

**THE POLICYHOLDERS COMPENSATION BILL,
2025**

Final Draft

THE POLICYHOLDERS COMPENSATION BILL, 2025

ARRANGEMENT OF SECTIONS

PART I — PRELIMINARY

Section

- 1 - Short title and commencement.
- 2 - Interpretation.
- 3 - Act to prevail.

PART II—THE POLICYHOLDERS COMPENSATION FUND

- 4 - Establishment of the Policyholders Compensation Fund.
- 5 - Objects and Functions of the Policyholders Compensation Fund.
- 6 - Powers of the Policyholders Compensation Fund.
- 7 - Board of Trustees.
- 8 - Disqualification for Appointment to the Board.
- 9 - Tenure of Office.
- 10 - Vacation of Office.
- 11 - Conduct of Business and Affairs of the Board.
- 12 - Managing Trustee.
- 13 - Staff of the Fund.
- 14 - Delegation by the Board.
- 15 - Duty of the Board to Determine and Pay Compensation
- 16 - Protection from personal liability.
- 17 - Common seal.
- 18 - Confidentiality.

PART III — FINANCIAL PROVISIONS

- 19 - Sources of funds.
- 20 - Financial year.
- 21 - Annual estimates.
- 22 - Accounts and audit.

PART IV —THE INSURANCE PROTECTION FUND

- 23 - Establishment of the Fund.
- 24 - Borrowing.

- 25 - Fund investments.
- 26 - Application of the Fund.
- 27 - Membership to the Fund.
- 28 - Cessation of membership.
- 29 - Effect of cessation.
- 30 - Contributions by insurers.

PART V — COMPENSATION

- 31 - Eligibility for compensation.
- 32 - Ineligibility for compensation.
- 33 - Conditions of compensation.
- 34 - Discharge of liability.
- 35 - Subrogation.
- 36 - Assignment.
- 37 - Actions against the Policyholders Compensation Fund.

PART VI — MONITORING OF INSURERS

- 38 - Risk Profiling of insurers.
- 39 - Reports from insurers.
- 40 - Collaboration with the Insurance Regulatory Authority.
- 41 - Early intervention and prompt corrective actions.

PART VII — STATUTORY MANAGEMENT OF INSURERS

- 42 - Appointment of Policyholders Compensation Fund as Statutory Manager.
- 43 - Powers of Policyholders Compensation Fund as Statutory Manager
- 44 - Rights and obligations in statutory management
- 45 - Actions against the Policyholders Compensation Fund.
- 46 - Autonomy of Policyholders Compensation Fund as Statutory Manager.
- 47 - Conclusion of Statutory Management.

PART VIII—LIQUIDATION OF INSURERS

- 48 - Appointment of Policyholders Compensation Fund as Liquidator.
- 49 - Powers of the Policyholders Compensation Fund as Liquidator.
- 50 - Stay of proceedings.
- 51 - Residual payment.
- 52 - Obligation to co-operate.
- 53 - Accounts and expenses on liquidation.
- 54 - Completion of liquidation and winding.
- 55 - Policyholders Compensation Fund to act independently.
- 56 - Exemption from the provisions of the Insolvency Act.

PART IX – OFFENCES

- 57 - Holding out as a member.
- 58 - False statements.
- 59 - Failure to provide information.
- 60 - General penalty.
- 61 - Imposition of penalties.
- 62 - Additional orders by the court.
- 63 - Recovery of penalties.

PART X— MISCELLANEOUS PROVISIONS

- 64 - Exemption from tax.
- 65 - Exemption from contribution and attachment.
- 66 - Regulations.
- 67 - Repeal of Section 179 of Cap 487.
- 68 - Transitional provisions.

SCHEDULE

- 1 - Provisions as to the Conduct and Affairs of the Board.
- 2 - Schedule of protected benefits

THE POLICYHOLDERS COMPENSATION BILL, 2025

Date of Assent: _____

Date of Commencement: _____

AN ACT of Parliament to provide for the establishment of the Policyholders Compensation Fund, to provide for the establishment of a policyholders' protection system, to provide compensation to policyholders and claimants, for the resolution of insurers; and for matters incidental thereto.

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Policyholders Compensation Act, 2025 and shall come into operation on such a date as the Cabinet Secretary may, by notice in the Gazette, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires –
 "Asset" means any movable or immovable asset and includes -
 - (a) any right, interest, title, claim, power or privilege, whether present or future, or whether vested or contingent, in relation to any asset, or which is otherwise of value;
 - (b) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of property where the person executing the conveyance is the proprietor or possessor, or wherein he is entitled to a contingent right, either for the whole or part of the interest;
 - (c) any security, including any stock, share, debenture, bonds, loan stocks, transferable subscription rights or warrants;
 - (d) any negotiable instrument, including any bank note, bearer

note, treasury bond or bill, dividend warrant, bill of exchange, promissory note, cheque and negotiable certificate of deposit;

(e) any mortgage or charge, whether legal or equitable, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation or trust receipt, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present or future, or whether vested or contingent; and

(f) any other tangible or intangible asset;

“Board” means the Board of Trustees of the Policyholders Compensation Fund appointed under Section 7 of this Act;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to finance;

“Chairperson” means the Chairperson of the Board appointed under Section 7 of this Act;

“Claim” means any unpaid claim which arises as a consequence of an incident or event that involves a risk or peril insured by a Kenyan policy that was issued by an authorized insurance company that has been placed under statutory management, liquidation and had its license cancelled;

"Claimant" means a person eligible to make a claim from an insurer that accrues from an insurance contract and specifically includes policyholders, beneficiaries and third parties under liability insurance as defined under any written law;

"Company" has the meaning assigned to it under the Companies Act, (Cap 486).

“Compensation” means the amount paid out to a claimant in the occurrence of a loss relating to an insurer placed under liquidation or whose license has been cancelled.

“Contribution” means the contribution paid under section 30 of this Act;

“Fund” means the Insurance Protection Fund established under section 23 of this Act;

"Insurer" means a person, registered and appropriately licensed under

the Insurance Act Cap 487 who carries on insurance business.

"Kenyan policy" means a contract, evidenced by a policy, whose performance by an insurer would constitute the carrying on, by the insurer, of insurance business of any class in the Republic of Kenya: Provided that a Kenyan policy shall not include –

- (a) A policy of re-insurance;
- (b) Annuities;
- (c) Pensions (Personal Pensions and Deposit Administration);
- (d) An insurance policy issued prior to 1st January, 2005 with the exception of that whose policyholder opted to contribute and had their premiums adjusted accordingly.

"Liabilities" includes debts, duties and obligations of every kind, whether present or future, or whether vested or contingent.

"Liquidation" is the process by which a company is brought to a legal end, and its assets sold off, proceeds distributed to creditors and shareholders, and its affairs wound up in an orderly manner.

"Managing Trustee" means the Chief Executive Officer of the Policyholders Compensation Fund appointed under Section 12 of this Act and also the Accounting Officer of Policyholders Compensation Fund.

"Officer", in relation to a member insurer, means a person who manages an insurer and includes the Principal Officer, management and staff of an insurer.

"Person" shall include incorporated, unincorporated and natural persons;

"Policyholder" means the holder of a Kenyan policy.

"Protected Benefit" means a claim that is eligible for compensation as provided in the Schedule of Protected Benefits under the Second Schedule of this Act.

