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REPUBLIC OF KENYA



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TWELFTH PARLIAMENT – SECOND SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE AND
NATIONAL PLANNING

REPORT ON THE CONSIDERATION OF THE CAPITAL MARKETS (AMENDMENT) BILL,
2018

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 14 NOV 2018 DAY: Wednesday

TABLED BY: Hon. Chairperson, DC on Finance & National Planning
Hon. Joseph Lino, MP.
R. Karim - PCA

CLERK-AT-THE-TABLE:

NOVEMBER, 2018

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ABBREVIATIONS

CMA - Capital Markets Authority

IPO - Initial Public Offer

KRA - Kenya Revenue Authority

CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings of the consideration of the Capital Markets (Amendment) Bill, 2018, National Assembly Bill No. 19 was published on 19th June, 2018 and read a First Time on 3rd July, 2018. In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard Newspapers on Friday, 6th July, 2018 pursuant to Article 118 of the Constitution. Two stakeholders submitted memoranda for consideration by the Committee. The Committee has since adopted the stakeholders' amendments for introduction into the Bill during the Committee Stage of the Bill.

In considering the Bill, the Committee noted that the Bill seeks to amend the Capital Markets Act to facilitate the punishing of persons involved in embezzlement activities and further ensure th administrative enforcement action set out is sufficiently explicit in application to key employees of listed companies.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Finance Bill, 2018.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the stakeholders for their participation in scrutinizing the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

SIGNED.......... DATE.....12/11/18.....

THE HON. JOSEPH LIMO, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

EXECUTIVE SUMMARY

The Capital Markets (Amendment) Bill, 2018, was published on 19th June, 2018 and read a First Time on 3rd July, 2018 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127. The Capital Markets (Amendment) Bill, 2018 seeks to amend the Capital Markets Act to facilitate the punishing of persons involved in embezzlement activities and further ensure that administrative enforcement action set out is sufficiently explicit in application to key employees of listed companies.

The Bill delegates legislative powers to the Cabinet Secretary. It does not limit any fundamental rights and freedoms. The Bill does not affect the functions of the county governments as set out in the Fourth Schedule of the Constitution. The Bill is a money Bill within the meaning of Article 114 of the Constitution.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on Friday, 6th July, 2018 pursuant to Article 118 of the Constitution. On expiry of the period to submit memoranda the Committee had received memoranda from two stakeholders for consideration. All their proposals were discussed in a stakeholder's meeting held on Thursday 9th August, 2018 in Parliament pursuant to Article 118 of the Constitution. The following stakeholders submitted their memoranda:-

1. Kipkenda and Co. Advocates
2. Mr. Erick Okoth
3. The National Treasury

1.0 ESTABLISHMENT OF THE COMMITTEE

The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;**
- d) To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- (fa) To examine treaties, agreements and conventions;
- g) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) To examine any questions raised by Members on a matter within its mandate.

1.1 MANDATE OF THE COMMITTEE

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, Public finance, Monetary policies, Public debt, Financial institutions (excluding those in securities exchange), Investment and divestiture policies, Pricing policies, Banking, Insurance, Population revenue policies including taxation and National planning and development.

In executing its mandate, the Committee oversees the following government Ministries;

- i. The National Treasury
- ii. Ministry of Devolution and Planning

- iii. Office of the Controller of Budget
- iv. Salaries and Remuneration Commission
- v. Commission on Revenue Allocation

1.2 COMMITTEE MEMBERSHIP

The Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members:-

- 1. The Hon. Joseph K. Limo, MP – **Chairperson**
- 2. The Hon. Isaac W. Ndirangu – **Vice-Chairperson**
- 3. The Hon. Jimmy O. Angwenyi, MP
- 4. The Hon. Alfred W. Sambu, MP
- 5. The Hon. Enoch Kibunguchy, MP
- 6. The Hon. Shakeel S. Ahmed, MP
- 7. The Hon. Abdul R. Dawood, MP
- 8. The Hon. Daniel E. Nanok, MP
- 9. The Hon. Andrew A. Okuome, MP
- 10. The Hon. David M. Mboni, MP
- 11. The Hon. Francis K. Kimani, MP
- 12. The Hon. Joseph M. Oyula, MP
- 13. The Hon. Joshua C. Kandie, MP
- 14. The Hon. Lydia H. Mizighi, MP
- 15. The Hon. Mohamed A. Mohamed, MP
- 16. The Hon. Purity W. Ngirici, MP
- 17. The Hon. Samuel Atandi, MP
- 18. The Hon. Stanley M. Muthama, MP

1.3 COMMITTEE SECRETARIAT

- 1. Ms. Leah W. Mwaura – **Senior Clerk Assistant/Lead Clerk**
- 2. Ms. Jennifer Ndeto – **Principal Legal Counsel**
- 3. Ms. Lauren Wesonga – **Third Clerk Assistant**
- 4. Mr. Josephat Motonu – **Fiscal Analyst III**
- 5. Mr. Chelang'a Maiyo – **Research & Policy Analyst III**

2.0 CONSIDERATION OF THE BILL

2.1 BACKGROUND INFORMATION

The Capital Markets (Amendment) Bill, 2018, was published on 19th June, 2018 and read a First Time on 3rd July, 2018 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127.

In processing the Bill, the Committee invited comments from the stakeholders pursuant to Article 118 of the Constitution. Two stakeholders responded by sending their memoranda to the Committee for consideration. The Committee held a stakeholder's meeting on Thursday 9th August, 2018 in Parliament to engage stakeholders on their memoranda pursuant to Article 118 of the Constitution. Representatives from Kipkenda and Company Advocates appeared before the Committee during the stakeholder meeting.

2.2 CLAUSE BY CLAUSE ANALYSIS

CLAUSE 2: Increases the scope of key personnel under the Act to include chief officers and Board of Directors of issuers of securities.

CLAUSE 3: Increases scope the authority can trace can trace assets to an issuer and its securities.

CLAUSE 4: The amendment specifies the persons the authority may investigate and provides for mitigation measures to be applied to the capital markets or investors as a result of investigations under subsection (1).

CLAUSE 5: Provides for incentive for persons to provide information leading to recovery of funds lost as a result of failure of a licensed stockbroker or dealer and provides that investment of funds shall be as determined by the Authority.

CLAUSE 6: The amendment disbands the Investment Compensation Fund Board.

CLAUSE 7: The amendments are for purposes of clarity as regards sanctions to be against issuers as opposed to only listed companies.

CLAUSE 8: Provides for form of report books, records and internal accounting directives.

CLAUSE 9: Creates offence of (front running) insider trading.

CLAUSE 10: Creates offence of obtaining gain by fraud.

CLAUSE 11: Provides for an appeal to the tribunal following a determination by the Authority and removes provision for reference of matters by the Committee or Authority.

3.0 SUBMISSION BY THE STAKE HOLDERS

Following the call for memoranda from the public on Friday, 6th July, 2018, the Committee received memoranda from two stakeholders. All their proposals were deliberated on and considered by the Committee. Below are the views of the stakeholders:

3.1 KIPKENDA AND CO. ADVOCATES

Representatives from Kipkenda and Co. Advocates proposed the following amendments to the Bill:-

Section 30D

There is need to recast the section to include the offence of facilitating and/or omitting to prevent the furnishing or publishing of information known to be untrue, incorrect or misleading in a prospectus. This should in turn be harmonized with the provisions of section 34B of the Act.

