(3) The Value Added Tax (Remission) (Low Income Housing Projects), Order 2008 shall continue to apply to a remission granted before the commencement date while the remission remains in force.


HENRY ROTICH,
Cabinet Secretary for the National Treasury.

LEGAL NOTICE NO. 55

THE RETIREMENT BENEFITS ACT
(No. 3 of 1997)

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

THE RETIREMENT BENEFITS (UMBRELLA RETIREMENT BENEFITS SCHEMES) REGULATIONS, 2017

PART I – PRELIMINARY

1. These Regulations may be cited as the Retirement Benefits (Umbrella Retirement Benefits Schemes) Regulations, 2017.

2. In these Regulations, unless the context otherwise requires—

“Act” means the Retirement Benefits Act, 1997;

“approved issuer” means an insurer registered under the Insurance Act or any other issuer approved in writing under the Capital Markets Act or under any other written law;

“contract of service” means an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for any period of time, and includes a contract of apprenticeship and internship;

“contribution” means a payment in money form in which members’ and employers’ contributions are fixed either as a percentage of pensionable earnings or as a shilling amount;

“deed of adherence” means an instrument in writing between an employer, the trustees and the sponsor in which the employer irrevocably undertakes and binds itself to the trusts of the scheme upon which the sponsor and the trustees in reliance thereto have without other conditions admitted the employer to join and participate in the provision of retirement benefits to its employees on the terms expressed in the scheme rules;

“dependant” means the member’s spouse, sons, daughters, grandsons, grand-daughters, adopted children, parents, grand-parents, brothers and sisters living at the time of the member's death and such other person or persons as were, in the opinion of the trustees, immediately before the member's death substantially dependent upon the member (whether alone or with others) for the provision of all the necessaries of life and such other person or persons as may be entitled...
to any beneficial interest in the member’s estate under any testamentary disposition made by the member provided that the class of dependants shall be closed at the death of a member except that it shall include unborn children who if born would have been dependants;

“employee” means an individual employed by an employer under a contract of service for wages or salary and includes an apprentice and an indentured learner who has become a member of the scheme;

“employer” means any person, or public body or any firm, corporation or company, who or which has entered into a contract of service to employ any employee, and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company who is participating in the scheme;

“existing scheme” means an umbrella scheme existing prior to the commencement of these Regulations;

“guaranteed fund” means an asset class—

(a) issued by an approved issuer, whereby the approved issuer, guarantees the accumulated capital of the scheme fund together with the investment income thereof in accordance with the terms of the guaranteed fund contract entered into between the approved issuer and the scheme; or

(b) which is referred to as the retirement benefits fund established as a statutory fund within the meaning of the provisions of the Insurance Act in which the capital of the scheme fund together with investment income thereof is guaranteed by the approved issuer in accordance with the terms of the policy of insurance issued to the scheme by the approved issuer;

“related company” in relation to a company means—

(a) its holding company or subsidiary;

(b) a subsidiary of its holding company;

(c) any person who controls it whether alone or with his associates or with other associates of the related company;

“special rules” means the rules that are unique to a specific participating employer and are binding to employees of the participating employer who are members of the scheme;

“trust deed” means the document in which the declaration for establishment of the scheme is made specifically governing the constitution of the scheme; and

“umbrella scheme” means a retirement benefits scheme with members employed by several employers, in which employee’s and employer’s contributions are paid into.

PART II – REGISTRATION AND SPONSORSHIP OF AN UMBRELLA SCHEME

3. (1) An application for registration of an umbrella scheme shall be—
(a) in case of an existing scheme, in Form I set out in the Schedule; and

(b) in case of a new scheme, in Form II set out in the Schedule.

(2) The Authority shall within ninety days from the date of receipt of an application for registration consider the application and notify the applicant in writing whether the application has been or not accepted and the reason for the decision where the application has not been accepted.

(3) The Authority shall, after notifying the applicant of the acceptance of its application for registration, proceed to register the scheme and forward to the scheme the certificate of registration.

(4) In considering an application under this regulation, the Authority may request the applicant to provide any additional information which may include ownership, directorship, shareholding and staff establishment.

4. Every registered umbrella scheme shall have a registered office within the Republic of Kenya.

5. (1) A sponsor of a scheme shall at all times have in its board of directors and top management at least four persons who are academically and professionally qualified in matters relating to either administration of schemes, insurance, law, accounting, actuarial science, economics, banking, finance, investment of scheme funds and a person possessing at least five years' experience in administration of retirement benefits schemes.

(2) The sponsor shall be—

(a) a company;

(b) a co-operative;

(c) partnership;

(d) associations;

(e) societies; or

(f) any other legal entity as may be appropriate:

Provided that where any of the legal entities are regulated, they must meet the requirements of their primary regulator.

6. In order to determine the professional suitability of a sponsor, the Authority shall have regard to the following qualities, in so far as they are reasonably determinable, of the sponsor concerned—

(a) its general probity;

(b) its competence and soundness of judgment for the fulfilment of the responsibilities attached to marketing the scheme;

(c) the diligence with which it is likely to fulfil those responsibilities;
(d) qualifications and experience of the sponsor’s top management or directors in administration and management of trusts;

(e) the previous conduct and activities of the sponsor concerned in business or financial matters, and in particular to any evidence that any of the directors or top management personnel of the sponsor—

(i) has been convicted of the offence of fraud, or any other offence of which dishonesty is an element; or

(ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in the provision of banking, insurance, investment or other financial services;

(f) any additional information as may be necessary in determining the professional suitability of a company proposing to establish or operate a scheme.

7. A sponsor, participating employer, member, trustee, administrator, manager, custodian, member of management committee or any other interested person may inspect the register of any sponsor, scheme, manager or custodian maintained by the Authority and received on a written application, a copy of the register upon payment of a prescribed fee.

PART III – TYPES AND MANAGEMENT OF UMBRELLA SCHEME

8. An umbrella scheme may be established for, either—

(a) employers within an industry, trade, profession, group or association, county governments or;

(b) employers who do not have any commercial or professional relationship with each other.

9. (1) Every umbrella scheme shall have scheme rules written in an official language and shall make provision for the following—

(a) the full name of the scheme, including reference to any prior change of name;

(b) the physical address of the registered office of the scheme;

(c) the date of commencement of the scheme;

(d) requirements for admission to membership into the scheme and the circumstances under which membership may cease;

(e) conditions under which and when a member may become entitled to any benefit including death benefits, the nature and extent of any such benefit, the period of guarantee for the benefits and the mode of calculating the benefit;

(f) requirements under which an employer may remit contributions on behalf of its employees who are members of the scheme;
(g) conditions under which an employer may cease making contributions to the scheme;
(h) conditions under which an employer may terminate its participation in the scheme;
(i) the appointment, term, removal from office, powers and remuneration of trustees;
(j) the appointment, term, removal from office, powers and remuneration of manager, custodian, administrator, auditor and other service providers to the scheme;
(k) powers of investment of scheme funds;
(l) rate, mode and method of remitting contributions;
(m) the vesting of contributions immediately;
(n) conditions under which a member shall become entitled to the benefits in the scheme;
(o) provision for a member to defer benefits in the scheme or another scheme including an occupational or individual retirement benefits scheme;
(p) custody of the scheme fund, title documents and securities belonging to the scheme;
(q) period upon which a member may withdraw his benefits from the scheme;
(r) interest chargeable on late payment of withdrawal or other benefits from the scheme;
(s) partial liquidation of the scheme where a participating employer ceases to remit member contributions or commits an act contrary to the provisions of the Act and the trust deed and rules;
(t) the appointment of a liquidator in case of a voluntary dissolution of the scheme;
(u) the manner in which the scheme shall be dissolved subject to the provisions of the Act and the regulations made thereunder;
(v) the manner in which contracts and other documents binding the scheme shall be executed;
(w) the normal retirement age;
(x) the procedure of amending the scheme rules;
(y) the manner in which disputes between the parties in the scheme shall be solved;
(z) manner of receiving and accounting for the contributions made by or on behalf of each member in the scheme;
(aa) the manner in which participating employers are kept informed on a quarterly and annual basis; and
(bb) such other matters as may be prescribed.

