance industry.

5.3 The Impact on the Public Sector

The Regulations provide for the mechanism of supervision of the insurance groups to enhance stability of insurance sector.

6.0 Monitoring and Review

The Regulations will come into effect immediately upon publication.
The implementation of these Regulations will be monitored through the supervision by Authority.

These Regulations will be reviewed in line with the Authority's periodic assessment of the impact of these Regulations on the insurance industry.

The undersigned can be contacted for queries on the statutory instrument.

7.0 Contact

Hon. (Amb.) Ukur K. Yatani, EGH

Cabinet Secretary for the National Treasury and Planning

P.O Box 30007-00100

NAIROBI

9th March, 2020

LEGAL NOTICE NO. 26

THE INSURANCE ACT

(Cap. 487)

THE INSURANCE (MICROINSURANCE) REGULATIONS, 2020

IN EXERCISE of the powers conferred by section 180 of the Insurance Act, the Cabinet Secretary for the National Treasury and Planning makes the following regulations—

Citation.

1. These Regulations may be cited as the Insurance (Microinsurance) Regulations, 2020.

Interpretation.

2. In these regulations, unless the context otherwise requires—

"bundled microinsurance product" means a microinsurance product that covers one or more classes of—

(a) general insurance business;

(b) long term insurance business; and

(c) general and long-term insurance business;

"general microinsurance product" means a health insurance contract, a contract covering personal belongings including dwellings, livestock, crops or tools of trade, or a personal accident contract, either on individual or group basis, according to the terms specified in the microinsurance criteria of the contract;

"fixed sum insurance" means an insurance contract under which an agreed specified fixed sum is payable or agreed specified fixed benefits shall be provided by the insurer to the policyholder on the occurrence of the insured risk regardless of the actual loss or damage suffered by the policyholder;

"grace period" means a specified period immediately following the premium due date during which a payment can be made to continue a policy in force without interruption;

"life microinsurance product" means a life insurance product designed in accordance with terms stated in the microinsurance criteria;

"master policyholder" in relation to a group microinsurance contract, means a person who is the legal holder of the policy issued in respect of that contract;

"microinsurer" means a person registered under the Act to carry on microinsurance business;

"microinsurance business" means insurance that is accessed by or accessible to the low-income population, including the underserved markets provided by a variety of different entities and managed in accordance with generally accepted insurance principles;

"microinsurance actuary" means a person who holds the qualifications of Certified Actuarial Analyst at a minimum; and

"waiting period" means the period an insured person shall be required to wait before some or all of that person's insurance coverage shall come into effect.

Scope of the regulations.

3. Save as specifically provided, these regulations shall apply to any person engaged in microinsurance business.

Grace periods.

4. (1) The grace period for microinsurance contracts shall be at least forty-five days from the date when the premium falls due for payment.

(2) A grace period shall not be provided for index-based microinsurance products.

Microinsurance criteria.

5. A microinsurance contract shall satisfy the following criteria—

(a) the policy shall offer protection to an individual or members of a group and their property and shall exclude third party liability risks;

(b) the contract term of the policy shall not exceed twelve months;

(c) the policy may be renewable at the end of the contract term without the need for a new policy document subject to the payment of premium;

(d) the amount of daily premiums or contributions shall not exceed forty shillings;

(e) the sum insured shall not be more than five hundred thousand shillings;

(f) the policy shall be a fixed sum insurance contract;

(g) the policy shall not provide for a change of the product's features during the term of the contract;

(h) the policy shall expressly state that the cover under the contract shall not commence until—

(i) the premium has been paid; or

(ii) where the contract provides for payment of the premium by instalments, the first instalment of the premium has been paid.

Approval of microinsurance products.

6. (1) A microinsurer shall apply to the Authority for approval of a microinsurance product and any amendments to the terms of the product in accordance with the product approval guidelines issued under the Act.

(2) In addition to the conditions specified in paragraph (1), a microinsurer shall submit—

(a) a sample policy summary;

(b) the proposed commission rates or fee structures;

(c) a sales plan specifying how the product will be marketed and distributed; and

(d) copies of drafts of any agreements with intermediaries or other persons who shall be involved in the marketing or distribution of the product.

Revocation of approval of microinsurance products.

7. (1) The Authority may, by notice in writing, revoke the approval of a microinsurance product—

(a) on application by the microinsurer;

(b) where the product ceases to meet the requirements of the Act or these regulations; or

(c) where the microinsurer ceases to comply with the provisions of the Act or these regulations.

(2) A revocation of approval of an existing microinsurance product shall not affect any existing contracts.

Change of product features.

8. (1) A microinsurer shall not alter the microinsurance product's features without the prior written approval of the Authority.

