Approved for tabling
SWA
2/10/19

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- THIRD SESSION (2019)

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF

i. **The Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019 (*Legal Notice No. 88 of 2019*); and**

ii. **The Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 (*Legal Notice No. 92 of 2019*);**

OCTOBER, 2019

Directorate of Committee Services
The National Assembly,
Parliament Buildings, Continental House, Room 402
NAIROBI.

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ABBREVIATIONS

LN	Legal Notice
RMA	Regulatory Making Authority
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

On the 21^{st} of June, 2019 and 2^{nd} July, 2019, the Principal Secretary for the National Treasury and Planning submitted fourteen (14) statutory instruments relating to the Budget for FY 2019/2020 for tabling in the National Assembly. They were all tabled on 21^{st} June, 2019 and 4^{th} July, 2019 and committed to the Committee on Delegated Legislation for consideration.

The Committee held several meetings to undertake the scrutiny. Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee invited the regulation making authority to a consultative meeting on 19^{th} and 20^{th} August, 2019 to consider the said statutory instruments which varied in subject matter, ranging from retirement benefits, insurance, public finance management, capital markets, excise duty, value added tax etc.

Having examined the various instruments against the Constitution of Kenya, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, the Statutory Instruments Act (*No 23 of 2013*) and the respective laws pursuant to which they are made, the Committee approved twelve (12) of the instruments and recommends to the House the annulment of two (2), for reasons advanced in this Report. These two are **the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations (*Legal Notice 88 of 2019*)** and **the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 (*Legal Notice 92 of 2019*).**

For information purposes, the approved instruments are as follows –

1. The Insurance (Valuation of Technical Provisions for Life Insurance Business) (Amendment) Guidelines, 2019 (*Legal Notice No. 82 of 2019*);
2. The Insurance (Capital Adequacy) (Amendment) Guidelines, 2019 (*Legal Notice No. 83 of 2019*);
3. The Tax Procedures (Unassembled Motor Vehicles and Trailers) Regulations, 2019 (*Legal Notice No. 84 of 2019*);
4. The Miscellaneous Fees and Levies (Forms) Regulations,2019 (*Legal Notice No. 85 of 2019*);
5. The Value Added Tax (Amendment) Regulations, 2019 (*Legal Notice No. 86 of 2019*);
6. The Retirement Benefits (Umbrella Retirement Benefits Schemes) (Amendment) Regulations, 2019 (*Legal Notice No. 87 of 2019*);
7. The Retirement Benefits (Individual Retirement Benefits Schemes) (Amendment) Regulations, 2019 (*Legal Notice No. 89 of 2019*);
8. The Insurance (Policyholders Compensation Fund) (Amendment) Regulations, 2019 (*Legal Notice No. 91 of 2019*);
9. The Insurance (Amendment) Regulations, 2019 (*Legal Notice No. 93 of 2019*);
10. The Excise Duty (EGMS) (Amendment) Regulations, 2019 (*Legal Notice No. 94 of 2019*); and
11. The Capital Markets (Securities) (Public Offers, Listing and Disclosures) (Amendment) Regulations, 2019 (*Legal Notice No. 95 of 2019*);

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4), it is my pleasure and duty to present to the House the Committee's **Report on the Consideration of the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations (*Legal Notice 88 of 2019*)** and **the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 (*Legal Notice 92 of 2019*).**

HON. GLADYS BOSS SHOLLEI CBS MP

1.0 PREFACE

1.1. Establishment and Mandate of the Committee

The Select Committee on Delegated Legislation is established pursuant to ***Standing Order No. 210*** and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.

The Committee is mandated to consider in respect of any statutory instrument, whether it:

a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
b) infringes on fundamental rights and freedoms of the public;
c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
d) contains imposition of taxation;
e) directly or indirectly bars the jurisdiction of the court;
f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
g) it involves expenditure from the consolidated fund or other public revenues;
h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
j) appears to have had unjustifiable delay in its publication or laying before Parliament;
k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
m) inappropriately delegates legislative powers;
n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
o) appears for any reason to infringe on the rule of law;
p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

Chairperson

Hon. Gladys Boss Shollei CBS MP
Uasin Gishu County Woman Representative
Jubilee Party

Vice- Chairperson

Hon. Fatuma Gedi, MP
Wajir County Woman Representative
Party for Development and Reforms

MEMBERS

Hon. Waihenya Ndirangu, MP
Roysambu Constituency
Jubilee Party

Hon. Alice Wahome, MP,
Kandara Constituency
Jubilee Party

Hon. Robert Mbui, MP
Kathiani Constituency,
Wiper Democratic Movement -Kenya

Hon. Daniel Maanzo, MP
Makueni Constituency
Wiper Democratic Movement -Kenya

Hon. Muriuki Njagagua, MP
Mbeere North Constituency
Jubilee Party

Hon. Timothy Wanyonyi, MP
Westlands Constituency
Orange Democratic Movement

Hon. George G. Murugara, MP
Tharaka Constituency
Jubilee Party

Hon. Ronald Tonui, MP
Bomet Central Constituency
Jubilee Party

Hon. William Kamoti, MP
Rabai Constituency
Orange Democratic Movement

Hon. Martha Wangari, MP
Gilgil Constituency
Jubilee Party

Hon. Gideon Mulyungi, MP
Mwingi Constituency
Wiper Democratic Movement – Kenya

Hon. William Kassait Kamket, MP
Tiaty Constituency
KANU

Hon. (Dr.) Wilberforce Oundo, MP
Funyula Constituency
Orange Democratic Movement

Hon. Jennifer Shamalla, MP
Nominated
Jubilee Party

Hon. Munene Wambugu, MP
Kirinyaga Central Constituency
Jubilee Party

Hon. Muturi Kigano, MP
Kangema Constituency
Jubilee Party

Hon. Patrick Kariuki Mariru, MP
Laikipia West Constituency
Jubilee Party

Hon. Sammy Seroney, MP
Nominated
Wiper Democratic Movement – Kenya

Hon. Tindi Mwale, MP
Butere Constituency
Amani National Congress

Hon. Alfred W. Sambu, MP
Webuye East
Amani National Congress

Hon. Abdi Koropu Tepo, MP
Isiolo South Constituency
Kenya Patriots Party

1.3 Committee Secretariat

Ms. Susan Maritim
Senior Clerk Assistant (Team Leader)

Mr. Jimale Mohamed
Second Clerk Assistant

Mr. Wilson Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Anne Njeri Kigoro
Research Officer III

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superitendent of Electronics

Ms. Mary Otieno
Office Superintendent

2.0 CONSIDERATION OF THE INSTRUMENTS

2.1 Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019

2.1.1 Introduction

1. The Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019 were made by the Cabinet Secretary Treasury pursuant to section 55 of the Retirement Benefits Act (No 3 of 1997).

2. The Regulations were published in the Gazette as *Legal Notice No 88* of 2019 on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled before the House on 21st June 2019. [1]

2.1.2 Purpose of the Regulations

3. The Regulations seek to amend various provisions of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000 (Legal Notice 119 of 2000) with the following implications –

   (i) To expand the requirements of the contents of the Scheme rules to include **the distribution of reserve funds to exiting members where the scheme maintains a reserve fund**;

   (ii) While Regulation 19(5)(a)(ii) of the Principal Regulations allows a person who opts to retire early to access his/her own contribution and fifty *per cent* (50%) of his employer's contribution and the investment income that has accrued in respect of those contributions, where he/she is a member of a defined contribution scheme, the amendment **seeks to delete these benefits to a person opting to retire early;**

   (iii) To limit a reserve fund where one is created, to a **maximum of five per cent of the total value of the scheme fund.**

2.1.3 Summary of the Regulations

4. The Regulations propose to amend the Principal Regulations, i.e. the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000 (LN 119/2000) by –

   (i) inserting the following new paragraph immediately after paragraph (0—

   (fa) the distribution of reserve funds to exiting members where the scheme maintains a reserve fund.

   (ii) deleting the words "and fifty percent of his employer's contribution and the investment income that has accrued in respect of those contributions" appearing in Regulation 19(5)(a)(ii) of the principal Regulations.

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[1] Annexure 1: LN 88 of 2019

(iii) deleting the word "may" and substituting therefor the word "shall" in paragraph (6) Regulation 25 of the principal Regulations.

(iv) deleting paragraph (2) of Regulation 33 of the principal Regulations and substituting therefor the following new proviso—

Provided that—

(i) a scheme shall not create and maintain a reserve fund that exceeds five percent of the total value of the scheme fund; and

(ii) the Authority may, in writing, require the trustees to adjust the reserve fund to such levels as it may determine.

2.1.4 Scrutiny of the Instrument

5. Pursuant to section 16 of the Act, the Committee held a meeting with the regulation making authority on 18th of August, 2019 in Mombasa where the authority made a presentation to the Committee on the proposed changes to the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000. The Authority further informed the Committee that pension sector stakeholders were consulted prior to amendments to the principal Regulations.

6. The Committee's attention was drawn to a memorandum addressed to the Committee dated 6 August, 2019 by **Mr. Eliud Ogutu**[2] who cited various violations of his rights as a member of the Stanbic Bank Kenya Ltd Staff Retirement Benefits Scheme. He observed that the amendment will deny him access to investment income accrued from his own contributions. He also cited lack of public participation by the regulation making authority.

7. Members weighed the pros and cons of the impact of the amendment, with some supporting while others expressing concerns that the amendment will frustrate members of pension schemes who wish to exit and use their contributions to increase their incomes or sustain themselves in absence of any other source of income.

2.1.5 Committee Observations

8. The Committee observed THAT –

(i) the Regulations were submitted to the National Assembly within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act having been published on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled on the 21st June, 2019;

(ii) the regulation making authority did not demonstrate sufficient public participation contrary to Articles 10 and 118 of the Constitution and section 5 and 5A of the SI Act on the Regulations. There was a complaint through a memorandum addressed to the Clerk of the National Assembly by a member of the public (Mr. Eliud Ogutu, a lawyer and Member of the Stanbic Kenya Retirement Benefits Scheme) detailing

[2] Annexure 2: Letter dated 6th August, 2019 by Mr. Eliud Ogutu

lack of public participation and how his rights are adversely affected by the Regulations.

(iii) the Regulations are likely to impose significant costs on the persons who may to opt for early retirement or change schemes hence ought to have been accompanied with a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act which should have been notified in the *Gazette* and in a newspaper likely to be read by members of the various occupational retirement benefits schemes under the Act, as required by section 8(1) of the Statutory Instruments Act.

(iv) contrary to section 13(k) of the Statutory Instruments Act, the Regulations makes rights, liberties or obligations unduly dependent upon non – reviewable decisions.

(v) contrary to section 13(m) of the Act, the Regulations make rights, liberties or obligations unduly dependent on insufficiently defined administrative powers as most decisions would be by the pension fund managers.

2.1.6 Committee Recommendation

9. Having examined the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations against the Constitution of Kenya, the Statutory Instruments Act (No 23 of 2013), the Retirement Benefits Act (No.3 of 1997 and the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, the Committee **recommends that the House <u>annuls in entirety</u> the said statutory instrument** for the following reasons –

(i) **insufficient public participation contrary to Articles 10 and 118 of the Constitution and section 5 and 5A of the SI Act.**

(ii) **the Regulations were not accompanied with a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act which should have been notified in the *Gazette* and in a newspaper likely to be read by members of the various occupational retirement benefits schemes under the Act, as required by section 8(1) of the Statutory Instruments Act.**

(iii) **contrary to section 13(k) of the Statutory Instruments Act, the Regulations makes rights, liberties or obligations unduly dependent upon non – reviewable decisions.**

(iv) **contrary to section 13(m) of the Act, the Regulations make rights, liberties or obligations unduly dependent on insufficiently defined administrative powers as most decisions would be by the pension fund managers.**

2.2 Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019

2.2.1 Introduction

10. The Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 were made by the Cabinet Secretary, National Treasury pursuant to section 18 of the Insurance (Motor Vehicles Third Party Risks) Act.

11. The Regulations were published in the Gazette as Legal Notice No 92 of 2019 on the 13^{th} of June, 2019, received by the Clerk of National Assembly on the 21^{st} of June, 2019 and tabled before the House on 21^{st} June 2019[3], being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

2.2.2 Purpose of the Regulations

12. The Regulations seek to amend Rule 3 (1) (a) of the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) Rules, 1999 (L.N. 10 of 1999) which provides for insurance of a motor vehicle used by fare paying passengers such as matatus, buses, taxis, private and public hire and self-drive vehicles. Rule no. 3(1) (d) provides for insurance of motor-cycles and motorized three wheeled used for social, domestic and leisure purposes.

13. Currently, motor vehicles (*boda boda*) and three-wheelers (*tuk tuks*) are the preferred mode of transport especially for low-income citizens. There has been a high rate of accidents occasioned by *boda boda*s leaving the injured fare-paying passengers with no recourse or access to medical services. The proposed amendment is, therefore, intended to entrench in the law the requirement for insurance in respect of *boda-boda* and *tuk-tuk* operators with a view to ensuring compliance and that all passengers, being this parties, are covered in the event of an accident.

14. The **implication is that all motorcycles and three-wheelers ferrying fare-paying passengers will be obligated to take out an insurance cover before they can ferry passengers.**

2.2.3 Scrutiny of the Instrument

15. Pursuant to section 16 of the SI Act, 2013, the Committee held a meeting with the regulation making authority on 19^{th} of August, 2019 where the National Treasury and Planning alongside the Insurance Regulatory Authority (IRA) informed the Committee that it undertook public participation which included formation of a taskforce consisting of members of staff of IRA, Association of Kenya Insurers and National Transport and Safety Authority. The mandate of the taskforce was to find out the risks involved in emerging motorcycle (*boda-boda*) and three-wheeler (*tuk-tuk*) business and the possible ways of mitigating the risks.

16. Other stakeholders that were consulted included the National *Boda-Boda* Association of Kenya, Competition Authority of Kenya, the County Government of Kiambu, the

[3] Annexure 3: LN 92 of 2019

Kenya Revenue Authority, the Motorcycles Assemblers Association, the Traffic Police, the National Hospital Insurance Fund and the National Social Security Fund.

2.2.4 Committee Observations

17. The Committee made the following observations –

(i) Statutory Timelines – Section 11 of the SI Act

The Regulations were submitted to the National Assembly within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (hereinafter referred to as the Act) having been published on the 13^{th} of June, 2019, received by the Clerk of National Assembly on the 21^{st} of June, 2019 and tabled on the 21^{st} June, 2019;

(ii) Consultation / Public participation – Section 5 of the SI Act

The Regulations contravene Articles 10 and 118 of the Constitution and sections 5, 5A, of the Statutory Instruments Act which require that the regulation-making authority conducts public participation and sufficient consultation with the stakeholders and persons likely to be affected by the Regulations.

The Report on stakeholders' submissions was not exhaustive thereby demonstrating that the public participation undertaken was insufficient.

(iii)Regulatory Impact Statement – Sections 6, 7 & 8 of the SI Act

Sections 6, 7, and 8 of the Act requires the regulatory-making authority to carry out a regulatory impact assessment and submit to Parliament a Regulatory Impact Statement if the proposed regulation has significant cost or impact to the community or a sect of the community.

The regulation making authority was not required to present a Regulatory Impact Assessment.

2.2.5 Committee Recommendation

18. Having examined the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 (*Legal Notice 92 of 2019*) against the Constitution of Kenya, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, the Insurance (Motor Vehicles Third Party Risks) Act (*Cap 405*) Laws of Kenya and the Statutory Instruments Act (*No 23 of 2013*), the Committee **recommends that the House <u>annuls in entirety</u> the said statutory instrument** for failing to demonstrate that sufficient public participation was undertaken, contrary to Articles 10 and 118 of the Constitution and sections 5, 5A and the Schedule to the Statutory Instruments Act.

3.0 COMMITTEE RECOMMENDATION[4]

19. Pursuant to Standing Order 210 (4) (b) and section 15 (1) of the Statutory Instruments Act and having examined **the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations (*Legal Notice 88 of 2019*)** and **the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 (*Legal Notice 92 of 2019*)** against the Constitution of Kenya, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, the Statutory Instruments Act (*No 23 of 2013*) and the respective laws pursuant to which they are made, the Committee **recommends that the House annuls in entirety the said statutory instruments.**

Signed...BBossSholleі... Date...02/10/2019...