(2) A participating employer may have special scheme rules which may make provision for the following—

(a) date of participation;
(b) rate of contribution which must not be below the limit of the rate in the trust deed and rules;
(c) normal retirement age which must not be less than prescribed in the trust deed and rules;
(d) power of amendment of the special rules by the parties:

Provided that the special rules shall be an enhancement of the general rules of the fund.

10. (1) A scheme may amend its rules, but no such amendment shall be valid—

(a) if it purports to invalidate or reduce the accrued rights of a member or sponsor of the scheme;
(b) if it purports to affect any right of a creditor of the scheme, other than as a member thereof;
(c) unless it has been approved by the Authority and registered as specified in paragraph (3) hereof.

(2) Within thirty days from the date of the passing of a resolution for the amendment of the scheme rules a copy of such resolution and amendment shall be transmitted to the Authority by the trustees for registration:

Provided that if any such proposed amendment affects the financial position of the scheme, the amendment shall be accompanied by a certificate signed by an actuary.

(3) If the Authority finds that any such amendment is consistent with the Act, and is satisfied that the financial soundness of the scheme shall not be adversely affected by the amendment, it shall register the amendment and return the copy of the resolution to the trustees with the date of registration endorsed thereon, and such amendment, shall be deemed to take effect as from the date of registration.

11. (1) There shall be service providers for the scheme whose process of appointments, functions, powers, duties, remuneration and removal from office shall be in accordance with the scheme rules.

(2) The instrument appointing any service provider shall make provision for the—

(a) the computation of the fee in respect of any services;
(b) the rights and obligations of the service providers to the trustees;
(c) the rights and obligations of the trustees to the service providers.
(3) An authorized employee of any service provider may attend all meetings of the trustees.

(4) The administrative costs debited to the scheme fund shall not exceed the budget approved for that purpose and the Authority may, if it deems appropriate, require a scheme to give further particulars of its budget.

(5) If the service provider is for any reason unable to discharge any duties imposed upon him by these Regulations or the scheme rules or any other instrument, an acting service provider shall be appointed pending procurement and contracting of a substantive service provider.

(6) The trustees of a scheme shall notify the Authority of the details and qualification of an in house person administering the scheme.

(7) Any agreement between the trustees and the service provider shall be submitted to the Authority.

(8) Where the service provider ceases to provide services to the scheme, a new service provider shall be appointed and the Authority shall be notified of the same within 30 days of appointment.

(9) For the purposes of this regulation, "service provider" means an administrator, custodian, manager and any other person appointed by the trustees as the case may be to render services to the scheme.

12. (1) There shall be trustees of the scheme whose appointment, term of office, removal from office, powers and duties including remuneration shall be in accordance with the Act, these Regulations and scheme rules.

(2) Where the sponsor elects not to appoint a trust corporation under regulation 16 as a sole trustee, the sponsor shall appoint nine trustees of a scheme of whom—

(a) five shall be nominated by participating employers from amongst members of the management committee constituted under regulation 18; and

(b) four shall be nominated by the sponsor, of whom two shall not be employees, directors or have any business relationship with the sponsor, with good standing in a relevant professional body and approved by the Authority.

(3) A trustee shall hold office for a period of three (3) years but shall be eligible re-appointment for one more final term of three years.

(4) Where a trustee resigns, is removed from office or otherwise ceases to be a trustee, that trustee shall be replaced in accordance with the provisions of paragraph (2).

(5) Upon such appointment or removal of a trustee, any assurance or thing requisite for vesting the trust property or any part thereof jointly in the persons who are the trustees shall be executed or done forthwith.

13. (1) The duties of the trustees shall include—
(a) administering and managing the scheme in accordance with the law and the scheme rules;

(b) keeping all proper books and records of account with respect to income, expenditure, liabilities and assets of the scheme fund;

(c) computing and preparing statements of payments of benefits to members;

(d) liaising with and not limited to, the Authority, sponsor, employer, members, manager, custodian and any other professional person engaged by the scheme;

(e) collecting, keeping and updating retirement benefits data of each member including maintenance of individual membership records;

(f) ensuring that the agreed contributions have been remitted to the custodian or approved issuer as required by the law and the scheme rules;

(g) communicating regularly with the members of the scheme with respect to the affairs of the scheme;

(h) providing members with annual membership benefits statements;

(i) keeping or causing to be kept such books, records and statements as may be necessary to give a complete record of—

   (i) the value of contributions made by or on behalf of members of the scheme;

   (ii) the investment transactions in respect of the scheme carried out by the custodian and permit, subject to notice, the sponsor or employer or any duly authorized agent, to inspect within the premises of the scheme such books, records and statements at any time during business hours;

(j) submitting to the sponsor and the participating employer scheme within a period of three months from the end of the financial year, the audited accounts of the scheme;

(k) notifying the sponsor and the employer of the particulars of the manager and custodian of the scheme as may be sought by any or both which particulars shall include—

   (i) full name of the manager and custodian;

   (ii) physical and postal address of the registered office of the manager and custodian;

   (iii) the dates of the first and subsequent financial years of the manager and custodian;

   (iv) the contents of the agreement limited to duties owed by the trustees to the service provider, duties of the service provider to the scheme and any other fixed timelines.
(v) any other particulars as the sponsor or the participating employer may request from the trustees;

(l) submitting to the sponsor and the participating employers at least quarterly from the date of commencement of the financial year of the scheme—

(i) valuation of the scheme fund representing all the assets of the scheme, and separately valuation together with the investment return thereof of contributions made by or on behalf of members of the scheme who are employees of each participating employer;

(ii) report reviewing the investment activity and performance of the investment portfolios comprising the scheme fund since the last report date and containing the manager's proposals for the investment of the scheme fund;

(iii) a record of all investment transactions of the scheme during the previous period;

(m) issuing proper instructions as provided for in the agreement to the custodian and manager;

(n) furnishing the sponsor and the participating employers with a copy of the most recent audited financial statements of the manager and custodian and with such information as may be sought by any or both;

(o) exercising the same standard of care of a prudent professional in the respective business for hire; and

(p) ensuring that documents intended to bind the scheme are professionally prepared.

14. The scheme rules shall make provision for—

(a) the procedure of and grounds for the removal from office of trustees;

(b) procedure for convening meetings—

Provided that—

(i) the trustees shall meet at least two times in every calendar year;

(ii) not more than six months shall elapse between the date of one meeting and the next meeting; and

(iii) an administrator of a scheme or an authorised external administrator of a scheme may attend meetings of the trustees;

(c) remuneration of the trustees.

