

SPECIAL ISSUE

Kenya Gazette Supplement No. 190 (Senate Bills No. 20)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

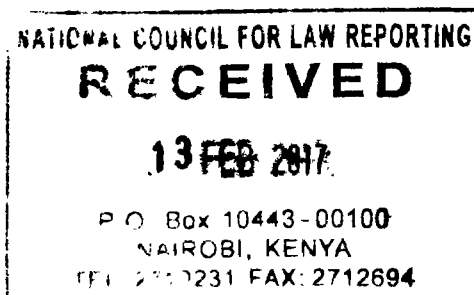
SENATE BILLS, 2016

NAIROBI, 2nd December, 2016

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THE COUNTY PENSION SCHEME BILL, 2016

A Bill for

AN ACT of Parliament to establish the County Pension Scheme; to provide for the management and administration of the scheme; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the County Pension Scheme Act, 2016.

Short title

2. In this Act, unless the context otherwise requires—

Interpretation.

“actuary” has the meaning assigned to it in section 2 of the Retirement Benefits Act;

No. 3 of 1997.

“annuity” means a pension purchased under a contract with a Registered Insurer;

“approved issuer” means an Approved Issuer appointed by the Board to provide the services of an Approved Issuer as defined in the Retirement Benefits Act;

“associated organization” means any person, firm, company, county agency or county corporation or organization of employees or association of employers created by, owned by or associated with county governments, urban areas and cities or other institution, established under the County Governments Act, Urban Areas and Cities Act, or their staff or any other person or body providing services to county governments or to their employees and includes those organizations whether associated with county governments or not that choose to participate in the Scheme by signing a deed of adherence;

No. 17 of 2012.
No. 13 of 2011.

“Auditor” means the Auditor-General appointed under Article 229 of the Constitution;

“Authority” means the Retirement Benefits Authority;

“Board” means the Board of Trustees established under section 6;

“Cabinet Secretary” means the Cabinet Secretary responsible for Public Service;

“Chairperson” means the chairperson of the Board of Trustees elected in accordance with section 6 (6);

“Child” means any child of a deceased member who has not attained eighteen years of age or if the child is receiving full time education, not more than twenty-five years of age and was at the time of the death of the deceased member wholly or mainly dependent on the deceased;

“Closed Schemes” means Local Authorities Pension Trust (Defined Benefits) scheme established under Legal Notice No. 50 of 2007 and the Local Authorities Provident Fund established under the Local Authorities Provident Fund Act, Laws of Kenya Cap. 272;

“Commencement Date” means the date of coming into force of this Act;

“Contribution” means the amount payable by a member or sponsor into the Scheme under section 20;

“Corporate Administrator” means a retirement benefit scheme administrator jointly established by the Closed Schemes and the County Pension Fund Scheme in accordance with the Retirement Benefits Act and shall include a Corporate Administrator previously incorporated by a Closed Scheme;

“Corporate Trustee” means a trust corporation duly registered by the Retirement Benefits Authority as a corporate Trustee;

“County Assemblies Service Boards Forum” means the forum established to bring together all the County Assemblies Service Boards established under section 12 of the County Governments Act;

“County Assemblies Forum” means the forum established to bring together all County Assemblies from all the County Governments in the Republic of Kenya;

“County Public Service” means the act of performing a public duty or work by a person employed by a county government;

“County Public Service Boards Forum” means a forum bringing together all the County Public Services Board established under section 57 of the County Governments Act;

“custodian” means a person registered under the Retirement Benefits Act and appointed by the Board under section 20;

“continuous service” means the uninterrupted service with the sponsor from the original date of entry, and includes any period or periods of authorized leave of absence (with or without pay), a break condoned by the Board, or a period of suspension followed by reinstatement in the same or other pensionable post, but excluding any period during which no contributions were made to the Scheme by or on behalf of the member;

“deed of adherence” means the legal instrument to be executed by a participating employer who joins the Scheme after the Commencement Date and which shall bind that employer to the Trust and Scheme’s Rules for the Benefit of its eligible employees;

“dependant” in relation to a deceased member, means a relative of the deceased who survives the deceased and who, on the date of the deceased’s death, was—

