SPECIAL ISSUE

Kenya Gazette Supplement No. 156 (National Assembly Bills No. 25)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2020

NAIROBI, 26th August, 2020

CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Insurance Professionals Registration Bill, 2020 753

NATIONAL ASSEMBLY
DIRECTORATE OF LEGAL SERVICES
RECEIVED
08 SEP 2020
P. O. Box 41842 - 00100,
NAIROBI

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

THE INSURANCE PROFESSIONALS REGISTRATION BILL, 2020

ARRANGEMENT OF CLAUSES

Clauses

PART I — PRELIMINARY

1—Short title.

2—Interpretation.

PART II — THE INSURANCE INSTITUTE OF KENYA

3—Establishment of the Institute.

4—Membership of the Institute

5—Functions of the Institute.

PART III—ADMINISTRATION OF THE INSTITUTE

6—Council of the Institute.

7—Conduct of business and affairs of the Council.

8—Powers of the Council.

9—Delegation by the Council.

10—Appointment of the Executive Director.

11—Staff of the Council.

12—Limitation of liability.

PART IV—REGISTRATION OF INSURANCE PROFESSIONALS COMMITTEE

13—The Registration Committee.

14—Constitution of the Registration Committee.

15—Registrar of the Registration Committee.

PART V— INSURANCE PROFESSIONALS EXAMINATIONS BOARD

16—The Examinations Board.

17—Membership of the Examinations Board.

18—Registrar of the Examinations Board.

19—Functions of the Examinations Board.

PART VI – PRACTISING CERTIFICATES AND REGISTRATION OF INSURANCE PROFESSIONALS

20—Practising Certificates.

21—Practising as an Insurance Professional.

22—Practising as an Insurance Professional.

23—Application for Practising certificate.

24—Issue of Practising certificate.

25—Duration of Practising certificate.

26—Application for Registration.

27—Qualification for Registration.

28—Disqualification from Registration.

29—Register.

30—Cancellation of Registration.

PART VII – DISCIPLINE

31—Professional Misconduct.

32—The Disciplinary Committee.

33—Inquiry of the Committee.

34—Recommendations after inquiry

35—Determination by the Registration Board

36—Appeals.

37—Rules.

PART VIII— MISCELLANEOUS PROVISIONS

38—Staff and Protection of Institute from liability.

39—Terms and conditions of employment of Staff.

40—Moneys payable to the Institute and other Bodies.

41—Accounts and Audit.

42—Annual Report.

43—Offences.

44—Vacancy in Membership.

PART IX— PROVISIONS ON DELEGATED POWERS

45—Regulations.

FIRST SCHEDULE—THE INSTITUTE

SECOND SCHEDULE—THE REGISTRATION COMMITTEE

THIRD SCHEDULE—THE EXAMINATIONS BOARD

FOURTH SCHEDULE—PROCEEDINGS OF INQUIRY

THE INSURANCE PROFESSIONALS REGISTRATION BILL, 2020

A BILL for

AN ACT of Parliament to make provision for the establishment of the Insurance Institute of Kenya, and the Insurance Professionals Examinations Board, to provide for examination, registration and regulation of standards and practice of insurance professionals and make provision for matters concerned therewith and incidental thereto.

ENACTED by the Parliament of Kenya, as follows —

PART I — PRELIMINARY

1. This Act may be cited as the Insurance Professionals Registration Act, 2020. Short title.

2. In this Act, unless the context otherwise requires— Interpretation.

"actuary" has the meaning assigned to it in the Insurance Act; Cap. 487.

"asset" has the meaning assigned to it in the Insurance Act; Cap. 487.

"Association" means an association of professionals established under section 10 of the Societies Act; Cap. 108.

"Authority" means the Insurance Regulatory Authority established by section 3 of Insurance Act; Cap. 487.

"bond investment business" has the meaning assigned to it in the Insurance Act; Cap. 487.

"broker" has the meaning assigned to it in the Insurance Act; Cap. 487

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

"Chairman" means the chairman of the Institute appointed under this Act; Cap. 487

"Commissioner" means the person appointed under section 3E of the Insurance Act;

"Council" means the Executive Council of the institute established under section 4;

"Disciplinary Committee" means the committee established under section 32;

"Examination Board" means the Insurance Professionals Examination Board established under section 16;

"Executive Director" means the person appointed as the Executive Director of the Institute under section 9;

"insurance business" has the meaning assigned to it in the Insurance Act;

"Insurance consultant" means a person who advises or offers to advise in the area of life and health insurance or property and casualty insurance and is licensed as an insurance consultant;

"Insurance Professional" means a person registered as an insurance professional under section 23;

"insurance surveyors " has the meaning assigned to it in the Insurance Act; Cap. 487

"Insurance Training and Education Trust" has the meaning assigned to it in the Insurance Act;

"insurer" has the meaning assigned to it in the Insurance Act;

"intermediary" has the meaning assigned to it in the Insurance Act; Cap. 487

"investigator" means the Commissioner of an investigator appointed under section 8 of the Insurance Act; Cap. 487.

"loss adjuster" and "loss assessor" has the meaning assigned to it in the Insurance Act;

"managing agent" has the meaning assigned to it in the Insurance Act;

"policy" has the meaning assigned to it in section 2 of the Insurance Act;

"register" means the register of insurance professionals maintained under section 29;

"registration committee" means the Committee appointed under section 13;

"risk manager" has the meaning assigned to it in the Insurance Act;

PART II — THE INSURANCE INSTITUTE OF KENYA

Establishment of the Institute.

3. (1) There is established an Institute to be known as the Insurance Institute of Kenya;

(2) The Institute 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 both movable and immovable property;

(c) borrowing money;

(d) entering into contracts;

(e) doing or performing all such other acts necessary for the proper performance of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The Headquarters of the Institute shall be in Nairobi, but the Institute may establish offices at any place in Kenya.

Membership of the Institute.

4. (1) A person who is registered under subsection (2) and (3) is a member of the Institute.

(2) The members of the Institute shall be classified into the following categories—

(a) Fellows, comprising those members who have successfully completed Fellow of the Chartered Insurance Institute of London (FCII) or Fellow of Insurance Institute of Kenya (FIIK) examinations offered by Chartered Insurance Institute of London and Insurance Institute of Kenya respectively or any other institution accredited by the Examinations Board to offer such a qualification (designatory letters F.I.I.K);

(b) Associate Members, comprising those members who have successfully completed ACII or AIIK examinations offered by Chartered Insurance Institute of London and Insurance Institute of Kenya respectively or any other institution accredited by the Examinations Board to offer such a qualification. (designatory letters A.I.I.K);

(c) Affiliate Members, comprising those members who work in the insurance industry but are not insurance professionals such as accountants, lawyers and members of other professional bodies.

