



REPUBLIC OF KENYA

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KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – SECOND SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

REPORT ON THE INSURANCE (AMENDMENT) BILL, 2013

PARLIAMENT BUILDINGS NAIROBI

OCTOBER, 2013

Approved
11/10/13
5/10/13

Paper laid
By champion
of Finance, Trade, and
Hon Benjamin
Langat
on Tuesday
11/10/13



INTRODUCTION

The Departmental Committee on Finance, Planning & Trade is one of the twelve Departmental committees of the National Assembly established under SO 216 and mandated to, inter alia; 'to study and review all legislations referred to it;

Specifically, the Committee deals with *Public finance, monetary policies, public debt, financial institutions, investment and divestiture policies, pricing policies, banking, insurance, population, revenue policies, planning, national development, trade, tourism promotion and management, commerce and industry.*

The Standing Orders also empowers the Committee to make its own selection of the subjects regarding the policy, management and administration among others of the Ministries and Departments falling under its jurisdiction.

COMMITTEE'S MEMBERSHIP

The committee comprises of the following members:-

1. Hon. Benjamin Langat, MP (Chairman)
2. Hon. Nelson Gaichuhie, MP (vice Chairman)
3. Hon. Jones M Mlolwa, MP
4. Hon. Anyanga, Andrew Toboso, MP
5. Hon. Timothy M .E. Bosire, MP
6. Hon. Shakeel Shabbir Ahmed, MP
7. Hon. Joash Olum, MP
8. Hon. Dr. Oburu Oginga, MP
9. Hon. Patrick Makau King'ola, MP
10. Hon. Abdullswamad Sheriff, MP
11. Hon. Sumra Irshadali, MP

12. Hon. Ogendo Rose Nyamunga, MP
13. Hon. Iringo Cyprian Kubai, MP
14. Hon. Dennis Waweru, MP
15. Hon. Tiras N. Ngahu, MP
16. Hon. Sakaja Johnson, MP
17. Hon. Jimmy Nuru Angwenyi, MP
18. Hon. Ronald Tonui, MP
19. Hon. Mary Emase, MP
20. Hon. Joseph Limo, MP
21. Hon. Lati Lelelit, MP
22. Hon. Kirwa Stephen Bitok, MP
23. Hon. Sammy Mwaita, MP
24. Hon. Daniel E. Nanok, MP
25. Hon. Eng. Shadrack Manga, MP
26. Hon. Abdul Rahim Dawood, MP
27. Hon. Sakwa John Bunyasi, MP
28. Hon. Alfred W. Sambu, MP
29. Hon. Sammy Koech, MP

On Thursday, 27th June, 2013, the Insurance (Amendment) Bill, 2013 went through the First Reading and referred to the Departmental Committee on Finance, Planning & Trade pursuant to the provisions of the Standing Order No. 127 of the National Assembly.

Pursuant to Article 118 of the Constitution and Standing Order 127, the Departmental Committee on Finance, Planning & Trade facilitated Public Participation by engaging the stakeholders on the Bill. The Committee met with the National Treasury, Pricewaterhousecoopers (Independent auditing firm), and Institute of Certified Public Accountants of Kenya (ICPAK) in the process of public participation and made presentations.

COMMITTEE'S OBSERVATIONS

The Committee observed that:

1. This Bill intends to amend the Principal Act Cap. 487 to among other things to conform with the constitution and also facilitate the implementation of EAC Treaty, in particular, the requirements of opening business opportunities (in this case Insurance) in the EAC Partner States as contained in the Common Market Protocol.
2. Further, the bill proposes to reduce the time of the insurer submitting their books of accounts from 120 days to 90 days to facilitate timely processing of compensation of policyholders.
3. The bill proposes to protect the interests of the policyholder by ensuring that funds will be made available for policyholder compensation should the insurer be placed under statutory management. Finally, the bill confers more powers to the Insurance Regulatory Authority (IRA) to intervene and oversee proper management of the insurance business.
4. The following is a clause by clause analysis of the Bill:

Clause	Highlights	Comments
1.	Short title	
2.	Contains proposed amendments to Section 3A of the Principal Act on the objects and functions of Insurance Regulatory Authority	A slight addition to expand the scope of IRA to cover promotion of the maintenance of a fair, safe and stable insurance sector.
3.	Proposes amendments to Section 22 of Cap. 487 on the prohibition of registration of certain persons	This proposed amendment is to ensure the conformity with the EAC Treaty by opening the registration and ownership of the insurance business to EAC Member countries

