

(7b) Where the person who petitions under paragraph (7a) is a person licensed under this Act, the petition may be made at the proceedings where the confidential business operations of that person is discussed.

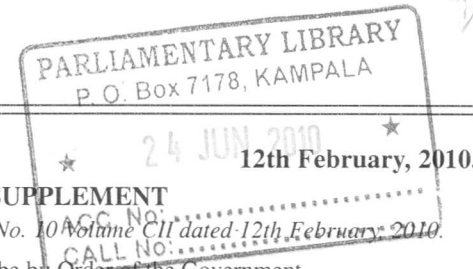
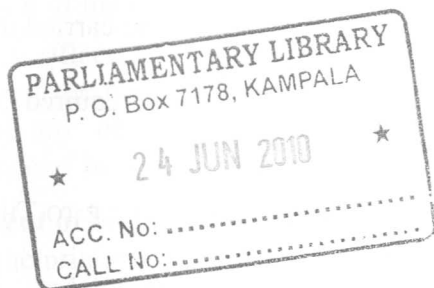
(7c) The Chairperson may using his or her discretion, allow the petition.”

48. Insertion of new section 99

99. Transitional provision

(1) The amendment made by section 4 (c) of this Act shall come into effect at the expiry of three years after the commencement of this Act.

(2) The amendments made by section 11 of this Act shall not apply to the commissioner of insurance in office, immediately before the coming into force of this Act.



BILLS SUPPLEMENT

to the Uganda Gazette Extraordinary No. 10 Volume CII dated 12th February 2010.

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THE INSURANCE (AMENDMENT) BILL, 2010

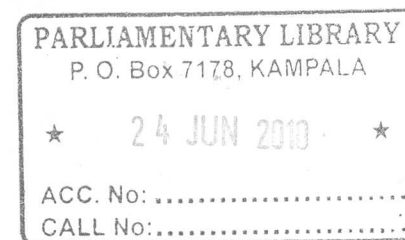
MEMORANDUM.

1. The object of this Bill is to amend the Insurance Act, Cap 213; to close the loopholes in the law; to correct the errors in the law; to ensure clarity of the law; to enhance corporate governance in the insurance sector; to enhance the development of the insurance sector and to provide for other connected purposes.
2. The Bill in particular seeks to delink the Insurance Commission from supervision by the Bank of Uganda and to bring it under the supervision of the Minister of responsible for finance.
3. The Bill also seeks to remove any ambiguities and to ensure clarity by defining the following technical terms that are used in Act but which are not defined; actuary, admitted assets, admitted liabilities, claim settling agent, director, document, insurance surveyor, licence, life insurance fund, loss assessor, micro insurance, non-life insurance fund, person, premium, principal officer and risk manager.
4. The Bill provides for health insurance as one of the classes of non-life insurance business to be regulated under the Insurance Act and prohibits the transaction of the business of life insurance and non-life insurance under a composite company.

5. The Bill seeks to enhance corporate governance in the insurance sector by providing the circumstances under which certain officers are prohibited from holding office in an insurance company; by prohibiting members of the board of an insurer from serving as members of the board of another insurer, brokerage company, financial institution or any other investment concern; by giving the Insurance Commission power to receive complaints from the public on the conduct of an insurer and to arbitrate or grant restitution in respect of the complaint; by amending the composition of the Board of the Insurance Commission to include representation of the Certified Public Accountants of Uganda and the Uganda Law Society amongst others; by amending the terms and condition of service of the Commissioner for Insurance and by bringing the Insurance Commission under the ambit of the Public Finance and Accountability Act.
6. The Bill also seeks to enhance corporate governance by restricting the loans that may be given by an insurer to the officers and directors of the insurer; by allowing the Insurance Commission to prescribe other methods of reserving for outstanding claims and by providing for the annual auditing of the accounts of insurer, insurance brokers, risk managers, loss adjusters, insurance surveyors and claim settling agents and the qualifications required of the auditor.
7. The Bill seeks to enhance the development of the insurance sector in Uganda by increasing the amount available to an insurer from 10% to 50% of the security deposit, where the insurer suffers a substantial loss from liability to claimants which cannot be met from the resources of the insurer; by requiring insurers to furnish quarterly financial statements with the Insurance Commission and to furnish for each year in the prescribed form, information on capitalization, reserves and the classes of insurance business carried on by the insurer in Uganda; by providing for actuarial investigations on an annual

- basis instead of every three year; by providing for mandatory offer to place reinsurance with a reinsurance company that may be incorporated under the laws of Uganda and by providing for the possibility of rehabilitation of an insurer before winding up of the insurer.
8. To further enhance the development of the sector, the Bill provides for the Policyholders' Compensation Fund to be used to compensate the policy holders of an insolvent insurer; the Bill regulates the operations of health maintenance organizations including the licensing requirements, the scope of operations and the contents of the contracts between the health maintenance organizations and policy holders; and provides for the charge of a levy on the policy holders by the insurers and which is to be remitted to the Insurance Institute of Uganda for training and certification of training programmes.
  9. The penalties payable under the Act have been increased as well as the areas for which regulations may be made.