(d) Corporate Members, comprising both private and public institutions and organizations and includes companies, partnerships and other corporate bodies; and

(e) such other category as the Institute may establish.

(3) The members of the Institution as specified in this section shall pay such membership fees, subscriptions and penalties as the Council may from time to time determine.

(4) The members of the Institute under subsection (2) shall be entitled to such rights of membership as the Council may prescribe.

Functions of the Institute.

5. (1) The functions of the Institute shall be to—

(a) establish, monitor and promote standards of professional competence and practice amongst insurance professionals;

(b) register persons who meet the required professional and ethical standards;

(c) promote research into the areas of insurance practice and related matters;

(d) publish books, periodicals, journals and articles on insurance practice and related matters;

(e) advise the Examinations Board on matters relating to examination standards and policies;

(f) co-ordinate and oversee Continuous Professional of Insurance Ptofessionals;

(g) advise the Technical and Vocational Education and Training Authority and the Commission of University Education on matters relating to examinations standards and policies relating to Insurance Professionals;

(h) recommend to the Cabinet Secretary for the time being responsible for education institutions to be approved for training of persons seeking registration under this Act;

(i) provide a medium for communication and exchange of information, knowledge and ethical standards for those persons engaged in insurance practice;

(j) advise the Registration Committee on matters relating to registration of insurance professionals;

(k) network with regional and international related bodies to promote and develop progressive insurance practices in the region and around the world;

(l) have regard to the conduct of persons registered and licensed under this Act, and take such disciplinary measures as may be necessary to maintain a proper standard of conduct among such persons;

(m) promote and protect the welfare and interests of insurance professionals;

(n) promote inter-professional collaboration with other professional bodies;

(o) carry out such other functions related to the implementation of this Act.

PART III—ADMINISTRATION OF THE INSTITUTE

Council of the Institute.

6. The management of the Institute shall vest in a Council which shall of—

(b) a chairperson elected by members of the Institute;

(c) nine members of the Institute elected in the manner provided in the First Schedule;

(d) the Commissioner of Insurance or a representative designated in writing;

(e) one person appointed by the Cabinet Secretary in writing; and

(f) the Executive Director of the Institute.

Conduct of business and affairs of the Institute.

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

(2) Except as provided in the First Schedule, the Council of the Institute may regulate its own procedure.

Powers of the Council.

8. The Council shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, shall have power to—

(a) control, supervise and administer the assets of the Institute in such manner and for such purpose as best promotes the purpose for which the Institute is established;

(b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Council;

(c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;

(d) enter into association with other bodies or organizations within or outside Kenya as the Council may consider desirable or appropriate and in furtherance of the purpose for which the Institute is established;

(e) open a banking account or banking accounts for the funds of the Institute; and

(f) invest any funds of the Institute not immediately required for its purposes as provided under section 41.

Delegation by the Council.

9. The Council may, by resolution generally or in any particular case, delegate to any committee of the Council or to any member, officer, employee or an agent of the Council, the exercise of any of the powers or the performance of any of the functions or duties of the Council under this Act.

Appointment of the Executive Director.

10. (1) There shall be an Executive Director of the Institute who shall be competitively recruited by the Council.

(2) The Executive Director shall hold and vacate the office in accordance with the terms of the instrument of appointment to that office.

(3) The Executive Director shall be an ex officio member of the Council.

(4) The Executive Director shall be the secretary to the Council and shall, subject to the direction of the Council, be responsible for the day to day management of the Institute.

(5) A person is qualified for appointment as the Executive Director to the Institute if the person—

(a) is a registered insurance professional;

(b) has at least five years' experience in insurance practice; and

(c) meets the requirements of Chapter Six of the Constitution

Staff of the Council.

11. The Council may appoint such other officers and other staff or hire such experts as may be necessary for the proper discharge of the functions of the Institute under this Act, upon such terms and conditions of service as the Council may determine.

Limitation of Liability.

12. (1) A staff of the Institute shall not be personally liable for any act or default of the Institute done or omitted to be done in good faith in the course of carrying on the functions of, or exercising of powers conferred upon the Council under this Act.

(2) Despite subsection (1), the Institute shall not be relieved of its liability to pay compensation to any person for any injury to him or her, his or her property or to any of his or her interest caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

PART IV — REGISTRATION OF INSURANCE PROFESSIONALS COMMITTEE

The Registration Committee.

13. (1) There shall be a Committee to be known as the Registration of Insurance Professionals Committee.

(2) The Registration Committee shall be a Committee of the Institute.

(3) The provisions of the second schedule shall have effect with respect to the Registration Committee.

(4) The functions of the Registration Committee shall be to—

(a) receive applications for registration and grant practicing certificates in accordance with the provisions of this Act;

(b) monitor compliance with professional quality assurance and other standards published by the Council for observance by the members of the Institute;

(c) prescribe regulations to govern quality assurance programmes, including actions necessary to rectify deviations from standards;

(d) where appropriate and based on the results of a quality assurance investigation recommend to the Council that a member's conduct be referred for inquiry under section 34;

(e) advise the Council on matters pertaining to professional and other standards necessary for the achievement of quality assurance; and

(f) perform any other functions connected therewith or incidental thereto.

Constitution of the Registration Committee.

14. The Registration Committee shall consist of five members appointed by the Council from the membership of the Institute one of whom shall be nominated by the Examinations Board.

Registrar of the Registration Committee

15. (1) The Council shall appoint a Registrar of the Registration Committee who shall be an employee of the Institute and who shall serve under the direction and control of the Executive Director.

(2) The Registrar of the Registration Committee shall hold and vacate the office of the Registrar in accordance with the instrument of appointment.

(3) In addition to the functions which the registrar is required to exercise and perform under this Act, the

Registrar of the Registration Committee shall exercise and perform functions which the Registration Committee may, from time to time determine.

(4) The Registrar of the Registration Committee shall be the Secretary to the Registration Committee, and may, with the consent of the person presiding at a meeting, take part in the deliberations on any matter arising at the meeting, but shall not be entitled to vote on any such matter

PART V— INSURANCE PROFESSIONALS EXAMINATIONS BOARD

The Examinations Board.

16. (1) There is established a board known as the Insurance Professionals Examinations Board.

(2) The Examinations 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 both movable and immovable property;

(c) borrowing money;

(d) entering into contracts; or

(e) doing or performing all such other acts necessary for the proper performance of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The conduct and regulation of the business and affairs of the Examinations Board shall be as provided in the Third Schedule.

Membership of the Examinations Board.