Change “Minister” to Cabinet Secretary”

The Capital Market Authority Act, is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

Justification

This is to bring legislative harmony in interpretation of the law and certainty in referring to the head of a ministry.

Committee agreed with the proposed amendment

THE NATIONAL TREASURY’S COMMENT

The National Treasury concurred with the proposal.

3.2 MR. ERICK OKOTH

Mr. Okoth submitted that:-

1. Professional bodies and individuals like auditors, accountants, environmentalists, managers and other bodies other than lawyers who issue clean bill of health to firms quoted in stock exchange that collapse within 1 to 3 years must be held accountable. They must be put red flag where needed. A fine (penalty) and cost of misleading the public. Excellent individuals/organisations should be rewarded/awarded with certificate of trust. The regulator should ensure that this is done.
2. Continuous audit of shareholders on shares quoted in the stock exchange to know the real owners and web during IPOs in order to protect percentage allocation to Kenyans.
3. Time frame under which a firm that is already listed in stock exchange can be delisted should be provided. The reasons for delisting must be convincing and public participation done because once listed, service provision is for the interest of all. The reasons for delisting should be compared to why the company applied for listing. It should not be made a free space where

greedy people go for funding from the public then later withdraw on the concept of majority shareholders' agreement.

4. Fraud, anti-money laundering, connivance in share price valuation and disposal should be looked into by shareholders and anyone trading on the stock market must deposit their KRA pins under know your customer. The regulator should facilitate the legal and administrative framework. This shall protect stock market fluctuations given that it's the economic barometer of any country.
5. Terms of service of chief officers and heads of departments must be approved by the CMA for listed firms. The salaries should be competitive and attached to their production and reflection of reality of junior staff pay.
6. Excess/surplus money raised for institutions during IPOs should not be returned to contributors but kept in government infrastructural program through specialized investment agency. This will help Kenyans to fund their own country for prosperity to save the country from international debts.

3.3 THE NATIONAL TREASURY

The National Treasury submitted the following comments on the Bill:-

Clause 2

The extension of the definition of key personnel to include licensed persons and chief financial officers and Board of Directors of issuers of securities will result in such persons being eligible to Fit and Proper assessments. By extension they will become subject to Section 25A 1 (c) which empowers the Authority to disqualify such persons from appointment as directors of listed companies or licensed persons for breach of the Act and regulations. This will serve as a deterrent to CFOs and Board of Directors of Listed companies from failing to exercise their responsibilities as required.

Clause 3

The amendment is aimed at broadening powers of the Authority to trace assets of persons who have been found to engage in fraudulent dealings in the issuer (both listed companies and issuers of corporate bonds).

As it is now, the Authority's powers are only limited to tracing assets of persons who have engaged in fraudulent dealings in securities. This fails to cover tracing of assets of persons who have engaged in fraudulent dealings in an issuer.

Clause 4

The Act does not categorically criminalize embezzlement of funds by directors and key officers of market intermediaries and listed companies, neither does it have a clear definition.

The Act gives due recognition to the investigation of losses occasioned from embezzled funds in market intermediaries and listed companies. However, it has omitted direct reference to an offence/misconduct relating to embezzlement of funds by directors and key officers of market intermediaries and listed companies. This has been particularly critical with respect to listed entities, where several entities were

noted to have been victim of embezzlement schemes perpetrated by senior management and/or board members.

The proposed amendment clarifies that embezzlement by senior management and/or board members is illegal and punishable.

The amendment aims protecting an investor/capital markets players from suffering further damage as a result of an activity under subsection (1). This is a stop gap measure.

Clause 5

The amendment is aimed at aligning management of ICF with international best practice where ICF is applied in not only compensation in the event of intermediary failure but also to pay financial rewards to whistleblowers who provide new and timely information about any securities law violation as a proactive means of investor protection.

The amendment will provide an incentivized approach to whistleblowers' efforts and the application of the outcome of the whistleblowers.

Management of ICF to be vested in the Authority rather than an independent board (Investor Compensation Fund Board) since it is unsustainable following the removal of unclaimed dividends from the mandate of the ICF to Unclaimed Financial Assets Authority.

Clause 6

Management of ICF to be vested in the Authority rather than an independent board (Investor Compensation Fund Board) since it is unsustainable following the removal of unclaimed dividends from the mandate of the ICF to Unclaimed Financial Assets Authority.

Clause 7

The amendment is aimed at expanding the scope to include not only listed companies but all other issuers of securities (e.g. issuers of corporate bonds, ABS- Asset Backed Securities).

The amendment is aimed at widening the scope of the legal provisions to be able sanction employees of licensed or approved persons in case they are found to in breach of the Act or Regulations. The amendment also aligns the powers of the Authority to take enforcement action against offenders.

The amendment seeks to enhance the penalty paid for breach so as to make it more deterrent.

Clause 8

The amendment will ensure that there are sufficient legal provisions to cater for possible sanctions against the financial accountants undertaking the role of external auditors, reviewers or reporting accountants of an Issuer.

Clause 9

The offences in the Act are too broad and yet front running as an offence cannot be fully criminalized in the regulations because non-licensees fall outside the ambit of the Business Conduct Regulations. The amendment seeks to include a provision criminalizing front running.

Clause 10

The amendment seeks to enhance the Authority's powers to protect investors from fraudsters.

Clause 11

The amendment seeks to clarify that references to the Tribunal shall flow from determinations made by the Authority. This will ensure that the matters brought before the Tribunal are only presented for consideration after the Authority has made a determination.

4.0 PROPOSED AMENDMENTS

The Committee has proposed the following amendments for consideration at the Committee Stage:-

CLAUSE 2

THAT, the Bill be amended in clause 2 by deleting the word “of” appearing immediately before the words “licenced person” and substituting therefor the word “or”.

Justification: The amendment is intended to clean up typo errors

CLAUSE 3

THAT, clause 3 of the Bill be amended by deleting paragraph (b).

Justification: The amendment proposed is being deleted since it’s already covered in the Bill.

CLAUSE 5

THAT, clause 5 of the Bill be amended in paragraph (a) by inserting the following new subsections immediately after subsection (2A)—

(2B) The Cabinet Secretary shall make regulations to give effect to the provisions of subsection (2A).

(2C) A person who—

(a) colludes with an officer of the Authority for the purpose of collecting the reward under subsection (2A);

(b) while working at the Authority aides another person to get and provide information under subsection (2A);

(c) provides false information under subsection (2A);

commits an offence shall on conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years.

Justification:

- i) The first amendment in 2B is meant to give the Cabinet Secretary to make regulations to give effect to the subsection. 2A
- ii) The second amendment in 2C is meant to create an offence for persons working for the Authority who may collude in order to benefit from the reward system being introduced for persons who provide new and timely information leading to the recovery of investors’ money. The penalty is also meant to also penalize persons who may want to give misleading information for purposes of benefiting from reward thereof.