SYDA N.M. BBUMBA,  
*Minister for Finance, Planning and Economic Development.*



THE INSURANCE (AMENDMENT) BILL, 2010

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1. Commencement

PART II—AMENDMENTS TO PART I OF THE PRINCIPAL ACT

2. Amendment of section 1 of principal Act
3. Amendment of section 2 of principal Act
4. Amendment of section 5 of principal Act
5. Amendment of section 7 of principal Act
6. Amendment of section 8 of principal Act
7. Amendment of section 11 of principal Act
8. Amendment of section 12 of principal Act

PART III—AMENDMENTS TO PART II OF THE PRINCIPAL ACT

9. Amendment of section 15 of principal Act
10. Amendment of section 17 of principal Act
11. Amendment of section 21 of principal Act
12. Amendment of section 24 of principal Act
13. Amendment of section 25 of principal Act
14. Amendment of section 26 of principal Act

PART IV—AMENDMENTS TO PART III OF THE PRINCIPAL ACT

15. Amendment of section 32 of principal Act
16. Amendment of section 33 of principal Act

PART V—AMENDMENTS TO PART IV OF THE PRINCIPAL ACT

17. Amendment of section 34 of principal Act
18. Amendment of section 37 of principal Act
19. Repeal of section 41 of principal Act
20. Amendment of section 42 of principal Act
21. Amendment of section 44 of principal Act
22. Repeal of subsection (1) of section 46 of principal Act
23. Amendment of section 47 of principal Act

Clause

24. Amendment of section 48 of principal Act
25. Amendment of section 49 of principal Act
26. Amendment of section 51 of principal Act
27. Amendment of section 55 of principal Act

PART VI—AMENDMENTS TO PART V OF THE PRINCIPAL ACT

28. Amendment of section 59 of principal Act
29. Amendment of section 64 of principal Act

PART VII—AMENDMENTS TO PART VII OF THE PRINCIPAL ACT

30. Insertion of section 70A to principal Act
31. Amendment of section 71 of principal Act

PART VIII—INSERTION OF PART VII A TO THE PRINCIPAL ACT

32. Insertion of Part VIIA to principal Act

PART IX—AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT

33. Amendment of section 78 of principal Act
34. Amendment of section 79 of principal Act
35. Amendment of section 80 of principal Act
36. Insertion of section 82A to principal Act
37. Insertion of section 83A to principal Act
38. Amendment of section 87 of principal Act
39. Replacement of section 89

PART X—INSERTION OF PART VIIIA TO THE PRINCIPAL ACT

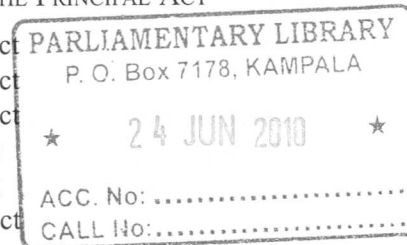
40. Insertion of Part VIIIA to principal Act

PART XI—AMENDMENTS TO PART IX OF THE PRINCIPAL ACT

41. Amendment of section 94 of principal Act
42. Insertion of section 94A to principal Act
43. Amendment of section 95 of principal Act
44. Insertion of section 96A to principal Act
45. Amendment of section 97 of principal Act
46. Amendment of section 98 of principal Act

PART XII—AMENDMENTS TO THE SCHEDULE TO THE PRINCIPAL ACT

47. Amendment of Schedule to principal Act
48. Insertion of new section 99



A Bill for an Act

ENTITLED

**THE INSURANCE (AMENDMENT) ACT, 2010**

**An Act to amend the Insurance Act; to provide definitions for the terms used in the Act; to provide for the regulation of health insurance; to provide additional powers to the commission to maintain security deposit accounts and to invest the deposits; to provide for an increase in the security deposit to be provided by insurers; to provide for the regulation of the directors of the insurers; to provide for the arbitration of complaints as an additional function of the commission; to provide for the composition of the commission and the tenure of the commissioner for insurance; to provide for rehabilitation of insurers; to provide additional grounds for winding up insurers; to provide for the establishment of the Policyholders' Compensation Fund; to provide for the regulation of insurance brokers, loss assessors and loss adjusters; to provide for the regulation of health maintenance organisations; to provide for the protection of the commission from liability; to provide for an increase in the fines and for related matters.**

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY

**1. Commencement**

This Act shall come into force on a date appointed by the Minister by statutory instrument.

PART II—AMENDMENTS TO PART I OF THE PRINCIPAL ACT

**2. Amendment of section 1 of principal Act**

Section 1 of the Insurance Act, in this Act referred to as the principal Act, is amended by substituting for “risk inspectors” the words “risk managers”.

**3. Amendment of section 2 of principal Act**

Section 2 of the principal Act is amended—

- (a) by inserting the following definitions in the appropriate alphabetical order—

““actuary” means a person who is a member, an associate or a fellow of a professional institute, faculty, society or association of actuaries, recognized as such by the commission and who is authorised by that institute, faculty, society or association to certify actuarial valuations of life insurance business;

“admitted assets” includes any properties, security, items or interest of a person but does not include—

- (a) unsecured loans;  
 (b) mortgaged assets;  
 (c) unpaid premium which is due by more than three months;  
 (d) intangible assets;  
 (e) prepaid preliminary expenses;  
 (f) assets held outside Uganda, except assets owed by foreign re-insurers;  
 (g) any other assets as may be determined by the commission;

“admitted liabilities” means liabilities shown as current contingents or as prospective liabilities in the accounts of an insurer and includes liabilities in respect of a policy of long term insurance business, but does not include—



- (a) liabilities in respect of share capital;
- (b) liabilities in respect of such matters as the commission may by notice on writing direct;

“claim settling agent” means a person licensed under this Act to undertake the business of settling and negotiating the settlement of an insurance claim, on behalf of an insurer, under a policy issued by the insurer within or outside Uganda;

“director” means a director of the governing body of an insurer, a broker or an adjuster;

“document” includes accounts, deeds, letters, writings, books and any other records of information however compiled, recorded or stored, whether in a written or printed form, on microfilm or in any other form;

