



EAST AFRICAN COMMUNITY

EAC INSURANCE BILL 2018

**EAC SECRETARIAT
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THE EAST AFRICAN INSURANCE BILL, 2018

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A Bill for an Act to make provision for insurance matters in the Community and for related matters.

PART I—PRELIMINARY

1. Citation and Commencement.

This Act may be cited as the East African Community Insurance Act, 2018 and shall come into force on such date as the Council may, by notice published in the Gazette, appoint.

2. Objectives of this Act.

The objective of this Act is to provide an integrated, sound insurance legal and regulatory regime which conforms to best international practices by—

- (a) providing for consumer protection in the insurance industry;
- (b) promoting sound and effective risk transfer mechanisms for the insurance industry;
- (c) providing for collaboration and coordination among Partner States' supervisory authorities in relation to identification and mitigation of systemic and contagion risks; and
- (d) promoting the formation of associations in the insurance industry in order to enhance professionalism in the industry.

3. Interpretation

In this Act, unless the context otherwise requires—

“**authority**” means the respective supervisory authority of a Partner State;

“**bancassurance**” means the sale, marketing or distribution of insurance products by a bank on behalf of an insurer under any written agreement;

“**Community**” means the East African Community established by Article 2 of the Treaty;

“**Council**” means the Council of Ministers of the Community established by Article 9 of the Treaty;

“**group-wide supervision**” means the supervisory approach to an insurance group that considers the group structure, any regulated or non-regulated entities;

“**general insurance business**” means an insurance business of class specified as general insurance business;

“**head of the group**” means the head of the group or parent, whether regulated or non-regulated, that is at the top of the group structure and has a significant influence over the activities of the group as a whole.

“**health management organization**” means an organization that provides or arranges medical care for insurers, individuals, and other entities on the basis of prepaid contractual arrangements;

“**Institution**” means the institution established in accordance with the Article 21 (a) of the Protocol;

“**involved supervisors**” means supervisors engaged in the supervision of an insurance group;

“**insurance group**” means a registered insurer and its subsidiaries or an insurer’s holding company, whether operating or non- operating, and its subsidiaries;

“**Insurance agent**” means a person appointed and authorised by an insurer to solicit applications for insurance or negotiate for insurance coverage on behalf of the insurer and to perform any other functions that may be assigned to him or her by the insurer and who in consideration for his or her services receives commission from the insurer;

“**insurance broker**” means a person who not being an agent acts as an independent contractor for commission or other remuneration who solicits or negotiates insurance business on behalf of an insured or prospective insured.

“**insurance**” means an arrangement by which an insurer undertakes to provide a guarantee of compensation for specified loss, damage, illness, or death in return for payment of a specified premium and includes assurance and reinsurance;

“**insurance business**” means the activity of undertaking liability of loss, damage, compensation, disease, health as well as reinsurance business;

“insurance intermediary” means a person who carries on business as a broker, an agent, a loss adjuster, a loss assessor, a risk manager, an insurance surveyor, a claims settling agent; define each

“insurer” means a licensed legal entity which carries on insurance business;

“life insurance business” means an insurance business of class specified as life insurance.

“macro prudential surveillance” means a set of systems and processes that monitors the vulnerability of the financial system with respect to economic and financial shocks;

“micro-insurance” means a financial arrangement to protect low-income people against specific perils in exchange for premium payments proportionate to the likelihood and cost of the risk involved;

“mutual insurer” means an insurer, being a company incorporated under any law which has no share capital and which by its constitution only and all policy-holders are members;

“Partner State” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the Republic of Uganda, the United Republic of Tanzania, Republic of South Sudan or any other country granted membership to the East African Community under Article 3 of the Treaty;

“policy holder” means a person who enters into an insurance contract with an insurer;

“premium” means an amount paid by the policyholder to the insurer under an insurance contract;

“Protocol” means the Protocol on the Establishment of the East African Community Monetary Union;

“reinsurer” means a person who is licensed to carry on reinsurance business;

“reinsurance” means an agreement whereby a person provides insurance to a risk assumed by an insurer; and

“takaful insurance” means insurance business conducted in accordance with sharia principles;and

“technical provisions” means the amount reserved by an insurer to fulfil its insurance obligations and to settle all commitments to policyholders and other beneficiaries arising over the life time of the portfolio of insurance policy.