"Run-off" refers to the process of managing and settling the existing insurance policies held by an insurer that is undergoing resolution, restructuring, or winding down its operations

"Resolution" means the process by which a troubled insurer is placed under regulatory oversight and control to address significant financial distress while minimizing disruption to policyholders, creditors, and the financial system.

"Subsidiary" has the same meaning as defined under the Companies Act;

"Statutory Management" refers to the assumption of management, control, and conduct of the affairs and business of an insurer as defined under Part VII of this Act; and

"Troubled Insurer" refers to an insurance company that is facing financial or operational difficulties that may jeopardize its ability to fulfill its obligations to policyholders.

"Winding Up" is the process of ending a company's operations by selling its assets, paying off its debts, and distributing any remaining assets to its owners.

Act to prevail.

3. Where there is any conflict or inconsistency between this Act and the provisions of any other Act in matters relating to the purpose of this Act, this Act shall prevail.

PART II— THE POLICYHOLDERS COMPENSATION FUND

Establishment of the Policyholders Compensation Fund

4. (1) There is established a state corporation to be known as the Policyholders Compensation Fund.
- (2) The Policyholders Compensation Fund shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of -
 - (a) suing and being sued;
 - (b) taking, purchasing or otherwise acquiring, holding, charging, leasing or disposing of moveable or immovable property;
 - (c) borrowing money; and
 - (d) doing or performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.
- (3) The Policyholders Compensation Fund established under section 4(1) of this Act shall be the successor of the Policyholders Compensation Fund established under section 179 of the Insurance Act CAP 487 Laws of Kenya.
- (4) Subject to this Act, all the rights, duties, obligations, assets, and liabilities of the Policyholders Compensation Fund existing before the

commencement of this Act shall continue to vest in the Policyholders Compensation Fund established under section 4(1) of this Act.

(5) The headquarters of the Policyholders Compensation Fund shall be in Nairobi but may establish offices in any other location within Kenya.

Objects and Functions of Policyholders Compensation Fund

5. (1) The objects and purposes for which the Policyholders Compensation Fund is established is to provide a policyholders' protection system to compensate policyholders and claimants of an insolvent insurer and for the resolution of insurers.

(2) Without prejudice to the generality of subsection (1), the Policyholders Compensation Fund shall;

- (a) provide compensation to claimants of an insolvent insurer as described under the schedule of protected benefits provided under the Second Schedule of this Act;
- (b) facilitate the transfer of long-term insurance policies of an insolvent insurer to another solvent insurer and funding any deficit in line with the schedule of protected benefits;
- (c) undertake the resolution of a troubled insurer and facilitate their orderly market exits through statutory management and liquidation;
- (d) undertake monitoring of insurers for purposes of early intervention and prompt corrective action;
- (e) advise the Cabinet Secretary on the policy that should be followed on the compensation of claimants, and resolution of insurers;
- (f) hold, manage, administer and apply the Insurance Protection Fund in accordance with this Act; and
- (g) perform such other functions as may be conferred on it by this Act or any other written law.

(3) For better clarity, the objects of policyholder protection through compensation of claimants, and resolution and monitoring of Insurers by the Policyholders Compensation Fund under this Act shall be –

- (a) to promote policyholder protection;
- (b) to promote confidence in the insurance sector; and

- (c) to contribute to stability in the insurance sector.
- (4) Pursuant to this Act, an authorized insurer shall be considered insolvent if-
 - (a) it is placed under liquidation by the Commissioner of Insurance under the provisions of the Insurance Act; or
 - (b) its license is cancelled by the Commissioner of Insurance under the provisions of the Insurance Act.

Powers of the Policyholders Compensation Fund

- 6. (1) The Policyholders Compensation Fund shall have all the powers necessary for the proper performance of its functions under this Act, and without prejudice to the generality of the foregoing, shall have power to-
 - (a) control, supervise and administer the assets and liabilities of Policyholders Compensation Fund in such a manner and for such purposes as best to promote the interests of the policyholders;
 - (b) impose levy contributions for the Insurance Protection Fund in accordance with this Act;
 - (c) employ such persons and engage the services of such service providers as may be necessary, on such terms and conditions for the proper and efficient exercise of its functions;
 - (d) enter into associations with other bodies or organizations, within or outside Kenya, as it may consider desirable or appropriate in furtherance of the purposes for which the Fund is established;
 - (e) invest any of the surplus funds in government approved securities in line with government laws and regulations, or any other security that has been approved by The National Treasury and Economic Planning;
 - (f) receive grants and appropriation provided by parliament, gifts, donations or endowments and make legitimate disbursement therefrom;
 - (g) request any information from any insurer, relevant regulatory authorities, fiscal or tax agency, or fraud investigations agencies within or outside Kenya where such information is reasonably required for the proper discharge of the functions under this Act; and
 - (h) subject to the provisions of this Act, regulate its own procedure.

The Board of Trustees

7. (1) The Policyholders Compensation Fund shall be administered by a Board of Trustees which shall comprise of-
- (a) a Chairperson, appointed by the President of the Republic of Kenya;
 - (b) the Commissioner of Insurance or a representative appointed in writing;
 - (c) the Cabinet Secretary responsible for matters relating to finance or a representative appointed in writing;
 - (d) the Attorney General or a representative appointed in writing;
 - (e) one person nominated by the body representing the interests of insurers;
 - (f) one person nominated by the body representing the interests of insurance brokers;
 - (g) one person representing the general public appointed by the Cabinet Secretary; and
 - (h) the Managing Trustee as an ex officio member without a right to vote.

(2) The Chairperson and the members appointed under section 7 (e), (f), (g) and (h) may be appointed from amongst persons who have knowledge or experience in matters relating to insurance, actuarial science, mathematics, finance, economics, law, accounting, business, banking, commerce, or any other relevant knowledge or experience.

Disqualification for Appointment to the Board

8. (1) A person shall not be eligible for appointment under paragraphs 7 (e), (f), (g) or (h) if that person —
- (a) has at any time been convicted of any offence involving fraud, theft, dishonesty, breach of trust, or moral turpitude, or any other criminal offence under any law punishable with imprisonment that amounts to a felony under the Laws of Kenya;
 - (b) was previously involved in the management or administration of an insurer which was deregistered, wound up or placed under statutory management in the last ten (10) years;
 - (c) person who holds any office or position, in a political party;
 - (d) is a director, officer, employee or shareholder of any insurer, insurance brokerage, or insurance agency;
 - (e) a member of parliament or county assembly of a county

government; or

- (f) is disqualified under any other written law from holding public office or being a director of any insurer, or any other private entity.

Tenure of Office

- 9. (1) The Chairperson or a member of the Board shall hold office for a period of three (3) years, on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for re-appointment for one further term.

(2) The members of the Board shall be appointed at different times so that the respective expiry dates of the members' terms of office shall fall at different times.

Vacation of Office

- 10. (1) A member other than the *ex-officio* member may –

- (a) at any time resign from office by notice in writing to the Cabinet Secretary; and

- (b) be removed from office by the Cabinet Secretary on recommendation of the Board if the member;

- (i) has been absent from three consecutive meetings of the Board without its permission;

- (ii) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;

- (iii) is convicted of a corruption or economic crime or other criminal offence involving dishonesty, fraud or moral turpitude or any other criminal offence under any law punishable with imprisonment that amounts to a felony under the Laws of Kenya;

- (iv) is of unsound mind or is incapacitated by prolonged physical or mental illness for a period exceeding six months; or

- (v) is otherwise unable or unfit to discharge his or her functions.

Conduct of business and affairs of the Board of Trustees.

11. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the First Schedule.