15. In determining whether a person is suitable to be appointed a trustee of a scheme, the appointing authority shall have regard to the qualities set out in section 22A of the Act.
16. Despite the provisions of these Regulations and scheme rules, the sponsor may by deed appoint a Trust Corporation to be a trustee or sole trustee on such terms and conditions as may be agreed in writing between such corporation and the sponsor or in default of such agreement in accordance with the Trust Corporation’s published terms and conditions as to acceptance of trusts at the date of such appointment.

17. No trustee being an advocate, accountant or other person engaged in any profession or business shall be engaged in professional services done by him or his firm in connection to the scheme.

18. (1) Each participating employer together with its employees, who are members of the scheme, shall nominate a maximum of three members to form a management committee.

(2) The management committee shall keep its corresponding participating employer and members informed regarding matters and activities of the scheme.

(3) The scheme rules shall make provision for
   (a) the procedure of and grounds for the removal from office of management committee member; and
   (b) procedure for convening meetings.

19. Where a member of an umbrella scheme gives notice in writing to the scheme of an intention to transfer benefits to another retirement scheme registered under the Act, the umbrella scheme shall, within thirty days from the date of the notice, transfer the benefits specified in the notice to that other scheme:

Provided that a member opting to transfer his benefits from the umbrella scheme shall not be penalized financially or otherwise by such scheme.

20. An agreement between an employer and the scheme, custodian, administrator or manager shall not include a clause whose purpose and intent is to penalize a scheme financially or otherwise on account solely of termination whenever such scheme opts to terminate the said agreement.

21. (1) In determining whether to participate in an umbrella scheme, an employer shall consider, among others, whether the scheme—

   (a) is registered under the Act;
   (b) has appointed an administrator, custodian, manager, as the case may be, who has the professional and technical capacity and adequate operational systems to manage the scheme;
   (c) has developed a prudent investment policy for the investment of the scheme fund;
   (d) is fully funded;
   (e) has the professional and technical capacity and adequate operational systems to manage a multi-employer scheme;
(f) consist only of scheme funds maintained separately at all times from any other funds under the control of the trustees; and

(g) keeps or has caused to be kept a designated account for the employees of each employer in the scheme.

22. (1) Every umbrella scheme shall maintain or cause to be maintained a quarterly record of contributions in respect of the employees of each employer in the prescribed form and the original record shall be submitted to the Authority within fifteen days following the end of every third calendar month.

(2) The quarterly record provided for in paragraph (1) may be delivered to the Authority electronically.

23. (1) A scheme fund including the title deeds, securities and income that shall accrue thereof shall at all times be held and maintained in custody by a custodian on behalf of the trustees of the scheme.

(2) Where the whole or a portion thereof of the scheme fund is invested in a guaranteed fund, the deposit administration policy for that whole or portion shall be held and maintained in the custody of the trustees.

(3) Notwithstanding the provisions of paragraph (2), no custodian may be appointed where the scheme funds are invested fully in a guaranteed fund.

(4) Notwithstanding any provision of the scheme rules to the contrary, any contribution payable in respect of any member of the scheme to a custodian shall be paid, directly to the custodian by or on behalf of the trustees:

Provided that in a case where a scheme has invested fully in guaranteed funds, contributions may be paid directly to the approved issuer.

(5) The payment of contributions under paragraph (4) shall be made before the tenth day of every calendar month or before any other day that may be notified in writing and approved by the Authority.

(6) The custodian shall, not later than the first business day following the day on which the custodian receives the contribution, deposit the contribution in an account with a bank duly registered under the Banking Act and such account shall be maintained by the custodian on behalf of and in the name of the scheme.

(7) A custodian shall open a client account on behalf of a scheme but the scheme funds shall not form part of the assets or funds of such custodian.

(8) A custodian shall, at the end of each quarter of the financial year, submit to the Authority a report detailing the assets of a scheme fund during that quarter.

(9) Scheme funds shall at all times be invested by the manager of the scheme on behalf of the trustees.
(10) An employer shall in the deed of adherence state the rate of contributions by the employer and the employees who have become members of the scheme:

Provided that the contributions shall not be less than that set in the scheme rules.

24. The contributions which have not been paid on or before the tenth day of every calendar month following the month in which the contributions become due shall become payable together with interest thereon as a civil debt summarily recoverable from the employer by the trustees.

25. (1) A scheme shall prepare and maintain a schedule showing the rates of contributions payable by or on behalf of the employer, sponsor and members.

(2) The schedule of rates of contributions shall allow for additional voluntary contributions by a member.

(3) A scheme may, if agreed upon by the sponsor, from time to time revise the schedule of the rates of contributions.

26. No scheme rules shall—

(a) restrict eligibility to membership of a scheme on the basis of gender, race, grade, cadre, age, differences in the employees' salary, wages, rank, seniority at the work place, association, religion or in any manner which is discriminatory;

(b) contain any provision which would render admission to membership subject to any discretionary power;

(c) provide for the qualifying period for membership to the scheme to be other than from the date of employment unless approved by the Authority:

Provided that—

(i) where an employee is moving from his previous employer to join a new employer he may transfer his membership from the previous scheme which the former employer sponsored, to the scheme sponsored by the new employer and he shall become a member of the scheme on completion of transfer proceedings; and

(ii) the transfer value of the accrued rights in respect of a member transferring his membership from one scheme to another shall be transferred to the scheme to which he is transferring his membership within a period of thirty days from the date of service of application for such transfer on the scheme from which he is transferring a copy of which shall be served on the Authority.

27. A member of the scheme shall not be permitted to withdraw from membership or withdraw his benefits from the scheme whilst he remains an employee of the employer unless he—
(a) becomes a member of another scheme established for the benefit of employees of that employer;
(b) attains the retirement age provided for in the scheme rules; or
(c) has need related to personal aptitude for which the trustees have given approval and obtained prior written consent of the Authority.

28. (1) Where a member leaves employment but before attaining the specified early retirement age—
(a) that member shall, upon request in writing to the trustees, be entitled to payment of his benefits comprising up to 100% and at most 50% together with the investment income thereon of the contributions made by the member and the employer respectively:

Provided that the member shall defer the remainder of the benefits save as provided in the scheme rules;
(b) a member shall defer his benefits until he attains the normal retirement age;
(c) a member may elect in writing to transfer his benefits to another scheme.

(2) Where a member elects in writing to have the retirement benefits referred to in paragraph (1)(c) transferred to another scheme for the purpose of purchasing a retirement benefit, the basis of paying transfer value where the scheme has a reserve fund shall be reviewed and certified by the actuary and the member shall get a proportionate share of the reserve fund.

(3) A member may opt for payment to him of the total amount of vested accrued benefits before attaining the retirement age where—
(a) the member retires on grounds of ill-health or subsequently during deferment, becomes incapacitated on grounds of ill-health which if the member was in employment, would occasion the member's retirement;
(b) the member is emigrating from Kenya to another country without any present intention of returning to reside in Kenya and has obtained the approval of the trustees, which shall be copied to the Authority, to withdraw his benefits.

(4) For the purposes of this regulation, a member of a scheme may be deemed to suffer ill-health and be paid his benefits therein before attaining retirement age if medical evidence is submitted to the scheme showing that he is permanently incapacitated and cannot be gainfully employed or engaged in any other occupation for which he is reasonably suited by education, training or experience.

