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**REPUBLIC OF KENYA  
NATIONAL ASSEMBLY  
NINTH PARLIAMENT - SECOND SESSION**

**REPORT  
OF THE  
DEPARTMENTAL COMMITTEE  
ON  
FINANCE, PLANNING & TRADE**

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**ON  
THE INSURANCE (AMENDMENT) BILL, 2003**

**NOVEMBER, 2003**

## **1.0 INTRODUCTION**

Mr. Speaker Sir, on behalf of the Members of the Departmental Committee no. F on Finance, Planning and Trade and pursuant to the provisions of Standing Order N. 101 (3), I would like to take this opportunity to present to the House, the Report of the Committee on the Insurance (Amendment) Bill, 2003.

***The functions of the Departmental Committee as established under Standing Order No. 151 are inter alia:-***

- (i) to study and review all legislation after First Reading subject to the exemptions under Standing Order No. 101 A (4)***
- (ii) to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary and as may be referred to them by the house or a Minister.***
- (iii) to make reports and recommendations to the House as often as possible including recommendations of proposed legislation.***

The Insurance (Amendment) Bill, 2003 was referred to the Departmental Committee on Finance, Planning and Trade upon a motion moved by the Minister for Finance pursuant to the provisions of Standing Order No. 101(1). The Committee in conjunction with State University of New York (SUNY) held a workshop in Mombasa for Parliamentary Committees to deliberate on the Insurance (Amendment) Bill, 2003 among other Bills.

## **2.0 DELIBERATION ON THE INSURANCE (AMENDMENT) BILL, 2003**

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The Ministry of Finance informed Members as follows:-

**Clause 2(a)** - The Clause is being amended to bring the Health Maintenance Organizations (HMOs) under the ambit of the Insurance Act since they offer medical insurance. This is intended to protect the insured public in the event of a collapse or mismanagement of the HMOs.

**Clause 2(C)** - The Clause is being amended to redefine the word “insurer” so as to remove the ambiguity.

The definition in the current Act implies that some insurance players can operate in the market without seeking formal registration from the Commissioner of Insurance.

**Clause 3** - Section 27 of the Principal Act is being amended through the insertion of a new section 27A.

The import of this amendment is to set the minimum number of board of directors of insurers to five (5) and ensure that they have some experience and knowledge in financial management.

The effect of the amendment is to ensure insurers are prudentially run and to encourage good corporate governance of these institutions.

**Clause 4 -** Section 31 of the Act is being amended to require senior managers underwriting insurance business to have technical/professional qualifications.

The Minister intends to entrench professionalism in the management of insurance business by ensuring that only persons having professional qualifications are employed.

**Clause 5 -** Section 54 of the Insurance Act is being amended to require insurers to submit on a quarterly basis un-audited revenue accounts, balance sheet, profit and loss account, statement of admitted assets and admitted liabilities.

Under the circumstances, it is not easy for the Commissioner to know the performance of Insurance companies in cases where such companies are undergoing financial difficulties.

**Clause 6 -** Section 53 creates the impression that there are non-resident companies in the local market. This is not the case and consequently the section is being amended for being superfluous.

**Clause 7 -** (a) Section 61 (I) provides that every account, balance sheet, certificate, abstract return or statement be prepared and submitted to the Commissioner after authentication within six months after the financial year.

This period is too long compared to other banking and capital market players. Therefore, the section is being amended to require underwriters to file returns by the end of March instead of June.

- (b) Section (1) is further being amended to require insurers to publish copies of their annual returns not later than 30 days subsequent to depositing the same with the Commissioner.

The amendment is intended to improve the corporate governance and accountability of the Insurance companies.

**Clause 8 -** Section 67A of the Insurance Act gives an impression that the Commissioner of Insurance may only inspect and control insurers and not other stakeholders in the same industry.

Therefore, the section is being amended to confer powers upon the Commissioner of Insurance, authority to inspect and control all persons registered under the Insurance Act.

**Clause 9 -** Section 67B of the Act is being amended to include "***any other person registered under this Act***".

The effect is to confer powers upon the Commissioner to enable him compel other persons engaged in the insurance business to comply with the conditions given after an inspection is conducted.

**Clause 10 -** Section 67D of the Act is being amended to include a penalty of Kshs. 200,000/= against those found transacting with any unauthorized persons and charging premium rates not filed with the Commissioner under section 75 of the Act.

This is to accord the industry players a level playing ground.

**Clause 11 -** Section 68 of the Act is being amended to include “**Agent**” and “**medical insurance provider**” in the list of those members being registered under the Act.

The current Act had omitted Agents from those registered although they are included in other parts of the Act.