17. (1) The Examinations Board shall consist of nine members as follows—

(a) two persons nominated by the Cabinet Secretary for the time being responsible for education one of whom shall be from the Kenya Institute of Curriculum Development;

(b) the Commissioner of Insurance or a representative designated in writing;

(c) one person nominated by the Commission for University Education;

(d) the Executive Director of the Association of Kenya Insurers or a representative nominated in writing;

(e) the Chief executive Officer of the Association of Insurance Brokers of Kenya or a person nominated in writing;

(f) one person nominated by the Attorney General in writing; and

(g) two persons nominated by the Council from amongst the members of the Institute.

(2) In nominating a person for appointment pursuant to subsection (1) (a), (b), (c), (d), (e) and (f), the nominating authority shall have regard to the suitability of the person being appointed, who should be a member of the Institute or have an interest in the affairs of the Institute.

Registrar to the Examinations Board.

18. (1) There shall be a Registrar to the Examinations Board who shall be appointed by the Examinations Board.

(2) The Registrar to the Examinations Board shall hold and vacate the office in accordance with the terms of the instrument of appointment.

(3) The Registrar of the Examinations Board shall serve as the Secretary to the Board, and may, with the consent of the person presiding at a meeting, take part in the deliberations on any matter arising at the meeting, but he shall not be entitled to vote on any such matter.

(4) In addition to the functions which the Registrar is required to exercise and perform under this Act, the Registrar to the Examinations Board shall exercise and perform such functions which the Examinations Board may, from time to time, determine

Functions of the Examinations Board.

19. (1) The functions of the Examinations Board are to—

(a) prepare syllabuses for Insurance Professionals Examinations;

(b) make rules with respect to examinations;

(c) issue certificates to candidates who have satisfied examination requirements;

(d) promote recognition of its examinations locally and internationally;

(e) liase with the Cabinet Secretary for the time being responsible for education, in accreditation of institutions to offer professional training for insurance professionals; and

(f) do anything incidental or conducive to the performance of any of the preceeding functions.

(2) The Examinations Board shall consult with the Council as often as it considers necessary for the purpose of exercising and performing its duties.

(3) The Examinations Board may establish such committees including examinations committees as it considers necessary for the purpose of exercising and performing its function.

PART VI — PRACTISING CERTIFICATES AND REGISTRATION OF INSURANCE PROFESSIONALS

Practising Certificates.

20. (1) After the expiration of twelve months or such longer period as the Cabinet Secretary may declare by notice in the Gazette, after the commencement of this Act, a person shall practice as a Insurance Professional if he is the holder of a practicing certificate that is in force.

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not less than fifty thousand shillings or imprisonment for a period not exceeding six months or to both

Practising as a Insurance Professional.

21. (1) Subject to this section, a person practices as an Insurance Professional for the purpose of this Act if, in consideration of remuneration or other benefits received or to be received—

(a) engages on their own or in partnership with others or as an employee or agent of another who is in insurance practice; or

(b) engages in any practice, or performs or offers to perform any services, which may be prescribed.

(2) Without prejudice to the generality of the forgoing, a person is said to engage in insurance practice if the person—

(a) sells or markets insurance products and or services either on their own account or on behalf of an insurer, a re-insurer and or an insurance broker or on their own account or in association with others;

(b) carries on the business of an insurance broker, either on their own account or in association with others;

(c) carries on the business of a claim settling agent either on their own account or in association with others;

(d) carries on the business of a risk manager either on their own account or in association with others;

(e) engages in insurance consulting services; or

(f) engages in any other business which is prescribed by the Cabinet Secretary as being insurance practice.

Application for a Practising Certificate.

22. (1) A person wishing to obtain a practising certificate shall apply to the Registration Committee.

(2) An application for a practising certificate shall be in the prescribed form shall be accompanied by the prescribed fee.

Issue of Practising Certificate.

23. (1) Where an application is made by a person in accordance with section 23, the Registration Committee shall issue a practicing certificate if it is satisfied that the person—

(a) is registered under this Act;

(b) has received from an Insurance Professional who is the holder of a practicing certificate, instruction of such a nature and for such period as may be prescribed; and

(c) meets such other requirements as may be prescribed.

(2) A Practising Certificate issued to any person remains the property of the Registration Committee.

Duration of Practising Certificate.

24. (1) A practising certificate issued under this Act shall be in force for the calendar year in which it issued but shall only be effective from the date of issue and shall remain in force unless it ceases to be in force under subsection (2), (4) or (5).

(2) Notwithstanding subsection (1), a practising certificate issued to any person shall cease to be in force if that person ceases to be registered.

(3) Where a practising certificate issued to any person ceases to be in force under subsection (2), that practising certificate shall not come into force again if the person is subsequently registered, but shall come into force again if the registration of the person is restored pursuant to section 30(5) or (6).

(4) Subject to section 28, a practising certificate ceases to be in force during any period when it is suspended pursuant to section 30 or, if that period is varied on appeal under section 36, during the period as so varied.

(5) A person may surrender to the Registration Committee, a practising certificate issued to him and, in that event, the certificate shall cease to be in force.

(6) Where a practising certificate ceases to be in force under subsection (2), the person to whom the certificate was issued shall deliver it to the Registration Committee within fourteen days after the date on which it ceases to be in force.

(7) A person who, without reasonable excuse, contravenes subsection (6) shall be guilty of an offence and is liable on conviction to a fine not exceeding ten thousand shillings.

Applications for Registration.

25. (1) A person wishing to be registered as an Insurance Professional shall apply to the Registration Committee.

(2) An application to be registered as an Insurance Professional shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) Where an application is made by a person in accordance with this section, the Registration Committee shall approve the application if it is satisfied that the person—

(a) is qualified to be registered; and

(b) is not disqualified from being registered.

(4) A person who, in an application to be registered, willfully makes a false or misleading statement commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a period not exceeding six months or to both.

Qualifications from registration.

26. (1) Subject to this section, a person is qualified to be registered if the person—

(a) has been certified by the Examinations Board as having attained the final qualification in Insurance practice in an examination administered by the Examinations Board or from an institution in Kenya or elsewhere which is accredited by the Board; or

(b) holds a qualification approved under subsection (2) by the Registration Committee; and

(c) is a Citizen of Kenya.

(2) The Registration Committee may from time to time, by notice in the Gazette, approve qualifications, which it considers sufficient to allow a person to be registered, and may, in the same manner, withdraw any such approval.

Disqualification from registration.

27. (1) Subject to this section, a person is disqualified from being registered—

(a) if such person is convicted by a court of competent jurisdiction in Kenya or elsewhere of an offence involving fraud or dishonesty;

(b) if such person is an undischarged bankrupt;

(c) if such person is of unsound mind and has been certified to be so by a medical practitioner; or

(d) during any period when the Registration Committee has determined under section 32(1)(i) that such person shall not be registered, or during any such period as varied by the High Court under section 33.

