

THE INSURANCE BILL, 2014

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THE INSURANCE BILL, 2014

AN ACT of Parliament to repeal and replace the Insurance Act [Cap. 487], to consolidate the law relating to insurance, to provide for the regulation and supervision of insurance business, insurance intermediaries, insurance service providers, health insurance managers and other businesses and activities relating to insurance and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I — PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Insurance Act, 2014 and shall come into force on such date as the Cabinet Secretary may, by notification in the *Gazette*, appoint.

Object and purpose of the Act.

2. The object and purpose of this Act is to—

- (a) establish a framework for the regulation and supervision, by the Authority, of the insurance market in Kenya;
- (b) promote the maintenance of a safe, sound, efficient, fair and stable insurance market;
- (c) promote public confidence in the insurance market; and
- (d) protect the interests of persons who are, or who may become, policyholders of licensed insurers and insurance beneficiaries or customers of other licensees.

Interpretation

Interpretation.

3. (1) In this Act—

“appointed actuary” means a person appointed as the appointed actuary of a licensed insurer under section 59;

“annuity contract” means a contract that falls within the class or sub-class of life insurance business specified as annuity business in the Regulations;

“approved securities” means securities specified in the Regulations as approved securities;

“associated person” has the meaning specified in the Regulations;

“Authority” means the Financial Services Authority established under section 3 of the Financial Services Authority Act;

“Central Bank” means the Central Bank of Kenya;

“Cabinet Secretary” means the Cabinet Secretary for the time being having responsibility for the National Treasury;

“capital resources” has the meaning specified in the Regulations;

“category”, in relation to an insurance service provider, means a category of insurance service provider’s business specified in the Regulations;

“child” has the meaning specified in the Constitution;

“class”, in relation to insurance business, means a class of insurance business specified in the Regulations;

“co-insurer” has the meaning specified in section 6;

“commencement date” means the date that this Act comes into force;

“company” has the meaning assigned under the Companies Act;

“compliance failure”, in relation to a licensee, means a failure to comply with a provision of this Act or regulations made under this Act;

“constituting document”, in relation to a body corporate, means the memorandum or articles of association or such other document that constitutes the body corporate;

“control”, in relation to a licensee, has the meaning specified in the Regulations;

“corporate agent” means an insurance agent that is not an individual agent;

“Court” means the High Court of Kenya;

“customer” means—

(a) in the case of an insurer, a policyholder of the insurer; or

(b) in the case of an insurance intermediary, an insurance service provider or a health insurance manager, a person, whether resident in or outside Kenya, to whom the insurance intermediary, service provider or health insurance manager provides, agrees to provide or has provided a service for which a licence is required;

“customer account” means a general customer account or a specific customer account;

“direct insurance business” means the business of undertaking liability as insurer under direct insurance contracts;

“direct insurance contract” means an insurance contract that is not a reinsurance contract;

“direct insurer” means—

(a) a licensed insurer that is authorised by its licence to carry on direct insurance business; or

(b) a foreign insurer that is not a foreign reinsurer;

“director”, in relation to a body corporate, means a person appointed to direct the affairs of the body corporate and includes—

(a) a person who is a member of the governing body of the body corporate;

(b) a person who, in relation to the body corporate, occupies the position of director, by whatever name called;

(c) an alternate or substitute director;

“distribution”, in relation to a distribution by a company to a shareholder, means—

(a) the direct or indirect transfer of an asset, other than the insurer’s own shares, to or for the benefit of the shareholder, or

(b) the incurring of a debt to or for the benefit of a shareholder in relation to shares held by the shareholder and whether by means of the purchase of an asset, the purchase, redemption or other acquisition of shares, a transfer of indebtedness or otherwise,

and includes a dividend;

“document” has the meaning assigned in the Evidence Act;

“financial year” means the calendar year;

“fit and proper criteria” mean the criteria specified by the Authority in accordance with section 172(1)(a);

“foreign insurer” means an insurer that is incorporated or constituted outside Kenya;

“foreign regulatory authority” means an authority in a jurisdiction outside Kenya which performs—

(a) functions corresponding or similar to those performed by the Authority; or

(b) a function that, in the opinion of the Authority, relates to the regulation or supervision of financial services;

“foreign reinsurer” means a foreign insurer—

(a) the primary business of which is the business of entering into reinsurance contracts, as reinsurer; and

(b) which does not carry on a significant amount of direct insurance business as a percentage of its premium income;

“former licensee” means a person whose licence has been revoked;

“general customer account” means a bank account maintained by a licensed insurance broker at a licensed bank that holds, or is intended to hold, insurance monies for more than one customer of the insurance broker;

“general insurance business” means insurance business of a class specified in the Regulations as general insurance business;

“general insurer” means a licensed insurer that is authorised to carry on general insurance business;

“group” , in relation to a body corporate (the “first body corporate”) means the first body corporate and any other body corporate that is—

(a) a holding company of the first body corporate;

(b) a subsidiary of the first body corporate;

(c) a subsidiary of a holding company of the first body corporate;

(d) a holding company of a subsidiary of the first body corporate;

(e) a body corporate of which the first body corporate, or a body corporate specified in paragraph (a) to (d) is a significant owner;

“group member”, in relation to a body corporate (the first body corporate), means another body corporate in the same group as the first body corporate;

“health insurance manager” means an intermediary, other than a broker, concerned with the placing of medical insurance business with an insurer for, or in expectation of, payment by way of a commission, fee or other remuneration.

“holding company”, in relation to a body corporate (the first body corporate), means another body corporate that—

(a) is a member of the first body corporate and whether alone, or under an agreement with other members, is entitled to exercise a majority of the voting rights in the first body corporate;

(b) is a member of the first body corporate and has the right to appoint or remove the majority of the directors of the first body corporate;

(c) has the right to exercise a dominant influence over the management and control of the first body corporate pursuant to a provision in the constitutional documents of the first body corporate; or

(d) is a parent of a parent of the first body corporate;

“index-based insurance contract” means an insurance contract—

(a) under which the liability of the insurer to make a payment to the policyholder is triggered by, and the amount of that payment is determined in accordance with, one or more indexes, rather than on an assessment of the policyholder’s actual loss; and

(b) where the payment is designed to provide a level of compensation, although not necessarily an indemnity, to the policyholder in respect of either or both of the following—

- (i) losses, including consequential losses, that the policyholder is expected to suffer, or
- (ii) costs, including mitigation costs, that the policyholder is expected to incur,

in the event that payment is triggered by the index;

“individual agent” means an insurance agent who is a natural person;

“insolvent”, in relation to a licensee or a former licensee, has the meaning specified in section 8;

“insurance agent” means a person appointed and authorised by an insurer to—

(a) solicit proposals for insurance on the insurer’s behalf,

(b) negotiate for insurance business on behalf of the insurer,

(c) act on the insurer’s behalf in relation to the issuance, renewal, or continuance, of a policy, or

(d)perform other functions, of an agency nature, assigned to the person by the insurer,

but does not include an individual who carries out any of the activities specified in paragraphs (a) to (d) as a salaried employee of—

- (i) the insurer; or
- (ii) of a person acting as an insurance agent of the insurer;

“insurance broker” means a person who carries on insurance broking business as an independent contractor;

“insurance broking business” means the business of—

(a)soliciting or negotiating of insurance contracts, including the renewal and continuance of insurance contracts, on behalf of a policyholder or a prospective policyholder (other than the person undertaking the business),

(b)bringing together, either directly or through the agency of a third party, with a view to the insurance of risks, of persons seeking insurance and insurers, and carrying out work preparatory to the conclusion of contracts of insurance, or

(c)providing advice to customers concerning their insurance requirements;

and includes reinsurance broking business;

“insurance business” means the business of undertaking liability as an insurer or a reinsurer under insurance contracts;

“insurance contract” has the meaning specified in section 4;

“insurance intermediary” means an insurance broker, a health insurance manager or an insurance agent;

“insurance monies” has the meaning specified in section 79;

“insurance service provider” means a person who carries on any category of insurance service providers’ business;

“insurer” means a person who carries on insurance business;

“interest” includes a legal and a beneficial interest;

“investment-linked contract” means a contract that falls within the class or sub-class of life insurance business specified as investment-linked life insurance business in the Regulations;

“Kenyan insurance business” means insurance business of a type or description designated in the Regulations as Kenyan insurance business;

“Kenyan insurance contract” means an insurance contract of a type or description designated in the Regulations as a Kenyan insurance contract;

“key control function” means—

(a) in relation to a licensed insurer, a function specified in section **56**; or

(b) in relation to an insurance broker, a corporate agent, an insurance service provider or a health insurance manager, a function specified in section **78**;

“key functionary” means a person, other than an employee of a licensee, who undertakes a key control function for the licensee under an outsourcing arrangement;

“licensable business” means—

(a) insurance business,

(b) the business of an insurance intermediary; or

(c) the business of an insurance service provider;

“licence” means a licence issued by the Authority under this Act;

“licensed bank” means a bank licensed by the Central Bank to carry on banking business under the Banking Act;

“licensed insurance broker” means a company holding an insurance broker’s licence;

“licensed insurance service provider” means a person holding an insurance service provider’s licence;

“licensed insurer” means a company holding an insurer’s licence or a reinsurer’s licence;

“licensed reinsurer” means a company holding a reinsurer’s licence;

“licensee” means a person who holds a licence issued under this Act;

“life fund” means an insurance fund established and maintained in accordance with section **43**;

“life insurance business” means insurance business of a class specified in the Regulations as life insurance business;

“life insurer” means a licensed insurer that is authorised to carry on life insurance business;

“microinsurance contract” has the meaning specified in the Regulations;

“person” includes a company, body corporate, association, cooperative, association of underwriters, Fund, natural person, partnership or scheme;

“policy” means a document that sets out the terms of an insurance contract and includes any endorsement on the document;

“policy holder” means the person who, for the time being is the legal holder of a policy with an insurer and includes, where the context permits—

(a) a person entitled, as beneficiary, to a payment under an insurance contract;

(b) the assignee of a policy;

(c) the personal representative of a deceased policy holder; and

(d) in relation to a policy providing for the payment of an annuity, an annuitant;

“Policyholder Protection Fund” means the Policyholder Protection Fund preserved under section **178**;

“policy liability” means—

(a) a liability that has arisen under an insurance contract; or

(b) a liability that, subject to the terms and conditions of an insurance contract, will arise on the happening of an event, or at a time, specified in the policy;

“prescribed” means prescribed in the Regulations;

“prescribed accounting standards” means the accounting standards prescribed in the Regulations;

“qualified actuary” means a person who—

(a) is a Fellow of the Actuarial Society of Kenya;

(b) is a Fellow of a prescribed actuarial association;

(c) is recognised by an approved actuarial association as having equivalent status to a Fellow of the association; or

(d) has an equivalent qualification to a Fellow, awarded by an actuarial association specified by the Authority;

“qualifying foreign reinsurer” means a foreign reinsurer that satisfies the requirements prescribed for that purpose in the Regulations;

“Regulations” means the Regulations issued under section 171;

“Regulatory Authority” or “Regulatory Authorities” means an authority within Kenya or in a jurisdiction outside Kenya which performs—

(a) functions corresponding or similar to those performed by the Authority; or

(b) a function that, in the opinion of the Authority, relates to the regulation or supervision of financial services;

“reinsurance business” means the business of undertaking liability as a reinsurer under reinsurance contracts;

“reinsurance contract” means an insurance contract under which one insurer (the reinsurer) indemnifies another insurer (the cedant) against losses on one or more contracts of insurance entered into by the cedant, and includes a retrocession agreement;

“repealed Act” means the Insurance Act [Cap. 487];

“retrocession agreement” means a reinsurance contract under which the cedant is a reinsurer;

“significant owner”, in relation to a body corporate, means a person who exercises control over the body corporate within the meaning of the Insurance Regulations;

“specific customer account” means a bank account maintained by a licensed insurance broker at a licensed bank in the name of a specific customer of the insurance broker or, with the agreement of the customer in the name of the insurance broker, that holds, or is intended to hold, insurance monies in respect of that customer only;

“specified form” means the form, if any specified or prescribed by the Authority;

“subsidiary”, in relation to a body corporate (the “first body corporate”), means a body corporate of which the first body corporate is a parent;

“takaful business”, has the meaning specified in the Regulations;

“technical provisions” has the meaning specified in the Regulations; and

“tribunal” means the Financial Services Tribunal established under the Financial Services Authority Act;

“unauthorised business” has the meaning specified in section 7.

4. (1) For the purposes of this Act, “insurance contract” means—
- Meaning of
“insurance
contract”
- (a) a contract under which one party, the insurer, in exchange for a premium, agrees with another party, the policyholder, to make a payment, or provide a benefit, to the policyholder or another person on the occurrence of a specified uncertain event which, if it occurs, will be adverse to the interests of the policyholder, or
- (b) an investment-linked contract,

and includes a reinsurance contract and an index-based insurance contract.

(2) An uncertain event is an event, with respect to which, there is uncertainty as to whether or when the event will take place.

(3) Without limiting subsection (1), an insurance contract includes a contract that falls within a class of insurance business specified in the Regulations.

(4) The Regulations may specify types or descriptions of contracts that are considered not to be insurance contracts for the purposes of this Act.

5. (1) For the purposes of this Act, insurance business is divided into life business and general business.

Classification of
insurance
business

(2) The Regulations shall specify classes of insurance business, separating the classes between life business and general business.

(3) Notwithstanding subsections (1) and (2), if the Authority is satisfied that any part of a licensed insurer’s business ought to be treated as belonging to a different type or a different class of insurance business than is provided for in the Regulations, it may direct that, in that insurer’s case, that part of the insurer’s business will be so treated for the purposes of this Act.

6. (1) For the purposes of this Act, “co-insurer” means an insurer that agrees to accept liability under an insurance contract together with one or more other insurers and “co-insurance” shall be construed accordingly.

Meaning of “co-
insurer”

- (2) An insurer may be a co-insurer—
- (a) whether the liability of the co-insurers is joint, several or joint and several; and
- (b) whether or not the existence of the co-insurer is disclosed to the policyholder.

Carrying
unauthorised
business

on **7.** (1) For the purposes of this Act, a person carries on unauthorised business if the person carries on any activity or business for which a licence is required without either—

(a) a licence that authorises that type of activity or business;
or

(b) the benefit of an exemption provided for in this Act or any other written law, exempting the person from the requirement to have a licence to carry on the activity or business.

(2) For the avoidance of doubt, a licensee carries on unauthorised business if the licensee carries on any activity or business for which a licence is required if that activity or business is not authorised by the licensee's licence.

(3) "Unauthorised business" shall be construed accordingly.

Meaning
"insolvent"

of **8.** (1) An insurer is insolvent if it does not meet the minimum solvency requirement prescribed in the Regulations.

(2) An insurance intermediary, an insurance service provider or a health insurance manager is insolvent if—

(a) it is unable to pay its debts as they fall due for payment; or

(b) the value of its liabilities exceeds its assets.

Functions of the Authority under this Act

Functions
Authority

of **9.** (1) The functions of the Authority under this Act are—

(a) to supervise licensees on an individual and group-wide basis and to monitor and enforce compliance by licensees with their obligations under this Act and the Regulations;

(b) to make Regulations under this Act and to issue guidance concerning the Act and the Regulations;

(c) to administer this Act;

(d) to promote awareness of, and undertake public education concerning, the insurance market;

(e) to cooperate with, and provide appropriate assistance to, foreign regulatory authorities and regulatory authorities and law enforcement agencies in Kenya;

(f) to monitor the operation of the insurance market and the effectiveness of this Act and the Regulations;

(g) to keep Government and the National Assembly informed concerning the insurance market in Kenya; and

(h)to provide advice to the Government on the national policy to be followed in order to ensure adequate insurance protection and security for national assets and properties; and

(i) to perform such other functions, and exercise such powers as may be assigned or given to it by this Act.

(2) The Authority shall perform its functions with the objectives of—

(a)promoting the maintenance of a safe, sound, efficient, fair and stable insurance market;

(b)promoting public confidence in the insurance market; and

(c)protecting the interests of persons who are, or who may become, policyholders of licensed insurers or customers of licensed insurance intermediaries.

10. (1) In performing its functions, the Authority shall—

Guiding principles

(a)seek to achieve the objectives of this Act specified in section 3, paragraphs (b), (c) and (d);

(b)have regard to—

(i) the need to implement international standards and best practice in relation to the regulation and supervision of insurance; and

(ii) the desirability of regulating and supervising licensees on a risk-sensitive basis; and

(c)seek to promote—

(i) effective competition in the insurance market in the interests of consumers; and

(ii) the development of an inclusive insurance market.

(2) In considering the measures to be taken to protect persons who are, or who may become, policyholders of licensed insurers or customers of licensed insurance intermediaries, the Authority shall have regard to—

(a)the differing degrees of experience and expertise that different policyholders and customers may have in relation to insurance products and the insurance sector;

(b)the needs that policyholders and customers may have for advice and accurate information; and

(c)the general principle that policyholders and customers should take responsibility for their informed decisions.

(3) In seeking to promote the development of an inclusive insurance market in Kenya, the Authority shall have regard to the need to ensure that the regulation and supervision of such products and services is proportionate.

Functions of Authority

PART II — LICENCING

Prohibitions, restrictions and exemptions

Prohibition against carrying on unauthorised business

11. (1) Subject to section 12, a person shall not carry on, or purport to carry on, insurance business, business as an insurance intermediary or an insurance service provider in Kenya or outside Kenya, unless the person holds a licence that authorises the person to carry on that business.

(2) Without limiting subsection (1), a person is considered to carry on—

(a) insurance business in Kenya if the person, as an insurer—

- (i) enters into a Kenyan insurance contract;
- (ii) occupies any premises in Kenya; or
- (iii) makes an offer to, or invites, any person resident in Kenya to enter into, renew or vary any insurance contract; or

(b) business as an insurance intermediary or an insurance service provider in Kenya if the person, insurance intermediary or insurance service provider—

- (i) occupies premises in Kenya; or
- (ii) invites a person resident in Kenya, or causes a person resident in Kenya, to be invited, whether through the publication of advertisements or otherwise, to become a customer.

(3) Without limiting subsections (1) and (2), a person purports to carry on a licensable business if the person uses any name, style, designation, description, title or trade mark that represents or implies that the person is carrying on that business, whether licensed or not.

(4) A person who contravenes subsection (1) is guilty of an offence and shall on conviction be liable—

(a) in the case of an individual, to a fine not exceeding Kenya Shillings five million or to imprisonment for a term not exceeding three years, or to both; or

(b) in the case of any other person, to a fine not exceeding Kenya Shillings five million.

12. (1) Section 11(1) does not apply to—

Exemptions to section 11

- (a) a foreign reinsurer by reason of the fact that it enters into a reinsurance contract, as reinsurer, with a licensed insurer;
- (b) a foreign insurer that is carrying on insurance business as permitted by an exemption granted by the Authority under section 14;
- (c) a foreign insurance broker when the broker is acting solely in relation to reinsurance contracts or retrocession agreements; or
- (d) a licensed reinsurer that is carrying on insurance business, as reinsurer, outside Kenya, provided that it is authorised to do so by its licence.

(2) A foreign insurer or reinsurer that operates an office in Kenya does not contravene section 11(1), provided that it does so in accordance with the written consent of the Authority.

(3) The Authority may, by written notice, exempt a person from section 11(1), if—

- (a) the person is carrying on business as an insurance intermediary in a country outside Kenya and the business is authorised under a licence issued by an insurance supervisory authority in that country;
- (b) the person is not carrying on business as an insurance intermediary in Kenya; and
- (c) the Authority is satisfied that the person is, or will be, subject to adequate supervision, as an insurance intermediary, in that country.

13. (1) A person shall not enter into a Kenyan insurance contract with a foreign insurer unless the contract is covered by an exemption granted to the foreign insurer under section 14.

Restrictions on effecting Kenyan insurance contracts

(2) A Kenyan insurance contract is enforceable by both parties to the contract, despite being entered into in contravention of subsection (1).

(3) A person who contravenes subsection (1) is guilty of an offence and shall on conviction be liable—

- (a) in the case of an individual, to a fine not exceeding Kenya Shillings five millions or to imprisonment for a term not exceeding three years, or to both; or
- (b) in the case of any other person, to a fine not exceeding Kenya Shillings five million.

14. (1) The Authority may grant an exemption to a foreign insurer in accordance with this section, permitting the foreign insurer, either as the

Exemption on grounds of insufficient market capacity

sole insurer or as a co-insurer with one or more other foreign insurers or licensed insurers, to enter into—

(a) one or more specific direct insurance contracts, or

(b) direct insurance contracts of a specific type or description,

where, except for the exemption, by entering into the insurance contract or insurance contracts, the foreign insurer would contravene section 11(1).

(2) Application for an exemption under this section may be made to the Authority by or on behalf of a foreign insurer.

(3) The Authority may grant an exemption under this section if it—

(a) is of the opinion that the principal objective of the insurance contract or contracts to which the application relates is to insure a risk or risks—

(i) that no licensed insurer is, or licensed insurers are, willing or able to insure;

(ii) that licensed insurers have insufficient capacity to insure; or

(iii) where the terms proposed by any licensed insurers willing and able to insure the risk are significantly less advantageous than the terms available from the foreign insurer; and

(b) is satisfied that—

(i) the foreign insurer is authorised in the country in which its principal place of business is situated (its “home country”) to enter into insurance contracts of the type for which the exemption is sought;

(ii) the foreign insurer is subject to adequate regulation and supervision in its home country and satisfies all regulatory and supervisory requirements in its home country in relation to the insurance business to be carried out under the exemption; and

(iii) the insurance contract or contracts would be lawfully entered into by the foreign insurer if entered into in its home country.

15. (1) A licensed insurance intermediary shall not act in relation to an insurance contract effected, or to be effected, by or with an insurer that does not hold an insurer’s licence, unless the insurance contract is covered by an exemption—

(a) granted under section 14; or

Licensed insurance intermediaries not to act for unauthorised insurer

(b)specified in the Regulations, in accordance with subsection (2).

(2) The Regulations may exempt specified categories or descriptions of insurance contract from subsection (1).

16. (1) Subject to subsection (2) and to any exemptions specified in the Regulations, a person shall not, except with the prior written approval of the Authority or unless authorised by another law—

Restrictions on use of certain words, phrases and abbreviations

(a)use, whether in the name under which the person is registered or in the description or title under which the person carries on business in Kenya—

- (i) the words “insurance”, “assurance” or “underwrite” or any combination or derivative thereof; or
- (ii) any other word, phrase or abbreviation prescribed in the Regulations as a word, phrase or abbreviation that suggests a licensable business; or

(b)make any representation, whether in a document or in any other manner that is likely to suggest that the person is carrying on, or licensed or otherwise entitled to carry on a licensable business.

