

SPECIAL ISSUE

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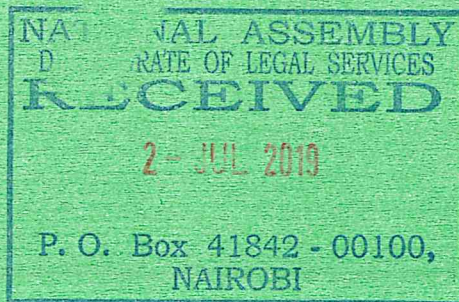
NATIONAL ASSEMBLY BILLS, 2019

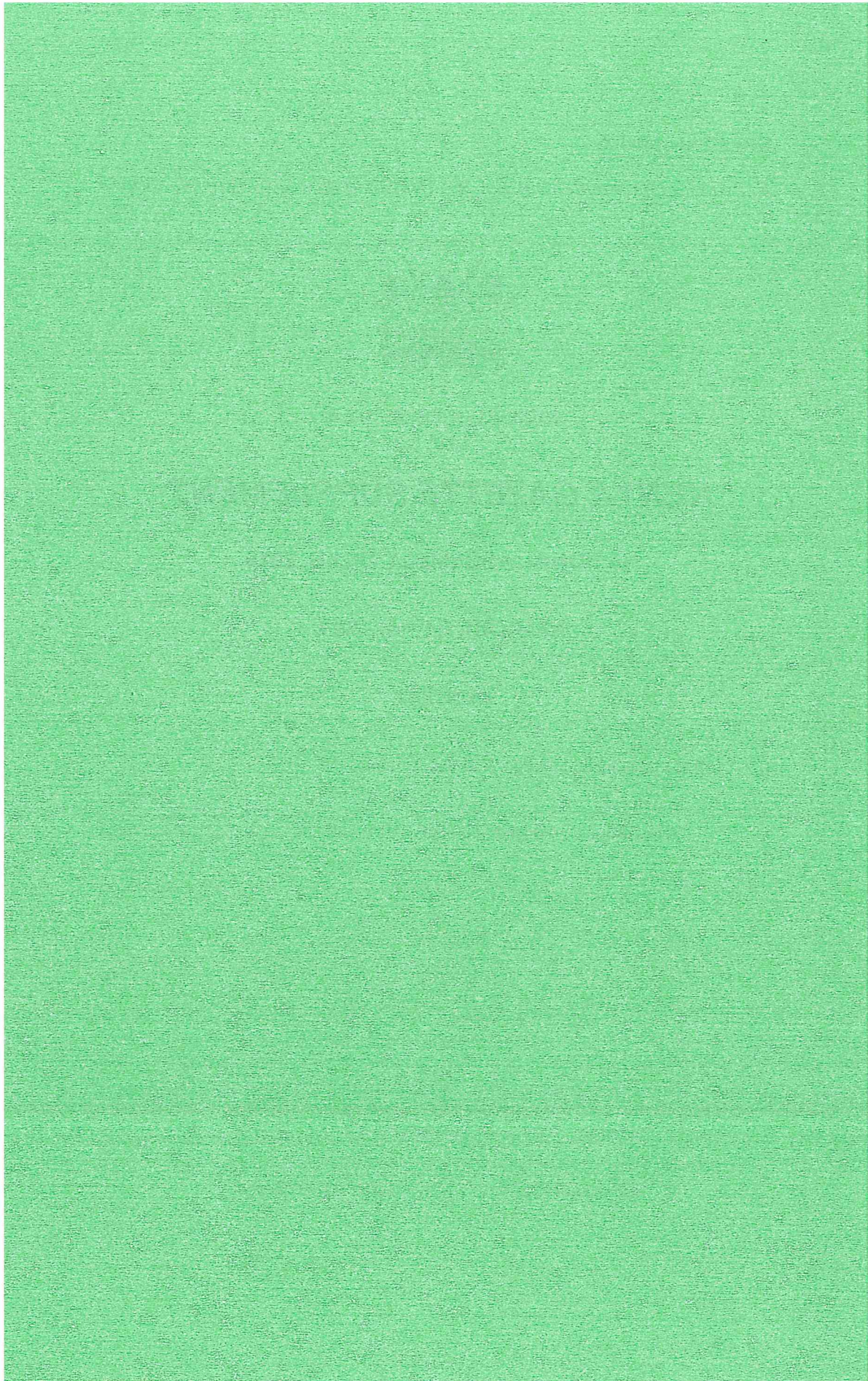
NAIROBI, 1st July, 2019

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THE INSURANCE (AMENDMENT) BILL, 2019

A Bill for

AN ACT of Parliament to amend the Insurance Act

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Insurance (Amendment) Act, 2019.