(2) A person shall not be treated as disqualified under subsection (1) (a) of this section if the Registration Committee, having regard to—

(a) the period which has elapsed since the conviction concerned; or

(b) the circumstances of the offence, determines that it would be unreasonable to so treat the person.

(3) A person shall not be treated as disqualified under subsection (1)(b) of this section if the Registration Committee is satisfied that the bankruptcy of the person concerned arose as a result of unavoidable losses or misfortunes.

(4) A person shall not be treated as being disqualified under subsection (1)(d) of this section if the High Court allows an appeal under section 33 of this Act.

Register.

28. (1) The Registrar of the Registration Committee shall cause to be kept a register in which shall be recorded—

(a) the name of any person whose application under section 26 of is approved;

(b) the fact that a practising certificate is issued to any person or that any such certificate has ceased to be in force under this Act;

(c) particulars of the cancellation of the registration of any person;

(d) the fact that the registration of any person is restored under this Act; and

(e) such other matters as the Registration Committee may determine.

(2) The Registrar to the Registration Committee may cause to be made such alterations in the register as are necessary to ensure that the matters recorded therein are accurate.

(3) The register may, at all reasonable hours, be inspected, and copies of all or any part of any entry in the register taken—

(a) without payment, by—

(i) any member of the police force or any public servant, acting in the course of his duty; or

(ii) any person authorised by the Registrar to the Registration Committee; or

(b) on payment of such fee as may be prescribed, by any other person.

(4) The register shall be received in proceedings before any court or tribunal as evidence of the matters recorded therein which are required by or under this Act to be so recorded.

(5) A document purporting to be certified by the Registrar of the Registration Committee—

(a) to be a true copy of an entry in the register;

(b) stating that a person is not, or was not on a date specified in the document, the holder of a practicing certificate,

shall be received in proceedings before a court or tribunal as prima facie evidence of any such matters contained in the entry or of that fact, as the case may be.

(6) Proceedings on an inquiry under this Act before the Disciplinary Committee shall be deemed to be proceedings before a tribunal for the purposes of this section.

Cancellation of Registration.

29. (1) Subject to this section, the Registration Committee shall cancel the registration of a member of the Institute—

(a) if determination that the registration of the member be cancelled is made under section 32(1)(d) of this Act;

(b) if any circumstance arises which, if the member were then a person applying for registration, would disqualify him under section 28 from being registered; or

(c) if it is appropriate under subsection (4) of this section to do so.

(2) The Registration Committee shall not cancel the registration of a member under subsection (1)(b) unless it has afforded to the member an opportunity to show cause why his registration should not be cancelled.

(3) Subsections (2) and (3) of section 28 shall apply in relation to the cancellation of the registration of a member of the Institute under subsection (1) (b) of this section as

they apply for the purpose of determining whether or not a person is disqualified from being registered.

(4) The Council may require the Registration Committee to cancel the registration of a member of the Institute who fails to comply with the requirements of section 4.

(5) When the registration of a member of the Institute is cancelled under subsection (1) (a), the Registration Committee shall restore the registration if, on an appeal made under section 34 the High Court allows the appeal.

(6) The Council may direct the Registration Committee to restore the registration of a person whose registration is cancelled under subsection (1)(c) and, if it does so, the Registration Committee shall restore the registration.

(7) The registration of a member shall be cancelled by recording in the register particulars of the cancellation.

(8) The registration of a member shall be restored by recording in the register particulars of the restoration.

Use of Title.

30. A person registered under this Act shall —

(a) by virtue of being so registered, be entitled to take and use the title and description of an Insurance Professional;

(b) not take or use, or affix to or use in connection with his premises, any title or description, of an Insurance Professional, other than as indicated by the particulars relating to his qualifications entered in the register.

PART VII— DISCIPLINE

Professional misconduct.

31. (1) A member of the Institute shall be guilty of professional misconduct if such member—

(a) deliberately fails to follow laid down procedures of his employer or client save those which are in violation of law;

(b) refuses, fails or neglects to apply established insurance principles in the course of discharging his professional functions;

(c) engages himself in corrupt activities or practices;

(d) is guilty of gross negligence in the conduct of his professional duties;

(e) engages in negative practices such as nepotism, tribalism, racism and other acts of discrimination in the discharge of their professional functions;

(f) engages in mis-selling insurance products with the intention of obtaining the sale regardless of whether or not the product will be helpful to consumers;

(g) does anything contrary to the Code of Conduct and or fails to do anything required to be done under the Code of Conduct;

(h) discloses information acquired in the course of their duties to any person without the consent of their employer or client or otherwise than required by law;

(i) uses his position to obtain or solicits favours of sexual kind or other benefits for which they are not entitled to in the discharge of their professional functions;

(j) engages in activities which are conflict with those of their employer or client or activities which are contrary to those for which he is registered as an Insurance Professional;

(k) is found guilty of fraud or any dishonest act;

(l) allows any person to practise in his or her name as an insurance professional, unless such person is the holder of a practising certificate and is in partnership with him or her or employed by him or her;

(m) enters, for the purpose of or in the course of practising as an insurance professional, into partnership with a person who does not hold a practising certificate, or secures any professional business through the services of such a person or by means not open to an insurance professional;

(n) pays or allows or agrees to pay, directly or indirectly, to any person (other than a person who holds a practising certificate, is a retired partner or the legal representative of such a partner), any share, commission or brokerage out of the fees for, or profits of his professional services;

(o) expresses an opinion on any matter with which he or she is concerned in a professional capacity without obtaining sufficient information on which to base the opinion;

(p) fails to keep the funds of a client in a separate banking account or to use any such funds for purposes for which they are intended; or

(q) does or fails to do any other act which may be prescribed.

The Disciplinary Committee.

32. (1) There shall be a committee to be known as the Disciplinary Committee.

(2) The Disciplinary Committee shall consist of six members as follows—

(a) the Chairperson appointed by the Council from persons who are qualified to be appointed as judges of the High Court or any court of similar jurisdiction;

(b) two persons elected by members of the Institute;

(c) the Commissioner of Insurance or a representative appointed in writing; and

(d) two person appointed the Cabinet Secretary to represent the public.

(3) The quorum of a meeting of the Disciplinary Committee shall be three members excluding the Chairperson and the Commissioner of Insurance

(4) A member of the Disciplinary Committee shall hold office for three years and shall be eligible for re-appointment for one further term.

(5) The Institute shall second a person who is a qualified and registered insurance professional to act as the Secretary to the Disciplinary Committee.

(6) The Council may, at any time, with reasonable cause, terminate the appointment of a member or chairperson of the Disciplinary Committee.