29. Upon the death of a member the benefits payable from the scheme shall be paid to the nominated beneficiary and if the deceased member had not named a beneficiary the trustees shall exercise their discretion in the distribution of the benefits to the dependants of the deceased member:
Provided that the trustees may refuse to pay the nominated beneficiary giving reasons thereof, in writing.

(2) In exercising the discretionary powers under this regulation, the trustees may further determine—

(a) the amount of retirement benefits payable to a nominated beneficiary;

(b) the amount of retirement benefits payable to the children of a member;

(c) the apportionment of a lump-sum benefit amongst all dependants;

(d) the apportionment of a retirement benefit amongst surviving spouses and children; or

(e) the reinstatement of a surviving spouse’s retirement benefit that had ceased on remarriage:

Provided that the trustees shall not increase any retirement benefit unless such increase has been recommended and certified by an actuary.

30. (1) The formula for the commutation of the retirement benefits which may be paid to a member who has attained the normal retirement age or persons entitled to receive a benefit under the scheme shall be provided for in the scheme rules:

Provided that—

(a) no more than one quarter of the retirement benefits may be commutated in a scheme where members do not make any contributions and not more than one third of the retirement benefits may be commutated in a scheme where members make contributions; and

(b) benefits arising from additional voluntary contributions may be fully commutated.

(2) The un-commutated portion of a retirement benefit which is payable to a retiring or deferred member shall be payable for the duration of his lifetime or the period for which payment is guaranteed in the scheme rules, whichever is the longer.

(3) The provisions of paragraphs (1) and (2) shall not apply—

(a) to a scheme which makes a lump-sum payment of accrued benefits to a member upon attaining the specified retirement age; or

(b) to benefits payable to a member where the portion of retirement benefits remaining after commutation the periodic pension shall become trivial pension.

(4) For the purposes of paragraph (3)(c), “trivial pension” means the amount determined from time to time by the Authority, which shall not be less than fifty percent of the average of the minimum wage prescribed by the Cabinet Secretary for the time being responsible for matters relating to labour in the year in which the benefit becomes due.
31. No benefits or contributions accruing or payable under the scheme shall be capable of assignment.

32. (1) A scheme shall be partially liquidated where a participating employer ceases to remit members' contributions or commits an act contrary to the provisions of the Act and the scheme's trust deed and rules.

(2) For avoidance of doubt, the partial liquidation of a scheme shall not affect the members' benefits which shall be treated in accordance with the rules of the scheme.

33. A scheme shall hold an annual general meeting to be attended by members of each participating employer whose agenda shall, without limiting, include a report on—

(a) any changes to the benefits and contributions structure;
(b) audited accounts;
(c) investments;
(d) remuneration of trustees;
(e) statutory compliance; and
(f) questions from members.

PART V—FINANCIAL PROVISIONS AND STATEMENTS

34. (1) Trustees shall keep and maintain such books of accounts and other records as may be necessary for the purpose of accounting for the assets and liabilities of the scheme.

(2) A scheme shall, where applicable, cause to be kept such records wherein an account of every member shall be maintained and all transactions in respect of each member shall be duly recorded.

35. (1) A scheme shall within three months from the date of registration appoint an auditor who shall be a member of the Institute of Certified Public Accountants of Kenya and the appointment shall be notified to the Authority within thirty days from the date of appointment for approval.

(2) The Authority may refuse to approve any appointment of an auditor or revoke its approval of an auditor and the auditor concerned shall vacate office as an auditor of the scheme.

(3) Where an auditor vacates office under the circumstances envisaged under paragraph (2), the trustees shall appoint another auditor subject to approval by the Authority.

36. (1) The trustees shall within three months of the end of year of the scheme submit audited annual accounts including the trustees' and investments reports to the Authority with a certificate signed by the chairperson of the board of trustees or any authorized trustee certifying...
that to the best of their knowledge and belief the information furnished to
the auditor for the purpose of audit is correct and complete in every
respect.

(2) The income and expenditure account and the statement of assets
and liabilities and notes thereto of the scheme shall be prepared on accrual
basis in the prescribed form and shall be accompanied by a report signed
by the auditor of the scheme fund and where the auditor is unable to sign
the report without qualification the report shall disclose reasons for such
qualification.

(3) The trustees shall within three months from the end of each
financial year—

(a) conspicuously display in the registered office of the scheme a
notice that the audited accounts together with the trustees' and
investments reports are available for inspection: and

(b) send to the sponsor and employer copy of the audited
accounts and to each member a summary of the audited
accounts of the scheme together with the member's benefit
statement by electronic means.

(4) The auditor shall be required to certify on an annual basis the
adequacy of the systems and controls operated by the fund, and in the case
of the administrator, in respect of the fund administration business carried
out by it, and determine whether they are adequate for purposes of
compliance with the provisions of the Act.

(5) The auditor shall further be required to examine the systems and
controls to monitor the receipt of contributions and the reporting of late
payments to the fund and render an opinion thereof as to their adequacy
for purposes of determining un-remitted contributions.

37. (1) The Authority may, from time to time, require a scheme to
be reviewed by an actuary.

(2) The Authority may exempt a scheme from the provisions of
paragraph (1) if such a scheme has satisfied the following conditions—

(a) all benefits, other than those fully secured by an approved
issuer, being limited to an amount, or to the periodic
retirement benefit which can be provided by an amount,
equal to an accumulation of actual contributions, adjusted
only in accordance with the direct investment return, both in
terms of income and capital appreciation or depreciation;

(b) no periodic retirement benefits have been paid by the scheme,
unless such benefits are fully secured by an approved issuer;

(c) the scheme submits to the Authority, at least once in every
three years, a certificate by an actuary prepared in accordance
with the approved form.

(3) The trustees shall within three months upon receipt of the
actuarial report from the actuary publish a notice to the sponsor, employer
and members that such report or an abstract thereof, is available in its
office for inspection.
(4) Notwithstanding anything contained in these Regulations—

(a) the Authority may by notice require a scheme to be valued in a prescribed manner at the cost of such scheme by an actuary any time in respect of any matter the Authority may deem appropriate;

(b) a trustee shall cause an actuarial valuation or actuarial review to be carried out in the event of major benefits improvements, group transfers of members, significant changes in the membership size, termination, amalgamations or other special circumstances that affect its financial position.

(5) Where a valuation under paragraph (4) is made as at a date other than the end of a financial year of the scheme, the Authority may require that the accounts for the period since the expiry of the last financial year and the statement of assets and liabilities on the date as at which the investigation is made, be prepared and audited in the manner prescribed in the Act and these Regulations.

(6) The actuarial method and assumptions selected by an actuary shall be stated and explained taking into account the experience of the scheme to the extent that the information is available and significant, and shall reflect long term trends without giving undue weight to recent experiences.

(7) The Authority may require an actuarial valuation or review to be prepared on whatever basis it might prescribe in specific circumstances.

(8) The trustees shall prepare a certificate in the prescribed form that shall form part of the actuarial valuation report.

38. No surplus of a scheme fund shall be directly or indirectly refunded to the sponsor of the scheme:

Provided that—

(a) a contribution holiday for both the employer and the member as shall be determined by an actuary shall not be construed to mean a refund of the surplus of a scheme fund, and shall be limited to the surplus above 10% of the scheme’s accrued liability;

(b) if the total accrued liabilities are being transferred to a different scheme, any surplus shall be allocated equally between the members and the employer;

(c) the portion of the surplus due to the sponsor may be used as a contribution holiday by the sponsor in the new scheme;

(d) subject to the surplus being sufficient for the purpose, where partial liability is being transferred to a scheme, a portion of surplus proportionate to the value of the liability may be transferred.