Short title.

2. The Insurance Act, hereinafter referred to as the “principal Act”, is amended in section 2—

Amendment of s. 2 of Cap. 487.

(a) by deleting—

(i) the definition of “bond investment business”; and

(ii) the definition of “industrial life insurance business”.

(b) by deleting the definition of “long term insurance business” and substituting therefor the following new definition—

“long term insurance business” includes insurance business of all or any of the following classes—

(a) life assurance;

(b) annuities;

(c) pensions (personal pension or deposit administration);

(d) group life;

(e) group credit;

(f) permanent health;

(g) investment (unit link and linked investments or non-linked investments); and

(h) includes, in relation to any insurer, business carried on by the insurer as incidental to any such class of insurance business.

3. The principal Act is amended by repealing section 43A.

Repeal of s. 43A of Cap. 487.

4. Section 54 of the principal Act is amended—

Amendment of s. 54 of Cap. 487.

(a) by deleting subsection (6) and substituting therefor the following new subsection—

(6) An insurer that fails to comply with subsection (1) shall be liable to a penalty of two hundred thousand shillings and a further penalty of ten thousand shillings for each day after the expiry of the prescribed period during which the insurer remains non-compliant.

(b) by inserting the following new subsection immediately after subsection (6)—

(7) The penalty imposed under subsection (6) shall be payable into the Policyholders Compensation Fund.

5. Section 67C of the principal Act is amended—

Amendment of s.
67C of Cap. 487.

(a) in subsection (1), by deleting the words “minimum solvency margin” appearing in paragraph (a) and substituting therefor the words “capital adequacy ratios”;

(b) by inserting the following new subsection immediately after subsection (5)—

(5A) For the purpose of this section, preserving the assets of the insurer shall include realization of the assets of the insurer upon the approval of the Authority.

(c) by inserting the following new subsection immediately after subsection (10)—

(11) For the purpose of this section, where a moratorium is declared under subsection (10), a policyholder shall not be liable to pay any claim not payable by the insurer due to the moratorium.

6. Section 155 of the principal Act is amended by inserting the following new subsection immediately after subsection (3)—

Amendment of s.
155 of Cap. 487.

(4) A person who fails to submit a return within the prescribed period shall be liable to a penalty of ten thousand shillings and a further penalty of one thousand shillings for each day after the expiry of the prescribed period that the return is not submitted.

(5) The penalty referred to in subsection (4) shall be payable into the Policyholders’ Compensation Fund.

7. Section 179 of the principal Act is amended—

Amendment of s.
179 of Cap. 487.

(a) in subsection (1), by deleting the words “insolvent insurers” appearing at the end thereof

and substituting therefor the words “insurer placed under a manager appointed under section 67C (2) or whose license has been cancelled under the Act”;

(b) in subsection (2A) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) provide compensation to claimants of insurers as provided under subsection (1);

(c) by deleting subsection (4) and substituting therefor the following new subsection—

(4) The Board shall comprise—

(a) a Chairman, appointed by the Cabinet Secretary;

(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 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.

(d) by inserting the following new subsections immediately after subsection (4)—

(4A) The chairman and the members appointed under paragraphs 4 (e), (f) and (g) shall be appointed from amongst persons who have knowledge or experience in matters relating to insurance, finance, law, accounting, banking or actuarial science.

(4B) A person shall not be eligible for appointment under paragraphs (4) (e), (f) or (g) if that person—

(a) has at any time been convicted of any offence

involving fraud, theft, dishonesty, breach of trust or moral turpitude;

- (b) was previously involved in the management or administration of a financial institution which was deregistered, wound up or placed under statutory management for any failure on the part of the management or the administration thereof;
- (c) is a director, officer, employee or shareholder of any insurer, broker, insurance agent or any other member of the insurance industry; or
- (d) is disqualified under any other written law from holding public office or being a director of any institution.