(2) Subsection (1) does not apply to—

(a)a licensee, provided that the name under which the licensee is registered, or the name which the licensee uses, does not suggest that the licensee carries on any licensable business other than the business that it is authorised by its licence to carry on;

(b)a person who appends to his or her name, an insurance qualification conferred on him or her by a prescribed body, where the qualification appended is followed with the initials of the name of that body; or

(c)an association of licensees or association of employees of licensees.

(3) A person who contravenes the provision of the section is guilty of an offence and shall on conviction be liable—

(a)in the case of an individual, to a fine not exceeding Kenya Shillings five million or to imprisonment for a term not exceeding three years, or to both; or

(b)in the case of any other person, to a fine not exceeding Kenya Shillings five million.

Licensing of insurers, insurance intermediaries and insurance service providers

Categories of licence

17. (1) A licence may be granted by the Authority in one of the following categories—

- (a) insurer's licence, which authorises the holder to carry on direct insurance business only;
- (b) reinsurer's licence, which authorises the holder to carry on reinsurance business only;
- (c) insurance broker's licence, which authorises the holder to carry on insurance broking business;
- (d) health insurance manager's licence, which authorises the holder to place medical insurance business with an insurer;
- (e) insurance agent's licence, which authorises the holder to act as an insurance agent; or
- (f) insurance service provider's licence, which authorises the holder to carry on business as an insurance service provider, in the category or categories specified on the licence.

(2) An insurer's licence may restrict the business that may be carried on by the insurer to undertaking liability as an insurer under microinsurance contracts only.

(3) An insurance broker's licence shall state whether or not the holder is authorised to carry on business as a reinsurance broker.

(4) An insurance agent's licence shall specify whether the holder is a corporate agent or an individual agent.

Form of licence

18. A licence—

- (a) shall be in writing and in the specified form; and
- (b) shall state the type of licence, and—
 - (i) if an insurer's licence or a reinsurer's licence, shall state the class or classes, or sub-classes, of insurance business that the holder is authorised to carry on;
 - (ii) if an insurance broker's licence, shall state whether the holder is authorised to carry on reinsurance broking business;
 - (iii) if an insurance agent's licence, shall state the insurer or insurers by which the insurance agent is appointed; and

- (iv) if an insurance service provider's licence, shall state the category of insurance service provider's business that the holder is authorised to carry on.

19. (1) Application for a licence may be made—

Application for a licence

- (a) in the case of an insurer's licence or a reinsurer's licence, by a company limited by shares;
- (b) in the case of an insurance agent's licence, by any person; or
- (c) in the case of any other licence, by a company limited by shares or by a corporate body of such type as may be prescribed.

(2) An application under subsection (1) shall be made in writing in the specified form, shall include the information required by the specified form and shall be accompanied by such other documents as may be prescribed.

20. (1) Subject to subsections (3) and (4), the Authority may grant an insurer's or reinsurer's licence to the applicant if it is satisfied that—

Grant of insurer's licence

- (a) the applicant satisfies the requirements of this Act and the Regulations with respect to the application;
- (b) the applicant intends, if granted the licence, to carry on insurance business or reinsurance business, as the case may be, in the classes for which it will be authorised;
- (c) the applicant—
 - (i) has the ability to comply with the prudential requirements specified in this Act and the Regulations; and
 - (ii) in particular, is able to meet, and has the ability to maintain, the capital requirements specified in the Regulations;
- (d) the applicant's ownership, corporate and management structure, governance framework, procedures and controls, or proposed procedures and controls, financial resources and, in the case of a direct insurer, its proposed reinsurance arrangements and in the case of a reinsurer, its retrocession arrangements, are appropriate having regard to the nature, scale and complexity of the applicant's insurance business or proposed insurance business;
- (e) the applicant intends, and has the ability, to carry on its business or proposed business in a prudent manner, in accordance with sound insurance principles and in compliance with applicable requirements of this Act and the Regulations;

(f) the applicant has the ability to comply with any conditions the Authority intends to attach to the licence under section **166**;

(g) if the applicant is a subsidiary of a foreign insurer, the group of which the applicant is a member is, or will be, subject to adequate and appropriate group-wide supervision and that the Authority will be able to obtain adequate information concerning the holding company and other members of the group;

(h) the applicant's significant owners, directors, senior managers and persons responsible for key control functions, individually and collectively, satisfy the Authority's fit and proper criteria; and

(i) issuing the licence is not against the public interest.

(2) Without limiting the discretion given to the Authority under subsection (1), the Authority may refuse to grant a licence to an applicant if it has reasonable grounds for believing that any person having an interest in the applicant does not satisfy the Authority's fit and proper criteria.

(3) The Authority shall not grant a licence to an applicant if the name under which the applicant would be licensed so closely resembles the name of a licensee that the licencing of the applicant under that name would, in the opinion of the Authority, be likely to confuse or mislead.

(4) The Authority shall not grant an insurer's licence that authorizes the holder to carry on both life insurance business and general insurance business.

(5) Subsection (4) does not apply to a licensed insurer whose licence restricts its insurance business to the undertaking of liability as an insurer under microinsurance contracts only.

Grant of other
licences

21. (1) The Authority may grant an insurance intermediary's licence or an insurance service provider's licence to an applicant if it is satisfied that—

(a) the applicant satisfies the requirements of this Act and the Regulations with respect to the application;

(b) the applicant—

(i) has the ability to comply with any applicable prudential requirements specified in this Act and the Regulations;

(ii) in particular, is able to meet and has the ability to maintain, any applicable capital resource requirements;

(c) where relevant, the applicant's significant owners, directors, senior managers and persons responsible for key

control functions, individually and collectively, satisfy the Authority's fit and proper criteria;

(d) the organization, management and financial resources of the applicant are, or on the issuance of the licence will be, adequate for the carrying on of the licensed business; and

(e) issuing the licence is not against the public interest.

(2) Without limiting the discretion given to the Authority under subsection (1), the Authority may refuse to grant a licence to an applicant if it has reasonable grounds for believing that any person having an interest in the applicant does not satisfy the Authority's fit and proper criteria.

22. (1) The Authority shall, within fourteen days of determining an application, give written notice of its decision to the applicant.

Notification and publication of decision

(2) If the Authority refuses to grant a licence to an applicant, or imposes conditions on the grant of a licence, the decision notice shall contain, or be accompanied by, a statement of the Authority's reasons for the refusal or for the imposition of conditions.

(3) The Authority shall, within fourteen days of giving written notice to the applicant, publish its decision notice in the *Gazette*.

23. (1) A licensee shall notify the Authority in writing within 14 days of commencing its licensed business.

Commencement of business

(2) If a licensee does not commence its licensed business within twelve months of the date of the license, it shall not commence the licensed business without the prior written approval of the Authority.

(3) This section does not apply to a licensed insurance agent.

(4) A licensee who contravenes subsection (2) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya shillings one million.

24. The Authority shall cause to be published in the *Gazette* on or before 30th April of each year, a list of all licensees as at the 31st March of that year.

List of insurers to be *Gazetted*

PART III – CHANGES IN CONTROL, MANAGEMENT AND KEY

CONTROL FUNCTIONS

Changes in control

25. The Regulations may modify or exclude this Part in relation to prescribed types of licensee and, in this Part, "licensee" shall be construed accordingly.

Application of this Part

26. (1) A person shall not become a significant owner of a licensee, except with the prior written approval of the Authority.

Changes in control

(2) A person who is a significant owner of a licensee shall not, except with the prior written approval of the Authority—

(a) increase or reduce the person's control over the licensee, within the meaning of the Regulations; or

(b) cease to be a significant owner of the licensee.

(3) A licensee shall not cause, permit or acquiesce in any dealing with its shares that would result in a person contravening subsection (1) or (2).

(4) A person who contravenes subsection (1) or (2) is guilty of an offence and shall on conviction be liable—

(a) in the case of an individual, to a fine not exceeding Kenya Shillings five million or to imprisonment for a term not exceeding three years, or to both; or

(b) in the case of any other person, to a fine not exceeding Kenya Shillings five million.

Application for approval of change in control

27. (1) An application to the Authority for approval under section **26**(1) or (2) shall be made by the licensee on behalf of the person who is, or intends to become, a significant owner.

(2) In determining whether to grant approval under section **26**(1) or (2), the Authority may take into account any factors which it reasonably considers appropriate.

(3) Without limiting subsection (2), the Authority shall consider whether—

(a) the person becoming a significant owner, or acquiring increased control, satisfies the Authority's fit and proper criteria;

(b) following the change of significant ownership or control, the licensee's ownership structure will be appropriate having regard to the nature, scale and complexity of its licensed business; and

(c) the change in significant owner or in control will, or is likely to—

(i) adversely affect the financial soundness of the licensee or the ability of the Authority to supervise the licensee; or

(ii) be prejudicial to the policyholders or customers of the licensee.

28. (1) The Authority may issue a directive under subsection (3) to—

Authority's
powers
concerning
significant
owners

(a) a person who becomes a significant owner in, or acquires increased control over, a licensee without obtaining the Authority's prior written approval; or

(b) a person who is a significant owner of a licensee if the Authority has reasonable grounds for believing that—

(i) the person does not satisfy its fit and proper criteria; or

(ii) by virtue of the person's significant ownership in, or control over, the licensee, any of the factors specified in subsection (2) apply.

(2) The factors referred to in subsection (1)(b)(ii) are that the licensee's ownership structure—

(a) is not appropriate having regard to the nature, scale and complexity of its licensed business;

(b) adversely affects the financial soundness of the licensee or the ability of the Authority to supervise it; or

(c) is prejudicial to the policyholders or customers of the licensee.

(3) If any of the circumstances specified in subsection (1) apply, the Authority may issue a directive to the person—

(a) requiring the person to dispose of the person's interest in the licensee, in whole or in part, within such time period as is specified in the notice; or

(b) prohibiting the person from exercising any rights, including voting rights, attached to the interest.

(4) Where the Authority issues a directive under subsection (3)(a) to a person, it may direct that during the period before the person's interest is disposed of, the person is prohibited from exercising any rights, including voting rights and the rights to receive a distribution, attached to the interest.

(5) Section **26**, **27** and **31** apply in relation to any disposal to be made in compliance with a directive issued under subsection (1).

(6) A person who, without reasonable excuse, fails to comply with the requirements of a directive issued under this section, is guilty of an offence and shall on conviction be liable—

(a) in the case of an individual, to a fine not exceeding Kenya Shillings five million or to imprisonment for a term not exceeding three years, or to both; or

(b)in the case of any other person, to a fine not exceeding Kenya Shillings five million.

Changes in senior management and key control functions

Appointment of, and changes in, directors, senior managers and persons responsible for key control functions

29. (1) A licensee shall not appoint a director, senior manager or person responsible for a key control function except with the prior written approval of the Authority.

(2) The Authority shall not grant approval under subsection (1) unless it is satisfied that—

(a)the person concerned satisfies the Authority’s fit and proper criteria; and

(b)following the appointment, the licensee’s management structure is appropriate having regard to the nature, scale and complexity of its licensed business.

(3) A licensee shall provide written notice to the Authority within fourteen days after a director, senior manager or person responsible for a key control function is appointed or ceases to hold office with, be employed by or act for the licensee.

(4) The written notice provided under subsection (3) shall include a statement of the reasons for the director, senior manager or person responsible for the key control function ceasing to hold office with, be employed by or act for the licensee.

Authority’s powers concerning management and key control functions

30. (1) If the Authority has reasonable grounds for believing that a person specified in subsection (2) does not satisfy its fit and proper criteria, it may, by written notice, require the licensee to—

(a)remove that person and, if it considers it appropriate, to replace the person with another person acceptable to the Authority;

(b)ensure that the person ceases to undertake certain specified functions in relation to the licensee; or

(c)take such remedial action in relation to that person as the Authority specifies.

(2) The following persons are specified for the purposes of subsection (1)—

(a)a director of a licensee;

(b)a senior manager of a licensee;

(c)a person responsible for a key control function of a licensee; and

(d)a person undertaking any function for a licensee that may be specified by the Regulations for the purpose of this paragraph.

(3) A notice issued under subsection (1)—

(a) shall state whether the specified requirements have immediate effect or the time period within which they must be complied with;

(b) may include directions consequential upon, or ancillary to, the requirements specified in the notice; and

(c) may direct that, in the case of a person who it has required the licensee to remove, the person may not be reappointed, or accept reappointment, to the same position, or to any specified position, with the licensee—

(i) at any time;

(ii) for such period as may be specified by the Authority; or

(iii) until such conditions as may be specified by the Authority have been met.

(4) This section has effect despite any agreement, contract of employment, written law or rule of law or any provision in the licensee's constituting documents.

(5) Where a notice issued under subsection (1) contains a direction under subsection (3)(c), any person to whom the direction relates who accepts an appointment contrary to the notice is guilty of an offence and shall on conviction be liable—

(a) in the case of an individual, to a fine not exceeding Kenya Shillings five million or to imprisonment for a term not exceeding three years, or to both; or

(b) in the case of any other person, to a fine not exceeding Kenya Shillings five million.

(6) A licensee that fails to comply with a notice issued under subsection (1) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings five million.

31. (1) If, whether before or after the Authority has approved the appointment of a director, senior manager or person responsible for a key control function, or has approved a significant owner, a licensee becomes aware of any information that is reasonably material to the Authority's fit and proper assessment of the person concerned, it shall notify the Authority of the information as soon as reasonably practicable.

Application for approval under section 29

(2) A licensee that contravenes subsection (1) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings five million.

32. (1) Notwithstanding any other provision of this Act, the Authority shall, from time to time, carry out an assessment of the professional, financial and moral suitability of the persons managing, controlling or

Authority to carry out assessment

having significant ownership or significant beneficial interest in a person licensed under this Act.

(2) An assessment under subsection (1) shall be in accordance with such criteria as may be prescribed in regulations.

(3) Where, upon an assessment under this section, the Authority is satisfied as to the professional, financial and moral suitability of the person managing, controlling or having a significant ownership or significant beneficial interest in a person licensed under this Act, it shall so certify in writing.

(4) A person who, upon an assessment under this section, is not certified by the Authority as fit and proper to manage or control a person licensed under this Act, shall be deemed to be disqualified from holding such office.

PART IV - SUPERVISION OF LICENSED INSURERS

Prudential requirements

Maintenance of financially sound condition

33. (1) A licensed insurer shall, at all times—

(a) maintain its business in a financially sound condition by—

- (i) having assets,
- (ii) providing for its liabilities, and
- (iii) conducting its business,

so as to be in a position, at all times, to meet its liabilities as they fall due; and

(b) conduct its insurance business in accordance with sound insurance principles.

(2) This section does not limit the specific capital, solvency and other prudential requirements specified in this Act or the Regulations.

Minimum paid-up capital

34. (1) A licensed insurer shall ensure that its paid-up capital equals or exceeds—

(a) the minimum amount specified in the Regulations; or

(b) if the Authority issues a directive under section **36**, the amount specified in the directive.

(2) A licensed insurer shall not, without the prior written approval of the Authority—

(a) pass a resolution to reduce its paid-up capital; or

(b) cause or permit its paid-up capital to be reduced.

(3) A resolution passed in contravention of subsection (2)(a) is void and of no effect.

(4) Subsection (2) applies, even if the paid-up capital of the licensed insurer is higher than the minimum amount specified in the Regulations or in any directive issued by the Authority under section 36.

(5) A licensed insurer that contravenes subsection (1) or subsection (2) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings five million.

35. (1) A licensed insurer shall maintain—

Capital adequacy
requirement

(a) its capital resources at a level adequate to support its insurance business, taking into account the nature, scale and complexity of that business and its risk profile; and

(b) adequate procedures and controls to monitor and assess its capital resources and its capital requirements on an on-going basis.

(2) Without limiting subsection (1), a licensed insurer shall, at all times, maintain capital resources, determined in accordance with the Regulation, that equal or exceed—

(a) the capital adequacy requirements specified in the Regulations; or

(b) if the Authority issues a directive under section 36, the capital adequacy requirements specified in the directive.

36. (1) If the Authority considers it appropriate, having regard to the nature, scale and complexity of the insurance business carried on, or proposed to be carried on, by a licensed insurer and the insurer's risk profile, the Authority may issue—

Authority may
issue directives

(a) a directive requiring the licensed insurer to increase its paid-up capital to an amount higher than the minimum specified in the Regulations; and

(b) a directive increasing the minimum capital adequacy requirement applicable to a licensed insurer to a higher sum than that specified in the Regulations.

(2) Unless the circumstances justify immediate compliance with a directive issued under subsection (1), a directive shall specify a reasonable period for compliance.

37. (1) A licensed insurer shall ensure that the value of its assets is determined in accordance with the prescribed accounting standards, except that the value of the assets of a licensed insurer shall not be taken to be more than the market value of those assets.

Valuation of
assets and
liabilities

(2) Subject to any specific requirements in the Regulations, a licensed insurer shall ensure that its liabilities—

(a) are calculated and valued on the basis required by the prescribed accounting standards;

(b) are monitored and calculated on a continuous basis; and

(c) include all liabilities arising out of its insurance contracts.

Licensed insurer to notify Authority of failure to comply

38. (1) A licensed insurer shall, as soon as reasonably practicable, notify the Authority in writing if it has reasonable grounds for believing that, at any time in the following three years, it is likely to fail to comply with a requirement imposed in any of the following sections—

(a) section **33**(1); or

(b) section **34**(1).

(2) A licensed insurer that contravenes subsection (1) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings five million.

Shares to be paid for in cash

39. (1) Subject to subsection (2), every share in a licensed insurer issued on or after the commencement date shall be fully paid for in cash.

(3) The Authority may, on the application of an insurer, give its written approval for the issue of one or more shares for a consideration other than cash.

(3) A licensed insurer that issues a share for a consideration other than cash without the written approval of the Authority is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings five million.

Share warrants to bearer

40. (1) The articles of a licensed insurer shall not authorise it to issue share warrants, within the meaning of section 85 of the Companies Act.

(2) A licensed insurer shall not issue a share warrant.

(3) A licensed insurer that contravenes subsection (2) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings five million.

Distributions

41. (1) A licensed insurer shall not make a distribution unless, immediately after the distribution, the insurer complies with—

(a) the requirements specified in sections **33**, **34** and **35**;

(b) sections **43** to **47**; and

(c) the capital and solvency requirements specified in the Regulations.

(2) A licensed insurer that contravenes subsection (1) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings five million.

42. (1) Subject to subsections (2) and (3), a licensed insurer shall not—

Restrictions on advances and loans

(a) acquire or deal in its own shares or lend money or make advances on the security of its own shares;

(b) grant a loan to an associated person;

(c) grant unsecured credit to any person except as permitted by the Regulations; or

(d) enter into a guarantee or provide a security in connection with a loan by another person to an associated person.

(2) Subsection (1) does not apply to a distribution permitted under section 41.

(3) If a licensed insurer wishes to carry out a transaction covered by subsection (1), it may provide the Authority with written notice of its intention to do so, specifying the details of the transaction.

(4) If, on receiving a notice under subsection (3) the Authority considers it appropriate to do so, it may issue the licensed insurer with a written notice stating that it has no objection to the transaction and the licensed insurer may carry out the transaction.

(5) A licensed insurer that carries out a transaction covered by subsection (1) without having received a written notice of no objection from the Authority under subsection (4) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings five million.

Life funds

43. (1) A life insurer shall establish and at all times maintain at least one segregated life fund in respect of its life policies.

Life insurer to establish Life Fund

(2) A life fund is a fund that—

(a) is established in the records of a life insurer; and

(b) relates solely to the life insurance business of the life insurer or a particular part of that business.

(3) A life insurer shall maintain a life fund so long as it has any liability in respect of a life policy to which the life fund relates.

(4) A life fund established before the commencement date is deemed to have been established under this Act and is subject to all the requirements of this Act and the Regulations relating to life funds.

(5) The Authority may direct a life insurer to establish and maintain a life fund for any part of its life insurance business, to be called by such name as the Authority may specify.

(6) A life insurer shall give the Authority written notice of the establishment of a life fund, specifying—

- (a) the date on which the fund was established;
- (b) the nature of the life insurance business of the life insurer to which the fund relates; and
- (c) such other matters as may be specified in the Regulations.

Requirements
relating to life
funds

44. (1) A life insurer shall—

(a) credit to the life fund all monies that it receives in respect of life insurance business to which the fund relates, including—

- (i) amounts credited to the life fund on its establishment;
- (ii) premiums payable under life policies referable solely to the fund;
- (iii) in the case of a life policy that is referable to the fund and to one or more other life funds, the proportion of the premium that, by virtue of a provision in the policy document, is to be credited to the fund;
- (iv) income from the investment of assets of the fund;
- (v) money paid to or by the life insurer to the credit of the fund under a judgment of a court relating to any matter concerning the business of the fund or any failure to comply with this subpart in relation to the fund; and
- (vi) any other money received by the life insurer in connection with its conduct of the business of the fund;
- (vii) any capital payment made by an insurer out of its own assets;

(b) include in a life fund all assets and investments related to the life insurance business to which the fund relates;

(c) credit to a life insurance fund all income arising from the investment of assets of that fund;

(d) treat as liabilities of the fund, all liabilities of the insurer arising out of the conduct of the life insurance business to which the fund relates;

(e) apply the assets of a life fund exclusively—

- (i) to meet liabilities (including policy liabilities) or expenses incurred for the purposes of the business of the fund;

(ii) for the making of investments in accordance with the Regulations; or

(iii) for the purposes of a distribution made in accordance with the Regulations; and

(f) ensure that the profits and losses of a life fund are dealt with in accordance with section 47.

(2) A life insurer shall not—

(a) subject to any exceptions in the Regulations, charge or mortgage any of the assets of a life fund;

(b) transfer an asset from one life fund to another life fund, except as may be permitted by the Regulations; or

(c) restructure or terminate any life fund without the approval of the Authority.

45. (1) In the investment, administration, and management of the assets of a life fund, a life insurer shall give priority to the interests of policyholders of life policies referable to the fund.

Responsibilities of life insurer in relation to the administration of a life funds

(2) In the event of conflict between the interests of policyholders of life policies referable to a life fund and the interests of shareholders of a life insurer, the life insurer must give priority to the interests of policyholders of those policies over the interests of its shareholders.

(3) An investment by a life insurer is not ineffective solely because it is made in contravention of subsection (1).

(4) A reference in subsections (1) to (3) to the interests of policyholders of life policies referable to a life fund is a reference to the interests of those persons viewed as a group.

46. (1) For the purposes of this Act, the assets of a life fund at a particular time are—

Assets of a life fund

(a) the balance of money represented by amounts credited to the fund in accordance with section 47;

(b) assets of the life insurer obtained as a result of the expenditure or application of money credited to the fund;

(c) investments held by the life insurer as a result of the expenditure or application of money credited to the fund;

(d) other money, assets, or investments of the life insurer transferred to the fund, whether in accordance with this Act or otherwise.