“health maintenance organization” means a person who—

- (a) acts as an insurer; and
- (b) undertakes to provide or arrange for delivery of basic health care services;

"insurance surveyor" means a person who engages in surveying risks and in advising on the rate and terms and conditions of premiums;

"licence" means a licence issued under this Act;

"life insurance fund" means the total of the reserves specified under section 47 (3);

"loss assessor" means a person licensed under this Act to undertake the business of assessing and investigating losses and who may settle losses on behalf of an insurer or an insured;

“micro insurance” means insurance for the protection of low-income people against specific perils in exchange for regular premium payments proportionate to the likelihood and cost of risk involved;

"non-life insurance fund" means the total of reserves specified under section 47 (2);

“person” includes any company or association or body of persons corporate or unincorporated;

"premium" means the consideration for entering into an insurance contract;

"principal officer" means an officer responsible for the general control and supervision of the insurance business of a person or body licensed under this Act;

"risk manager" means a person who does the business of minimising losses which arise from unforeseen events and who minimises the cost of the losses by arranging physical or financial measures through insurance or any other means;”;

- (b) by substituting for the definition of “loss adjuster” the following—

““loss adjuster" means a person registered under this Act to undertake the business of professional loss adjustment for and on behalf of an insurer, an insured or any other person and who may in addition settle claims on behalf of an insurer;”.

**4. Amendment of section 5 of principal Act**

Section 5 of the principal Act is amended—

- (a) by renumbering the existing provision as (1);
- (b) by inserting immediately after paragraph (b) (xiii), the following—

“(xiiiia) health insurance;”;

(c) by inserting immediately after paragraph (c) the following—

“(2) No person shall transact the business of life insurance and non-life insurance as a composite company.”

#### 5. Amendment of section 7 of principal Act

Section 7 of the principal Act is amended—

(a) by substituting for subsection (1) the following—

“(1) Every insurer shall hold in an account maintained by the commission for the purpose, a security deposit of at least 10 per cent of the prescribed paid up capital of the insurer.”;

(b) by substituting for subsection (3) the following—

“(3) The deposits made under subsection (1) shall be invested by the commission, as the commission may determine.”

#### 6. Amendment of section 8 of principal Act

Section 8 of the principal Act, is amended by substituting for “10 percent” appearing in paragraph (a), the words “50 percent”.

#### 7. Amendment of section 11 of principal Act

Section 11 of the principal Act is amended by inserting immediately after subsection (2), the following—

“(3) A member of the board of directors of an insurance company shall not at the same time serve as a member of the board of directors of another insurance company or of a brokerage company, financial institution, security brokerage company or any other investment concern or a subsidiary of any of these.”

#### 8. Amendment of section 12 of principal Act

Section 12 of the principal Act is amended by substituting for “as an officer” appearing in subsection (1), the words “for an insurance company”.

### PART III—AMENDMENTS TO PART II OF THE PRINCIPAL ACT

#### 9. Amendment of section 15 of principal Act

Section 15 of the principal Act is amended—

(a) by substituting for subsection (2) (c) the following—

“(c) approve texts of policies and proposal forms;”;

(b) by substituting for subsection (2) (f) the following—

“(f) receive complaints from members of the public on the conduct of a person licensed under this Act and arbitrate and grant restitution to the complainant, as may be possible;”.

#### 10. Amendment of section 17 of principal Act

Section 17 of the principal Act is amended—

(a) by substituting for subsection (1) (c) the following—

“(c) the commissioner for insurance, who shall have no voting rights;”;

(b) by substituting for subsection (1) (e) the following—

“(e) a representative of the Insurance Institute of Uganda, who shall not be a director, employee or shareholder of any insurer, intermediary, loss assessor or loss adjustor;”;

(c) by substituting for subsection (1) (f) the following—

“(f) a representative of the Institute of Certified Public Accountants of Uganda;”;

(d) by inserting immediately after paragraph (f) the following—

“(fa) a representative of the Uganda Law Society;”;

(e) by inserting immediately after subsection (5) the following—

“(6) A member of the commission shall not disclose any information, or use any proprietary information, concerning a person licensed under this Act, obtained in the course of performance of his or her duties as a member of the commission, for the purposes of attaining a business advantage or personal financial gain.”

#### 11. Amendment of section 21 of principal Act

Section 21 of the principal Act is amended by inserting immediately after subsection (2) the following—

“(2a) The commissioner for insurance shall hold office for a term of four years and shall be eligible for reappointment for one further term.

(2b) The commissioner for insurance shall be removed from office where the commissioner—

- (a) is guilty of grave misconduct or willful neglect in the discharge of his or her duties;
- (b) is adjudged bankrupt or fails to make any arrangements or composition with his or her creditors;
- (c) becomes of unsound mind;
- (d) is convicted of a criminal offense other than an offense which affects his or her position as the commissioner;
- (e) becomes permanently incapacitated by accident or ill health from performing his duties for a period of six consecutive months or an aggregate period of nine months in a financial year; or
- (f) fails to perform his or her duties and obligations as specified in the terms and conditions specified by the commission.”

#### 12. Amendment of section 24 of principal Act

Section 24 of the principal Act, is amended by substituting for “the central bank” appearing in subsection (3), the words “Government”.

#### 13. Amendment of section 25 of principal Act

Section 25 of the principal Act, is amended by substituting for “central bank” appearing in paragraphs (a) and (b), the word “Minister”.