HON. GLADYS BOSS SHOLLEI CBS MP

(CHAIRPERSON)

[4] Annexure 4 – Committee Minutes

ANNEXURE 1

COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST

Report on the Consideration of the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 (Legal Notice No. 92 of 2019) AND the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019 (Legal Notice No. 88 of 2019)

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 01/10/19

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei CBS MP (Chairperson)	[signature]
2.	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	[signature]
3.	Hon. Isaac Waihenya Ndirangu, MP	[signature]
4.	Hon. Robert Mbui, MP	
5.	Hon. Alice Wahome, MP	
6.	Hon. Daniel Maanzo, MP	[signature]
7.	Hon. Muriuki Njagagua, MP	
8.	Hon. Martha Wangari, MP	[signature]
9.	Hon. Timothy Wanyonyi, MP	[signature]
10.	Hon. William Kamoti Mwamkale, MP	
11.	Hon. Patrick Kariuki Mariru, MP	[signature]
12.	Hon. Ronald Kiprotich Tonui, MP	
13.	Hon. William Kassait Kamket, MP	
14.	Hon. Munene Wambugu, MP	[signature]
15.	Hon. George Gitonga Murugara, MP	[signature]
16.	Hon. Jennifer Shamalla, MP	[signature]
17.	Hon. Muturi Kigano, MP	
18.	Hon. (Dr.) Wilberforce Oundo, MP	
19.	Hon. Sammy Seroney, MP	[signature]
20.	Hon. Tindi Mwale, MP	
21.	Hon. Abdi Tepo, MP	
22.	Hon. Alfred Sambu, MP	

23. Hon. Gideon Mulyungi, MP

ANNEXURE I

ANNEXURE 2

MINUTES OF THE 44TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 24TH SEPTEMBER, 2019 AT 11.30 A.M. IN THE SMALL DINING ROOM, NEW WING, MAIN PARLIAMENT BUILDINGS

PRESENT

1. **The Hon. Fatuma Gedi, MP - Vice Chairperson**
2. The Hon. George Murugara, MP
3. The Hon. Alice Wahome, MP
4. The Hon. Patrick Mariru, MP
5. The Hon. Martha Wangari, MP
6. The Hon. Timothy Wanyonyi, MP
7. The Hon. (Dr.) Wilberforce Oundo, MP
8. The Hon. Gideon Mulyungi, MP
9. The Hon. Kassait Kamket, MP
10. The Hon. Sammy Seroney, MP

ABSENT WITH APOLOGY

1. **The Hon. Gladys Boss Shollei CBS MP - Chairperson**
2. The Hon. Robert Mbui, MP
3. The Hon. Ronald Tonui, MP
4. The Hon. Kamoti Mwamkale, MP
5. The Hon. Muriuki Njagagua, MP
6. The Hon. Waihenya Ndirangu, MP
7. The Hon. Munene Wambugu, MP
8. The Hon. Muturi Kigano, MP
9. The Hon. Jennifer Shamalla, MP
10. The Hon. Daniel Maanzo, MP
11. The Hon. Tindi Mwale, MP

ABSENT

1. The Hon. Alfred Sambu, MP
2. The Hon. Abdi Koropu Tepo, MP

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Jimale Mohamed - Second Clerk Assistant
3. Mr. Dima Dima - Principal Legal Counsel
4. Mr. Josphat Motonu - Fiscal Analyst I
5. Mr. Charles Ayari - Superitendent of Electronics (Audio)
6. Ms. Mary Otieno - Office Superintendent
7. Mr. Anthony Wamae - Serjeant at Arms
8. Mr. Brian Wechabe - Legal Intern

ANNEXURE 2

MIN.NO. /NA/CDL/2019/245 PRAYER AND RELIMINARIES

The meeting commenced at 11.45 a.m. with the Prayer.

MIN.NO. /NA/CDL/2019/246 ADOPTION OF THE AGENDA

The agenda was unanimously adopted without amendment.

MIN.NO. /NA/CDL/2019/247 CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Confirmation of Minutes of the 43rd sitting was deferred to the next meeting.

MIN.NO. /NA/CDL/2019/248 CONSIDERATION OF THE RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2019 – LEGAL NOTICE NO. 88 OF 2019

The Committee was informed the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019 are made by the Cabinet Secretary Treasury pursuant to section 55 of the Retirement Benefits Act (No 3 of 1997).

The Regulations were published in the Gazette as *Legal Notice No 88* of 2019 on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled before the House on 21st June 2019.

The Regulations seek to amend various provisions of the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019 with the following implications–

(i) To expand the requirements of the contents of the Scheme rules to include **the distribution of reserve funds to exiting members where the scheme maintains a reserve fund**;

(ii) While Regulation 19(5)(a)(ii) of the Principal Regulations allows a person who opts to retire early to access his own contribution and fifty *per cent* (50%) of his employer's contribution and the investment income that has accrued in respect of those contributions, where he is a member of a defined contribution scheme, the amendment seeks to delete this benefits to a person opting to retire early.

(iii) While it is currently discretionary, the proposed amendments seek to make it mandatory that scheme rules **shall** provide for the payment of retirement benefit by way of an income draw down, as an alternative or in addition to the purchase of annuity for members at retirement age:

(iv) To limit a reserve fund where one is created, to a **maximum of five per cent of the total value of the scheme fund.**

Pursuant to section 16 of the Act, the Committee met the regulation making authority on the 18th of August, 2019 in Mombasa in which the Committee raised the issue of public participation in light of the complaints received from the public in respect to the Regulations.

The regulatory body informed the Committee that it held consultations with various organisations including with retirees who appear to be currently suffering for having accessed their benefits early.

Committee Observations

The Committee observed THAT –

(i) the Regulations were submitted to the National Assembly within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act having been published on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled on the 21st June, 2019.

(ii) the regulation making authority did not demonstrate sufficient public participation on the Regulations. There were complaints through memorandum addressed to the Clerk of the National Assembly of a member of the public (Mr. Eliud Ogutu, a lawyer and Member of the Stanbic Kenya Retirement Benefits Scheme) detailing lack of public participation and how his rights are adversely affected by the Regulations.

(iii) the Regulations are likely to impose significant costs on the persons who may to opt for early retirement or change schemes hence ought to have been accompanied with a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act which should have been notified in the *Gazette* and in a newspaper likely to be read by members of the various occupational retirement benefits schemes under the Act, as required by section 8(1) of the Statutory Instruments Act.

(iv) contrary to section 13(k) of the Statutory Instruments Act, the Regulations makes rights, liberties or obligations unduly dependent upon non – reviewable decisions.

(v) contrary to section 13(m) of the Act, the Regulations make rights, liberties or obligations unduly dependent on insufficiently defined administrative powers as most decisions would be by the pension fund managers.

Committee Resolution

The Committee having scrutinized the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, the Committee resolved to **annul in entirety** the said Regulations for the following reasons –

(i) insufficient public participation contrary to Articles 10 and 118 of the Constitution and section 5 and 5A of the SI Act.

(ii) the Regulations were not accompanied with a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act which should have been notified in the *Gazette* and in a newspaper likely to be read by members of the various occupational retirement benefits schemes under the Act, as required by section 8(1) of the Statutory Instruments Act.

(iii)contrary to section 13(k) of the Statutory Instruments Act, the Regulations makes rights, liberties or obligations unduly dependent upon non – reviewable decisions.

(iv) contrary to section 13(m) of the Act, the Regulations make rights, liberties or obligations unduly dependent on insufficiently defined administrative powers as most decisions would be by the pension fund managers.

The decision to annul the Regulations was proposed by Hon. (Dr.) Wilberforce Oundo, MP, and seconded by Hon. Gideon Mulyungi, MP.

MIN.NO. /NA/CDL/2019/249 CONSIDERATION OF THE RETIREMENT BENEFITS (UMBRELLA RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2019 - LEGAL NOTICE NO. 87 OF 2019

The Committee was informed the Retirement Benefits (Umbrella Retirement Benefits Schemes) (Amendment) Regulations, 2019 are made by the Cabinet Secretary Treasury pursuant to section 55 of Retirement Benefits Act, 1997.

The Regulations were published in the Gazette as Legal Notice No 87 of 2019 on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled before the House on 21st June 2019, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The amendments are intended to allow contributions for post-retirement medical funds under the Umbrella Retirement Benefits Scheme. This implies that members of the Umbrella Benefits Schemes may make additional voluntary contributions to the umbrella scheme and on retirement transfer 10% of the accrued retirement benefits prior to commutation to a medical provider.

Committee Observations

The Committee observed THAT –

1) the Regulations were submitted to the National Assembly within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (*No 23 of 2013*); having been published on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled on the 21st June, 2019.

2) pursuant to section 16 of the Act, the Committee met the regulation making authority on the 18th of August, 2019 in Mombasa.

3) annexed to the Regulations is a copy of an explanatory memorandum indicating that the Authority exposed the changes to the pension sector stakeholders prior to seeking the amendment in the regulations. The regulation making authority therefore demonstrated sufficient public participation.

4) the Regulations do not require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act since they are intended to create harmony within the individual, Occupational and Umbrella Benefits Schemes Regulations which will not impose significant costs on the community or a part of the community.

5) the Regulations are beneficial to retirees due to the medical challenges faced by retirees when they retire. The Committee also noted that the Scheme is voluntary.

Committee Resolution

Having scrutinized the **Retirement Benefits (Umbrella Retirement Benefits Schemes) (Amendment) Regulations, 2019,** the Committee satisfied itself that the said statutory instrument is in accord with the Constitution of Kenya, the Statutory Instruments Act (No 23 of 2013) and the Retirement Benefits Act (No.3 of 1997), the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya pursuant to which it is made and therefore **approved** it.

The decision to approve the Regulations was proposed by Hon. (Dr.) Wilberforce Oundo, MP and seconded by Hon. Kassait Kamket, MP.

MIN.NO. /NA/CDL/2019/250 CONSIDERATION OF THE RETIREMENT BENEFITS (INDIVIDUAL RETIREMENT BENEFITS SCHEMES (AMENDMENT) REGULATIONS, 2019 - LEGAL NOTICE NO. 89 OF 2019

The Committee was informed that Retirement Benefits (Individual Retirement Benefits Schemes (Amendment) Regulations, 2019 are made by the Cabinet Secretary Treasury pursuant to section 55 of Retirement Benefits Act, 1997.

The Regulations were published in the Gazette as Legal Notice No 89 of 2019 on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled before the House on 21st June 2019, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The Regulations are intended to make provision for creation of reserve funds in defined contribution schemes. The rules of the scheme do not make provisions for distribution of the reserve fund funds at the end of the financial year or when members are exiting the scheme.

The allocation of such benefits has remained subjective and sometimes members exit without a consideration of the reserve fund entitlement. It is on that basis that the amendment is proposing that schemes that create reserves to make provision in the scheme rules for distribution of such reserves to exiting members.

Committee Observations

The Committee observed THAT –

(1) the Regulations were submitted to the National Assembly within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (*No 23 of 2013*); having been published on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled on the 21st June, 2019.

(2) the Regulations are archaic given that they exceed ten years contrary to section 22 (2) of the Statutory Instruments Act, 2013. The Authority however responded that the Office of the Attorney General advised that the said section of the SI Act affects instruments published after commencement of the Act.

(3) that the regulating making authority conducted sufficient public participation as demonstrated by the accompanying explanatory memorandum in accordance with section 5 of the SI Act and Articles 10 and 118 of the Constitution. Pension sector stakeholders were consulted.

(4) the Regulations do not require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act since they are intended to amend section 7 of the Retirement Benefits (Individual Retirement Benefits Schemes) Regulations, 2019 which will not impose significant costs on the community or a part of the community.

Committee Resolution

Having scrutinized the (**Individual Retirement Benefits Schemes (Amendment) Regulations, 2019,** the Committee satisfied itself that the said statutory instrument is in accord with the Constitution of Kenya, the Statutory Instruments Act (No 23 of 2013) and the Retirement Benefits Act (No.3 of 1997), the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya pursuant to which it is made and therefore **approved** it.

The approval was proposed by Hon. Alice Wahome, MP, and seconded by Hon. (Dr.) Wilberforce Oundo, MP

MIN.NO. /NA/CDL/2019/251 CONSIDERATION OF THE TAX PROCEDURES (UNASSEMBLED MOTOR VEHICLES AND TRAILERS) REGULATIONS, 2019 - LEGAL NOTICE NO. 84 OF 2019

The Committee was informed that the Tax Procedures (Unassembled Motor Vehicles and Trailers) Regulations, 2019 are made by the Cabinet Secretary Treasury pursuant to section 112 of the Tax Procedures Act, 2015.

The Regulations were published in the Gazette as Legal Notice No 84 of 2019 on the 17th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled before the House on 21st June 2019, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The Regulations seek to provide a new legal framework for importation of knocked-down kits for assembling of motor vehicles and trailers under the new tax legislation.

The Regulations seek to consolidate the Customs and Excise (Unassembled Motor Vehicles) Regulations, 1993 and Customs and Excise (Restricted Imports) (Commercial Trailers) (Order), 2002 to provide three levels of the knocked down kits and repeals the previous Regulations.

The Regulations update the Customs and Excise (Unassembled Motor Vehicles) Regulations, 1993 and Customs and Excise (Restricted Imports) (Commercial Trailers) (Order), 2002 and issue it under the current Tax Procedures Act, 2015.

Pursuant to section16 of the Act, the Committee met the regulation –making authority and the Kenya Revenue Authority on the 20th of August, 2019 in Mombasa.

Committee Observations

The Committee observed THAT –

1) the Regulations were submitted to the National Assembly within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (hereinafter referred to as the Act) having been published on the 17th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled on the 21st June, 2019.
2) on public participation, the regulation making authority held a meeting with the automotive stakeholders at State House Mombasa in January, 2019 in which matters pertaining to the revamping of the motor vehicle assembly in Kenya were discussed.
3) the Regulations will streamline the motor vehicle assembly industry by providing a legal framework for importation of knocked down kits by authorized importers and assemblers to support development of the automotive which will not impose significant costs on the community or a part of the community hence a Regulatory Impact Statement is not required.

Committee Resolution

Having scrutinized the **Tax Procedures (Unassembled Motor Vehicles and Trailers) Regulations, 2019**, the Committee satisfied itself that the said statutory instrument is in accord with the Constitution of Kenya, the Statutory Instruments Act (No 23 of 2013) and the Tax Procedures Act, 2015, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya pursuant to which it is made and therefore **approved** it.

The approval was proposed by Hon. (Dr.) Wilberforce Oundo, MP, and seconded by Hon. Patrick Mariru, MP.

MIN.NO. /NA/CDL/2019/252 CONSIDERATION OF THE MISCELLANEOUS FEES AND LEVIES (FORMS) REGULATIONS 2019 - LEGAL NOTICE NO. 85 OF 2019

The Committee was informed that the Miscellaneous Fees and Levies (Forms) Regulations, 2019 are made by the Cabinet Secretary Treasury pursuant to section 12 of the Miscellaneous Fees and Levies Act, No.29 of 2016.

The Regulations were published in the Gazette as Legal Notice No 85 of 2019 on the 17th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled before the House on 21st June 2019, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The Regulations seek to prescribe the Form which is a requirement under the Act for an importer to complete for all goods imported into the country for home use.

The Committee conferred with the regulation making authority on 20th of August, 2019 pursuant to section16 of the SI Act.

Committee Observations

The Committee observed THAT –

1) the Regulations were submitted to the National Assembly within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (hereinafter referred to as the Act) having been published on the 17th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled on the 21st June, 2019;
2) the Regulations arose out of stakeholder views during various budget sensitizations indicating the need to have Import Declaration Form prescribed and anchored in the Miscellaneous Fess and Levies Act, 2016 which imposes the import declaration fee; and
3) the Regulations do not require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act since they are prescribing the form which is a requirement under the Act which will not impose significant costs on the community or a part of the community.

Committee Resolution

Having scrutinized the **Miscellaneous Fees and Levies (Forms) Regulations 2019,** the Committee satisfied itself that the said statutory instrument is in accord with the Constitution of Kenya, the Statutory Instruments Act (No 23 of 2013) and the Miscellaneous Fees and Levies Act, No.29 of 2016, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya pursuant to which it is made and therefore **approved** it.

The approval was proposed by Hon. (Dr.) Wilberforce Oundo, MP and seconded by Hon. Kassait Kamket, MP.

MIN.NO. /NA/CDL/2019/253 CONSIDERATION OF THE INSURANCE VALUATION OF TECHNICAL PROVISIONS FOR LIFE INSURANCE BUSINESS) (AMENDMENT) GUIDELINES, 2019 - LEGAL NOTICE NO. 82 OF 2019

The Committee was informed that the Insurance Valuation of Technical Provisions for Life Insurance Business) (Amendment) Guidelines, 2019 are made by Insurance Regulatory Authority pursuant to section 3A (1) (g) of the Insurance Act.

The Regulations were published in the Gazette as Legal Notice No. 82 of 2019 on the 6th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled before the House on 21st June 2019, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The Regulations propose to amend Legal Notice No.38 of 2017 on valuation of technical provisions for life insurance business to review the capital charge and risk margin on interest rate in order to align it with the outcome of the study conducted by the Authority following a request by the Actuarial Society of Kenya. This was based on the effect the risk margins and the capital charge had on the market.

The Committee conferred with the regulation making authority on 20th of August, 2019 pursuant to section16 of the SI Act.