PART II—ADMINISTRATION

4. Administration of this Act.

This Act shall be administered by the institution established in accordance with the Article 21 (a) of the Protocol.

5. Functions of the Institution.

The functions of the institution shall be to—

- (a) coordinate the implementation of the East African Community Insurance Policy;
- (b) promote the development of insurance sector in the Community;
- (c) undertake research and collate statistics relating to the insurance sector in the community with a view to attaining an inclusive, fair, safe and stable insurance sector in the Community.
- (d) facilitate information sharing among authorities of Partner States;
- (e) develop and monitor the implementation of standards on conduct of business for protection of policy holders and other insurance stakeholders.
- (f) promote financial stability in the insurance sector through systemic risk management in the Community;.
- (g) develop and monitor the implementation of the insurance supervisory principles, standards and methodologies;
- (h) advise the Council on insurance matters;
- (i) promote the harmonization of insurance supervisory standards and insurance professional certification standards and programs; and
- (j) co-operate with other regional and international organizations on matters of mutual interest.

PART III—LICENSING

6. Licensing of insurers and reinsurers.

- (1) A person shall not carry on or purport to carry on insurance business or reinsurance business in the Partner State without a valid license or approval issued by the Authority.
- (2) For the purpose of sub-section (1), a person shall satisfy the prescribed requirements for the grant of a license or approval in accordance with the Regulations made under this Act.

- (3) An Authority shall apply appropriate penalties for engaging in unlicensed insurance or reinsurance business
- (4) A license issued to an insurer or reinsurer remains valid unless it is suspended, varied or revoked.

7. Classification of insurance licenses

- (1) A license issued in a Partner State shall specify the class of insurance business which may be transacted by the licensee.
- (2) Without limiting the generality of subsection (1), an authority may issue the following insurance business licenses—
 - (a) an insurer’s license which authorizes the holder to carry on life business;
 - (b) an insurer’s license which authorizes the holder to carry on general business;
 - (c) a reinsurer’s license which authorizes the holder to carry on reinsurance business;
 - (d) a micro insurance license which authorizes the holder to carry on micro insurance business;
 - (e) a takaful license which authorizes the holder to carry on takaful business;
 - (f) a health management organization license which authorizes the holder to carry on health management organization business; or
 - (g) any other license as circumstances may dictate.

8. Prohibition on transacting life and general business concurrently.

- (1) Subject to subsection (2), a Partner State shall not license an insurer to transact life insurance business and general insurance business concurrently.
- (2) An insurer transacting life or general business may be licensed to transact micro insurance business.

9. Licensing requirements for insurers and reinsurers.

In considering an application for a license, an authority shall be guided by the following factors—

- (a) the financial status and antecedents of the applicant;
- (b) the competence and integrity of the proposed management and administration of the applicant;

- (c) the adequacy of the applicant's capital structure, earning prospects, business plans, financial plans, reinsurance and retention proposals;
- (d) whether the public interest would be served by granting a license;
- (e) the governance framework of the applicant;
- (f) proposed reinsurance and retrocession arrangements; and
- (g) such other requirements that the Council may by regulations prescribe.

10. Grant of licence

- (1) The authority shall, where the applicant meets the requirements for the grant of a license, issue the relevant license to the applicant.
- (2) If the authority refuses to issue a license, the authority shall give reasons in writing for its decision.

11. Display of licences

A licensee shall display its licence in a prominent and conspicuous place at the principal place of business and a copy of the licence at any of its branches in a place that the public can access.