(7) Where the Chairperson or a member of the Disciplinary Committee is unable to exercise and perform his functions the Council may appoint a person to replace the Chairperson or the member for such period as may be necessary.

Inquiry of the Disciplinary committee.

33. (1) Where the Council has reason to believe that a member of the Institute may have been guilty of professional misconduct it shall refer the matter to the Disciplinary Committee which shall inquire into the matter.

(2) The provisions of the Fourth Schedule shall have effect with respect to an inquiry by the Disciplinary Committee pursuant to subsection (1).

Recommendations after Inquiry.

34. (1) On the completion of an inquiry under section 34 into the alleged professional misconduct of a member of the Institute, the Disciplinary Committee shall have power to do any of the following—

(a) decide that no further action be taken against the member;

(b) decide that the member be reprimanded;

(c) decide that the member be reprimanded with the publication of the reprimand in the Gazette;

(d) submit to the Council a report of the inquiry calling for the registration of the member be cancelled and that the member not be registered for such period as specified; or

(e) submit to the Council a report of the inquiry calling for any practising certificate held by the member to be suspended.

(2) Where the Disciplinary Committee, in a report makes a recommendation under subsection (1)—

(a) under subsection (1) (a) or (b) and the Council does not agree with the recommendation; or

(b) under subsection (1) (c), (d) or (e) the council shall within fourteen days of receipt of the report, forward to the Registration Board a copy of the report together with any recommendation referred to in subsection (1) which the council considers

inappropriate in the circumstances of the case, which recommendation may be similar or vary from the recommendation of the Disciplinary Committee.

Determination of the Registration Committee.

35. (1) On the receipt pursuant to section 35 of copy o report relating to the alleged professional misconduct of a member of the Institute, the Registration Committee may make one of, or more than one, of the following determinations—

(a) determine that no further action be taken against the member;

(b) reprimand the member;

(c) reprimand the member and cause the fact of the reprimand to be published in the Gazette;

(d) determine that the registration of the member b cancelled and direct that the member be not registered for such period as is specified; or

(e) suspend the practicing certificate of the member for such period as is specified.

(2) Before making a determination under subsection (1) Registration Committee may in writing, require the Council to furnish the Registration Committee such further evidence concerning any matter that is so specified, and the Council shall comply with the requirement.

(3) In order to comply with a requirement of the Registration Committee under subsection (2) the Council may direct that the Disciplinary Committee to reopen and continue the inquiry concerned and the disciplinary Committee shall do so to the extent that it is necessary to furnish the evidence required.

(4) A member of the Institute whose alleged professional misconduct is the subject of inquiry shall have a right to be heard by the Registration committee before it makes a determination under subsection (1).

(5) The Registration committee shall notify the member of the Institute whose alleged professional misconduct is the subject of the inquiry of its determination under subsection (1)

(6) Subject to section 34, a determination of the registration committee under subsection (1) shall be final.

Appeals.

36. (1) A person aggrieved by a determination of the Disciplinary Committee under section 36(1) may appeal to the High Court against such determination within sixty days of being notified of the determination.

(2) On an appeal the High Court may affirm, with or without variation, of the period for which the person concerned is not to be registered, or the period for which his practising certificate is suspended, confirm the determination of the Disciplinary Committee or allow the appeal.

(3) A determination under section 33 of this Act shall have effect notwithstanding that an appeal is made against the determination, but in the event that the High Court allows the appeal—

(a) section 28 of this Act shall have effect in relation to the cancellation of the registration of the member; and

(b) the suspension of the practising certificate of the member of the Institute shall cease to have effect.

Rules.

37. (1) The Chief Justice may make rules governing appeals under section 37 and providing for the fees to be paid, the scale of costs of any appeal and the procedure to be followed therein.

(2) Until rules are made under subsection (1) of this section, and subject to any such rules, the provisions of the Civil Procedure Code shall apply as if the determination appealed against was a decree of a subordinate court exercising original jurisdiction.

PART VIII— MISCELLANOUS

Staff and Protection of Institute from Liability.

38. (1) The Institute and the Examinations Board may each engage and employ such persons as are necessary for the discharge of their respective functions under this Act.

(2) No liability shall attach to the Institute, or the Examinations Board or to any of their respective members, employees or agents for any loss or damage sustained by any person as a result of any act or omission done or made in good faith and without negligence in the performance or

exercise or the intended performance or exercise of any duty or power imposed or conferred by or under this Act.

Terms and conditions of employment o Staff.

39. (1) The terms and conditions of employment of staff employed under section 39 shall be as may be determined by the Institute and the Examinations Board respectively.

(2) For the purposes of subsection (2)"terms and conditions" includes conditions with respect to the duration of employment or with respect to dismissal from employment.

Moneys payable to the Institute and Other Bodies.

40. (1) There shall be payable to the Institute and the Examinations Board such moneys as are appropriated by Parliament, and such grants as may be recommended by the Cabinet Secretary and approved by Parliament for their respective purposes.

(2) The Cabinet Secretary may give directions as to the amounts in which, and the times at which, moneys referred to in subsection (1), are to be paid to the Institute or the Examinations Board.

Accounts and Audit.

41. (1) The Institute and the Examinations Board shall keep proper accounts and records in relation to the accounts and shall each prepare in respect of each accounting year a statement of accounts.

No. 12 of 2003.

(2) The accounts of the Institute and the Examinations Board shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

(3) The Institute and the Examinations Board shall, within three months from the end of the financial year to which the accounts relate, submit to an appointed auditor the accounts of the Institute and the Examinations Board together with—

(a) a statement of income and expenditure during the year;

(b) a statement of the assets and liabilities of the Institute and the Examinations Board as of the last day of that year;

(c) a cash flow statement for the financial year; and

(d) any other statements and accounts that may be necessary to fully disclose the financial position of the Institute and the Examinations Board.

(3) On the written request of the members of the Institute the accounts and statements of the Institute or the Examinations Board shall be made available to him or to any person nominated by the member.

Annual report.

42. The Institute and the Examinations Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary responsible for matters related to finance a report of the operations including audited accounts under section 42 of the Institute and the Examinations Board for the immediate preceding year.

Offences by an association.

43. (1) A person who—

(a) assumes or uses the title or designatory letters referred to in section 4(2)(a) and who is not a Fellow of the Institute;

(b) assumes or uses the title or designatory letters referred to in section 4(2)(b) and who is not a member of the Institute

(c) assumes or uses the title Honorary Fellow of the Institute;

(d) assumes or uses the title Associate Member of the Institute;

(e) assumes or uses the title Affiliate Member of the Institute;

(f) assumes or uses the title Corporate Member of the Institute;

commits an offence.