#### 14. Amendment of section 26 of principal Act

Section 26 of the principal Act, is amended by substituting for subsection (2) the following—

“(2) The accounts and records of the commission kept under subsection (1) shall be in accordance with the Public Finance and Accountability Act, 2003”.

#### PART IV—AMENDMENTS TO PART III OF THE PRINCIPAL ACT

#### 15. Amendment of section 32 of principal Act

Section 32 of the principal Act, is amended by substituting for subsection (2) (b) the following—

“(b) may be renewed on application, in the prescribed form and after payment of the prescribed fees; and”.

#### 16. Amendment of section 33 of principal Act

Section 33 of the principal Act, is amended—

(a) by substituting for subsection (1) (c) the following—

“(c) the relevant minimum capital or security deposit requirements specified in Part 1 have not been complied with by the insurer or that the net assets of the insurer are below the minimum paid up capital;”;

(b) by repealing the word “first” appearing in subsection (1) (f);

(c) by inserting immediately after subsection (1) (j), the following—

“(k) the insurer has refused or failed to abide by the decision of the commission, to settle a claim or complaint in accordance with section 15 (2) (f).”;

(d) by substituting for subsection (5) the following—

“(5) An insurer may within thirty days from the receipt of the communication of the commission of the suspension or revocation of his or her licence, appeal to the High Court.”;

(e) by substituting for subsection (8) the following—

“(8) The commission shall publish in the Gazette and a newspaper widely read by the people in the area where the registered office of the affected insurer is located, any revocation or suspension of the licence of the insurer or any reinstatement or relicensing of the affected insurer, as soon as is practicable.”

PART V—AMENDMENTS TO PART IV OF THE PRINCIPAL ACT

17. Amendment of section 34 of principal Act

Section 34 of the principal Act, is amended by substituting for subsection (1) the following—

“(1) An insurer shall not allow credit on the premium payable for more than thirty days from inception or renewal of the policy and the insurer may opt out of the risk subject to the provisions of the policy, except for business emanating from a broker licensed under this Act.”

18. Amendment of section 37 of principal Act

Section 37 of the principal Act is amended—

- (a) by renumbering the existing provision as (1);
- (b) by inserting immediately after subsection (1) the following—

“(2) An insurer who violates this section is liable to a fine of twenty percent of the premium received or the fine imposed under section 97 (4) (b), whichever is higher.”

19. Repeal of section 41 of principal Act

Section 41 of the principal Act is repealed.

20. Amendment of section 42 of principal Act

Section 42 of the principal Act is amended—

(a) by substituting for subsection (1) (a) the following—

“(a) a loan on a life policy limited to the policy's surrender value, where the right to borrow the same amount is also provided to the other policy holders of that class; or”;

(b) by inserting immediately after subsection (1) the following—

“(1a) Notwithstanding subsection (1), the total aggregate of the loan given to a director of an insurer shall not exceed ten percent of the paid up capital of the insurer.”

21. Amendment of section 44 of principal Act

Section 44 of the principal Act, is amended—

(a) by substituting for subsection (1) (b) the following—

“(b) in the case of non-life insurance business or reinsurance, the admitted assets of the insurer shall exceed the greater of—

- (i) the admitted liabilities of the insurer, by a minimum of fifteen percent of the premium income, net of reinsurance sessions; or

- (ii) such sum as may be prescribed by the commission, in consultation with the Minister.”

**22. Repeal of subsection (1) of section 46 of principal Act**

Subsection (1) of section 46 of the principal Act is repealed.

**23. Amendment of section 47 of principal Act**

Section 47 of the principal Act, is amended by substituting for subsection (2) (b) the following—

“(b) reserves for outstanding claims, a sum equal to the total estimated amount of all outstanding reported claims together with an additional amount of not less than 15 percent of the total amount of outstanding reported claims, in respect of claims incurred but not reported at the end of the last preceding year or such amount as the commission may determine;”.

**24. Amendment of section 48 of principal Act**

Section 48 of the principal Act, is amended by substituting for “central bank” appearing in subsection (3), the word “Minister”.

**25. Amendment of section 49 of principal Act**

Section 49 of the principal Act, is amended—

- (a) by substituting for subsections (1) (a), (b) and (c) the following—

“(1) An insurer shall within thirty days after the end of each quarter of a financial year and within ninety days after the end of a financial year, except for the reports required under paragraph (e), prepare and furnish to the commission in the prescribed form—

- (a) notwithstanding section 55(1), a certificate as to the solvency of the insurer, signed in the case of a life insurer by an actuary or other person authorized by the commission;

- (b) a balance sheet and profit and loss account duly audited by an auditor approved by the commission, showing the financial position of the insurance business at the close of that quarter or year;

- (c) a statement of the life insurance business carried on by the insurer in Uganda in that quarter or year;”;

- (b) by inserting immediately after subsection (1) the following—

“(1a) An insurer shall, within fifteen days after the end of every three months in a financial year, prepare and furnish to the commission, the revenue accounts of the insurer.

(1b) An insurer shall within fifteen days after the end of every six months in a financial year, prepare and furnish to the commission, the revenue accounts, the cash flow statement and the statement of admitted assets and liabilities of the insurer.”

**26. Amendment of section 51 of principal Act**

Section 51 of the principal Act, is amended—

- (a) by substituting for subsection (3) the following—

“(3) The auditor shall—

- (a) not be an employee, manager, director or shareholder of the insurer;
- (b) maintain a professional indemnity policy, as may be determined by the commission;

- (c) be a member of Institute of Certified Public Accountants of Uganda; and
- (d) audit the accounts of the insurer in an independent and impartial manner.”

