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NATIONAL HOSPITAL INSURANCE FUND ACT

NO. 9 OF 1998

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NATIONAL HOSPITAL INSURANCE FUND ACT

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NO. 9 OF 1998

NATIONAL HOSPITAL INSURANCE FUND ACT

[Date of assent: 31st December, 1998.]

[Date of commencement: 15th February, 1999.]

An Act of Parliament to establish a National Hospital Insurance Fund; to provide for contributions to and the payment of benefits out of the Fund; to establish the National Hospital Insurance Fund Management Board and for connected purposes

[Act No. 9 of 1998, L.N. 23/1999, Act No. 18 of 2014.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the National Hospital Insurance Fund Act, 1998.

2. Interpretation

In this Act, unless the context otherwise requires—

“**benefit**” means a benefit payable under this Act;

“**Board**” means the National Hospital Insurance Fund Management Board established by section 4;

“**card**” means a National Hospital Insurance Card issued under section 21;

“**child**” means a child of a contributor including a posthumous child, a step-child, an adopted child and any child to whom the contributor stands in *loco parentis*, who—

- (a) has not attained the age of eighteen years; or
- (b) having attained the age of eighteen years, but not the age of twenty-one years has no income of his own and is living with the contributor;
- (c) having attained the age of eighteen years, is undergoing a full-time course of education at a university, college, school or other educational establishment or serving under articles or an indenture with a view to qualifying in a trade or profession and is not in receipt of any income other than a scholarship, bursary or other similar grant or award; or
- (d) having attained the age of eighteen years, is either mentally or physically handicapped and is wholly dependent on and living with the contributor.

“**contributor**” means a person liable to contribute to the Fund under section 15;

“**employer**” includes the Government;

“**financial year**” means a financial year within the meaning of section 33;

“**Fund**” means the National Hospital Insurance Fund established by section 3;

“**hospital**” means any medical institution or premises in which persons are received and treated as out-patients or in-patients, and includes a maternity home, a nursing home and a health clinic and “**declared hospital**” means a hospital declared as such under section 30;

“**inspector**” means a person appointed as an inspector under section 11;

“**the Minister**” means the Minister for the time being responsible for matters relating to Health;

“**register**” means the register of contributors to the Fund kept pursuant to section 23;

“**spouse**” means the wife or husband of a contributor and “**named spouse**” means, in any financial year, the spouse of the contributor who is for the time being named on the card issued to the contributor for that financial year;

“**stamp**” means a National Hospital Insurance stamp sold under section 24.

PART II – ESTABLISHMENT AND MANAGEMENT OF THE FUND

3. Establishment of the Fund

(1) There shall be established a Fund, to be known as the National Hospital Insurance Fund which shall vest in and be operated and managed by the Board.

(2) There shall be paid—

- (a) into the Fund, all contributions and other payments required by this Act to be paid into the Fund; and
- (b) out of the Fund, all benefits and other payments required by this Act to be paid out of the Fund.

(3) The provisions of the First Schedule shall have effect with respect to the Fund.

4. Establishment of Board

(1) There shall be established a Board to be known as the National Hospital Insurance Fund Board of Management which shall consist of—

- (a) a chairman to be appointed by the President by virtue of his knowledge and experience in matters relating to insurance, financial management, economics, health or business administration;
- (b) the Principal Secretary in the Ministry for the time being responsible for matters relating to Health or his representative;
- (c) the Principal Secretary to the Treasury or his representative;
- (d) the Principal Secretary/Director of Personnel Management or his representative;

National Hospital Insurance Fund

- (e) the Director of Medical Services or his or her representative;
- (f) one person nominated by the Federation of Kenya Employers;
- (g) one person nominated by the Central Organisation of Trade Unions;
- (h) one person nominated by the Kenya National Union of Teachers and the Kenya Union of Post Primary Education Teachers in such manner as may be prescribed;
- (i) one person nominated by the Kenya Medical Association;
- (j) one person nominated by faith-based healthcare organisations in such a manner as may be prescribed.
- (k) *deleted by Act No. 18 of 2014, Sch.*
- (l) *deleted by Act No. 18 of 2014, Sch.*

(2) *deleted by Act No. 18 of 2014, Sch.*

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

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

[Act No. 18 of 2014, Sch.]