- (a) a spouse to the deceased;
- (b) a child of the deceased; or
- (c) a parent of the deceased who was dependent on the deceased for the provision of the ordinary necessities of life;

“early retirement age” means the age specified in the Regulations but which shall not be less than 50 years;

“eligible employee” means any employee of a county government, an associated organization, county agency, county corporation or such other body that may be approved by the Board and which has signed a Deed of Adherence in the prescribed form;

“employer” means a county government or any of its entities, a state organ or associated organization or any other person or body, approved by the Board to contribute to the Fund;

“Fund” means the County Pension Fund established under section 24;

“Fund Manager” means a manager registered under the Retirement Benefits Act and appointed by the Board under section 18;

“Gazette” means the Kenya Gazette or the County Gazette as may be appropriate;

“gender” a reference to a male gender shall include a reference to all other genders;

“income drawdown” means the facility to continue to keep retirement savings invested and take an income at a specified period rather than buy an annuity;

“investment return” means a portion of the investment income declared by the Board and appropriated to the account of a Member;

“member” means a person who is a Member of the Scheme and includes a person entitled to or receiving a benefit under the Scheme;

“member account” means an account maintained by the Scheme for an individual Member;

“minority groups” means youth, older members of society, persons with disabilities, or members of minority or marginalized communities;

“normal retirement age” means the retirement age marked by the sixtieth birthday where the exact date of birth is known, and where it is not known, the first day of January in the year in which his sixtieth birthday is deemed by the sponsor and the board to occur;

“Nominating Bodies” means entities vested with the mandate of nominating individuals persons to the Board of Trustees as provided for under section 6 of this Act;

“Pensionable Emoluments” means basic salary and housing allowances payable to an employee by an employer who is a member of the Scheme;

“public funds” means the totality of moneys provided in article 206 of the Constitution but does not include contributions to a retirement benefit scheme by an employer as part of consideration under an employment contract;

“Public Officer” has the meaning assigned to it under Article 260 of the Constitution of Kenya 2010;

“public service” means the action of performing work or duty of a public nature by individuals employed in a public office other than as a state officer;

“Salih” means a pension arrangement developed by the Board specifically for individuals who profess Islam religion and submit to Muslim law and who wishes to have their pension funds managed and invested in a sharia compliant manner;

“Scheme” means the County Pension Scheme established under section 5;

“State Organ” has the meaning assigned to it under Article 260 of the Constitution of Kenya, 2010;

“sponsor” means an employer or any other person or body who makes Contributions on behalf of a member;

“spouse” means a male or female person to whom a member is married or was married immediately before their death under the law, whether monogamous or not;

“trustee” means a member of the Board of Trustees who, under the law of trust, alone or collectively with other trustees is the legal owner of the assets of the Scheme;

“Trust Secretary” means the secretary to the Board of Trustees who shall also serve as the chief executive officer of the Corporate Administrator established under section 21; and

“Regulations” means the Regulations made by the Cabinet Secretary under the First Schedule.

3. This Act applies to—

Application.

- (a) a County Government;
- (b) a person employed by a County Government;
- (c) a County Agency, County Corporation or Associated Organizations;
- (d) a person employed by a County Agency, County Corporation or Associated Organization;
- (e) a person seconded or transferred from the National Government to a County Government;
or
- (f) an officer approved by the Board to become a member of the scheme under the auspices of a Sponsor who has signed a Deed of Adherence.

4. (1) The object and purpose of the Act is to—
- (a) provide for the adoption of an existing umbrella pension scheme for all staff and officers of County Governments, County Agencies, County Corporations, Associated Organizations and other related entities;
 - (b) establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the Scheme and former employees of local and central government who transfer their service to a County Government, County Agency, or County Corporation;
 - (c) protect the benefits of employees of county governments;
 - (d) maximise employer compliance with employer duties and the employment safeguards in accordance with the Retirement Benefits Act;
 - (e) improve the social security of members of the Scheme by ensuring that the members save in order to cater for their livelihoods during their retirement;
 - (f) promote and improve the understanding of the good administration of county government scheme;
 - (g) reduce or minimise the risk of situations arising which may lead to members losing their benefits;
 - (h) provide for the transition from the existing system of retirement benefits schemes for staff of County Governments and former local and central governments to a uniform, inclusive and comprehensive pension scheme for County Governments, County Agencies, County Corporations and other Associated Organizations;
 - (i) provide for a unified corporate administrative framework for the umbrella pension scheme established under this Act and the Closed Schemes; and
 - (j) provide for the establishment or adoption of an existing Corporate Administrator to provide

Objects of the Act.