Committee Observations

The Committee observed THAT –

1) the Regulations were submitted to the National Assembly within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (*No 23 of 2013*); having been published on the 6th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled on the 21st June, 2019; and

2) on public participation, the regulatory body presented to the Committee a study report by The Actuarial Society of Kenya (TASK) through the Association of Kenya Insurers (AKI). The Authority also held a meeting with the Actuarial Society of Kenya Council Members on 30th November 2018 to discuss the said report.

   The Authority also conducted an independent study to determine whether the risk margins proposed by AKI and TASK meet the regulatory threshold in ensuring that the value of technical liabilities is adequate to withstand market volatility as well as the potential cost of transferring the liability to a third party. It therefore follows that all the interests of the stakeholders were taken into consideration.

Committee Resolution

Having scrutinized the Insurance Valuation of Technical Provisions for Life Insurance Business) (Amendment) Guidelines, 2019, the Committee satisfied itself that the said statutory instrument is in accord with the Constitution of Kenya, the Statutory Instruments Act (No 23 of 2013) and the Insurance Act, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya pursuant to which it is made and therefore **approved** it.

The approval was proposed by Hon. Alice Wahome, MP, and seconded by Hon. (Dr.) Wilberforce Oundo, MP.

MIN.NO. /NA/CDL/2019/254 **CONSIDERATION OF THE INSURANCE (CAPITAL ADEQUACY) (AMENDMENT) GUIDELINES, 2019, LEGAL NOTICE NO. 83 OF 2019**

The Committee was informed that the Insurance (Capital Adequacy) (Amendment) Guidelines, 2019 are made by Insurance Regulatory Authority pursuant to section 3A (1) (g) of the Insurance Act.

The Regulations were published in the Gazette as Legal Notice No 83 of 2019 on the 6th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled before the House on 21st June 2019, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The Regulations propose to amend Legal Notice No.39 of 2017 on capital adequacy to review the capital charge and risk margin on interest rate in order to align it with the outcome of the study conducted by the Authority following a request by the Actuarial Society of Kenya. This was based on the effect the risk margins and the capital charge had on the market.

The Committee conferred with the regulation making authority on 20th of August, 2019 pursuant to section16 of the SI Act.

Committee Observations

The Committee observed THAT –

1) the Regulations were submitted to the National Assembly within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (*No 23 of 2013*); having been published on the 6th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled on the 21st June, 2019;

2) on public participation, the regulatory body presented to the Committee a study report by The Actuarial Society of Kenya (TASK) through the Association of Kenya Insurers (AKI). The Authority also held a meeting with the Actuarial Society of Kenya Council Members on 30th November 2018 to discuss the said report.

   The Authority also conducted an independent study to determine whether the risk margins proposed by AKI and TASK meet the regulatory threshold in ensuring that the value of technical liabilities is adequate to withstand market volatility as well as the potential cost of transferring the liability to a third party. It therefore follows that all the interests of the stakeholders were taken into consideration.

3) the Regulations do not require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act since they are intended to provide for the mechanism of technical valuation for life insurance business. The guidelines will safeguard the interest of the policyholders and the members of the public in general and this will not impose significant costs on the community or a part of the community hence the Regulatory Impact Statement will not be required.

Committee Resolution

Having scrutinized the **Insurance (Capital Adequacy) (Amendment) Guidelines, 2019, the Committee** satisfied itself that the said statutory instrument is in accord with the Constitution of Kenya, the Statutory Instruments Act (No 23 of 2013) and the Insurance Act, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya pursuant to which it is made and therefore **approved** it.

The approval was proposed by Hon. Timothy Wanyonyi, MP, and seconded by Hon. (Dr.) Wilberforce Oundo, MP.

MIN.NO. /NA/CDL/2019/255 CONSIDERATION OF THE VALUE ADDED TAX (AMENDMENT) REGULATIONS, 2019 - LEGAL NOTICE NO. 86 OF 2019

Consideration of the Value Added Tax (Amendment) Regulations, 2019 was deferred to the next meeting.

MIN.NO. /NA/CDL/2019/256 CONSIDERATION OF THE ADJUSTMENT OF EXCISE DUTY RATES FOR INFLATION - LEGAL NOTICE 109 OF 2019

Consideration of Adjustment of Excise Duty Rates for Inflation was deferred to the next meeting.

MIN.NO. /NA/CDL/2019/257 ANY OTHER BUSINESS

1) **Retreat with Ministry of Petroleum & Mining**: Members were requested to confirm their availability for the retreat to be held on Monday, 30th September, 2019 in Machakos County with the Ministry of Petroleum & Mining to consider Petroleum Regulations.

2) **Foreign Travel**

(i) International Civil Aviation Organisation (ICAO) symposium (12 -14 Nov, 2019)

The Committee resolved to participate in the ICAO symposium on the Unmanned Aircraft Systems (Drones) in Montreal, Canada in November 2019. It was further resolved that priority would be accorded to Members who have only undertaken one foreign travel on the Committee's budget.

Using this criterion therefore, the following Members were nominated to participate in the Montreal, Canada visit –

1. Hon. Fatuma Gedi, MP
2. Hon. Patrick Mariru, MP
3. Hon. Kassait Kamket, MP

(ii) Tehran Tea Exhibition & Joint Delegation with Ministry of Foreign Affairs to resolve impasse on capping of tea prices (20 – 26 November 2019)

The following Members were nominated to attend the meeting

1. Hon. Munene Wambugu
2. Hon. Martha Wangari, MP
3. Hon. Waihenya Ndirangu, MP

MIN.NO. /NA/CDL/2019/258 ADJOURNMENT

There being no other business, the meeting was adjourned at 1.00 p.m. until Thursday 26th September 2019.

Signed: .... **Date:** 02/10/2019

HON. GLADYS BOSS SHOLLEI CBS MP

(CHAIRPERSON)

MINUTES OF THE 43RD SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 19TH SEPTEMBER, 2019 AT 11.30 A.M. IN THE COMMITTEE ROOM 12, MAIN PARLIAMENT BUILDINGS

PRESENT

1. The Hon. George Murugara, MP **(Chairing)**
2. The Hon. Martha Wangari, MP
3. The Hon. Waihenya Ndirangu, MP
4. The Hon. Alice Wahome, MP
5. The Hon. Patrick Mariru, MP
6. The Hon. Kamoti Mwamkale, MP
7. The Hon. Timothy Wanyonyi, MP
8. The Hon. Muriuki Njagagua, MP
9. The Hon. (Dr.) Wilberforce Oundo, MP
10. The Hon. Jennifer Shamalla, MP
11. The Hon. Munene Wambugu, MP
12. The Hon. Muturi Kigano, MP
13. The Hon. Kassait Kamket, MP
14. The Hon. Sammy Seroney, MP

ABSENT WITH APOLOGY

1. **The Hon. Gladys Boss Shollei CBS MP - Chairperson**
2. **The Hon. Fatuma Gedi, MP - Vice Chairperson**
3. The Hon. Robert Mbui, MP
4. The Hon. Ronald Tonui, MP
5. The Hon. Daniel Maanzo, MP
6. The Hon. Gideon Mulyungi, MP
7. The Hon. Tindi Mwale, MP

ABSENT

1. The Hon. Alfred Sambu, MP
2. The Hon. Abdi Koropu Tepo, MP

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Jimale Mohamed - Second Clerk Assistant
3. Mr. Dima Dima - Principal Legal Counsel
4. Mr. Josphat Motonu - Fiscal Analyst I
5. Mr. Charles Ayari - Superitendent of Electronics (Audio)
6. Ms. Mary Otieno - Office Superintendent
7. Mr. Anthony Wamae - Serjeant at Arms
8. Mr. Brian Wechabe - Legal Intern

MIN.NO. /NA/CDL/2019/234 PRAYER AND RELIMINARIES

The meeting commenced at 11.35 a.m. with the Prayer.

MIN.NO. /NA/CDL/2019/235 ADOPTION OF THE AGENDA

The agenda was unanimously adopted without amendment.

MIN.NO. /NA/CDL/2019/236 CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 42^{nd} sitting held on 17^{th} September, 2019 were proposed by Hon. Munene Wambugu, MP and seconded by Hon. Muriuki Njagagua, MP;

MIN.NO. /NA/CDL/2019/237 MATTERS ARISING

No other matter arose.

MIN.NO. /NA/CDL/2019/238 CONSIDERATION OF THE INSURANCE (AMENDMENT) REGULATIONS, 2019 – LEGAL NOTICE NO. 93 OF 2019

The Committee was informed that the Insurance (Amendment) Regulations, 2019 are made by the Cabinet Secretary Treasury and Planning pursuant to section 180 of the Insurance Act.

The Regulations were published in the Gazette as Legal Notice No. 93 of 2019 on the 13^{th} of June, 2019, received by the Clerk of National Assembly on the 21^{st} of June, 2019 and tabled before the House on 2^{1st} June 2019, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The Regulations are intended to align the Insurance Regulations to the changes effected on the Insurance Act to enable its effective implementation. The Finance Act, 2015 amended the Insurance Act to adopt a risk-based regime in which the soundness of an insurer is confirmed by use of capital adequacy as opposed to margin of solvency.

The Insurance (Amendment) Regulations, 2019 do not require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act since they are intended for realigning the Regulations with the insurance Act only concern policy holders who have premiums with insurance industries and are not likely to impose significant costs on the community or a part of the community .

Committee Observations

The Committee observed THAT –

(1) the Regulations were submitted to the National Assembly within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (*No 23 of 2013*); having been published on the 13^{th} of June, 2019, received by the Clerk of National Assembly on the 21^{st} of June, 2019 and tabled on the 21^{st} June, 2019.

(2) pursuant to section 16 of the Act, the Committee met the regulation making authority on the 18^{th} of August, 2019 in Mombasa. The Committee noted during the retreat in Mombasa that the Regulations were archaic given that they exceeded ten years contrary to section 22 (2) of the Statutory Instruments Act, 2013. The Authority responded that the Office of the Attorney General was on the matter and was advised that the said section of the SI Act affects instruments published after commencement of the Act.

(3) the regulatory body presented to Members that vide a letter dated 13th September 2018, they wrote to the following stakeholders;

- the Association of Kenya Insurers,
- the Insurance Institute of Kenya, the Policyholders Compensation Fund,
- the Retirement Benefits Authority,
- the Law Society of Kenya,
- Association of Brokers amongst others.

The Committee noted that the RMA conducted public participation by writing to various insurance associations and that the stakeholders responded which informed the policy changes effecting amendment to the Regulations.

(4) The Insurance (General) (Amendment) Regulations, 2019 do not require a Regulatory Impact Statement within the meaning of Sections 6, 7, and 8 of the Act since they only concern policy holders who have premiums with insurance industries and are not likely to impose significant costs on the community or a part of the community.

Committee Resolution

The Committee having scrutinized the Insurance (General) (Amendment) Regulations, 2019 satisfied itself that the said statutory instrument is in accord with the Constitution of Kenya, the Statutory Instruments Act (No 23 of 2013) and the Insurance Act, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya pursuant to which it is made and therefore **approved** it.

The approval was proposed by Hon. Jennifer Shamalla, MP, and seconded by Hon. Munene Wambugu, MP.

MIN.NO. /NA/CDL/2019/239 CONSIDERATION OF THE INSURANCE (MOTOR VEHICLE THIRD PARTY RISKS) (CERTIFICATE OF INSURANCE) (AMENDMENT) REGULATIONS, 2019 - LEGAL NOTICE NO. 92 OF 2019

The Committee was informed that the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 are made by the Cabinet Secretary, National Treasury pursuant to section 18 of the Insurance (Motor Vehicles Third Party Risks) Act.

The Regulations were published in the Gazette as Legal Notice No 92 of 2019 on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled before the House on 21st June 2019, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The Regulations seek to amend Rule 3 of the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) Rules, 1999.

The proposed amendment is intended to entrench in the law the requirement for insurance in respect of *boda boda* and *tuk tuk* operators with a view to ensuring compliance and that all passengers, being this parties, are covered in the event of an accident.

The implication is that all motorcycles and three-wheelers ferrying fare paying passengers will be obligated to take out an insurance cover before they can ferry passengers.

The Committee conferred with the regulation making authority on 19th of August, 2019 pursuant to section16 of the SI Act.

Committee Observations

The Committee observed THAT –

1) the Regulations were submitted to the National Assembly within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (hereinafter referred to as the Act) having been published on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled on the 21st June, 2019.

2) on publication participation, the regulation making authority informed the Committee that a taskforce was formed consisting of members of staff of the Insurance Regulatory Authority (IRA), the Association of Kenya Insurers (AKI) and the National Transport and Safety Authority (NTSA). The mandate of the taskforce was to find out the risks involved in emerging motor cycle and three-wheeler (*tuk tuk*) business and the possible ways of mitigating the risks.

   Members noted that the report on stakeholders' submissions was not exhaustive and therefore concluded that public participation undertaken was insufficient.

3) the regulation making authority was not required to present a Regulatory Impact Assessment.

Committee Resolution

Having examined the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, Insurance (Motor Vehicles Third Party Risks) Act and the Statutory Instruments Act (*No 23 of 2013*), the Committee resolved to **annul in entirety** the Regulations for failing to demonstrate that sufficient public participation was undertaken. The Regulations are therefore in contravention of Articles 10 and 118 of the Constitution and sections 5, 5A and the Schedule to the Statutory Instruments Act.

The decision to annul the Regulations was proposed by Hon. Jennifer Shamalla, MP, and seconded by Hon. (Dr.) Wilberforce Oundo, MP.

MIN.NO. /NA/CDL/2019/240 CONSIDERATION OF THE EXCISE DUTY (EXCISABLE GOODS MANAGEMENT SYSTEM) (AMENDMENT) REGULATIONS, 2019 - LEGAL NOTICE NO. 94 OF 2019

The Committee was informed that the Excise Duty (Excisable Goods Management System) (Amendment) Regulations 2019 are made by the Cabinet Secretary Treasury and Planning pursuant to section 45 of the Excise Duty Act, 2015.

The Regulations were published in the Gazette as Legal Notice No 94 of 2019 on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled before the House on 21st June, 2019, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The Regulations seek to amend the Excise Duty (Excisable Goods Management System) Regulations, 2017 which was necessitated by amendment of the First Schedule to the Act in 2018. The Finance Act, 2018 amended the First schedule to the Excise Duty Act, 2015 to provide clarity on the description of water which is exercisable. The amendment seeks to align the regulation with the Excise Duty Act, 2015 and provides that the Excise Stamp fee applicable on bottled water is Kshs 0.6. (read sixty cents).

Pursuant to section 16 of the Statutory Instruments Act that requires the Committee to confer with the regulation making authority, the National Treasury and Planning appeared before the Committee on Monday, 19th August, 2019, in Mombasa and made a presentation to the Members on the Insurance (Amendment) Regulations, 2019.

Committee Observations

The Committee observed THAT –

1) the Regulations were submitted to the National Assembly within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (*No 23 of 2013*); having been published on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled on the 21st June, 2019.
2) Pursuant to section16 of the Act, the Committee met the regulation –making authority and the Kenya Revenue Authority on the 20th of August, 2019 in Mombasa. The Committee noted that the Regulations were self-explanatory and appeared administrative in nature.
3) On public participation, there is attached to the Regulations an explanatory memorandum which details the conduct of public participation and /or consultation with the stakeholders and persons likely to be affected by the regulations. That Articles 10 and 118 of the Constitution requires public participation in law making and similar processes while sections 5, 5A and the Schedule to the Act and Standing Order 210 require the regulation –making authority to conduct sufficient consultation and demonstrate the outcome.
4) On Regulatory Impact Statement, the Regulations do not require a Regulatory Impact Assessment for purposes of generating a Regulatory Impact Statement within the meaning of section 6, 7 and 8 of the Act, since-
   (a) it is an amendment of a tax consistent with government policy pursuant to section 9(l) of the Act; and
   (b) they do not have significant cost or impact to the community or a sect of the community.
5) The regulations seek to amend the principal Regulations to be in consonance with the schedule to the Excise Duty Act as amended by the Finance Act, of 2018 to provide clarity on which category of water is subject to Excise Stamp fee applicable on bottled water.

Committee Resolution

Having scrutinized the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2019, the Committee satisfied itself that the said statutory instrument is in accord with the Constitution of Kenya, the Statutory Instruments Act (No 23 of 2013) and the Excise

Duty Act, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya pursuant to which it is made and therefore **approved** it.

The approval was proposed by Hon. Jennifer Shamalla, MP, and seconded by Hon. (Dr.) Wilberforce Oundo, MP.