5. Objects and functions of the Board

(1) The objects and functions of the Board shall be—

- (a) to receive all contributions and other payments required by this Act to be made to the Fund;
- (b) to make payments out of the Fund to declared hospitals in accordance with the provisions of this Act;
- (c) in consultation with the Minister, to set the criteria for the declaration of hospitals and to declare such hospitals in accordance thereto for the purposes of this Act;
- (d) to regulate the contributions payable to the Fund and the benefits and other payments to be made out of the Fund;
- (e) to protect the interests of contributors to the Fund;
- (f) to advise the Minister on the national policy to be followed with regard to national health insurance and to implement all Government policies relating thereto; and

- (g) to perform such other functions as are conferred on it by this Act or by any other written law.

6. Powers of the Board

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

- (a) manage, control and administer the assets of the Fund in such manner and for such purpose as best promotes the objects for which the Fund is established:

~~Provided that~~ the Board shall not charge or dispose of any immovable property without the prior approval of the Minister;

- (b) receive any gifts, grants, donations or endowments made to the Fund or any other monies in respect of the Fund and make disbursements therefrom in accordance with the provisions of this Act;
- (c) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Board;
- (d) open a banking account or banking accounts for the Fund; and
- (e) invest any monies of the Fund not immediately required for the purposes of this Act in the manner provided in section 34.

7. Conduct of business and affairs of the Board

The conduct and regulation of the business and affairs of the Board shall be as provided in the Second Schedule, but subject thereto, they may regulate its own procedure.

8. Delegation by the Board

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

9. Remuneration of Board members

The Board, in consultation with the Minister, shall pay members of the Board such remuneration, fees or allowances for expenses as the Board may determine.

10. The Chief Executive Officer

(1) There shall be a chief executive officer of the Board who shall be recruited competitively by the Board on such terms and conditions as the Board may, with the advice of the Salaries and Remuneration Commission determine.

(1A) The chief executive officer shall, subject to the directions of the Board, be responsible for the day-to-day management of the Fund and shall be the Secretary of the Board.

(2) The Chief Executive Officer shall be an *ex-officio* member of the Board but shall have no right to vote at any meeting of the Board.

[Act No. 18 of 2014, Sch.]

11. Staff of the Board

The Board may appoint such officers, inspectors and servants as are necessary for the proper discharge of its functions under this Act or any other written law, upon such terms and conditions of service as the Board may determine.

12. The common seal of the Board

(1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

13. Protection from personal liability

Subject to section 14, no matter or thing done by a member of the Board or any officer, employee or agent of the Board shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Board under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

14. Liability of the Board for damages

The provisions of section 13 shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.

PART III – CONTRIBUTIONS AND BENEFITS**15. Contributions to the Fund**

(1) Subject to this Act, any person—

- (a) who is ordinarily resident in Kenya; and
- (b) who has attained the age of 18 years; and
- (c) whose total income, whether derived from salaried or self-employment, in the immediately preceding month, was not less than such amount as the Board, in consultation with the Minister, may prescribe,

shall be liable as a contributor to the Fund.

(2) A person liable as a contributor under this section shall pay to the Board—

- (a) in the case of a person whose income is derived from salaried employment, a standard contribution; or
- (b) in the case of a person whose income is derived from self-employment, a special contribution,

in accordance with this section.

(3) A contribution under subsection (2) shall be at such rate, depending on the person's total income, as the Board, in consultation with the Minister, may determine.

(4) A person to whom this section applies shall pay the contribution to the Board on the first day of each month or on such later date as the Board, in consultation with the Minister, may prescribe.

(5) In this section, “**income**” means such income as the Board, in consultation with the Minister and the Minister for Finance may prescribe for the purposes of this Act.

16. Standard contributions

(1) A person liable to pay a standard contribution under section 15 shall pay such contribution through monthly deductions from his salary or other remuneration and the employer of such person shall be liable to deduct and to pay the contribution to the Board on behalf of and to the exclusion of that person.

(2) An employer shall not be liable under this section to pay the standard contribution in respect of any person employed by him for any month—

- (a) in which he was not at any time the employer of that person (except where the employment is terminated in the month immediately preceding that month);
- (b) in which he was not the employer on the first day of that month, unless that contribution has not been paid before the day in that month when he becomes the employer, in which case he shall only become liable seven days after that day; or
- (c) in respect of which the salary or other remuneration payable by him after all other statutory deductions have been made therefrom, are not sufficient to pay that contribution.

(3) An employer shall be entitled subject to and in accordance with any regulations—

- (a) to deduct from the salary or other remuneration of any person employed by him, notwithstanding anything to the contrary in any other law, the amount of any standard contribution paid by him or to be paid by him within one month of such deduction, on behalf of that person;
- (b) to obtain a card for any person employed by him where that person does not provide him with a card issued to that person, or where that person’s card has been lost or destroyed;
- (c) to retain possession of the card issued to a person employed by him, except when that person requires the card for the purpose of obtaining any benefit or making a claim under this Act until that card is required for surrender upon the issue of a new card for the next financial year.