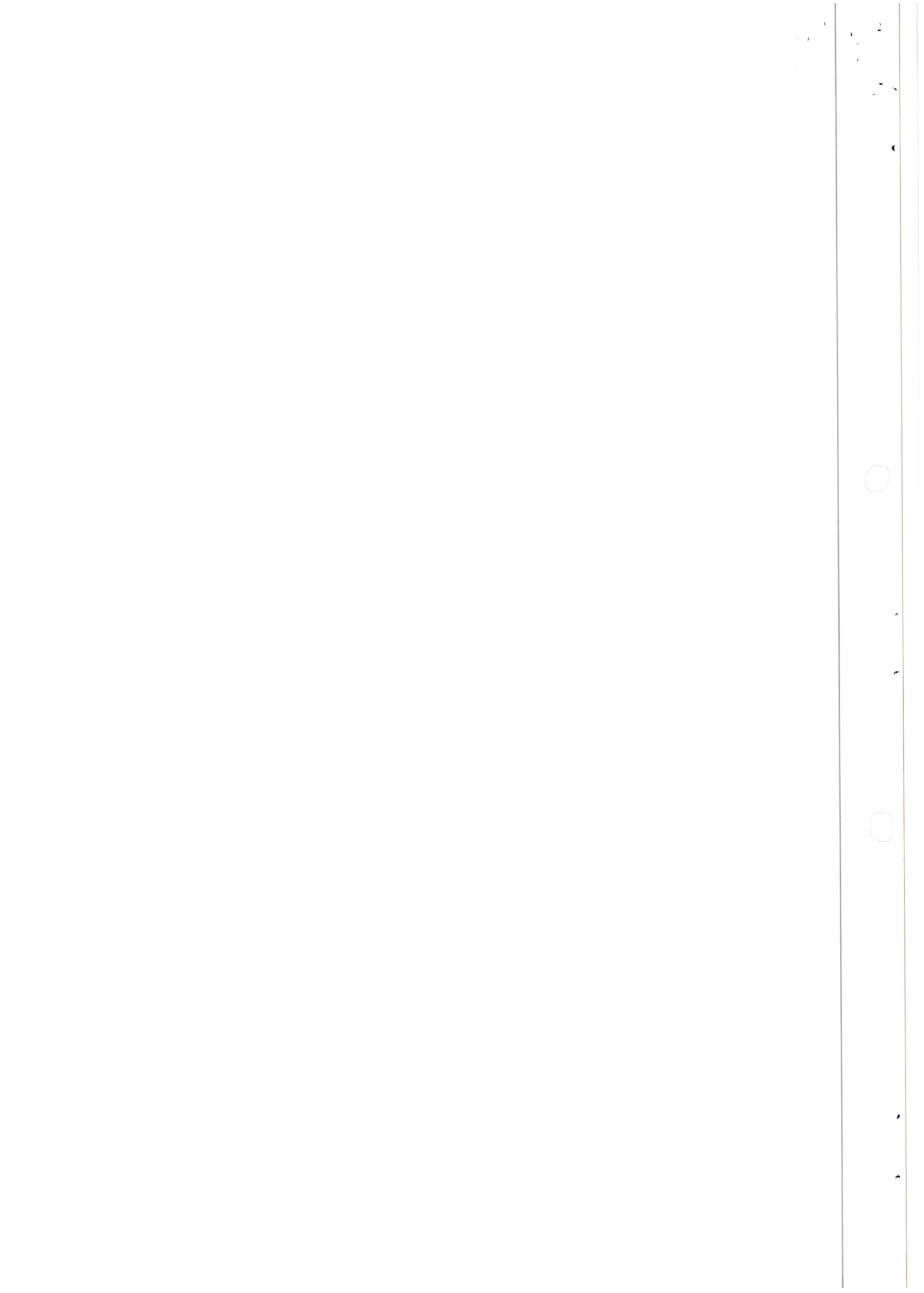
CLAUSE 7

THAT, clause 7 of the Bill be amended by deleting subparagraph (vii).

Justification: The amendment proposing for the deletion of subparagraph (vii) is because subparagraph (iii) is similar to subparagraph (vii).

Annextures

- 1. Minutes of the proceedings**
- 2. Adoption schedule**



MINUTES OF THE 74TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON TUESDAY, 13TH NOVEMBER, 2018 IN BOARD ROOM , 9TH FLOOR, HARAMBEE SACCO PLAZA AT 10.00 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Christopher Omulele, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. David M. Mboni, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Joseph M. Oyula, MP
11. Hon. Edith Nyenze, MP
12. Hon. Francis K. Kimani, MP

APOLOGY

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Shakeel Shabbir Ahmed, MP
3. Hon. Lydia H. Mizighi, MP
4. Hon. Mohamed A. Mohamed, MP
5. Hon. Purity Ngirici, MP
6. Hon. Samuel Atandi, MP
7. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|-----------------------------------|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Lead Clerk |
| 2. Ms. Jennifer Ndeto | - | Principal Legal Counsel 1 |
| 3. Mr. Collins Mahamba | - | Audio Officer |
| 4. Mr. John Njoro | - | Serjeant-At-Arms |
| 5. Mr. Vitalis Augo | - | Office Assistant |

Agenda

AGENDA

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Confirmation of Minutes of the proceedings of 69th – 73rd sittings
5. Matters Arising
6. **Bills**

i) Recommittal of Item 1 and 2 of the Committee's Recommendations on the County Pensions Scheme Bill, 2017

1. The County Pension Scheme Bill, 2017 should be withdrawn pursuant to Standing Order 140 to allow for the consideration of the County Governments Retirement Scheme Bill, 2018 which has incorporated the views of all affected stakeholders.
2. The Second Reading of County Pensions Scheme Bill, 2017 should not be approved by the House.

ii) Consideration of the Capital Markets Authority (Amendment) Bill, 2018

7. Pending Business before the Committee – refer to pages 2,37 of the Notice

Adjournment/ Date of the next meeting

MIN.NO.NA/F&NP/2018/414: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10.25 am with prayer from the Chairperson.

MIN.NO.NA/F&NP/2018/415: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/416: RECOMMITTAL OF THE COUNTY PENSIONS SCHEME BILL

The Chairperson informed the Committee that the County Pensions Scheme Bill was scheduled for Second Reading the following day hence the need for the Committee's report to have been tabled before then. The Chairperson requested the Committee to reconsider its position on the observations and recommendations contained in the report of the Committee on the Bill. The Members unanimously agreed to the deletion of the observations and recommendations and in their place support the Committee's proposed Committee Stage Amendment. The matter was proposed and seconded by Hon. Rahim Dawood, M.P and Hon. Jimmy Angwenyi, M.P respectively.

MIN.NO.NA/F&NP/2018/416: CONSIDERATION OF THE CAPITAL MARKETS AUTHORITY (AMENDMENT) BILL, 2018

The Committee was taken through the Committee Stage Amendments on the above mentioned Bill. The following Amendments were therefore proposed for consideration by the House during Committee Stage:-

CLAUSE 2

THAT, the Bill be amended in clause 2 by deleting the word “of” appearing immediately before the words “licenced person” and substituting therefor the word “or”.