(2) Except as provided in the regulations and circulars, the Board may regulate its own procedures.

The Managing Trustee

12. (1) The Board shall, in consultation with the Cabinet Secretary, appoint a Managing Trustee who shall be the Chief Executive Officer and the Accounting Officer of the Policyholders Compensation Fund.

(2) The Managing Trustee shall hold office on such terms and conditions of service as may, from time to time, be determined in writing in the instrument of appointment or otherwise in writing from time to time in consultation with the Cabinet Secretary.

(3) No person shall qualify for appointment under this section unless such person-

- a) holds a postgraduate degree in actuarial science, insurance, economics, statistics, accounting, finance, commerce, business studies, mathematics, law, or banking from a recognized and accredited institution; and
- b) has at least ten years' experience, of which five years are at management level.

4) The Managing Trustee shall be responsible for the day-to-day management of the affairs and staff of the Policyholders Compensation Fund.

(5) The Managing Trustee shall hold office for a term of three (3) years but shall be eligible for re-appointment for one further term.

Staff of the Policyholders Compensation Fund.

13. The Board may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as may determine.

Delegation by the Board.

14. The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent

of the Policyholders Compensation Fund, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or under any other written law.

Duty of the Board to determine and pay compensation

15. (1) The Board shall, in consultation with the Cabinet Secretary, determine from time to time, the amount payable as compensation for different types or classes of insurance policies as provided in the Schedule of Protected Benefits in the Second Schedule and pay such compensation to the claimant as soon as is reasonably practicable after a claim is made.

(2) The Board shall publish, by notice in the Gazette, the Schedule of Protected Benefits as compensation determined under paragraph (1) and the date the amount payable as compensation shall come into force, which shall not in any case, be earlier than the date of publication of the notice.

Protection from personal liability

16. No act or omission by any member of the Board, or by any officer, employee, agent or servant of the Policyholders Compensation Fund shall, if the act or omission was done *bona-fide* for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable to any action, claim or demand whatsoever.

Common seal

17. (1) The fixing of the common seal of the Board on any document shall be authenticated by the signatures of either the Chairperson of the Board or the Managing Trustee, in addition to the signature of one other member of the Board authorised by the Board, through a resolution of the Board, to act for that purpose -

- a) provided that in the absence of both the Chairperson and the Managing Trustee, the Board may, by resolution, authorise any two members of the Board to fix the seal and authenticate the fixing of the seal.
- b) a document purporting to be duly executed under the seal of the Board shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

Confidentiality

- 18.** (1) No Trustee, officer, employee or agent of the Policyholders Compensation Fund or any person who for any reason, has access to any record, document, material or information relating to the business and affairs of the Policyholders Compensation Fund, an insurer or a customer of an insurer which he has acquired in the performance of his duties or the exercise of his functions, shall divulge, publish, or otherwise disclose, to any person such document, material or information unless the disclosure is required—
- (a) under any law;
 - (b) for the performance of his duties or the exercise of his functions under this Act; or
 - (c) when lawfully required to do so by a court of law.
- (2) This section shall not apply to any document, material or information which at the time of the disclosure is, or has already been made, lawfully available to the public from any source.
- (3) No person who has any document, material or information which has been disclosed to his knowledge in contravention of subsection (1) shall in any manner whatsoever disclose the same to any other person.
- (4) Any person who contravenes subsection (1) or (3) commits an offence and shall, on conviction, be liable to a fine as prescribed under the Data Protection Act.

PART III — FINANCIAL PROVISIONS

Sources of funds for the Policyholders Compensation Fund

- 19.** (1) The sources of funds for the Policyholders Compensation Fund shall comprise of —
- (a) monies which at commencement of this Act exist in the Policyholders Compensation Fund established under the Insurance Act;
 - (b) monies appropriated by Parliament;
 - (c) contributions of authorized insurers and their policyholders paid in accordance with this Act;
 - (d) monies borrowed for the purposes of the Insurance Protection Fund;
 - (e) monies received as grants or donations;
 - (f) monies received as reimbursement;

- (g) penalties charged on insurers on non-compliance with various Acts and regulations;
- (h) monies earned or arising from any investment; and
- (i) such fees, monies or assets as may accrue to or vest in the course of the exercise of its powers or the performance of its functions under this Act or under any written law.

(2) The receipts, earnings or accruals of the Policyholders Compensation Fund and its balances at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained for the purposes of the Insurance Protection Fund.

Financial year

20. The financial year of the Policyholders Compensation Fund shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates

21. (1) The annual estimates of the revenue and expenditure of the Policyholders Compensation Fund shall be prepared by the Board for the subsequent year in accordance with the set government rules and regulations.

(2) The annual estimates of the Policyholders Compensation Fund shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval in accordance with the set government rules and regulations.

(3) The operations budget of the Policyholders Compensation Fund shall be a percentage of revenue collections prescribed by the Board and approved by the Cabinet Secretary.

Accounts and audit

22. (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, liabilities and assets of the Policyholders Compensation Fund.

(2) Within the prescribed period by relevant government rules and regulations, the Board shall submit to the Office of the Auditor-General or to an auditor appointed under this section, the financial Statements of the Policyholders Compensation Fund in the format prescribed by the Public Sector Accounting Standards Board and the National

Treasury & Economic Planning.

- (3) The financial statements of the Policyholders Compensation Fund shall be audited and reported upon in accordance with the prescribed governments laws and regulations.

PART IV — INSURANCE PROTECTION FUND

Establishment of the Insurance Protection Fund

23. (1) There is hereby established a fund to be known as the Insurance Protection Fund.
- (2) The Insurance Protection Fund shall vest in the Policyholders Compensation Fund and shall be administered by the Board.
- (3) The Fund shall consist of-
 - (a) monies which at commencement of this Act existed in the Policyholders Compensation Fund established under the Insurance Act;
 - (b) monies appropriated by Parliament;
 - (c) contributions of authorized Insurance companies and their policyholders paid in accordance with this Act;
 - (d) monies borrowed for the purposes of the Insurance Protection Fund in line with Government rules and regulations;
 - (e) monies received as subventions, grants or donations;
 - (f) monies received as reimbursement;
 - (g) penalties charged on insurers on non-compliance with various acts and regulations;
 - (h) monies earned or arising from any investment; and
 - (i) such fees, monies or assets as may accrue to or vest in the course of the exercise of its powers or the performance of its functions under this Act or under any written law.

Annual estimates

24. (1) The annual estimates of the revenue and expenditure of the Insurance Protection Fund shall be prepared by the Board for the subsequent year in accordance with the set government rules and regulations.
- (2) The annual estimates of the Insurance Protection Fund shall be approved by the Board before the commencement of the

financial year to which they relate and shall be submitted to the Cabinet Secretary for approval in accordance with the set government rules and regulations.

(3) The operations budget of the Policyholders Compensation Fund shall be a percentage of revenue collections prescribed by the Board and approved by the Cabinet Secretary.

Insurance Protection Fund Investment

25. (1) The monies constituting the Insurance Protection Fund may be invested by the Fund in -

(a) treasury bills, treasury bonds or other securities issued by the Government; or

(b) any other investments as may be prescribed in the Gazette by the Cabinet Secretary, National Treasury and Economic Planning from time to time.

Application of the Insurance Protection Fund

26. The Fund shall be used to meet-

- (a) compensation payments in line with the schedule of protected benefits;
- (b) liabilities in respect of borrowings made; and
- (c) disbursements for the whole or any part of the liability on account of other expenses incurred in the course of operations of the Policyholders Compensation Fund.