MIN.NO. /NA/CDL/2019/241 CONSIDERATION OF THE CAPITAL MARKET (SECURITIES) (PUBLIC OFFERS, LISTING AND DISCLOSURES) (AMENDMENT) REGULATIONS 2019 - LEGAL NOTICE NO. 95 OF 2019

The Committee was informed that the Capital Market (Securities) (Public Offers, Listing and Disclosures) (Amendment) Regulations 2019 are made by the Cabinet Secretary, National Treasury and Planning pursuant to section 12 of the Capital Markets Act, (*Cap. 485A*).

The Regulations were published in the Gazette as Legal Notice No 95 of 2019 on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled before the House on 21st June, 2019, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The Regulations seek to create an efficient and facilitative regulatory framework to attract companies already listed on international exchanges to list on the Nairobi Securities Exchange. This is in line with Capital Market Authority's mandate to create deeper, more liquid domestic markets as recommended in the Capital Markets Master Plan.

Enhance investor protection by empowering the Authority to require issuers of securities to the public to publish any information that may be considered material to enable investors make informed choices in the companies that they invest in.

Committee Observations

The Committee observed THAT –

1) the Regulations were submitted to the National Assembly within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (*No 23 of 2013*); having been published on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled on the 21st June, 2019.
2) pursuant to section16 of the Act, the Committee met the regulation –making authority on the 20th of August, 2019 in Mombasa. The Committee noted that the Regulations are self-explanatory and appear administrative in nature.
3) Pursuant to section 16 of the Act, the Committee conferred with the National Treasury on Tuesday, 20th of August, 2019 in Mombasa.
4) the Committee raised the issue of lapse of time of the Regulations given the ten-year limit provided in the Statutory Instruments Act. The regulation making authority implored the Committee to consider the issue of retrospective operation of the law.
5) On public participation, the Authority submitted the Explanatory memorandum with the said documentation as instructed by the Committee with a list of participants attending their round table discussions.
6) On Regulatory Impact Statement, the Capital Markets (Securities) (Public Offers, Listings and Disclosures) (Amendment) Regulations, 2019 deals with companies listing

of local and foreign companies in the stock market and protection of the those investing in the stock market hence do not require a Regulatory Impact Statement since the proposed regulation has no significant cost or impact on the community or a section of the community.

Committee Resolutions

The Committee having scrutinized the Capital Market (Securities) (Public Offers, Listing and Disclosures) (Amendment) Regulations 2019 satisfied itself that the said statutory instrument is in accord with the Constitution of Kenya, the Statutory Instruments Act (No 23 of 2013), the Capital Markets Act and the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya pursuant to which it is made and therefore **approved** it.

The approval was proposed by Hon. Alice Wahome, MP, and seconded by Hon. Jennifer Shamalla, MP.

MIN.NO. /NA/CDL/2019/243 ANY OTHER BUSINESS

1) **Legal Notice 100 of 2019**: The Committee raised concerns about crackdown on LPG retailers, specifically in Murang'a County. The Committee was informed that the Ministry of Petroleum & Mining submitted the Petroleum (Liquefied Petroleum Gas), Regulations, 2019 (LN 100 of 2019) for consideration by the National Assembly. The Committee resolved to invite the Ministry of Petroleum & Mining to a meeting on **Monday, 30th September, 2019 in Machakos County** to consider the said business.
2) **Foreign Travel**: The Committee resolved to deliberate on foreign travel in the next meeting. It was further resolved that priority be accorded to the Members who have undertaken only one travel so far.

MIN.NO. /NA/CDL/2019/244 ADJOURNMENT

There being no other business, the meeting was adjourned at 12.28 p.m. until Tuesday, 24th September 2019.

Signed: ...BossShollei... **Date:** ...02/10/2019...

HON. GLADYS BOSS SHOLLEI CBS MP

(CHAIRPERSON)

MINUTES OF THE 37TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON MONDAY, 18TH AUGUST, 2018, AT 2.30 P.M. IN BAOBAB CONFERENCE ROOM AT SERENA BEACH RESORT, MOMBASA

PRESENT

1. **The Hon. George Murugara, MP - (Chairing)**
2. The Hon. Waihenya Ndirangu, MP
3. The Hon. Robert Mbui, MP
4. The Hon. Patrick Mariru, MP
5. The Hon. Ronald Tonui, MP
6. The Hon. Martha Wangari, MP
7. The Hon. Daniel Maanzo, MP
8. The Hon. Kamoti Mwamkale, MP
9. The Hon. Muriuki Njagagua, MP
10. The Hon. (Dr.) Wilberforce Oundo, MP
11. The Hon. Munene Wambugu, MP
12. The Hon. Muturi Kigano, MP
13. The Hon. Jennifer Shamalla, MP
14. The Hon. Gideon Mulyungi, MP
15. The Hon. Kamket Kassait, MP
16. The Hon. Tindi Mwale, MP

ABSENT WITH APOLOGY

1. The Hon. Gladys Boss Shollei CBS MP - Chairperson
2. The Hon. Fatuma Gedi, MP - Vice Chairperson
3. The Hon. Alice Wahome, MP
4. The Hon. Timothy Wanyonyi, MP
5. The Hon. Sammy Seroney, MP

ABSENT

1. The Hon. Alfred Sambu, MP
2. The Hon. Abdi Koropu Tepo, MP

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Jimale Mohamed - Second Clerk Assistant
3. Mr. Dima Dima - Principal Legal Counsel
4. Ms. Brigitta Mati - Legal Counsel I
5. Mr. Nimrod Ochieng - Audio Technician
6. Ms. Mary Otieno - Office Superintendent
7. Mr. Brian Wechabe - Legal Intern

The National Treasury and Planning

1. Hon. Nelson Gaichuhie - Chief Administrative Secretary
2. Mr. Wanyambura Mwambia - Senior Deputy Director, Macro Fiscal Affairs
3. Mr. Joseph Ngugi - Deputy Director, Macro Fiscal Affairs
4. Mr. Samuel G. Kinyua - Economist, National Treasury

Kenya Revenue Authority

Mr. Maurice Oray - Deputy Commissioner

Retirement Benefits Authority

1. Mr. Shem Ouma - Chief Manager, Research & Strategy
2. Mr. Lazarus Keizi - Manager, Retirement & Scheme

Capital Markets Authroity

1. Mr. Nyale Yanga - Ag. Manager, Corporate Affairs
2. Ms. Josephine Kangong'a - Assistant Manager, Regulatory Framework

MIN.NO. /NA/CDL/2019/196 PRAYER AND RELIMINARIES

The session resumed with at 2.30 pm, chaired by Hon. Robert Mbui, MP.

MIN.NO. /NA/CDL/2019/197 CONSIDERATION OF RETIREMENT BENEFITS (UMBRELLA RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2019 - LEGAL NOTICE NO. 87 OF 2019

Mr. Shem Ouma, Chief Manager, Research & Strategy informed the Committee THAT –

1) The Regulations seek to amend Regulation 22 of the Retirement Benefits (Umbrella Retirement Benefits Schemes) Regulations, 2017, by inserting new paragraphs immediately after paragraph (1) to allow contributions for post-retirement medical funds under Umbrella Retirement Benefits Schemes. This means that members of the Umbrella Retirement Schemes may make additional voluntary contributions to the umbrella scheme and on retirement transfer 10% of the accrued retirement benefits prior to commutation to a medical provider.
2) The amendment to allow contributions for post-retirement medical funds was only introduced in the Occupational Retirement Benefit Schemes Regulations and the Individual Retirement Benefits Schemes Regulations and not in Umbrella Retirement Benefits Schemes. This means that members of the Umbrella Retirement Schemes are excluded from funding a medical fund by making additional voluntary contributions and accessing the 10% provided prior to commutation to members of Individual and Occupational Retirement Benefits Schemes.
3) The Retirement Benefits Authority informed the Committee that the amendment was subjected to public participation. The Report to be availed to the Committee as soon as possible.

Way Forward

The Committee deferred decision making on the Regulations.

MIN.NO. /NA/CDL/2019/198 CONSIDERATION OF RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2019- LEGAL NOTICE NO. 88 OF 2019

The Regulations seek to amend Regulation 7 of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000 to ensure that members of retirement benefits schemes accumulate more savings to fund their activities in old age.

The Committee was informed that the preservation rule that was operational for more than 5 years was amended to allow for individuals to access 50% employers' and 100% employees' accumulated benefits in a defined contribution scheme, while in a defined benefit scheme, accesses 50% of the accrued benefits.

After the amendment in 2010, in a span of six months, more than Kshs. 2 billion was accessed by deferred members. The dilution of the preservation provision has seen many individuals depleting their accumulated benefits before they reach retirement, more so when changing jobs or leaving employment.

Retirement benefits savings are intended to be long term in nature and geared towards attaining a reasonable income replacement rate upon retirement. Members are therefore unable to receive adequate benefits at retirement as their accumulated benefits are depleted due to the partial access of benefits.

With the proposed amendment, members of defined contribution Occupational Retirement Benefits Schemes can now access only their contributions on leaving employment before attaining the retirement age. The employer's contribution will be preserved and continue to accrue interest and be accessed on retirement, emigration, or medical grounds. Workers can also transfer their contributions to a scheme of their choice.

RBA informed the Committee that pension sector stakeholders were consulted prior to amendments to the principal Regulations. The Authority was instructed to submit the Report on stakeholder consultations to the Committee as soon as possible.

Plenary discussions

1. RBA informed the Committee that pension sector stakeholders were consulted prior to amendments to the principal Regulations. The Authority was instructed to submit the Report on stakeholder consultations to the Committee as soon as possible.
2. Members weighed the pros and cons of the impact of the amendment, with some supporting while others expressing concerns that the amendment will frustrate members of pension schemes who wish to exit and use their contributions to increase their incomes or sustain themselves in absence of any other source of income.
3. **Petition by Eliud Ogutu:** the Committee's attention was drawn to a petition to the Committee dated 6 August, 2019 citing various violations of his rights as a member of

the Stanbic Bank Kenya Ltd Staff Retirement Benefits Scheme. He observed that the amendment will deny him access to investment income accrued from his own contributions. He also cited lack of public participation by the regulation making authority.

In response to Mr. Ogutu's submissions, the Authority stated that it undertook sufficient public participation and that the amendment was done in the interest of public good.

4. The Authority was implored upon to carry out public sensitization programmes on pension schemes and its benefits.

Way Forward

The Committee deferred decision making on the Regulations.

MIN.NO. /NA/CDL/2019/199 CONSIDERATION OF RETIREMENT BENEFITS (INDIVIDUAL RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2019 - LEGAL NOTICE NO. 89 OF 2019

The Regulations seek to amend Regulation 7 of the Retirement Benefits (Individual Retirement Benefits Schemes) Regulations, 2000 to make provision for creation of reserve funds in defined contribution schemes. This will ensure that all the members of the retirement benefits scheme are entitled to a share of the reserve fund when exiting the scheme.

The rules of the scheme do not make provisions for distribution of the reserve funds at the end of the financial year or when members are exiting the scheme. The allocation of such benefits has remained subjective and sometimes members exit without a consideration of the reserve fund entitlement. It is on that basis the amendment proposes that schemes that creates reserves to make provisions in the scheme rules for distribution of such reserves to exiting members.

Plenary discussions

1. The Authority was implored upon to carry out public sensitization programmes on pension schemes and its benefits.
2. RBA was instructed to also submit the Report on stakeholder consultations to the Committee as soon as possible.

Way Forward

The Committee deferred decision making on the Regulations.

MIN.NO. /NA/CDL/2019/200 CONSIDERATION OF THE CAPITAL MARKETS (SECURITIES) (PUBLIC OFFERS, LISTING AND DISCLOSURES) (AMENDMENT) REGULATIONS, 2019 – LEGAL NOTICE 95 OF 2019

The Regulations seek to **amend Regulation 10 and the Fifth Schedule of the Capital Markets (Securities) (Public Offers, Listing and Disclosures), 2002** to create an efficient and facilitative regulatory framework to attract companies already listed on international exchanges to list on the Nairobi Securities Exchange. The fast track listing process seeks to significantly reduce the time and cost it takes to attain a secondary listing on the NSE.

The Regulations will also enhance investor protection by empowering the Authority to require issuers of securities to the public to publish any information that may be considered material to enable investors make informed choices in the companies that they invest in.

Given that various exchanges have different requirements, it is proposed that the Authority be empowered to determine such additional disclosures that these foreign companies would need to disclose based on the requirements in their primary jurisdiction and the nature of the company that intends to list.

Regulation G.05 (1) of the Fifth Schedule of the Regulations gives a list of material information to which public announcements may be made. This closed list of material information under the regulations, limits issuers from making public announcement of information that could otherwise be categorized as material information. Further, to avoid the need for a lengthy breakdown of all that would be considered material a single proviso 'or any other material information' serves to adequately cater for the entire universe of material information. It is also worth noting that what may be considered material in one company may not be material in another company hence the need to allow the Authority to use its discretion to determine, what may be material to an issuer of securities to the public in addition to what is already provided in the Regulations

Stakeholder Consultations Outcome

The development of the Regulations was guided by submissions from various stakeholders following the Authority request for policy submissions in September 2018. The Authority similarly encouraged internal proposals amongst staff/departments to make submissions which are mainly informed by the practical experiences while interacting with the market.

Following the various submissions from both local and international stakeholders, as well as internal proposals, the Authority reviewed the submissions and identified those with potential positive impact on the growth of the country's capital markets. The Regulations were among the policy proposals that were identified and subjected to second round of public participation through round table engagements which were held at the Kenya School of Monetary Studies on 11th October 2019. More than 70% of the proposals tabled in the round table meeting were adopted by the stakeholders and where applicable the relevant regulations amended and refined.

The Authority maintains continuous engagement with stakeholders on areas where they may need further guidance when implementing the Regulations.

Impact

The Regulations will promote investor confidence in the market and seek to ensure that the market is transparent, fair, orderly and efficient. They will also promote investor confidence thereby enhancing attractiveness of the Kenya's capital markets to both local and foreign investors. To the public sector, the Regulations provide a framework for facilitative business environment by attracting investment to Kenya

Monitoring and Review

The Regulations require issuers of securities to the public to disclose to the Authority the occurrence of any material event within twenty-four hours of such event. Upon receipt of the information, the Authority shall, in addition to what is provided under the Regulations, make a determination on whether there is information that is material that needs to be published.

In addition, the Regulations require semi-annual reports from issuers which the Authority reviews to ensure that the necessary disclosures are in line with the Regulations. Monitoring roles and powers of the Authority are still applicable including the power to take enforcement actions against breach of these Regulations.

Plenary Discussions

1. The Authority was instructed to ensure that evidence of the consultations is availed to the Committee alongside the Explanatory Memorandum and the report on stakeholder consultations.

2. Reg. 10 of the Principal Regulations is ambiguous on disclosure of requirement for entities listed on a foreign securities exchange recognized by the Authority, this contravenes section 13(m) of SIA in appropriating delegated legislatives powers.

3. Members also inquired about the penalties on failure to meet obligations that are required by the Authority. The CEO responded that the Authority continues to enforce disclosure of material information both for local and foreign companies. Violation will be dealt with as provided for in the parent Act.

4. Members also noted that the principal Regulations are older than 10years contrary to section 22 (2) of the Statutory Instruments Act, 2013. The Authority responded that the Office of the Attorney General was on the matter and was advised that the said section of the SI Act affects instruments published after commencement of the Act.

Way Forward

The Committee deferred decision making on the Regulations.

MIN.NO. /NA/CDL/2019/201 ADJOURNMENT

The meeting was adjourned at 5.00 p.m. to be reconvened on Tuesday, 20th August, 2019 at 9.00am.

Signed: .... **Date:** ....02/10/2019.....

