

THE INSURANCE ACT (CHAPTER 487 OF THE LAWS OF KENYA)

SECTION 179

PART XIX

CABINET SECRETARY'S POWERS

179. Policyholders Compensation fund

- (1) The Cabinet Secretary shall, for the protection of policyholders, establish a Policyholders' Compensation Fund, in this section referred to as "The Fund", to provide compensation to the claimants of an insurer placed under a manager appointed under section 67C (2) or whose license has been cancelled under the Act.
- (2) Where a Fund is established under subsection (1), the Cabinet Secretary shall appoint a Board of Trustees, in this section referred to as "the Board", for the management and administration of the Fund.
- (2A) The functions of the Board shall be to: -
 - (a) provide compensation to claimants of insurers as provided in subsection (1);
 - (b) monitor, in consultation with the Commissioner where necessary, the risk profile of any insurer;
 - (c) advise the Cabinet Secretary on the national policy to be followed with regard to matters relating to compensation of policyholders and to implement all government policies relating thereto;
 - (d) participate in the statutory management of an insurer placed under statutory management by the regulator;
 - (e) liquidate an insurer as may be ordered by a court;
 - (f) perform such other functions as may be conferred on it by this Act or by any other written law.
- (2B) The Board shall have all the powers necessary for the proper performance of its functions under this Act, and without prejudice to the generality of the foregoing, shall have power to: -
 - (a) control, supervise and administer the assets and liabilities of the Fund in such manner and for such purposes as best promote the interests of policyholders;
 - (b) employ such persons and engage the services of such consultants as may be necessary, on such terms and conditions for the proper and efficient exercise of its functions;
 - (c) enter into association with such other bodies or organizations, within or outside Kenya, as it may consider desirable or appropriate in furtherance

of the purposes for which the Fund is established;

- (d) invest any of its surplus funds in securities which for the time being trustees may by law invest in, or in any other securities which the treasury may, from time to time, approve;
- (e) receive contributions paid by insurers and policyholders, grants provided by parliament, gifts, donations or endowments on behalf of the Fund and make legitimate disbursements therefrom;
- (f) subject to the provisions of this Act, regulate its own procedure.

(3) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporation name, be capable of-

- (a) suing and being sued; taking, purchasing or otherwise acquiring, holding, charging or disposing of movable
- (b) or immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(4) The Board shall comprise-

- (a) a Chairman, appointed by the Cabinet Secretary;
- (b) the Commissioner of Insurance or a representative appointed in writing;
- (c) the Cabinet Secretary responsible for matters relating to finance or a representative appointed in writing;
- (d) the Attorney-General or a representative appointed in writing;
- (e) one person nominated by the body representing the interests of insurers;
- (f) one person nominated by insurance brokers;
- (g) one person representing the general public appointed by the Cabinet Secretary; and
- (h) the Managing Trustee as an *ex officio* member without a right to vote.

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

- (4B) A person shall not be eligible for appointment under paragraphs (4) (e), (f), or (g) if that person –
- (a) has at any time been convicted of any offence involving fraud, theft, dishonesty, breach of trust or moral turpitude;
 - (b) was previously involved in the management or administration of a financial institution which was deregistered, wound up or placed under statutory management for any failure on the part of the management or the administration thereof;
 - (c) is a director, officer, employee or shareholder of any insurer, broker, insurance agent or any other members of the insurance industry; or
 - (d) is disqualified under any other written law from holding public office or being a director of any institution.
- (5) The Cabinet Secretary shall prescribe the qualifications and terms of service of the chairman and members of the Board, including the procedure for their appointment.
- (5A) The Cabinet Secretary shall, in consultation with the board, appoint a Managing Trustee who shall be the Chief Executive and Secretary to the Board, and who shall hold office for such period and on such terms and conditions of service as may, from time to time, be determined in writing by the Cabinet Secretary in consultation with the board.
- (6) The Cabinet Secretary may require payment of a monthly contribution to the Fund to be paid by every policyholder and insurer, in such amount and at such times as the Cabinet Secretary may in consultation with the Board, prescribe.
- (7) A contribution required under subsection (6) shall be remitted to the Board by the insurer, in such manner as may be prescribed.
- (8) If an insurer, for any reason, fails to pay its contribution to the Board within the prescribed period, the insurer shall be liable to pay to the Board a penalty interest charge, which shall be prescribed by the Cabinet Secretary in consultation with the Board.
- (9) If an insurer fails to pay the prescribed contribution to the Board and any outstanding penalty interest charge-
- (a) The Board shall hold the directors of the insurer who has defaulted in remitting a statutory contribution to be severally and jointly liable for the payment of the outstanding contribution together with the applicable interest; and
 - (b) The liability of the directors shall commence on the expiry of ninety days from the due date of the outstanding statutory contribution.
 - (c) Such insurer shall be liable to having its registration cancelled.

- (10) A contribution paid by an insurer to the Board may be treated as an item of the expenses of management of the insurer for the financial year in which the amount is paid.
- (11) The Cabinet Secretary may, in consultation with the Board, make regulations generally for the better carrying out the provisions of this section.

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No matter or thing done by a member of the Board, the secretary of the Board, or an officer, employee or agent of the Board shall, if the matter or thing is done *bonafide* for executing the functions, powers, or duties of the Board under this Act, render the member, secretary, officer, employee or agent, or any person acting on their direction personally liable to any action, claim, or demand whatsoever.