(b) by inserting immediately after subsection (3) the following—

“(3a) An auditor shall not audit the accounts of an insurer for a continuous period of four years.”

**27. Amendment of section 55 of principal Act**

Section 55 of the principal Act is amended by substituting for “three years” appearing in subsection (1) the words “one year”.

PART VI—AMENDMENTS TO PART V OF THE PRINCIPAL ACT

**28. Amendment of section 59 of principal Act**

Section 59 of the principal Act is amended by substituting for “one hundred and twenty days” appearing in the section, the words “ninety days”.

**26. Amendment of section 64 of principal Act**

Section 64 of the principal Act, is amended—

- (a) by substituting for the words in the marginal note, “Mandatory reinsurance placements with international and national organisations”;
- (b) by inserting immediately after subsection (1) (b), the following—

“(c) a reinsurance company incorporated under the laws of Uganda, a percentage of reinsurance cessions as may be prescribed by Regulations.”;

(c) by substituting for subsection (2) the following—

“(2) The provisions of subsection (1) shall not affect the right of Africa-Re, ZEP-RE or a reinsurance company incorporated under subsection (1) (c) to accept or decline all or any part of the minimum reinsurance cessions offered or placed by any insurer or reinsurer.”;

(d) by substituting for “central bank” appearing in subsection (3), the word “Minister”.

PART VII—AMENDMENTS TO PART VII OF THE PRINCIPAL ACT

**30. Insertion of section 70A to principal Act**

The principal Act is amended by inserting immediately before section 71 the following—

**“70A. Rehabilitation**

(1) After inspection of the affairs of an insurer and before the commission petitions court for winding up of the business of the insurer, the commission may order the rehabilitation of an insurer where—

- (a) the insurer whose affairs are inspected, fails to provide access to the books, accounts, documents, or other records—
  - (i) of the insurer;
  - (ii) of a subsidiary or related company within the control of the insurer; or
  - (iii) of a director, senior executive or technical personnel of the insurer, in so far as they pertain to the insurer;
- (b) the insurer is in such a condition that any further transaction of business would be financially hazardous to the policyholders and the creditors of the insurer and to the public;



- (c) the commission has reasonable cause to believe that there is—
- (i) embezzlement from the insurer;
  - (ii) wrongful sequestration or diversion of the assets of the insurer;
  - (iii) forgery or fraud which affects the insurer; or
  - (iv) any other illegal conduct which may endanger the assets of the insurer in an amount that threatens the solvency of the insurer;
- (d) the insurer fails to remove a director, senior executive, technical personnel, an agent or any other person, who is found, after notice and hearing by the commission, to be dishonest or untrustworthy in a way that affects the business of the insurer;
- (e) the control of the insurer, whether by stock ownership or any other means, directly or indirectly, is with a person who after notice and hearing is found to be untrustworthy in any way that affects the business of the insurer;
- (f) without the approval of the commission, the insurer transfers or attempts to transfer, in a manner contrary to Part VI of this Act, substantially the entire property or business of the insurer, or enters into a transaction the effect of which is to merge, consolidate, or reinsure substantially the entire property or business of the insurer with the property or business of another person;
- (g) the insurer willfully violates this Act, a valid order of the commission or any other law that governs the insurer;

- (h) the insurer fails to pay, within sixty days after the due date, any obligation due in any jurisdiction as a result of a judgment by a competent court, except where the insurer in good faith makes an effort to contest the obligation or systematically attempts to compromise or renegotiate a previously agreed settlement with creditors on the ground that the insurer is financially unable to pay its obligations in full;
- (i) the insurer fails to file its annual report or other financial report required by this Act within the stipulated time and where after written demand by the commission fails to immediately give an adequate explanation;
- (j) the board of directors or the holders of the majority of the stock entitled to vote, or where a majority of the individuals who control the entities specified under this Act, request or consent to rehabilitation under this section.
- (2) For the purpose of rehabilitation, the commission may order an insurer to—
- (a) comply with a plan to effect the reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer, or
  - (b) submit to the commission, for approval, a plan to effect the reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer.
- (3) Where the commission believes that any further attempts to rehabilitate an insurer would substantially increase the risk of loss to the policyholders and creditors of the insurer or to the public, or would be futile, the commission may petition the Court to order the winding-up of the insurer in accordance with section 71 of this Act.”

**31. Amendment of section 71 of principal Act**

Section 71 of the principal Act, is amended by inserting immediately after subsection (2) (c) the following—

- “(d) the insurer is not able to meet its obligations to a policyholder under an insurance contract;
- (e) the commission believes that it is just and equitable and in the interests of the policyholders to wind up the insurer.”

## PART VIII—INSERTION OF PART VII A TO THE PRINCIPAL ACT

**32. Insertion of Part VIIA to principal Act**

There is inserted immediately after Part VII of the principal Act, the following—

“PART VII A—COMPENSATION FOR POLICYHOLDERS OF INSOLVENT INSURER

**71A. Policyholders' Compensation Fund**

- (1) There is established a Policyholders' Compensation Fund.
- (2) The Policyholders' Compensation Fund shall be managed by the commission.
- (3) The money of the Policyholders' Compensation Fund shall consist of—
- (a) premium levied upon insurers licensed under this Act, as may be prescribed;
  - (b) loans obtained by Government;
  - (c) grants, gifts and donations;
  - (d) money from any other source approved by the Minister in writing.

- (4) The money of the Policyholders' Compensation Fund shall be used to compensate the policyholders of an insolvent insurer.”