Membership to the Insurance Protection Fund

27. (1) Any insurer licensed by the Insurance Regulatory Authority shall become a member of the Insurance Protection Fund from the date it is granted the license.

(2) Notwithstanding subsection (1), every insurer which at the commencement of this Act is licensed by the Insurance Regulatory Authority shall be deemed to be a member of the Insurance Protection Fund.

(3) The Policyholders Compensation Fund shall cause a list of all insurers whose membership to the Insurance Protection Fund is in good standing to be published in the Gazette annually.

(4) The Policyholders Compensation Fund shall issue membership certificates pursuant to subsection (1) on an annual basis.

- (5) Upon issuance of membership certificate, an insurer shall prominently display the membership certificate at its principal place of business including its branches which the public have access.

Cessation of membership

- 28.** (1) An insurer shall automatically cease being a member of the Insurance Protection Fund upon the –
- (a) surrender, cancellation or revocation of an insurer's license by the Insurance Regulatory Authority; or
 - (b) appointment of Policyholders Compensation Fund to liquidate the insurer.
- (2) The Fund shall, as soon as reasonably practicable after cessation of membership of an insurer under subsection (1), cause the name of that insurer to be published in the Gazette and at least two daily newspapers of nationwide circulation.

Effect of cessation

- 29.** (1) Where an insurer ceases to be a member of the Insurance Protection Fund under section 28, the insurer shall-
- (a) not assume, hold out or in any other way give the impression that the insurer is a member of the Insurance Protection Fund;
 - (b) surrender the membership certificate to the Insurance Protection Fund and notify its policyholders of the termination of its membership to the Insurance Protection Fund; and
 - (c) not be relieved from its obligations or liabilities to the Insurance Protection Fund that have accrued before the cessation of its membership.
- (2) Where an insurer ceases to be a member of the Insurance Protection Fund, any new policies and claims arising after the cessation of membership shall not be eligible for compensation.

Contributions by Insurers

- 30.** (1) All insurers and their policyholders shall, in respect of each Kenyan policy, pay a contribution to finance the payment of compensation and to defray the expenditure involved in or relating to the performance of the functions of the Policyholders Compensation Fund.

(2) An insurer or a policyholder shall pay the contribution under paragraph (1), as the case may be, in such manner as and at such rate of the premium payable by the policyholder in respect of the relevant policy issued as the Board may prescribe, a rate that shall not be lower than zero point two five per cent (0.25 percent) for the policyholder and zero point two five per cent (0.25 percent) for the insurer.

(3) Every insurer shall collect from its policyholders the contribution payable by the policyholder at the commencement of a policy issued to the policyholder and remit the contribution together with its own contribution to the Policyholders Compensation Fund, within thirty days of the issue or renewal of the policy.

(4) A contribution paid by an insurer to the Policyholders Compensation 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.

(5) Every insurer shall submit to the Policyholders Compensation Fund, in the prescribed form—

- (a) a monthly return showing the total contributions payable to the Policyholders Compensation Fund for that month thirty days after the last date of the reported month; and
- (b) an annual return signed by its auditor showing the total annual contribution payable to the Policyholders Compensation Fund, within three months after the end of the calendar year.

(6) An insurer who fails to submit monthly or annual returns or contributions as required under paragraph (5), shall pay a penalty of two hundred thousand Kenya shillings and a further be liable to pay a penalty charge penalty of ten thousand Kenya shillings for every day after the expiry of the prescribed period during which the returns remains un-submitted.

(7) An insurer who does not remit monthly contributions as required under paragraph (3), shall be liable to pay a penalty charge as the Board shall determine and publish annually in a Schedule at a rate not lower than five percent (5%) of the outstanding contribution for every month during which the return remains unremitted.

- (8) If an insurer fails to pay the prescribed contribution to the Board and any outstanding penalty interest charge-
- (a) the Board shall hold the directors of the insurer who has defaulted in remitting a statutory contribution to be severally and jointly liable for the payment of outstanding contribution together with the applicable interest;
 - (b) the liability of the directors shall commence on the expiry of ninety days from the due date of the outstanding statutory contribution.
 - (c) such insurer shall be liable to having its registration cancelled by the Insurance Regulatory Authority.
 - (d) the insurer's membership to the Insurance Protection Fund shall not be in good standing.
- (9) The Board may, through legal proceedings, recover from an authorized insurance company or its directors all sums due to it under this Act.

PART V — COMPENSATION

Eligibility for compensation

- 31.** (1) The Policyholders Compensation Fund shall make compensation to a claimant in the occurrence of a loss when an insurer placed under liquidation or whose license has been cancelled.
- (2) A claimant of a Kenyan policy who has been prejudiced as a consequence of the inability, due to insolvency, of the insurer issuing the Kenyan policy to meet any liability arising under the policy shall be eligible to make a claim for compensation to the Policyholders Compensation Fund.
- (3) A claimant shall not be eligible for compensation by the Policyholders Compensation Fund, in accordance with the provisions of the Act and of the Regulations, unless the policy of insurance held by the policyholder, at the material time, was a Kenyan policy. Provided that a Kenyan policy shall not include –
- (a) a policy of re-insurance;
 - (b) annuities;
 - (c) pensions (Personal Pensions or Deposit Administration); and

(d) an insurance policy issued prior to 1st January, 2005 with the exception of that whose policyholder opted to contribute and had their premiums adjusted accordingly.

(4) A claimant who is eligible for compensation may make a claim for compensation in the prescribed form and manner that shall be determined by the Policyholders Compensation Fund.

(5) A claim submitted under subsection (3) shall be accompanied by such other documents in support of the claim as the Policyholders Compensation Fund may require.

(6) In making a claim for compensation a claimant shall—

- (a) observe utmost good faith by making a full and honest disclosure, to the Policyholders Compensation Fund, of all material facts relating to his claim; and
- (b) provide any other information, whether on oath or otherwise, as may be required by the Policyholders Compensation Fund.

Ineligibility for Compensation

- 32.** (1) The Policyholders Compensation Fund may reject a claim and decline to pay any compensation to a claimant who fails to comply with the requirements of eligibility for compensation if -
- (a) it is not a Kenyan policy
 - (b) it is not eligible for compensation in the Schedule of Protected Benefits provided in the Second Schedule;
 - (c) it arose from incidents or accidents that happened after an insurer's license had been cancelled;
 - (d) it is duplicated by the liability of another authorized insurer;
 - (e) the insurer had not been notified of the claim within the stipulated time frame provided in the policy;
 - (f) it is a claim for a residual amount after payment of compensation by the Policyholders Compensation Fund under the same policy;
 - (g) it is a claim that has been determined as inadmissible by the insurer;
 - (h) the Policyholders Compensation Fund determines the claim to be fraudulent;
 - (i) it is a claim made two (2) years after publication of a notice of commencement of compensation. This section shall not apply to a

person who has, for reasons beyond his control and to the satisfaction of the Policyholders Compensation Fund, been unable to make his claim within the period specified;

- (j) it is an application for compensation for a residual claim amount that was partially settled by the insurer that had been received by the claimant, and exceeds the maximum compensation amount prescribed in the Schedule of Protected Benefits provided in the Second Schedule; or
- (k) any other reason that the Policyholders Compensation Fund may determine from time to time.

(2) The Policyholders Compensation Fund shall inform the claimant as soon as practicable the decision of the Policyholders Compensation Fund to reject the claim.