(2) Assets or investments obtained by the application of assets (other than money) of a life fund are themselves assets of the fund.

(3) A life insurer must keep assets of a life fund distinct and separate from assets of other life funds and from all other money, assets, or investments of the life insurer.

(4) A life insurer shall maintain at all times assets of the life fund which are of a value equivalent to or higher than the liabilities of the life fund.

(5) A life insurer shall not include any of the following as assets of a life fund—

- (a) an amount on account of goodwill;
- (b) development expenditure or any amount capitalized in respect of such expenditure; and
- (c) any other assets that may be specified in the Regulations or by the Authority.

(6) Nothing in the provisions of this Act relating to life funds is intended to constitute a life insurer or its directors as a trustee or trustees of the assets of the life funds of the life insurer.

Withdrawals
from life fund

47. (1) Subject to such limits and such proportions as may be prescribed in the Regulations, where upon an actuarial valuation of a life fund, there is a surplus of assets over liabilities in the fund at the end of a financial year, the life insurer, on the recommendation of the appointed actuary, may allocate a part of the surplus attributable to participating policies—

- (a) by way of bonus; and
- (b) for transfer out of that life fund to the shareholders.

(2) If the sum of moneys transferable from a life fund in accordance with any instrument or contract binding the licensed life insurer, or its constituting documents is less than the sum of moneys allowed under subsection (1), then the lesser sum of moneys is transferable.

Statutory deposit of approved securities

Licensed insurer
to make statutory
deposit of
approved
securities

48. (1) A licensed insurer shall deposit with the Central Bank approved securities of a total value at least equal to—

- (a) the minimum amount prescribed in the Regulations; or
- (b) such higher amount as the Authority may direct in respect of the insurer under subsection (2).

(2) The Authority may, by written notice to a licensed insurer, at any time increase the minimum amount of the deposit to be made by an insurer to an amount greater than that specified in the Regulations in relation to the insurer.

(3) If, for any reason, the total value of the deposited securities is less than the minimum amount prescribed in the Regulations or directed by the

Authority, the insurer shall make good the deficiency by depositing additional securities of the required value with the Central Bank.

(4) A licensed insurer shall be considered not to be in breach of subsection (1) provided that the required additional securities are deposited with the Central Bank within two months of the date on which the total value of deposited securities fell below the minimum amount.

(5) In this section and section **52**, “the minimum amount” is the greater of the amount specified in the Regulations or such higher amount as, in relation to a particular licensed insurer, the Authority may direct under subsection (2).

49. (1) A licensed insurer may at any time replace any securities deposited under this section with other securities, provided that the value of the replacement securities, together with any other securities deposited, equals or exceeds the minimum amount.

Substitution,
redemption and
sale of securities

(2) The Central Bank shall, on the written application of a licensed insurer, invest in approved securities the whole or any part of the amount received on the redemption of a deposited security.

(3) A licensed insurer may require the Central Bank to sell any deposited security and to invest the net proceeds of the sale in such other approved securities as the insurer may direct and the new security shall be deemed to form part of the deposit under section **48**.

50. A deposit made by a licensed insurer is considered an asset of the insurer, but shall not—

Status of
statutory deposit

(a) be capable of being transferred, assigned, or encumbered with a mortgage or other charge, by the insurer;

(b) be available for the discharge of a liability of the insurer other than by a liquidator in accordance with section **51**;

(c) be liable to attachment in execution of a judgment except a judgment obtained by a policyholder of the insurer in respect of a debt due upon a policy of insurance issued in Kenya and which debt the policy holder has been unable to recover in any other way.

51. (1) Approved securities deposited with the Central Bank by a licensed insurer shall be dealt with by the Central Bank solely as follows—

Use of security
deposit

(a) to make a payment or transfer to the insurer in accordance with section **52**; or

(b) to make a payment or transfer to a liquidator appointed with respect to the insurer in accordance with this section.

(2) Approved securities deposited with the Central Bank by a licensed insurer shall not be used by the Central Bank to make a payment to, or with respect to, any other licensed insurer.

(3) If a liquidator is appointed with respect to a licensed insurer, the Central Bank shall—

- (a) obtain payment due under any deposited security; and
- (b) pay the net proceeds obtained under the security to the liquidator.

(4) Any money paid to the liquidator shall only be used by the liquidator—

- (a) first, for the purpose of satisfying the liabilities of the licensed insurer to its policyholders in respect of a policy of insurance issued by the insurer in Kenya;
- (b) second, if there is any surplus after satisfying the liabilities specified in paragraph (a), for the purpose of satisfying the liabilities of the licensed insurer to any other policyholders; and
- (c) if there is any surplus after satisfying the liabilities specified in paragraph (b), for the other purposes of the liquidation.

(5) Where a security is deposited by a life insurer in respect of life insurance business, the security, or the money obtained therefrom, shall not be available for the discharge of a liability of the insurer other than a liability arising out of a policy of life insurance issued by the insurer.

(6) The Central Bank may, if it considers it appropriate to do so, instead of obtaining payment due under a security, transfer the security or the assets to the liquidator, in which case subsection (4) applies in relation to the security transferred.

(7) If a licensed insurer becomes insolvent at a time when no liquidator has been appointed, the Central Bank may—

- (a) obtain payment due under any deposited security; and
- (b) retain the net proceeds obtained under the security pending the appointment of a liquidator.

Release of
security deposit

52. (1) If the Authority is satisfied that the total value of the deposited securities, attributable to a licensed insurer exceeds the minimum amount, it may authorise the Central Bank, on the application of the insurer—

- (a) to realise any of the securities forming part of the deposit and pay the net proceeds to the insurer; or
- (b) to transfer ownership in any of the securities forming part of the deposit to the insurer.

(2) The Authority shall not authorise the Central Bank to make a payment or transfer ownership of any securities to a licensed insurer unless,

after the payment or transfer, the total value of the deposited securities is equal to or exceeds the minimum amount.

(3) If a licensed insurer ceases to carry on insurance business, the insurer may apply to the Authority for the release of any deposited assets or for the cancellation of any security provided under this Act.

(4) Except as permitted under this section, the Authority shall not authorise the Central Bank to release any deposited security or agree to the cancellation of any security on the application of a licensed insurer unless the insurer has—

(a) satisfied all its liabilities to policyholders; or

(b) made arrangements satisfactory to the Authority for the satisfaction of all its liabilities to policyholders.

53. For the purposes of the provisions concerning the deposit of approved securities, the value of a security is the value estimated at the market rate prevailing at the time of valuation.

Valuation of approved securities

Governance and management

54. (1) A licensed insurer shall—

Governance framework

(a) take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors, senior managers and key functionaries so that—

(i) it is clear who has which of those responsibilities;

(ii) there is appropriate separation of the oversight function from the management responsibilities; and

(iii) the business and affairs of the insurer can be adequately monitored and controlled by the directors and its relevant senior managers;

(b) establish and maintain such strategies, policies, procedures and controls, including internal controls, as are appropriate for the nature, scale and complexity of its business and its risk profile;

(c) ensure that its policies, procedures and controls are regularly reviewed and updated as required;

(d) ensure that its directors are adequately resourced and that they have sufficient powers to—

(i) obtain in a timely manner such information as they require to undertake their functions; and

(ii) access senior management, persons responsible for key control functions, key functionaries and other relevant persons; and

(e) make and retain for the period specified in the Regulations, a record of how it has complied with this section.

(2) The procedures and controls established and maintained under subsection (1) shall—

(a) provide for—

- (i) the prudent management of the insurer's business, in accordance with sound insurance principles; and
- (ii) the effective oversight of its senior management and key functionaries;

(b) recognise and protect the interests of the licensee's policyholders; and

(c) take into account—

- (i) the nature, scale and complexity of the insurer's business; and
- (ii) the degree of risk associated with each area of its business.

(3) Without limiting subsections (1) and (2), a licensed insurer shall establish and maintain such policies, procedures and controls as are specified in the Regulations.

Risk
management

55. (1) A licensed insurer shall establish and maintain—

(a) a clearly defined strategy and policies, for the effective management of all significant risks that the insurer is or may be exposed to; and

(b) procedures and controls that are sufficient to ensure that the risk management strategy and policies are effectively implemented.

(2) The risk management strategy and policies shall—

(a) be appropriate for the nature, scale and complexity of the licensed insurer's business;

(b) specify how risks are to be identified, monitored, managed and reported on in a timely manner;

(c) take into account the probability, potential impact and the time duration of risk; and

(d) comply with such other requirements as may be specified in the Regulations.

(3) Without limiting subsections (1) and (2), a licensed insurer's risk management strategy and policies shall provide for—

- (a) insurance risk;
- (b) counterparty default risk;
- (c) liquidity risk;
- (d) operational risk;
- (e) balance sheet and market risk;
- (f) strategic risk and investment risk;
- (g) contagion and related party risk;
- (h) legal and regulatory risk; and
- (i) such other risks as may be specified in the Regulations.

56. (1) A licensed insurer shall establish and maintain the following key control functions—

Maintenance of
key control
functions

- (a) a chief executive function;
- (b) a risk management function;
- (c) a compliance function;
- (d) an actuarial function;
- (e) an internal audit function;
- (f) such other functions as may be specified as key control functions in the Regulations; and
- (g) such other functions as it considers appropriate for the nature, scale and complexity of its insurance business.

(2) A licensed insurer shall not outsource a key control function unless the outsourcing is permitted, in whole or in part, by the Regulations.

(3) The key control functions shall be provided with the authority, independence and resources required to enable them to operate effectively.

57. (1) Subject to subsection (2), a licensed insurer shall appoint a senior employee to—

Appointment of
person
responsible for
key control
function

- (a) undertake the duties of the function; or
- (b) if the duties of the function are to be undertaken by more than one employee (whether or not in conjunction with a key functionary), to have overall responsibility for, and oversight of, the key control function.

(2) Subsection (1) does not apply if the duties of a key control function are to be undertaken wholly by a key functionary.

(3) A person shall not be appointed as the person responsible for a key control function or as a key functionary without the approval of the board of the insurer or, where a committee of the board has responsibility for the function, without the approval of that committee.

Reinsurance arrangements

Reinsurance
arrangements

58. (1) A direct insurer shall have such arrangements as it considers appropriate for the reinsurance of risks under insurance contracts that it has entered into in the course of its business as an insurer.

(2) A direct insurer shall not, without the prior written authorisation of the Authority under subsection (3), enter into a reinsurance contract, as cedant, other than—

- (a) with a licensed reinsurer;
- (b) with a qualifying foreign reinsurer; or
- (c) in accordance with such arrangements, as may be specified in the Regulations.

(3) The Authority may, on the application of a direct insurer, authorise the insurer to enter into a reinsurance contract, as cedant, with—

- (a) a foreign direct insurer; or
- (b) a foreign reinsurer that is not a qualifying foreign reinsurer.

(4) The Regulations may specify requirements in relation to the reinsurance arrangements of licensed direct insurers and the retrocession arrangements of licensed reinsurers, including by—

- (a) requiring—
 - (i) direct insurers to provide the Authority with prior written notice of their reinsurance arrangements;
 - (ii) licensed reinsurers to provide the Authority with prior written notice of their retrocession arrangements; and
 - (iii) the approval of the Authority with respect to certain specified reinsurance or retrocession contracts or arrangements;
- (b) imposing restrictions on the reinsurance or retrocession of risks with foreign insurers; and
- (c) specifying requirements in relation to the reinsurance arrangements of licensed insurers and the retrocession arrangements of licensed reinsurers.

Appointed actuary

59. (1) Subject to subsections (2) and (3), a licensed insurer shall appoint and at all times have an appointed actuary who may be—

Appointed
actuary

(a) an employee of the licensed insurer; or

(b) engaged by the insurer under a contract for services.

(2) The Regulations may exempt specified types and descriptions of short term insurer from the requirement to appoint an appointed actuary.

(3) A person shall not be appointed as the appointed actuary of a licensed insurer unless—

(a) the person is a qualified actuary;

(b) the person has consented in writing to be appointed as the insurer's appointed actuary; and

(c) the Authority has given its prior written approval to the person's appointment as the insurer's appointed actuary.

(4) The Authority shall not approve the appointment of a person as the appointed actuary of a licensed insurer unless it is satisfied that the person is qualified to act as appointed actuary and has sufficient experience and is competent to act as the insurer's appointed actuary.

(5) Where, for whatever reason, a person ceases to be the appointed actuary of a licensed insurer, the licensed insurer is deemed not to have contravened subsection (1) if it appoints another person to be its appointed actuary within two months of the date that the person who was previously appointed ceased to hold that appointment.

(6) A licensed insurer is guilty of an offence if—

(a) subject to subsections (2) and (5), it does not have an appointed actuary; or

(b) it appoints a person as appointed actuary contrary to subsection (3).

(7) A licensed insurer that is guilty of an offence under subsection (6) shall on conviction be liable to a fine not exceeding Kenya Shillings five million.

60. A licensed insurer shall—

Actuarial review
and
financial
condition report

(a) ensure that its appointed actuary undertakes an actuarial review of its business and, if required by the Regulations or the Authority, a group actuarial review, in respect of each financial year; and

(b) take all reasonable steps to ensure that the appointed actuary prepares a written financial condition report complying with the Regulations for the insurer within

sufficient time for the insurer to submit the financial condition report to the Authority in accordance with section **102(1)(c)**.

Provision of information to appointed actuary

61. (1) A licensed insurer shall ensure that the appointed actuary has reasonable access to the accounting records and other documents of the insurer.

(2) The appointed actuary is entitled to require from a director or an employee of the insurer such information and explanations as the appointed actuary thinks necessary for the performance of the duties of an actuary.

(3) A licensed insurer that contravenes subsection (1) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings five million.

(4) Subject to subsection (5), a director or an employee of a licensed insurer who fails to comply with subsection (2) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings five million or to imprisonment for a term not exceeding three years, or to both.

(5) A director or an employee does not commit an offence under subsection (4) if the director or employee proves that—

- (a) the director or employee did not have the information required in his or her possession or under his or her control; or
- (b) by reason of the position occupied by, or the duties assigned to him or her, he or she was unable to give the information or explanations required.

Reporting obligations of appointed actuary

62. (1) Despite anything to the contrary in any other written law, the appointed actuary shall report immediately to the Authority any information relating to the affairs of the licensed insurer that the person has obtained that, in that person's opinion, suggests that—

- (a) the business of the licensed insurer is not, or is likely at any time in the next three years not to be, in a financially sound condition;
- (b) the licensed insurer is—
 - (i) in breach of the requirements in section **34(1)** or **35**;
 - (ii) in material breach of any capital and solvency requirements specified in the Regulations; or
 - (iii) likely, within the next three years, to become unable to meet the requirements specified in subparagraphs (i) or (ii); or
- (c) the licensed insurer has exposures that jeopardise its long term financial viability or stability.

(2) Where the appointment of the appointed actuary is terminated, or the appointed actuary resigns, the appointed actuary (or former appointed actuary) shall

(a) forthwith inform the Authority of the termination of the appointment, or resignation, and shall disclose to the Authority the circumstances that gave rise to the termination or resignation; and

(b) if, but for the termination of the appointment or resignation, the person would have reported information to the Authority under subsection (1), the person shall report the information concerned to the Authority, as if the appointment had not been terminated or the person had not resigned.

(3) Where a person provides any information to the Authority under subsection (2) or (3) in good faith, the person is considered not to be in contravention of any written law, rule of law, agreement, regulatory or administrative requirement or professional code of conduct to which the person is subject and no civil, criminal or disciplinary proceedings shall lie against the person in respect thereof.

(4) The failure, in good faith, of a person to provide a report or information to the Authority under subsection (1) or (2) does not confer upon any other person a right of action against the person which, but for that failure, the other person would not have had.

(5) Subject to subsection (6), a person shall, before reporting to the Authority under subsection (1) or (2), take reasonable steps to inform the insurer of his or her intention to make the report and the nature of the report.

(6) A person is not required to inform the insurer of his or her intention to make a report under this section if the person is of the opinion that to give notice to the insurer may be detrimental to the interests of its customers.

(7) A person who fails to comply with subsection (1) or (2) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings five million or to imprisonment for a term not exceeding three years, or to both.

Transfers, Assignments and Amalgamations

63. (1) Subject to section 69—

(a) no part of the business of a licensed insurer may be—

(i) transferred to another person, or

(ii) amalgamated with the business of another person, and

(b) a licensed insurer may not be amalgamated with another body corporate,

Restrictions on transfers, assignment and amalgamations

except under a scheme that complies with this Act and the Regulations and that has the prior written approval of the Authority.

(2) An arrangement or transaction which has the effect of transferring a part of the business of a licensed insurer to another person, amalgamating any part of the business of a licensed insurer with the business of another person or amalgamating a licensed insurer with another body corporate is void unless—

(a) effected under a scheme approved by the Authority; or

(b) effected under an arrangement or reconstruction under sections 207 to 210 of the Companies Act in compliance with section 69.

(3) A licensed insurer that contravenes subsection (1) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings five million.

Application for approval of scheme

64. (1) Application to the Authority for the approval of a scheme shall be made jointly by or on behalf of the licensed insurer and all other persons who are parties to the scheme.

(2) An application under subsection (1) shall be accompanied by such documentation as may be specified in the Regulations.

(3) Notice of the application shall be advertised in the manner and form specified in the Regulations.

(4) Before determining an application under this section, the Authority may—

(a) at the cost of the insurer—

(i) undertake an investigation into the desirability or otherwise of the scheme;

(ii) arrange for an independent actuary or any other suitably qualified person to make a written report on the proposed scheme; and

(b) require the insurer and each party to the scheme to provide the Authority with the documents and information it requires.

(5) The licensed insurer and every other party to the proposed scheme shall provide to the actuary or other person referred to in subsection (4)(a)(ii) the information that the actuary or person requires to assist the actuary or other person in preparing the report.

(6) An investigation under subsection (4)(a)(i) may be carried out by the Authority or by one or more persons appointed by the Authority to act on its behalf.

65. (1) The Authority may, where it considers it necessary, conduct an enquiry on the application at which the insurer, each party to the scheme and any interested person who has made representations to the Authority concerning the scheme are entitled to attend and be heard either in person or through a legal representative.

Hearing
application
approval
scheme
of
of

(2) At the enquiry conducted under subsection (1), the Authority may consider evidence that it considers appropriate.

(3) Where the Authority confirms the scheme—

(a) it is binding on the parties to it; and

(b) it has effect, despite anything to the contrary in the constituting documents of the insurer or of any company that is a party to the scheme.

(3) A copy of the confirmed scheme shall be filed with the Registrar of Companies appointed under the Companies Act.

66. (1) In considering an application for the approval of a scheme, the Authority shall have regard to—

Consideration
and decision
on
application
for
approval
of
scheme

(a) the interests of the policyholders of the licensed insurers that are parties to the proposed scheme; and

(b) any other matters that the Authority considers relevant.

(2) The Authority may, after considering an application for the approval of a scheme—

(a) give its approval unconditionally or subject to any conditions that it considers appropriate; or

(b) refuse to give its approval.

67. (1) Upon the approval of a scheme by the Authority, the parties to the transfer shall effect the transfer or amalgamation within such time as the Authority may determine.

Implementation
of scheme

(2) Any asset or liability to be transferred under the scheme is deemed to be an asset or liability of the transferee and shall not be dealt with in any way by the transferor.

(3) Where the parties fail to transfer any assets or liabilities within the time specified in subsection (1), the transferee may apply to the Court for a vesting order to enable it to complete the transfer.

(4) Where the Authority is of the opinion that the parties have failed to transfer any assets and liabilities to be transferred under the scheme within the period specified in subsection (1), the Authority may take control of those assets and liabilities and the Authority may transfer those assets and liabilities in accordance with the scheme, notwithstanding the rights of any of the parties in relation to those assets and liabilities.

(5) A person who fails to comply with subsection (1) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings ten million.

Regulations

68. The Regulations shall provide for—

(a) notices to be given with respect to the advertisement of schemes of transfer and amalgamation, both at the application stage and after approval;

(b) requirements in relation to schemes, and the information to be provided;

(c) the procedures for the determination by the Authority of applications for schemes of transfer and amalgamation.

Application of
the Companies
Act

69. (1) In this section, “Companies Act arrangement”, means an arrangement or reconstruction under sections 207 to 210 of the Companies Act.

(2) The approval by the Authority of a scheme under section **66** does not limit the application of sections 207 to 210 of the Companies Act, if the scheme is subject to those provisions.

(3) A licensed insurer may only effect a Companies Act arrangement subject to the provisions of this section.

(4) A licensed insurer may not propose a Companies Act arrangement unless it has given the Authority not less than twenty-eight days prior notice of its intention to make the proposal (or such lesser period as the Authority agrees in writing to accept).

(5) The Authority is entitled to appear and be heard at every hearing of the Court in respect of a Companies Act arrangement.

(6) The Court, determining an application to sanction a Companies Act arrangement shall take into consideration—

(a) whether the Authority is present at the hearing of the Court when the Order is made; or

(b) whether the Authority has been given sufficient notice of the hearing, but has decided not to appear.

(7) In determining whether to sanction a Companies Act arrangement, the Court shall give primary consideration to the interests of the policyholders of the licensed insurer.

Transfer of
Business Act
disapplied

70. The Transfer of Business Act [Cap. 500] does not apply to a scheme approved by the Authority or to a Companies Act arrangement sanctioned by the Court in accordance with section **69**.

**PART V – SUPERVISION OF INSURANCE INTERMEDIARIES
AND INSURANCE SERVICE PROVIDERS**

Prudential requirements

71. A licensed health insurance manager, a licensed insurance broker and a corporate agent shall, at all times, maintain its business in a financially sound condition by—

Maintenance of financially sound condition

- (a) having assets,
- (b) providing for its liabilities, and
- (c) generally conducting its business,

so as to be in a position to meet its liabilities as they fall due.

(2) This section does not limit the specific capital, solvency and other prudential requirements specified in this Act or the Regulations.

72. (1) A licensed health insurance manager, a licensed insurance broker and a corporate agent—

Minimum paid up capital

- (a) shall ensure that its paid-up capital equals or exceeds—
 - (i) the minimum amount specified in the Regulations; or
 - (ii) if the Authority issues a directive under section **74**, the amount specified in the directive; and
- (b) shall not, without the prior written approval of the Authority—
 - (i) pass a resolution to reduce its paid-up capital; or
 - (ii) cause or permit its paid-up capital to be reduced.

(2) A resolution passed in contravention of subsection (2)(a) is void and of no effect.

(4) Subsection (2) applies, even if the paid-up capital of the [type of intermediary] is higher than the minimum amount specified in the Regulations or in any directive issued by the Authority under section **74**.