(2) An application to change the microinsurance product's features shall be accompanied by a written certification by the microinsurance actuary that the revised terms have been determined in accordance with generally accepted actuarial methodologies.

(3) A change in the microinsurance product's features shall not be applicable to existing contracts.

Group microinsurance policies.

9. (1) A microinsurer may offer a group policy that meets the following conditions—

(a) the master policyholder purchases the insurance policy on behalf of members of the group and their beneficiaries;

(b) the group is identifiable and exists independently of the insurance contract;

(c) the group is not formed by an intermediary or a registered insurer; and

(d) the risks insured under the policy are related to the common interests or activities of the beneficiaries.

(2) Where group underwriting is applied, price discrimination shall not be allowed between individuals within the group.

(3) The master policyholder shall disclose the premium payable by each member of the group and the benefits payable to the members at the inception of the contract.

Marketing materials.

10. Any marketing material developed for a microinsurance contract shall be in the same language as the policy document and shall be in a clear, plain and easy to understand language.

Policy summaries.

11. (1) A microinsurer shall prepare a simple policy summary for each of its micro insurance policies with an express declaration in the summary that the product is a microinsurance product.

(2) A policy summary shall—

(a) be no more than one A4 page with a minimum font size of 12 or in an electronic format that captures similar details that it will have if it was in paper form;

(b) be written in clear, plain and easy to understand language with no or minimal use of technical and legal language;

(c) where any technical or legal language is used, the language shall be fully explained;

(d) be in the same language as the policy document; and

(e) contain a summary of the cover provided and the key features of the policy.

(3) The policy summary shall be issued to prospective policyholders, in electronic form or otherwise, prior to selling the policy.

(4) Despite paragraph (2), the policy summary shall contain the following information—

(a) the name of the microinsurer and the address of its principal office in Kenya;

(b) a description of the insured risks and any exclusions or limitations that apply;

(c) the duration of the policy, the period of cover, the grace period and any waiting periods that apply;

(d) the principal benefits provided under the policy;

(e) any obligations on a prospective policyholder to disclose material facts before purchasing the policy;

(f) procedures for payment of premiums, date when premium is payable, amount of premium payable including consequences of non-payment of premiums;

(g) whether, and in what circumstances the policy is renewable and the procedures for renewal;

(h) whether, and in what circumstances the policy is renewable and the procedures for renewal;

(i) the claims procedures;

(j) the right to complain and the method of lodging a complaint;

(k) a statement that the Policy Summary does not contain the full terms of the insurance policy, which are to be found in the policy document; and

(l) how the policyholder may obtain a copy of the policy document.

Policy documents.

12. (1) A microinsurer shall ensure that the policy document for a microinsurance contract—

(a) is written in clear, plain and easy to understand language with no, or minimal, use of technical and legal language; and

(b) will be easily understood by any person to whom it is marketed and sold.

(2) A microinsurance policy document shall—

(a) be written in English or Kiswahili or any other language:

Provided that where a language other than English or Kiswahili is used, the issuer shall provide an English or Kiswahili translation of the microinsurance policy document;

(b) state in clear terms that it is a microinsurance policy;

(c) contain no or few exclusions; and

(d) shall specify—

(i) the name of the microinsurer;

(ii) the name of the policyholder;

(iii) the insured risk;

(iv) the compensation to be made, or the benefits to be provided, on the occurrence of the insured risk;

(v) any exclusions applicable to the contract; and

(vi) the procedure for making a claim.

Provision of policy documents and receipts.

13. (1) A microinsurer shall, within three working days of the commencement of a microinsurance contract, provide the policyholder with a policy document and a confirmation of receipt of premium.

(2) A microinsurer may provide the documents under paragraph (1) in electronic form.

Claims payments.

14. (1) A microinsurer shall, within ten calendar days of receipt of a claim notification under a microinsurance policy, pay or reject the claim and, in the case of a rejection, notify the claimant in writing the reasons for the rejection.

(2) Where a claim notification is received by a microinsurance intermediary, such notification shall be deemed to have been received by the microinsurer.

(3) Where a microinsurer is unable to complete the claim process due to a reasonable cause, the microinsurer shall seek an extension of time of not more than ten calendar days from the Authority to complete the claims process.

Registration requirements.

15. (1) Except as otherwise provided for under the Act, only a person registered in accordance with these regulations shall carry on microinsurance business in Kenya.

(2) The name of a registered microinsurer shall contain the word "microinsurance" in microinsurer's registered name.

(3) A registered insurer who intends to carry on microinsurance business shall set up a separate microinsurance company for that purpose.