(3) The claimant shall have the right of appeal within thirty (30) days upon receipt of the Policyholders Compensation Fund's decision rejecting the claim.

(4) A claimant shall not be eligible to make more than one claim under the same policy that exceeds the maximum compensation amount provided in the Schedule of Protected Benefits in the Second Schedule. Such claims shall be consolidated and subjected to the prescribed limit under the Schedule of Protected Benefits.

Conditions of compensation

33. (1) The right of any policyholder to compensation under this Act shall be subject to compliance of the policyholder with any conditions, relating to the total or partial assignment of the policyholders' rights under or in respect of the relevant Kenyan policy, imposed by the Policyholders Compensation Fund, including—

- (a) any rights a policyholder may have in respect of any payments made by the policyholder to the insolvent insurance company as premiums, under the policy, after the insolvency; or
- (b) any rights a policyholder may have against any other person in respect of any event giving rise to any liability of the company under the relevant policy.

(2) Any payment made by any person, other than the Policyholders Compensation Fund, to the policyholder being a payment which is related to any liability of an insolvent company to the policyholder, may, if the Policyholders Compensation Fund so decides, be considered as payment, in whole or in part, of the compensation payable to the policyholder under the Act.

Discharge of liability

34. Upon payment of insured claim under this Part, the Policyholders Compensation Fund shall be discharged from all liabilities to the extent of the amount of the payment made.

Subrogation

35. (1) Where Policyholders Compensation Fund makes a payment under this Part in respect of any claim, Policyholders Compensation Fund shall have rights to subrogation to the extent of the amount of the payment made to all the rights and interests of the claimant and may maintain an action in respect of those rights and interests in the name of the claimant or in the name of Policyholders Compensation Fund.
- (2) Upon payment of a claim, the Policyholders Compensation Fund shall be entitled to recover from the insurer's assets or receive from any successor, where the case may be, an amount equal to the compensation payment paid by the Policyholders Compensation Fund on account of its subrogation to the claims of any customer or policyholder.
- (3) The Policyholders Compensation Fund shall have first subrogation and recovery rights on compensation payments made upon revival or liquidation of an insurer.

Assignment

36. (1) The Policyholders Compensation Fund may, where it deems necessary, withhold payment to any party other than the claimant in respect of any claim with an insurer until it has received an assignment in writing of all the rights and interests of the claimant in relation to the claim that is deemed satisfactory to the Policyholders Compensation Fund.
- (2) Any payments to any party other than the claimant shall be guided by the respective Insurance Policy and as may be determined by the Policyholders Compensation Fund.

Action against the Policyholders Compensation Fund

37. No action shall be taken against the Policyholders Compensation Fund in respect of the obligation to make payment in relation to an insured claim unless the action is commenced within seven (7) years after the date of publication of the notice for compensation.

PART VI – MONITORING OF INSURERS

Risk Profiling of Insurers

38. (1) The Policyholders Compensation Fund shall monitor the risk profiles of licensed insurers for the purposes of undertaking early intervention and prompt corrective action under this Act.
- (2) The Policyholders Compensation Fund shall initiate early intervention and prompt corrective action as may be determined by the Board from time to time.

Reports from Insurers

39. (1) The Policyholders Compensation Fund may, by notice in writing, require an insurer to furnish the Policyholders Compensation Fund within such period as specified in the notice, all such returns or information as directed in such notice for purposes of risk profiling.
- (2) The Policyholders Compensation Fund may from time to time require any insurer to file such additional reports as the Fund may deem necessary for purposes of this Act.
- (3) The Policyholders Compensation Fund or any of its officers, shall not disclose to any person or use any return or information acquired under subsection (1) except for the purpose of achieving the objectives of the Policyholders Compensation Fund.

Collaboration with the Insurance Regulatory Authority

40. (1) The Policyholders Compensation Fund may collaborate with the Insurance Regulatory Authority in assessing the financial condition of a troubled insurer.
- (2) The Policyholders Compensation Fund may request access to reports of inspection and any other documents relating to a troubled insurer and to all underlying documents and revisions of reports of inspections.
- (3) The Policyholders Compensation Fund may rely on the advice of the Insurance Regulatory Authority regarding any material changes on any condition of an insurer that may cause significant risk to the Fund.
- (4) The Policyholders Compensation Fund shall, where necessary, submit to the Insurance Regulatory Authority any information obtained by or produced by the Policyholders Compensation Fund, whether in the course of risk profiling or otherwise, regarding the business and affairs of the insurer or any of its subsidiaries or associates or of any person dealing with the insurer or any of its subsidiaries or associates, that relates to the safety and soundness or the operations, of the insurer.

Early intervention and prompt corrective actions

41. The Policyholders Compensation Fund shall, in collaboration with the Insurance Regulatory Authority, undertake early intervention or prompt corrective actions in accordance with this Act or any other law to resolve

any problems in a troubled insurer. Early intervention and prompt corrective actions shall include but not limited to the following:

- i) stopping the insurer from transacting any new insurance business in whole or in part;
- ii) requiring increase in capital to bridge a deficit;
- iii) requiring additional reserving requirements;
- iv) require the insurer to restructure whole or part of its business;
- v) file recovery plans and living wills;
- vi) stopping issuance of dividends;
- vii) restricting purchase of insurer's shares;
- viii) restricting ownership of subsidiaries; or
- ix) any other action as may be deemed necessary.

PART VII—STATUTORY MANAGEMENT OF INSURERS

Appointment of Policyholders Compensation Fund as Statutory Manager

- 42.** (1) The Insurance Regulatory Authority shall, whenever the circumstances require as provided under the Insurance Act, appoint the Policyholders Compensation Fund to be the sole and exclusive Statutory Manager of any insurer.
- (2) The appointment under subsection (1) shall be made in writing and communicated in advance within reasonable time.

Powers of Policyholders Compensation Fund as Statutory Manager

- 43.** (1) The powers and responsibilities of the Policyholders Compensation Fund as Statutory Manager shall include to-
- (a) take over management, control and conduct of the affairs and businesses of the insurer and to exercise all the powers of the insurer to the exclusion of its board and shareholders, including the use of its corporate seal;
 - (b) evaluate the solvency and liquidity of the insurer;
 - (c) assess the insurer's compliance with the provisions of the Insurance Act and its regulations, and with this Act and its regulations made or directives issued thereunder;
 - (d) determine the adequacy of the capital and reserves, and the effectiveness of the corporate governance structures of the insurer;

- (e) obtain from any former principal officer, director, secretary, officer or employee of the insurer any documents, records, accounts, statements, correspondence or information relating to its business;
- (f) trace, preserve and secure all the assets of the insurer in a manner the Policyholders Compensation Fund may prudently determine. For the purposes of this section, preservation of assets shall include but not limited to maintenance and realization of the assets as approved by the Board;
- (g) discharge the liabilities of the insurer as appropriately determined by the Policyholders Compensation Fund;
- (h) recover all debts and other sums of money due to and owing to the insurer;
- (i) transfer part or all the business of a troubled insurer including transfer of all or part of its assets and liabilities to a solvent insurer as the Policyholders Compensation Fund may determine;
- (j) run-off the policies of the insurer as the Policyholders Compensation Fund may determine;
- (k) settle claims against the insurer from its assets including those claims arising from policies that are being run-off;
- (l) establish a bridge institution for purposes of portfolio transfer in subsection 1(j) above;
- (m) document claims that were reported prior to appointment of Policyholders Compensation Fund as Statutory Manager of the troubled insurer;
- (n) restructure or reorganize the insurer's operations and balance sheet as considered necessary and which, subject to the provisions of this Act, may be implemented by the Policyholders Compensation Fund on behalf of the insurer;
- (o) enter into court settlement agreements for liability claims against the insurer;
- (p) enter into, vary, terminate or frustrate any existing contracts with any other person other than a policyholder where necessary;

- (q) facilitate revival strategies including but not limited to strategic investor agreements, creditor voluntary agreements, mergers and acquisitions; and
- (r) enter into contracts with persons to undertake any functions necessary, as may be determined by the Policyholders Compensation Fund, in the execution of statutory management duties.