(5) A licensed health insurance manager, a licensed insurance broker or a corporate agent who contravenes subsection (1) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings one million.

Capital resources

73. A licensed health insurance manager, a licensed insurance broker and a corporate agent shall ensure that, at all times, its capital resources equal or exceed—

- (a) such capital resource requirements as may be specified in the Regulations; or
- (b) if the Authority issues a directive under section **74**, the minimum capital resource requirement specified in the directive.

Authority may issue directive in relation to capital resources

74. (1) If the Authority considers it appropriate, having regard to the nature, scale and complexity of the licensed business carried on, or proposed to be carried on, by a licensed health insurance manager, a licensed insurance broker or a corporate agent, the Authority may issue a directive to the licensee requiring it to increase its capital resources to an amount higher than the minimum specified in the Regulations.

(2) Unless the circumstances justify immediate compliance with a directive issued under subsection (1), a directive shall specify a reasonable period for compliance.

Licensed insurance broker to notify Authority of likely failure to comply

75. (1) A licensed health insurance manager or a licensed insurance intermediary shall, as soon as reasonably practicable, notify the Authority in writing if it has reasonable grounds for believing that, at any time in the following three years, it is likely to fail to comply with section **71**.

(2) A licensed health insurance manager, a licensed insurance broker or a corporate agent shall, as soon as reasonably practicable, notify the Authority in writing if it has reasonable grounds for believing that, at any time in the following three years, it is likely to fail to comply with a requirement imposed in—

- (a) section **72**; or
- (b) section **73**;

(3) A licensed health insurance manager or a licensed insurance intermediary that contravenes subsection (1) or a licensed health insurance manager, a licensed insurance broker or a corporate agent that contravenes subsection (2) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings one million.

Governance and Management

Governance framework

76. (1) A licensed health insurance manager and a licensed insurance broker shall—

- (a) take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors, senior managers and key functionaries so that
 - (i) it is clear who has which of those responsibilities;

(ii) there is appropriate separation of the oversight function from the management responsibilities; and

(iii) its business and affairs can be adequately monitored and controlled by the directors and its relevant senior managers;

(b) establish and maintain such strategies, policies, procedures and controls, including internal controls, as are appropriate for the nature, scale and complexity of its business;

(c) ensure that its policies, procedures and controls are regularly reviewed and updated as required; and

(d) make and retain for the period specified in the Regulation, a record of how it has complied with this section.

(2) The procedures and controls established and maintained under subsection (1) shall—

(a) provide for the effective oversight of its senior management and key functionaries; and

(b) take into account the nature, scale and complexity of the insurance intermediary's business.

(3) Without limiting subsections (1) and (2), a licensed health insurance manager and a licensed insurance broker shall establish and maintain such policies, procedures and controls as are specified in the Regulations.

77. (1) A licensed health insurance manager and a licensed insurance broker shall establish and maintain—

Risk
management

(a) a clearly defined strategy, and if the directors consider it appropriate, policies, for the effective management of all significant risks that the licensee is or may be exposed to; and

(b) procedures and controls that are sufficient to ensure that the risk management strategy and policies are effectively implemented.

(2) The risk management strategy and policies shall—

(a) be appropriate for the nature, scale and complexity of the licensee's business;

(b) specify how risks are to be identified, monitored, managed and reported on in a timely manner;

(c) take into account the probability, potential impact and the time duration of risk; and

(d) comply with such other requirements as may be specified in the Regulations.

(3) Without limiting subsections (1) and (2), the risk management strategy and policies shall provide for—

(a) operational risk; and

(b) such other risks as may be specified in the Regulations.

Key control functions

78. (1) A licensed health insurance manager, a licensed insurance broker, a corporate agent and a licensed insurance services provider shall establish and maintain the following key control functions—

(a) a compliance function;

(b) such functions as may be specified as key control functions in the Regulations; and

(c) such other functions as it considers appropriate for the nature, scale and complexity of its business.

(2) A licensed health insurance manager, a licensed insurance broker, a corporate agent and a licensed insurance services providers shall not outsource a key control function unless the outsourcing is permitted, in whole or in part, by the Regulations.

(3) The key control functions shall be provided with the authority, independence and resources required to enable them to operate effectively.

Insurance monies

Meaning of "insurance monies"

79. (1) Insurance monies are monies that a licensed insurance intermediary receives or holds in the course of the intermediary's business in relation to any insurance transaction, that are received by the intermediary—

(a) from or on behalf of a policyholder or prospective policyholder for or on account of an insurer in connection with an insurance contract or a proposed insurance contract; or

(b) from or on behalf of an insurer for or on account of a policyholder or prospective policyholder.

(2) Without limiting subsection (1), "insurance monies" include—

(a) premiums and premium refunds; and

(b) monies intended for the settlement of insurance claims.

(3) The following are not insurance monies—

(a) a cheque or payable order made payable to an insurer; and

(b)a cheque or payable order made payable to a policyholder or prospective policyholder.

80. (1) A licensed insurance service provider is not authorised to, and shall not, receive or hold insurance monies.

Restrictions on receipt and holding of insurance monies

(2) Except as permitted by this Part or the Regulations, a licensed insurance broker is not authorised to receive or hold insurance monies.

(3) Section **82** applies in relation to the receipt and holding of insurance monies by a licensed insurance agent.

(4) A licensed insurance services provider that contravenes subsection (1) or a licensed insurance broker that contravenes subsection (2) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings one million.

81. (1) A licensed insurance broker and a licensed insurance agent shall not accept a cheque or other payable order from a policyholder or prospective policyholder in respect of monies for or on account of an insurer, unless the cheque or payable order is made payable to the insurer.

Payable orders and electronic transfers

(2) A licensed insurance broker and a licensed insurance agent shall not request or authorise the electronic transfer of monies into any of its accounts, including a general or specific client account, if those monies are paid for or on account of an insurer in connection with an insurance contract or a proposed insurance contract.

(3) If a licensed insurance broker or a licensed insurance agent receives an electronic transfer of monies referred to in subsection (2) into any of its accounts, including a general or specific client account, it shall as soon as reasonably practicable return the monies to the person who paid them.

(4) A licensed insurance broker or a licensed insurance agent that contravenes subsection (1) or (2) is guilty of an offence and shall on conviction be liable—

(a)in the case of an individual, to a fine not exceeding Kenya Shillings one million or to imprisonment for a term not exceeding one year, or to both; or

(b)in the case of any other person, to a fine not exceeding Kenya Shillings one million.

82. (1) A licensed insurance agent shall not receive, hold or in any way deal with insurance monies unless the insurer for which the agent acts has authorized the agent to receive, hold or deal with those monies.

Receipt and holding of monies by a licensed insurance agent

(2) Where a licensed insurance agent receives any money, including a premium or part premium, payable under an insurance contract issued or to be issued by an insurer by which the insurance agent is appointed—

(a)the insurance agent is considered to have been received the money as agent of the insurer and holds the money in trust for the insurer; and

(b) payment to the insurance agent is, despite any agreement to the contrary, deemed to be payment to the insurer.

(3) Where a licensed insurance agent receives any money from an insurer by which the insurance agent is appointed which is intended to be paid to a policyholder or prospective policyholder of the insurer, including a premium refund and money paid in relation to the settlement of a claim under an insurance contract—

(a) the insurance agent holds the money in trust for the insurer; and

(b) payment of the money is considered not to have been received by the policyholder or prospective policyholder until the money has been paid to the policyholder or prospective policyholder.

(4) Any moneys received or held by a licensed insurance agent in the circumstances specified in this section shall not be treated, for any purposes, as assets or property of the insurance agent and shall not be used for payment of any costs or charges due under this Act or the Regulations or for payment to the insurance agent's creditors.

(5) On receiving any insurance monies in accordance with this section, a licensed insurance agent shall—

(a) forthwith notify the insurer in writing of the receipt of monies on the insurer's behalf; and

(b) as soon as reasonably practicable, remit the monies to the insurer.

(6) A licensed insurance agent that contravenes subsection (1) or (5) is guilty of an offence and shall on conviction be liable—

(a) in the case of an individual, to a fine not exceeding Kenya Shillings one million or to imprisonment for a term not exceeding three years, or to both; or

(b) in the case of any other person, to a fine not exceeding Kenya Shillings one million.

Receipt of insurance monies by licensed insurance broker

83. (1) A licensed insurance broker may receive insurance monies only if each of the following paragraphs apply—

(a) the insurer concerned has authorized the insurance broker to receive those monies;

(b) the monies are paid to the licensed insurance broker in cash; and

(c) the monies—

(i) are payable by a policyholder or prospective policyholder for or on account of a licensed insurer; or

- (ii) the monies are provided to the insurance broker by a licensed insurer by way of premium refund for payment to a policyholder or prospective policyholder or for the purposes of settling a claim of a policyholder and, in either case, the policyholder or prospective policyholder is a customer of the insurance broker.

(2) A licensed insurance broker shall, within two working days of the receipt of any insurance monies in accordance with subparagraph (1), pay the monies into a general customer account or a specific customer account established and operated in accordance with this Act.

(3) A licensed insurance broker shall not receive any insurance monies under subparagraph (1) unless it has established a customer account into which the monies can be paid.

(4) Any insurance moneys received by a licensed insurance broker shall not be treated, for any purposes as assets or property of the insurance broker and shall not be used for payment of any costs or charges due under this Act or the Regulations or for payment to the insurance agent's creditors.

(5) A licensed insurance broker that receives insurance monies contrary to subsection (1) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings three million.

84. (1) On receiving any insurance monies in accordance with section **80****Error! Bookmark not defined.**, a licensed insurance broker shall—

Payment of monies to insurer

(a) forthwith notify the insurer in writing that it has received the monies on the insurer's behalf; and

(b) as soon as reasonably practicable, remit the monies to the insurer.

(2) A licensed insurance broker that contravenes subsection (1) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings three million.

85. (1) A licensed insurance broker shall ensure that any customer account that it maintains is—

Establishment of customer account

(a) held with a licensed bank;

(b) either a current account or a deposit account;

(c) separate from any of the insurance broker's own bank accounts;

(d) clearly designated as a customer account; and

(e) under at least dual signatory control, where the signatories are sufficiently senior to provide an appropriate span of control.

(2) A licensed insurance broker that opens a customer account shall—

(a) give written notice to the bank that the account is to be a customer account, specifying whether the account is a general customer account or a specific customer account; and

(b) request the bank in writing to provide an undertaking to the effect that the bank

(i) acknowledges that the account is a client account and that money standing to the credit of the account at any time is held by the licensee as a trustee;

(ii) agrees that any interest payable in relation to monies standing to the credit of the account will be credited to that account and not to any other account;

(iii) agrees not to combine the customer bank account with any other account, whether held by the licensee or by any other person; and

(iv) agrees that it has no right of set off, counterclaim or any security interest against money in the customer account with respect to any debt or other obligation of the licensee.

Operation
customer
account

86. (1) A licensed insurance broker shall not—

(a) pay any insurance monies into a customer account unless it has received an undertaking from the bank in the terms specified in section **85**(2)(b);

(b) except as provided in subsection (2)—

(i) pay monies that are not insurance monies into a customer account; or

(ii) pay insurance monies received in respect of one customer into a specific customer account held in respect of another customer; or

(c) knowingly permit a customer account to become overdrawn.

(2) A licensed insurance broker may pay into, or permit to be paid into or credited to, a customer account monies that are not insurance monies if the monies—

(a) are required to open the account;

(b) are required to restore an amount withdrawn in error from the account; or

(c) represent interest earned on the money in the account.

Other obligations and restrictions

87. (1) A licensed insurance broker and a licensed insurance services provider shall at all times maintain such professional indemnity and other insurance as may be specified in the Regulations.

Professional indemnity and other insurance

(2) A licensed insurance broker or a licensed insurance services provider that contravenes subsection (1) is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings one million.

88. (1) A licensed insurer shall not conduct business with or pay any commission or other remuneration to an insurance broker unless the person is licensed as an insurance broker.

Insurer not to conduct business with unlicensed insurance broker

(2) Subsection (1) does not apply if —

(a) the person concerned carries on business outside Kenya; and

(b) does not require to be licensed as an insurance broker under this Act.

Provisions relating to insurance agents

89. (1) A licensed insurer shall not appoint a person as its insurance agent unless the person is licensed as an insurance agent.

Insurer not to appoint unlicensed insurance agents

(2) Subsection (1) does not apply in respect of the appointment by a licensed insurer of a person as its insurance agent if

(a) the person appointed is resident outside Kenya; and

(b) the person is appointed to act as the insurer's agent solely outside Kenya.

90. (1) An individual agent may not act as the agent of more than one licensed insurer in respect of—

Restrictions on individual agents

(a) any class of life insurance business; or

(b) any class of general business.

(2) The Regulations may prescribe circumstances in which a corporate agent can act as the agent of more than one licensed insurer.

91. (1) Despite anything to the contrary contained in an insurance contract, an insurance agent who completes an insurance form or a similar document on behalf of a person is considered to be the agent of the insurer and not the agent of the person on whose behalf the agent completes the proposal form.

Insurance agent considered agent of insurers

(2) Knowledge acquired by an insurance agent in the course of completing an insurance proposal or a similar document under subsection (1), is considered to be knowledge acquired by the insurer.

(3) Nothing contained in an insurance contract shall absolve the insurer from liability in respect of knowledge obtained by the insurance agent under subsection (2).

Liability
insurer
conduct
agents

of
for
of
92. (1) If a person is appointed as the insurance agent of a single licensed insurer, subject to subsections (4) and (5), the insurer is responsible, as between the insurer and the policyholder or prospective policyholder, for the conduct of the insurance agent in relation to any matter relating to insurance, whether or not the insurance agent acted within the scope of the authority granted by the insurer.

(2) If a person is appointed as the insurance agent of different licensed insurers and the person engages in conduct in relation to any matter relating to an insurer, subject to subsections (4) and (5), the licensed insurer that appointed the person as insurance agent for that insurance business is responsible for the conduct of that person, as between the insurer and the policyholder or prospective policyholder, whether or not the insurance agent has acted within the scope of the authority granted by the insurer.

(3) This section applies whether the person appointed as insurance agent is a licensed insurance agent or, contrary to this Act, a person who is not a licensed insurance agent.

- (4) This section applies to any conduct of agent of a licensed insurer
- (a) on which a person in the circumstances of the policyholder or prospective policyholder could reasonably be expected to rely; and
 - (b) on which the policyholder or prospective policyholder in fact relied in good faith.

(5) Where a licensed insurer is responsible for the conduct of an agent under subsection (1) or (2), the insurer's liability to a policyholder or prospective policyholder is in respect of any loss or damage suffered by the policyholder or prospective policyholder as a result of the conduct of the agent.

(6) This section does not limit or affect any liability of an insurance agent of an insurer to a policyholder or prospective policyholder.

PART VI – PROVISIONS OF GENERAL APPLICATION

Financial statements and audit

Application
this Part

of
93. (1) The following sections apply to all licensees—

- (a) section **94**; and
- (b) sections **106** and **107**.

(2) Sections **95** to **105** apply to licensed health insurance managers and licensed insurance brokers and in those sections “relevant licensee” means a licensee to whom the sections apply.

94. (1) A licensee shall keep at its principal office in Kenya, records that are sufficient— Maintenance of financial records

- (a) to show and explain its transactions;
- (b) to enable its financial position to be determined with reasonable accuracy, at any time;
- (c) to enable it to prepare such financial statements and make such returns as it may be required to prepare and make under this Act and the Regulations; and
- (d) if applicable, to enable its financial statements to be audited in accordance with this Act and the Regulations.

(2) A licensee shall retain the records required to be kept under this section for a period of at least seven years after the completion of the transaction to which they relate.

(3) Subsection (2) continues to apply to a person who held a licence issued under this Act, even if the licence has been cancelled.

(4) A licensee that contravenes subsection (1) or a former licensee that contravenes subsection (3) is guilty of an offence and shall on conviction be liable—

- (a) in the case of an individual, to a fine not exceeding Kenya Shillings one million or to imprisonment for a term not exceeding six months, or to both; or
- (b) in the case of any other person, to a fine not exceeding Kenya Shillings one million.

95. In this Part and in the Regulations, “financial statements”, in relation to a relevant licensee and to a financial year, mean— Meaning of “financial statements”

- (a) a statement of the financial position of the relevant licensee as at the last date of the financial year,
- (b) a statement of the financial performance of the licensee in relation to the financial year,
- (c) a statement of cash flows for the licensee in relation to the financial year,
- (d) such statement relating to the prospects for the licensee’s business as may be specified in the Regulations or as may be required by the prescribed accounting standards, and
- (e) such other statements as may be specified in the Regulations,

together with any notes or other documents giving information relating to the matters specified in paragraphs (a), (b), (c), (d) or (e).

Preparation of financial statements

96. (1) A relevant licensee shall prepare financial statements for each financial year.

(2) The financial statements shall—

(a) be prepared in accordance with, and comply with, the prescribed accounting standards; and

(b) shall comply with any requirements of the Regulations.

Appointment of auditor

97. (1) A relevant licensee shall appoint and at all times have an auditor for the purposes of auditing its financial statements.

(2) A person shall not be appointed as auditor under subsection (1) unless—

(a) the person is qualified under the Regulations to act as the auditor of a relevant licensee;

(b) the person has consented in writing to act as auditor; and

(c) the Authority has given its prior written approval to the person's appointment as auditor of the relevant licensee.

(3) The Authority shall not approve the appointment of a person as auditor of a relevant licensee unless it is satisfied that the person is qualified to act as auditor and has sufficient experience and is competent to audit the financial statements of the relevant licensee.

(4) The approval of the Authority is not required where the auditor appointed in respect of a financial year acted as the auditor of the relevant licensee in the previous financial year and the Authority has not revoked its approval of the auditor under section **101**.

(5) Where, for whatever reason, a person ceases to be the auditor of a relevant licensee, the relevant licensee is deemed not to have contravened subsection (1) if it appoints another auditor in accordance with this section within two months of the date that the person who was previously appointed auditor ceases to hold that appointment.

Relevant Licensee's Duties in Relation to Audit

98. A relevant licensee shall make such arrangements as are necessary to enable its auditor to audit its financial statements in accordance with this Act and the Regulations, including by—

(a) giving the auditor a right of access at all reasonable times to its financial records and to all other documents and records; and

(b) providing the auditor with the information and explanations that the auditor requires for the purposes of the audit.

Audit and Audit Report

99. (1) An auditor shall carry out sufficient investigation to enable the auditor to form an opinion on the financial statements, and prepare an audit report, in compliance with this Act and the Regulations.

(2) Upon completion of the audit of the financial statements of a relevant licensee, the auditor shall—

- (a) provide an audit report to the relevant licensee complying with the Regulations; and
- (b) send a copy of the audit report, together with the management letter, to the Authority.

(3) The Authority may at any time, by notice in writing, direct a relevant licensee to supply the Authority with a report, prepared by its auditor or such other person as may be nominated by the Authority, on such matters as the Authority may determine which may include an opinion on the adequacy of the accounting systems and controls of the relevant licensee and on asset quality and the adequacy of its technical provisions.

(4) A report prepared under subsection (3) shall be at the cost of the relevant licensee.

100. (1) Despite anything to the contrary in any other written law, the auditor of a relevant licensee shall report immediately to the Authority any information relating to the affairs of the relevant licensee that the auditor has obtained in the course of acting as its auditor that, in the opinion of the auditor, suggests that—

Reporting
Obligations of
Auditors

- (a) the relevant licensee is, or is likely to become insolvent or its business is not, or is likely to cease to be, in a financially sound condition;
- (b) in the case of a licensed insurer, the relevant licensee—
 - (i) is not in compliance with its paid-up capital, solvency margin, capital resources requirements;
 - (ii) is in material breach of any solvency requirements specified in the Regulations; or
 - (iii) is likely to become unable to meet the requirements specified in subparagraphs (i) or (ii);
- (c) in the case of a licensed health insurance manager or a insurance broker, the insurance broker is in breach of, or likely to breach—
 - (i) the paid-up capital requirements; or
 - (ii) the capital resource requirements;
- (d) a criminal offence has been or is being committed by the relevant licensee or in connection with its business;
- (d) the relevant licensee has significant weaknesses in its internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardize its financial viability; or

(e) a serious breach of this Act or the Regulations has occurred in respect of the relevant licensee or its business.

(2) Where the appointment of an auditor of a relevant licensee is terminated, or the auditor resigns, the auditor whose appointment has been terminated, or who has resigned, shall—

(a) forthwith inform the Authority of the termination of the appointment, or the resignation, and disclose to the Authority the circumstances that gave rise to the termination or resignation; and

(b) if, but for the termination of the appointment, or the resignation, the auditor would have reported information to the Authority under subsection (1), the auditor shall report the information concerned to the Authority, as if the appointment had not been terminated or the auditor had not resigned.

(3) The Authority may require an auditor of a relevant licensee to discuss any audit he or she has conducted or commenced, or provide additional information regarding the audit to, the Authority.

(4) Where, in good faith, a person who is, or was, an auditor of a relevant licensee provides any information to the Authority under subsection (1), (2) or (3), the person is considered not to be in contravention of any written law, rule of law, agreement, regulatory or administrative requirement or professional code of conduct to which the person is subject and no civil, criminal or disciplinary proceedings shall lie against the person in respect thereof.

(5) The failure, in good faith, of a person who is, or was, an auditor of a relevant licensee, to provide a report or information to the Authority under subsection (1), (2) or (3) does not confer upon any other person a right of action against the person which, but for that failure, the other person would not have had.

(6) Subject to subsection (7), the auditor of a relevant licensee shall, before reporting to the Authority under subsection (1) or (2), take reasonable steps to inform the licensee of his or her intention to make the report and the nature of the report.

(7) An auditor is not required to inform the licensee of his or her intention to make a report under this section if the auditor is of the opinion that to give notice to the licensee may be detrimental to the interests of its customers.

(8) An auditor or former auditor who fails to comply with subsection (1) or (2) is guilty of an offence and shall on conviction be liable—

(a) in the case of an individual, to a fine not exceeding Kenya Shillings five million or to imprisonment for a term not exceeding three years, or to both; or

(b) in the case of any other person, to a fine not exceeding Kenya Shillings five million.

101. (1) If the Authority is of the opinion that the auditor of a relevant licensee has failed to fulfil his or her obligations under this Act or is otherwise not a fit and proper person to act as the auditor of a relevant licensee, it may give written notice to the licensee and to the auditor of its intention to revoke the appointment of the auditor on the date specified in the notice.

Powers
Authority of

(2) A notice given under subsection (1) shall state—

(a) the grounds on which it intends to revoke the appointment of the auditor;

(b) that the licensee and the auditor may provide written representations to the Authority objecting to the revocation of the auditor's appointment; and

(c) the last date for the provision of written representations to the Authority.