HON. GLADYS BOSS SHOLLEI CBS MP

(CHAIRPERSON)

MINUTES OF THE 36TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON MONDAY, 19TH AUGUST, 2018, AT 9.00 A.M. IN BAOBAB CONFERENCE ROOM AT SERENA BEACH RESORT, MOMBASA

PRESENT

The Hon. George Murugara, MP - **(Chairing)**
The Hon. Waihenya Ndirangu, MP
The Hon. Robert Mbui, MP
The Hon. Patrick Mariru, MP
The Hon. Ronald Tonui, MP
The Hon. Martha Wangari, MP
The Hon. Daniel Maanzo, MP
The Hon. William Kamoti, MP
The Hon. Muriuki Njagagua, MP
The Hon. (Dr.) Wilberforce Oundo, MP
The Hon. Munene Wambugu, MP
The Hon. Sammy Seroney, MP
The Hon. Muturi Kigano, MP
The Hon. Jennifer Shamalla, MP
The Hon. Gideon Mulyungi, MP
The Hon. Kamket Kassait, MP
The Hon. Tindi Mwale, MP

ABSENT WITH APOLOGY

1. **The Hon. Gladys Boss Shollei CBS MP - Chairperson**
2. **The Hon. Fatuma Gedi, MP - Vice Chairperson**
3. The Hon. Alice Wahome, MP
4. The Hon. Timothy Wanyonyi, MP

ABSENT

1. The Hon. Alfred Sambu, MP
2. The Hon. Abdi Koropu Tepo, MP

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Jimale Mohamed - Second Clerk Assistant
3. Mr. Dima Dima - Principal Legal Counsel
4. Ms. Brigitta K Mati - Second Legal Counsel
5. Mr. Nimrod Ochieng - Audio Technician
6. Ms. Mary Otieno - Office Superintendent
7. Mr. Brian Wechabe - Legal Intern

The National Treasury and Planning

1. Hon. Nelson Gaichuhie - Chief Administrative Secretary
2. Mr. Wanyambura Mwambia - Senior Deputy Director, Macro Fiscal Affairs
3. Mr. Joseph Ngugi - Deputy Director, Macro Fiscal Affairs
4. Mr. Samuel G. Kinyua - Economist

Kenya Revenue Authority

1. Mr. Maurice Oray - Deputy Commissioner
2. Mr. Victor Mino - Ag. Chief Manager

Insurance Regulatory Authority

1. Mr. Geoffrey K. Kiptum - Commissioner of Insuarance/CEO
2. Mr. Kalai Musee - Ag. Chief Manager, Technical
3. Mr. Elias Omondi - Actuarial Officer
4. Ms. Diana Sawe Tanui - Corporation Secretary & Chief Maker, Legal Affairs
5. Mr. Mathews Odero - Legal Officer
6. Mr. John Keah - Head of Secretariat, Policyholders Fund

Retirement Benefits Authority

1. Mr. Shem Ouma - Chief Manager, Research & Strategy
2. Mr. Lazarus Keizi - Manager, Retirement & Schemes

Capital Markets Authority

1. Mr. Nyale Yanga - Ag. Manager, Corporate Affairs
2. Ms. Josephine Kangong'a - Assistant Manager, Regulatory Framework

MIN.NO. /NA/CDL/2019/189 PRAYER AND RELIMINARIES

Pursuant to Standing Order 188, the Members present unanimously elected Hon. George Murugara, MP to chair the meeting. He thereafter called the meeting to order at 9.20 a.m. and requested Hon. Munene Wambugu, MP to pray.

The Committee unanimously approved the Programme for the retreat as presented, with amendments to session chairs.

MIN.NO. /NA/CDL/2019/190 OPENING REMARKS

Remarks by Ag. Chairperson Committee on Delegated Legislation

The Chairperson of the Committee on Delegated Legislation welcomed the team from the National Treasury & Planning led by the Chief Administrative Secretary, Hon. Nelson Gaichuhie to the meeting. The agencies represented were the Kenya Revenue Authority, the Insurance Regulatory Authority, Capital Markets Authority and the Retirement Benefits Authority. He then requested all participants to introduce themselves.

He thereafter invited Hon. Gaichuhie, the Chief Administrative Secretary, to make his remarks.

Remarks by Chief Administrative Secretary

Hon. Gaichuhie thanked the Committee for the invitation to confer on the Legal Notices. The various Legal Notices under discussion are meant to implement the FY 2019/2020. The CAS further emphasized the necessity of partnership between the Committee on Delegated Legislation and assured commitment in enhancing efficiency in service delivery to the public.

MIN.NO. /NA/CDL/2019/191 CONSIDERATION OF INSURANCE (VALUATION OF TECHNICAL PROVISIONS FOR LIFE INSURANCE BUSINESS) (AMENDMENT) GUIDELINES, 2019 – LEGAL NOTICE 82 OF 2019

Mr. Geoffrey Kiptum, CEO of Insurance Regulatory Authority informed the Committee THAT –

(i) Appendix 2 of the Insurance Valuation of Technical Provisions for Life Insurance Business) (Amendment) Guidelines, 2019 is amended by deleting the expression "20%" appearing in the row relating to interest rates and substituting therefor the expression "10%"

(ii) The guideline proposes to amend the principal Guideline to review the capital charge and risk margin on interest rate in order to align it with the outcome of the study conducted by the Authority.

(iii) The Association of Kenya Insurers (AKI), on behalf of the Life Insurance Companies in the industry communicated the negative impact of the interest rate risk margins of 20% as prescribed in The Insurance.

(iv) Consultations were conducted; the Authority consulted the insurers through the Association of Kenya Insurers and the Actuarial Society of Kenya where their views were incorporated into the draft Guidelines.

(v) The Authority conducted an independent study to determine whether the risk margins proposed by Association of Kenya Insurers and the Actuarial Society of Kenya meet the regulatory threshold in ensuring that the value of technical liabilities is adequate to withstand market volatility as well as the potential cost of transferring the liabilities to a third party.

Plenary discussions

1. **Interest Rates Risk Margin**

The Committee was informed that the Study Report on Interest Rates Risk Margin determines the Risk of 28% margin. The policyholders are protected by introducing the risk margin for validation purpose. The Risk Margins were computed using the VaR and Tail-VaR at various confidence intervals. Therefore, the lower the interest rate, the higher the risk.

Members sought to find out about comparative analysis in other jurisdiction particularly East Africa. In response, the Committee was informed that the 28% risk margin for valuation purposes and required capital determination purposes was recommended in the above Report.

UK and South Africa are using similar approach which the Authority has so far adopted it by reducing the risk margin to 10% from 20% and increase the margin applied for capital purposes to 18% from 10%.

The Committee was informed that East African countries are still using the net premium valuation. The Authority represents the interest of the public where independent analysis was conducted and capital of insurance companies was increased.

2. **Mode of Presentation**

The Committee urged the presenters to simplify the technical terms used in the presentation owing to the fact that not all participants are familiar with specific terms in each field of expertise.

Way Forward

The Committee deferred decision making on the Regulations

MIN.NO. /NA/CDL/2019/192 CONSIDERATION OF THE INSURANCE (POLICYHOLDERS COMPENSATION FUND) (AMENDMENT) REGULATIONS, 2019 – LEGAL NOTICE NO. 91

The Regulations seek to amend the principal Regulations, i.e., the Insurance (Policyholders Compensation Fund) (Amendment) Regulations, 2010 by deleting Regulation 11.

Provision of Insolvency of Insurance Company

1) The current Policyholders Compensation Fund is established under section 179(1) of the Insurance Act. Regulation 11 provides that the Board of the Fund shall not provide compensation to a policyholder under the Act unless the authorized insurance company that issued the Kenyan policy or policies has become insolvent. The Regulations further expounds the conditions under which an insurer shall be considered to be insolvent, most of which have since become obsolete by amendment of the Insurance Act as well as the Companies Act.

2) Since the Fund was established 2004 it has not made any compensation to the claimants even though four insurance companies have been put under statutory management. The Policyholders Compensation Fund will be capacitated to provide compensation to policyholders of authorized insurance companies that are placed under statutory management or which license has been cancelled by the Commissioner.

3) The proposed amendment to the Policyholders Compensation Fund Regulations is intended to enable effective implementation for the Insurance Act for purposes of protecting the insuring members of the public against the insurance companies that collapse or whose license are cancelled by the Commissioner.

4) The proposed amendment does not have a direct or substantial indirect effect on business and do not restrict competition.

5) The following stakeholders were invited to make recommendations by letter dated 13th September, 2018: - the Association of Kenya Insurers, the Insurance Institute of Kenya, the Policyholders Compensation Fund, the Retirement Benefits Authority, the Law Society of Kenya, Association of Brokers amongst others. The responses received from all the stakeholders informed the policy changes effecting amendment to enable operationalize payment of claims by Policyholders Compensation Fund.

Plenary discussions

(i) The Committee was informed that Kshs. 10B has accumulated in the Policyholders Compensation Fund and that the proposed amendments will ensure that the policyholders are compensate as required by law in a timely manner.

(ii) On stakeholder consultations, the Committee was informed that invitations were undertaken through the various insurance associations. The Law Society of Kenya was invited but did not submit its views.

(iii) Members also noted with concern that managers have in the past not done much to revive struggling insurers placed under statutory management. There is therefore need to ensure that such responsibilities are given to qualified personnel to guard the public interest.

(iv) It was also noted that the existing legal framework does not adequately support compensation of policy holders.

(v) The proposed amendment also has an effect on the Companies Act.

Way Forward

The Committee deferred decision making on the Regulation.

MIN.NO. /NA/CDL/2019/193 CONSIDERATION OF THE INSURANCE (MOTOR VEHICLES THIRD PARTY RISKS) (CERTIFICATE OF INSURANCE) (AMENDMENT) RULES, 2019 – LEGAL NOTICE NO. 92

The Regulations propose to amend Rule 3 of the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) Rules, 1999.

Rule 3(1) (a) provides for insurance of a motor vehicle used by fare paying passengers such as matatus, buses, taxis, private and public hire and self-drive vehicles. Rule no. 3(1) (d) provides for insurance of motor-cycles and motorized three wheeled used for social, domestic and leisure purposes.

Currently, motor vehicles (*boda boda*) and three-wheelers (*tuk tuks*) are the preferred mode of transport especially for low-income citizens. There has been a high rate of accidents occasioned by *boda boda*s leaving the injured fare-paying passengers with no recourse or access to medical services.

The proposed amendment is intended to entrench in the law the requirement for insurance in respect of *boda boda* and *tuk tuk* operators with a view to ensuring compliance and that all passengers, being this parties, are covered in the event of an accident.

The implication is that all motorcycles and three-wheelers ferrying fare paying passengers will be obligated to take out an insurance cover before they can ferry passengers.

Stakeholders' Consultations

Consultations were undertaken as follows: -

1) A taskforce was formed consisting of members of staff of IRA, Association of Kenya Insurers and National Transport and Safety Authority. The mandate of the taskforce was to find out the risks involved in emerging motor cycle and three-wheeler (tuk *tuk*) business and the possible ways of mitigating the risks.
2) The following stakeholders were consulted: - Association of Kenya insurers, National Boda Boda Association of Kenya, Completion Authority of Kenya, County Government of Kiambu, Kenya Revenue Authority, Motorcycles Assemblers Association, Traffic Police, National Hospital Insurance Fund and National Social Security Fund.
3) The amendment to the principal Regulations will ensure that motorcycles (boda boda) and three wheelers (tuk tuk) are included in the category of motor vehicles used for fare paying passengers.
4) The proposed Regulations do not have or direct or substantial indirect effect on business and do not restrict competition.

Plenary discussions

(i) On public participation, Members noted that the report on stakeholders' submissions was not availed to the Members. It was resolved that the Report be availed to the Committee through the secretariat.

(ii) It was proposed that insurance should also be extended to the maritime industry to cover boats and canoe to mitigate the high number of accidents in that sector without compensation and access to quality medical care. Members were also informed that maritime laws provide for insurance of boats.

(iii) It was clarified that an evaluation report is not required for motorcycles during application for insurance cover. The insurance premium to be paid is approximately Kshs. 2, 000 to 3,000 per annum.

(iv) IRA was implored upon to conduct adequate consumer education targeting *boda boda* riders, *tuk tuk* drivers and the general public.

MIN.NO. /NA/CDL/2019/194 CONSIDERATION OF THE INSURANCE (AMENDMENT) REGULATIONS, 2019 – LEGAL NOTICE NO. 93 OF 2019

The Regulations seek to amend the principal Regulations by **deleting Regulation 8** which provides for admitted liabilities which were the basis for determining the solvency of insurers in the erstwhile compliance-based regime. The Insurance Act has since been amended through the Finance Act, 2015 to adopt the risk-based regime in which the soundness of an insurer is confirmed by use of capital adequacy as opposed to margin of insolvency.

Amendments to the Insurance (Amendment) Regulations are intended to align the Insurance Regulations to the changes effected on the Insurance Act to enable its effective implementation.

The implication is that the insurance will aligned to the provisions in the substantive law in which the provisions for admitted assets and admitted liabilities have since been deleted.

The Regulations also seek to **amend Regulation 9 by deleting sub regulation (2)** and substituting with new sub regulation. This is because classes of long term insurance business were introduced after an amendment was effected to the Insurance Act. This was necessary to bring certainty in the law. The implication is that clear definition of the long-term classes of insurance business will enable effective operation of the law.

The Regulations also propose to **delete paragraph (a) of Regulation 17** and **paragraph (a) of Regulation 18.**

The amendment was purely administrative; however, the following stakeholders were invited to make recommendations by letter dated 13th Sep 2018: - the Association of Kenya Insurers, the Insurance Institute of Kenya, the Policyholders Compensation Fund, the Retirement Benefits Authority, the Law Society of Kenya, Association of Brokers amongst others. The responses received from all the stakeholders informed the policy changes effecting amendment to the Regulations.

The proposed regulations do not have a direct or a substantial indirect effect on business and do not restrict competition.

Plenary discussions

Members noted that the Regulations are older than 10years contrary to section 22 (2) of the Statutory Instruments Act, 2013. The Authority responded that the Office of the Attorney General was on the matter and was advised that the said section of the SI Act affects instruments published after commencement of the Act.

Way Forward

The Committee deferred decision making on the Regulations.

MIN.NO. /NA/CDL/2019/195 ADJOURNMENT

The meeting was adjourned at 12.30 p.m. to be reconvened the same day at 2.30 p.m., same venue.

Signed: .... **Date:** ...02/10/2019

HON. GLADYS BOSS SHOLLEI CBS MP

(CHAIRPERSON)

ANNEXURE 3

LEGAL NOTICE NO. 88

THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

IN EXERCISE of the powers conferred by section 55 of the Retirement Benefits Act, 1997, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2019

1. These Regulations may be cited as the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019. Citation.

2. Regulation 7 of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000, hereinafter referred to as the "principal Regulations", is amended by inserting the following new paragraph immediately after paragraph (f)— L.N. 119/2000

(fa) the distribution of reserve funds to exiting members where the scheme maintains a reserve fund.

3. Regulation 19 of the principal Regulations is amended in paragraph (5) is amended by deleting the words "and fifty percent of his employer's contribution and the investment income that has accrued in respect of those contributions" appearing in subparagraph (a) (ii).

4. Regulation 25 of the principal Regulations is amended in paragraph (6) by deleting the word "may" and substituting therefor the word "shall".

5. Regulation 33 of the principal Regulations is amended in paragraph (2) by deleting the proviso thereto and substituting therefor the following new proviso—

Provided that—

(i) a scheme shall not create and maintain a reserve fund that exceeds five percent of the total value of the scheme fund; and

(ii) the Authority may, in writing, require the trustees to adjust the reserve fund to such levels as it may determine.

Dated the 13th June, 2019.

HENRY ROTICH,
Cabinet Secretary for the National Treasury and Planning.

ANNEXURE 3

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Retirement Benefits Authority

RETIREMENT BENEFITS AUTHORITY

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THE RETIREMENT BENEFITS (UMBRELLA RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2019

Background

The amendment to allow contributions for post-retirement medical funds was only introduced in the Occupational Retirement Benefit Schemes regulations and the Individual Retirement Benefits Schemes regulations and not in Umbrella Retirement Benefits Schemes. This means that members of the Umbrella Retirement Schemes are excluded from funding a medical fund by making additional voluntary contributions and accessing the 10% provided prior to commutation to members of Individual and Occupational Retirement Benefits Schemes.

Legal context

The amendment allows contributions for post-retirement medical funds under Umbrella Retirement Benefits Schemes. This means that:

1. Umbrella retirement benefit schemes must provide for the making of additional voluntary contributions for purposes of funding a post-retirement medical fund.
2. Members of the Umbrella retirement benefit schemes who have been making additional voluntary contributions may on retirement transfer 10% of the accrued retirement benefits prior to commutation to a medical provider.

The amendment allows contributions for post-retirement medical funds under Umbrella Retirement Benefits Schemes. This means that members of the Umbrella Retirement Schemes may make additional voluntary contributions to the umbrella scheme and on retirement transfer 10% of the accrued retirement benefits prior to commutation to a medical provider.

Impact Assessment

The amendment seeks to create harmony within the Individual, Occupational and Umbrella Retirement Benefits Schemes regulations.

Public Participation

The Retirement Benefits Authority subjected the amendment to public participation.

LEGAL NOTICE 88 OF 2019

THE RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2019

Background

In September 2010, the "Preservation rule" that was operational for more than 5 years was amended to allow for individuals to access 50% employers' and 100% employees' accumulated benefits in a defined contribution scheme, while in a defined benefit scheme, a member accesses 50% of the accrued benefits. After the amendment in 2010, in a span of six months, over Ksh. 2 billion was accessed by deferred members. The dilution of the preservation provision has seen many individuals depleting their accumulated benefits before they reach retirement, more so when changing jobs or leaving employment.

The partial access of benefits reduces the accumulation of benefits in the long term especially where workers change jobs several times in their work history. Retirement benefits savings are intended to be long term in nature and geared towards attaining a reasonable income replacement rate upon retirement. Members are therefore unable to receive adequate benefits at retirement as their accumulated benefits are depleted due to the partial access of benefits.