39. (1) The statement of income and expenditure of the scheme shall be treated in accordance with international financial reporting standards.
(2) In preparing a statement of income and expenditure, the trustees may, at their discretion, create and maintain a reserve fund with such sum as they shall in their discretion so determine:

Provided that the Authority may in writing require trustees to adjust the reserve fund to such levels as it may so determine.

40. (1) Assets of a scheme shall be valued for the purpose of these Regulations at values not exceeding their market or net realizable value and in particular—

(a) the value of land and buildings shall not exceed the value determined on the basis of a valuation by a registered valuer who is a member of the Institute of Surveyors of Kenya once in every three years or at any shorter interval as the Authority may otherwise require in writing;

(b) where the market value of any security, share, or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable, having regard to the financial position of the issuing concern, the dividend paid by it during the preceding five years and other relevant factors; and

(c) office machinery, furniture, motor vehicles and computer equipment shall be valued in accordance with the International Financial Reporting Standards.

(2) In this regulation, “net realizable value” means the value which an asset or investment may realize upon disposal at arm’s length transaction less expenses payable to effect the disposal.

41. Repair and maintenance expenses in respect of investments shall, as may be applicable, be charged to income during the year the expense is incurred and if the repair costs, in the opinion of trustees, is material, the same shall be treated in accordance with the international accounting standards on amortization.

42. (1) The financial statements of a scheme shall be in the prescribed form and shall disclose the following—

(a) un-remitted contributions;

(b) fees and expenses paid directly or indirectly to, or on behalf of the trustees appropriately classified;

(c) fees and expenses paid by any other party, including the sponsor of the scheme, on behalf of the scheme;

(d) returns on investment as per each category of investment;

(e) related company transactions;

(f) ownership of more than ten per centum equity in any one company or related companies; and

(g) the penalty, if any, payable by the sponsor for failure to remit contributions or accrued interest on unpaid benefits and any other matter as may be prescribed by the Authority.
(2) For the purpose of these Regulations, an expense is allowable if it is incurred by the trustees in the—

(a) ordinary course of the trade and business of the scheme; and
(b) discharge of the powers and trusts of the scheme.

43. The scheme fund and assets shall be protected against any manner of insurable risk and financial loss arising out of any negligence, commission or omission or inadvertent default on the part of any of its officers, trustees, administrator, manager or custodian either by way of a guarantee from the sponsor or by way of insurance of such amount as the trustees may deem adequate.

PART V—INVESTMENT GUIDELINES

44. (1) A scheme shall prepare and maintain and after every three years revise a written statement of the principles governing decisions on investments for the purposes of that scheme.

(2) The statement shall cover, among other things, the policy of the scheme or the pooled fund in the following matters—

(a) the categories of investments to be held;
(b) the level of risk;
(c) the realization of investments; and
(d) such other matters as may be prescribed from time to time by the Cabinet Secretary.

(3) Neither the scheme nor the statement of principles governing decisions on investments of the scheme fund shall impose restrictions on any power to make investments by reference to the consent of the employer or the sponsor.

(4) A scheme shall obtain and consider the written advice of an investment advisor before a statement under this regulation is prepared or revised.

(5) A scheme shall take into account the latest actuarial report when determining the principles governing decisions on investments of the scheme fund.

45. (1) Notwithstanding the provisions herein, a scheme shall invest only in the asset classes specified in column 2 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 to the extent to which the market value of the investment in the class expressed as a percentage of the total assets of the scheme does not exceed the percentage listed in column 3 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 in respect of such asset—

Provided that—

(a) a scheme may exceed the maximum percentage indicated in column 3 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 in the event of
an increase in the market price of assets, bonus issues or transfer of investment from one class of assets to another but any such excess shall not continue for a period of more than ninety days;

(b) a scheme may exceed the maximum percentage indicated in column 3 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 in the event of revaluation of real property but any such excess shall be reported immediately to the Authority together with an action plan as to how the trustees intend to return the scheme into compliance and the Authority shall within thirty days of receipt of the action plan advise the scheme in writing if the plan is acceptable or require the scheme to implement the plan subject to such terms and conditions as the Authority may deem appropriate;

(c) the maximum investment in the quoted equity of any one company shall be fifteen per centum of the aggregate market value of the total assets of the scheme;

(d) the maximum investment in the unquoted equity, commercial paper loan stock and debenture issued by a company controlled by or a related company of the sponsor shall be five per centum of the aggregate market value of the total assets of the scheme; and

(e) investments in the category "any other asset" under item 14 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 shall be subject to the prior written approval of the Authority, which may be given or denied by the Authority within thirty days of application by a scheme.

(2) Any portion of a scheme fund which is not invested in guaranteed fund issued by an approved issuer shall for the purposes of this regulation be treated as the aggregate market value of total assets of the scheme and be invested without regard to the portion of the scheme fund invested in guaranteed fund.

(3) The prescribed investment guidelines shall not apply to an approved issuer with regard to the investment of guaranteed funds.

PART VI – LEVY

46. (1) Every scheme shall within three months after the end of its financial year remit a retirement benefit levy to the Authority.

(2) The levy shall be payable in Kenya Shilling denominated crossed cheque, bankers draft or electronic funds transfer and acknowledged by the issuance of an official receipt of the Authority.

(3) The basis of the annual levy shall be a percentage of the net asset value of the total scheme fund indicated in column 2 of Table L of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 corresponding to the category in column 1, which includes the total value of the scheme fund:
Provided that—

(a) the value of the scheme fund to be used in determining the levy shall be the total fund value indicated in the latest audited accounts of the scheme;

(b) notwithstanding the provisions of this regulation, the minimum levy payable to the Authority shall be two thousand shillings per annum and a maximum of five million shillings.

PART VII—TRANSFERS AND AMALGAMATION OF SCHEMES

47. (1) Subject to the provisions of the Act and these Regulations, a member may transfer his or her benefits from one scheme to another.

(2) Any member who intends to transfer or has transferred benefits from one scheme to another as provided for under paragraph (1), that member shall, if so required by the trustees, provide in writing the amount of such benefits and the names of the scheme from which the benefits shall become payable and any other information, as may be required.

(3) The basis of paying a transfer value in paragraph (2) above from a scheme that has a reserve fund shall be certified by an actuary.

(4) For the purpose of this regulation, "scheme" includes an Individual Retirement Benefits Scheme or Occupational Retirement Benefits Scheme.

48. (1) No amalgamation of schemes shall take place unless all the conditions as listed below have been satisfied and approved by the Authority in writing to the concerned schemes—

(a) the arrangements and particulars for the proposed amalgamation, including copies of current actuarial reports, in respect of the schemes and other statements taken into account for the purposes of the amalgamation, have been submitted to and approved by the Authority;

(b) the Authority has been furnished with such additional particulars, or such specific reports by an actuary or auditor, as it may deem necessary for the purposes of this regulation;

(c) the Authority is satisfied that the arrangements referred to in subparagraph (a) accords full recognition to the reasonable expectations of the members of the schemes concerned, and that the proposed transaction would not render any scheme which is a party thereto and which will continue to exist if the proposed transaction when completed is unable to—

(i) meet the requirements of the Act and these Regulations;

(ii) remain in a sound financial condition; or

(iii) in the case of a scheme which is not in a sound financial condition, to attain a sound condition within the period of time deemed by the Authority to be satisfactory;
(d) the Authority has been furnished with such evidence as it may require to show that the provisions of the scheme rules of the concerned schemes in so far as they are applicable, have been carried out or that adequate arrangements have been made to carry out such provisions at such intervals as may be required by the concerned schemes; and

(e) the approval referred to herein shall be given within thirty days of receipt of all the information required under paragraph (d).