No. 3 of 1997.

scheme administration services to all retirement benefits schemes within the county governments sector.

PART II—ESTABLISHMENT, ADMINISTRATION AND MANAGEMENT OF THE SCHEME

5. (1) There is established the County Pension Scheme which shall be administered by the Board in accordance with this Act and the Retirement Benefits Act.

Establishment of the County Pension Scheme.

(2) The Scheme is established as an statutory trust and shall vest in, operated and managed by the Board.

Cap. 197.

(3) The Scheme is an umbrella pension scheme for all persons in service in the County Governments, County Agencies, County Corporations and Associated Organizations.

(4) The Scheme shall be the successor to the Laptrust (Umbrella) Retirement Fund previously established and registered under Trust Deed and Rules under Retirement Benefits Authority Certificate Registration no. 01305, and all rights, obligations, assets and liabilities of the Laptrust (Umbrella) Retirement Fund existing on the date of the coming into force of this Act shall be deemed to be transferred to the Fund and any reference to the Laptrust (Umbrella) Retirement Fund in any contract or document shall for all intents and purposes be deemed to be a reference to County Pension Fund.

6. (1) There is established the Board of trustees for the scheme.

Board of Trustees of the Scheme.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) entering into contracts;
- (d) borrowing and lending money; and
- (e) doing or performing all such other things or acts as may be necessary in furtherance of its purpose and functions.

Cap. 164.

(3) The Board shall comprise of the following trustees appointed by the Cabinet Secretary—

- (a) a representative of the Council of Governors;
- (b) a representative of the Public Service Commission;
- (c) a representative of the County Public Service Boards;
- (d) a representative of the County Assembly Service Boards; and
- (e) five other nominees from the county governments nominated from the three most representative employee unions, two of whom shall be of the opposite gender on one part and one representative from persons with disability.

(4) The nominee from the Public Service Commission shall serve to ensure gender balance on the Board of in accordance with the two-thirds gender rule enshrined in the Constitution.

(5) The Trust Secretary shall serve as the Secretary to the Board and the Chief Executive Officer of the Scheme.

(6) A chairperson shall be elected by the trustees from amongst the trustees set out under sub-section (3).

(7) The Cabinet Secretary shall formally appoint the nominees forwarded under sub-section (3) by notice in the Gazette.

(8) The nomination and appointment of trustees shall be carried out in the manner prescribed under the first schedule.

(9) The Trust Secretary shall be an *ex officio* member of the Board with no rights to vote at a meeting of the Board.

7. A person is qualified for appointment as a trustee if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;

Qualifications for
appointment of
Trustees.

- (c) has at least five years' experience in any of the following fields—
- (i) finance;
 - (ii) administration;
 - (iii) law;
 - (iv) economics;
 - (v) investment;
 - (vi) engineering and technology;
 - (vii) nursing;
 - (viii) medicine;
 - (ix) agriculture;
 - (x) actuarial science; or
 - (xi) any other profession represented in the wide membership of the Scheme directly relevant to the functions of the Board; and
- (d) meets the requirements of Chapter Six of the Constitution.

8. The functions of the Board shall be to—

Functions of the Board.

- (a) formulate the policies relating to the Scheme in accordance with the provisions of Retirement Benefits Act;
- (b) collect contributions and income payable to the Fund under this Act;
- (c) pay out the various benefits to persons entitled to the benefits as provided under the Act;
- (d) protect the Fund's assets and ensure long term viability of the Scheme;
- (e) ensure efficient administration of the Scheme;
- (f) ensure prudent investment of the monies forming part of the Fund and where necessary establish companies to perform such functions as the Board may consider necessary and relevant to the Scheme including offer administration services, fund management, and consultancy services;
- (g) negotiate competitive annuity rates on behalf of retiring and withdrawing members;

No. 3 of 1997.