Legal Context

1. Members of defined contribution occupational retirement benefits schemes can now access only their contributions on leaving employment before attaining the retirement age. The employer's contribution will be preserved and continue to accrue interest and be accessed on retirement, emigration, or medical grounds;
2. Members of umbrella retirement benefit schemes who leave employment before attaining early retirement age can now only access their own contribution. The employer's contribution will be preserved and continue to accrue interest and be accessed on retirement, emigration, or medical grounds.
3. Reserve funds held by Retirement Benefits Schemes is limited to a maximum of 5 per cent of the scheme fund except where the Authority has instructed Trustees in writing.

Impact analysis

Members of retirement benefits schemes will accumulate more savings to fund their activities in old age. This will reduce dependency syndrome.

Public Participation

The Retirement Benefits Authority exposed the changes to the pension sector stakeholders prior to seeking the amendment in the regulations.

LEGAL NOTICE 89 OF 2019

THE RETIREMENT BENEFITS (INDIVIDUAL RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2019

Background

The Individual and Occupational Regulations make provision for creation of reserve funds in defined contribution schemes. The rules of the scheme do not make provisions for distribution of the reserve funds at the end of the financial year or when members are exiting the scheme.

The allocation of such benefits has remained subjective and sometimes members exit without a consideration of the reserve fund entitlement. It is on that basis the amendment is proposing that schemes that create reserves to make provisions in the scheme rules for distribution of such reserves to exiting members.

Legal Context

Regulation 7 of the Retirement Benefits (Individual Retirement Benefits Schemes) Regulations, 2000 is amended by inserting the following new paragraph immediately after paragraph (k)—

(ka) the distribution of reserve funds to exiting members where the scheme maintains a reserve fund.

Impact analysis

All the members of the retirement benefits scheme will be entitled to a share of the reserve fund when exiting the scheme.

Public Participation

The Retirement Benefits Authority exposed the changes to the pension sector stakeholders prior to seeking the amendment in the regulations

(2) SUSAN please deal FA 08/8/19

(3) C. HEMINGWAY please note FA 08/8/19

1294

(1) D/Cmttes 8/8/19

eliudogutu

advocate | commissioner for oaths

6th August 2019

RECEIVED
08 AUG 2019
CLERK'S OFFICE

The Clerk of the National Assembly,
Parliament Buildings,
Parliament Road,
NAIROBI.

FAO: Chair, Committee on Delegated Legislation

Dear Sir,

Legal Notice Number 88 of 2019 dated 13th June, 2019:
The Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019.

I wish to record my objection to the publication of the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019 (the "**Amendment Regulations**") which were referred to your Committee by the National Assembly on the 25th June 2019 for consideration.

I am a member of a registered defined contribution pension scheme, the Stanbic Bank Kenya Limited Staff Retirement Benefit Scheme (the "**Pension Scheme**"), and my rights are adversely affected by the Amendment Regulations.

1. Background

The Cabinet Secretary for the National Treasury and Planning (the "**Cabinet Secretary**") has, through Legal Notice Number 88 of 2019 dated 13th June, 2019, published the Amendment Regulations which amended the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000 (the "**Regulations**").

2. Effect of the Amendment Regulations

As a member of the Pension Scheme, my vested rights are directly affected by Amendment Regulations in the following manner:-

2.1 Regulation 19 (5) (a) (ii) of the Regulations has been amended by the Amendment Regulations to now read as follows: "***the scheme rules shall provide that: where a member leaves employment after vesting of his benefits but before attaining the specified early retirement age, he may opt for payment of his own contribution where he is a member of a defined contribution scheme.***"

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advocate | commissioner for oaths

Prior to the amendment, the Regulation 19 (5) (a) (ii) read as follows: "***the scheme rules shall provide that: where a member leaves employment after vesting of his benefits but before attaining the specified early retirement age, he may opt for payment of his own contribution and fifty per cent of his employer's contribution and the investment income that has accrued in respect of those contributions, where he is a member of a defined contribution scheme.***"

2.2 The effect of this amendment is that where an employee's contract of employment is terminated before the employee has reached the retirement age provided for in the Trust Deed and/or the Pension/Provident Fund Rules:-

1. the employee will no longer be entitled to withdraw fifty (50) per cent of the employer's portion of contributions and the investment income gained from the employer's contributions until the employee attains the retirement age; and
2. the employee will no longer be entitled to the investment income gained from the employee's own contribution.

This fundamentally alters the previous position under the Regulations where an employee was entitled to his contribution in full plus fifty (50) per cent of the employer's contribution and the investment income that had accrued from the said contributions. The absurd situation here is that the employee cannot even access the investment income accrued from his own contributions even though he is allowed to withdraw his own contributions!

3. Lack of Public Participation

These amendments to the Regulations are far-reaching and should be subjected to public participation as required by Articles 10 (1) (b) and (c) and 10 (2) (a) of the Constitution of Kenya and Section 5 (1) (2) and (3), 6, 8, 9, and 11 of the Statutory Instruments Act. At no point has the Cabinet Secretary sought the views of the Pension Fund, or other members of pensions schemes at large, before publishing the Amendment Regulations.

The Cabinet Secretary failed to conduct public participation on the Amended Regulations despite the obvious impact of the same on personal financial planning and general well-being of members of pension schemes.

I understand that the Regulations were the brainchild of pension fund managers, ostensibly on the grounds that a lot of retirees leave employment with insufficient pension. However, it is obvious that the pension fund managers are acting out of self-interest since more funds under management means more management fees earned – to my detriment as a member of a pension scheme. These lobbying efforts should be curtailed to ensure that policy-making and legislation is all-inclusive and not aimed at benefiting certain sectors of society.

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4. Prayers

The Committee on Delegated Legislation is mandated to receive representations from affected members of the public in its oversight role to ensure good governance and accountability.

In the premises, it is my prayer that the Committee finds that the Amendment Regulations:-

1. are null and void and legally defective as they are in contravention of both the Constitution and the Statutory Instruments Act; and
2. be set aside, and the Cabinet Secretary be directed to immediately revoke the same.

It is my humble submission that you will favourably consider my prayers to forestall any unnecessary legal challenges by affected members of pension schemes.

Yours faithfully,

ELIUD OGUTU

P. O. Box 54556-00200
Nairobi, Kenya
eogutu@gmail.com

ANNEXURE 4

LEGAL NOTICE 92

LEGAL NOTICE NO. 91

THE INSURANCE ACT

(Cap. 487*)*

IN EXERCISE of the powers conferred by section 180 of the Insurance Act, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE INSURANCE (POLICYHOLDERS COMPENSATION FUND) (AMENDMENT) REGULATIONS, 2019

1. These Regulations may be cited as the Insurance (Policyholders Compensation Fund) (Amendment) Regulations, 2019. Citation.

2. The Insurance (Policyholders Compensation Fund) Regulations, 2010, are amended by deleting regulation 11. L.N. 86/2010

Dated the 13th June, 2019.

HENRY ROTICH,
Cabinet Secretary for the National Treasury and Planning.

LEGAL NOTICE NO. 92

THE INSURANCE (MOTOR VEHICLES THIRD PARTY RISKS) ACT

(Cap. 405*)*

IN EXERCISE of the powers conferred by section 18 of the Insurance (Motor Vehicles Third Party Risks) Act, the Cabinet Secretary for the National Treasury and Planning makes the following Rules—

THE INSURANCE (MOTOR VEHICLES THIRD PARTY RISKS) (CERTIFICATE OF INSURANCE) (AMENDMENT) RULES, 2019

1. These Rules may be cited as the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019. Citation.

2. Rule 3 of the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) Rules, 1999, is amended in paragraph (1) by inserting the words "and motorcycle and three-wheelers used by fare-paying customers" immediately after the words "self drive vehicles" appearing in paragraph (a). L.N. 10/1999

Dated the 13th June, 2019.

HENRY ROTICH,
Cabinet Secretary for the National Treasury and Planning.

LEGAL NOTICE NO. 92 OF 2019

THE INSURANCE (MOTOR VEHICLES THIRD PARTY RISKS) (CERTIFICATE OF INSURANCE) (AMENDMENT) RULES, 2019

Legislate the requirement for Motorcycles (boda boda) and Three-wheelers (tuk tuk) to take insurance cover for fare paying passengers

Amendment of Rule 3 of the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) Rules, 1999, is amended in paragraph (1) by inserting the words "and motorcycle and three-wheelers used by fare paying customers" immediately after the words "self-drive vehicles" appearing in paragraph (a).

Rule 3 provides that:

3. (1) A certificate of insurance shall—

(a) ***in the case of a motor vehicle used by fare paying passengers such as matatus, buses, taxis, private and public hire and self-drive vehicles, be in Form 1 in the First Schedule;***

(b) in the case of a motor vehicle being used for business such as tractors, lorries, trucks, pick-ups, trailers and dealers in, manufacturers or repairers of motor vehicles be in Form 2 in the First Schedule;

(c) in the case of private motor cars used for social, domestic and leisure purposes be in Form 3 in the First Schedule;

(d) ***in the case of motor-cycles and motorized three-wheelers used for social, domestic and leisure purposes be in Form 4 in the First Schedule;***

and shall be printed in square security printed disc in the manner specified in the Second Schedule:

Provided that the name of the policy-holder shall not be entered on the original certificate of insurance to be carried and displayed on the motor vehicle, but shall be entered only on the duplicate certificate.

(2) A certificate of insurance shall—

(a) be issued for a period commencing not earlier than the date on which liability under the insurance policy to which it relates commences and ending not earlier than the expiry date of such policy; and

(b) be issued only by an authorized employee of a licensed motor vehicle insurer.

Section 2 of the Insurance (Motor Vehicles Third Party Risks) defines **"motor vehicle"** as a *mechanically* propelled vehicle intended or adapted for use on roads, but does not include a steam traction engine, a steam roller or a vehicle constructed and intended for use exclusively on rails.

Rule 3 (1) (a) provides for *insurance* of ***a motor vehicle used by fare paying passengers such as matatus, buses, taxis, private and public hire and self-drive vehicles.***

Rule 3 (1) (d) provides for insurance of ***motor-cycles and motorized three-wheelers used for social, domestic and** leisure **purposes.***

Currently in Kenya motorcycles (*boda bodas*) and three-wheelers (*tuk tuks*) are the preferred mode of transport for most citizens and especially low-income citizens. There has been a *high* rate of accidents occasioned by *boda bodas* leaving the injured fare paying passengers with no recourse and or access to medical services. According to statics by the National Transport and Safety Authority, *boda boda* accident related injuries account for the highest number of accident victims. This means that vulnerable citizens are exposed to the vagaries of the road and they are more often than not unable to cater for medical treatment in an unfortunate event of an accident.

As indicated above, the *boda bodas* and *tuk tuks* are not indicated in the category of motor vehicles *used* by fare paying passengers thus leaving room for speculation as to whether they ought to take insurance cover or not. The law however provides for insurance cover for motor-cycles and motorized three-wheelers used for social, domestic and leisure purposes. This does not cure the dire social issue arising from *boda boda* and *tuk tuk* exposures as highlighted above.

Currently, *boda boda* operators take up insurance policies to cover their operations in the passenger ferrying business on a voluntary basis but there would be no solid basis for enforcement. Absence of such leaves the fare paying passengers at the mercy of those operators willing to take on insurance cover.

The proposal is intended to entrench in the law the requirement for insurance in respect to *boda boda* and *tuk tuk* operators with a view to ensuring compliance and that all passengers, being third parties, are covered in the event of an accident.

Implication: All motorcycles and three-wheelers ferrying fare paying passengers will be obligated to take out an insurance cover before they can ferry passengers.

Stakeholders' consultation

The proposed amendments in the above regulations are intended to firstly, clean up the existing provisions of the law and secondly, to enable effective implementation of the law in accordance with the intended purpose of providing insurance to fare paying passengers of motor cycles (boda, boda) and three-wheelers (tuk tuk).

In this case there were consultations in the following manner: -

1. A task force was formed consisting of members of staff of the Commissioner, Association of Kenya Insurers and National Transport and Safety Authority. The mandate of the taskforce was to find out the risks involved in the emerging motor cycle and three-wheeler (tuk tuk) business and the possible ways of mitigating the risks. The taskforce adopted a methodology of literature review, discussion with key stakeholders and study tours to other countries with a high prevalence of commercial motor cycles. Discussions were held with the following stakeholders-
    a. *Association of Kenya Insurer;*
    b. *National Boda Boda Association;*
    c. *Competition Authority of Kenya;*
    d. *County Government of Kiambu;*
    e. *Kenya Revenue Authority;*
    f. *Motorcycles Assemblers Association;*
    g. *Traffic Police;*
    h. *National Hospital Insurance Fund;*
    i. *National Social Security Fund.*

2. Amendment to the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules is a streamline of the Rules to ensure that motorcycles (boda boda) and three-wheelers (tuk tuk) are included in the category of motor vehicles used by fare paying passengers.

3. The proposed regulations do not have a direct or a substantial indirect effect on business and do not restrict competition.

INSURANCE REGULATORY AUTHORITY

IRA

(96)

Zep-Re Place Longonot Road,
7th Floor, Upper Hill,
P.O. Box 43505 - 00100, Nairobi, Kenya.
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Website: www.ira.go.ke

CFN/IRA/00/025/11

20th May 2015

Chief Executive Officer,
Association of Kenya Insurers,
AKI Centre, Mucai Drive,
NAIROBI

Dear Sir,

Attention: William Kiama

RE: DEVELOPMENT OF POLICY ON INSURANCE OF COMMERCIAL MOTORCYCLES

The Insurance Regulatory Authority is a state corporation established under the Insurance (Amendment) Act, No. 11 of 2006. It is mandated to regulate, supervise and develop the insurance industry in Kenya as well as to advise the government on the policy to follow in respect to insurance.

The emergence of commercial motor cycles (*boda bodas*) as an alternative mode of transport has not only made commuting easier, but has come with its share of challenges. Road traffic crashes, injuries and deaths involving *boda bodas* have become common place. The injuries cause disability and death as well as being a great socio-economic burden. This is putting a heavy financial strain on families, communities, health facilities and the Government.

The challenges posed by *boda bodas* are multi-faceted and require concerted efforts from all stakeholders. We have identified your organization as a key stakeholder which is capable of facilitating in the development of the policy paper.

The purpose of this letter is therefore to invite you for a half a day workshop on **Thursday, 4th June 2015** from **9.00 a.m.** to **1.00 p.m**. The venue will be College of Insurance, Red Cross Road, South C.

Please confirm your availability to Mary Nkoimu Tel 020 4996220 email: mnkoimu@ira.go.ke

Yours faithfully

SAMMY M. MAKOVE
COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER

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CFN/IRA/00/025/11

9th April 2015

Dr Stephen Muketha,
Chairman,
Kenya Tuktuk Boda Boda Motor Bike Welfare Association
Interfina House, 1st Floor,
Tom Mboya St, Nairobi, Rm 12
Email: tukbodabike@gmail.com
Cell: +254714130655, +254733666358

Dear Sir,

RE: DEVELOPMENT OF POLICY ON INSURANCE OF COMMERCIAL MOTORCYCLES

The Insurance Regulatory Authority is a state corporation established under the Insurance (Amendment) Act,No. 11 of 2006. It is mandated to regulate, supervise and develop the insurance industry in Kenya as well as to advise the government on the policy to follow in respect to insurance.

The emergence of commercial motor cycles (*boda bodas*) as an alternative mode of transport has not only made commuting easier, but has come with its share of challenges. Road traffic crashes, injuries and deaths involving *boda bodas*have become common place. The injuries cause disability and death as well as being a great socio-economic burden. This is putting a heavy financial strain on families, communities, health facilities and the Government.

In view of this, the Authority formed a multi-sectorial task force to develop a policy paper on Insurance of commercial motorcycles in Kenya so as to compensate victims of accidents caused by *boda bodas*.

We have identified your organization as a key stakeholder which iscapable of facilitating in the development of the policy paper.

The purpose of this letter is therefore to request for a meeting with you and the members of the taskforce on **Wednesday, 22ndApril 2015** in your offices at **12.00 noon**.

Please confirm your availability to Mary Nkoimu Tel 020 4996220 email: mnkoimu@ira.go.ke

Yours faithfully

SAMMY M. MAKOVE
COMMISSIONER OF INSURANCE &CHIEF EXECUTIVE OFFICER

95

INSURANCE REGULATORY AUTHORITY

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CFN/IRA/00/025/11

20th May 2015

Director General,
Competitions Authority of Kenya,
Kenya Railways Staff Retirement Benefit Scheme Block 'D', 1st Floor,
Haile Selassie Avenue,
P.O. Box 36265 – 00200,
NAIROBI.