12. Suspension, variation or revocation of licences.

- (1) An authority may suspend, vary or revoke a licence granted to a licensee.
- (2) For purposes of subsection (1), an authority shall take into consideration any of the following—
 - (a) whether it is required for protecting the interests of policy holders;
 - (b) whether the business of the insurer is not being conducted in accordance with sound insurance principles and practices;
 - (c) whether the relevant minimum paid up capital or security deposit requirements have not been complied with by the insurer;
 - (d) whether the insurer is not in compliance with the capital adequacy and solvency requirements;
 - (e) whether the insurer has not commenced insurance business within the time prescribed;
 - (f) whether the insurer has made a false statement to the authority which statement is material to the insurer's licensing and which the insurer knows or might have known to be false;
 - (g) whether a judgment arising out of any insurance liability obtained in a competent court against an insurer remains unsatisfied without good reason;

- (h) whether an insurer has ceased to qualify as an insurer under the laws of the partner state;
 - (i) whether the insurer has contravened the laws of the partner state;
 - (j) whether it is in the public interest; or
 - (k) any other condition as may be prescribed.
- (3) An authority shall, before suspending, varying or revoking a license, give the insurer the opportunity to be heard.

PART IV — CORPORATE GOVERNANCE

13. Governance framework

Every insurer shall establish and maintain—

- (a) an appropriate governance and management framework; and
- (b) strategies, policies, procedures and controls appropriate for the nature, scale and complexity of its business and its risk profile.

14. Suitability requirements

An insurer shall ensure that its board members, senior managers, key persons in control functions and significant shareholders are fit and proper to fulfil their respective roles.

15. Risk management and internal control systems

- (1) Every insurer shall, as part of its overall corporate governance framework, establish effective systems of risk management and internal controls including effective functions of risk management, compliance, actuarial matters and internal audit.
- (2) For the purposes of subsection (1), an insurer shall put in place the following measures—
 - (a) strategies setting out the approach for dealing with specific areas of risk, legal and regulatory obligations;
 - (b) policies defining the procedures and other requirements that members of the board and other employees need to follow;
 - (c) processes for the implementation of the processes and strategies; and
 - (d) controls to ensure that such strategies, policies and processes are in place and are attaining their intended objectives.

PART V - CHANGES IN CONTROL AND OWNERSHIP OF INSURERS

16. Acquisition of significant ownership in an insurer

Any proposal to acquire significant ownership or an interest in an insurer that results in the acquirer, directly or indirectly, alone or with associates, exercising control over the insurer shall be submitted to an authority for approval.

17. Significant ownership.

(1) The Council shall by regulations define what amounts to—

- (a) significant ownership;
- (b) interest in an insurer: and
- (c) exercising control over an insurer.

(2) In determining what amounts to control over an insurer, the Council may at a minimum take into consideration the following—

- (a) the holding of a defined number or percentage of issued shares or financial instruments above the prescribed threshold in an insurer or its intermediate or ultimate beneficial owner;
- (b) voting rights attached to the shares or financial instruments mentioned in paragraph (a);and
- (c) power to appoint directors to the board of an insurer and other executive committees or to remove them.

(3) For the purpose of determining what amounts to significant ownership of an insurer, the Council shall take into consideration the holding of a prescribed percentage of issued shares in an insurer or its intermediate or ultimate beneficial owner.

18. Conversion of mutual insurer into a limited liability company.

Any proposed change from a mutual insurer to a company limited by shares or from a company limited by shares to a mutual insurer shall be approved by an authority.

19. Portfolio transfers and mergers of insurers

Any proposed portfolio transfer or merger of insurers shall be approved by an authority.