8. Section 197A of the principal Act is amended by adding the following new subsections immediately after subsection (7)—

Amendment of s.
197A of Cap. 487.

(8) An insurer shall prepare and submit to the Authority premium levy returns as prescribed.

(9) Where an insurer fails to submit returns as prescribed, the insurer shall pay a penalty of two hundred thousand shillings and a further penalty of ten thousand shillings for every day after the expiry of the prescribed period during which the document remains un-submitted and the penalty shall be payable to the Policyholders Compensation Fund.

9. Section 203 of the principal Act is amended by adding the following new subsections immediately after subsection (5)—

Amendment of s.
203 of Cap. 487.

(6) An insurer shall prepare claims payment returns and submit them in a manner prescribed by the Authority.

(7) Where an insurer fails to submit returns as required under subsection (6), the insurer shall pay a penalty of two hundred thousand shillings and a further penalty of ten thousand shillings for every day after the expiry of the prescribed period during which the returns remains un-submitted and the penalty shall be payable to the Policyholders Compensation Fund.

MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to introduce provisions for the protection of policyholder where an insurer is in distress and the assets are put in statutory management. It empowers the Authority to prescribe the manner of submission of various kinds of returns, and provides for a penalty for late submission, which shall be payable into the Policyholders' Compensation Fund.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill does not concern County Governments in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 27th June, 2019.

ADEN DUALE,
Leader of Majority.

The definition of “designated non-financial businesses or professions” in section 2 of Cap. 487 which is intended to amend—

“designated non-financial businesses or professions” means—

- (a) casinos (including internet casinos);
- (b) real estate agencies;
- (c) dealing in precious metals;
- (d) dealing in precious stones;
- (e) accountants who are sole practitioners, partners or employees within professional firms;
- (f) non-governmental organisations;
- (fa) trust and company service providers;
- (g) such other business or profession in which the risk of money laundering exists as the Minister may, on the advice of the Centre, declare;

The definition of “bond investment business”, “industrial life assurance business” and “long term insurance business” in section 2 of Cap. 487 which is intended to amend—

“bond investment business” means the business of issuing bonds or endowment certificates by which a company in return for subscriptions payable at periodic intervals contracts to pay the bond holder a sum or series of sums at a future date, not being life assurance business but including sinking fund or capital redemption insurance business;

“industrial life assurance business” means the business of effecting assurances on human life, premiums in respect of which are payable, at intervals not exceeding two months in each case, to collectors sent by the insurer to each owner of a policy, or to his residence or place of work;

“long term insurance business” includes insurance business of all or any of the following classes, namely, ordinary life assurance business, industrial life assurance business and bond investment business and includes, in relation to any insurer, business carried on by the insurer as incidental to any such class of business;

Section 43A of Cap. 487 which is intended to amend—

43A. (1) For purposes of this Act, a reference to admitted liabilities of an insurer in computing available capital means liabilities shown as current, contingent and prospective liabilities in the accounts of an insurer, and includes, in the case of long term insurance business, the liabilities in respect of policies of long term insurance business.

(2) For purposes of this Act, a reference to admitted liabilities does not include—

- (a) liability in respect of a share capital or reserve in lieu of capital approved by the Commissioner;
- (b) liability in respect of such matters as the Commissioner may by notice in writing direct;
- (c) tax liability arising from an unappropriated or undistributed surplus of a statutory fund;
- (d) such other liability as may be prescribed;

(3) An insurer shall make adequate provision in the accounts for liabilities in respect of unexpired risks and outstanding or incurred claims including provision for claims incurred but not reported which shall be computed in accordance with a method approved by the Commissioner.