Justification: The amendment is intended to clean up typo errors.

CLAUSE 3

THAT, clause 3 of the Bill be amended by deleting paragraph (b).

Justification: The amendment proposed is being deleted since it’s already covered in the Bill.

CLAUSE 5

THAT, clause 5 of the Bill be amended in paragraph (a) by inserting the following new subsections immediately after subsection (2A)—

(2B) The Cabinet Secretary shall make regulations to give effect to the provisions of subsection (2A).

(2C) A person who—

- (a) colludes with an officer of the Authority for the purpose of collecting the reward under subsection (2A);
- (b) while working at the Authority aides another person to get and provide information under subsection (2A);
- (c) provides false information under subsection (2A);

commits an offence shall on conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years.

Justification:

- i) The first amendment in 2B is meant to give the Cabinet Secretary to make regulations to give effect to the subsection. 2A
- ii) The second amendment in 2C is meant to create an offence for persons working for the Authority who may collude in order to benefit from the reward system being introduced for persons who provide new and timely information leading to the recovery of investors’ money. The penalty is also meant to also penalize persons who may want to give misleading information for purposes of benefiting from reward thereof.

CLAUSE 7

THAT, clause 7 of the Bill be amended by deleting subparagraph (vii).

Justification: The amendment proposing for the deletion of subparagraph (vii) is because subparagraph (iii) is similar to subparagraph (vii).

MIN.NO.NA/F&NP/2018/417: ANY OTHER BUSINESS


1. The Chairperson requested Members to avail themselves for the meeting with the Central Bank of Kenya and the Kenya Bankers Association scheduled for Thursday 15th November, 2018 so as to engage them on the implementation of the Finance Act (Section relating to guidelines for withdrawal and depositing).
2. The Secretariat was directed to follow up with the Directorate of Finance and Accounting on the payments made to Members for meetings held away from Nairobi.

MIN.NO.NA/F&NP/2018/418: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 11.50 a.m. The date of the next meeting is Thursday, 15th November, 2018 at 10.00am.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED  DATE..... 13/11/18

MINUTES OF THE 2ND SITTING OF THE REPORT WRITING RETREAT OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON FRIDAY, 19TH OCTOBER, 2018 AT GRAND ROYAL SWISS HOTEL, KISUMU COUNTY AT 2.30PM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Christopher Omulele, MP
3. Hon. Daniel E. Nanok, MP
4. Hon. Andrew A. Okuome, MP
5. Hon. David M. Mboni, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Joseph M. Oyula, MP
8. Hon. Joshua C. Kandie, MP
9. Hon. Purity W. Ngirici, MP
10. Hon. Samuel Atandi, MP
11. Hon. Stanley M. Muthama, MP

APOLOGY

1. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
2. Hon. Jimmy O. Angwenyi, MP
3. Hon. Shakeel Shabbir Ahmed, MP
4. Hon. Abdul Rahim Dawood, MP
5. Hon. Dr. Enoch Kibunguchy, MP
6. Hon. Mohamed A. Mohamed, MP
7. Hon. Lydia H. Mizighi, MP
8. Hon. Edith Nyenze, MP

INATTENDANCE

SECRETARIAT

- | | | |
|-------------------------------|---|----------------------------------|
| 1. Ms. Florence Atenyo-Abonyo | – | Director, Committee Services |
| 2. Ms. Leah Mwaura | – | First Clerk Assistant/Lead Clerk |
| 3. Ms. Jennifer Ndeto | – | Principal Legal Counsel 1 |
| 4. Ms. Laureen Wesonga | – | Third Clerk Assistant |
| 5. Mr. Josephat Motonu | – | Fiscal Analyst |
| 6. Ms. Beatrice Auma | – | Administration Assistant |
| 7. Mr. John Njoro | – | Serjeant-At-Arms |
| 8. Mr. Vitalis Augo | – | Office Assistant |

MIN.NO.NA/F&NP/2018/5: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2.35 p.m with prayer from the Chairperson. He then welcomed the meeting to deliberate on the agenda.

MIN.NO.NA/F&NP/2018/6: CONFIRMATION OF MINUTES

Agenda deferred.

MIN.NO.NA/F&NP/2018/7: CONSIDERATION OF COMMITTEE STAGE AMENDMENTS TO THE CAPITAL MARKETS (AMENDMENT) BILL, 2018

The Committee proceeded with its consideration of amendments to the Capital Markets (Amendment) Bill, 2018 as follows:-

Clause 7

Sub-clause 7(a)

- (i) – Agreed to
- (ii) – Agreed to
- (iii)– Agreed to
- (iv)– Agreed to
- (v) – Agreed to
- (vi)– Agreed to
- (vii) – Delete

sub-clause 7(b) – Agreed to

Clause 8 – Agreed to

Clause 9 – Agreed to

Clause 10 – insert the following new sub-clause “a person obtaining gainfully under subsection 2A commits an offence.”

Clause 11 – Agreed to

NEW CLAUSE

The proposal by Kipkenda and Co. Advocates to amend section 30D of the principal Act was agreed to by the Committee. They proposed that:-

Section 30D of the principal Act is amended in subsection 1 by inserting the following paragraph immediately after paragraph (b)

“(c) facilitates the furnishing or publishing of information which is untrue, incorrect or misleading in a prospectus.”

MEMBERS' DELIBERATIONS


The meeting agreed that the Committee would conclude on Clauses 5(b) and 6 and the memorandum by Mr. Erick Omondi during the adoption of the report.

MIN.NO.NA/F&NP/2018/8: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 5.15pm. The next meeting will be held the following day at 9.00am.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED  DATE 13/11/18



MINUTES OF THE 59TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 9TH AUGUST, 2018 IN SMALL DINING, NEW WING, MAIN PARLIAMENT AT 9.30 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Dr. Enoch Kibunguchy, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Lydia H. Mizighi, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Purity Ngirici, MP
11. Hon. Samuel Atandi, MP
12. Hon. Stanley M. Muthama, MP

APOLOGY

1. Hon. Alfred Sambu, MP
2. Hon. Shakeel Shabbir Ahmed, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. David M. Mboni, MP
6. Hon. Mohamed A. Mohamed, MP

INATTENDANCE

SECRETARIAT

- | | | |
|--------------------------|---|------------------------------------|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/ Lead Clerk |
| 2. Ms. Jennifer Ndeto | - | Legal Counsel |
| 3. Ms. Laureen Wesonga | - | Third Clerk Assistant |
| 4. Mr. Josephat Motonu | - | Fiscal Analyst |
| 5. Mr. Collins Mahamba | - | Audio Officer |
| 6. Mr. John Njoro | - | Serjeant-At-Arms |
| 7. Mr. Vitalis Augo | - | Office Assistant |
| 8. Ms. Catherine Waireri | - | Intern |

APA INSURANCE LTD.