PART VI - SUPERVISION OF INSURERS

20. Inspection of Insurers.

- (1) The authority shall inspect the affairs of insurers.
- (2) For the purpose of performing the functions in subsection (1), an authority may—
 - (a) inspect the premises and the business, including the procedures and controls, of an insurer or a subsidiary or holding company of an insurer;
 - (b) inspect any premises or business of a person to whom an insurer has outsourced any functions or activities;
 - (c) inspect the assets, including cash, belonging to or in the possession of or control of an insurer or any of its subsidiaries or holding companies;
 - (d) examine and make copies of documents belonging to or in the possession or control of an insurer, any of its subsidiaries or holding companies; or
 - (e) seek information and explanations from the officers, employees, agents and representatives of an insurer or any of its subsidiaries or holding companies.
- (3) Notwithstanding subsection (1), the authority may inspect insurers at any time before the prescribed time for inspection where the authority believes that—
 - (a) the interests of the policyholders, shareholders or members of the public could be prejudiced;
 - (b) the insurer is unable to meet its obligations under the licence;
 - (c) the insurer is in breach of the laws of the partner state;

21. Macro prudential surveillance system.

An authority shall, in collaboration with other relevant institutions, develop a macro prudential surveillance system to monitor the vulnerability of the financial system with respect to economic and financial shocks.

PART VII-PREVENTIVE, CORRECTIVE AND ENFORCEMENT MEASURES

22. Progressive escalation of corrective measures.

- (1) An authority shall take corrective action on an insurer that fails to operate in a manner that is consistent with regulatory requirements.
- (2) The corrective actions that an authority may impose on an insurer may include—

- (a) restrictions on business activities;
- (b) prohibiting the insurer from issuing new policies;
- (c) withholding approval for new business activities or acquisitions
- (d) restricting the transfer of assets;
- (e) restricting the ownership of subsidiaries;
- (f) restricting activities of a subsidiary where, in its opinion, such activities jeopardize the financial situation of the insurer;
- (g) directions to reinforce financial position;
- (h) requiring measures that reduce or mitigate risks;
- (i) requiring an increase in capital;
- (j) restricting or suspending dividend or other payments to shareholders;
- (k) restricting purchase of the insurer's own shares;
- (l) arranging for the transfer of obligations under the policies from a failing insurer to another insurer that accepts this transfer;
- (m) taking control of assets and liabilities of an insurer;
- (n) suspending or revoking the license of an insurer;
- (o) barring officers and board members from such roles in future; and
- (p) any other directions.

23. Remedial plans.

- (1) An authority shall require insurers to prepare a remedial plan where the authority considers it appropriate.
- (2) For the purposes of subsection (1) the authority may take into consideration the following factors—
 - (a) the licensee has breached or is likely to breach solvency control and governance levels prescribed by Partner state legislation;
 - (b) the business of the licensee has not been, or is not being conducted in accordance with the provisions of the Partner state legislation; or
 - (c) the licensee is carrying on or is likely to carry on its licensed business in a manner detrimental to the interests of its policyholders.
- (3) The Council shall by regulations prescribe the procedures for assessing, approving and monitoring the implementation of remedial plans.

PART VIII-REINSURANCE AND OTHER FORMS OF RISK TRANSFER

24. Reinsurance and risk transfer

- (1) An insurer shall make arrangements for the reinsurance of the risks it underwrites.
- (2) An authority shall approve the reinsurance arrangements filed by an insurer.

(2) The Council shall by regulations set standards for the use of reinsurance and other forms of risk transfer to ensure that insurers adequately control and transparently report their risk transfer programmes.

25. Compulsory cessions.

Every insurer shall offer compulsory cessions to national and regional reinsurers as provided for in the respective national laws.

26. Capital adequacy and other prudential requirements

- (1) The authority shall ensure that every insurer maintains the prescribed prudential requirements.
- (2) The Council shall by regulation prescribe the capital adequacy requirements, solvency requirements and other prudential requirements for insurers.

27. Investment requirements

An authority shall regulate the investment activities of insurers.

28. Segregated life funds

- (1) A life insurer shall establish and maintain segregated life funds.
- (2) A segregated life fund shall be used only for the purpose for which the fund is established and maintained.
- (3) No part of the assets of a segregated life fund shall—
 - (a) be used to meet any liabilities or expenses of an insurer other than liabilities or expenses referable to that class of long term insurance business; and
 - (b) be directly or indirectly applied for any purposes other than the purpose of that class of long term insurance business; or
 - (c) be paid, applied or allocated as dividends or otherwise as profits to shareholders or transferred to another segregated fund.

