



THE NATIONAL ASSEMBLY  
LORDS LAID

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Kenya Subsidiary Legislation, 2020

Ken. Debt Act  
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Leah Namburo Masey

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—

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

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

“Act” means the Insurance Act; Cap. 487.

“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 unregulated 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.

3. The objective of these regulations is to— Objective of the regulations.

(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.

4. These regulations shall apply to insurance groups. Scope of the regulations. 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.

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

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 board.

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.	Delegation by senior management.
9. A financial conglomerate shall have a transparent organisational and managerial structure that is consistent with its overall strategy.	Governance arrangements.
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.	Governance in wider groups.
11. A financial conglomerate shall have a framework governing information flows within the group.	Information flows.
12. A financial conglomerate shall ensure that each entity within the group has a distinct operational framework including premises.	Distinct operational framework.
13. A financial conglomerate shall establish a group-wide governance framework that addresses the sound governance of the conglomerate.	Governance framework.
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.	Resources.
15. The board of a parent company shall be ultimately responsible for the sound and prudent management of a financial conglomerate.	Responsibility for management.
16. A financial conglomerate shall establish a corporate governance framework which shall—	Corporate governance.
(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.
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.
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.
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, upstreaming 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.
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.
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.
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

Adherence to corporate governance requirements.

Remuneration policy.

Intra-group conflicts.

Suitability of board and management.

Periodic assessment of suitability.

Responsibilities of the parent company board.

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.

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.

Intra-group transactions.

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.

Group shared services.

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

Capital management policies.

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

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;

Capital management.

- (l) 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.

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.

Risk management framework.

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.

Responsibility for risk management.

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

Risk reporting.

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—

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

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

“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**

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

#### **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**

<b>Date</b>	<b>Venue</b>	<b>Workshops / Forums</b>
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 public consultation and input received on [actreview@ira.go.ke](mailto: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**