Section 67C of Cap. 487 which is intended to amend—

67C. (1) This section applies and the powers conferred by subsection (2), may be exercised in the following circumstances—

- (a) if the insurer is found to have failed to meet the minimum solvency margin required under section 41 of the Act;
- (b) if the insurer has failed to submit any of the accounts, returns, statements, actuarial valuations or other reports under Part VI for over six months after the end of the financial year to which they relate;
- (c) if the insurer having failed to comply with any requirement of this Act, has continued that failure, or having contravened any provision of this Act, has continued that contravention for a period of six months after notice of such failure or contravention has been given to him by the Commissioner;
- (d) where, having regard to the financial circumstances of the person registered, the Commissioner is satisfied that the person cannot carry on the business, or any part of the business, for which he is registered, as the case may be, in a satisfactory and efficient manner;
- (e) if an amount due by the insurer under a judgement entered into in an action in Kenya arising out of a policy of insurance issued by the insurer or a contract of reinsurance entered into by a reinsurer, has remained unpaid for three months after the date of the final adjudication in that action;

- (f) if the business of the insurer is wholly or is unproportionately reinsured with another person;
 - (g) if an insurer is unable to pay its debts within the meaning of section 384 of the Insolvency Act, 2015;
 - (h) if the insurer is found to have made adequate reserves or to have understated the level of his liabilities;
 - (i) if the insurer is discovered to have submitted or provided any accounts, returns, statements, books, records, correspondence, documents or other information relating to his business which is false or misleading; or
 - (j) if the Commissioner discovers, whether on an inspection or otherwise, or becomes aware of any fact or circumstance which, in his opinion, warrants the exercise of the relevant power in the interests of the insurer, its shareholders, policy-holders, or reinsurer or in the public interest.
- (2) The Commissioner may, with the approval of the Board—
- (i) appoint a competent person familiar with the business of the insurer (in this Act referred to as “a manager”) to assume the management, control and conduct of the affairs and business of an insurer to exercise all the powers of the insurer to the exclusion of its Board of Directors, including the use of its corporate seal;
 - (ii) remove any officer or employee of an insurer who, in the opinion of the Commissioner, has caused or contributed to any contravention of any provisions of this Act, or any regulations or directions made thereunder or to any deterioration in the financial stability of the insurer or has been guilty of conduct detrimental to the interests of policyholders or other creditors of the insurer;
 - (iii) appoint three competent persons familiar with the business of insurers to its Board of Directors to hold office as directors who shall not be removed from office without the approval of the Commissioner;
 - (iv) by notice in the *Gazette*, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the insurer in favour of any officer, employee or any other person.
- (3) The appointment of a manager shall be for such period, not exceeding twelve months, as the Commissioner shall specify in his instrument of appointment and may be extended by the High Court, upon

the application of the Commissioner if such extension appears to the High Court to be justified.

(4) A manager shall, upon assuming the management control and conduct of the affairs and business of an insurer, discharge his duties with diligence and in accordance with sound insurance, actuarial and financial principles and, in particular, with due regard to the interests of the insurer, its policy-holders and the insuring public in general.

(5) The responsibilities of a manager shall include—

- (a) tracing, preserving and securing all the assets and property of the insurer;
- (b) recovering all debts and other sums of money due to and owing to the insurer;
- (c) evaluating the solvency and liquidity of the insurer;
- (d) assessing the insurer's compliance with the provisions of this Act and regulations made or directions issued thereunder;
- (e) determining the adequacy of the capital and reserves and the management of the insurer and recommending to the Commissioner any restructuring or reorganisation which he considers necessary and which, subject to the provisions of any other written law, may be implemented by him on behalf of the insurer; and
- (f) obtaining 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.

(6) The Manager shall, within a period of twelve months from the date of his appointment, prepare and submit to the Commissioner a report on the financial position and the management of the insurer with recommendations as to whether—

- (i) the insurer is capable of being revived; or
- (ii) the insurer should be liquidated.

(7) The Commissioner shall, after taking into account the report of the manager, make appropriate recommendations to the Board, who shall then take a decision on the matter.

(8) Where the Board decides that the insurer should be liquidated, the provisions of section 123 shall apply.

(9) Neither the Commissioner or any other officer or employee of the Commissioner, nor the manager nor any other person appointed,

designated or approved by the Commissioner under the provisions of this Part shall be liable in respect of any act or omission done in good faith in the execution of the duties undertaken by him.