29. Technical provisions

- (1) An insurer shall establish and maintain technical provisions relating to its business operations.

- (2) The Council shall by regulation prescribe methodologies for determination of technical provisions relating to an insurer's life and general business.

PART IX- INTERMEDIARIES

30. Insurance intermediaries.

- (1) A person shall not carry on insurance business as an intermediary unless that person is licensed by an authority.
- (2) The Council shall prescribe regulations for the licensing, regulation and supervision of insurance intermediaries.
- (3) A license issued to an insurance **broker** remains valid for a period of three years and is renewable for similar period cycles unless it is suspended or revoked.

Insert details on inspection of intermediaries

31. Categories of insurance intermediaries.

- (1) An authority may grant a licence to the following categories of insurance intermediaries –
 - (a) Insurance Brokers;
 - (b) Insurance Agents;
 - (c) Reinsurance Brokers;
 - (d) Bancassurance Brokers;
 - (e) Bancassurance Agents;
 - (f) Loss Assessors;
 - (g) Risk Surveyors;
 - (h) Claims Settling Agents;
 - (i) Takaful Agents;
 - (j) Takaful Brokers;
 - (k) Micro-Insurance Agents;
 - (l) Micro-Insurance Brokers;
 - (m) Insurance Consultants; and
 - (n) Any other category that the Council may by regulation determine.

PART X - MARKET CONDUCT OF INSURANCE BUSINESS AND CONSUMER PROTECTION

32. Market conduct and consumer protection standards

- (1) An Insurance contract shall only incept upon the payment of premiums to the insurer.
- (2) An insurer who issues an insurance policy without receiving premium payment remains liable to a claim under the policy.
- (3) An intermediary shall not receive any premium.
- (4) Premium rates charged by the insurer shall be determined by an actuary approved by the authority.
- (5) The Council shall by regulation prescribe standards and guidelines in respect of conduct of insurance business and consumer protection.
- (6) Subject to subsection (4) the regulations shall at a minimum provide for—
 - (a) intermediation of an insurance premium between the insured and the insurer;
 - (b) Claim management processes ;
 - (c) Treating Customers fairly;
 - (d) Consumer awareness framework;
 - (e) Confidentiality of information; and
 - (f) Disclosure requirements

33. Establishment of policyholders' compensation Scheme

- (1) Partner States Authorities shall establish a scheme to compensate policyholders of an insurer in the event of closure or winding up.
- (2) Subject to subsection (1), Partner States shall prescribe the establishment and management of the Scheme through regulations.

34. Ombudsman services.

- (1) Partner states may provide for an ombudsman who shall mediate disputes between insurers and insurance consumers.
- (2) Partner state legislation shall provide for the nature of complaints procedures, remedial powers and fees of the Ombudsman.

35. Insurance appeals tribunal.

- (1) A Partner State may provide for the establishment of an insurance appeals tribunal which shall adjudicate appeals arising from the decision of the authority of the partner state.
- (2) Partner State legislation shall provide for the procedures, remedial powers and fees of the Tribunal.

36. Confidentiality by insurers and intermediaries

- (1) Insurers and intermediaries shall maintain confidentiality in handling confidential client information.
- (2) The Council shall prescribe regulations on disclosure of client information.

37. Disclosure requirements

Insurers shall disclose information to policy holders and general public for the purposes of giving a clear view of their business activities and financial performance.

38. Compliance with anti-money laundering and combating the financing of terrorism.

All licensees shall comply with laws dealing with money laundering and combating the financing of terrorism.

39. Supervisory cooperation and coordination.

- (1) The authority shall provide for—
 - (a) coordination arrangements with involved supervisors on cross border issues;
 - (b) identification of group wide supervisors outlining their responsibilities;
 - (c) cross border operations and crisis management;
 - (d) information sharing in crisis management;
 - (e) contingency plans; and
 - (f) public communication in a crisis situation.
- (2) For the purposes of subsection (1) authorities may enter into cooperation and coordination agreements which may provide for—
 - (a) information flows between involved supervisors;
 - (b) communication with the head of the group;

- (c) convening periodic meetings of involved supervisors; and
- (d) conduct of a comprehensive assessment of the insurance group.