(4) Where a registered insurer sets up a separate microinsurance company for the purposes of carrying on microinsurance business, the management and governance structure of the parent company may be used for the separate microinsurance company.

Application for registration.

16. (1) Microinsurance registration applications shall be subject to similar registration requirements as insurers under the Act, but with capital, annual registration and operational requirements as set out in these regulations.

(2) A person who has applied to be registered as a microinsurer shall have the higher of—

(a) a minimum paid up capital of fifty million shillings; or

(b) risk-based capital as may be determined by the Authority.

(3) A microinsurer shall apply to the Authority for the renewal of registration annually on or before the 30th of September.

(4) The reserving requirements for microinsurance products marketed or sold under by a microinsurer shall be the same as for products sold under general insurance business.

Complaints.

17. (1) A microinsurer shall establish and maintain a function and procedures for dealing with enquiries, complaints and disputes.

(2) A microinsurer shall within seven calendar days of receiving a complaint, resolve the complaint and notify the complainant of its decision.

Appointment of microinsurance intermediaries.

18. (1) A microinsurer may appoint a microinsurance intermediary by entering into an agreement which shall specify the terms and conditions of the relationship between the microinsurer and the intermediary.

(2) A microinsurance intermediary shall not require to be registered by the Authority.

(3) A microinsurer may appoint any person as a microinsurance intermediary:

Provided that—

(a) the microinsurer is satisfied that the person is fit and proper to be a microinsurance intermediary;

(b) the person has successfully completed a microinsurance training program approved by the Authority; and

(c) the person shall be monitored and supervised as a microinsurance intermediary by the microinsurer.

Register of microinsurance intermediaries.

19. (1) A microinsurer shall keep and maintain a register of all microinsurance intermediaries that it has appointed.

(2) The register of microinsurance intermediaries shall include—

(a) full name, business address and contact details of each intermediary;

(b) the date of appointment and termination where applicable;

(c) the volume of business generated by the microinsurance intermediary by class or type;

(d) the source of microinsurance business; and

(e) the amount of commissions or fees paid to the microinsurance intermediary.

Training obligations.

20. (1) A microinsurer shall, at its expense, provide at least twenty-five hours of training to all its microinsurance intermediaries at the time of appointment.

(2) A microinsurer shall, at its expense, ensure that its microinsurance intermediaries undergo refresher training of at least fifteen hours after every three years.

(3) A microinsurance training programme shall include training on—

(a) the provisions of the Act and these regulations;

(b) the duties and responsibilities of the intermediary in the distribution of microinsurance products;

(c) the specific microinsurance products that the intermediary shall be authorised to distribute;

(d) the insurance market;

(e) claims and complaints handling procedures of the microinsurer; and

(f) consumer protection and the fair treatment of policyholders.

Commissions and fees.

21. The commission or fee payable to a microinsurance intermediary by the microinsurer shall not exceed fifteen per cent of the premium paid.

Reporting requirements.

22. In addition to any other reporting requirements under the Act, a microinsurer shall regularly report to the Authority on the following matters—

(a) information in respect of microinsurance business as may be required by the Authority;

(b) quarterly information regarding the handling of complaints or grievances made against the microinsurer or its microinsurance intermediaries not more than fifteen days after the end of the quarter to which it relates; and

(c) annual reports on microinsurance intermediaries that were appointed by the microinsurer during the year not later than three months after the end of the year in which the appointments were made.

Enforcement.

23. All the penalties and sanctions applicable to insurers under the Act shall apply to microinsurers with the necessary modifications.

Transition.

24. A registered insurer engaged in microinsurance business shall continue providing such products and regularise compliance with these regulations within three years from the date of the coming into operation of these regulations.

Dated the 7th February, 2020.

UKUR YATANI,
Cabinet Secretary,
for National Treasury and Planning.

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EXPLANATORY MEMORANDUM

MICROINSURANCE REGULATIONS, 2020

PART I

Name of Statutory Instrument : Microinsurance Regulations, 2020

Name of the Parent Act : The Insurance Act, (Cap. 487)

Enacted Pursuant to : Section 180 of the Insurance Act

Name of the Ministry/Department: The National Treasury and Planning

***Gazetted* on** : 28th February, 2020

Tabled on :

PART II

1. Purpose of Statutory Instrument

The purpose of the statutory instrument is to provide a framework for the operation of microinsurance business in Kenya. This is based on the need for enhanced access to insurance at affordable rates to the lower end of the market as set out in the Kenya Vision 2030. Insufficient safety nets for the low income populations offers credence to the need for development of the microinsurance legal framework in Kenya.