(4) No sum deducted from the salary or other remuneration of an employee by his employer in accordance with the provisions of this Act shall be recoverable from the employer by that person after a stamp to the value of that sum has been affixed to a card issued to that person and duly cancelled:

Provided that nothing in this subsection shall affect the responsibility of the employer for the safe custody of that employee’s card.

(5) If for any reason an employer is unable to ascertain whether any person employed by him is liable to pay the standard contribution for any month, he may apply to the Board for a decision, and, subject to the provisions of section 31, any decision given by the Board thereon shall be final and binding on that employer.

(6) Any person who—

- (a) fails without lawful excuse to pay, within the time and in the manner prescribed by this Act in relation to him, any standard contribution which he is liable as an employer to pay under this Act; or
- (b) knowingly makes any deductions from the salary or other remuneration of any person employed by him, purporting to be a deduction in respect of any standard contribution, other than a deduction which he is authorised to make by this Act,

commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings.

17. Persons to be treated as employers

In relation to contributors who work under the general control or management of a person other than their employer, immediate and in relation to any other case of employment for which it appears to the Board that special provision is needed, the Board may, in regulations, provide that for the purposes of this Act, the prescribed person shall be treated as their employer; and such regulations may provide for adjusting the rights between themselves of employers, persons prescribed as employers and employed persons.

18. Penalty for late payment of standard contributions

(1) Subject to the provisions of this section and without prejudice to any other penalty imposed under this Act, if any contribution which any person is liable to pay under this Act in respect of any month, is not paid on or before the day on which payment is due, a penalty equal to —

- (a) in the case of micro and small enterprises, twenty-five percent of the amount of that contribution; and
- (b) in any other case, two times the amount of that contribution,

shall be payable by that person for each month or part thereof during which the contribution remains unpaid, and any such penalty shall be recoverable as a sum due to the Fund, and when recovered, shall be paid into the Fund.

(2) If an employer fails to pay a standard contribution in respect of any person employed by him—

- (a) that employer shall be liable to pay the penalty prescribed in subsection (1);
- (b) that employee shall not be liable to any penalty under this section for so long as he is employed by that employer.

(3) Where a contributor is outside Kenya on the day when a standard contribution becomes payable by him, that contribution shall, for the purposes of this section, be deemed to become payable on the day of his return to Kenya.

(4) In this section, the expressions “micro enterprise” and “small enterprise” have the meanings assigned thereto respectively in the Micro and Small Enterprises Act, 2012.

[Act No. 18 of 2014, Sch.]

19. Special contributions

(1) Every person liable to pay a special contribution under this Act shall pay the contribution to the Board on the first day of each month or on such later date as the Board may specify, in such manner and at such rate as may be prescribed.

(2) If a special contribution which any person is liable to pay under this section is not paid on or before the day on which the payment is due, a penalty equal to five times the amount of the contribution shall be payable by that person for each month or part thereof during which the contribution remains unpaid, and any such penalty shall be recoverable as a sum due to the Fund and when recovered shall be paid into the Fund.

(3) Any contributor who, without lawful excuse, fails to pay, within the time and in the manner prescribed by this Act, any special contribution which he is liable to pay, commits an offence and is liable on conviction to a fine equal to four times the amount of that contribution but the imposition of any such fine shall not affect the liability of such person to pay the penalty prescribed by subsection (2).

20. Voluntary contributions

The Board may make regulations in respect of voluntary contributions, prescribing the manner of making such contributions, the procedure to be followed and the forms to be used.

21. Cards and evidence of payment of contributions

(1) Subject to the provisions of this section and to such other terms or conditions as the Board may prescribe, there shall, upon application, be issued to every person who is liable as a contributor to the Fund in any financial year, a National Hospital Insurance Card for that year, and there shall be inscribed on that card, at such time and in such manner as may be prescribed, the full name of the contributor and such other particulars as may be prescribed.

(2) Before a card is issued to any person under this section, the Board may require the person—

- (a) to produce evidence that he is likely to be liable as a contributor in that year;
- (b) to produce evidence that he has in that year and in the immediately preceding year paid every standard contribution that he was liable to pay; and
- (c) to surrender any card issued to or in respect of that person for the immediately preceding financial year.