PART XI- WINDING UP OF INSURERS AND EXIT FROM THE MARKET

40. Exit from the market by insurers

The Council shall by Regulations—

- a) define a range of options for the exit of insurers from the market;
- b) define insolvency of insurers and establish the criteria and procedure for dealing with insolvency of insurers; and
- c) determine the point at which it is no longer permissible for an insurer to continue its business.

42. Priority protection of policyholders

In the event of winding-up proceedings of insurers, priority will be given to policyholders.

43. Liquidation and winding up

Partner States' shall—

- (a) make provisions to allow the insurance regulator to appoint the liquidator of an insolvent insurer;
- (b) require that the long term insurance business is not wound up voluntarily; and
- (c) require that a general insurance business shall not voluntarily be wound up without prior approval by the Partner States Regulatory Authorities

PART XII - MISCELLANEOUS PROVISIONS

44. Industry Associations.

- (1) An authority shall acknowledge the role played by insurance associations in the respective Partner States.
- (2) There shall be collaboration between an authority and insurance associations in the development of the regional insurance sector.
- (3) An authority shall encourage industry associations to develop codes of conduct for self-regulation.

45. Accreditation of foreign insurer or intermediary.

(1) A foreign insurer or intermediary shall not carry on business in the Community without accreditation by an authority.

(2) A foreign insurer or intermediary shall be accredited in accordance with the following criteria—

(a) Making a formal application to an authority for acceptance as an accredited insurer or intermediary.

(b) Providing documentary evidence on the following—

- i. incorporation in home jurisdiction;
- ii. status of registration by a regulatory agency in home jurisdiction
- iii. audited financial statements for the previous three years;
- iv. credit rating of B+ or equivalent from a reputable rating agency; and
- v. any other relevant information.

(c) payment of an annual accreditation fee to be prescribed by the respective Authority;

(d) any other criteria as may be prescribed in a regulation.

47. Mutual recognition

(An Authority shall recognize an insurer, reinsurer and intermediary licensed by the authority of another Partner State.)

48. Access to information by authorities

Insurers shall provide access to any information or documents that the authority may require for purposes of supervision and regulation.

49. Publication of licensee's details

The authority shall keep a register and publish, in an appropriate form, the name, the registered physical address, the scope of license for the —

- (a) licensed insurers and reinsurers; and
- (b) licensed insurance intermediaries.

50. Power to make regulations.

- (1) The Council may make regulations for the better carrying into effect the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), the Council may make regulations —
 - (a) prescribing the requirements on licensing;
 - (b) providing suitability requirements for key insurance personnel;
 - (c) specifying methods of valuation of technical provisions for general insurance business;
 - (d) specifying methods of valuation of technical provisions for life insurance business;
 - (e) prescribing corporate governance practices;
 - (f) providing for risk management and internal control systems;
 - (g) providing for supervisory review and reporting;
 - (h) providing for reinsurance and other forms of risk transfer;
 - (i) specifying capital adequacy, investment and other prudential requirements;
 - (j) providing for supervision of intermediaries;
 - (k) providing for macro prudential surveillance;
 - (l) providing for changes in control and portfolio transfers;
 - (m) Providing for conduct of business, consumer protection, self-regulation and public disclosures;
 - (n) providing for measures to combat fraud, money laundering and financing of terrorism;
 - (o) providing for preventive, corrective, enforcement and remedial measures;
 - (p) providing for group wide supervision, supervisory cooperation, coordination and crisis management;
 - (q) providing for winding up and exit from the insurance market; and
 - (r) providing for management of policy holder compensation scheme.

51. Act to take precedence over Partner State laws.

This Act shall take precedence over Partner state laws with respect to any matter relating to insurance.