(3) The Authority shall consider any objections it receives before deciding whether or not to revoke the appointment of the auditor.

(4) A notice revoking the appointment of an auditor under subsection (1) shall be given to the auditor.

(5) If a relevant licensee fails to appoint an auditor, the Authority may appoint a qualified person to act as the auditor of the licensee.

(6) An auditor appointed under subsection (5) is considered, for the purposes of this Act, to have been appointed by the relevant licensee and the licensee shall be responsible for the auditor's costs and remuneration.

102. (1) A relevant licensee shall, within the time period specified in the Regulations, submit to the Authority its annual financial statement accompanied by—

Submission of
Financial
Statements to the
Authority

(a) a directors' certificate in the form approved by the Authority, if any;

(b) the auditor's report;

(c) in the case of a licensed insurer required by the Regulations to prepare a financial condition report, the financial condition report prepared;

(d) any report on the affairs of the licensee made to its members in respect of the financial year; and

(e) such other documents as may be specified in, or required by, the Regulations.

(2) Unless accompanied by the certificates, reports and documents specified in subsection (1), the financial statements are considered not to have been submitted to the Authority.

(3) A relevant licensee shall, in respect of and within such periods as may be specified in the Regulations, submit to the Authority—

- (a) periodic financial statements, that may be unaudited;
- (b) a return in the form approved by the Authority, if any; and
- (c) such other information and documentation as may be specified in the Regulations.

(4) If the Authority considers that the financial statements submitted by a relevant licensee under subsection (1), or any documents attached to them, are inaccurate or incomplete or that they are not prepared in accordance with the prescribed accounting standards, the Authority may by written notice reject the financial statements.

(5) Where the Authority rejects the financial statements under subsection (4), they are considered not to have been submitted by the licensee.

Extension
Time of

103. (1) The Authority may, on the application of a relevant licensee, extend the time for compliance with section **102** for a period not exceeding one month or, where it grants more than one extension, for an aggregate period of no more than two months.

(2) An extension under subsection (1) may be granted subject to such conditions as the Authority considers appropriate.

Group accounts

104. (1) Where a relevant licensee is a member of a group of companies, the Authority may require the licensee to submit group accounts.

(2) The Authority may require that the group accounts are audited by the auditor of the relevant licensee or by another auditor approved by the Authority in writing.

Regulations

105. (1) The Regulations shall prescribe—

- (a) internationally recognized accounting standards to be used by relevant licensees in the preparation of their financial statements; and
- (b) recognized qualifications for an auditor.

(2) The Regulations may specify requirements concerning—

- (a) the determination of the financial year of a relevant licensee;
- (b) the form, manner and place in which the financial records of a relevant licensee are to be kept;
- (c) other records required to be kept by a relevant licensee and the form, manner and place in which the additional records are to be kept;

- (d) the preparation and audit of the financial statements of a relevant licensee;
- (e) the reports to be provided by the auditor to the relevant licensee and the Authority;
- (f) the submission of annual and periodic financial statements and returns to the Authority;
- (g) the form, content, preparation and audit of group accounts.

Obligations and restrictions

106. (1) A licensee incorporated in Kenya shall not, without the prior written consent of the Authority— Branches and subsidiaries

- (a) establish or acquire a subsidiary in or outside Kenya; or
- (b) open an office in or outside Kenya.

(2) A licensee who contravenes this section is guilty of an offence and shall on conviction be liable—

- (a) in the case of an individual, to a fine not exceeding Kenya Shillings one million or to imprisonment for a term not exceeding six months, or to both; or
- (b) in the case of any other person, to a fine not exceeding Kenya Shillings one million.

107. (1) A licensee shall submit to the Authority such reports and returns relating to the licensee's financial condition and its business as may be specified in this Act or the Regulations, or as may otherwise be required by the Authority. Returns reports and

(2) If the Authority considers that any report or return submitted by a licensee under subsection (1) is inaccurate or incomplete or is not prepared in accordance with this Act or the Regulations or is not in the form specified by the Authority, the Authority may, by written notice, require the licensee to amend the report or return or submit a replacement.

PART VII – INFORMATION GATHERING, ON-SITE

INSPECTIONS AND INVESTIGATIONS

Powers to obtain information

108. (1) Where reasonably required by the Authority for the performance of its functions under this Act or any other written law, the Authority may, by notice in writing given to a person specified in subsection (2), require the person to— Notice to provide information or produce documents

- (a) provide specified information or information of a specified description; or
 - (b) produce specified documents or documents of a specified description.
- (2) A notice under subsection (1)—
 - (a) may be issued to a—
 - (i) a licensee;
 - (ii) a former licensee;
 - (iii) a person the Authority reasonably believes to be carrying on, or to have at any time carried on, unauthorised business;
 - (iv) a person connected with a person specified in subparagraph (i), (ii) or (iii); or
 - (v) to any person who the Authority reasonably believes is in possession of the information or documents; and
 - (b) shall specify the place where and the period within which the information or documents shall be provided or produced.
- (3) The Authority may require—
 - (a) any information or documents provided or produced under this section to be—
 - (i) provided or produced in such form as the Authority may specify; and
 - (ii) verified or authenticated in such manner as the Authority may reasonably specify;
 - (b) that the information is to be provided to, or the documents are to be produced to, a person specified in the notice; and
 - (c) that the person to whom the notice is issued, or a person who is or has been a director, auditor or actuary of that person, provide such explanations relating to the information or documents as the Authority may reasonably require.
- (4) The Authority may take copies or extracts of any document produced under this section.
- (5) Where a person claims a lien on a document, its production under this section is without prejudice to that lien.

(6) A person who, without reasonable excuse, fails to comply with a notice issued under this section is guilty of an offence and shall on conviction be liable—

(a) in the case of an individual, to a fine not exceeding Kenya Shillings one million or to imprisonment for a term not exceeding six months, or to both; or

(b) in the case of any other person, to a fine not exceeding Kenya Shillings one million.

On-site inspections

109. (1) For the purposes of this section, “relevant person” means—

Authority may undertake on-site inspections

(a) a licensee;

(b) a subsidiary or holding company of a licensee; or

(c) a former licensee.

(2) The Authority may, at any time, for the purpose of performing its functions—

(a) inspect the premises and the business, including the procedures and controls, of a relevant person;

(b) inspect any premises or business of a person to whom the licensee has outsourced any functions or activities;

(c) inspect the assets, including cash, belonging to or in the possession or control of a relevant person or of a person to whom any functions or activities of the relevant person have been outsourced;

(d) examine and make copies of documents belonging to or in the possession or control of a relevant person or of a person specified in paragraph (b) that, in the opinion of the Authority, relate to the carrying on of insurance business or the business as an insurance intermediary, by the relevant person; and

(e) seek information and explanations from the officers, employees, agents and representatives of a relevant person or of a person specified in paragraph (b), and whether verbally or in writing, and whether in preparation for, during or after an on-site inspection.

(3) An on-site inspection may be undertaken by employees of the Authority, by other persons authorised by the Authority for the purpose or by both employees and other authorised persons.

(4) An on-site inspection undertaken in relation to a person to whom any functions or activities of a relevant person have been outsourced shall be limited to those aspects of the premises, business, assets or documents

that are relevant to the functions of the Authority in relation to the relevant person.

(5) Subject to subsection (6), the Authority shall give reasonable notice to a relevant person of its intention to exercise its powers under subsection (2).

(6) Where it appears to the Authority that the circumstances so justify, the Authority may exercise its powers under subsection (2) without giving notice of its intention to do so.

(7) In undertaking an on-site inspection, the Authority shall exercise reasonable care to avoid hindrance to the day to day activities of the relevant person.

Duties of relevant persons and their directors and senior managers in relation to inspection visits

110. (1) A relevant person shall permit any employee of the Authority, or person appointed by the Authority, undertaking an on-site inspection, to have access to—

- (a) any of its premises, its business and any assets in its possession or control that the Authority requires to inspect,
- (b) all documents, including financial records, that the Authority requires, including electronic records,

for the purposes of the inspection.

(2) A relevant person who contravenes subsection (1) is guilty of an offence and shall on conviction be liable—

- (a) in the case of an individual, to a fine not exceeding Kenya Shillings one million or to imprisonment for a term not exceeding one year, or to both; or
- (b) in the case of any other person, to a fine not exceeding Kenya Shillings one million.

Investigations

Examination under oath or affirmation by Authority

111. (1) Where the Authority on reasonable grounds believes that a person (“the examinee”) can provide information that the Authority reasonably requires for the purposes of performing its functions, the Authority may, by notice in writing, require the examinee to attend before a specified member of the Authority’s staff (“the examiner”) to be examined under oath or affirmation.

(2) A notice under subsection (1) shall state—

- (a) the general nature of the matters on which the examinee is to be examined;
- (b) the date, time and place of the examination; and
- (c) the entitlement of the examinee to be represented by a legal representative in accordance with section **112**(2).

(3) Any change in the matters required to be stated in the notice under subsection (2) shall be confirmed by the Authority to the examinee in writing before the date of the examination.

112. (1) The examiner is entitled to administer an oath to the examinee, or affirm the examinee, for the purposes of this section, even though the examiner may not otherwise be entitled to do so.

Conduct of
examination by
Authority

(2) An examinee may be represented at the examination by a legal representative who may, at such times as the examiner determines—

(a) address the examiner; and

(b) examine the examinee on any matters on which the examiner has examined the examinee.

(3) Subject to subsection (4), an examination under this section shall be held in camera.

(4) The examiner may in his or her discretion permit to be present at the examination—

(a) any officer or employee of the Authority and any other person that, in the opinion of the examiner, is essential to the examination; and

(b) any person whom the examinee requests to be present.

(5) The examiner shall cause a written record to be made of the examination and shall, within a reasonable period following the examination, provide a written copy of the record to the examinee, subject to such conditions (including a condition as to disclosure of the record or any part thereof or information relating thereto) as the examiner may impose.

(6) A person is guilty of an offence if—

(a) having received a notice under subsection (1), the person fails or refuses to submit to examination in accordance with the notice;

(b) as an examinee, the person fails to answer a question that has been properly put to the person by the examiner; or

(c) having been issued with a record of an examination pursuant to subsection (5), the person fails to comply with any condition imposed by an examiner.

(7) A person who is guilty of an offence under subsection (6) is liable to a fine not exceeding Kenya Shillings one million or to imprisonment for a term not exceeding six months, or to both.

113. (1) Where the Authority on reasonable grounds believes that a person can provide information that the Authority reasonably requires for the purposes of discharging its functions, the Authority may apply to the Court to have that person examined under oath or affirmation before the

Examination
under oath or
affirmation by
Court

Court and to have the results of that examination transmitted to the Authority.

(2) On an application under subsection (1), the Court may, on such terms and conditions as it considers fit, order—

- (a) the examination of a person under oath or affirmation; and
- (b) the production by that person to the Court of such documents as are specified in the order.

(3) A person may choose to be represented by a legal representative at an examination held under this section and the proceedings of the examination shall be held in camera.

(4) An application to the Court under subsection (1) shall be processed by the Court within seven days of the application and the results of the examination, together with such documents as may be produced, shall be provided to the Authority within a reasonable period, not exceeding fourteen days, after the date of the examination.

Search warrant

114. (1) The Court may issue a search warrant under this section if the Court is satisfied on information on oath or affirmation given on behalf of the Authority that there are reasonable grounds for believing that one or more of the conditions specified in subsection (2) have been satisfied.

(2) The conditions referred to in subsection (1) are—

(a) that a person has failed to fully comply with a notice issued by the Authority under section **108** within the time period specified in the notice and that on the premises specified in the warrant—

- (i) there are documents that have been required to be produced; or
- (ii) there is information that has been required to be provided;

(b) that a notice could be issued by the Authority to a person under section **108**, and—

- (i) there are documents, or there is information, on the premises that could be required to be produced or provided under by the notice; and
- (ii) if the notice was to be issued, it would not be fully complied with or the documents or information to which the notice relates would be removed, tampered with or destroyed;

(c) that—

- (i) an offence under this Act or the Regulations has been, is being or may be committed by a person;

- (ii) there are documents, or there is information, on the premises specified in the warrant that evidence the commission of the offence; and
- (iii) if a notice under section **108** was to be issued, it would not be complied with or the documents or information to which the notice related would be removed, tampered with or destroyed.

(3) A warrant issued under this section shall authorise a named representative of the Authority, together with a police officer and any other person named in the warrant—

- (a) to enter the premises specified in the warrant at any time within seven days from the date of the warrant;
- (b) to search the premises and take possession of any documents or information appearing to be documents or information of a type in respect of which the warrant was issued or to take, in relation to such documents or information, any other steps which appear to be necessary for preserving or preventing interference with them;
- (c) to take copies of, or extracts from, any documents or information appearing to be documents or information of a type in respect of which the warrant was issued;
- (d) to require any person on the premises to provide an explanation of any document or information appearing to be documents or information of a type in respect of which the warrant was issued or to state where such documents or information may be found; and
- (e) to use such force as may be reasonably necessary to execute the warrant.

(4) Unless the Court, on the application of the Authority, otherwise orders, a document of which possession is taken under this section may be retained—

- (a) for a period of three months; or
- (b) if within that period, proceedings for a criminal offence, to which the document is relevant are commenced against any person, until the conclusion of those proceedings.

(5) In this section, “premises” includes a vehicle, vessel or aircraft.

PART VIII –ENFORCEMENT AND REMEDIAL ACTION

Enforcement action

Enforcement
action against
licensees

115. (1) The Authority may take enforcement action against a licensee if—

(a) in the opinion of the Authority, the licensee—

- (i) has contravened or is in contravention of this Act or the Regulations;
- (ii) has contravened or is in contravention of an obligation under the anti-money laundering and terrorist financing legislation;
- (iii) in the case of a licensed insurer, is not carrying on its business in a prudent manner or in accordance with sound insurance principles or has breached a solvency control level specified by the Authority;
- (iv) is carrying on, or is likely to carry on, business in a manner detrimental to the public interest or to the interests of any of its customers or creditors;
- (v) is or is likely to become insolvent;
- (vi) has failed to comply with a directive given to it by the Authority under this Part;
- (vii) is in breach of, or has breached, any condition of its licence; or
- (viii) has provided the Authority with any false, inaccurate or misleading information, whether on making application for a licence or subsequent to the issue of the licence;

(b) a petition is presented to the Court under the Companies Act for the winding up of the licensee, application is made to a court outside Kenya for the winding up, judicial management or administration of the licensee, or for an equivalent procedure, the licensee passes a winding up resolution, makes, or proposes to make, a composition or arrangement with its creditors or is dissolved;

(c) a receiver or receiver manager has been appointed in respect of the business carried on by the licensee or possession has been taken of any of its property by or on behalf of the holder of a debenture secured by a charge;

(d) the Authority has reasonable grounds for believing that—

- (i) a person having a share or interest in the licensee, whether equitable or legal, or any director, senior manager or key functionary of the licensee is not a fit and proper person to have an interest in or be concerned with the management of the licensee;
- (ii) the licensee or a subsidiary or holding company of the licensee has refused or failed to co-operate with the Authority on an inspection visit undertaken by the Authority under section 109; or
- (iii) the licensee has departed substantially from the most recent business plan submitted to the Authority.

(2) If the Authority is entitled to take enforcement action under subsection (1), without limiting any other power given to it by this Act, it may vary any conditions attached to the licence, or impose additional conditions, under section 166(4).

116. (1) The Authority is entitled to take enforcement action against a person that is carrying on, or has carried on, unauthorised business.

Enforcement
action against
persons in
relation to
unauthorised
business

(2) If the Authority is entitled to take enforcement action under subsection (1), without limiting any other power given to it by this Act, it may exercise one or more of the following powers—

- (a) issue a directive requiring the person to cease carrying on the unauthorised business under section 117;
- (b) appoint an investigator to conduct an investigation under section 120(1)(c); or
- (c) apply for an order under section 131.

117. (1) Where the Authority is entitled to take enforcement action against a licensed insurer, the Authority may issue a written directive to the insurer—

Directives to
licensed insurer

- (a) imposing one or more prohibitions, restrictions, limitations or conditions on the licensed insurer or its business, including, but not limited to, that—
 - (i) the insurer shall cease to engage in any class of insurance business;
 - (ii) the insurer shall not enter into any new contracts for any class of insurance business;
 - (iii) the insurer shall not vary any existing contracts of insurance;
 - (iv) the aggregate premium income of the insurer, whether before or after the deduction of

reinsurance premiums payable by the insurer for reinsuring its insurance liabilities, shall be limited as specified in the directive;

- (v) the insurer refrain from making investments of a specified class or description;
- (vi) the insurer realise, within such time period as may be specified in the directive, the whole or a specified portion of investments of a specified type or description held by the insurer;
- (vii) the insurer shall not transfer its assets, or specified assets, to any other person;
- (viii) the insurer shall not declare or make any distribution to its shareholders or purchase its own shares;

(b)requiring the licensed insurer—

- (i) to increase its capital resources;
- (ii) to provide a remediation or recovery plan to the Authority;
- (iii) to enter into one or more reinsurance contracts, as cedant;
- (iv) to arrange the transfer of obligations under any insurance contracts to another insurer that is willing to accept them;
- (v) to notify the Authority, or obtain specific approval from the Authority, before it undertakes certain specified actions or types or descriptions of action;
- (vi) to provide any return or other document it is obliged to submit under this Act or the Regulations within a shorter period of time than that permitted under this Act;
- (vii) to provide to the Authority specified reports or returns that are not required to be submitted to the Authority under this Act or the Regulations;
- (viii) to appoint a skilled person under section **135**;
- (ix) to appoint additional directors, senior managers or key functionaries approved by the Authority;

(c)requiring the licensed insurer to take such other action as the Authority considers may be necessary to—

- (i) safeguard the financial condition of the insurer;

- (ii) protect the property of, or in the custody, possession or control of, the insurer; or
- (iii) protect policyholders or creditors or potential policyholders or creditors of the insurer.

(2) A licensed insurer that fails to comply with, or carries on business in contravention of, a directive issued by the Authority under this section is guilty of an offence and shall on conviction be liable to a fine not exceeding Kenya Shillings five million.

118. (1) Where the Authority is entitled to take enforcement action against a licensed insurance intermediary or a licensed insurance service provider, the Authority may issue a written directive to the insurance intermediary or service provider—

Directives to licensed insurance intermediaries and insurance service providers

(a) imposing one or more prohibitions, restrictions, limitations or conditions on the licensed insurance intermediary or service provider or its business, including, but not limited to, that the insurance intermediary or service provider—

- (i) ceases to act as an insurance intermediary or service provider; or
- (ii) ceases accepting particular types of business; or

(b) requiring the insurance intermediary or service provider to take other action that the Authority considers may be necessary to protect the interests of its customers or prospective customers, in the case of an insurance agent, the insurer on whose behalf the agent acts.

(2) A licensed insurance intermediary or service provider that fails to comply with, or carries on business in contravention of, a directive issued by the Authority under this section is guilty of an offence and shall on conviction be liable—

(a) in the case of an individual, to a fine not exceeding Kenya Shillings one million or to imprisonment for a term not exceeding one year, or to both; or

(b) in the case of any other person, to a fine not exceeding Kenya Shillings one million.

119. (1) Where the Authority is entitled to take enforcement action against a person carrying on unauthorised business, the Authority may issue a written directive to the person requiring the person—

Directive to person carrying on unauthorised business

(a) to cease carrying on the unauthorised business concerned;

(b) to take such action as the Authority considers may be necessary to protect—

- (i) the property of, or in the custody, possession or control of, the person; or

- (ii) the interests of persons with whom the person has carried on unauthorised business with.

(2) A person who fails to comply with a directive issued under subsection (1) is guilty of an offence and shall on conviction be liable—

(a) in the case of an individual, to a fine not exceeding Kenya Shillings one million or to imprisonment for a term not exceeding one year, or to both; or

(b) in the case of any other person, to a fine not exceeding Kenya Shillings one million.

Appointment of investigator

120. (1) The Authority may appoint one or more competent persons as investigators to conduct an investigation on its behalf—

(a) with respect to a licensee—

- (i) if it appears to the Authority on reasonable grounds that there are, or may be, grounds for taking enforcement action against the licensee under section **115**; or

- (ii) the Authority is of the opinion that it is desirable to appoint an investigator in the interests of the customers or creditors or potential customers or creditors of the licensee or in the public interest;

(b) with respect to a former licensee, if the Authority would have been entitled to appoint an investigator under paragraph (a), but for the cancellation of the licensee's licence; and

(c) with respect to any person if it appears to the Authority on reasonable grounds that the person is carrying on, or has carried on, unauthorised business.

(2) The matters investigated by an investigator appointed under subsection (1) may include one or more of the following in respect of the person being investigated—

(a) the nature, conduct or financial condition of the person's business;

(b) a particular aspect of the person's business;

(c) the ownership or control of the person being investigated;

(d) in the case of a licensee, whether there are grounds for the taking of enforcement action against the licensee;

(e) whether the person is carrying on, or has carried on, unauthorised business.

(3) The Authority may give directions to the investigator concerning any one or more of the following—

- (a) the scope of the investigation;
- (b) the period for the conduct of the investigation;
- (c) the conduct of the investigation; and
- (d) the manner in which the investigator shall report to the Authority.

(4) Where an investigator is appointed with respect to a former licensee, an investigation under subsection (2) shall extend only to—

- (a) in the case of paragraphs (a) and (b), the person's business carried on at any time when the person was a licensee; and
- (b) in the case of paragraph (c), to the ownership or control of the person at any time when the person was a licensee.

(5) An investigator shall submit a report of his or her investigation to the Authority.

(6) The Authority may direct that the licensee pay the costs, or such part of the costs as it may specify, of an investigation conducted under this section.

(7) The Regulations may provide for—

- (a) the notice to be given to a person to be investigated under this section;
- (b) the conduct of an investigation;
- (c) the powers of an investigator appointed under this section; and
- (d) the payment of remuneration to the investigator.

(8) A person who fails to provide all assistance reasonably required by an investigator appointed under this section is guilty of an offence and shall on conviction be liable—

- (a) in the case of an individual, to a fine not exceeding Kenya Shillings one million or to imprisonment for a term not exceeding one year, or to both; or
- (b) in the case of any other person, to a fine not exceeding Kenya Shillings one million.

121. (1) Subject to subsection (2) and to any direction under section **120**(3), an investigator appointed under this section has—

Powers
investigator of

- (a) the power to require the person under investigation or any person connected with the person under investigation to attend before the investigator at such time and place as the investor may determine to answer questions; and

(b) the powers of the Authority

- (i) to require the provision of information or documents under section **108**;
- (ii) to apply to the Court under section **113** for the examination of a person under oath or affirmation; and
- (iii) to apply to the Court under section **114** for a search warrant.