(4) The Policyholders Compensation Fund shall discharge its mandate as a statutory manager of a troubled insurer within a period of twenty-four months from the date of appointment.

(5) The Policyholders Compensation Fund or any other officer, trustee, employee, or agent designated and approved by the Board of the Policyholders Compensation Fund under this part, shall not be liable in respect of any act or omission done in good faith in the execution of the duties undertaken by him.

(6) For the purposes of discharging its duties, Policyholders Compensation Fund shall have power to, where necessary, declare a Moratorium on the payments by the insurer of its claimants and other creditors for the duration of statutory management of the troubled insurer. The declaration of a moratorium shall;

- (a) be applied equally to all classes of policyholders and creditors, subject to such exemptions in respect of any class of insurance as the manager may, by notice in the Gazette, or in any other newspaper of nation-wide circulation specify;
- (b) suspend the running of time for the purposes of any Law of limitation in respect of any claim by any policyholder or creditor of the insurer;
- (c) cease to apply upon determination of the manager's appointment whereupon the rights and obligations of the insurer, its policyholders and creditors shall, save to the extent provided in paragraph (b), be the same as if there had been no declaration under the provisions of this subsection. Provided that this subsection does not apply to any sum due as contributions or penalties to the Policyholder Compensation Fund.

(7) For the purpose of this section, where a moratorium is declared under subsection (6), a policyholder shall not be liable to pay any claim not payable by the insurer due to the moratorium.

(8) For purposes of this section, no legal proceedings shall be instituted or sustained against the insurer until such a time as the Moratorium is lifted.

(9) For purposes of this Act, all executions of judgements and/or decrees against policyholders as relating to their obligations under the troubled insurer's insurance contracts shall be stayed until such a time as the Moratorium is lifted.

(10) Where the Policyholders Compensation Fund, in exercise of its powers under this Act, Policyholders Compensation Fund shall not, by reason of exercise of such powers be held to have assumed or incurred any obligation or liability of the insurer for its own account.

Rights and obligations in statutory management

44. (1) Upon appointment of Policyholders Compensation Fund as Statutory Manager under section 42,-

(a) the insurer and its officers shall-

- (i) immediately submit its assets, liabilities, businesses and affairs to such control; and
- (ii) provide the Policyholders Compensation Fund all such facilities as may be required to carry on the businesses and to manage the assets, liabilities and affairs, including disposal of assets of the insurer;

(b) the Policyholders Compensation Fund shall-

- (i) remain in control of the assets, liabilities, businesses and affairs in the name and on behalf of the insurer concerned; and
- (ii) carry on the businesses and manage the assets, liabilities and affairs of that insurer in the name and on behalf of that insurer including disposal of assets.

(2) Throughout the period of statutory management of an insurer, there shall be vested in the Policyholders Compensation Fund all the powers

of the insurer, and of its directors and shareholders, under the constituent documents of that insurer, or exercisable by the insurer or its directors and shareholders under any law, regardless of whether such powers are exercisable by resolution, special resolution, or in any other manner.

(3) During the period of statutory management of an insurer-

- (a) no director or shareholder of the insurer shall, either directly or indirectly, engage in any activity in relation to the insurer; and
- (b) no remuneration of whatever nature shall accrue or be payable to any director of the insurer.

(4) An exercise of the powers under section 43 shall not confer on, or vest in, the Policyholders Compensation Fund any title to, or any beneficial interest in, any asset of the insurer.

(5) Where the Policyholders Compensation Fund has been appointed as statutory manager under section 42, the Policyholders Compensation Fund shall-

- (a) be deemed to be acting as the agent of the insurer in carrying on the businesses and managing the assets, liabilities and affairs of the insurer or in carrying out any transaction relating to the insurer or its assets, businesses and affairs, including disposal of assets; and
- (b) not, by reason of having assumed control of the insurer or any action taken by it, be held to have assumed or incurred any obligation or liability of the insurer for its own account.

(6) Any person who contravenes the provision of subsection (1) or (3) above commits an offence and is liable to a fine not exceeding one million Kenya shillings or to imprisonment not exceeding three years or to both and shall, in addition be liable to an additional fine not exceeding one hundred thousand Kenya shillings for every day the contravention continues.

Actions against the Policyholders Compensation Fund

45. (1) Where the Policyholders Compensation Fund has assumed control of an insurer under section 42-

- (a) No injunction may be brought or any other action or civil proceeding commenced against the Policyholders Compensation Fund in respect of the appointment;
- (b) no cause of action which subsisted against the insurer prior to

statutory management shall be maintained against the Statutory Manager;

- (c) no creditor has any right of set off or attachment against the insurer's or policyholder's assets; and
- (d) no person may terminate or amend any agreement with the insurer or claim an accelerated payment under any such agreement with the insurer by reason of appointment of the Policyholders Compensation Fund under section 42 from the date of appointment.

Autonomy of Policyholders Compensation Fund as Statutory Manager

46. Upon appointment as Statutory Manager pursuant to this Act, the Policyholders Compensation Fund shall not be subject to the direction or supervision of any other entity in the exercise of its rights, powers, and privileges.

Conclusion of Statutory Management

47. The Policyholders Compensation Fund shall submit to the Insurance Regulatory Authority a final report on the statutory management of the insurer with recommendation that-
- (a) the insurer has complied with the matters that necessitated statutory management and management of the insurer should revert to the shareholders and directors; or
 - (b) the insurer should be liquidated, in which event the Policyholders Compensation Fund shall be appointed as liquidator.

PART VIII—LIQUIDATION OF INSURERS

Appointment of Policyholders Compensation Fund as Liquidator

48. (1) The Insurance Regulatory Authority shall appoint the Policyholders Compensation Fund as the liquidator of an insurer where-
- (a) an appointment has been issued pursuant to the provisions of the Insurance Act;
 - (b) a recommendation to liquidate has been made under Section 47 of this Act; or
 - (c) a liquidation order has been issued by a Court or by any other legislative process.
- (2) The appointment of the Policyholders Compensation Fund as the

liquidator of an insurer by the Insurance Regulatory Authority shall have the same effect as the appointment of a liquidator by the Court.

- (3) No liquidator of an insurer, other than the Policyholders Compensation Fund shall be appointed. Where another liquidator is appointed or had been appointed by Court or any other legislative process, the Insurance Regulatory Authority shall make an application before Court to substitute the liquidator with Policyholders Compensation Fund.