(3) For the purposes of ascertaining whether the standard contribution for any month has been paid by any person, any officer duly authorised by the Board may put such questions, whether orally or in writing, to that person, or require that person to furnish such information or particulars or to produce such documents or other papers as, in his opinion, are necessary for that purpose.

(4) Any person who—

- (a) knowingly makes any false statement, whether orally or in writing, relating to any matter affecting his liability to pay any standard contribution; or
- (b) being required under sub-section (3) to answer any question, furnish information or particulars or produce any document or paper, refuses or neglects to do so without reasonable cause,

commits an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(5) For the purposes of this section, the following shall constitute conclusive evidence that a contribution for any month in any financial year has been paid by a person—

- (a) a stamp duly affixed to a card issued to that person for that month, and duly cancelled, in accordance with the provisions of this Act;
- (b) a receipt issued under section 23(2);
- (c) a record of payment in the register of contributors to the Fund kept in accordance with section 23(1) of this Act;
- (d) in the case of a standard contribution, a record in the contributor's monthly pay-slip that the contribution has been deducted from his salary for the month or months at issue.

(6) Any person who knowingly uses a card which does not belong to him, or which is not validly issued, to claim a benefit from the Fund, commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings, or to imprisonment for a term not exceeding eighteen months, or to both.

22. Payment of benefits

(1) The Board shall pay from the Fund, benefits to declared hospitals for expenses incurred at those hospitals by any contributor, his named spouse, child or other named dependant.

(2) Subject to such limitations as may be imposed under sub-section (3), the medical or health care expenses referred to in subsection (1) shall cover both in-patient and out-patient medical health care.

(3) Without prejudice to the provisions of sub-section (1), the benefits payable from the Fund shall be limited to expenses incurred in respect of drugs, laboratory tests and diagnostic services, surgical, dental or medical procedures or equipment; physiotherapy care and doctors' fees, food and boarding costs, subject to such limits, regulations and conditions as the Board may, in consultation with the Minister, prescribe.

(4) Notwithstanding any provision to the contrary, no claim or benefit shall be payable under this Act in any financial year unless the contributor produces, at the time of making the claim, a card issued to him, showing payment for the last month in the year for which it became due and for every preceding month in that

year, commencing with the first month in respect of which he became liable as a contributor that year, or such other evidence of those payments as the Board may prescribe:

Provided that no benefit shall be paid in respect of any expenses incurred by a contributor before the month in which he first became liable to pay a contribution.

23. Register and receipts

(1) The Board shall cause to be kept, for the Fund, a register containing the names of all contributors and there shall be entered in that register the particulars stated on every card issued to a contributor and particulars of all contributions or other payments to the Fund made by or in respect of the contributor in so far as they are evidenced by a card surrendered or shown to an officer of the Board in accordance with subsection (2) of this section or by any receipt issued in accordance with that subsection.

(2) A contributor or an employer shall be entitled on request—

- (a) upon the surrender of his card or cards to an officer of the Fund, to a receipt acknowledging all the payments of contributions evidenced by that card or cards;
- (b) not more than once in every three months, upon showing his card to an officer of the Board, to have entered in the register a record of all the payments evidenced by that card;
- (c) to a receipt acknowledging any payments to the Fund made by or in respect of him otherwise than by affixing a stamp to his card,

but save as aforesaid, no person shall be required to issue any receipt to a contributor.

24. Stamps

(1) There shall be offered for sale to the public in such quantities and at such times and places as the Board may consider necessary for the implementation of this Act, National Hospital Insurance stamps at such prices as the Board may from time to time determine.

(2) For the purposes of this section, the Board shall cause stamps to be printed of such design, which may be varied from time to time, as it may deem fit.

25. Offences relating to benefits

(1) Any person who, for the purpose of obtaining the payment of any benefit under this Act, knowingly makes any false statement, whether orally or in writing, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twenty four months, or to both.

(2) Any person who—

- (a) with intent to obtain the payment of any benefit under this Act, impersonates any person whether living or dead; or

- (b) buys, sells or offers for sale, takes or gives in exchange, or pawns or takes in pawn any card or used stamp or any receipt issued under this Act; or
- (c) affixes any used stamp to any card,

commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

(3) Any person who prints or sells stamps in of the provisions of this Act, commits an offence and is liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.

(4) Any declared hospital which knowingly or fraudulently alters or falsifies any information with intent to defraud the Board or to obtain any benefit that it is not entitled to under this Act, commits an offence and is liable on conviction to—

- (i) a fine not exceeding five hundred thousand shillings;
- (ii) suspension from the list of declared hospitals for the purposes of this Act for a period not exceeding five years:

Provided that the Board may review such suspension any time after the twenty-fourth month from the date of imposition thereof.