## PART IX—AMENDMENTS TO PART VIII OF THE PRINCIPAL ACT

**33. Amendment of section 78 of principal Act**

Section 78 of the principal Act, is amended by substituting for subsection (5) the following—

- “(5) A person aggrieved by a suspension of a licence under this section, may within thirty days from the receipt of the communication of the suspension, from commission, appeal to the High Court.”

**34. Amendment of section 79 of principal Act**

Section 79 of the principal Act, is amended—

- (a) by substituting for “with the central bank as a security deposit” appearing in subsection (1), the words “as security deposit, in an account maintained by the commission for the purpose.”;
- (b) by inserting immediately after subsection (1), the following—

“(1a) The deposit made under subsection (1) shall be considered part of the assets in respect of the capital, of the insurance broking company.

(1b) The deposit made under subsection (1) shall be invested by the commission, as the commission may determine.

(1c) The security deposit made under subsection (1) shall be available to the insurance broking company in accordance with section 8.

(1d) Any income that may accrue from the security deposit shall be payable to the insurance broking company that makes the security deposit.

(1e) Where an insurance broking company that makes a security deposit winds up, a claim under a non assessable policy for unearned premium or other premium refund and a claim of a general creditor, including a claim of a ceding and an assuming company, in the capacity of general creditors, shall take priority.”

### 35. Amendment of section 80 of principal Act

Section 80 of the principal Act, is amended—

- (a) by repealing paragraph (b) (iii);
- (b) by renumbering the existing provision as (1);
- (c) by inserting immediately after subsection (1) the following—

“(2) An insurance agent shall not act for two or more insurers transacting the same class of insurance business.

(3) For the avoidance of doubt, an insurance agent may act for one insurer transacting life business and one insurer transacting non life business but not for two or more insurers transacting the same class of insurance business.”

### 36. Insertion of section 82A to principal Act

The principal Act is amended by inserting immediately after section 82 the following—

#### “82A. Auditing of accounts and auditors.

(1) The accounts of every insurance broker, risk manager, loss assessor, loss adjuster, insurance surveyor and claim settling agent shall be audited annually by an auditor approved by the commission.

(2) An auditor shall not act as such, under subsection (1), for a continuous period of four years.”

### 37. Insertion of section 83A to principal Act

The principal Act is amended by inserting immediately after section 83 the following—

#### “83A. Commission to inspect insurance brokers, loss assessors and loss adjusters

(1) The commission shall inspect the affairs of insurance brokers, loss assessors and loss adjusters at least once, every year.

(2) The commission may, at any time before the expiry of three years, inspect the affairs of an insurance broker, a loss assessor or a loss adjuster where the commission has reason to believe that—

- (a) the interests of the policyholders or shareholders of the insurer or of members of the public may be prejudiced;
- (b) the insurance broker, loss assessor or loss adjuster is unable to meet his or her obligations under this Act;
- (c) the insurance broker, loss assessor or loss adjuster has not complied with this Act.

(3) The commission may appoint a competent person to carry out an inspection under this section, on its behalf.

(4) A person appointed to carry out an inspection under this section may question an insurance broker, loss assessor or loss adjuster or an officer of any of these persons, under oath.

(5) The commission shall inform the insurance broker, loss assessor or loss adjuster of the conclusions reached following the inspection and for the purpose of remedying the defects identified by the inspection, may require the insurance broker, loss assessor or loss adjuster to comply, within a period the commission may specify, with any directive it may issue.”

**38. Amendment of section 87 of principal Act**

Section 87 of the principal Act, is amended by inserting immediately after subsection (1) the following—

“(1a) Where an insurance broker does not pay a premium collected, as required under subsection (1), the insurance broker shall within fourteen days after the expiry of the period specified for making the payment, submit to the insurer, the details of the client from whom the premium is collected.

(1b) Where a premium continues to be outstanding sixty days after it is due, the policy shall be voidable at the instance of the insurer.

(1c) The insurance broker may be required to pay a penalty interest on the premium which is due, at a rate as may be determined by the commission.”

**39. Replacement of section 89**

For section 89 of the principal Act, there is substituted the following—

**“89. Loans to insurance agents**

No insurance agent shall, without the prior approval of the commission, have at any time, a loan outstanding to an insurance company, which is in the excess of an aggregate of two million shillings.”

## PART X—INSERTION OF PART VIII A TO THE PRINCIPAL ACT

**40. Insertion of Part VIII A to principal Act**

There is inserted immediately after Part VIII of the principal Act, the following—

## “PART VIII A—HEALTH MAINTENANCE ORGANISATIONS

**92A. Licensing of health maintenance organisations**

(1) A person who qualifies under this Part, may be granted a licence to operate a health maintenance organisation in Uganda.

(2) No person shall transact business as a health maintenance organisation in Uganda without a valid licence granted by the commission for that purpose.

(3) Notwithstanding any provision in this Act to the contrary, a health maintenance organisation shall be subject to this Act and to regulations made under this Act.

(4) No person shall be granted a licence under this section, unless sections 6 and 7, and the requirements for the qualifications of the directors are fulfilled.

(5) The requirements for the qualification of the directors shall be prescribed by the commission.

**92B. Application for licence to operate as health maintenance organisation in Uganda**

(1) A person proposing to transact business as a health maintenance organisation in Uganda shall apply to the commission for a licence.