Tel No. +254 20 2628233

Email: info@cak.go.ke

Dear Sir,

RE: STAKEHOLDERS' WORKSHOP TO DEVELOP A POLICY ON INSURANCE FOR COMMERCIAL MOTORCYCLES

The Insurance Regulatory Authority is a state corporation established under the Insurance (Amendment) Act, No. 11 of 2006. It is mandated to regulate, supervise and develop the insurance industry in Kenya as well as to advise the government on the policy to follow in respect to insurance.

The emergence of commercial motor cycles (*boda bodas*) as an alternative mode of transport has not only made commuting easier, but has come with its share of challenges. Road traffic crashes, injuries and deaths involving *boda bodas* have become common phenomena. The injuries cause disability and death as well as being a great socio-economic burden. This is putting a heavy financial strain on families, communities, health facilities and the Government.

The challenges posed by *boda bodas* are multi-faceted and require concerted efforts from all stakeholders. We have identified your organization as a key stakeholder which is capable of facilitating in the development of a Policy Paper on insurance of motorcycles.

The purpose of this letter is therefore to invite you for a half a day workshop on **Thursday, 4th June 2015** from **9.00 a.m**. to **1.00 p.m**. The venue will be College of Insurance, Red Cross Road, South C.

Please confirm your availability to Mary Nkoimu Tel 020 4996220 email: mnkoimu@ira.go.ke

Yours faithfully

SAMMY M. MAKOVE
COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER

(93)

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20th May 2015

Eng. Njeri Gatabaki-Mburu,
County Executive Board Member,
Roads and Transport, Public Works and Services,
County Government of Kiambu,
P.O Box 189,
KIAMBU.

Tel: 067 5858167/171

Dear Madam,

RE: DEVELOPMENT OF POLICY ON INSURANCE OF COMMERCIAL MOTORCYCLES

The Insurance Regulatory Authority is a state corporation established under the Insurance (Amendment) Act, No. 11 of 2006. It is mandated to regulate, supervise and develop the insurance industry in Kenya as well as to advise the government on the policy to follow in respect to insurance.

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Yours faithfully

SAMMY M. MAKOVE
COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER

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CFN/IRA/00/025/11

20th May 2015

Commissioner General,
Kenya Revenue Authority,
Times Towers, Haile Selassie Avenue,
P.O. Box 48240 - 00100,
NAIROBI

Telephone: +254 20-2810000

Dear Sir,

RE: DEVELOPMENT OF POLICY ON INSURANCE OF COMMERCIAL MOTORCYCLES

The Insurance Regulatory Authority is a state corporation established under the Insurance (Amendment) Act, No. 11 of 2006. It is mandated to regulate, supervise and develop the insurance industry in Kenya as well as to advise the government on the policy to follow in respect to insurance.

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SAMMY M. MAKOVE
COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER

98

INSURANCE REGULATORY AUTHORITY

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Website: www.ira.go.ke

20th May 2015

Dr. Isaac Kalua,
Chairman,
Motorcycles Assemblers Association of Kenya,
Honda Motorcycles Kenya,
P.O Box 3387 - 00506,
NAIROBI.

Email: Isaac.Kalua@honda-eu.com

Dear Sir,

RE: DEVELOPMENT OF POLICY ON INSURANCE OF COMMERCIAL MOTORCYCLES

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COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER

97

INSURANCE REGULATORY AUTHORITY

IRA

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E-mail: commins@ira.go.ke
Website: www.ira.go.ke

20th May 2015

Traffic Commandant
NAIROBI Area.

Mobile No. +254 721898330

Dear Sir,

RE: DEVELOPMENT OF POLICY ON INSURANCE OF COMMERCIAL MOTORCYCLES

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Yours faithfully

SAMMY M. MAKOVE
COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER

INSURANCE REGULATORY AUTHORITY

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CFN/IRA/00/025/11

20th May 2015

Managing Trustee,
National Social Security Fund,
P.O. Box 30599 – 00100,
NAIROBI.

Cell Phone: 0722-204192, 0734-699926, 0734-333238

Dear Sir,

Attention: Pius Metto

RE: DEVELOPMENT OF POLICY ON INSURANCE OF COMMERCIAL MOTORCYCLES

The Insurance Regulatory Authority is a state corporation established under the Insurance (Amendment) Act, No. 11 of 2006. It is mandated to regulate, supervise and develop the insurance industry in Kenya as well as to advise the government on the policy to follow in respect to insurance.

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Yours faithfully

SAMMY M. MAKOVE
COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER

INSURANCE REGULATORY AUTHORITY

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10

CFN/IRA/00/025/11

20th May 2015

Chief Executive Officer,
National Hospital Insurance Fund,
P.O. Box 30443 – 00100,
NAIROBI.

Tel No. +254-20 – 2723255/6

Dear Sir,

Attention: Richard Sigei

RE: STAKEHOLDERS' WORKSHOP TO DEVELOP A POLICY ON INSURANCE FOR COMMERCIAL MOTORCYCLES

The Insurance Regulatory Authority is a state corporation established under the Insurance (Amendment) Act, No. 11 of 2006. It is mandated to regulate, supervise and develop the insurance industry in Kenya as well as to advise the government on the policy to follow in respect to insurance.

The emergence of commercial motor cycles (*boda bodas*) as an alternative mode of transport has not only made commuting easier, but has come with its share of challenges. Road traffic crashes, injuries and deaths involving *boda bodas* have become common phenomena. The injuries cause disability and death as well as being a great socio-economic burden. This is putting a heavy financial strain on families, communities, health facilities and the Government.

The challenges posed by *boda bodas* are multi-faceted and require concerted efforts from all stakeholders. We have identified your organization as a key stakeholder which is capable of facilitating in the development of a Policy Paper on insurance of motorcycles.

The purpose of this letter is therefore to invite you for a half a day workshop on **Thursday, 4th June 2015** from **9.00 a.m**. to **1.00 p.m**. The venue will be College of Insurance, Red Cross Road, South C.

Please confirm your availability to Mary Nkoimu Tel 020 4996220 email: mnkoimu@ira.go.ke

Yours faithfully

SAMMY M. MAKOVE
COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER

Such an arrangement is normally used where risks are uninsurable in the open market, or due to the general unattractiveness of such risks to conventional insurers for one reason or another. (Insurance Regulatory Authority, 2009). The mutual insurance concept is akin to a cooperative society or Savings and Credit Cooperative (SACCO).

The government can take advantage of the existence of the associations and organize the *boda boda* operators to form a mutual insurance company to manage the risks arising out of the business. Further, the NTSA requires boda bodas to form associations of at least 100 operators.

5.2.1.1 Legal Framework

- The mutual to be under the purview of the Insurance Regulatory Authority.
- There is no provision for mutual insurance companies under the Insurance Act, CAP 487.
- In order to allow for the licensing and operation of mutual companies, there is need to amend the Insurance Act to create provisions for their supervision.
- The risks to be managed based on insurance principles and funded by premiums.
- The mutual insurance company to cover exclusively risks associated with *boda boda* business. These include own damage, third party, medical expenses, personal accident, last expense and life covers.
- The mutual insurance company may be owned by the national association of *boda bodas* where the county associations have representation.
- Where this option is adopted, the IRA may consider commissioning a study in jurisdictions which supervise mutuals.

5.2.2 Evaluation

5.2.2.1 Merits

- As the mutual will not be profit driven, premiums are bound to be affordable to the *boda boda* operators.
- This is bound to lead to improved risk management due to convergence of ownership and the relevant insurance mechanism.
- Will offer a clear sense of ownership, hence individual commitment to the survival of the mutual.
- Will offer high economies of scale due to the high business volume.
- Will tap revenue from a guaranteed captive market.
- Will lead to improved service delivery as the mutual will be committed to honoring its obligations and offering timely claims settlement to its members.
- Will encourage adherence to traffic rules.
- The associations may be used as channels for distributing insurance to their members thus increasing insurance penetration in the country.
- Develop community spirit as mutual companies are cooperative ventures. Policyholders / owners would feel comfortable dealing with a mutual company which they are part of.

5.2.2.2 Demerits of a Mutual

- It may take some time to raise additional funds should the need arise for expansion.
- In contrast to conventional shareholder controlled corporates, there is lack of a core owner to provide business vision and exercise essential control.
- If not well structured and governed, there is the risk of poor corporate governance.

5.2.3 Compulsory Pools for Boda Bodas

Under this arrangement, the existing *boda bodas* associations will be organized into formal groups and registered. The government will then compel the associations to form a common pool to manage the risks associated with their business at the national level.

5.2.3.1 Legal Framework

- Establishment of a statutory compulsory pool to manage the risks associated with *boda boda* business.
- Amendment of the Insurance Act to allow supervision of insurance pools.

5.2.4 Evaluation

5.2.4.1 Merits of Pools

- Mandatory and no free exits, hence assuring long term sustainability.
- Existence of economies of scale due to the large number of *boda bodas* in the country.
- Ability to generate data for underwriting purposes.
- Pooling of resources and sharing of liabilities.
-

5.2.4.2 Demerits of Pools

- This may lead to establishment of a monopoly, unless more than one pool is established. This is contrary to the principles of a free market economy.
- There may be no clear sense of ownership.

5.2.5 Road Accident Compensation Levy

This involves establishment of a fund through a levy to be charged on fuel (Insurance Regulatory Authority, 2009). The collected funds can be used to compensate victims, including the rider of *boda boda* accidents. Funding can also be partly derived from other sources such as registration of *boda bodas* and licensing fees, inspection fees, traffic offence fines etc.

5.2.5.1 Legal Framework

- A margin to be loaded on the fuel price per litre and the amount collected to be remitted to the body to be established.

5.2.6 Evaluation

5.2.6.1 Merits

- Will provide a guaranteed source of funds to meet liabilities.
- Timely collection of funds and payment of claims.
- Provides certainty on the expected level of compensation based on an inbuilt structured mechanism.
- As funding will be derived from indirect taxation (fuel levy) the cost implications may not be easy to discern, hence may not be contentious.
- Offers protection to all victims of *boda boda* accidents.

5.2.6.2 Demerits

- The body could be exposed to serious mismanagement or abuse.
- The body would be susceptible to inherent internal inefficiencies in state corporations, thus rendering payment of compensation highly bureaucratic and inefficient.
- There could be resistance to imposition of a compulsory levy.
- Absence of a 'no-fault' system would lead to unsustainable legal costs.

6.0 Policy Recommendations

The Authority proposes establishment of a mutual insurance company. This seems a compelling and workable option as the conventional insurance industry has largely shied away from covering risks associated with *boda bodas* despite a huge potential for business.

Mutuals are usually formed by a defined group of people for a defined purpose. Currently, there are *boda boda* associations where members contribute a small amount on a monthly basis from which pay-outs are made to those suffering risk events. In essence, this is a form of risk pooling.

The Insurance Regulatory Authority in partnership with other stakeholders can aid these associations to develop formal insurance. The associations can be used in various ways to provide insurance services to their members. These include:

- The associations may be used as channels for distributing insurance to their members thus increasing insurance penetration in the country.
- The associations may be used to collect premiums and remit to the mutual insurance company, thus making it cost effective.
- The associations can be used to collect documents required for claims processing, thus ensuring compensation is done in a timely manner.
- The associations can reinforce trust in the insurance products by the members.
- The association can be insured as a group policyholder as opposed to individuals. This can reduce the cost of insurance and the association maintains records of its members.
- The associations can have a close relationship with and amongst the members which aids in understanding the needs of the members as well as managing the risk of fraudulent claims.
- The associations can be used for member selection and reducing insurance risks such as fraud, over-usage and moral hazard.
- The associations can be used to provide other complimentary services such as training members on safety, health or other services that compliment insurance services. This leads to improved risk management making the business attractive to the insurance industry.

- The associations can act as a means of reducing costs and making insurance more affordable by being an aggregator of members to support product delivery.

Adopting this option therefore does not require a lot of resources. There are some strategic partners who are interested in safety of road users and may be willing to finance this initiative. These include World Bank and World Health Organization.

7.0 Policy Implementation

There is need to promote alternative modes of mobility (*boda bodas)* to ensure that goods, services and people move from one point to another with much ease and convenience. There is however need to ensure that these modes of transport are safe. Addressing the safety of pedestrians, cyclists and motor cyclists is critical to successfully reducing the total number of global road traffic deaths. (World Health Organization, 2013)

WHO estimates that, unless immediate action is taken, road traffic injuries will rise to become the fifth leading cause of death by 2030. In addition to fatalities, many less severe injuries are caused by road traffic crashes. These non-fatal injuries are an important cause of disability. According to WHO, the vulnerable groups are pedestrians, cyclists and motor cyclists.

There are sufficient legislations and laws on road safety in the country. The challenge is implementation of the same. New traffic rules may not add any value in reducing the intensity of accidents on Kenyan roads, unless properly designed and implemented (Manyara, 2013). There is also need to step up full and meaningful participation by stakeholders so as to address the challenges caused by *boda boda* business effectively.

7.1 Institutional Framework

The stakeholders in the *boda boda* sub-sector have been divided into two categories based on the role that they play; preventive and reactive.

7.1.1 Preventive Role

These are the organizations that play a preventive role by putting in place measures that reduce the frequency of accidents, and / or should an accident happen, the impact is minimized.

7.1.1.1 Ministry of Transport

- The Ministry of Transport may consider establishing specific lanes for *boda bodas.* In Busia, a different bicycle lane was established and this led to a tremendous reduction in accidents (Ochieng & Egessa,, 2003). An increase in the number of *boda bodas* in the region has led to congestion thus making the lane narrow.

- Ensure that the roads are in good condition with proper sign boards.

7.1.1.2 National Transport and Safety Authority

- Develop rules and regulations for the operations of *boda bodas.*
- Develop curriculum for driving schools for *boda boda* riders.
- Ensure that only registered driving schools offer training to *boda boda* riders.
- In partnership with other stakeholders, develop a national strategy on creation of awareness on road safety and insurance
- Coordinate implementation of the national strategy on road safety and insurance awareness.
- Issue *boda boda* riders with annual driving licenses.
- In partnership with the county governments, ensure that *boda boda* riders have Certificates of Good Conducts (CGC).
- In partnership with the traffic police, ensure that the rules are strictly adhered to.
- Coordinate training of *boda boda* riders and / or operators on safety, operations of insurance services, financial literacy and other related issues.
- In partnership with other stakeholders coordinate on funding of road safety and insurance awareness programs.
- Liaise with other strategic partners to develop strategies aimed at ensuring safety of passengers and other road users.

7.1.1.3 Ministry of Devolution

- Registration of *boda boda* welfare associations and / or *chamas* both at the county and national level.
- Guide the *boda boda* associations to form formal organizations by putting in place the required structures as well as developing a code of conduct for self-regulation.
- Training members on basic business skills.

7.1.1.4 County Governments

The county governments play a key role in ensuring the success of *boda boda* business as well as safety of all road users. These include:

- Registration of *boda bodas* in the respective county.
- Issuing road licenses to *boda bodas* so as to have a right to use the roads.
- Develop specific bye-laws to handle operations of *boda bodas* in the counties.
- Issuing Certificates of Good Conduct to *boda boda* riders.
- Ensure that the *boda bodas* are in good working conditions.
- Conduct annual inspection of *boda bodas*.
- Allocate parking space for *boda bodas*.
- Solicit for funds from strategic partners interested in safety of road users.

7.1.1.5 *Boda Boda* Association(s)

- Registration of members.
- In partnership with other organizations, train members on safety, operations of insurance services, financial literacy and other related issues.
- Ensure the members are properly trained and have a valid driving license to ride *boda boda*.
- Self-regulation and instill discipline on the members.
- Control and regulate routes.
- Ensure members of the group have valid insurance.
- Liaise with the insurance companies in the event of an accident by ensuring that all required documents have been submitted.
- Solve disputes amongst the members.

7.1.1.6 Traffic Police

- Enforcing regulations on operations of *boda bodas* including:
  - i. Riders have a valid driving license and Certificate of Good Conduct.
  - ii. Enforcing the helmet law and standard.
  - iii. Limiting passengers to only one.
  - iv. Wearing reflectors and using daytime headlights.
  - v. Operating on designated routes.

vi. Not drinking and driving or speeding.
vii. Ensure *boda bodas* operate on the designated routes only.

7.1.2 Reactive Role

Risks can only be minimized but not eliminated completely. The organizations under this category handle the residual risks that materialize after the preventive measures have been put in place.

7.1.2.1 Insurance Regulatory Authority

- Create an enabling environment for the development of insurance products for *boda boda.*
- Develop laws and regulations to enable companies underwrite insurance business related to *boda boda.*
- Enforce laws and regulations pertaining to insurance business.
- Advice the government on matters relating to insurance.
- In partnership with other organizations, train and create awareness for *boda boda* operators on safety, operations of insurance services, financial literacy and other related issues..