(5) The Board shall cause the name of every hospital suspended under subsection (4)(ii) of this section to be notified in the *Gazette* and such institution shall not, during the suspension, be entitled to any benefit from the Fund.

(6) A hospital which has been suspended under this section shall be required to disclose the fact of such suspension to all its actual or potential patients prior to their admission or rendering of any services to any patient:

Provided that where a hospital fails to comply with the provisions of this subsection, it shall not be permitted to claim from any patient more than the difference between the actual cost of the service and what the Board would have contributed had the hospital not been suspended.

26. Regulations on contributions and stamps

The Board may, in consultation with the Minister, make regulations providing for—

- (a) any matters incidental to the payment and collection of any contributions under this Act, or to the issue of any stamps or to the issue or replacement of any cards under this Act;
- (b) the refund of any contributions paid in error;
- (c) the remission in whole or in part of penalties incurred under this Act, in such circumstances and subject to such conditions as may be prescribed;
- (d) the giving of such rebates as may be prescribed to contributors who have no dependants or who fulfil such other conditions or requirements as may be prescribed in cases of voluntary contributions.

27. Regulations relating to benefits

Subject to the provisions of this Act, the Board, in consultation with the Minister, may make regulations prescribing the amount of any benefits and the period within which any benefits shall be payable out of the Fund for the time being and such regulations may provide for—

- (a) any conditions or limitations subject to which any benefit shall be paid;
- (b) the manner of the making and determination of any claim to any benefit;
- (c) the postponement of any payment of benefit pending any relevant inquiry;
- (d) the authorisation of any person to claim a benefit on behalf of a contributor where such contributor is unable, for the time being, to do so;
- (e) the settlement of valid claims, which shall be within a period of one month from the date of submission of the claim.

28. Modification of Act in special cases

Regulations made by the Board may modify in such manner as the Board may deem proper, the provisions of this Act in their application—

- (a) to persons who are or have been outside Kenya while contributors to the Fund;
- (b) to persons who are employed on board any ship or aircraft.

29. General provision as to regulations

(1) Without prejudice to any specific power conferred by any provision of this Act, the Board may, in consultation with the Minister, make regulations facilitating the implementation of this Act, including in particular, regulations—

- (a) prescribing anything required to be prescribed under this Act;
- (b) prescribing the particulars, information, proof or evidence to be furnished as to any question or matter arising under this Act, including any question or matter relevant to the payment of contributions by or in respect of any person, or the making or validity of any claim or application for the payment of any benefit under this Act;
- (c) prescribing, in respect of any action required or permitted to be taken under this Act, the time and manner of taking that action, the procedure to be followed and the forms to be used.

(2) Any regulations made under this Act may make different provisions in respect of different cases or classes of cases and for different purposes of this Act, may impose conditions and make exceptions, and may contain such incidental or supplementary provisions as appear to the Board to be expedient for the purposes of the regulations.

30. Declaration of hospitals for purposes of Act

(1) The Board may, in consultation with the Minister and the chairman of the Medical Practitioners and Dentists Board, by notice in the *Gazette*, declare any hospital, nursing home or maternity home to be a hospital for the purposes of this Act.

(2) A declaration under subsection (1) may be made subject to such conditions as the Board thinks fit as to the charges which may be made by the hospital to any contributor under this Act (including conditions as to the amount of such charges and the requirement of the Board's consent to any variation thereof) and where any such conditions are made—

- (a) the Board may publish such conditions in the *Gazette* or in such other manner as it thinks fit; and
- (b) it shall not be lawful for the hospital to make any charge to any contributor under this Act which is contrary to such condition.

(3) The Board may, at any time, after consulting the Minister, revoke any declaration under this section.

31. Determination of claims and questions

(1) Subject to the provisions of this Act, the Board, in consultation with the Minister, may make regulations for the determination by the Board or by any officer thereof, or by a person or body of persons appointed or constituted in accordance with the regulations, of any question arising under or in connection with this Act, including any claim for a benefit, and subject to the provisions of the regulations, a decision in accordance therewith shall be final.

(2) Regulations under subsection (1) may provide—

- (a) for enabling appeals to be brought from the decisions of any officer, person or body of persons to any other person or body appointed or constituted in accordance with the regulations to hear such appeals;
- (b) for the reference to the High Court for decision on any question of law arising in connection with the determination of any question by any officer, person or body of persons and for appeals to the High Court from the decision of any such officer, person or body on any such question of law; and the Chief Justice shall have power to make rules of court for regulating such references and appeals, for empowering the court to make orders as to the costs of such references and appeals, and for limiting the time within which such appeals may be brought.