**Clause 12 -** Section 73 of the Principal Act is amended to enable insurance agents negotiate the brokerage commissions within the set ceiling.

**Clause 13 -** Section 150 of the Act is being amended by including “**medical insurance providers**” in the requirement for licensing of intermediaries.

The effect of this is to make it compulsory for medical insurance providers to seek registration under the Insurance Act and hence scrutinize before licensing. This will also ensure that risks are borne by properly capitalized insurers.

**Clause 14 -** New Section 150A is being introduced to the Principal Act in order to explain the

role of a “ medical insurance provider”.

**Clause 15 -** Section 152 of the Act is being amended to add the expression “**medical insurance provider**” among the intermediaries.

The effect of this is to enable the Commissioner to deal with medical insurance providers on matters of licensing and supervision.

**Clause 16 -** Section 154 of the Act is amended by deleting the words “**more than one insurer**” and substituting with “**not more than three**”.

The amendment restricts insurance agents to dealing with at most three principals.

- This will solve the problem of agents who have been moving from one principal to another thereby leaving big amounts of un-remitted premiums.
- The Commissioner will be able to monitor the agents activities when limited to three insurers unlike the previous unlimited number.

**Clause 17 -** Section 17 156 of the Act is being amended by deleting the words “**before the last day of the month next following that in which the risk commences**” and substituting the words “**not later than thirty days next following the day on which the risk commences**”.

The effect of this amendment is to reduce

the credit period the brokers were being given by insurers before remitting premiums from sixty days to thirty days.

The previous arrangement was creating problems for insurers who could not receive the premium early and yet are expected to pay claims. Some brokers were even misappropriating the premiums as they held it over the period.

**Clause 18** - Section 196 of the Act is amended to allow the Commissioner to gazette and publish in the Kenya Gazette and in two daily newspapers names of members of the insurance industry whose registration have been cancelled.

The effect of this is to create awareness to the general public of those members whose operations have been stopped so as not to transact with such persons.

The intention is to move to a cash and carry situation where brokers remit premiums immediately in future.

### **3.0. COMMITTEE'S OBSERVATIONS**

The Committee deliberated on the Insurance Amendment Bill, 2003 with the Association and made the following observations:-

- (i) The tendency by Insurance Brokers to withhold clients' payments for onward transmission to the Insurance Companies is the likely mischief that occasioned the proposed Amendment Bill.



- (ii) There is apparent abuse of the system through registration of brokering companies by relatives or friends to ensure the award of the contract on insurance service through political influence.
- (iii) There is need to limit the level of business covered in the Government by an Insurance Company. Therefore, disclosure of public business level covered is of necessity both to the regulatory authority and the public.
- (iv) There is no justification for the existence of Insurance Brokers due to incidents of withholding clients' payments. Therefore, clients should deal directly with Insurance Companies.
- (v) The office of the Commissioner Insurance appears ineffective in ensuring compliance. Apparently, there is lack of capacity to police/regulate the industry hence there is need to retool the office.
- (vi) There is need to vet Insurance Brokers so as to control their operations and to have professional and credible brokers in the industry.
- (vii) There is need to entrench the Code of Conduct in the law so as to regulate the operations of the players in the industry.

#### **4.0 PROPOSED AMENDMENTS**

The Association of Insurance Brokers of Kenya proposed the following amendments to the Insurance (Amendment) Bill, 2003:-

**(i) CLAUSE 17(a)**

THAT, Clause 17(a) be amended by inserting the following words after the word "insurer" at the end.

“or to have agreed with the broker on premium collection and remittance terms”.

The proposed amendment is based on the fact that credit agreement between the Insurance Brokers and Insurance Companies is a worldwide practice.

**(ii) CLAUSE 17(b)**

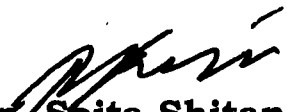
THAT, Clause 17(b) be amended by deleting the word “broker”.

The reason for the proposed amendment being that, a broker is a corporate body governed by the Company Act and not an Employee of the Insurance Company as is the case of an Agent. Moreover, any fear thereto as to the protection of the insured is well covered under Section 156(2) of the proposed amendments.

**5.0 CONCLUSION**

The Committee recommends that the House adopts its Report on the Insurance (Amendment) Bill, 2003.

Mr. Speaker Sir, may I take this opportunity to thank Members of Finance, Planning and Trade Committee for their input and the other Members of Parliament for their valuable contributions on the Bill during the workshop.

  
**Hon. Soita Shitanda, MP**  
**Chairman of the Departmental Committee on**  
**Finance, Planning and Trade**

Date.....  