(2) A corporate body (whether incorporated in Kenya or elsewhere) which falsely uses any of the titles or designatory letters referred to in section 4(2)(a) or 4(2) (b) commits an offence.

(3) Where a firm uses the title or designatory letters referred to in section 4(2) (a) or 4(2) (b) while each of the partners in the firm are entitled to use the title or designatory letters, each of the partners of the firm commits an offence.

(4) A person who commits an offence under this section is liable on conviction to a fine not exceeding one hundred thousand shillings, and, in the case of a continuing offence, a further fine not exceeding ten thousand shillings for each day on which the offence continues.

Vacancy in membership.

44. The Council, the Registration Committee or the Examinations Board may exercise and perform their functions notwithstanding any vacancy among the members and the validity of any proceedings of the Council, the Registration Committee or the Examinations Board shall not be affected by any such vacancy or any defect in the appointment of a member.

PART IX— DELEGATED POWERS

Regulations.

45. (1) The Council may make regulations for the better carrying out of the provisions of this Act;

(2) Without prejudice to the generality of subsection (1) the regulations may provide for—

(a) the form and method of keeping registers and other records under this Act;

(b) a detailed scheme specifying academic qualifications for registration as a professional in the manner prescribed by regulations under this Act;

(c) a detailed scheme outlining procedures for qualification, issuing and revocation of a license to operate as a professional in the manner prescribed by regulations under this Act;

(d) a detailed scheme specifying for the limits of professional liability in the manner prescribed by regulations under this Act;

(e) it has a detailed scheme specifying for the limits of professional indemnity in the manner prescribed by regulations under this Act;

(f) a detailed scheme specifying acts that amount to professional misconduct in the manner prescribed by regulations under this Act;

(g) a detailed scheme specifying disciplinary process, disciplinary mechanisms and sanctions for

professional misconduct in the manner prescribed by regulations under this Act;

(h) the forms and fees to be prescribed for purposes of this Act;

(i) the form and method of conducting any inspection, assessment, evaluation, examination or regulation required under this Act; and

(j) the membership rights of different categories of members of the Institute.

FIRST SCHEDULE (s.7)

THE INSTITUTE — CHAIRPERSON OF THE COUNCIL

Tenure of office.

1. (1) The Chairperson shall be elected during the annual general meeting of the Institute.

(2) Unless he earlier vacates the office, a person elected to the office of chairman shall hold the office until another Chairperson is elected.

(3) A person elected as chairperson in subsection (1) shall hold office for a term of two years renewable once.

(4) A person who holds the office of Chairperson may resign the office by writing under his hand delivered to the Council.

Vacancy in office of chairperson.

2. (1) When the chairperson vacates office through resignation or otherwise, the Vice-Chairperson will hold office until the next Annual General meeting.

(2) In a case where the Vice-Chairperson is unable to take office, the Council shall appoint a person to act as Chairperson.

(3) The Council under resolution may revoke the appointment of a person to as a Chairperson.

(4) The appointment of a person to act as Chairperson ceases to have effect—

MEETINGS OF THE INSTITUTE

3. Subject to paragraph 4 of this Schedule, an annual general meeting of the Institute shall be held not later than six months after the end of each year.

4. A special general meeting of the Institute—

(a) may be held at any time; and

(b) be held on a written request made to the Council and signed by not less than one hundred members of the Institute.

5. (1) A meeting of the Institute shall be convened by the Council by giving to every member of the Institute a written notice—

(a) stating the place and time of the meeting; and

(b) indicating the business which it is proposed to transact at the meeting,

which shall include, among other matters, the presentation of the following—

(i) a report by the Council covering the past year;

(ii) financial statements and the auditor's report thereon;

(iii) election of the Chairperson and Council members; and

(iv) the appointment of the auditor.

(2) Notice of a meeting shall be given not less than fourteen days before the date on which it is to be held to each member of the Institute by posting the notice to the address of the member last known to the Institute, or by handing the notice to the member in person.

(3) The validity of any proceedings of the Institute shall not be affected by any failure to comply with the requirement of sub-paragraph (2) of this paragraph unless it is proved that the failure to comply in relation to any member was a deliberate failure.

6. (1) The Chairperson shall preside at all meetings of the Institute at which he is present.

(2) At a meeting of the Institute at which the Chairperson is not present, the Vice-Chairperson shall preside.

(3) At a meeting of the Institute at which neither the Chairperson nor the Vice-Chairperson are present, the members of the Institute present shall elect one of their members to preside.

7. (1) Subject to this paragraph, the quorum at a meeting of the Institute shall be at least thirty percent of the total membership of the Institute.

(2) Where a general meeting of the Institute is convened—

(a) otherwise than pursuant to paragraph 4(b) of this Schedule, and a quorum is not present when the

meeting proceeds to business, the meeting shall stand adjourned until the same day on the following week, at the same time and place, and if a quorum is not present at or within fifteen minutes after that time, the members present shall constitute a quorum; or

(b) pursuant to paragraph 4(b) of this Schedule, and a quorum is not present when the meeting proceeds to business the meeting shall be dissolved.

8. (1) No business shall be transacted at a meeting of the Institute unless—

(a) the business is indicated in the notice of the meeting as business which it is proposed to transact; or

(b) in the case of business not so indicated, the meeting decides to transact the business and the person presiding at the meeting agrees to the transaction of the business.

(2) Minutes of the proceedings at meetings of the Institute shall be kept in such a manner as the Chairman or in his absence the person presiding at a particular meeting, directs.

9. The person presiding at a meeting of the Institute may adjourn the meeting from time to time and from place to place, with the consent of the meeting.

10. The person presiding at a meeting of the Institute may in his or her discretion limit the number of persons permitted to speak in favour of or against any motion and the time any such person may so speak.

11. (1) Questions arising at a meeting shall be determined by a majority of the members of the Institute voting on the question.

(2) Voting on any question shall be by a show of hands, unless before the declaration of the result of the voting on a show of hands , a ballot is demanded—

(a) by the person presiding at the meetings; or

(b) by at least twenty per cent of the members of the Institute present, in which event the question

shall be determined by a ballot take in such manner as the person presiding at the meeting directs.

(3) Where a ballot is held, voting may be either done personally or by written proxy.

(4) An instrument appointing a proxy shall be in writing and shall be deposited with the Secretary to the Council not less than forty-eight hours before the meeting of the Institute at which it is to be used.

(5) A proxy to be used in any ballot at any meeting may be used at the meeting or, if the meeting is adjourned, in any ballot when the meeting is resumed after the adjournment but the holding of a proxy shall not be counted towards the quorum at any stage of any meeting.

(6) The person presiding at a meeting of the Institute has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.