2) An amalgamation of a scheme fund shall not be approved if its intent, purpose or effect will—

(a) diminish the retirement benefits of the members of such scheme;

(b) reduce the accrued benefits of its members.

3) Whenever any transaction comes into force in accordance with the provisions of this regulation, the relevant assets and liabilities of the schemes so amalgamated shall respectively vest in and become binding upon the resultant scheme.

4) A transaction effected in terms of this regulation shall not deprive any creditor of any scheme thereto, except in his capacity as a member, of any right or remedy which he had immediately prior to that date against any scheme to the transaction or against any member of such scheme.

PART IX- TRANSITION PROVISION

49. All existing schemes shall within ninety days from the date of commencement of these Regulations amend their scheme rules to comply with the provisions of the Act and these Regulations.

SCHEDULE

FORM I

RETIREMENT BENEFIT AUTHORITY REGISTRATION OF EXISTING SCHEMES

APPLICATION FOR THE PURPOSE OF REGISTRATION UNDER s. 23(2) OF THE RETIREMENT BENEFITS ACT, 1997

(read attached notes before completing the form)

PART I – DETAILS OF THE SCHEME

A. 1) Name of the scheme..............................................................................................................

(ii) Income Tax Pin Number........................................................................................................

B. Any other names under which the scheme has been known previously:

....................................................................................................................................................

....................................................................................................................................................
C. Any other names under which the scheme has been known together with the names of the schemes which have in whole or part been merged with or replaced by the scheme in the past five years:

D. Provide the following particulars regarding the scheme:

(i) Is it a provident or pension fund? Yes/ No
(ii) Is it employee based? Yes / No
(iii) Is the scheme contributory or non-contributory
(iv) If other specify
(v) What is the current status of the scheme?

D.1 Is it an open scheme?
D.2 Is it a paid up scheme? Yes/ No
D.3 Is it a closed scheme? Yes/ No
D.4 If other, specify

D.5 State whether the scheme is a defined contribution or a defined benefit scheme
D.6 If other, specify

E. Give the following information as at the end of the last financial year from 20 to 20.

E.1 State number of members of the scheme.
E.2 State the number of members of the scheme who were active members in this service
E.3 State the numbers in whom the scheme benefits have been fully vested
E.4 Scheme vesting formula
E.5 State the number of members who are drawing pension, if any
Kenya Subsidiary Legislation, 2017

6) State the numbers of members whose retirement benefits are deferred

7) State the number of the total permanent workforce of the sponsoring employers.

8) Is the membership of the scheme compulsory or voluntary?

(ii) Do those permanent employees of the sponsoring employers who are not members of the scheme belong to any scheme? Yes/ No

If Yes, give details of the scheme

F. Give the following information as at the end of the last financial year from 20... to 20...

i. Where applicable, state the contribution formula for the employee and the employer, and in the case of an individual based scheme, the individual contribution formula

Employee

Employer

Individual contribution

ii. State the amount contributed:

Employee’s contribution:
Kshs

Employer’s contribution
Kshs

iii. State the total benefits as follows

Lump sum payments:
Kshs

Committed payments Kshs

Pension Payments: kshs

Death benefits payments: Kshs

Disability benefits payments: Kshs

Deferred benefits

Others specify

iv.
(1) State the total value of the scheme fund. Kshs. .................................................................

(2) State the basis of valuation eg Market value, Historical cost, etc

G. 1) provide the following particulars of the schemes as follows:

Country........................................................................................................................................

Date of establishment.................................................................

Registered office of the scheme:

Building........................................................................................................

Road...................................................

Postal address...........................................

Telephone..........

Telex...........

Fax/email

(ii) Is the scheme established under an irrevocable trust? Yes /No.

If No, state the basis of the establishment

(iii) Is the scheme approved under the Income Tax (Retirement Benefits Scheme) Rules? Yes/ No

If Yes, state the income Tax Reference Number..................................................

H. Provide details for the following:

i. Members of the Board Of Trustees (Appendix A)

ii. Fund Managers, if any (Appendix B)

iii. Auditors, Legal Advisors, Actuary, Managers, Custodian and Administrators (Appendix C)

(please complete the tables in the above mentioned appendices)

1. If the scheme does not engage in the services of trustees, a scheme administrator or fund manager, then the following particulars:

i. Who administers the scheme?

...............................................................................................................................

ii. Who makes decisions on the investment of the scheme funds?

...............................................................................................................................

iii. Are the funds separated from those of the sponsors? Explain

...............................................................................................................................
iv. Are the scheme funds separated from those of the fund manager? Yes/ No

I. Provide the list of investment portfolio as per the latest audited or management accounts for the period from ..........20...... to ..........20...... showing the cost, market and book values and the respective percentages in relation to the total fund of the scheme as in appendices D1 and D2 annedex

NOTE:

1. In case the assets of the scheme are managed by an Insurance Company/ Bank/ Asset Manager on a pooled basis, such

2. The said manager in completing appendix D2 to provide the investments of the pool and submit on a separate list all the schemes which form the pool together with their respective shares of the pooled investment

(ii) Where applicable, state the ratio of fund assets in relation of actuarial liabilities as per the latest actuarial report

J. List all Bankers of scheme funds showing the branches and address for such branches:

K. (i) Is the custodian of the scheme assets registered under the Capital Markets Authority Act? Yes/ No

(ii) If the custodian is registered by any other authority provide the following:
Full Name
Physical Address
Building
Road
Town
Postal Address
Telephone
Fax

(iii) State in whose name the title documents for the assets of the scheme are registered?

(iv) Give full details of the person who keeps scheme’s assets and documents:
Full Name
Physical Address........................................................................................................................................
Building............................................... Road.................................................................................................
Town...........................................................................................................................................................
Postal Address..............................................................................................................................................
Telephone................................................ Fax..............................................................................................

PART II-PARTICULARS OF SPONSOR(S)
(In case of more than one sponsor, provide the following particulars for each on a separate attachment)

A. Name of Sponsor(s)
.................................................................................................................................................................
.................................................................................................................................................................
.................................................................................................................................................................

B. Physical Address.................................................................
Building.......................................................................................................................................................
Town............................................................................................................................................................
Postal address.............................................................................................................................................
Fax/ Email...................................................................................................................................................

C. (i) Income Tax P.I.N Number...........................................................
(ii) Income Tax Reference Number............................................................