32. Inspection

(1) The Chief Executive Officer may, at any time and from time to time, and shall, if so directed by the Board cause an inspection to be made by an inspector authorised by him of—

- (a) any premises or places where an inspector reasonably believes that any persons are employed (excluding a private dwelling not used for the purpose of trade or business); or

- (b) any declared hospital, for the purposes of ascertaining whether this Act is being or has been complied with, and the inspector shall, for the purposes of such inspection, have power to enter any such premises or place at all reasonable times, and to examine every person whom he finds therein.

(2) The occupier of any premises or place liable to inspection under this section and the servants and agents of the occupier or other person shall furnish to the inspector all such information and produce for inspection all such documents as the inspector reasonably requires for the purposes of ascertaining whether—

- (a) standard contributions are or have been payable, or have been duly paid, by or in respect of any person; or
- (b) any benefit is or was payable to or in respect of any person; or
- (c) in the case of a declared hospital, whether the conditions (if any) attached to the declaration have been met.

(3) Any person who—

- (a) wilfully delays or obstructs an inspector in the exercise of his powers under this section; or
- (b) refuses or neglects to answer any question or to furnish any information or to produce any document when required to do so under this section,

commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings and in the case of a conviction for making false claims or receiving illegal benefits shall be required to make good any moneys falsely received.

(4) Every inspector shall, before entering any premises or other place liable to inspection under this section, if so required by the occupier or other person authorised by him, produce a certificate of his appointment signed by or under the authority of the Board.

(5) Where any hospital is liable to be inspected by a public officer for the purposes of enforcing any law other than this Act, the Board may make arrangements for any of the powers and duties of inspectors under this section to be exercised or performed by the public officer and where such arrangement is made, that public officer shall have all the powers of an inspector under this section.

(6) Any inspector who, without any lawful excuse, gives false information in respect of the existence or non-existence of any fact in any hospital or other premises or places inspected under this section, commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding twelve months or to both.

PART IV – FINANCIAL PROVISIONS

33. Financial year

The financial year of the Fund shall be the period of twelve months commencing on the 1st July in every year.

34. Investment of Funds

(1) All moneys in the Fund which are not immediately required to be applied for the purposes of this Act shall be invested—

- (a) in such investment in a reputable bank, being an investment in which trust funds, or part thereof, are authorised by law to be invested;
- (b) in the procurement and acquisition of essential medical equipment for provision to hospitals, on such terms and conditions as the Board may, from time to time, prescribe:

Provided that the Board may advance money to any declared hospital for improvement of medical and health care services, subject to the Board being satisfied that such hospital is financially viable and in any underserved area, as may from time to time, be defined by the Minister.

(2) All investments made under this section shall be held in the name of the Board.

35. Annual estimates

(1) At least four months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

(2) The annual estimates shall make provisions for all estimated expenditure of the Board for the financial year concerned, and in particular shall provide—

- (a) for the payment of the salaries, allowances and other charges in respect of the staff of the Board;
- (b) for the payment of the pensions, gratuities and other charges in respect of retirement benefits to staff of the Board;
- (c) for the payment of all the claims and benefits of the contributors in respect of medical and health care expenses incurred by them or their named dependants pursuant to the provisions of this Act;
- (d) for the proper maintenance of the buildings and grounds of the Board;
- (e) for the proper maintenance, repair and replacement of the equipment and other movable property of the Board;
- (f) for the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matters as the Board may deem fit.

(3) The annual estimates shall be submitted for approval by the Board before the commencement of the financial year to which they relate:

Provided that once approved, the sum provided in the estimates shall not be increased without the prior consent of the Board.

(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorisation of the Board.

36. Expenses of administering the Fund

There shall be paid out of the Fund and in such manner as the Board, in consultation with the Minister may determine, such sum as the Board may estimate to be its expenditure in respect of any financial year in accordance with the provisions of section 35.

37. Accounts and audit

(1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Fund.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General (Corporations) or to an auditor appointed under subsection (3) of this section, the accounts of the Board together with—

- (a) a statement of income and expenditure during that year; and
- (b) a statement of the assets and liabilities of the Board on the last day of the financial year.

(3) The accounts of the Board shall be audited by the Auditor-General (Corporations) or by an auditor appointed by the Board with the approval of the Auditor-General (Corporations).