(2) The investigator may only exercise the powers under subsection (1) to the extent that the investigator considers it necessary for the purposes of the investigation.

(3) An investigator appointed under section **120** may, if the investigator considers it necessary for the purposes of the investigation, on giving written notice to the person concerned, also investigate the business of any person who is, or at any relevant time has been—

- (a) a member of the group of which the person under investigation is a part; or
- (b) a partnership of which the person under investigation is a partner.

Appointment of administrator

Appointment of
administrator by
Authority

122. (1) The Authority may appoint a suitably qualified and experienced person as an administrator of a licensed insurer, a licensed health insurance manager or a licensed insurance broker if—

- (a) it is entitled to take enforcement action against the licensee in accordance with section **115**(1); and
- (b) it considers that the appointment of an administrator is necessary to—
 - (i) protect or preserve the business or property of the licensee; or
 - (ii) protect the interests of the policyholders or customers of the licensee.

(2) The Authority may issue Guidance setting out the criteria that it will use when assessing the fitness and propriety of a person to be appointed as an administrator.

Provided that the Guidance may make different provision in relation to different persons, circumstances or cases.

(3) The appointment of an administrator must be in writing and must state the date on which, and the time at which, the appointment takes effect.

(4) The Authority shall, as soon as practicable after appointing an administrator, give written notice to the licensee of the appointment, specifying the grounds on which the appointment was made and advertise the appointment in the *Gazette*.

(5) The administration terminates 12 months after the date of appointment unless the administration has previously been extended by order of the Court made on the application of the Authority.

(6) Where the Court extends the administration, under subsection (4), the administrator remains in office until the administration is terminated by the Court.

123. (1) A moratorium period commences at the time when the administrator is appointed and terminates when the administration is terminated.

Moratorium
period

(2) Subject to subsections (3) to (6), during the moratorium period, except with the written consent of the administrator—

(a) no steps may be taken to enforce, or continue any power or rights under, any security over the licensee's property, including by the appointment of a receiver;

(b) no right of termination or forfeiture may be exercised in relation to premises let to the licensee;

(c) no steps may be taken to repossess assets in the possession of the licensee that were supplied to the licensee—

(i) under a hire purchase, conditional sale or chattel leasing agreement, or

(ii) subject to a retention of title agreement;

(d) no legal process, including legal proceedings by way of counterclaim, may be commenced or continued against the licensee;

(e) no right of set off may be exercised against the licensee;

(f) no judgment or order obtained against the licensee may be enforced against it, and no execution or distress may be levied against the licensee or its assets, including an attachment of debt;

(g) no share may be transferred and no alteration may be made in the status of the members of the licensee, whether by an amendment of the constituting documents or in any shareholders' or members' agreement or otherwise; and

(h) no resolution of the members may be passed.

(3) The administrator shall not provide consent for any matter referred to in subsection (2) without having first consulted with the Authority.

(4) Subsection (2) does not affect the existence of any security over the property of a licensee or any priorities over its debts.

(5) Subsection (2)(d) does not limit or prevent the commencement or continuation of legal process, including legal proceedings by way of counterclaim, against the licensee in respect of any contract entered into, or obligation incurred by, the licensee after the appointment of an administrator.

(6) Subsection (2)(f) does not limit or prevent—

(a) the enforcement of a judgment or order obtained against the licensee, or

(b) the levying of any execution or distress against the licensee or its assets, including an attachment of debt,

in respect of in respect of any contract entered into, or obligation incurred by, the licensee after the appointment of an administrator.

Application to
Court in respect
of moratorium

124. (1) The Court may, on an application made by a person affected by the moratorium give directions in relation to any matter arising in connection with the moratorium.

(2) Without limiting subsection (1), an order under that subsection may—

(a) make such provision as the Court considers necessary to protect the interests of one or more creditors of the company during the moratorium period;

(b) give leave for any action which the administrator may consent to under section **123**(2); or

(c) require the sale of an asset or assets of the licensee.

(3) In making an order under this section, the Court shall have regard to the need to safeguard the interests of persons who have dealt with the licensee in good faith and for value.

(4) The administrator shall be made a party to any application under this section, as respondent.

(5) The Authority is entitled to—

(a) appear and be heard in all proceedings relating to an application under this section; and

(b) to call, examine and cross-examine any witness in any proceedings referred to in paragraph (a).

(6) The Authority, if it considers fit, may support or oppose an application made under this section.

General duties of
administrator

125. (1) An administrator shall, on his appointment, take into his custody or under his control the assets to which the licensee is or appears to be entitled.

(2) Subject to subsection (3), the administrator shall manage the business, assets and affairs of the licensee.

(3) The administrator shall at all times act in accordance with any directions that may be given by the Court.

(4) The administrator shall perform his functions as quickly and efficiently as reasonably practicable.

(5) In performing his functions, undertaking his duties and exercising his powers, an administrator acts as the licensee's agent.

126. (1) Subject to subsection (2), the administrator has the power to do anything necessary for the management of the business, assets and affairs of the licensee, including the following powers—

Powers of
administrator

(a) power to take possession of, collect and get in the assets of the licensee and, for that purpose, to take such proceedings as the administrator considers expedient to recover possession of any assets of the licensee;

(b) power to sell, charge or otherwise dispose of assets of the licensee;

(c) power to appoint an actuary, accountant or other professionally qualified person to advise or assist the administrator;

(d) power to commence, continue, discontinue or defend any action or other legal proceedings in the name and on behalf of the licensee;

(e) power to make any payment which is necessary or incidental to the performance of the administrator's functions;

(f) power to pay any existing debt of the company where he considers that the payment of the debt would further the objectives of the administration;

(g) power to carry on the business of the licensee;

(h) in the case of a licensed insurer, power to apply to the Authority for approval of a scheme of transfer or amalgamation under section 64 and, if approved, to implement the scheme on behalf of the insurer;

(i) power to effect a Companies Act arrangement, in the case of an insurer, pursuant to section 69;

(j) power to do all things incidental to the exercise of the powers specified in paragraphs (a) to (h).

(2) The Authority may, in the notice of appointment or by subsequent written notice, add to or restrict the administrator's powers.

(3) The administrator shall consult with the Authority, to the extent required by the Authority, as to the exercise of the administrator's powers

(4) The following persons are not concerned to inquire whether the administrator is acting within his powers—

(a) a person dealing with the administrator in good faith and for value; and

(b) a person who acquires any interest in assets of the licensee from a person referred to in paragraph (a) in good faith and for value.

(5) The acts of an administrator of a licensee are valid notwithstanding any defect in the administrator's nomination, appointment or qualifications.

Directors' and
officers' and
functions
powers

127. (1) Whilst an administrator is appointed in respect of a licensee, the directors of the licensee remain in office but, unless the administrator otherwise directs in writing, they shall not—

(a) engage in the management or conduct of the business of the licensee; or

(b) exercise any functions or powers that are inconsistent with the powers, functions and duties of the administrator.

(2) Any power conferred on the licensee or its directors or other officers, whether by a written law, the constituting documents or otherwise, which could be exercised so as to interfere with the administration of the licensee by the administrator, shall not be exercised without the written consent of the administrator.

Relationship
with Authority

128. (1) The administrator of a licensee shall—

(a) comply with any directions given in writing by the Authority relating to the exercise of the powers of the administrator; and

(b) provide to the Authority such reports that the Authority may require as to the state of the affairs, business, and administration of the licensee, with the frequency that the Authority requires.

(2) The administrator shall be paid such remuneration as agreed with the Authority and the administrator's remuneration and expenses shall be payable—

(a) out of the assets of the licensee; and

(b) to the extent that there are insufficient assets, by the Authority.

129. (1) The Authority may, by written notice at any time before the administration is extended by the Court—

Termination of appointment and administration

- (a) appoint an additional or replacement administrator; or
- (b) terminate the administration of the licensee.

(2) The Authority shall not terminate the administration of a licensee unless it is satisfied that the objectives of the administration have been achieved or that they cannot reasonably be achieved.

(3) Where the Authority terminates the administration, the administrator ceases to hold office.

(4) The Authority shall publish a notice issued under subsection (1) in the *Gazette*.

130. (1) The administrator or the Authority may apply to Court for directions concerning the business or property of the licensee or the conduct of the administration.

Application to Court by administrator or Authority for directions

(2) On an application under subsection (1), (1), the Court may—

- (a) give directions concerning the concerning the business or property of the licensee, the conduct of the administration or the exercise of the administrator's powers; and
- (b) confer powers on the administrator additional to those specified in section **126**.

(3) The administrator and every other person shall be bound by the directions given by the Court under this section.

Application to Court by Authority

131. (1) The Authority may apply to the Court for an order under this section with respect to—

Application and grant of Court order for

- (a) a licensee, where the licence of the licensee has been or is about to be cancelled or where the Authority is entitled to take enforcement action against the licensee;
- (b) a former licensee; or
- (c) a person that is carrying on, or has carried on, unauthorised business.

(2) On an application made under subsection (1), the Court may make such order as it considers necessary to protect or preserve the business or property of the person with respect to whom the application is made, or the interests of the person's customers, prospective customers, creditors or the public, including one or more of the following orders—

- (a) an order preventing the person concerned or any other person from transferring, disposing of or otherwise dealing

with property belonging to the person or in the person's custody or control;

(b) an order appointing an administrator to take over and manage the person's business, or any part of that business;

(c) an order granting the Authority a search warrant; or

(d) where the person concerned is in contravention of this Act or the Regulations, an order requiring the person concerned to take such action, or to refrain from taking such action, as is necessary to bring that person back into compliance with this Act or the Regulations.

(3) An order made under subsection (2)(b) shall specify the powers of an administrator, which may include the powers of a licensee under this Act or of a liquidator appointed by the Court under the Companies Act and may—

(a) require an administrator to provide security to the satisfaction of the Court;

(b) fix and provide for the remuneration of the administrator;

(c) require any person it considers necessary to appear before the Court for the purposes of giving information or producing records concerning the person with respect to whom the order is made or the business carried on by that person.

(4) An order made under paragraph (2)(b) shall make provision for reports to be submitted by the administrator to the Court and to the Authority.

(5) The Court may, on its own motion or on the application of the Authority or the administrator, make any one or more of the following orders—

(a) an order giving directions to the administrator concerning the exercise of his or her powers;

(b) an order varying the powers of the administrator;

(c) an order terminating the appointment of the administrator; or

(d) an order that the person in respect of whom the order is applied for or made, pay the costs, in whole or in part, of or in connection with—

(i) the Authority's application under this section, whether or not an order is made; and

(ii) giving effect to any order made.

(6) An application under subsection (1) may be made—

- (a) without notice by the Authority or upon such notice as the Court may require; and
- (b) before the Authority has given notice of intention to cancel a licence.

Cancellation of licence

132. (1) Subject to subsection (2), the Authority may cancel a licence if one or more of the following apply in relation to the licensee—

Grounds
cancellation
of
licence

- (a) the licensee has applied to the Authority in writing for the cancellation of its licence;
- (b) the licensee has ceased to carry on insurance business in or from Kenya;
- (c) the licensee does not commence its licensed business within a period of 12 months from the date of the grant of the licence;
- (d) the Authority is entitled to take enforcement action against the licensee; or
- (e) the licensee has been wound-up and dissolved.

(2) The Authority may not cancel an insurer's licence under subsection (1)(a), (b) or (c) unless it is satisfied that the licensed insurer has no liabilities under any insurance contracts in respect of its insurance business, whether because—

- (a) the insurer did not enter into any insurance contracts, or incur any liabilities under any insurance contracts;
- (b) its insurance business has been fully run-off; or
- (c) it has assigned its liabilities to another licensed insurer under a scheme complying with this Act or under an arrangement approved under the Companies Act in accordance with section 69.

(3) The Authority may not cancel an insurer's licence under subsection (1)(d) unless either—

- (a) it is satisfied that the licensed insurer has no liabilities under any insurance contracts in respect of its insurance business; or
- (b) it has obtained an order under section 131.

133. (1) Before cancelling a licence under section 132(1)(b), (c) or (d), the Authority shall give the licensee written notice of its intention to cancel the licence, stating—

Procedure
cancelling
licence

- (a) the grounds upon which it intends to cancel the licence; and

(b) that unless the insurer objects in writing to the cancellation, the licence will be cancelled on a date not less than 14 days after the date of the notice.

(2) The Authority shall consider any objections it receives before deciding whether or not to cancel the licence.

Public statements

Public
statements

134. (1) Subject to subsection (5), the Authority may issue a public statement in such manner as it considers fit setting out—

(a) enforcement action that the Authority intends to take against a licensee; or

(b) enforcement action that the Authority has taken against a licensee or former licensee.

(2) A public statement issued under subsection (1) may include such information as the Authority considers appropriate, including

(a) the reasons for the enforcement action taken or to be taken; and

(b) the nature of the enforcement action taken or to be taken.

(3) Where it considers it in the public interest to do so, the Authority may issue a public statement in such manner as it considers fit with respect to—

(a) any person who the Authority has reasonable grounds to believe is carrying on, has carried on, intends to carry on or is likely to carry on unauthorised business;

(b) any matter relating to the insurance sector where the Authority considers that the statement is desirable for—

(i) the protection of the public, whether within or outside Kenya, against financial loss arising out of the dishonesty, incompetence, malpractice or insolvency of persons engaged in business within the insurance sector; or

(ii) the deterrence of financial crime and other unlawful activities relating to the insurance sector.

(4) Subject to subsection (5), where a public statement is to be issued under this section in relation to a licensee or a former licensee, the Authority shall give that person seven days written notice of its intention to issue the public statement and the reasons for the issue of the statement.

(5) If the Authority is of the opinion that it is in the public interest or in the interests of any of the customers, prospective customers or creditors of a licensee or former licensee that subsection (4) should not have effect or that the period referred to in that subsection should be reduced, the

Authority may issue the public statement without notice to the licensee or former licensee or with such shorter period as it considers appropriate.

Appointment of skilled person

Skilled persons

135. (1) This section applies to—

(a) a licensee; or

(b) a subsidiary or holding company of a licensee.

(2) The Authority may, by notice in writing given to a person specified in subsection (1), require that person to appoint a person with relevant professional skills (“a skilled person”), at the person’s own cost—

(a) in the case of a licensee, to advise the licensee on the proper conduct of the licensee’s business; and

(b) in the case of a licensee or a subsidiary or holding company of a licensee, to carry out an investigation and provide the Authority with a report on, or on any aspect of, the person’s business and affairs or its financial condition.

(3) The Authority may require the report provided under subsection (2)(b) to be in such form as may be specified in the notice.

(4) The person appointed as a skilled person under subsection (2), shall be a person—

(a) nominated or approved by the Authority; and

(b) appearing to the Authority to have the skills necessary to make a report on the matter concerned.

(5) A person who appoints a skilled person and any person who is providing, or who at any time has provided, services to that person in relation to a matter on which a report is required, shall give the skilled person all such assistance as the skilled person may reasonably require.

(6) A person specified in subsection (1) who fails to comply with a notice issued under subsection (2) is guilty of an offence and shall on conviction be liable—

(a) in the case of an individual, to a fine not exceeding Kenya Shillings one million or to imprisonment for a term not exceeding one year, or to both; or

(b) in the case of any other person, to a fine not exceeding Kenya Shillings one million.

(7) A person specified in subsection (1) or subsection (5) who fails to provide all assistance reasonably required by the skilled person is guilty of an offence and shall on conviction be liable—

(a) in the case of an individual, to a fine not exceeding Kenya Shillings one million or to imprisonment for a term not exceeding one year, or to both; or

(b) in the case of any other person, to a fine not exceeding Kenya Shillings one million.

Financial penalties

Authority's
power to impose
financial penalty

136. (1) Where the Authority considers that a licensee has, without reasonable excuse, failed to comply with an obligation under this Act or the Regulations, it may impose a financial penalty on the licensee.

(2) The financial penalty imposed on a license under subsection (1) shall be of an amount that the Authority considers to be appropriate, taking into account—

- (a) all circumstances that it considers relevant, and
- (b) the factors specified in Schedule 3,

but shall not exceed the sum specified in Schedule 3.

(3) The Authority may not impose a financial penalty on a licensee in respect of a compliance failure committed more than two years prior to the date upon which it sends a notice to the licensee under section **137** or **139**.

(4) The imposition of a financial penalty on a licensee does not prevent the licensee being prosecuted in respect of a compliance failure that also constitutes an offence.

Notice of
intention to
impose financial
penalty, other
than late
payment penalty

137. (1) Where it intends to impose a financial penalty on a licensee, other than a late payment penalty, the Authority shall send a notice of its intention to the licensee—

(a) specifying—

- (i) the alleged compliance failure and the relevant facts surrounding the compliance failure; and
- (ii) the amount of the financial penalty that it intends to impose; and

(b) advising the licensee of the right to make written representations to the Authority in accordance with subsection (2).

(2) A licensee that receives a notice under subsection (1) may, within 14 days of receiving the notice, send written representations to the Authority—

(a) denying the commission of the alleged compliance failure or disputing the facts of the alleged compliance failure;

(b) submitting that it had a reasonable excuse for the compliance failure; or

(c) submitting that the proposed financial penalty is too high.

(3) The written representations shall be accompanied by, or include, a statement setting out the reasons on which the licensee relies in support of its representations.

(4) Before imposing a financial penalty on a licensee, the Authority shall consider any written representations that it receives from the licensee within the time period specified in subsection (2) and, where it receives such representations, it must provide reasons for the action that it takes.

138. (1) After the expiration of fourteen days from the date that it sent a notice to a licensee under section **137**, the Authority may send the licensee a financial penalty notice stating—

Imposition of
financial penalty

(a) the compliance failure in respect of which the notice is issued;

(b) the date on which notice of intention to impose a financial penalty in respect of that compliance failure was sent to the licensee;

(c) the amount of the financial penalty imposed;

(d) a date, not less than fourteen days after the date of the penalty notice, by which the financial penalty must be paid to the Authority; and

(e) that, if the licensee does not pay the financial penalty or appeal the penalty on or before the date referred to in paragraph (d), the licensee will be considered to have committed the compliance failure and be liable for the penalty set out in the notice.

(2) A licensee who receives a penalty notice under subsection (1) shall pay the penalty stated in the notice to the Authority, or appeal the imposition of the penalty, on or before the date specified in the notice.

(3) A licensee that fails to pay or appeal the financial penalty on or before the date referred to in subsection (1)(d) is considered to have committed the compliance failure and is liable for the penalty set out in the notice.

139. (1) For the purposes of this Act—

Late payment
penalties

“late payment penalty” means a financial penalty imposed in respect of the failure of a licensee to pay any fee, charge, levy or penalty payable under this Act, the Financial Services Authority Act or the Regulations on or before the date on which the fee, charge, levy or penalty is due for payment.

(2) For the purposes of determining whether a late payment penalty may be imposed a fee, charge, levy or penalty payable under this Act, the Financial Services Authority Act or the Regulations is considered not to have been paid until it has been paid in full.

(3) Where the Authority decides to impose a late payment penalty on a licensee, it shall send the licensee a penalty notice stating—

(a) the fee, charge or penalty in respect of which the late payment penalty is being imposed; and

(b) the amount of the penalty.

(4) A licensee who receives a penalty notice under subsection (1) shall pay the late payment penalty stated in the notice to the Authority, or appeal the imposition of the penalty, within 21 days of the date of the penalty notice.

PART IX – WINDING UP OF INSURERS

Application of
and
interpretation for
this Part

140. (1) This Part and, subject to the modifications and exclusions specified in this Part and Schedule 2, the Companies Act, apply to the winding up of an insurer.

(2) In this Part—

“insurer” means—

(a) a licensed insurer; or

(b) a company that has been a licensed insurer, but the licence of which has been revoked; and

“liquidator” means the liquidator of an insurer or a former insurer appointed under the Companies Act, as modified.

Restriction on
voluntary
winding up of
insurers

141. (1) An insurer shall not be wound up voluntarily under section 271 of the Companies Act without the prior written consent of the Authority.

(2) The Authority shall not give its consent to the voluntary winding up of an insurer unless it is satisfied that—

(a) the insurer has not entered into any insurance contracts, or incurred any liabilities under any insurance contracts;

(b) the insurer’s insurance business has been fully run-off;

(c) the insurer has transferred the whole of its insurance business or assigned its liabilities under all insurance contracts to another licensed insurer under a scheme approved by the Authority under section 66 or under a Companies Act arrangement affected in accordance with section 69; or

(d) the voluntary winding up of the insurer will enable paragraphs (b) or (c) to be achieved in a more efficient or expeditious manner.

(3) A resolution for the voluntary winding of an insurer without the written consent of the Authority is void and of no effect.

(4) Where, with the consent of the Authority, an insurer passes a resolution to wind up voluntarily under section 271 of the Companies Act, the insurer shall, at the same time, appoint a person approved by the Authority as liquidator of the insurer.

142. An insurer may be wound up by the Court only on one or more of the following grounds—

Grounds for winding up an insurer

- (a) the insurer is insolvent within the meaning of section 8;
- (b) the insurer is unable to pay its debts within the meaning of section 220 of the Companies Act;
- (c) the insurer's licence has been revoked or there are grounds for the revocation of its licence;
- (d) the Court is of opinion that it is just and equitable that the insurer should be wound up; or
- (e) the Court is of the opinion that it is in the public interest that the insurer should be wound up.

143. (1) A petition to the Court for the winding up of an insurer under section 221 of the Companies Act may be presented only by—

Restriction on winding up by the Court

- (a) the Authority under section 122, on any ground specified in section 142;
- (b) a creditor or creditors of the insurer, on the ground specified in section 142(b); or
- (c) with the prior written consent of the Authority—
 - (i) the insurer, on the ground specified in section 142(d); or
 - (ii) a contributory or contributories of the insurer, on the ground specified in section 142(d).

(2) The Court shall dismiss a petition presented by an insurer or a contributory or contributories of an insurer without the prior written consent of the Authority.

(3) The Authority may present a petition to the Court for the winding up of an insurer whether or not the licence of the insurer has been revoked.

(4) The Authority shall be entitled—

- (a) to appear and be heard in all proceedings relating to—
 - (i) a petition for the winding up of an insurer; and

(ii) if a winding up order is made, the winding up of the insurer; and

(b) to call, examine and cross-examine any witness in any proceedings referred to in paragraph (a).

(5) The Authority, if it considers fit, may support or oppose a petition presented to the Court for the winding-up of an insurer.

Authority to be given notice of petition

144. (1) A person intending to file a petition under section 221 of the Companies Act in relation to an insurer shall—

(a) give the Authority written notice of intention to file the petition; and

(b) provide the Authority with a copy of the proposed petition together with all documents intended to be filed in relation to the petition.

(2) A person who presents a petition to the Court under section 221 of the Companies Act in relation to an insurer shall, immediately after presenting the petition, provide a copy of the petition, together with all other documents filed in Court in relation to the petition, to the Authority.