D. Number of Members in service of the sponsor..............................................................

PART III—PARTICULARS OF EMPLOYERS
(Provide the following: Particulars for each on a separate attachment)

A. i) Name of sponsor:
.................................................................................................................................................................
.................................................................................................................................................................
.................................................................................................................................................................

ii) If a company, certificate of incorporation number:
.................................................................................................................................................................

iii) If not a company state the number of the certification of registered under the Business Names Act:
.................................................................................................................................................................

iv) Physical Address
Building............................................... Road.................................................................................................
Town............................................................................................................................................................
Telephone..................................................................................................................................................
Email/ Fax...................................................................................................................................................
v) (i) Income Tax P.I.N Number

Income Tax Reference Number

PART IV—ATTACHMENTS

Please attach copies of the following:

I) Trust deed and rules

II) Latest actuarial report

III) Latest audited or management accounts

IV) An actuarial certificate certifying the design and financial viability of the scheme (if applicable)

V) For insured schemes, a copy of the insurance policy document and a copy of the latest fund value statement and revenue account

VI) For schemes with funds invested by an asset manager firm, a copy of the latest scheme fund investment report and revenue account

VII) Fund management agreement(s) (where applicable)

I hereby declare that the statements b contained herein and the documents submitted herewith are true and accurate to the best of my knowledge and belief. Any alterations in particulars states herein or in the said documents will be promptly communicated to the authority within a period not later than three months from the date of alteration.

Signed on this ................ day of ...........................................

Full Name: .................................................................

Designation: ...............................................................

Chairman/ Secretary

Authorized

signature of Applicant

-----------------------------

APPENDIX A

PARTICULARS OF THE BOARD OF TRUSTEES

NAME OF SCHEME ....................................................... 

<table>
<thead>
<tr>
<th>Trustees</th>
<th>Citizenship</th>
<th>Residential Address</th>
<th>Occupation</th>
<th>Date of Appointment</th>
<th>Whom do the Trustees represent in the board</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

State against each Trustee whether they have been convicted of a criminal offence giving the date and particulars of the offence.

1. .................................................................

2. .................................................................
APPENDIX B

PARTICULARS OF SENIOR MANAGEMENT OF THE FUND MANAGER*

(Complete this form for each fund manager, where applicable)

Name of the Scheme

Is the Fund Manager Registered under the Capital Markets Act/Insurance Act?

Income Tax P.I.N Number

<table>
<thead>
<tr>
<th>Full Name</th>
<th>Designation</th>
<th>Nationality</th>
<th>Age</th>
<th>Postal Address</th>
<th>Date of Appointment</th>
<th>Experience (No. of years)</th>
<th>Academic and professional experience</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

If any of the officers has been convicted of a criminal offence, please give the name of the officer, the date and particulars of the offence.

*(The Chief Executive and his core team)

APPENDIX C

PARTICULARS OF AUDITORS, LEGAL ADVISORS, ACTUARIES, ADMINISTRATORS AND CUSTODIANS

<table>
<thead>
<tr>
<th>Name of firm</th>
<th>Income Tax P.I.N Number</th>
<th>Address, Telephone of Email</th>
<th>Professional body to which partners are members</th>
<th>Date of appointment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actuaries</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrators</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Auditors</td>
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<tr>
<td>Custodians</td>
<td></td>
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<tr>
<td>Legal Advisors</td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
APPENDIX D1

LIST OF INVESTMENT PORTFOLIO

Income Tax P.I.N Number

<table>
<thead>
<tr>
<th>INVESTMENTS</th>
<th>AMOUNT IN KSHS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Original cost</td>
</tr>
<tr>
<td>(a) Real Estate:*</td>
<td></td>
</tr>
<tr>
<td>(i) Land</td>
<td></td>
</tr>
<tr>
<td>(underdeveloped)</td>
<td></td>
</tr>
<tr>
<td>(ii) Residential</td>
<td></td>
</tr>
<tr>
<td>(iii) Commercial</td>
<td></td>
</tr>
<tr>
<td>(iv) Agricultural</td>
<td></td>
</tr>
<tr>
<td>(v) Any other</td>
<td></td>
</tr>
<tr>
<td>(b) Quoted Equity*</td>
<td></td>
</tr>
<tr>
<td>(i) Agricultural</td>
<td></td>
</tr>
<tr>
<td>(ii) Commercial &amp; allied</td>
<td></td>
</tr>
<tr>
<td>(iii) Financial and Investment</td>
<td></td>
</tr>
<tr>
<td>(iv) Industrial &amp; allied</td>
<td></td>
</tr>
<tr>
<td>(v) Others</td>
<td></td>
</tr>
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</table>

APPENDIX D1 (CONTD)

<table>
<thead>
<tr>
<th>INVESTMENTS</th>
<th>AMOUNT IN KSHS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Original cost</td>
</tr>
<tr>
<td>(c) Unquoted Equity*</td>
<td></td>
</tr>
<tr>
<td>(i) Agricultural</td>
<td></td>
</tr>
<tr>
<td>(ii) Commercial &amp; allied</td>
<td></td>
</tr>
<tr>
<td>(iii) Financial &amp; Allied</td>
<td></td>
</tr>
<tr>
<td>(iv) Industrial &amp; allied</td>
<td></td>
</tr>
</tbody>
</table>

APPENDIX D1 (CONTD)

<table>
<thead>
<tr>
<th>INVESTMENTS</th>
<th>AMOUNT IN KSHS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Original cost</td>
</tr>
<tr>
<td>(d) Government paper</td>
<td></td>
</tr>
<tr>
<td>(i) Bonds</td>
<td></td>
</tr>
<tr>
<td>(ii) Stock</td>
<td></td>
</tr>
<tr>
<td>(iii) Treasury bills</td>
<td></td>
</tr>
<tr>
<td>(iv) Any other (specify)</td>
<td></td>
</tr>
<tr>
<td>(e) Cash &amp; Deposits in Banks</td>
<td></td>
</tr>
<tr>
<td>(state the name(s) of the Bank(s)</td>
<td></td>
</tr>
<tr>
<td>(f) Offshore investments</td>
<td></td>
</tr>
<tr>
<td>(g) Other, specify</td>
<td></td>
</tr>
</tbody>
</table>

TOTAL 100% 100% 100%
# LIST OF INVESTMENT PORTFOLIO

## APPENDIX

**Name of Scheme**

**Income Tax PIN Number**

<table>
<thead>
<tr>
<th>TOTAL INVESTMENT IN THE POOL</th>
<th>AMOUNT IN KSHS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Original Cost</td>
</tr>
<tr>
<td>a) Real Estate</td>
<td></td>
</tr>
<tr>
<td>(i) Land</td>
<td></td>
</tr>
<tr>
<td>(ii) Residential</td>
<td></td>
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<tr>
<td>(iii) Commercial</td>
<td></td>
</tr>
<tr>
<td>(iv) Agricultural</td>
<td></td>
</tr>
<tr>
<td>(v) Any other</td>
<td></td>
</tr>
<tr>
<td>b) Quoted Equity</td>
<td></td>
</tr>
<tr>
<td>i. Agricultural</td>
<td></td>
</tr>
<tr>
<td>ii. Commercial and Allied</td>
<td></td>
</tr>
<tr>
<td>iii. Financial &amp; Investment</td>
<td></td>
</tr>
<tr>
<td>iv. Industrial and Allied</td>
<td></td>
</tr>
<tr>
<td>v. Others</td>
<td></td>
</tr>
<tr>
<td>c) Unquoted Equity</td>
<td></td>
</tr>
<tr>
<td>(v) Agricultural</td>
<td></td>
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<tr>
<td>(vi) Commercial &amp; Allied</td>
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<td>(vii) Financial &amp; Allied</td>
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<tr>
<td>(viii) Industrial &amp; Allied</td>
<td></td>
</tr>
<tr>
<td>d) Government Paper</td>
<td></td>
</tr>
<tr>
<td>i. Bonds</td>
<td></td>
</tr>
<tr>
<td>ii. Stocks</td>
<td></td>
</tr>
<tr>
<td>iii. Treasury Bills</td>
<td></td>
</tr>
<tr>
<td>iv. Any other (specify)</td>
<td></td>
</tr>
<tr>
<td>e) Cash and Deposits in Banks</td>
<td></td>
</tr>
<tr>
<td>(state the names of the Banks)</td>
<td></td>
</tr>
<tr>
<td>f) Offshore Investments</td>
<td></td>
</tr>
<tr>
<td>g) Listed REITS</td>
<td></td>
</tr>
<tr>
<td>h) Others (as applies per investment guidelines)</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>100%</td>
</tr>
</tbody>
</table>
*Provide on a separate paper a list of land reference title numbers in which scheme funds are invested

*Provide on a separate paper a list of companies in which investments are held.