4.	Amendment on Section 23 of Cap. 487 on the minimum capital requirements and holding by Kenyan Citizens	Opening the insurance business to EAC Partner States
5.	Proposes amendment to Section 29 of the Principal Act on appropriate insurance arrangements	This proposed amendment is a just a rearrangement for clarity of the provision
6.	Proposes amendment to Section 54 of the Principal Act on accounts and balance sheet	Provides for an offence by not adhering with financial procedures
7.	Proposes amendment to Section 61 of the Principal Act on submission of accounts and statements	The proposed amendment seeks to reduce the time allowed, from 4 to 3 months, for submission of the books of accounts to the Commissioner of Insurance by the Insurers. This is to ensure adherence to the promptness of prudent book keeping and also timely compensation of policyholders within 90 days.
8.	Proposes amendment to Section 67C of the Principal Act on the power of the Commissioner to intervene in management	This provision stresses that only competent persons familiar with the insurance business should be appointed to such management and not just any person as is the current case. The other additional provision is aimed at protecting the interests of the policyholder with regard to Policyholders'

		Compensation Fund, in case the insurer goes into statutory management.
9.	Proposes repeal and replacement of Section 68A of the Principal Act on authority to carry out assessment	This proposed amendment seeks to grant Insurance Regulatory Authority powers to make assessment of the management of insurance business on its own determination. This would go a long way in enabling IRA to freely execute its functions.
10.	Proposes amendment to Section 146 of the Principal Act on power to decline business	This amendment seeks to remove the provision of an insurer appealing against a decision of the Company refusing to accept reinsurance. This is, in a considered opinion, a retrogressive move and should be rejected.
11.	Proposes amendment to Section 153 of the Principal Act on registration and re-registration	To be in adherence to EAC treaty by opening up the insurance business to the entire EAC partner states and not just in Kenya.
12.	Section 169 on tribunal is set to be emended	Introducing the Vice Chair into the appeals tribunal
13.	Proposes amendment to Section 170 of the Principal Act on the powers of the Tribunal	Providing that the tribunal shall have the powers of the Resident Magistrate and not the Subordinate Court as is the case currently.
14.	Proposes amendment to Section 174	The amendment intends to

	of the Principal Act on cognizance of offences and restrictions on institution of proceedings	harmonize the Act with the Constitution of Kenya, 2010.
15.	Proposes amendment to Section 179 of the Principal Act on policy holder's compensation fund	The amendment basically increases functions of the Board of Directors of the Authority.
16.	Proposes amendment to Section 197A of the Principal Act on imposition of insurance premium levy	Deletes the provision for charging different insurance premium levy for insurance business outside Kenya. This is in adherence to the EAC Treaty. However, Section 197A (1) which is being referred still has reference to 'insurance business in Kenya' and should therefore be amended accordingly.
17.	Section 203 of the Principal Act is proposed to be amended which deals with settlement of claims	
18.	Proposes amendment to Section 204 of the Principal Act on appointment of public prosecutors	The amendment intends to harmonize the Act with the Constitution of Kenya, 2010. This is by replacing the 'Attorney General' with the 'Director of Public Prosecutions' as office with the powers to institute prosecutions

PROPOSED AMENDMENTS

The Committee, having met with various stakeholders, is considering the following amendments for introduction to the House during the Committee Stage of the Bill:

Clause 2

That clause 2 of the Bill is amended by inserting the following immediately after clause 1 subsection 2(e)-

2A. Section 2 of the Principal Act is amended by inserting the following words-

“Cabinet Secretary” means the Cabinet Secretary in the time being responsible for the National Treasury.

Also, delete the word “Minister” wherever it occurs and replace with “Cabinet Secretary”

Justification

The word “Minister” is used severally in the Principal Act and therefore need to be replaced with Cabinet Secretary for the Act to be in complacence with the Constitution of Kenya, 2010

Clause 10

That clause 10 of the Bill be deleted.

Justification

The provision in Subsection 2 of Section 146 of the Principal Act that is proposed to be deleted deals with an insurer appealing against a decision of the Company’s refusal to accept reinsurance. It is a considered opinion that that window of appeal is crucial to for the concerned party for progressivity.

Clause 16

That Clause 16 of the Bill is amended by – replacing the word “Kenya” with the words “East African Community Partner States for reciprocating states”

Justification

The further amendment to Section 197A of the Principal Act is meant to adhere to the spirit of the EAC Treaty.

ACKNOWLEDGEMENTS

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. The Committee also appreciates the Secretariat for the preparation of this report.

Finally, I wish to express my appreciation to the Honourable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning & Trade to table this report on the Insurance (Amendment) Bill, 2013 and commend it to the House for information pursuant to the provisions of Standing Order 127 of the National Assembly.

Signed Benjamin Langat

CHAIRPERSON

(HON. BENJAMIN LANGAT, MP)

Date: 01-10-2013