- (h) ensure that the Scheme observes high standards of corporate governance and business ethics; and
- (i) perform any other functions assigned to it under this Act or under any other law.

9. (1) In the exercise of its functions under this Act the Board shall be accountable to the sponsors and the members of the Scheme.

Powers of the Board.

(2) The Board shall have all powers necessary for the proper performance of its functions under this Act.

(3) Without prejudice to the generality of subsection (1), the Board shall have power to—

- (a) invest the assets of the Scheme in such manner as best promotes the purpose for which the Scheme is established;
- (b) appoint a custodian and fund manager, and jointly with other schemes in the county governments incorporate or invest in the corporate administrator established under section 21 to carry out their functions as specified in the Retirement Benefits Act;
- (c) determine the provisions to be made for administrative expenses as provided for under section 26 (2) and for reserves of the Fund as provided for under section 28;
- (d) to protect the assets of the Scheme;
- (e) collaborate with any other institution so as to further the purpose for which the Scheme is established;
- (f) receive grants, gifts, donations or endowments and make legitimate disbursements from them;
- (g) enforce remittance of outstanding contributions by a Sponsor;
- (h) invest any monies of the Scheme not immediately required for its purposes in the manner provided in section 25; and
- (i) undertake any activity necessary for the fulfilment of any of the functions of the Scheme.

No. 3 of 1997.

(4) The Board may subject to such conditions as it may consider appropriate, by directions in writing, delegate any of its powers to any one or more of the Trustees or to the Trust Secretary or employees of the Schemes' Corporate Administrator.

10. (1) The Board may establish such committees as it may consider necessary for the better carrying out of its functions under this Act.

Committees of the Board.

(2) The Board may co-opt to sit in the committees, persons with such skills and knowledge as it may consider necessary for the effective functioning of the Board.

(3) The persons co-opted under subsection (2) shall not be more than three.

11. (1) There is established a Shariah Supervisory Committee which shall consist of at least three and not more than five members.

The Shariah Supervisory Committee.

(2) The membership of the Committee shall be drawn from the most renowned muslim scholars with expertise in the management of a sharia compliant pension scheme and who shall be persons of integrity.

(3) The quorum for the conduct of the business of the Committee shall be three members or by resolution circulated and approved by the number forming a quorum.

(4) The function of the Shariah Supervisory Committee shall be to—

- (a) advise the Board on the requirements of Shariah law in respect to Sharia compliant pension schemes to ensure that at all times, the Board is managed and invested in a Sharia compliant manner; and
- (b) monitor and supervise the management and investment of Salih to ensure that the same is Shariah Compliant.

12. (1) The trustee shall hold office on part-time basis for a term of three years and may be eligible for re-appointment for one further final term of three years.

Tenure of office.

(2) The Board shall put in place arrangements to ensure that one-third of the trustees are appointed in a staggered manner separated by at least six months.

13. The trustees shall be paid such allowances, and reimbursement of expenses as the Board may approve. Provided only that an extensive remuneration survey shall be conducted through a qualified human resource consultant prior to such proposals and approvals.

Remuneration of Trustees.

14. (1) A trustee may be removed from office by the Cabinet Secretary for—

Removal from Office.

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or negligence of duty;
- (d) bankruptcy; or
- (e) absence from three consecutive meetings of the Board without a reasonable written explanation addressed to the Chairman.

(2) Before the Cabinet Secretary makes a decision to remove a trustee pursuant to subsection (1), the trustee shall be given an opportunity to be heard on any allegation.

15. A person shall cease to be a trustee if the person—

Vacation of office.

- (a) resigns in writing, to the Cabinet Secretary;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of more than six months;
- (c) is declared bankrupt;
- (d) is unable to perform the functions of their office by reason of mental or physical infirmity;
- (e) is removed in accordance with section 14; or
- (f) dies.

16. Where a vacancy occurs in the membership of the Board under section 14 or 15, the Cabinet Secretary shall appoint a new member in accordance with the provisions of this Act.

Filling of casual vacancy.

17. (1) The business and affairs of the Board shall be conducted in accordance with the Second Schedule.

Meetings of the Board.

(2) Except as provided in the Second Schedule, the Board may regulate its own procedures subject to

compliance with the provisions as to meetings under the Retirement Benefits Act.