(10) For the purposes of discharging his responsibilities, a manager shall have power to declare a moratorium on the payment by the insurer of its policy-holders and other creditors and the declaration of a moratorium shall—

- (a) be applied equally to all classes of policy-holders and creditors, subject to such exemptions in respect of any class of insurance as the manager may, by notice in the *Gazette* specify;
- (b) suspend the running of time for the purposes of any law of limitation in respect of any claim by any policy-holder or creditor of the insurer;
- (c) cease to apply upon the termination of the manager's appointment whereupon the rights and obligations of the insurer, its policy-holders 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.

Section 179 of Cap. 487 which is intended to amend—

179. (1) The Cabinet Secretary shall, for the protection of policyholders, establish a Policyholders Compensation Fund, in this section referred to as "the Fund", to provide compensation to the claimants of insolvent insurers.

(2) Where a Fund is established under subsection (1), the Cabinet Secretary shall appoint a Board of Trustees, in this section referred to as "the Board", for the management and administration of the Fund.

(2A) The functions of the Board shall be to—

- (a) provide compensation to the policyholders of an insolvent insurer;
- (b) monitor, in consultation with the Commissioner where necessary, the risk profile of any insurer;
- (c) advise the Cabinet Secretary on the national policy to be followed with regard to matters relating to compensation of policyholders and to implement all government policies relating thereto; and

- (d) participate in the statutory management of an insurer placed under statutory management by the regulator;
- (e) liquidate an insurer as may be ordered by a court;
- (f) perform such other functions as may be conferred on it by this Act or by any other written law.

(2B) The Board 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 the Fund in such manner and for such purposes as best promote the interests of policyholders;
- (b) employ such persons and engage the services of such consultants as may be necessary, on such terms and conditions for the proper and efficient exercise of its functions;
- (c) enter into association with such 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;
- (d) invest any of its surplus funds in securities which for the time being trustees may by law invest in, or in any other securities which the Treasury may, from time to time, approve;
- (e) receive contributions paid by insurers and policyholders, grants provided by Parliament, gifts, donations or endowments on behalf of the Fund and make legitimate disbursements therefrom;
- (f) subject to the provisions of this Act, regulate its own procedure.

(3) The Board 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 or disposing of movable or immovable property;
- (c) borrowing or lending 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.

(4) The Board shall comprise—

- (a) a chairman, who shall be a person not connected with any insurer, broker or insurance agency;
- (aa) the Commissioner of Insurance or his designated representative;
- (b) one person nominated by insurers carrying on general business;
- (c) one person nominated by insurers carrying on long term insurance business;
- (d) one person nominated by insurance brokers;
- (e) one person representing interests which the Cabinet Secretary considers should be represented on the Board; and
- (f) one person nominated by persons carrying on the business of assessing losses in insurance;
- (g) the Permanent Secretary to the Treasury or a person deputed by him in writing.

(5) The Cabinet Secretary shall prescribe the qualifications and terms of service of the chairman and members of the Board, including the procedure for their appointment.

(5A) The Cabinet Secretary shall, in consultation with the Board, appoint a Managing Trustee who shall be the chief executive and secretary to the Board, and who shall hold office for such period and on such terms and conditions of service as may, from time to time be determined in writing by the Cabinet Secretary in consultation with the Board.

(6) The Cabinet Secretary may require payment of a monthly contribution to the Fund to be paid by every policy-holder and insurer, in such amount and at such times as the Cabinet Secretary may, in consultation with the Board, prescribe.

(7) A contribution required under subsection (6) shall be remitted to the Board by the insurer, in such manner as may be prescribed.

(8) If an insurer, for any reason, fails to pay its contribution to the Board within the prescribed period, the insurer shall be liable to pay to the Board a penalty interest charge, which shall be prescribed by the Cabinet Secretary in consultation with the Board.

(9) 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 the outstanding contribution together with the applicable interest; and;

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- (b) the liability of the directors shall commence on the expiry of ninety days from the due date of the outstanding statutory contribution.

(10) A contribution paid by an insurer to the Board may be treated as an item of the expenses of management of the insurer for the financial year in which the amount is paid.

(11) The Cabinet Secretary may, in consultation with the Board, make regulations generally for the better carrying out the provisions of this section.