- | | | |
|---------------------------|---|--|
| 1. Mr. Vinod Bharatan | - | Chief Executive Officer |
| 2. Mr. Luke Magambo | - | GM, Finance, Heritage Insurance |
| 3. Mr. George M. Nyambuti | - | Credit Control Manager, Jubilee Insurance Company Ltd. |
| 4. Mr. John Kigochi | - | Chief Finance Officer |

INSURANCE REGULATORY AUTHORITY

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|------------------------|---|-------------------------------------|
| 1. Mr. Wilson Wachira | - | Head Composite Insurers Supervision |
| 2. Mr. Joseph Owuor | - | Senior Supervision Officer |
| 3. Ms. Jemimah Mwaniki | - | Senior Legal Officer |

BRITAM HOLDINGS PLC

1. Mr. Ambrose Dabani - Chief Executive Officer
2. Mr. Dennis Mworira - Chief Operations Officer
3. Ms. Carol Misiko - Group Chief Risk Officer
4. Ms. Rachel Mwenda - Head of Legal

BIMA INTERMEDIARIES ASSOCIATION OF KENYA

1. Mr. Washington Ndegea- Chairman
2. Mr. Benard Oduge- Committee Member

ASSOCIATION OF INSURANCE BROKERS OF KENYA

1. Mr. N. Omolo - Chairman
2. Mr. Eliud Adiedo - CEO
3. Mr. Anthony Mwangi - Vice-Chairman
4. Mr. Jocham Arwa - Managing Partner, Rachier & Amollo Adv.
5. Mr. John Lagat - Treasurer
6. Mr. Dennis Nyongesa - Board Member
7. Mr. Ahmed Abdi - Board Member
8. Mr. Tom Mulwa - Board Member

KIPKENDA AND CO. ADVOCATES

1. Mr. Stephen Kipkenda- Senior Partner
2. Mr. Ian K. Tum- Legal Assistant

Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Stakeholder engagement on the Insurance (Amendment) Bill, 2018 and the Capital Markets (Amendment) Bill, 2018**
11. Adjournment

MIN.NO.NA/F&NP/2018/331:PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.45a.m. with prayer from the Chairperson. Hethen called for introductions of those present before welcoming APA Insurance Ltd to present their memorandum to the Committee.

MIN.NO.NA/F&NP/2018/332: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2018/333:MEETING WITH APA INSURANCE LTD ON THE INSURANCE (AMENDMENT) BILL, 2018

Mr. Bharatan, the CEO of APA Insurance Ltd informed the meeting that they were in support of the Bill.

They proposed the following amendments:-

Clause 10

Comments/Proposals

1. The amendments will ensure all insured premium is received by the underwriters, risk coverage confirmed and in case of a loss, the issues surrounding premium payments and validity of cover are avoided. This amendment foremost protects the insured Mwananchi and should be supported by all the insurance stakeholders of goodwill.
2. The premium paid is used to buy reinsurance protection, pay for claims, pay service providers, pay commissions, meet management expenses, pay taxes etc. From IRA statistics, approximately 60% of the premiums are used to settle claims and hence it is paramount to ensure the premium is promptly received by the insurer.
3. The role of the intermediary should be technical advice to the clients both for the risks to be covered and in the claims process and not handling the monies. The intermediary's compensation as defined in the Insurance Act is commissions which the insurers pay to them and that is what the Insurance Act behooves.
4. It is public knowledge that some insurance brokers have misused client's premium leaving them unduly exposed in the event of a loss. Some of the brokers have gone down with huge premium sums unremitted whilst others move from one insurer to the other leaving a trail of debts. This has also been reported for some counties and parastatals and indeed there are cases pending in courts and at IRA for arbitration. This bill not only cures the premium remittance issue but also any corruption tendencies that might be abated through channeling premium via intermediaries.
5. Under the Risk Based Capital regime, insurance companies are required to maintain a certain level of Capital Adequacy Ratios (200% CAR by June 2020). In arriving at the solvency levels, outstanding premiums attracts near 100% capital charge. At the moment, the industry is owed close to Kshs 40 Billion (read capital required from insurers). These solvency requirements have driven many insurance companies to the verge of being closed down and the Amendment Bill will secure the future of our insurance industry as it brings back public confidence, solvency levels will be strengthened and forestall any closures that leave policyholders and claimants unduly exposed.
6. By enacting the Bill, we anticipate growth in the insurance penetration as insuring public will have their confidence restored as the ambiguity of insurance premium payment will be done away with and claims will be considered expeditiously as per the policy issued.
7. They therefore fully support the amendments that are timely at this critical moment of implementing Risk Based Capital, IFRS 9 (Financial Instruments) and the impending IFRS 17 (Insurance Contracts) and strongly believe will further transform the insurance sector. We will be joining other countries like Nigeria, Ghana, Tanzania and Uganda that have adopted similar insurance payment legislations.

MEMBERS' DELIBERATIONS

1. They supported Clause 10 because, if the excise duty of 0.05% on money transfer of Kshs. 500,000 becomes law, money passing through intermediaries will result in increased costs.
2. If Clause 10 becomes law, brokers will not be eliminated, they will offer investment advise to their clients and act as a link between the clients and insurance companies.
3. Currently, some brokers deduct their commissions while others do not. It depends on the agreement between the broker and the insurance company.
4. IRA officials informed the meeting that it was only in Kenya that intermediaries were receiving premiums on behalf of the client. They promised to do a substantive analysis on the same and present their findings to the Committee.

MIN.NO.NA/F&NP/2018/334: MEETING WITH BRITAM HOLDINGS PLCON THE INSURANCE (AMENDMENT) BILL, 2018

The Chairperson called for introductions of those present before inviting Britam Holdings PLC to make their submissions.

Britam Holdings PLC proposed the following amendments:-

Clause 2

Britam Holdings PLC proposed the following amendments under Section 2:

- (i) By deleting the current definition of a broker and intermediary and inserting the following new definition:

Broker, in relation to an insurer or reinsurer, means a person-

- a) Who carries on the business of arranging contracts of insurance (whether or not the business is the person's principal business or is carries on in connection with any other business); and
- b) Who is not an employee of the insurer or reinsurer; and
- c) Who is not appointed, under signed agreement and agent of the insurer for the purposes of receiving money due to the insurer from the insured and due from the insured to the insurer; and
- d) Whose fiduciary duty is to the client.

Intermediary refers to a broker, Independent Agent or tied agent.

- (ii) By deleting the definition of an agent.

- (iii) By introducing the following new definitions:

Commission refers to the payments to an intermediary made by an insurer or reinsurer to reward the intermediary for selling and servicing its products. The commission amount varies and depends on the type and size of the contract as defined in the Eleventh Schedule. A commission can be paid when the contract is take out (initially) and/ or over the duration of the contract (renewal) as a proportion of the premium, contribution, deposit or the fund size.

Independent Agent refers to a person, corporate or a natural, who not being a salaried employee of an insurer or reinsurer who in consideration of a commission, solicits or procures insurance business for one or more insurer(s); broker(s) or insured(s) and subsequently owes such persons a fiduciary duty.

Tied Agent refers to a natural person, who not being a salaried employee of an insurer or reinsurer and who in consideration of a commission, solicits or procures insurance business for a single insurer or a single insurance group and subsequently owes such a person a fiduciary duty.

Justification

They stated that the new definitions of broker, independent agent and tied agent provide greater clarity on distinguishing on whose authority each class on intermediary acts. This defines a formidable fiduciary obligation on whose behalf on intermediary works for and subsequently promotes accountability amongst the intermediary network. The other definition of commission also seeks to define the definition of commission which is ardently missing from the Principal Act.