Powers of the Policyholders Compensation Fund as Liquidator

- 49.** (1) Notwithstanding the provisions of any other written law, Policyholders Compensation Fund shall, where it is appointed a liquidator, have power to-
- (a) carry on the business of an insurer so far as may be necessary for the beneficial winding up;
 - (b) engage any other professionals to assist it in the performance of its duties, where necessary;
 - (c) sell or otherwise dispose the assets of insurer;
 - (d) make any compromise or arrangement with creditors;
 - (e) make any compromise or arrangement with debtors;
 - (f) enter into, vary, terminate or frustrate any existing contracts with any other person other than a policyholder where necessary;
 - (g) pay any classes of creditors in part or in full;
 - (h) determine and write down any liabilities or debts owed by the insurer and give a complete discharge in respect thereof;
 - (i) recover any amounts owed to the insurer as at the date of liquidation;
 - (j) invest available funds which are not immediately required for the purpose of financing day-to-day operations in short-term placements in Government securities or any other securities as may from time to time be prescribed in the Gazette by the Cabinet Secretary;
 - (k) recover all monies spent in the compensation of claimants to

replenish the Fund;

- (l) charge and collect a liquidation fee at a rate to be determined by the Cabinet Secretary; and
- (m) sue in the name of an insurer in liquidation, without sanction of the Court or a committee of inspection.

(2) Any party aggrieved by the exercise of any of the powers specified herein may apply to the High Court for orders as appropriate.

Stay of proceedings

- 50.** (1) No cause of action which subsisted against the insurer prior to liquidation shall be maintained against the liquidator.
- (2) No injunction may be brought or any other action or civil proceeding may be commenced or continued against the insurer or in respect of its assets, and its policyholders without the sanction of the Court.
- (3) No attachment, garnisheement, execution or other method of enforcement of a judgment or order against the insurer or policyholders may take place or continue.

Residual payment

- 51.** (1) Subject to section 49, there shall be paid out of the assets of the insurer in liquidation in priority to all other debts-
- (a) the following statutory debts—
 - (i) all taxes, levies, contributions, and local rates due from the insurer at the relevant date and having become due and payable within twelve months next before that date not exceeding in the whole, one year's assessment;
 - (ii) all amounts due by the insurer as the employer of any person in respect of statutory contributions payable during the period of twelve months immediately preceding the relevant date;
 - (b) all outstanding insurance contract liabilities including outstanding claims and premium refunds due to policyholders and claimants of the insurer;
 - (c) all costs, charges and expenses, including the cost of compensation of the Policyholders Compensation Fund as a liquidator;

- (d) all outstanding wages or salaries in respect of services rendered to the insurer by any employee other than a director during the period of four months before the liquidation date;
 - (e) all other creditors ranked *pari passu*; then
 - (f) all amounts due to directors and shareholders of the insurer
- (2) The debts in subsection (1) shall be paid in the order of the rank specified therein, or as may be prescribed in the regulations to this Act;
- (3) For purposes of this Act, the creditor ranking provided under the Insolvency Act shall not apply.

Obligation to co-operate

52. (1) In the exercise of its powers as a liquidator, the Policyholders Compensation Fund may, by notice in writing, require any person who is or has at any time been a director, managing director, secretary, principal officer, manager, officer or employee, agent, accountant or auditor of the insurer or any person who has custody of any funds or other assets of the insurer being liquidated to-

- (a) give to the liquidator all assistance in connection with the liquidation;
- (b) appear before the liquidator for examination concerning matters relevant to the liquidation;
- (c) produce any books or documents that relate to the affairs of the insurer being liquidated.

(2) Any person who —

- (a) refuses or fails to comply with a requirement of the liquidator which is applicable to him, to the extent to which he is able to comply with it; or
- (b) obstructs or hinders a liquidator in the exercise of the powers conferred under this Act; or
- (c) furnishes information or makes a false statement which he knows to be false or misleading in any material particular;
- (d) when appearing before a liquidator for examination pursuant to such requirement, makes a statement which he knows to be false or misleading in any material particular,

commits an offence and is liable to a fine not exceeding one million

shillings, or to imprisonment for a term not exceeding three years, or to both and shall in addition be liable to a fine not exceeding fifty thousand Kenya shillings for every day the contravention continues.

Accounts and expenses on liquidation

- 53.** (1) The Policyholders Compensation Fund shall in the course of liquidation, cause to be filed with the Insurance Regulatory Authority a status report and statement of accounts of an insurer once every six calendar months.
- (2) All expenses related to the liquidation and winding up of an insurer shall be chargeable on the assets of the insurer.
- (3) Where in exceptional circumstances the assets of an insurer under liquidation are not sufficient to meet the expenses as provided for in subsection (1), the expenses shall be chargeable on the Insurance Protection Fund.
- (4) The Policyholders Compensation Fund shall endeavor to liquidate the business of an insurer in an efficient manner in order to minimize costs and undue delay that may impair dividends due to policyholders, creditors and contributories and cause losses to the Fund.

Completion of liquidation and winding up.

- 54.** (1) Where the Policyholders Compensation Fund considers that liquidation has been substantially completed, the Policyholders Compensation Fund shall cause to be published in the Gazette the final statement of account in respect of the insurer.
- (2) Any interested person shall within thirty days of the publication under subsection (1) raise objections to any matters set out in the final statement of account in respect of the insurer and the Policyholders Compensation Fund shall address such objections in the manner prescribed.
- (3) Subject to subsection (2), the Policyholders Compensation Fund may apply to the High Court for an order to terminate the liquidation and to wind up the insurer.
- (4) Policyholders Compensation Fund shall upon obtaining an order under subsection (3) cause a notice to that effect to be published in the Gazette.
- (5) Where upon completion of liquidation of an insurer there are unclaimed or surplus assets including monies, such unclaimed or

surplus assets or monies shall vest in the Policyholders Compensation Fund and shall be paid into the Insurance Protection Fund.

- (6) Upon completion of winding up of an insurer, the liquidator may receive payment from debtors and other entities on behalf of a wound up insurer and the amount received shall be paid into the Insurance Protection Fund.
- (7) Where upon completion of winding up of an insurer there are securities held by the insurer that are not yet disposed off, the interest of the insurer in those securities shall be assigned to the Insurance Protection Fund.
- (8) The Registrar of Companies and the Registrar of Titles, and any officer or person in charge of a deeds registry, or any other relevant office, shall upon production of any relevant deed, bond, share stock, debenture or other document, make such endorsement and effect such alterations as may be necessary to record the transfer of the relevant property or asset to the Policyholders Compensation Fund.

Policyholders Compensation Fund to act independently

55. In exercising its functions under the provisions of this Part, Policyholders Compensation Fund shall not be subject to the supervision of any person or authority.

Exemption from the provisions of the Insolvency Act

56. For purposes of this Act, the Insolvency Act shall not apply in the liquidation of insurers.

PART IX — OFFENCES

Holding out as a member

57. (1) No person shall hold himself out to be a member of the Policyholders Compensation Fund or in any way represent that he is insured under this Act.
- (2) Any person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both and shall in addition be liable to a fine not exceeding fifty thousand Kenya shillings for every day the contravention continues.

False statements

58. Any person who prepares, signs, approves false statements concurs in any—

- (a) account, statement, return, report or other document required to be submitted to the Policyholders Compensation Fund under this Act that he knows or has reason to believe is false, or contains false or misleading information; or
- (b) return that does not present accurate information required to be submitted to the Policyholders Compensation Fund under this Act

commits an offence and is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both, and shall in addition, be liable to a fine not exceeding fifty thousand Kenya shillings for every day the contravention continues.

Failure to provide information.