(7) A declaration by the person presiding at a meeting of the Institute that a resolution has or has not been carried and an entry to that effect in the minutes of the meeting is evidence of that fact.

Meetings of the Council.

12. (1) The chairperson of the Council shall convene ordinary meetings of the Council 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 Council at any time for the transaction of the business of the Council.

(3) Unless three quarters of the total members of the Council otherwise agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.

(4) The quorum for the conduct of the business of the Council shall be seven members.

(5) The chairperson shall preside at every meeting of the Council, in his or her absence the vice chairman shall preside, and he shall, with respect to that meeting and the

business transacted thereat, have all the powers of the chairman.

(6) In the event of the absence of both the chairman and the vice chairman, the members present shall elect one of their number to preside, the person so elected shall with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(7) Unless a unanimous decision is reached, a decision on any matter before the Council shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the chairperson or the vice-person or the person presiding shall have a casting vote.

(8) Subject to sub-clause (4), no proceedings of the Council shall be invalid by reason only of a vacancy among the members thereof.

(9) Subject to the provisions of this section, the Council may determine its own procedure and the procedure for any committee of the Council and for the attendance of other persons at its meetings and may make rules in respect thereof.

THE COUNCIL—MEMBERSHIP OF THE COUNCIL

13. Each of the nine members of the Council (one of whom shall be the Vice-Chairperson) referred to in section 6 of this Act shall be elected at an annual general meeting of the Institute.

14. Subject to section 6 of this Act, a member of the Council—

(a) elected pursuant to paragraph 4;

(b) appointed pursuant to section 6 (d) of this Act; or

(c) co-opted pursuant to paragraph

shall hold office for a period of two years and may be re-elected or re-appointed to a further term of two years.

15. (1) Subject to sub-paragraph (4), where a member of the Council (including a member co-opted pursuant to this sub-paragraph) ceases to hold office before the expiration of the prescribed period or otherwise than under the provisions of paragraph 5 of this Schedule (where

applicable), the Council may co-opt a person to hold that office.

(2) Sub-paragraph (4) does not apply to the members of the Council appointed pursuant to section 9 of this Act.

(3) In this sub-paragraph, the "prescribed period" means—

(a) in relation to a member referred to in sub-paragraph (2)(a), the period beginning with their election and ending at the commencement of the day on which the third annual general meeting after his or her election is to be held;

(b) in relation to a member referred to in sub-paragraph (2)(b), the period of three years next following their appointment; or

(c) in relation to a member referred to in sub-paragraph (2)(c), the period beginning with their being co-opted and ending at the commencement of the day on which the first annual general meeting after their being co-opted is to be held.

16. Of the nine members of the Council (including the Vice-Chairperson) first elected by the Institute after the commencement of this Act—

(a) three (identified by agreement of the members of the Council or by lot) shall cease to hold office at the commencement of the day on which the second annual general meeting of the Council is to be held, save in the case of any such who earlier ceases to hold office;

(b) two (so identified) shall cease to hold office at the commencement of the day on which the third annual general meeting of the Council is to be held, save in the case of any such member who earlier ceases to hold office; and

(c) the remaining two members shall cease to hold office at the commencement of the day on which the fourth annual general meeting of the Council is to be held, save in the case of any such member who earlier ceases to hold office.

17. A member of the Council shall become vacant if such member resigns the office by writing under their hand delivered —

(a) in the case of the members appointed pursuant to section 7(d) to the Cabinet Secretary; or

(b) in the case of any other member, to the Council;

18. (1) Subject to paragraph 5 (3) of this Schedule, where a member of the Council ceases to hold office, another member shall be elected to fill the vacancy at the annual general meeting of the Institute next following, or shall be appointed by the Cabinet Secretary, as the case may be.

(2) A member of the Council who ceases to hold office other than under is eligible for re-election or re-appointment.

19. Paragraph 4, 5, 6 and 7 do not apply to the Chairperson.

VICE—CHAIRMAN OF THE COUNCIL

20. There shall be a Vice-Chairperson of the Council who shall be elected by the Council from amongst the members of the Council elected under section 6 of this Act.

(2) The Vice-Chairperson shall hold office for the period of one year immediately following their election to the office or, if they ceases to hold office as a member of the Council before then, until they so cease to hold office.

(3) Subject to paragraph 1 of this Schedule, the Vice-Chairperson may exercise and perform the functions of the Chairperson if the Chairperson is unable to exercise and perform those functions.

SECOND SCHEDULE (s.13)

THE REGISTRATION COMMITTEE

1. (1) A member of the Registration Committee shall hold office for a period of three years unless he earlier ceases to hold office.

(2) A member of the Registration Committee may resign the office by writing under his hand to the Council.

(3) A member of the Registration Committee who ceases to hold office at the end of the prescribed term is eligible for re-appointment.

CHAIRPERSON AND VICE—CHAIRPERSON OF REGISTRATION COMMITTEE

2. (1) The Council shall appoint from amongst the members of the Registration Committee a Chairperson and a Vice-chairperson of the Committee

(2)The Chairperson and a Vice-chairperson of the Registration Committee shall hold office as a member of the Registration Board or until they resign from office under sub-paragraph (3).

(3) The Chairperson and a Vice-chairperson of the Registration Committee may resign by writing under their hand addressed to the Council.

PROCEEDINGS

3. The quorum for meetings of the Registration Committee shall be four.

4. The person presiding at a meeting of the Registration Committee has a deliberate vote, and, in the event of any equality of votes, also has a casting vote.

5. Minutes of the proceedings of the Registration Committee shall be kept in such manner as the Committee directs.

THIRD SCHEDULE (s.16)

THE EXAMINATIONS BOARD —MEMBERS OF THE EXAMINATIONS BOARD

1. (1) A member of the Examinations Board shall hold office for the period of two years next following his or her appointment and shall be eligible for re-appointment, unless he or she earlier ceases to hold office.

(2) The office of a member of the examinations Board shall become vacant if such member—

(a) resigns the office by writing under their hand delivered to the Cabinet Secretary

(b) has the appointment revoked by the Cabinet Secretary or ceases to hold the office.

CHAIRMAN AND VICE—CHAIRMAN OF EXAMINATIONS BOARD

2. (1) The Cabinet Secretary shall appoint from amongst the members of the Examinations Board a Chairperson and Vice Chairperson of the Board.

(2) The Chairperson and the Vice-Chairperson of the Examinations Board shall hold office until they cease to hold office as members of the Examinations Board or until they resign the office under sub-paragraph (3) of this paragraph.

(3) The Chairperson or the Vice-Chairperson of the Examinations Board may resign the office, by writing under their hand addressed to the Cabinet Secretary.