A study by FinAccess conducted in 2016 revealed that the rate of insurance penetration including NHIF was at 4.9% of GDP. The report provided that the access of NHIF increased by 5% in 2013 and the other form of insurance has remained stagnant. It further revealed that the majority of the insured are drawn from the formal sector, which accounts for about 5% of the total population. This therefore means that majority of Kenyans in the informal sector are not adequately provided for by conventional insurance. A different concept of insurance is therefore necessary to facilitate the required growth by tapping into the potential existing in the informal sector.

2. Legislative Context

Insurance Regulations were amended through Legal Notice Number 57 of 2012 that introduced microinsurance as a new class of general insurance. The regulations further defined the term microinsurance.

The Authority through the support of the Financial and Legal Sector Technical Assistance Programme developed a policy paper on the Kenya Microinsurance. The paper recommended a legal framework that provides for the –

a) definition that will be used by the Authority to approve a product as a microinsurance product;

b) type of institutions that the Authority will allow to underwrite and sell microinsurance products;

c) consumer protection requirements that microinsurance underwriters and agents will have to follow;

d) prudential regulations that should apply to microinsurers;

e) tax benefits needed for microinsurance companies;

f) consumer education programmes that the Authority should initiate; and

g) transition arrangement that will apply to current formal and informal underwriters and distributors who want to transition to the microinsurance licence.

It is out of the above recommendation that these regulations were formulated to come up with the mechanism of regulating the microinsurance business in Kenya. The regulations propose to allow for the licensing of microinsurers with a lower capital requirement as compared to the conventional insurers.

3. Policy Background

The need to increase the uptake of insurance business in Kenya among the low-income population working in the informal sector, prompted the demand for microinsurance. This led to the development of the policy paper on Microinsurance in Kenya with the objective of formulating a legal and regulatory framework. The paper articulated the need for development of regulations to provide for a mechanism for regulating microinsurance business.

The Authority projects to increase penetration from 2.8% to 3.5% by the year 2022.

The policy paper emphasized that smallholder farmers, small traders and manufacturers and people generating livelihoods on a small and generally vulnerable scale constitute the base of the untapped microinsurance market in Kenya. The paper highlights that the banking sector has been active in tapping into this market through microfinance institutions and savings societies however the insurance industry is yet to make a meaningful impact.

4.0. Consultation Outcome

As provided for in Articles 10 and 118 of the Constitution of Kenya, the Insurance Regulatory Authority, consulted the stakeholders and the general public on the effect of the regulations. The responses informed the policy behind the draft regulations.

The following consultations and stakeholder forums were held.

SCHEDULE OF INTERNAL STAKEHOLDERS

Date	Venue	Workshops / Forums
20/02/2018	Insurance Regulatory Authority's Training Room	Exposure of the regulations to the Authority's staff
23/02/2018	College of Insurance	Stakeholder's Workshop for insurance companies
08/03/2018	Insurance Regulatory Authority's Training Room	Bancassurance Stakeholders.

The outcome of stakeholder and public consultations was in favour of the issuance of the Regulation.

The Draft Regulations were availed on the Insurance Regulatory Authority website https://www.ira.go.ke for pubic consultation and input received on actreview@ira.go.ke

The Authority will also engage in further stakeholder education and dissemination through both the print and electronic media, and other activities for public awareness, to ensure that all parties are aware of the existence of the Regulations and their effect.

5.0 Impact

5.1 Rights and Freedoms

The coming into effect of these Regulations will have no negative impact on the fundamental Rights and Freedoms of the citizens and residents of Kenya.

The Regulations will ensure penetration and inclusiveness of insurance services to the underserved in the market. This will enhance both the economic and social rights of the people of Kenya.

5.2 The Impact on the Private Sector

The coming into force of the Regulations will have the effect of promoting insurance business and ensuring penetration and wider coverage to the most underserved in the market while maintaining a fair, safe and stable insurance industry.

5.3 The Impact on the Public Sector

As part of product development, the Regulations seek to enable Micro, Small and Medium Enterprises (MSME) and agriculture sector have access to insurance products in a regulated environment. This will ensure inclusiveness and penetration of in the insurance services aiding in;

1. The Government's Big 4 Agenda;
2. Enhancing business in the 47 County Governments;
3. Insurance as a tool of financial inclusion to Kenyan citizens;
4. Achievement of Kenya's Vision 2030.

6.0 Monitoring and Review

The Regulations will come into effect immediately upon publication. The implementation of these Regulations will be monitored through the supervision by Authority.

These Regulations will be reviewed in line with the Authority's periodic assessment of the impact of these Regulations on the insurance industry.

7.0 Contact

Hon. (Amb.) Ukur K. Yatani, EGH

Cabinet Secretary for the National Treasury and Planning

P.O Box 30007-00100

NAIROBI

9th March, 2020