(4) The employment of an auditor shall not be terminated by the Board without the consent of the Auditor-General (Corporations).

(5) The Auditor-General (Corporations) may give general or special directions to an auditor appointed under subsection (3) of this section and the auditor shall comply with those directions.

(6) An auditor appointed under subsection (3) of this section shall report directly to the Auditor-General (Corporations) on any matter relating to the directions given under subsection (5) of this section.

(7) Within a period of six months after the end of the financial year, the Auditor-General (Corporations) shall report on the examination and audit of the accounts to the Board and the Minister, and in the case of an auditor who has been appointed under subsection (3) of this section, the auditor shall transmit a copy of the report on the accounts to the Auditor-General (Corporations).

(8) Nothing in this Act shall be construed to prohibit the Auditor-General (Corporations) from carrying out an inspection of the Board's accounts or records if it appears to him desirable and the Auditor-General (Corporations) shall carry out such an inspection at least once every six months.

(9) Notwithstanding anything in this Act, the Auditor-General (Corporations) may transmit to the Minister a special report on any matters incidental to his powers under this Act, and section 19(3) and (4) of the Exchequer and Audit Act (Cap. 412) shall, *mutatis mutandis* apply to any report made under this section.

(10) The Minister shall lay the audit report before the National Assembly within nine months after the report has been submitted to him under this section.

(11) The fee for any auditor not being a public officer shall be determined and paid by the Board.

PART V – MISCELLANEOUS PROVISIONS

38. Annual Reports

The Board shall, within three months after the end of each financial year, prepare and submit to the Minister a report of the operations of the Board for the immediately preceding year.

39. Administrative regulations

(1) In the performance of its functions under this Act, the Board may, subject to this Act, make regulations generally for the governance, control and administration of the Board and in particular for—

- (a) the settlement of the terms and conditions of service, including the appointment, dismissal, remuneration and retirement benefits of the members of the staff of the Board; and
- (b) the constitution and procedure of meetings of the Board and the establishment, composition and terms of reference of committees of the Board.

(2) Regulations made by the Board under this section shall not be published in the *Gazette* but shall be brought to the attention of all persons affected thereby.

40. Exemption from stamp duty

No duty shall be chargeable under the Stamp Duty Act (Cap. 480) in respect of any instrument executed by any person on behalf of or in favour of the Board or in respect of the payment of any benefit or in refunding any contribution under this Act in any case where, but for this exemption, the Board or any person acting on its behalf would be liable to pay such duty.

41. Legal proceedings under the Act

Proceedings in respect of an offence under this Act, may, notwithstanding any provision to the contrary in any other written law, be commenced at any time within the period of three months from the date on which evidence sufficient in the opinion of the Board to justify a prosecution for an offence, comes to its knowledge, or within the period of twelve months after the commission of the offence, whichever is shorter.

42. Proceedings to recover sums due to the Board

(1) The court before which any person is convicted of an offence under this Act may, without prejudice to any civil remedy, order such person to pay to the Board, as the case may be, the amount of any standard contribution or any other sum, together with any penalty found to be due from such person to the Board and any sum so ordered shall be recoverable as a fine and paid into the Fund.

(2) All sums due to the Board shall be recoverable as debts due to the Board, and without prejudice to any other remedy, may be recovered by the Board summarily as a civil debt.

(3) All criminal and civil proceedings under this Act may, without prejudice to any other power in that behalf, be instituted by any inspector or other officer of the Board.

(4) All sums recovered by legal proceedings in respect of moneys which should have been paid into the Fund shall, when recovered, be paid into the Fund.

43. Recovery of compensation or damages

Where a contributor to the Fund is entitled, whether under the Workmen's Compensation Act (Cap. 236) or otherwise, to recover compensation or damages in respect of any injury or illness, he shall not, to the extent to which such compensation or damages are recoverable, be entitled to any benefits in respect of any treatment undergone by him as a result of such injury or illness, and any benefits paid in respect of such treatment, shall to the extent to which such compensation or damages have been recovered, be repaid to the Board:

Provided that the payment of any benefits as aforesaid shall not preclude the right of the contributor to recover any compensation or damages.

44. Evidence

In any proceedings under this Act, a copy of any entry in the accounts of, or any extract from the records or register of the Fund, shall, if stated to be a true copy by a certificate purporting to be signed by the Chief Executive of the Board, or a person authorised in that behalf by him, be received in evidence as *prima facie* evidence of the truth of the contents thereof.