NOTES FOR APPLICATION FOR REGISTRATION

The following words and phrases as used in the application form have the following respective meanings:

1. Actuarial liabilities
   A debt or an obligation of a retirement benefits scheme arrived at using actuarial principles and assumptions

2. Administrator
   A person charged with the responsibility of day to day management of a scheme such as keeping records, paying benefits to and providing members with information relating to their benefits

3. Banks
   Bank of financial institution licensed under the Banking Act and registered as custodian by the Authority in which schemes accounts are operated or held.

4. Commuted payment
   Whole or part of a pension entitlement paid to a member on retirement subject to scheme rules and/or Income Tax regulations.

5. Contribution formula
   The rate(s) of contribution of the fund by members and/or employers.

6. (i) Contributory scheme
   A retirement benefit scheme in which both the employer and the members contribute to the fund.

   (ii) Non-contributory scheme
   A retirement benefit scheme in which only the employers contributes to the fund.

7. Custodian
   A person who has custody of scheme assets including cash and title documents, as an agent of the scheme.

8. (i) Defined Benefit Scheme
   A scheme in which benefits to be provided or paid are specific based on a specified criteria such as service, earnings e.t.c.

   (ii) Defined Contribution (money purchase) scheme
   A scheme which specified the contributions to be made whether by employer and or employee. The accumulated contributions and interest earned determine the value of the benefit.

9. Financial year
   Financial year of the scheme.

10. Fund manager
A person charged with the responsibility of investing scheme funds.

(11) Lump sum
Full and final payment of retirement benefit upon cessation of employment on attaining the normal retirement age.

(12) (i) Open scheme
A running scheme which is open to new members to join.
(ii) Paid up scheme
A scheme where contributions to the scheme have ceased e.g. due to winding up.
(iii) Closed scheme
A scheme which is closed to new members but which otherwise function as a normal scheme for its continuing members.

(13) (i) Vested benefit
Any accrued benefit to which a member would be immediately entitled to on withdrawal from service of the sponsor from the scheme or at retirement.
(ii) Vesting formula
The method of determining the benefits to be vested.

*person includes a body corporate or a company.*

FORM II

RETIREMENT BENEFITS AUTHORITY
APPLICATION FOR REGISTRATION OF A NEW UMBRELLA RETIREMENT BENEFITS SCHEME

PART I – DETAILS OF THE SCHEME

A. (i) Name of the Scheme

(ii) .................................................. Income Tax P. I.N. Number

B. Provide the following information regarding the proposed scheme:

(i) Proposed number of employers

(ii) Proposed number of members

(iii) Registered office of the Scheme

Postal Address

Telephone Address

Telex Fax

E-mail

(iv) Is the scheme registered under the Income Tax (Retirement Benefit) Rules?

YES/NO
If yes, state the Income Tax Reference Number.

C. Provide the following details in the appendices:
(i) Directors of the Trust corporation or institution rendering trust services (Appendix A)
(ii) Auditors, Legal Advisors, Actuary, Managers, Custodians and Administrators (if any) (Appendix B) partners.
(iii) Directors or partners of the sponsor (Appendix C)

PART II – PARTICULARS OF TRUSTEES
A. Name of Trustee;

B. Physical Address
Building ......................................... Road ..................................................
Town ..................................................
Postal Address ................................. Telephone ................. Fax ..................................

C.  (i) Income Tax PIN Number .................................................................
(ii) Income Tax reference Number .........................................................
(iv) Certificate of Incorporation Number ................................................

D. Has the Trust Corporation or the institution rendering trust services previously been convicted of a criminal offence with a sentence of a period of six months or more?

PART III – PARTICULARS OF SPONSORS
(In case of more than one sponsor, provide the following particulars for each on a separate attachment)
A.  (i) Name of Sponsor:

(ii) If a company, certificate of incorporation number:

(iii) If not a company state the number of the certificate of registration under
The Business Names Act:
B. Physical Address
Building ................................ Road ...........................................
Town .................................................................
Postal Address ................................. Telephone ............ Fax ............

C. (i) Income Tax P.IN Number .......................................................
(ii) Income Tax reference Number .................................................

PART IV – ATTACHMENTS
Please attach copies of the following:
(i) Trust Deeds and Rules
(ii) Certificate of incorporation of the trust corporation
(iii) Latest audited report and accounts of the Trust Corporation
(iv) An actuarial certificate certifying the design financial viability of the scheme
(v) A feasibility on a proposed scheme
(vi) Certified copies of: ......................... 1. Certificate of incorporation of the Sponsor; or
2. Certificate of Registration as a business name of sponsor...

I hereby declare that Section 26 of the Act has been complied with and the statement contained herein and the documents submitted herewith are true and accurate to the best of my knowledge and belief. Any alterations in particular stated herein or in the said documents will be promptly communicated to the Authority within a period of not later than thirty days from the date of alteration.

Signed on this ................................ day of ...........................................

Signature of the applicant

Full Name: .............................................................
Designation: ............................................................

APPENDIX A

PARTULARS OF DIRECTORS OF TRUST CORPORATION

<table>
<thead>
<tr>
<th>Name of Director</th>
<th>Citizenship</th>
<th>Address/Tel/E-mail</th>
<th>Occupation</th>
<th>Date of Appointment</th>
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APPENDIX B

PARTICULARS OF AUDITORS, LEGAL ADVISORS, ACTUARIES, ADMINISTRATORS, MANAGER AND CUSTODIANS

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Name of firm</th>
<th>Income Tax P.I.N. Number</th>
<th>Address, Telephone of Email</th>
<th>Professional body to which partners are members</th>
<th>Date of appointment</th>
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</thead>
<tbody>
<tr>
<td>Actuaries</td>
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<tr>
<td>Administrators</td>
<td></td>
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</tr>
<tr>
<td>Auditors</td>
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<tr>
<td>Custodians</td>
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<tr>
<td>Legal Advisors</td>
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<td>Managers</td>
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APPENDIX C

PARTICULARS OF DIRECTORS OR PARTNERS OF A SPONSOR

<table>
<thead>
<tr>
<th>Name of Directors/Partners*</th>
<th>Citizenship</th>
<th>Address/Tel/E-mail</th>
<th>Occupation</th>
<th>Date of Appointment</th>
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*Delete as appropriate.


HENRY ROTICH,
Cabinet Secretary for the National Treasury.