(2) The application referred to under subsection (1) shall be in the prescribed form and shall contain the following information—

- (a) the name and address of—
  - (i) the company to operate as a health maintenance organisation;
  - (ii) the directors of the company;
  - (iii) the shareholders of the company;
- (b) the nationality and occupations of the directors of the company;
- (c) the nationality and shareholding of the shareholders of the company;

- (d) the estimated number of employees of the company;
- (e) the memorandum and articles of association or the constitution of the company and the certificate of incorporation;
- (f) the internal organisational structure of the company indicating the senior executive personnel;
- (g) the external organisational structure of the company indicating the parent, subsidiary and affiliate organizations of the company;
- (h) the names, addresses, official positions and biographical forms of the directors, senior executive, technical personnel, officers and all other individuals who are to be responsible for the conduct of the affairs of the company;
- (i) the capital structure and earning prospects of the company;
- (j) the business plans, financial plans and earnings forecasts and detailed enrollment projections for at least three years;
- (k) any other information relating to the viability of the company as a health maintenance organization, as the company considers relevant to the application;
- (l) documentary evidence that a sum equivalent to a percentage of the security deposit set by the commission, has been deposited in an account maintained by the commission for that purpose;
- (m) specimens of the proposed forms, policies, contracts, receipts and any other documents to be used in connection with the operations of the health maintenance organization; and

- (n) any other document or information that the commission may require.

(3) Where an application under subsection (1) does not provide all the relevant information or where clarification is necessary, the applicant shall be called upon to provide the information or clarification to complete the application.

#### **92C. Operations of health maintenance organisations**

(1) For the purposes of transacting business, a health maintenance organisation may, with the authority of the commission—

- (a) offer basic health care services through a provider, a provider association, an intermediary organisation or an agent of a provider, where that person is under contract with or is employed by the health maintenance organisation;
- (b) offer non-basic health care services on a prepaid basis;
- (c) purchase, lease, construct, renovate, operate or maintain a hospital or medical facilities;
- (d) transact business between affiliated entities, including loans and the transfer of responsibility under a contract between affiliates or between the health maintenance organisation and its parent company;
- (e) contract any person for the performance on its behalf, of certain functions including marketing, enrollment and administration;
- (f) contract with an insurance company licensed in Uganda, or with a hospital or medical service corporation authorised to do business in Uganda, for the provision of insurance, indemnity or reimbursement against the cost of health care services provided by the health maintenance organisation;

(g) jointly market its products with an insurance company licensed in Uganda or with a hospital or medical service corporation authorised to do business in Uganda, with the company that is offering each product being clearly identified.

(2) A health maintenance organisation which offers non-basic health care services on a prepaid basis in accordance with subsection (1) (b), shall not offer basic health care services to any group or individual.

(3) Prior to the carrying out of its operations under subsection (1), a health maintenance organisation shall file a notice in the prescribed form, with adequate supporting information, with the commission, indicating how the operations may affect the financial soundness of the health maintenance organisation.

(4) Where the commission is of the opinion that the operations of a health maintenance organisation may substantially and adversely affect the financial soundness of the health maintenance organisation and endanger its ability to meet its obligations, the commission shall not allow the health maintenance organization to operate.

(5) Where the commission does not communicate to a health maintenance organisation that files a notice under subsection (2) within thirty days of receiving the notice, it shall be deemed that the commission approves the request.

#### **92D. Contracts of health maintenance organisations**

(1) A health maintenance organization shall for the purposes of carrying out its operations, enter into a contract with an individual or with a group of persons.

(2) The contract between the health maintenance organization and an individual or the group of persons shall be effective within thirty days of the effective date of the contract.

(3) The contract shall contain—

- (a) the name and address of the health maintenance organisation;
- (b) the requirements for eligibility;
- (c) the benefits and services to be offered by the health maintenance organisation;
- (d) the emergency care benefits and services to be offered by the health maintenance organisation;
- (e) co-payments, coinsurance, deductibles or other out-of-pocket expenses, if any, allowable under the contract;
- (f) the financial responsibility of the person covered under the contract and how the obligation that person is determined;
- (g) the limitations and exclusions of the contract, if any;
- (h) provisions on the termination of the contract;
- (i) provisions on reinstatement of a person covered, where available;
- (j) procedures regarding claims;
- (k) grievance procedures;
- (l) procedures for requesting for an independent external review;
- (m) provisions on continuation of coverage;
- (n) provisions on conversion;
- (o) provisions on extension of benefits, if available;
- (p) provisions on coordination of benefits, where applicable;



- (q) subrogation, if any;
- (r) procedures for obtaining the directory of the health maintenance organisation;
- (s) term of coverage offered by the health maintenance organisation;
- (t) provisions for cancellation of the contract; and
- (u) provisions for renewal of the contract.

(4) The contract shall not contain provisions or statements—

- (a) that are unjust, unfair, inequitable, misleading or deceptive; or
- (b) that encourage misrepresentation.

(5) In addition to the information required under subsection (3), a contract with an individual shall provide for a period of ten days for examining and returning the contract and having the premium refunded, as the case may be.

(6) Where an individual returns a contract to receive a refund of the premium paid in accordance with subsection (5), and services are required during that period, the individual shall pay for the services.

#### 92E. Evidence of coverage

(1) A person who is covered under a group contract, shall receive, evidence of his or her coverage, from the holder of the contract of the group or from the health maintenance organisation.

(2) The evidence of coverage shall not contain provisions or statements that are unjust, unfair, inequitable, misleading, deceptive or that encourage misrepresentation.

(3) The evidence of coverage shall contain a clear statement of the name and address of the health maintenance organization.”