7.1.2.2 National Hospital Insurance Fund

- Develop special packages and applicable rates for *boda bodas* make it compulsory for the owners and / or riders to contribute to the fund.
- Administer the funds, process and pay medical expenses for riders who are involved in accidents.
- In partnership with other organizations, train and create awareness for *boda boda* operators on safety operations of insurance services, financial literacy and other related issues.
-

7.1.2.3 Retirement Benefits Authority

- Facilitate development of pension schemes for the *boda boda* operators.
- In partnership with other organizations, train and create awareness for *boda boda* operators on safety, operations of insurance services, financial literacy and other related issues.
-

7.1.2.4 National Social Security Fund

- Make it mandatory for *boda boda* operators and riders to contribute to the fund.
- Administer the funds, process and pay compensation to the beneficiaries of affected *boda boda* operators.
- In partnership with other organizations, train and create awareness for the *boda boda* operators on safety operations of insurance services, financial literacy and other related issues.

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Appendix 1

List of Stakeholders

Discussions were held with the following stakeholders when developing the policy paper:

1. Association of Kenya Insurers
2. National *Boda Boda* Association
3. Completions Authority of Kenya
4. County Government – Kiambu
5. Kenya Revenue Authority
6. Madison Insurance Company Limited
7. Ministry of Devolution – Uwezo Fund
8. Ministry of Transport
9. Motorcycles Assemblers Association
10. National Hospital Insurance Fund
11. National Social Security Fund
12. National Transport and Safety Authority
13. Retirements Benefits Authority
14. Traffic Police – Nairobi Area
15. Xplico Insurance Company Limited

Policy Paper on Compensation for Victims of Accidents caused by Commercial Motor Cycles (*Boda Bodas*)

June 2015

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List of Abbreviations and Acronyms

AKI	- Association of Kenya Insurers
Authority	- Insurance Regulatory Authority
GDP	- Gross Domestic Product
HIV /AIDS	– Human Immunodeficiency Virus / Acquired Immunodeficiency Syndrome
IRA	- Insurance Regulatory Authority
NHIF	- National Hospital Insurance Fund
NTSA	- National Transport and Safety Authority
PSVs	- Public Service Vehicles
RTIs	- Road Traffic Injuries
WHO	- World Health Organization

Definition of Terms

1. *Boda Bodas* - Refers to:
   - Two-wheels motor cycles;
   - Trailer motor cycles with three wheels; and
   - Passenger motor cycles with three wheels popularly known as "*tuk-tuk*".
2. *Boda Boda* operator - Refers to the boda boda rider and / or owner.
3. *Chamas* - Informal associations for raising funds through merry-go-rounds for income generating activities and assist members in the event of misfortunes.
4. *Mama Mboga* - Women vegetables vendors.
5. *Matatus* - Small-scale public service vehicles.
6. *Tuk-tuks* - Passenger motor cycles with three wheels.

Executive Summary

Preamble

The Insurance Regulatory Authority (IRA) was established under an Act of Parliament to supervise, regulate and develop the insurance industry in Kenya. The core objectives of the Authority are to protect policyholders and beneficiaries of insurance, and to provide access to insurance to the population.

One of the functions of the Authority is to advice the Government on matters relating to insurance. In discharging this function, the Authority established a taskforce to develop a comprehensive policy paper with recommendations on how victims of *boda boda* accidents can be compensated.

The taskforce was appointed on 17th March 2015 and consists of representatives from:

- Association of Kenya Insurers
- Insurance Regulatory Authority
- National Transport and Safety Authority.

Members of the taskforce are:

1. Mary Nkoimu - Insurance Regulatory Authority
2. Jemima Mwaniki - Insurance Regulatory Authority
3. Eric K'Omolo - Insurance Regulatory Authority
4. Mathews Odero - Insurance Regulatory Authority
5. William Kiama - Association of Kenya Insurers
6. Robert Ngugi - National Transport and Safety Authority

Alternative Mode of Transport

The Government waived taxes on imported motor cycles in the year 2008 with the aim of promoting job creation in the transport sector to the youth. This led to an upsurge of commercial motor cycles (commonly referred to as *boda boda*) in the country.

Boda bodas provide three types of transport services in the country, namely:

i. Short distance service within main urban areas competing with conventional taxis and *Tuk-tuks*.
ii. Act as feeders to urban areas with low density demand, or rough terrain where taxis and *tuk-tuks* are non-attractive.
iii. Act as feeders to main roads competing and supplementing taxis and larger capacity *matatus*.

The types of *boda boda* used in the country for transport are:

- Bicycles, in some rural areas.
- Open motor cycle [normal state].
- Covered motor cycle with an umbrella [modified state].
- Passenger motor cycle with three wheels popularly known as "*tuk-tuk*"

Impact of *Boda Bodas*

Boda boda business has become significant to all involved stakeholders: the owners, riders and customers. *Boda boda* business has not only eased getting around in the country, but has also come with its share of challenges.

Merits of *Boda Bodas* Business

The benefits of *boda boda* business include:

- It is a source of income.
- It is relatively cheaper to purchase and maintain.
- Creates employment opportunities, especially for the youth.
- It is readily available both in urban and rural areas.
- The charges of hiring a *boda boda* are relatively cheap and negotiable.
- Delivery of goods and services to the doorsteps of customers.
- They are used as a means of transport where roads are impassible.
- They are used as ambulances in remote areas of the country.

Boda boda business has however come with significant challenges, which include:

- Cause accidents and loss of lives.
- Cause congestions and traffic jams in urban areas.
- *Boda boda* are vulnerable and are associated with criminal activities in some parts of the country.

- Health hazards such as pneumonia, amongst the riders and pollution due to gas emissions.
- The business is associated with high drop-out rate of school going minors in some parts of the country.
- Associated with some socio-economic challenges such as early marriages and high prevalence of HIV/AIDS in some parts of the country.

Challenges facing *Boda Boda* Business

This new mode of transport has however come with challenges, as they become a common sight, so is the number of road accidents associated with *boda bodas*. Road traffic crashes, injuries and deaths involving *boda boda* are on the increase. The injuries cause disability and death as well as being a great socio-economic burden. This is putting a heavy financial strain on families, communities and health facilities. Globally, it is estimated that RTIs cost governments between 1% to 3% of their total Gross Domestic Product (GDP).

According to the World Health Organization (WHO), traffic accidents are among the top ten causes of death globally, coming third after HIV/AIDS and tuberculosis respectively. In a report dubbed 'The Burden of Road Traffic Injuries - The Global Picture', released in September 2014, WHO says motor cycle accidents contribute to 23 per cent of global traffic deaths. In Kenya, statistics from National Transport and Safety Authority (NTSA) show that as at 31st December 2014, 388 riders died in traffic accidents up from 328 the previous year.

It is estimated that accidents caused by *boda bodas* claim more lives than any other mode of transport in the country. According to official statistics, three (3) out of a hundred (100) people, who are involved in *boda boda* accidents, lose their lives. The number of lives lost through *boda boda* accidents is estimated to be at least 500 people per year, according to the Traffic Police Department statistics. This accounts for 14 per cent of total number of road fatalities in the country, which stands at 3,000 per year.

Road traffic injuries place a heavy strain on health care services in terms of financial resources, bed occupancy and demand placed on health professionals. A report by the WHO in the year 2009 revealed that RTI patients represent 45% - 60% of all admissions to surgical wards in the country.

Road injury epidemic is a crisis for public health in the country and is a major contributor of poverty. The cost of treating victims of *boda boda* accidents is quite high and most of them do not even have the basic cover from the National Hospital Insurance Fund (NHIF). Public hospitals are therefore obliged to treat them for free, a situation that has left hospitals with huge debts especially due to the cost of treating such accident victims, who usually suffer multiple fractures. The hospitals are forced to waive such bills because most of the victims are unable to pay and cannot be detained in hospitals indefinitely.

Public hospitals have been forced to devote valuable bed-space to accommodate casualties of motor cycle accidents. The accidents are so frequent necessitating many public hospitals to establish special wards for victims of *boda boda* accidents.

Compensation for Victims of *Boda Boda* Accidents

Compensation (insurance) for victims of *boda boda* accidents is either insufficient or not available at all. Despite being an opportunity for business, most insurance companies have shunned the business opportunity. This is because *boda bodas* are viewed as being high risk due to lack of regulation, amongst others.

Currently, only seven (7) insurance companies out of thirty six (36) authorized insurance companies offer insurance covers for motor cycles, out of which only two (2) offer cover for *boda bodas*. The motor cycle policy varies from one company to the other, but the cover is for private and commercial (not for ferrying paying passengers) . Generally, the cover provided caters for:

- Third party only.
- Third party fire and theft; and
- Comprehensive – Material own damage.

Most *boda bodas* purchase insurance cover so as to comply with the traffic rules. This cover compensates damage to third party property damage only and is for private and commercial use only. It is evident that the rider and the passenger are not covered for under the current insurance products.

Methodology

The following methodology was employed in the development of the policy paper:

I. Literature review.
II. Discussions with key stakeholders
III. Study tours to other countries with a high prevalence of commercial motor cycles.

Possible Options

The Insurance Regulatory Authority makes the following recommendations for consideration as the possible options for ensuring that victims of *boda boda* accidents are compensated in the event of an accident in order of priority. Details of the possible options are available in the body of the paper.

1. Establishment of mutual insurance company(ies).
2. Establishment of Compulsory Pools for *boda bodas.*
3. Establishment of a Road Accident Compensation Fund.

Recommendations

There is need to promote alternative modes of mobility (*boda bodas)* to ensure that goods, services and people move from one point to another with much ease and convenience. There is however need to ensure that these modes of transport are safe. Addressing the safety of pedestrians, cyclists and motor cyclists is critical to successfully reducing the total number of global road traffic deaths. (World Health Organization, 2013)

WHO estimates that, unless immediate action is taken, road traffic injuries will rise to become the fifth leading cause of death by 2030. In addition to fatalities, many less severe injuries are caused by road traffic crashes. These non-fatal injuries are an important cause of disability. According to WHO, the vulnerable groups are pedestrians, cyclists and motor cyclists.

invaluable necessity. Due to a lack of adequate regulation however, the *boda boda* sector has become one of the leading causes of road carnage, claiming the lives of thousands and maiming even more (Odero, 2009).

Traffic deaths and injuries can have devastating financial and social consequences for families, communities and the nation at large. According to the NTSA RTIs cost Kenya's economy about KES 14 billion as of June 2014 (National Transport and Safety Authority, 2014) Road traffic crashes, injuries and deaths involving motor cycles has also increased noticeably and is putting a heavy burden on families, communities and the health system in general.

Road traffic injuries place a heavy strain on health care services in terms of financial resources, bed occupancy and demand placed on health professionals. A report by the WHO in the year 2009 revealed that RTI patients represent 45% - 60% of all admissions to surgical wards in the country (World Health Organization, 2009).

The cost of treating victims of *boda boda* accidents is quite high and most of them do not even have the basic cover from the National Hospital Insurance Fund (NHIF). Public hospitals are therefore obliged to treat them for free, a situation that has left hospitals with huge debts especially due to the cost of treating such accident victims, who usually suffer multiple fractures. The hospitals are forced to waive such bills because most of the victims are unable to pay and cannot be detained in hospitals indefinitely.

Public hospitals have been forced to devote valuable bed-space to accommodate casualties of motor cycle accidents. The accidents are so frequent necessitating many public hospitals to establish special wards for victims of *boda boda* accidents. For instance Kenyatta National Hospital has converted wards 6A, C and D into emergency wards to receive the swelling numbers of motorcycle victims (Manyara C. G., 2013).

Traffic rules for motorists, cyclists and pedestrians are rarely adhered to leading to an increase in accidents due to the interactions between the various means of transport. *Boda boda* operators normally bear heavy losses in the event of an accident (Ochieng & Egessa,, 2003). Where a passenger is injured, the operator meets the cost of treatment or compensation as the passenger is not covered in the insurance.

In conclusion, accidents caused by motor cycles can be fatal and constitutes a high economic burden. The accidents also impose high intangible cost (i.e. pain, grief and suffering). On the other hand, compensation (insurance) for victims of *boda boda* accidents is either insufficient or not available at all. Despite being an opportunity for business, most insurance companies shy away from offering insurance cover to commercial motor cycles due to:

- Lack of regulation in the sector;
- High administrative costs due to the large numbers of *boda bodas*;
- *Boda bodas* do not have designated routes thus move from one place to another. This makes monitoring difficult;
- Most *boda bodas* are hired leading to lack of control by the owners;
- Lack of cooperation by the riders and / or owners in the event of a claim. Boda boda riders do not report accidents to the police. A study carried out by Amend in Thika in January and February 2014 revealed that only 8.5% of the riders reported the accidents (Amend Kenya, 2014);
- Ignorance on safety measures by the riders and / or passengers;
- Lack of enforcement of traffic rules; and
- General negative perception towards insurance companies underwriting public service vehicles (PSVs).

4.0 Objective

The main objective of this policy paper is to ensure that victims of accidents caused by *boda bodas* have some form of protection and will be compensated against risks associated with the business.

The specific objectives include:

1. Access to insurance by *boda boda* operators.
2. Mechanism of managing risks amongst the *boda boda* operators.
3. Creating awareness and training of *boda boda* operators on roard safety and insurance.
4. Developing mechanisms of ensuring that the members of the public are protected and compensated against risks associated with *boda boda* business.
5. Ensure access to healthcare by facilitating provision of appropriate health insurance cover.

5.0 Policy Issues

The following policy issues have been identified following discussions with key stakeholders:

1. Lack of access to insurance.
2. Lack of awareness on road safety and insurance.
3. Lack of enforcement of traffic rules.

5.1 Lack of access to Insurance

Despite the fact that *boda boda* business is booming (over 500,000 registered motorcycles) in the country, insurance companies have shunned the business opportunity. The insurance industry considers boda boda business as a high risk due to the following:

1. High number of accidents.
2. High cost of administering individual policies.
3. Lack of sufficient statistics for underwriting purposes.
4. High number of unauthorized *boda boda* riders.
5. General negative perception towards insurance companies underwriting public service vehicles (PSVs).

5.1.1 High Number of Accidents

Statistics from the traffic department, Nairobi County, shows that between January and April 2014 motorcycle fatalities were 13, serious injuries were 53 and slightly injured were 19 as compared to the same period 2015 where fatalities were 18, serious injuries 62 and slight injuries were 21.

5.1.2 High cost of Administering Individual Policies

With the low premiums charged, individual policies for every motor cycle are very expensive to manage. Moral hazard and claim management costs. Spread of claims and driver not being the owner of the motor cycle.

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5.1.3 Lack of Sufficient Statistics for Underwriting Purposes

Studies indicate that less than 10% of motorcycle accidents are reported to the police (Amend Kenya, 2014). The available statistics on motorcycles accidents are not sufficient to support the design of an insurance product which insurers are willing to underwrite. Designing insurance products require an estimation of expected accidents rates, cost of claim, expenses as well as profit margins.

5.1.4 High Number of Unauthorized Boda Boda Riders

The Traffic Act requires all riders on Kenyan road to have valid driving licenses. This is also a requirement for acquiring a motor insurance policy. Whereas there is no reliable statistics on the number of licensed riders, most of the *boda boda* riders are not authorized to ride motorcycles which makes it impossible for them to access insurance.

5.1.5 Negative perception towards insurance companies that underwrite Public Service Vehicles (PSVs)

Insurance companies that underwrite *matatus* and PSV are generally considered by the public to be high risk companies. This is mainly because of fraud associated with PSV accidents as well as a history of companies underwriting PSV having been put under statutory management.

5.2 Policy Options

Many Kenyans rely on *matatus* and *boda bodas* to commute, hence the need for more energy and resources to be focused on enhancing safety in the public road transport system. It is however not possible to eliminate all the risks associated with the transport sector and road accidents are prone to happen.

Compared to car occupants, motor cycle riders and their passengers are relatively unprotected. The likelihood of serious injury or death faced by motor cyclists and their passengers is therefore higher than for other groups of users of motorized transport.

Despite the fact that *boda boda* business is booming (over 600,000 registered motorcycles) in the country, insurance companies have shunned the business opportunity. The risks associated with operating *boda boda* business may be considered as a social problem which requires a social solution.

To fill the gap caused by lack of insurance cover for compensation, *boda boda* operators have formed welfare associations to assist one another in the event of misfortunes. These include catering for medical expenses, funeral expenses for the members and giving something small to the beneficiaries of the deceased. The members also participate in income generating activities such as brick-making, livestock keeping and merry-go-rounds. These associations are normally registered with the Ministry of Devolution (former Ministry of Social Services).

After lengthy deliberations, the Authority has come up with the following possible options for consideration, in order of priority.

5.2.1 Mutual Insurance Company

A mutual insurance company is owned by its policyholders. The purpose of a mutual insurance company is to provide insurance coverage for its members. The members have a right to select management. Mutuals exist in order to ensure the benefits promised to the members are long term thus avoiding the pressure of achieving short term profit targets. The goal of the mutual is to provide its members insurance coverage at or near cost.