Clause 3

They proposed that Section 5(A) is deleted in its entirety and replaced therewith by the following:

5(A) (1) The Commissioner may direct the Insurance Group through the regulated entity's Principal Officer to provide any information necessary for effective group-wide supervision save for where the Insurance Group is already a regulated entity in which case the Commissioner shall request for this information through the respective regulator.

(2) Information necessary shall relate to information that demonstrably relates to the safeguarding of the policyholders' interests.

(3) The provision of this section shall not limit a Commissioner from requesting for information on an Insurance Groups capital adequacy in so far as it's regulated entity is non-compliant to the Risk Based Capital Framework.

Justification

Section 5A(1) and (2) authorizes the Commissioner of Insurance to direct any member of the group to provide any information necessary for effective group wide supervision and penalizes such member or holding company with penalties under the Insurance Act for any breach or failure to comply to such directive.

They proposed the deletion of this section in its entirety as it creates ambiguity as it does not define who a member of the group refers to- Is it a Director? Officer? Managing Director? In addition, it does not define the nature and type of information requested for.

The proposed amendments seeks to provide clarity on the nature of information and the mode in which such information will be collected including appointing the contract officer as the Principal Officer of the regulated entity.

Clause 12

They proposed deleting in its entirety the proposed new Section 204(A) on the Power of the Authority to Settle

Justification

They proposed to delete the section in its entirety as the amendment:

- (i) Does not properly define the nature and scope of the complaint to be lodged- is it a service complaint or a contract complaint?
- (ii) Usurps arbitration which is the dispute resolution mechanism proposed in the Insurance Contracts
- (iii) Does not define the qualification of the officers charged with resolving disputes- do they have the requisite qualifications to resolve disputes?
- (iv) Negates the right to appeal to a tribunal that is not set up and therefore governed by specific rules and procedures. Tribunals are set up through an Act of the Parliament. In

addition, the appeal from a decision of a Tribunal takes the form of a Judicial Review. This is not explicitly in place and thus would be prejudicial to the insurance company.

Clause 13

They proposed inserting a new clause 13 which states that:

- a) Section 69(1) of the Principal Act is amended by deleting the following words, “Subject to subsection (2)” and “or bonus or of a share in the valuation surplus in respect of long term insurance business”
- b) Section 69(2) of the Principal Act is deleted in entirety.

Justification

The Amendment deletes part of Subsection 1 on restriction on the payment of bonuses or payments from a share in the valuation surplus in respect of long term business. These restrictions were principally only applicable to long term insurance companies and are not technically (actuarial calculations) supported.

The definition of subsection (2) seeks to create uniformity and negate a contradiction to the proposed amendments under Sub-section (1).

These amendments thus ensure uniformity in long term and short term insurance.

Clause 14

They proposed an amendment in the Bill by inserting a new clause 14 that introduces e-policies:

- a) Section 87(2) of the Principal Act is amended by inserting the following words immediately after the word post “... e-mail or other electronic or telecommunication mode”
- b) Section 199 of the Principal Act is amended by inserting the following words immediately after the word post “... e-mail or other electronic or telecommunication mode”
- c) Inserting a new section 199A as follows:
199A. An insurer may offer insurance in electronic (e) or telecommunication (t) mode through e/t-applications and e/t-proposals. In such instances, an applicant for insurance will consent to such application through e/t-signature.
- d) Inserting a new section 199B as follows:
199B. The Cabinet Secretary may make regulations, prescribing all matters which are required and permitted to govern e/t-transactions in the insurance sector, or which in his opinion are necessary, desirable or convenient to be prescribed, to give full effect to this Section 199.

Justification

The amendment seeks to align the Act to modern market trends that recognize electronic contracts. With regard to the business environment and specific interest on the insurance business, information technology and communication has and should continue to have a significant impact. It is therefore not definite that the insurance sector is not insulated from the rise in technologies and improving the connectivity between business and customers with each other.

In Kenya, the Insurance Regulatory Authority (IRA) is mandated to promote the development of the insurance sector and has continued to adopt new technologies. However, the IRA has not been successful as other sectors, for instance banking, in exploiting the use of technological

devices such as use of mobile phones and internet which have experienced a high penetration to increase the insurance penetration.

One major technological advancement in the insurance sector that seek to exploit the above technological devices and increase insurance penetration while moving towards less or zero paper include the use of e-signatures and e-documents.

Clause 15

They proposed an amendment in the Bill by inserting a new clause 15 that amends the Principal Act as follows:

- a) Section 151(A) of the Principal Act is amended by inserting the word “**Tied**” immediately before the word Agent.
- b) Section 154 of the Principal Act is amended by inserting the following word “**Agent**” wherever it appears and substituting thereof with the word “**Independent Agent**”

Justification

The current Act has no reference to a tied or independent agent. To align with the definitions that were proposed, they also aligned the nature of the contractual appointment by defining that of a Tied Agent in Section 151(1A) and Section 154.

This amendment provides clarity on the appointment of a tied agent and independent agent.

Clause 16

They proposed an amendment in the Bill by inserting a new clause 16 that amends the Subsidiary Legislation as follows:

The Eleventh Schedule of the Principal Act is amended by deleting parts of Section 4: Superannuation Business (Including Group Life Policies) on entirety in relation to Term Assurances and Deposit Administration as follows

- (i) Term Assurances - 10% of premium
- (ii) Deposit Administration - 1% procurement commission on amounts deposited on the first year and every successive year up to the tenth year.

Justification

Currently the 11th schedule allows for a commission rate of 8% of premium and a Deposit Administration commission of 1% on amounts deposited on the first year.

This amendment seeks to create uniformity by advancing a similar compensation structure for superannuation business as is payable under Ordinary Life and General Insurance business and accords equity to intermediaries servicing superannuation business.

MEMBERS' DELIBERATIONS

1. On why they had left out Section 5A(2) of the Bill, they informed the Committee that IRA has the powers to enact the provisions of the Sub-clause even if it is not in law.
2. They proposed the deletion of Section 5A(1) because information about the group is still accessible to IRA through public filings and submissions made in terms of corporate governance. The provision in the Bill is not clear on who in the insurance company can provide information to the Commissioner.
3. Britam officials informed the meeting that a broker is appointed by the client to source for the appropriate insurance that they need from the market.

4. Emailing policies to clients will not affect the work of brokers because policies are currently sent directly to clients via post and not through brokers. The emailing will be in addition to the hard copies sent via post.
5. Britam officials informed the meeting that there are independent and tied agents. If a premium is paid through the tied agent it is as good as paid to the insurance company and the insurer will take responsibility of it if it is not submitted. The reverse is true in the case of an independent agent.
6. On limiting the amount paid to managers, CEO's or directors, they informed the meeting that market forces should take their course but this should not be provided for in the law.
7. In a scenario where a client pays premiums in instalments, they informed the meeting that the policy document will spell out how payments can be made in a way that the client will be covered within the period.
8. They were of the opinion that a penalty of Kshs. 5,000,000 is too high.