#### PART XI—AMENDMENTS TO PART IX OF THE PRINCIPAL ACT

#### 41. Amendment of section 94 of principal Act

Section 94 of the principal Act is amended—

- (a) in subsection (2) by inserting immediately after the word “broker” appearing in this subsection, the words “loss assessor and loss adjuster”;
- (b) in subsection (3) by substituting for “or broker” the words, “broker, loss assessor or loss adjuster”;
- (c) by inserting immediately after subsection (3) the following—

“(4) Evidence of membership of an association shall be a requirement for a renewal of a licence for a broker, a loss assessor and a loss adjuster.

(5) A professional association shall not unjustifiably deny a broker, loss assessor or loss adjuster membership and where a broker, loss assessor or loss adjuster is denied membership, that person may appeal to the commission.”

#### 42. Insertion of section 94A to principal Act

The principal Act is amended by inserting immediately after section 94 the following—

##### “94A. Insurance training levy

(1) Each insurer shall pay a levy on the gross direct premium written by the insurer.

(2) The levy shall be charged on the policyholders and collected by the insurers.

(3) All the money realised from the levy shall be remitted by the insurer to the Insurance Institute of Uganda and shall be used by the Insurance Institute of Uganda for training and certification of training programmes.

(4) The levy shall be calculated at a rate to be prescribed by the commission, in consultation with the Minister.”

#### 43. Amendment of section 95 of principal Act

Section 95 of the principal Act, is amended by substituting for “fifty thousand shillings” appearing in subsection (2), the words “three hundred thousand shillings”.

#### 44. Insertion of section 96A to principal Act

The principal Act is amended by inserting immediately after section 96 the following—

##### “96A. Protection from liability

(1) A member of the commission shall not be personally liable in respect of any act or omission done in good faith in the performance of his or her functions under this Act.

(2) An officer, a member of staff or any other person acting on behalf of the commission shall not be personally liable in respect of any act or omission done in good faith in the performance of his or her functions under this Act.”

#### 45. Amendment of section 97 of principal Act

Section 97 of the principal Act, is amended—

(a) by substituting for “two years” appearing in subsection (2), the words “five years”;

(b) by substituting for subsection (3) (c) the following—

“(c) is privy to the furnishing of any false information under this Act, commits an offence and is liable on conviction to a fine of not less than three million shillings or to a term of imprisonment of six years or both.”;

(c) by substituting for subsection (4) (b) the following—

“(b) a fine of not more than ten million shillings;”;

(d) by substituting for subsection (5) (b) the following—

“(b) a fine of not more than five hundred thousand shillings;”.

#### 46. Amendment of section 98 of principal Act

Section 98 of the principal Act, is amended by inserting immediately after paragraph (g) the following—

“(ga) relating to microinsurance;

(gb) providing for the corporate governance of persons licensed under this Act;

(gc) relating to health maintenance organisations;

(gd) providing for inspections to be carried out under this Act;

(ge) for prescribing for anything required by this Act to be prescribed;”.

#### PART XII—AMENDMENTS TO THE SCHEDULE TO THE PRINCIPAL ACT

#### 47. Amendment of Schedule to principal Act

The Schedule to the principal Act is amended by inserting immediately after paragraph 7 the following—

“(7a) A person licensed under the Insurance Act may petition the chairperson of the commission requesting that a member of the commission be excused from the proceedings, where the proceedings involve confidential business operations of that person, where the member to be excused is employed by a direct competitor of that person.

(7b) Where the person who petitions under paragraph (7a) is a person licensed under this Act, the petition may be made at the proceedings where the confidential business operations of that person is discussed.

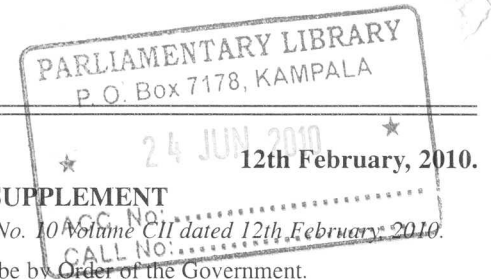
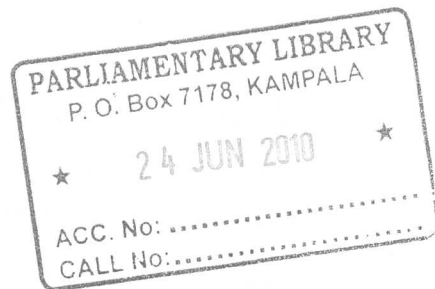
(7c) The Chairperson may using his or her discretion, allow the petition.”

#### 48. Insertion of new section 99

##### 99. Transitional provision

(1) The amendment made by section 4 (c) of this Act shall come into effect at the expiry of three years after the commencement of this Act.

(2) The amendments made by section 11 of this Act shall not apply to the commissioner of insurance in office, immediately before the coming into force of this Act.



## THE INSURANCE (AMENDMENT) BILL, 2010

### MEMORANDUM.

1. The object of this Bill is to amend the Insurance Act, Cap 213; to close the loopholes in the law; to correct the errors in the law; to ensure clarity of the law; to enhance corporate governance in the insurance sector; to enhance the development of the insurance sector and to provide for other connected purposes.
2. The Bill in particular seeks to delink the Insurance Commission from supervision by the Bank of Uganda and to bring it under the supervision of the Minister of responsible for finance.
3. The Bill also seeks to remove any ambiguities and to ensure clarity by defining the following technical terms that are used in Act but which are not defined; actuary, admitted assets, admitted liabilities, claim settling agent, director, document, insurance surveyor, licence, life insurance fund, loss assessor, micro insurance, non-life insurance fund, person, premium, principal officer and risk manager.
4. The Bill provides for health insurance as one of the classes of non-life insurance business to be regulated under the Insurance Act and prohibits the transaction of the business of life insurance and non-life insurance under a composite company.