(4) The Vice-Chairman may exercise any of the functions of the Chairman if the Chairman is unable to exercise and perform those functions.

PROCEEDINGS

3. The quorum at meetings of the Examinations Board and the arrangements relating to meetings shall be such as the Examinations Board may determine.

4. The person presiding at a meeting of the Examinations Board has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.

5. Minutes of the proceedings of the Examinations Board shall be kept in such manner as the Board directs, and, on the written request of the Cabinet Secretary shall be made available to him or any person nominated by him.

FOURTH SCHEDULE (s.34)

DISCIPLINARY COMMITTEE

PROCEEDINGS OF INQUIRY

1. (1) The Council shall cause a statement to be prepared setting out the allegation of professional misconduct to be investigated by the Disciplinary Committee.

(2) The Secretary to the Council shall transmit to each member of the Disciplinary Committee and to the person whose conduct is the subject of investigation a copy of the statement prepared pursuant to sub-paragraph (1) of this paragraph.

2. (1) The Secretary to the Council shall give notice of the first date, time and place fixed for the inquiry to the person whose conduct is the subject of investigation.

(2) Every such notice shall, at least fourteen days, before the first date fixed for the inquiry, be delivered to the person whose conduct is the subject of investigation by hand or be sent to him through the post by registered letter addressed to their address last known to the Council.

(3) Where a person whose conduct is the subject of investigation fails to appear either personally or by their advocate at the time and place fixed in the notice served on them, the inquiry may proceed in their absence.

(4) Notice of the adjournment of an inquiry shall be given to the person whose conduct is the subject of investigation in such manner as the Disciplinary Committee determines.

3. (1) A person whose conduct is the subject of investigation may appear at the inquiry either personally or by their advocate.

(2) The Institute may appear at the inquiry by an advocate. (1) For the purpose of the conduct of the inquiry the Disciplinary.

4. (1) For the purpose of the conduct of the inquiry the Disciplinary Committee has power—

(a) to administer oaths;

(b) to summon persons to attend and give evidence;

(c) to order the production of relevant documents, including court judgements; and

(d) to recover in whole or in part the costs of the inquiry not exceeding one hundred thousand shillings from any or all the parties involved in the proceedings.

(2) An oath may be administered by any member of the Disciplinary Committee or by the Secretary to the Council.

(3) Notices, orders and summonses of the Disciplinary Committee shall be issued under the hand of the Secretary to the Council.

5. (1) Subject to this Schedule on the inquiry—

(a) the procedure to be followed is within the discretion of the Disciplinary Committee; and

(b) the Disciplinary Committee is not bound by the rules of evidence.

(2) Unless the Disciplinary Committee otherwise determines, the proceedings on the inquiry shall be held in camera.

(3) The Secretary to the Council shall keep or cause to be kept, a record of the proceedings on the inquiry.

6. (1) The decision of the Disciplinary Committee on the inquiry is that of the majority of the members present and voting for the purpose of making a decision.

(2) For the purposes of making the decision on the inquiry every member of the Disciplinary Committee has one vote, and, in the event of an equality of votes, the Chairman of the Disciplinary Committee also has a casting vote.

7. The validity of proceedings of the inquiry is not affected by any vacancy among the members of the Disciplinary Committee or any defect in the appointment of a member.

8. (1) A person served with a summons to appear as a witness at the inquiry who, without reasonable excuse fails to attend as required by the summons, is guilty of an offence.

(2) A person appearing as a witness at the inquiry who, without reasonable excuse—

(a) refuses or fails to be sworn;

(b) refuses or fails to answer a question that he is required to answer by the Chairperson of the Disciplinary Committee; or

(c) refuses or fails to produce a document that he was required to produce by a summons under this Act, served on him, commits an offence.

(3) A person convicted of an offence under this sub-paragraph is liable on conviction to a fine not exceeding twenty thousand shillings.

9. (1) A member of the Disciplinary Committee has, in the performance of their duty as a member, the same protection and immunity as a judge.

(2) A person appearing before the Disciplinary Committee at the inquiry on behalf of the person whose conduct is the subject of investigation has the same protection and immunity as an advocate has in appearing for a party in proceedings in the High Court.

(3) A person summoned to attend or appearing before the Disciplinary Committee as a witness at the inquiry has the same protection, and is, in addition to the penalties provided in this Schedule, subject to the same liabilities, in any civil or criminal proceedings, as a witness in proceedings in the High Court.

10. Proceedings on the inquiry shall be deemed to be judicial proceedings for the purposes of Chapter XI of the Penal Code Cap. 63.

MEMORANDUM OF OBJECTS AND REASONS

The main objective of this Bill is to provide a legislative framework for the regulation of professionals in the insurance sector to enhance the standards of service in the sector, promote professionalism and address concerns regarding professional misconduct in the insurance industry. The Bill seeks to establish the Insurance Institute of Kenya as the overall professional organ for insurance professionals that shall regulate professional conduct and maintain level of standards of services rendered by Insurance Professionals registered under the Bill. The Bill will help to promote the recognition of Insurance Professionals not only in Kenya but also in the East African region.

PART I of the Bill contains preliminary provisions.

PART II and III of the Bill provides for the establishment of the Insurance Institute of Kenya as well the management body being the Council. It further provides for membership of Council and the appointment of the Executive Director.

PART IV of the Bill contains provisions for the registration of insurance professional. The registration Committee that is mandated with registration of professionals and the registrar of the Committee.

PART V of the Bill contains on Insurance Professional Examinations Board, the membership of the Board and functions of Board which is to issue examinations for person seeking to be qualified as Insurance Professionals under the Bill.

PART VI of the Bill contains provisions on issuance of practising certificate to qualified insurance professionals and matters incidental such as duration of certificates issued and cancellation of such certificates.

PART VII of the Bill contains provisions on discipline of insurance professional including what amounts to professional misconduct and the manner of conduct of disciplinary proceedings by the Disciplinary Committee.

PART VIII of the Bill contains miscellaneous provisions such terms of conditions of employment of staff of the council, protection from liability for discharge of their functions, accounts and audit of the Council, the Institute and the Examinations Board and submission of annual reports by the council and the examinations Board.

PART IX of the Bill contains delegated powers of the council to make regulations for the better performance of functions under the Bill.

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

The Bill delegates legislative powers but does not limit any 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 as it affects the functions and powers of County Government set out in the Fourth Schedule. Monetary policy including insurance is a function of the National Government under Paragraph 10 of Part 1 of the Fourth schedule to the Constitution.

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

The enactment of this Bill may occasion additional expenditure of public funds to be provided for through the annual estimates.

Dated the 20th August, 2020.

BENJAMIN WASHIALI,
Member of Parliament.