Reduction of contracts as alternative to winding up

145. The Court may reduce the amount of the insurance contracts of an insurer, on conditions that the Court considers just, instead of making a winding up order against the insurer.

Appointment of liquidator

146. (1) Subject to subsection (2), on making a winding-up order in respect of an insurer, the Court shall appoint—

(a) as liquidator of the insurer—

(i) the Policyholder Protection Fund;

(ii) such other person as may be nominated by the Authority or the Policyholder Protection Fund; or

(iii) such other suitably qualified person as the Court considers appropriate;

(b) the Policyholder Protection Fund and such other person specified in paragraphs (a)(ii) and (iii) as joint liquidators of the insurer.

(2) The Authority or the Policyholder Protection Fund may apply to the Court for the appointment of another person nominated in the application as liquidator in substitution for the liquidator appointed under subsection (1).

Remuneration of liquidator

147. (1) The Court shall not make any direction concerning the salary or remuneration of a liquidator under section 238(2) of the Companies Act without first giving the Authority the opportunity to make representations to it.

(2) No person, other than the Authority, may apply to the Court to vary the remuneration of a liquidator.

148. (1) The statement of affairs of an insurer as at the date of the winding up order made under section 232 of the Companies Act shall be submitted to the Authority at the same time as it is submitted to the liquidator.

Provision of documents to the Authority

(2) The liquidator shall—

(a) deliver to the Authority a copy of the preliminary report referred to in section 233 of the Companies Act at the same time as he submits it to the Court; and

(b) submit to the Authority such other documents as the Authority may specify.

149. The liquidator of an insurer shall, in the administration of the liquidation and the distribution of the assets of the insurer, have regard to any directions given to the liquidator by the Authority.

Liquidator to have regard to directions of the Authority

150. Notwithstanding section 237 of the Companies Act, the liquidator of a life insurer—

Continuation of life business

(a) may carry on its life business with a view to it being transferred as a going concern to another insurer but shall not effect a new policy; and

(b) subject to subsection (2), may transfer its assets and liabilities to another insurer, including liabilities under life policies.

(2) The liquidator, for the purpose of a transfer under subsection (1) (b), may with the approval of the Authority, apply to the Court for an order to reduce—

(a) the amount of liabilities under life policies of the insurer; or

(b) the amount of its other liabilities.

151. (1) In the winding up of a life insurer, the assets of a life fund shall be applied, first to meet the costs of the winding up attributable to that fund and second to meet policy liabilities in respect of the life insurance business to which the fund relates.

Application of life fund in winding up of life insurer

(2) Subject to subsection (1), where the assets of a life fund exceed the costs of the winding up and the policy liabilities attributable to that fund, the surplus assets shall be treated as assets of the company for the purposes of its winding up.

152. (1) Notwithstanding the provisions of the Companies Act, in the winding up of an insurer, the assets of the company, after payment of the properly incurred costs and expenses of the winding up, shall be applied in satisfying the company's liabilities under its insurance contracts in priority to all other claims, other than secured claims.

Insurance liabilities to have priority

(2) Where the Court makes an order under section 324 of the Companies Act in respect of an insurer, requiring a person to repay, restore or account for money or other assets, to pay compensation to the company or to pay interest to the company, the Court shall order that the money, assets or contribution is to be treated for the purposes of subsection (1) as assets of the company.

(3) Where the value of the assets referred to in subsections (1) and (2) exceeds the amount of the liabilities of an insurer under its insurance contracts, the excess is an asset of the insurer available for distribution in accordance with the Companies Act.

Waiver of strict
proof of debt

153. Where it appears to the liquidator that by reason of the inadequacy of its documents, or any other circumstances, hardship would be caused if he requires strict proof of debt, he may act on such evidence as he thinks fit and payment of a debt made by the liquidator in good faith to any person as being the person entitled to it shall discharge the liquidator from all liabilities in respect of that debt.

Offences by
directors,
employees or
agents of insurer

154. (1) A director, employee, agent or contributory, past or present, of an insurer commits an offence if—

(a) within twelve months immediately preceding or after the commencement of the winding up of the insurer, the person—

- (i) conceals any part of the insurer's property or any of its liabilities;
- (ii) fraudulently removes any part of the insurer's property;
- (iii) by him or herself or through another person, alters, conceals, destroys, mutilates or falsifies a document relating to the insurer's property or affairs;
- (iv) by him or herself or through another person, parts fraudulently with, alters or makes any omission in a document relating to the insurer's property or affairs;
- (v) by any false representation or other fraud, obtains any property, for or on the insurer's behalf, on credit which the insurer has not subsequently paid for;
- (vi) pledges or disposes of the insurer's property which has been obtained on credit and has not been paid for, unless the pledging or disposal was in the ordinary course of the insurer's business;
- (vii) attempts to account for any part of the insurer's property by fictitious losses or expenses;

(viii) makes any false representation or other fraud for the purpose of obtaining the consent of the insurer's creditors to an agreement with reference to its affairs or to its winding up;

(b) after the commencement of the winding up—

(i) knowing or believing that a false debt has been proved by a person, fails to inform the liquidator; or

(ii) fails to produce or prevents the production of a document relating to the insurer's property or affairs.

(2) A director, employee, agent or contributory, past or present, of an insurer which is being wound up commits an offence if, after the commencement of the winding up, the person—

(a) issues any insurance policy in the name of, or on behalf of, the insurer; or

(b) makes any material omission in a statement relating to the insurer's affairs.

(3) A person who commits an offence under subsection (1) or (2) shall on conviction be liable—

(a) in the case of an individual, to a fine not exceeding Kenya Shillings five million or to imprisonment for a term not exceeding five years, or to both; or

(b) in the case of any other person, to a fine not exceeding Kenya Shillings ten million.

PART X – MISCELLANEOUS AND GENERAL PROVISIONS

Cooperation

155. (1) The Authority shall take such steps as it considers appropriate to co-operate with— Duty to cooperate

(a) regulatory authorities; and

(b) other persons, in or outside Kenya, who have functions in relation to the prevention or detection of financial crime.

(2) Co-operation may include the sharing of documents and information, which the Authority is not prevented by this or any other written law from disclosing.

(3) For the purposes of sections **156** and **157**, "relevant authority" means a person specified in subsection (1).

Provision of assistance to other authorities

156. (1) Subject to section **157**(1), on the written request of a relevant authority, the Authority may—

- (a) exercise the powers to obtain information or documents conferred on it by section **108**;
- (b) make application under section **113** for the examination of a person under oath or affirmation by the Court;
- (c) require a person to be examined under oath or affirmation under section **111**; or
- (d) appoint one or more competent persons as investigators to investigate any matter.

(2) An investigator appointed under subsection (1)(d) has the powers of an investigator appointed under section **120**.

(3) The Authority may disclose information, or provide documentation, to a relevant authority whether the information or documentation was obtained through the exercise of a power specified in subsection (1) or is otherwise in the possession of the Authority.

(4) Where the Authority would, on the written request of a relevant authority, be entitled to disclose information or provide documentation in its possession to the authority, the Authority may disclose such information or documentation to the relevant authority without having received a written request from the authority.

Matters relevant to the provision of assistance

157. (1) The Authority shall not exercise a power conferred on it by section **156**(1) unless it is of the opinion that the information or documentation to which the request relates is reasonably required by the relevant authority for the purposes of its functions.

(2) In deciding whether or not to exercise the power conferred on it by section **156**(1) at the request of a foreign regulatory authority, the Authority may take into account, in particular—

- (a) whether reciprocal assistance would be given to the Authority in the country or territory of the foreign regulatory authority;
- (b) whether the request relates to the breach of a law, or other requirement, which has no close parallel in Kenya or involves the assertion of a jurisdiction not recognised by Kenya;
- (c) the nature and seriousness of the matter to which the request for assistance relates, the importance of the matter to persons in Kenya and whether the assistance can be obtained by other means;
- (d) the relevance of the information or documentation to the enquiries to which the request relates; and

(e) whether it is otherwise appropriate in the public interest to provide the assistance sought.

(3) For the purposes of subsection (2)(a), the Authority may require the foreign regulatory authority making the request to give a written undertaking, in such form as the Authority may require, to provide reciprocal assistance to the Authority.

(4) For the purposes of subsection (2)(e), the public interests includes the interests of customers or prospective customers of a licensee.

(5) If a foreign regulatory authority fails to comply with a requirement of the Authority made under subsection (3), the Authority may refuse to provide the assistance sought by the foreign regulatory authority.

(6) The Authority may decide that it will not, on the request of a foreign regulatory authority, exercise its powers under this section unless—

(a) it has received satisfactory assurances from the foreign regulatory authority that any information and documentation provided to it will not be used in any criminal proceedings against the person furnishing it, other than proceedings for an offence equivalent to section or for an offence of perjury or any equivalent offence;

(b) the foreign regulatory authority undertakes to make such contribution towards the cost of exercising its powers as the Authority considers appropriate; and

(c) it is satisfied that the foreign regulatory authority is subject to adequate legal restrictions on further disclosure of the information and documents and that it will not, without the written permission of the Authority—

(i) disclose information or documents provided to it to any person other than an officer or employee of the authority engaged in the exercise of any of its supervisory functions, or

(ii) take any action on information or documents provided to it.

Protection of Confidential Information

158. (1) For the purposes of this section, “protected information” means information which—

Restrictions on disclosure of information

(a) relates to the business or other affairs of any person;

(b) is acquired by a person specified in subsection (2), for the purposes of, or in the performance of, the person’s functions under this Act, and includes any information that is obtained from a regulatory authority or a law enforcement authority.

(2) The following persons are specified for the purposes of subsection (1)(b)—

- (a) the Authority;
- (b) a Board member or a member of a committee of the Board;
- (c) an employee of the Authority;
- (d) a person appointed as an investigator under section **120** or section **156(1)(d)**;
- (e) a person appointed as a skilled person under section **135**;
- (f) any person acting as agent, or under the authority, of the Authority; and
- (g) an employee of a person specified in paragraphs (d) to (f).

(3) Information is not protected information—

- (a) if the information is or has been available to the public from any other source; or
- (b) where the information is disclosed in a summary form or in statistics expressed in a manner that does not enable the identity of particular persons to whom the information relates to be determined.

(4) Subject to section **159**, protected information shall not be disclosed by a recipient of that information, whether the recipient of the information is a person specified in subsection (2) or a person who has directly or indirectly received the protected information from a person specified in subsection (2), without the consent of—

- (a) the person from whom the recipient obtained the information; and
- (b) if different, the person to whom it relates.

(5) A person who contravenes this section is guilty of an offence and shall on conviction be liable—

- (a) in the case of an individual, to a fine not exceeding Kenya Shillings ten thousand or to imprisonment for a term not exceeding six months, or to both; or
- (b) in the case of any other person, to a fine not exceeding Kenya Shillings one million.

159. Section **158** does not apply to a disclosure by—

- (a) any person where the disclosure is—
 - (i) required or permitted by, and made in accordance with, a court of competent jurisdiction in Kenya;
 - (ii) required or permitted by this or any other Act;

- (iii) made to a law enforcement agency in Kenya;
 - (iv) made to the Financial Reporting Centre established under section 21 of the Proceeds of Crime and Anti-Money Laundering Act (Cap. 59B);
- (b) a person specified in section **158**(2), where the disclosure is made to any person for the purpose of performing or exercising any function, duty, responsibility or power under this Act or the Regulations, in either case whether the function, duty, responsibility or power is of the person disclosing the information or of the Authority or the Board;
- (c) the Authority—
- (i) to a relevant authority in accordance with section **156**;
 - (ii) to help protect the public, or any section of it, from becoming a victim of financial crime;
- (d) a person, other than the Authority, where the disclosure
- (i) is made with the written consent of the Authority; and
 - (ii) could lawfully have been made by the Authority.

160. (1) Subject to subsection (2), a statement made by a person in compliance with a notice given by the Authority under section **108**, to the Court under section **113**, to an examiner conducting an examination under section **111**, or in compliance with a request made by the investigator, to an investigator appointed under section **120** or **156**(1)(d), is admissible in evidence in any proceedings, provided that it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

Admissibility of statements

(2) A statement made by a person in compliance with a requirement imposed by virtue of this Act may only be used in evidence against the person in criminal proceedings if—

- (a) that person has introduced the statement in evidence; or
- (b) the prosecution of that person relates to—
 - (i) a failure or refusal by that person to produce documents or give assistance in accordance with this Act;
 - (ii) an omission by that person to disclose material which should have been disclosed or the provision by that person of false or misleading information; or

(iii) an untruthful statement by that person.

Protection for disclosure

161. A person who discloses information or produces documents as permitted or required by this Act is deemed not to be in contravention of any written law, rule of law, agreement or professional code of conduct to which that person is subject and no civil, criminal or disciplinary proceedings shall lie against the person in respect thereof.

Enforceability of Agreements

Enforceability of agreements made by persons carry on unauthorised business

162. (1) An agreement to which this section applies that is made by a person in the course of carrying on unauthorised business is unenforceable against the other party to the agreement.

(2) The other party to an agreement referred to in subsection (1) is entitled to recover—

(a) any money or other property that the party has paid or transferred under the agreement; and

(b) compensation for any loss that the party has sustained as a result of having parted with it.

(3) Where an agreement is unenforceable by reason of this section, the amount of compensation recoverable as a result of that section is—

(a) such amount as may be agreed by the parties; or

(b) on the application of either party, the amount determined by the Court.

(4) This section applies to an agreement—

(a) made after this Act comes into force; and

(b) the making or performance of which constitutes, or is part of, the unauthorised business being carried on.

(5) The commission of an offence under this Act or the Regulations does not make the agreement concerned illegal or invalid to any greater extent than is provided by this section.

Microinsurance

Regulations to define and make provision for microinsurance

163. The Regulations—

(a) shall specify a definition of “microinsurance contract”;

(b) may modify or exclude provisions of this Act in relation to microinsurance contracts;

(c) may modify or exclude provisions of this Act in relation to licensed insurers whose licence restricts their insurance business to the undertaking of liability as an insurer under microinsurance contracts only;

(d) may exempt specified categories or descriptions of persons from the requirement to obtain an insurance agents licence to act as an insurance agent in relation to the sale and distribution of microinsurance contracts;

(e) may authorise the sale by—

- (i) general insurers of specified types or descriptions of microinsurance contract that constitute life insurance business; and
- (ii) life insurers of specified types or descriptions of microinsurance contract that constitute general insurance business; and

(f) may provide for the form, content, distribution, sale and servicing of microinsurance contracts.

Takaful

164. (1) The Authority may, after consultation with the Cabinet Secretary, make Regulations providing for takaful in Kenya.

Takaful

(2) The Takaful Regulations may provide for the licensing and supervision by the Authority of persons carrying on takaful business.

(3) This Act applies to persons licensed under the Takaful Regulations, except to the extent that the Act is modified or excluded by the Takaful Regulations.

Applications and conditions

165. (1) Every application made under this Act shall—

Applications
under this Act

(a) be in writing and, where appropriate, in the specified form; and

(b) have included with it such documents or information as may be specified by this Act, the Regulations or in the specified form.

(2) The Authority may—

(a) require an applicant to provide it with such documents and information, in addition to those specified in subsection (1)(b), as it reasonably requires to determine the application;

(b) specify—

- (i) the form in which the documents and information are to be provided; and
- (ii) the period within which applications are to be made; and

(c) require any documents and information provided to be verified in such manner as it may specify.

(3) If, before the determination by the Authority of an application—

(a) there is a material change in any information or documentation provided by or on behalf of the applicant to the Authority in connection with the application, or

(b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading,

the applicant shall forthwith give the Authority written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

(4) An applicant that fails to comply with subsection (3) is guilty of an offence and shall on conviction be liable—

(a) in the case of an individual, to a fine not exceeding Kenya Shillings one million or to imprisonment for a term not exceeding six months, or to both; or

(b) in the case of any other person, to a fine not exceeding Kenya Shillings one million.

Conditions

166. (1) In this section—

“approval” means an approval or permission granted under this Act or in the Regulations;

“condition” means a condition attached to a licence or to an approval or exemption and includes a condition as varied in accordance with this section; and

“exemption” means an exemption granted under this Act or the Regulations.

(2) A licence may be issued or an approval or exemption granted subject to such conditions as the Authority considers appropriate.

(3) If a licence is issued, or an approval or exemption is granted, subject to one or more conditions—

(a) the Authority shall, together with the licence, approval or exemption, issue a written notice specifying the condition or conditions; and

(b) if, in respect of any conditions, it considers that it is in the public interest to do so, the Authority may state those conditions on the licence, approval or exemption.

(4) The Authority may, upon giving reasonable written notice to a licensee, at any time—

(a) vary or revoke any condition; or

(b)impose new conditions on the licence, approval or exemption.

(5) A licensee may apply to the Authority in writing for a condition to be revoked or varied and, if the Authority is satisfied that the condition is no longer necessary or should be varied, it may revoke or vary the condition.

(6) If the Authority revokes or varies a condition or imposes a new condition, the licensee shall, if requested to do so by the Authority, deliver its licence, approval or exemption to the Authority for re-issue.

Registers and records, fees, charges and levies

167. (1) The Authority shall maintain—

Registers

(a) a Register of licensed insurers,

(b) a Register of licensed insurance intermediaries, and

(c) such other registers as the Authority considers appropriate,

in which shall be recorded the information that the Board may determine.

(2) The registers and the information contained in any document filed with the Authority may be kept in any form the Authority considers appropriate including, either wholly or partly, by means of a device or facility—

(a) that records or stores information in magnetic or electronic form, and

(b) that permits the information to be inspected and reproduced in legible and useable form.

168. (1) Subject to subsection (2), a person may, on payment of the specified charge, during normal business hours—

Inspection of registers and information held by Authority

(a) inspect the registers and any records kept by the Authority that are designated in the Regulations as public records; and

(b) request to be provided by the Authority with a copy or certified copy of, or extract from, any document that the person would be entitled to inspect under paragraph (a).

(2) In respect of documents filed or kept in electronic form, the rights granted under subsection (1) extend only to reproductions of those documents in useable written form produced in the manner that the Authority considers appropriate.

(3) A copy or reproduction of, or extract from any document or record that is kept by the Authority and certified by it is admissible in evidence in legal proceedings to the same extent as the original document.

Electronic filing
of documents

169. (1) In this section, a document in electronic form is a document in a computer processable message format that is capable of being transmitted electronically.

(2) Regulations may provide for a system enabling documents required or permitted to be filed with the Authority under this Act or the Regulations to be filed in electronic form.

(3) A system for the filing of documents, in electronic form shall provide for—

(a) the criteria for authorising persons to file documents in electronic form; and

(b) the security and authentication of the documents filed.

Fees, charges
and levies

170. (1) The Regulations shall provide for the payment—

(a) by licensed insurers, of—

(i) an insurance premium levy payable to the Authority; and

(ii) an insurance training levy payable Insurance Training and Educational Trust or its successor ; and

(iii) a policyholders protection levy payable to Policyholders Protection Fund.

(b) such other levies, payable by such licensees, as may be approved by the Cabinet Secretary.

(2) The Regulations may prescribe fees and charges payable by licensees and by applicants for licences.

(3) A licensee that is liable to pay a levy referred to in subsection (1) shall pay the levy to the Authority on or before the last date for payment specified in the Regulations.

(4) The Regulations—

(a) shall provide for—

(i) the licensees liable for the levies, fees and charges provided for and specified in accordance with subsections (1) and (2); and

(ii) the mode and time of payment of the levies, fees and charges; and

(b) may provide for any other matters concerning the charging and payment of the levies, fees and charges.

(5) The Regulations may provide that application fees are not refundable, in whole or in part, even if the application is refused.

(6) The Authority may refuse to take any action required of it with respect to a licensee, or an applicant for a licence, for which a fee or charge is payable until the fee or charge and any other fees, penalties and charges payable by, or in respect of, the licensee or applicant have been paid.

(7) Any fee, charge, levy or penalty which is owed to the Authority under this Act may be recovered as a debt due to the Authority.

Regulation of licensees

171. (1) The Authority shall, after consultation with the Cabinet Secretary, make Regulations for giving effect to this Act.

Regulations

(2) The Regulations shall specify or provide for—

(a) the issued share capital, margin of solvency, capital resources and other prudential requirements applicable to licensed insurers;

(b) the prudential requirements applicable to licensed insurance intermediaries, or specified categories of licensed insurance intermediaries;

(c) classes of insurance business, separating the classes between life insurance and general business;

(d) strategies, policies, procedures and controls to be established and maintained by licensed insurers and licensed insurance intermediaries, or specified categories of insurance intermediaries, including internal controls, risk management and compliance;

(e) requirements relating to business conduct, including requirements relating to the disclosure by licensees of information to their customers and the public;

(f) information to be provided and returns to be submitted to the Authority by licensees; and

(g) such other matters as are required by this Act to be provided for in the Regulations.

(3) Without limiting subsections (1) and (2), the Regulations may specify or provide for—

(a) the valuation of different types of risk to which licensed insurers are exposed;

(b) requirements in relation to the valuation of assets and liabilities, including—

(i) methods for estimating or valuing the assets of a licensed insurer, including contingent assets, and for this purpose, may specify the assets of a licensed insurer that are admissible and that are inadmissible, whether in whole or in part;

- (ii) methods for estimating or valuing the liabilities, of a licensed insurer, including contingent liabilities and its technical provisions, and for this purpose may prescribe specific types and categories of technical provisions; and
 - (iii) solvency control levels;
- (c) requirements in relation to licensed insurers that are part of a group, with the objective of ensuring that—
 - (i) group risks and impact are taken into account; and
 - (ii) there is adequate prudential regulation of insurance groups;
- (d) the establishment and maintenance of reserves by licensed insurers;
- (e) requirements in relation to
 - (i) the maintenance, operation and restructuring of life funds;
 - (ii) the valuation of the assets of life funds;
 - (iii) determining the liabilities of a life fund;
 - (iv) the investment of the assets of a life fund; and
 - (v) the allocation of profits and losses, and distributions, in relation to participating policies;
- (f) requirements and restrictions relating to investments;
 - (i) such other requirements or matters as the Authority considers appropriate for—
 - (i) the maintenance by licensed insurers of a sound financial condition;
 - (ii) the assessment of the solvency and financial condition of licensed insurers; and
 - (iii) the protection of policyholders from financial loss and the protection of policyholder funds.
- (g) the responsibilities of the directors and senior management of licensees;
- (h) the performance of the key control functions of licensees and the activities and responsibilities of key functionaries, auditors and actuaries;

- (i) policies and procedures to be maintained by licensed insurers with respect to—
 - (i) the assessment and management of risk; and
 - (ii) the prevention, detection, reporting and remedying of insurance fraud;
- (j) principles and rules of corporate governance to be adhered to by licensees;
- (k) internal audit requirements;
- (l) internationally recognised accounting standards to be adopted by relevant licensees;
- (m) circumstances in which prior notice is to be given of new insurance products;
- (n) circumstances in which approval is required for new insurance products, and procedures for approval of new insurance products;
- (o) circumstances in which approval is required for premium methodologies and premium rates;
- (p) outsourcing;
- (q) reinsurance and fronting arrangements;
- (r) index-based insurance contracts;
- (s) insurance pools;
- (t) the preparation of, and requirements relating to, business plans;
- (u) measures for the detection, prevention, remedying and reporting of financial crime;
- (v) complaints made against licensees;
- (w) the supervision by the Authority of insurance groups and non-insurance groups, including group governance and internal controls; and
- (x) such other matters as are permitted by this Act to be provided for in the Regulations.