Cap. 197.

(3) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any of its decisions.

18. (1) The common seal of the Board shall be kept in such custody as the Board may direct and shall be used under the directions and authority of the Board.

Common seal of the Board.

(2) The common seal of the Board when affixed to a document and authenticated shall be judiciously noticed and unless the contrary is established, an order or authorization of the Board under this section shall be presumed to have been given.

PART III—ADMINISTRATION AND MANAGEMENT OF THE COUNTY PENSION FUND

19. The Board shall appoint fund managers of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act—

Appointment and functions of the fund manager.

Cap. 197.

- (a) implement the investment policy of the Scheme as approved by the Board;
- (b) invest the scheme funds and assets in accordance with the provisions of the Retirement Benefits Act and the investment policy of the Board;
- (c) maintain books of account on all investment transactions relating to the Scheme;
- (d) provide regular information on investment strategy, market returns and other performance indicators to the Board; and
- (e) perform any other function that may be assigned in the instrument of appointment and other written law.

20. (1) The Board shall appoint Custodians of the Scheme who shall, in addition to the duties under the Retirement Benefits Act—

Appointment and functions of the Custodian.

Cap. 197.

- (a) receive the total contributions remitted by the member and Sponsor under this Act on behalf of the Board;

- (b) not later than the next business day following of receipt of the Contributions from a Sponsor, notify the Fund Manager and the Corporate Administrator of such receipt;
- (c) receive and keep in safe custody the title documents, securities and monies of the Scheme in trust for the members and beneficiaries;
- (d) collect dividends for the Scheme;
- (e) report to the Board on any matter relating to the assets being held by the Custodian on its behalf at such intervals as may from time to time be determined by the Board;
- (f) undertake statistical analysis on the investments and returns on investments with respect to funds in its custody and provide data and information to the Administrator and the Board;
- (g) execute, on behalf of the Board, the relevant proxy for the purpose of voting in relation to the investments; and
- (h) perform any other function that may be assigned in the instrument of appointment or any other written law.

(2) The Custodian shall maintain all funds and assets in its custody to the order of the Board and shall not utilise any pension fund or assets in its custody to meet its own financial obligation.

21. (1) The Scheme shall be administered by a Corporate Administrator jointly established or owned by the Scheme established under this Act and the Closed Schemes. Provided that the Board of the Scheme established under this Act and the Boards of the Closed Schemes may adopt any existing Corporate Administrator owned by any of the Closed Schemes and modify its structure to suit the joint needs of the three partner schemes.

The Corporate Administrator.

(2) The Corporate Administrator shall be a Company established in accordance with this Act, the Companies Act, and the Retirement Benefits Act, 1997.

The Companies Act.

Act No. 3 of 1997.

- (3) The functions of the Administrator shall be to—
- (a) carry out daily administration of the affairs of the Scheme in accordance with the provisions of the Trust Deed and Rules in this Act, the Retirement Benefits Act, the Income Tax Act, and its amendments, any other relevant legislation in force and all other legal documents related to the scheme;
 - (b) ensure that the scheme is at all times administered in the best interest of the Members and Sponsors of the Scheme;
 - (c) liaise with the trustees, the Authority, the Department for the time being responsible for collecting domestic taxes and the scheme service providers in the course of administration of the Scheme;
 - (d) Collate, collect and maintain accurate data of all the assets of the Schemes under its administration, the members, the service providers, the beneficiaries, and any other information necessary for the day to day administration of the Scheme.
 - (e) Keep all the proper books and records of account in respect to income, expenditure, assets and liabilities of the Schemes under its administration including preparing scheme budgets, cash flows and liquidity requirements as may from time to time be required.
 - (f) offer advisory and training services to the trustees, members and the Sponsor on their rights and obligations in the scheme;
 - (g) avail the required data of the scheme to the service providers to enable preparation of statutory returns to the Authority;
 - (h) submit or cause to be submitted required statutory returns to the Authority;
 - (i) compute and pay benefits to the members and their beneficiaries directly as provided for in the law and the Trust Deed and Rules;

Cap. 470.

Act No. 3 Of 1997.

No. 3 of 1997.