MIN.NO.NA/F&NP/2018/335: MEETING WITH BIMA INTERMEDIARIES ASSOCIATION OF KENYA ON THE INSURANCE (AMENDMENT) BILL, 2018

The Chairperson called for introductions of those present before inviting BIAK to make their submissions.

They proposed the following amendments:-

Clause 10

They rejected repealing and replacement of section 156 of Cap 487.

Justification

They quoted the measures taken by Insurance Core Principals (ICP's) to counter insurance premiums mishandlings including:

1. Working with relevant industry or trade associations to encourage and maintain an industry wide approach to deterring, preventing, detecting, reporting and remedying fraud AND
2. The establishment of antifraud committees consisting of industry or trade organizations, law enforcement agencies, other supervisors, other authorities, and possibly consumer organizations as platform to address fraud in insurance- for example, by discussing trends, risks, policy issues, profiles and modus operandi.

They proposed that better proposals to counter fraud in the insurance sector should be sought than repealing a whole section in the Insurance Act. They would have preferred that proposals be made to work with the various associations in the insurance sector like BIAK to counter fraud perpetrated by agents. They have repeatedly asked for the same since 2014 but have always been rebuffed by the IRA.

1. They stated that this proposal has the capacity to erode the gains that have been made in the insurance industry. The insuring public has long dealt with some of them who have been in the industry for decades and have built up portfolios and trust over time. Their clients trust them explicitly with their business and their premiums, but the new directive has the potential to cast doubt as to their professionalism. Proposals not to receive premiums on behalf of the insurer will make their selling of insurance hard because:
 - i. They don't expect clients to start lining up at the halls of insurance companies to pay premiums.
 - ii. Not every client can issue a cheque and most of them prefer cash transactions.

- iii. An insurance cover paid for by M-pesa or other cashless means takes a long time to be reconciled in the books of the insurer, such that a client can take a whole day before the payments have been located. This is very inconveniencing to say the least.
2. They stated that insurance fraud is perpetrated by a few bad apples in the insurance sector, and people who are known. But they could not take action against them in their association because that exceeds their mandate. Attempts to be empowered to deal with them by IRA has not borne any fruit.
3. They claimed that the Act is criminalizing an act yet the industry has not tackled other friendly means to counter fraud.
4. They noted the aspects of banks having come into the insurance industry and felt that they could be behind the attempts to make life hard for thousands of agents in this country by making proposals that will be hard to meet so that we can leave the industry. The Insurance Act has been repealed and amended in favor of banks and that was also done behind their backs with no stakeholder consultation.
5. The aim of any amendment in the Insurance Act should be to improve insurance penetration, but the latest acts and proposals are seriously going behind the same.
6. Fraud can also be countered by continuous education of the agent, as they do at their organization, however, they need the support of the government in doing that. They proposed that a program could be rolled out by IRA in continuously educating the agent in conjunction with BIAK so that there can be more professional insurance agents who will significantly improve insurance penetration and project a good name for the insurance industry.
7. The principal-agent rules in the Law of Agency say that an agent represents the principal and has the sole mandate of the agents behavior. Insurance companies in Kenya know how they deal with insurance agents for purpose of insurance business, and all that is lacking is an independent organization like BIAK to help in the same.
8. The current proposal on insurance fraud is a kneejerk reaction and over reacting to the problem of fraud, and as we say it's like responding to a mosquito bite with a hammer to kill the mosquito.

MEMBERS' DELIBERATIONS

1. On whether IRA recognizes the brokers' associations, IRA officials informed the meeting that they collaborate with them and usually have engagements though IRA does not regulate. They instead provide them with market conduct guidelines to offer guidance to the industry.
2. BIAK informed the meeting that their members are not involved in fraud. They know the bad elements in the industry but they have not been empowered by law to deal with them.

MIN.NO.NA/F&NP/2018/336: MEETING WITH ASSOCIATION OF INSURANCE BROKERS OF KENYA ON THE INSURANCE (AMENDMENT) BILL, 2018

The Chairperson called for introductions of those present before inviting AIBK to make their submissions.

They proposed the following amendments:-

Clause 2

Definition of '*Index based insurance*'.

They proposed that either the indices be explicitly mentioned and/or the specific examples or categories be mentioned but in a way that leaves the categories open to permit addition of new typologies in future.

Justification

The justification for the proposed changes is to provide additional clarity and eliminate the possibility of inappropriate indices and/or typologies being added through interpretation by the courts on a case by case basis.

Definition of 'Micro-Insurance'

They proposed that the term low income population be removed and replaced by a terminology that has precise meaning. Low-income is a relative term. While for some people annual salary of Kshs. 600,000 is high, for others a annual salary of Kshs. 12,000,000 is too low. We suggest the use of the term insurance policies accessible to persons with annual income of Kshs. 300,000 and below.

Justification

Lack of terminological clarity in legislations opens the door for gross interpretational abuse by the courts, in ways that undermine the utility of the legislation.

Definition of 'Insurance fraud'.

The word "**unfair**" is subjective and therefore amenable to different interpretations depending on the persons concerned. It is not defined in the Act itself. What is classified as "**unlawful gain**" may also give rise to different interpretations. Where for example a person presents a false claim in the name of another person can it be said that the person presenting the false claims has received a gain when the payment is actually sent to someone else? Finally, the use of the term "victim" is also unclear. Where, for example, a policy is insured with A, but re-insured with B, and where a fraudulent claim is lodged in connection therewith, who is the victim? In Subsection (1) insert the following Proviso thereto: *Provided that where the premium guaranteed to be paid by such person and in such manner as may be prescribed is not paid within the prescribed time or in the prescribed manner, then the Insurer shall be entitled to cancel the insurance policy upon giving the Insured a thirty (30) day notice which notice shall be sent to the Insured directly and shall not be sent through postal or other address belonging to a Broker; and provided also that no Insurer shall give Insurance Credit for a period exceeding Fourteen (14) Days*

Justification

They proposed to have the definition amended to simplify but broaden the meaning of Insurance Fraud to cover forms of deception, as well as fraudulent activities and representations designed to secure unlawful advantage in connection with an insurance claim.

Clause 10

They proposed to retain the current section 156 of the Insurance Act but review it in line with the revised insurance cash-and-carry policy and also to entrench new rules designed to effectuate and strictly enforce the insurance cash-and-carry rules but which also take into account the practical realities of the insurance business in Kenya today. we are convinced that criminalization of premium handling by any other intermediary other than the underwriters directly will send a wrong signal to the insurance market and frustrate all efforts aimed at

enhancing insurance penetration. We propose new additional provisions to section 156 that are designed to strengthen the legal framework for cash-and-carry rule. These include the proposed subsections (15) (16) and (17) Section 204B (1) A person other than a person licenced under this Act is guilty of an offence of insurance fraud where knowingly, by act or omission with intent to injure, defraud or deceive: (a) (b) (c) (d) (4) *an Insurer and any officer or director of an Insurer who pays any commission or who gives any rebate or discount to any person pursuant to a contract of insurance which was procured DIRECTLY without the involvement of an Agent or Broker is guilty of an offence and is liable on conviction to a fine not exceeding five million shillings or to a term of imprisonment for three (3) months or both.*

Justification

The purported repeal of the current Section 156 of the Insurance Act ignores the fact that the problem of delayed payment of premiums does not result from any demonstrable weakness of Sec.156 as it is currently but rather from the absence of effective enforcement mechanism for the said Sec.156.