59. Any insurer that fails or neglects-

- (a) within the time specified for so doing, to provide the Policyholders Compensation Fund with any account, record, statement, return, report or other document in respect of the business or affairs of the insurer that is required to be submitted to the Policyholders Compensation Fund under this Act; or
- (b) to respond, within the time specified in the notice, to a request for information or explanation in respect of the insurer made by or on behalf of the Policyholders Compensation Fund under this Act,

commits an offence and is liable to a fine not exceeding five hundred thousand Kenya shillings and shall, in addition, be liable to a fine not exceeding fifty thousand Kenya shillings for every day the contravention continues.

General penalties

60. Any person who commits an offence under this Act for which no penalty is provided, shall, on conviction—

- (a) in the case of a natural person, be liable to a fine not exceeding five hundred thousand Kenya shillings or to imprisonment not exceeding a term of three years or to both; or

- (b) in any other case, be liable to a fine not exceeding one million shillings.

Imposition of penalties

61. (1) Where in the opinion of the Policyholders Compensation Fund an insurer fails or has failed to—

- (a) adhere to the provisions of this Act or any regulations, rules, orders, notifications, guidelines or circulars of the Policyholders Compensation Fund in respect of matters pertaining to this Act;
- (b) comply with a request for information or restricts the right of access to information by the Policyholders Compensation Fund or any person acting on behalf of the Fund under this Act; or
- (c) maintain proper claims records or misrepresents any information on claims management used as a basis for determining exposure of the Policyholders Compensation Fund.
- (d) maintain proper gross direct premiums records or misrepresents any information, including information on insurance policies, used as a basis for assessing member contributions,

Policyholders Compensation Fund may, after giving the insurer the right to be heard, determine and impose a penalty on the insurer giving reasons for the imposition and specifying the manner in which it shall be paid.

- (2) The penalty imposed under this section shall be prescribed by the Policyholders Compensation Fund.

Additional orders by the court

62. Where a person has been convicted of an offence under this Act, the court may, in addition to any fine or term of imprisonment that may be imposed—

- (a) order such person to rectify the contravention in respect of which the person was convicted; or
- (b) order the convicted person to make a restitution to the insurer or its appointed liquidator equal to the court's estimation of the amount of the monetary benefit where the court is satisfied that as a result of the commission of the offence, the convicted person acquired a monetary benefit or that, a monetary benefit accrued to the benefit of the person.

Recovery of penalties

63. (1) All penalties recoverable by the Policyholders Compensation Fund under this Act shall be paid into and form part of the Insurance Protection Fund.
- (2) The procedure and other matters relating to recovery of penalties levied under this Act shall be as prescribed.

PART X— MISCELLANEOUS PROVISIONS

Exemption from tax

64. (1) The Policyholders Compensation Fund shall not be liable to any taxation imposed by any law in respect of income or profits.
- (2) No duty shall be chargeable under the Stamp Duty Act in respect of any instrument executed by or on behalf of or in favour of the Policyholders Compensation Fund on its own behalf or where acting as statutory manager or liquidator for any insurer in any case where the Policyholders Compensation Fund or the insurer would otherwise be liable to pay such duty.
- (3) In addition to subsection (2), the Cabinet Secretary may, by order published in the Gazette, specify any tax, duty, fee, rate, levy, or other impost as one to which Policyholders Compensation Fund shall not be liable, and the law relating thereto shall have effect accordingly.

Exemption from contribution and attachment

65. (1) The Policyholders Compensation Fund on its own or acting as statutory manager or liquidator of an insurer shall be exempt from contribution, attachment, garnishment, lien, foreclosure or sale.
- (2) The exemptions set out in subsection (1) shall apply *mutatis mutandis* to insurers in liquidation.

Regulations

66. The Cabinet Secretary may, on the recommendation of the Policyholders Compensation Fund make regulations for operationalization of the of the provisions of this Act.

Repeal and amendments of various Acts of Parliament

67. (1) Section 179 of the Insurance Act is repealed.
- (2) Amend Section 67C(2)(i), Section 67C(5), Section 120 and Section 123 of the Insurance Act
- (3) Upon commencement of this Act, the transitional provisions set out under Section 68 shall apply.

Transitional provisions

- 68.** (1) The assets and liabilities of the Policyholders Compensation Fund established under Section 179 of the Insurance Act shall continue to vest in the Policyholders Compensation Fund established under this Act.
- (2) The rate of contribution and manner of submission of returns shall continue as in the Insurance Act.
- (3) Notwithstanding section 7, the persons who were members of the Policyholders Compensation Fund Board of Trustees existing immediately before the commencement of this Act shall, upon commencement of this Act, continue being Members of the Board of Trustees for their unexpired term.
- (4) The officers or employees of the Policyholders Compensation Fund shall continue to serve.
- (5) All powers, rights, liabilities, obligations and privileges conferred upon the Policyholders Compensation Fund established under the section 179 of the Insurance Act CAP 487 under any existing agreements or written law shall continue to vest in the Policyholders Compensation Fund established under this Act.

FIRST SCHEDULE

(s.1)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Meetings

- (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
- (2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members, convene a special meeting of the Board at any time for the transaction of the business of the Board.
- (3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
- (4) The quorum for the conduct of the business of the Board shall be five (5) members, at least two of whom shall be the members referred to in Section 10 (1) (b), (c) or (d) excluding the ex-officio members.
- (5) The chairperson shall preside at every meeting of the Board and in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.
- (6) Unless an unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and in case of an equality of votes, the chairperson or the person presiding shall have a casting vote.
- (7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.
- (8) Nothing in this paragraph shall prevent the chairperson from authorizing a director to use live telephone conferencing or other appropriate communication or multimedia facilities to participate in any meeting of the Board where, prior to the meeting, the director, by notification to the chairperson, has requested for such authorization.
- (9) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

2. Committees of the Board.

- (1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.
- (2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.
- (3) The Board may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.
- (4) All decisions by the committees appointed under subparagraph (1) shall be ratified by the Board.

3. Secretary to the Board.

- (1) The secretary to the Board shall be the Managing Trustee responsible for-
 - (a) arranging the business of the Board's meetings;
 - (b) keeping records of the proceedings of the Board;
 - (c) performing such other duties as the Board may direct.
- (2) The Board may in the absence of the secretary appoint any member of the Board or staff of the Policyholders Compensation Fund to temporarily perform the functions of the secretary under subparagraph (1).

4. Disclosure of interest.

- (1) A member of the Board who has any direct or indirect interest in any matter before the Board for consideration, shall disclose the nature of his interest at a meeting of the Board, have the disclosure recorded in the minutes of the meeting and shall not participate in any deliberation or decision of the Board relating to that matter.
- (2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.
- (3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to a fine not exceeding two hundred thousand shillings.

5. Contracts and instruments.

Any contract or instrument which, if entered or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

6. Minutes

The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books kept for that purpose.



SECOND SCHEDULE**(s.2)****SCHEDULE OF PROTECTED BENEFITS**

Class Code	Class Name	Compensation Limit (Kes)
1	Aviation	250,000
2	Engineering	250,000
3	Fire Domestic	250,000
4	Fire Industrial	250,000
5	Liability	250,000
6	Marine	250,000
7	Motor Private	250,000
8	Motor Commercial	250,000
9	Personal Accident	250,000
10	Theft	250,000
11	Workmen's Compensation	250,000
12	Medical	250,000
13	Microinsurance	250,000
14	Miscellaneous	250,000
31	Life Assurance	Deficit of the Life Fund
32	Annuities	Nil
33	Pensions	Nil
34	Group Life	Deficit of the Life Fund
35	Group Credit	Deficit of the Life Fund
36	Permanent Health	Deficit of the Life Fund
37	Investment	Deficit of the Life Fund