45. General penalty

A person convicted of an offence under this Act for which no other penalty is prescribed shall be liable to a fine not exceeding fifty thousand shillings or, in the case of a natural person, to imprisonment for a term not exceeding two years, or to both.

46. Repeal of Cap. 255

The National Hospital Insurance Act (Cap. 255) is repealed.

FIRST SCHEDULE

[Section 3(3).]

TRANSITION PROVISIONS

1. In this Schedule—

“**appointed day**” means the day appointed for the coming into operation of the National Hospital Insurance Fund Act, 1998;

“**Fund**” means the National Hospital Insurance Fund existing immediately before the appointed day.

National Hospital Insurance Fund

(1) On the appointed day, all the funds, assets and other property movable and immovable which immediately before that day, were held for and on behalf of the Fund in the name of the Permanent Secretary to the Treasury shall, by virtue of this paragraph and without further assurance, vest in the Board.

(2) Every public officer having the power or duty to effect or amend any entry in a register relating to property or to issue or amend any certificate or other document effecting or evidencing title to property, shall, without payment of a fee or other charge and upon request made by or on behalf of the Board, do all such things as are by law necessary to give final effect to the transfer of the property mentioned in subparagraph (1).

3. On the appointed day, all rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the appointed day were vested in, imposed on or enforceable by or against the Government for and on behalf of the Fund shall, by virtue of this paragraph, be transferred to, vested, imposed on or enforceable by or against the Board.

4. On and after the appointed day, all actions, suits or legal proceedings pending by or against the Government for and on behalf of the Fund shall be carried on or prosecuted by or against the Board.

(1) Subject to subparagraph (2), the officers, inspectors and servants appointed for the administration of the Fund in office on the appointed day shall be deemed to officers, inspectors and servants appointed by the Board under section 11 of the Act.

(2) Notwithstanding the provisions of subparagraph (1), within twelve months after the appointed day, the Board shall review the qualifications of all persons deemed to be employees of the Board under subparagraph (1) and may retain those found suitably qualified for employment by the Board subject to—

- (a) such persons opting to remain in the service of the Board; and
- (b) such terms and conditions of service (not being to the disadvantage of such persons) as may be agreed with the Board.

(3) Any employee not retained by the Board under subparagraph (2) may exercise his option to either—

- (a) retire from the service of the Board; or
- (b) be redeployed within the public service.

(4) Where an employee enters into an agreement with the Board under subparagraph (2), his service with the Government shall be deemed to be terminated without the right to severance pay but without prejudice to all other remuneration and benefits payable upon the termination of his appointment with the Government.

6. The annual estimates for the Fund for the financial year in which the appointed day occurs shall be deemed to be the annual estimates of the Board for the remainder of that financial year:

Provided that such estimates may be varied by the Board in such manner as the Minister may approve.

SECOND SCHEDULE

[Section 7.]

PROVISIONS AS TO THE CONDUCT OF
BUSINESS AND AFFAIRS OF THE BOARD**1. Tenure of office**

(1) A member of the Board other than an *ex-officio* member shall, subject to the provisions of this Schedule, hold office for a period not exceeding three years, on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for re-appointment for one more term of a period not exceeding three years.

(2) The members of the Board shall be appointed at different times so that the respective expiry dates of the members' terms shall fall at different times.

2. Vacation of office

A member other than the chairman or an *ex officio* member may—

- (a) at any time resign from office by notice in writing to the Minister;
- (b) be removed from office by the Minister if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission from the chairman; or
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or
 - (iii) is convicted of an offence involving dishonesty or fraud; or
 - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
 - (v) is incapacitated by prolonged physical or mental illness; or
 - (vi) is otherwise unable or unfit to discharge his functions.

3. Meetings

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) The members of the Board shall, at the first meeting of the Board, elect from amongst their number, a vice-chairman and an honorary treasurer.

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

(4) The quorum for the conduct of the business of the Board shall be nine members excluding the Chief Executive Officer.

(5) The chairman shall preside at every meeting of the Board at which he is present but in his absence, the vice-Chairman shall preside and, in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the chairman or the person presiding shall have a casting vote.

(7) Subject to paragraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make standing orders in respect thereof.

4. Disclosure of interest

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

5. The common seal

The affixing of the common seal of the Board shall be authenticated by the signatures of the chairman and the Chief Executive Officer and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairman and the Chief Executive Officer.

Provided that the Board shall, in the absence of either the chairman or the Chief Executive Officer, in any particular matter, nominate one member to authenticate the seal of the Board on behalf of either the chairman or the Chief Executive Officer.

6. Minutes

The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books kept for that purpose.