Section 156 of the Principal Act is amended as follows:

- (a) In subsection (1) by inserting the following proviso thereto provided that where the premium guaranteed to be paid by such person and in such manner, as maybe prescribed is not paid within the prescribed time or in the prescribed manner then the insurer shall be entitled to cancel the insurance policy upon giving the insured a thirty day notice which notice shall be sent to the insured directly and shall not be sent through postal or other address belonging to a broker; and provided also that no insurer shall give Insurance Credit for a period exceeding fourteen days.
- (b) In Sub-section 6 by deleting the current sub-section 6 and replacing it with the following subsection (6).
- (6) Subject to subsection (1) a broker shall remit to the insurer all premium payments received from a client within a period of not more

Justification

- 1. The purported repeal of the current Section 156 of the Insurance Act actually criminalizes insurance brokerage business and sends wrong signals to the insuring public in ways that threaten the entire insurance industry including penetration levels.
- 2. There is no distinction between an Insurance Agent and an Insurance Broker with clearly defined roles as is currently the case in the existing Law. The new Sec.156 intended to supplant the current Sec.156 does not properly balance the rights of Insurers.

Clause 10(4)

Any Agent or Broker or any officer or director thereof who contravenes sub-section (6) shall be guilty of an offence and upon conviction shall be liable to a fine of not less than twice the aggregate sum of premiums not remitted within the prescribed time and/or imprisonment for a term of three (3) months or both

Justification

This is a tidier way of ensuring adherence to the law and remittance of premium without curtailing operations.

Clause 10(5)

An Insurer shall pay a Broker insurance commission due to him within Thirty (30) Days upon receipt of premium. Provided that all commissions payable to a Broker within any calendar month may be aggregated by an Insurer in which case the aggregate commissions due to the Broker shall be paid **not later than the 5th day of each succeeding month.**

Justification

The purported amendment did not foresee the impracticability of paying commissions every thirty days on business that is transacted on a daily basis.

Section 204B

They proposed that section 204B should be amended to separate criminal liability of intermediaries from criminal liabilities of other persons including the insured.

Justification

The justification for the proposed changes is that if the criminal liability of intermediaries is not separated from that of other unlicensed persons including the insured's them. We end up with a situation in which any fraudulent activity, involving an intermediated transaction will always implicate the intermediary even in situations where the intermediary may not have had any role in the crime and even in situations where the intermediary cannot prevent the commission of the crime.

New Clause

They proposed to introduce a new clause which reads as follows: *“an insurer and any officer or director of an insurer who pays any commission or who gives any rebate or discount to any person pursuant to a contract of insurance which was procured directly without the involvement of an agent or broker is guilty of an offence and is liable on conviction to a fine not exceeding five million shillings or to a term of imprisonment for three months or both”.*

Justification

The justification for the proposed amendment is to ensure that fraudulent and corrupt activities associated with direct procurement are brought within regulation.

MEMBERS' DELIBERATIONS

1. Currently, brokers enter into agreements with insurance companies on the time within which they are supposed to remit premiums. In some cases, it is the client that delays to pay the premium and not the intermediaries.
2. They suggested that the timeline for the submission of premiums by intermediaries should be set at 14 days and a penalty paid for every single day that an intermediary stays with the money if it is confirmed that the money was paid to them.
3. Removing intermediaries from the insurance business is a conspiracy between public bodies and insurance companies where insurance will be sold to companies by tied agencies and the commission shared between the insurance companies and public companies.

MIN.NO.NA/F&NP/2018/337: MEETING WITH KIPKENDA AND CO. ADVOCATES ON THE INSURANCE (AMENDMENT) BILL, 2018 AND THE CAPITAL MARKETS (AMENDMENT) BILL, 2018

The Chairperson called for introductions of those present before inviting Kipkenda and Co. Advocates to make their submissions.

They proposed the following amendments:-

On the Insurance (Amendment) Bill, 2018

Clause 12, Section 204A.

An addition that the clause should include the manner of presenting such complaints or that the Cabinet Secretary shall prescribe the manner of presenting such complaints.

Justification

The procedure should be simple and convenient to policyholders as a way of ensuring access to justice.

Change “Minister” to “Cabinet Secretary”

The Insurance Act, (in this Act referred to as the “principal Act”), is amended by deleting the word “Minister” wherever it appears and substituting therefor the words “Cabinet Secretary”

Justification

To bring legislative harmony in the interpretation of the law and certainty in referring to the head of a ministry. This can also be achieved by amending the definition section to state that “Minster” means “Cabinet Secretary” in order to bring clarity to the terminology.

Proposed amendments to the Capital Markets (Amendment) Bill, 2018

Section 30D

There is need to recast the section to include the offence of facilitating and/or omitting to prevent the furnishing or publishing of information known to be untrue, incorrect or misleading in a prospectus. This should in turn be harmonized with the provisions of section 34B of the Act.

Change “Minister” to Cabinet Secretary”

The Capital Market Authority Act, is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

Justification

This is to bring legislative harmony in interpretation of the law and certainty in referring to the head of a ministry.

MEMBERS’ DELIBERATIONS

1. Their presentation was clear and to the point.
2. The Chairperson thanked them for being keen and participating in the legislative process.

MIN.NO.NA/F&NP/2018/338: ADJOURNMENT

The Chairperson informed the Committee that there will be a meeting with the National Treasury on Tuesday, 14th August, 2018 to consider the Finance Bill, 2018, the Insurance (Amendment) Bill, 2018 and the Capital Markets (Amendment) Bill, 2018. The Committee will then proceed to a report writing retreat for the three Bills in Mombasa from Tuesday, 14th to Sunday, 19th August, 2018.

MIN.NO.NA/F&NP/2018/338: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 1.45pm.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED  DATE 13/11/18

REPUBLIC OF KENYA



NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ATTENDANCE SCHEDULE/PAYMENT SCHEDULE

Clerk's Chambers
National Assembly
NAIROBI

National Assembly

AGENDA: *ADOPTION OF THE CAPITAL MARKETS (AMENDMENTS) BILL, 2018*

DATE: 13TH NOVEMBER, 2018

TIME: 11.50AM

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN	
3. HON. JIMMY O. ANGWENYI, MP	
4. HON. CHRISTOPHER OMULELE, MP	
5. HON. DR. ENOCH KIBUNGUCHY, MP	
6. HON. SHAKEEL SHABBIR AHMED, MP	
7. HON. ABDUL RAHIM DAWOOD, MP	
8. HON. DANIEL E. NANOK, MP	
9. HON. ANDREW A. OKUOME, MP	
10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
14. HON. LYDIA H. MIZIGHI, MP	
15. HON. MOHAMED ALI, MP	
16. HON. PURITY NGIRICI, MP	
17. HON. SAMUEL ATANDI, MP	
18. HON. STANLEY M. MUTHAMA, MP	
19. HON. EDITH NYENZE, MP	