(3) For the purposes of subsection (2), methods for determining or calculating solvency requirements may be by reference to a formula, framework or amount or a combination of methods and may adopt a standardised approach, permit the use of full or partial internal models or adopt a combined approach.

(4) Instead of specifying detailed requirements and methods in relation to any matter relating to capital, solvency or financial condition, the Regulations may require compliance with internationally recognised standards, practices or methodologies.

(5) The Regulations may—

(a) be made for the purposes of this Act or for specified provisions of this Act;

(b) make different provision in relation to different persons, circumstances or cases;

(c) include such transitional provisions as the Authority considers necessary or expedient; and

(d) come into operation on such date or dates as are specified in the Regulations.

Guidance

172. (1) The Authority may issue Guidance—

(a) setting out the criteria that it will use when assessing the fitness and propriety of a person—

(i) as an owner of a licensee; or

(ii) to perform a specific role or function;

(b) with respect to compliance by licensees with this Act and the Regulations; and

(c) with respect to such matters as it considers relevant to its functions.

(2) The fit and proper criteria shall cover—

(a) competency and capability;

(b) honesty, integrity;

(c) financial soundness; and

(d) such other matters as the Authority considers appropriate.

(3) The Guidance may make different provision in relation to different persons, circumstances or cases.

(4) Failure to follow Guidance issued under this section shall not, of itself, render a person liable to proceedings of any kind but such failure may be taken into account by the Authority in determining whether there has been a contravention of this Act or the Regulations.

International
standards and
best practice

173. When making any Regulations or issuing any Guidance, the Authority shall have regard to international standards and best practice relating to the regulation and supervision of insurance business and insurance intermediaries, with the objective of ensuring that, as far as

reasonably practicable, the Regulations and any Guidance issued complies with international standards and best practice, taking into account the nature of the insurance sector in Kenya and its stage of development.

174. (1) Before making, amending or replacing any Regulation or issuing any Guidance, the Authority shall— Requirement to consult

(a) provide persons that the Authority considers will be substantially affected with a copy of the proposed—

- (i) Regulations or Guidance;
- (ii) amendments to the Regulations or Guidance; or
- (iii) replacement Regulations or Guidance;

(b) give those persons a reasonable opportunity to make written representations to the Authority; and

(c) consider any written representations that it receives.

(2) The Authority may comply with its obligations under—

(a) subsection (1)(a), by publishing the relevant documents as may be appropriate.

(b) subsection (1), in respect of a person by consulting with any professional or trade association of which the person is a member and considering representations by that association.

(3) The Authority may but is not obliged to provide a response to any written representations that it receives.

(4) The failure of the Authority to comply with subsection (1) does not affect the validity of any Regulations made or Guidance issued.

Offences

175. (1) No person shall make or assist in making a representation, statement, report or return, whether oral or written— False or misleading representations, statements, reports or returns

(a) that is required or permitted by this Act or the Regulations to be made to or, in the case of a document, submitted to the Authority; and

(b) that—

- (i) contains a false statement of a material fact; or
- (ii) omits to state a material fact required to be provided to the Authority or necessary to avoid the statement or document being materially misleading.

(2) A person does not contravene subsection (1) if the person did not know and, with the exercise of reasonable diligence, could not have known that the representation or statement contained a false statement or omitted a material fact.

(3) A person that contravenes subsection (1) is guilty of an offence and shall on conviction be liable—

(a) in the case of an individual, to a fine not exceeding Kenya Shillings five million or to imprisonment for a term not exceeding three years, or to both; or

(b) in the case of any other person, to a fine not exceeding Kenya Shillings five million.

Liability of directors

176. If a body corporate is convicted of an offence under this Act, every director of the body corporate is guilty of the offence if it is proved—

(a) that the act or omission that constituted the offence took place with the director's authority, permission, or consent; or

(b) that the director—

(i) knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and

(ii) failed to take reasonable steps to prevent or stop it.

Defence for offences against this Act

177. (1) In any prosecution of a person for an offence under this Act, it is a defence if the person proves that—

(a) the failure to comply with this Act was due to the act or omission of another person, or some other cause beyond the person's control; and

(b) the person took reasonable precautions and exercised due diligence to avoid the failure.

(2) For the purposes of subsection (1)(a), another person does not include a director, employee, or agent of the person charged with the offence.

PART XI – POLICYHOLDER PROTECTION FUND

Policyholders' Compensation Fund preserved

178. (1) The Policyholders' Compensation Fund established under section 179 of the repealed Act is preserved and continues to be a body corporate with perpetual succession and a common seal under the name "Policyholder Protection Fund".

(2) In this Part, "Fund" means the Policyholder Protection Fund.

(3) The corporate identity of the Fund and, except as provided by this Act, the Fund's rights and obligations, are not affected by the repeal of the repealed Act.

(4) The Fund is capable of—

- (a) suing and being sued in its corporate name;
- (b) acquiring, holding, charging or otherwise dealing with and disposing of movable and immovable property, including any interest in movable and immovable property;
- (c) borrowing money by way of loan, advance or overdraft, with or without security;
- (d) lending money;
- (e) entering into contracts;
- (f) employing or engaging the services of persons to assist it in performing its functions or exercising its powers; and
- (g) so far as is possible for a body corporate, exercising such other rights, powers and privileges and obligations of a natural person of full capacity.

(5) Without limiting subsection (4) the Fund has the powers necessary for the proper performance of its functions under this Act.

179. (1) The functions of the Fund are to—

Functions and
powers of the
Fund

- (a) provide compensation to claimants under policies issued by an insolvent licensed insurer, in accordance with Regulations made under section **184**;
- (b) provide premium refunds to policyholders in respect of unexpired risk, in accordance with Regulations made under section **184**;
- (c) act as liquidator of an insolvent insurer on appointment under this Act;
- (d) monitor, in consultation with the Authority, the risk profile of a licensed insurer in distress;
- (e) advise the Cabinet Secretary and the Authority on the national policy to be followed in regard to matters relating to the protection of policyholders and to implement all government policies relating thereto; and
- (f) perform such other functions as may be conferred on it by this Act or any other written law.

(2) The Fund has the power to do anything lawful that is necessary for, or ancillary or incidental to, the performance of its functions.

- (3) Without limiting subsection (2), the Fund has the power to—
- (a) control, supervise and administer the assets of the Fund in such manner and for such purposes as best promote the purpose for which the Fund is established;
 - (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Fund;
 - (c) receive any grants, gifts, donations or endowments on behalf of the Fund and make legitimate disbursements therefrom;
 - (d) enter into association with such other bodies or organizations, within or outside Kenya, as it may consider desirable or appropriate and in furtherance of the purpose for which the Fund is established;
 - (e) open a banking account or banking accounts for the monies of the Fund; and
 - (f) invest monies of the Fund not currently required for its purposes in the manner provided in this Act.

Property of the Fund

180. The property of the Fund comprises—

- (a) levies charged on insurers under section **182**;
- (b) interests and profit from the Fund's investments;
- (c) money borrowed by the Fund;
- (d) donations, grants and loans;
- (e) monies appropriated by Parliament;
- (f) recoveries
- (f) penalties paid under this Act; and
- (g) all other money lawfully received or made available for the Fund.

Board and Chief Executive Officer of the Fund

181. (1) The governing body of the Fund is the board of directors which shall be appointed by the board of the Authority established under Financial Services Authority Act and comprises—

- (a) a non-executive chairperson appointed from amongst the members appointed under paragraph (e);
- (b) the Director General or his appointed representative;
- (c) a nominee of the Insurance Institute of Kenya;
- (e) five other members, not being public officers, appointed by virtue of their knowledge and possession of a minimum

of ten years experience in matters relating to insurance, actuarial science, finance, banking, commerce, law, accountancy or economics;

(f) the Chief Executive Officer of the Fund, as an ex-officio member of the Board.

(2) A person is not eligible for appointment to the Board of the Fund under subsection (1)(e) if the person—

(a) has at any time been convicted of any offence (involving fraud, theft, dishonesty, breach of trust or moral turpitude);

(b) is an undischarged bankrupt;

(c) has previously been involved in the management or administration of a financial institution which was deregistered, wound up or placed under statutory management for any failure on the part of the management or the administration thereof;

(d) is a director or other officer, employee or shareholder of a licensee; or

(f) is disqualified under any other written law from holding public office or being a director of any public institution.

(3) The Board of the Fund shall, in consultation with the Authority, appoint a Chief Executive Officer of the Fund who shall be an ex-officio member of the Board but shall have no right to vote at any meetings of the Board of the Fund.

(4) The Chief Executive Officer shall be the Secretary to the Board of the Fund and shall hold office for such period and on such terms and conditions of service as may be prescribed in the instrument of appointment.

182. (1) The Cabinet Secretary may require payment of a monthly levy to the Fund to be paid by every licensed insurer, in such amount and at such times as the Cabinet Secretary may, in consultation with the Board of the Fund and the Authority, prescribe.

Levies payable
to the Fund

(2) A levy required to be paid under subsection (1) shall be remitted to the Fund by the licensed insurer, in such manner as may be prescribed.

(3) If an insurer, for any reason, fails to pay its levy to the Fund within the prescribed period, the insurer shall be liable to pay to the Fund a penalty interest charge, which shall be prescribed by the Cabinet Secretary in consultation with the Board of the Fund and the Authority.

(4) A levy paid by an insurer to the Fund may be treated as an item of the expenses of management of the insurer for the financial year in which the amount is paid.

183. (1) The Fund may utilise its monies —

Utilisation of its
monies

- (a) to meet the liabilities of an insolvent insurer to a claimant as may be prescribed;
 - (b) to meet the cost of transfer of the life fund of one insurer to another licensed insurer;
 - (c) to meet liabilities for unexpired premiums, as may be prescribed in the Regulations made under section 184;
 - (d) to meet the administrative, legal and other costs of maintaining and administering the Fund; and
 - (e) to repay monies borrowed and to pay interest on monies borrowed.
- (2) Notwithstanding subsection (1), the Fund shall not be utilised to pay—

- (a) liabilities of an insolvent insurer to its managers, directors, associates or the associate of a body corporate of which that insolvent insurer is a subsidiary;
- (b) liabilities of an insolvent insurer that is being wound up unless the liquidator is notified of the liability within six months from the effective date of its winding up order or such other period as the Authority may approve in the case of a particular insurer or policy holder or person entitled through the policyholder; or
- (c) liabilities of an insurer to its employees arising in connection with the employment contract.

(3) For the purposes of this Part, a licensed insurer is deemed to be insolvent if—

- (a) the Authority determines the insurer to be insolvent; or
- (b) winding up proceedings have been commenced against the insurer under the provisions of this Act.

184. The Cabinet Secretary may, in consultation with the Board of the Fund and the Authority, make Regulations for the conduct of the affairs of the Board of the Fund and for the utilisation of the monies and property of the Fund.

Regulations

PART XII – APPEALS TO THE FINANCIAL SERVICES TRIBUNAL

185. A person aggrieved by a decision of the Authority under this Act or the Financial Services Authority Act may, within one month from the date on which the decision is intimated to him, appeal to the Tribunal.

Appeals to the Tribunal

186. An appeal shall lie to the Tribunal where a dispute arises between any person and the Authority as to the exercise of the powers conferred upon the Authority by this Act or the Financial Services Act.

**PART XIII — TRANSITIONAL PROVISIONS, SAVINGS AND
REPEALS**

187. (1) The transitional provisions in Schedule 3 have effect.

Transitional
provisions

(2) The Cabinet Secretary may, on the recommendation of the Authority, make transitional Regulations and savings that are not inconsistent with Schedule 3.

(3) Transitional Regulations made under subsection (2) may be retroactive to the commencement date or a date after the commencement date.

188. The Insurance Act [Cap. 487] is repealed, but the savings in Schedule 4 have effect, despite the repeal of that Act.

Repeals
savings and

SCHEDULE 1

**MODIFICATIONS TO THE COMPANIES ACT IN RELATION TO
THE WINDING UP OF AN INSURER**

The modifications to the Companies Act specified in this Schedule apply with respect to the winding up of insurers.

Section of the Companies Act	Modification
219	Disapplied (section 142 applies in its place).
221	Modified as specified in section 143 .
222	Modified— (a) in subsection (2), by substituting “may make a winding-up order” for “shall make a winding-up order”; and (b) by disapplying subsection (3).
227	The Court shall, when making a winding-up order, direct how a copy of the order is to be forwarded to the registrar for registration.
229	Section 229 of the Companies Act is subject to section 152 .
232	Modified— (a) by substituting “liquidator” for “official receiver” in each place that it occurs; and (b) as specified in section 148 .
233	Modified— (a) by substituting “liquidator” for “official receiver” in each place that it occurs; and (b) as specified in section 148 .
234	Disapplied (section 146 applies in its place).
235	Modified by substituting “Policyholder Protection Fund” for “official receiver”.
236	Modified— (a) by disapplying paragraphs (a) to (e); and (b) by substituting the following for paragraph (f)— “(f) the liquidator of an insurer shall be described as by the style “the liquidator” of the insurer

	in respect of which the liquidator is appointed.”
237	Disapplied.
238	Modified— (a) in subsection (2), by substituting “The liquidator” for “Where a person other than the liquidator is appointed liquidator, he”; and (b) as specified in section 147 .
241	Modified in subsection (1) to substitute “Authority” for “committee of inspection”. Section 241 is subject to the provisions of Part IX.
242	Modified by disapplying— (a) subsection (1) (section 149 applies in its place); and (b) subsection (2).
244	Modified in subsection (1) by substituting “Authority” for each reference to the committee of inspection or the committee.
245	Modified— (a) in subsection (1)— (i) by deleting “other than the official receiver”; (ii) by substituting “and to the Authority” for “, or as it directs”; (b) in subsection (2), by substituting “triplicate” for “duplicate”; (c) in subsection (4), by substituting “, one copy shall be delivered by the official receiver to the Authority and one copy” for “and the other copy” ; and (d) by deleting the proviso after subsection (5).
248	Disapplied.
249	Disapplied.
250	Modified— (a) by substituting “The Court may, on the application of the liquidator or the Authority,” for “Where in the case of a winding up there is no committee of inspection, the court may, on the application of the liquidator,”; and (b) by deleting the proviso.

251	Modified— (a) in subsection (1), by substituting “, the Authority or any creditor” for “or the official receiver or any creditor or contributory”; and (b) by substituting “the liquidator” for “the official receiver”.
258	Modified by substituting “The liquidator” for “Where the official receiver becomes the liquidator of a company, whether provisionally, he”.
265	Modified in subsection (3), by deleting “where the official receiver is not the liquidator”.
271	Subject to section 141 .
272	Subject to section 141 .
278	Subject to section 141 .
279	Modified by inserting “by appointing a liquidator approved by the Authority” after “the vacancy”.
280	Disapplied.
281	Modified by inserting “the Authority and” after “forthwith notify”.
283	Modified in subsection (3) by inserting “the Authority and” after “deliver to”
287	Disapplied.

SCHEDULE 2

FINANCIAL PENALTIES

Factors to be considered by Authority in determining financial penalty

1. In determining the amount of the financial penalty to be imposed on a licensee, other than a late payment penalty, the Authority—
 - (a) shall take into account the following matters—
 - (i) the nature and seriousness of the compliance failure committed by the licensee;
 - (ii) whether the licensee has previously contravened the Act or the Regulations and if so, the number and seriousness of the licensee's previous contraventions;
 - (iii) whether the compliance failure was deliberate or reckless or caused by the negligence of the licensee;
 - (iv) whether any loss or damage has been sustained by third parties as a result of the compliance failure;
 - (v) whether there has been any gain to the licensee as a result of the compliance failure; and
 - (vi) the ability of the licensee to pay the penalty; and
 - (b) may take into account such other matters as it considers appropriate.
2. Where the Authority extends the time for submitting any document to the Authority, or notifying the Authority of any matter, the last day of the final extension given by the Authority shall be regarded as the last date for the submission of the document or the making of the notification.

Fixing of penalties

3. Where the Authority decides to impose a financial penalty on a licensee, other than a late payment penalty, it shall, after taking account of the matters specified in paragraph 1, fix the amount of the financial penalty as shall be prescribed in the regulation from time to time.
4. Where the Authority decides to impose a late payment penalty on a licensee, the penalty shall be calculated in accordance with the Table below.

**Table
Late Payment Penalties**

Period of Late Payment	Penalty
<p>1. Levies For the late payment by a licensed insurer of any levy provided for in the Regulations</p>	<p>For each month or part of a month that payment of the full levy is overdue, 5% of the part remaining due.</p>
<p>2. Fees, Charges and Penalties For the late payment by a licensee of any fee, charge or penalty payable under the Act or the Regulations</p>	<p>Amount equivalent to the Amount payable and an additional 5% of the amount due for each month the amount remains outstanding.</p>

SCHEDULE 3

TRANSITIONAL PROVISIONS

Applications

1. An application made to the Authority under the repealed Act that has not been determined prior to the commencement date is deemed to have been made under this Act.

Licences

2. A person who, immediately prior to the commencement date, was registered under the repealed Act is deemed to have been granted a licence under this Act on the commencement date, as follows—
 - (a) a person that was registered as an insurer, without the authority to undertake reinsurance business, is deemed to have been granted an insurer's licence under this Act and, unless the Authority otherwise specifies in writing, is authorised to carry on the classes of business that it was authorised to carry on under the repealed Act;
 - (b) a person that was registered as an insurer, with the authority to undertake reinsurance business, is deemed to have been granted a reinsurer's licence under this Act and, unless the Authority otherwise specifies in writing, is authorised to carry on the classes of business that it was authorised to carry on under the repealed Act;
 - (c) a person that was registered as a medical insurance provider is deemed to have been granted a health insurance manager's licence under this Act;
 - (d) a person that was registered as a broker is deemed to have been granted an insurance broker's licence under this Act;
 - (e) a person that was registered as an agent is deemed to have been granted an insurance agent's licence under this Act for the licensed insurers specified on its registration under the repealed Act;
 - (e) a person that was registered as a risk manager, loss adjuster, motor assessor, insurance investigator, surveyor or claims settling agent is deemed to have been granted an insurance service provider's licence under this Act, in the category specified in the Regulations;
3. Where a person who was registered as a broker under the repealed Act was authorised under the repealed Act to act in relation to reinsurance business, unless the Authority otherwise specifies in writing, the person is deemed to be authorised to carry on business as a reinsurance broker under this Act on the commencement date.

4. For the avoidance of doubt, a person is not registered under the repealed Act for the purposes of paragraph 2 if, immediately before the commencement date, the registration had expired and had not been renewed.

Deposit

5. A deposit made by an insurer under Part IV of the repealed Act shall be treated as a deposit made by an insurer under section 48 of this Act on the commencement date.

Accounts and financial statements

6. Subject to paragraph 7, the provisions of this Act that relate to financial statements and audit come into force and take effect as follows—

(a) if the commencement date is the 1st January, on the commencement date;

(b) if the commencement date is any other date, on the 1st January of the year following the commencement date.

7. Any accounts or financial statements submitted to the Authority on or after the commencement date in relation to any financial year prior to the date specified in paragraph 6(a) or (b), as the case may be, may comply with the requirements of the repealed Act and Regulations made under the repealed Act instead of the requirements of this Act and the Regulations.
8. Where paragraph 6(b) applies, the provisions of the repealed Act in relation to accounts and audit continue to apply during the period commencing with the commencement date and ending with the date specified in paragraph 6(b), despite the repeal of the repealed Act.

Enforcement action

9. This Act shall apply to any enforcement action commenced by the Authority under the repealed Act, as if it was commenced under this Act.

Registers

10. The Registers maintained by the Authority under the repealed Act shall, after the commencement date, be integrated with and become part of the Registers maintained by the Authority under this Act.

Appeals

11. An appeal made to the Tribunal established under the repealed Act that has not been determined before the commencement date shall be treated as if made under Financial Services Authority Act.

Provisions coming into force after the commencement date

12. The Regulations may provide that specified provisions of this Act come on a date or dates after the commencement date.

SCHEDULE 4

SAVINGS

1. The Regulations and other subsidiary legislation, an approval, direction, decision, notification, exemption and other executive act made or done under the repealed Act and in force or having effect immediately before the commencement date, is deemed to have been made or done under the corresponding provisions of this Act, and continues to remain in full force and effect in relation to the person to whom it applied until amended or replaced.
2. A guideline, circular, or notice issued by the Authority under the repealed Act to persons registered under the repealed Act before the commencement date, is deemed to have been lawfully issued in relation to the provision of this Act corresponding to the matter dealt with in the guideline, circular or notice, and shall remain in full force and effect until it is amended or replaced.
3. All decisions, actions, appointments, dealings, findings and recommendations of a manager or Authority under the provisions of section 67C of the repealed Act, shall continue in force as if the repealed Act is still in force.
4. An application for a licence or approval or for any other purpose or an appeal, made by a person to the Authority or the Insurance Appeals Tribunal under the repealed Act before the commencement date, if there is a corresponding provision in this Act or Financial Services Authority Act, shall be dealt with as if it was made under those provision and, if there is no corresponding provision in this Act or Financial Services Authority Act, the application or appeal shall lapse on the effective date.
5. A policy issued, a transaction or dealing lawfully executed or entered into, and business lawfully done before the commencement date by a person who was a registered insurer under the repealed Act, or who was a registered insurance intermediary under the repealed Act, and who is licensed or deemed to be licensed as an insurer or insurance intermediary such other insurance intermediary under this Act, with a policy holder or customer, creditor, debtor, or other person, is deemed to have been lawfully and validly executed or done under this Act, and a right or liability under the transaction, dealing or business existing, immediately before the effective date, is deemed to continue to be lawful and valid under this Act.
6. Legal proceedings, a criminal prosecution, or investigation under the repealed Act shall be construed as if the repealed Act is in force.

7. An act, decision, rule, order or direction lawfully done or made prior to the coming into force of this Act in respect of an insurer whose winding up has commenced but has not been completed shall remain valid and binding until it is amended and replaced.