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THE COUNTY GOVERNMENTS RETIREMENT SCHEME ACT

CHAPTER 189B

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CHAPTER 189B

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CHAPTER 189B

COUNTY GOVERNMENTS RETIREMENT SCHEME ACT

[Date of assent: 18th September, 2019.]

[Date of commencement: 7th October, 2019.]

An Act of Parliament to establish the County Governments Retirement Scheme for employees in the service of county governments, to provide for retirement benefits of those employees and for connected purposes

[Act No. 21 of 2019.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the County Governments Retirement Scheme Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"actuary" has the meaning assigned thereto in the Retirement Benefits Act (Cap. 197).

"administrator" means the person appointed as such under section 23;

"annuity" means a pension purchased under a contract with a registered insurer;

"approved issuer" means an approved issuer appointed by the Trustee to provide the services of approved issuer in accordance with the Retirement Benefits Act (Cap. 197);

"associated organization" means any person, firm, company or organization of employees or association of employers created by, owned by or associated with county governments, urban areas and cities or any other institution, established under the County Governments Act (Cap. 265), the Urban Areas and Cities Act (Cap. 275), 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;

"Authority" means the Retirement Benefits Authority established under the Retirement Benefits Act (Cap. 197);

"Board" means the Board of Trustees established under section 6;

"Cabinet Secretary" means the Cabinet Secretary responsible for the National Treasury;

"child" means any child of a deceased member including a natural child, an adopted child or a step-child 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 wholly or mainly dependent on the deceased, and includes an unborn child who, if already born, would have been a child of the deceased;

"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 this Act;

"county public service" means the collectivity of individuals performing a function within a county government;

"custodian" means a person appointed as such under section 22 of the Act;

"deed of adherence" means the legal instrument to be executed by the employer who joins the Scheme after the commencement date of the Scheme and which shall bind that employer to the Scheme's rules;

"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 such age as may be prescribed but which shall not be less than fifty years;

"eligible employee" means an employee of the county public service or an employee of an associated organization or body, as may be approved by the Board and which has signed a deed of adherence in accordance with this Act;

"employer" means a county government or any of its entities, a state organ or associated organization, as may be approved by the Board and which has signed a deed of adherence in accordance with this Act;

"existing scheme" means the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund;

"Fund" means the County Governments Retirement Scheme Fund established under section 37;

"fund manager" means a person appointed as such under section 21;

"income drawdown" means the facility to continue to keep retirement savings invested in the scheme and take an income during a specified period rather than buy an annuity;

"insured benefit" means the death in service lump sum benefit and the disability lump sum benefit to be provided in terms of section 24;

"investment return" means a portion of the return of the investment declared by the Board and appropriated to the account of a member;

"member" means an eligible employee who has become 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;

"membership" means the fact of having been admitted as a member of the Scheme and a member's period of membership shall for the purposes of determining the member's entitlement to access his benefits upon resignation or

termination of service be deemed to include his period of membership of other registered retirement benefits schemes in respect of which benefits have been transferred into the Scheme;

"normal retirement age" means the age as set by the Public Service Commission or any other Act of Parliament for retirement of public officers;

"pensionable emoluments" means basic salary excluding housing, transport and any other allowances or fluctuating emoluments;

"public officer" has the meaning assigned thereto in Article 260 of the Constitution;

"Public Service" has the meaning assigned thereto in Article 260 of the Constitution;

"Scheme" means the County Governments Retirement Scheme established under section 4;

"sponsor" means an employer or any other 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 under any other law, whether monogamous or not immediately before their death; and

"Trustee" means a member of the Board.

3. Objects and purpose of the Act.

(1) The object and purpose of the Act is to—

- (a) provide for the establishment of the Scheme;
- (b) provide for the payment of retirement benefits to members of the Scheme when they become due;
- (c) provide for the social security of members of the Scheme by ensuring that the members save in order to cater for their livelihood during their retirement;
- (d) establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the Scheme;
- (e) establish transitional provisions for existing schemes; and
- (f) protect the benefits of the members of the Scheme.

PART II – ESTABLISHMENT OF THE COUNTY GOVERNMENTS RETIREMENT SCHEME

4. Establishment of the County Governments Retirement Scheme

(1) There is established the County Governments Retirement Scheme.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) entering into contracts;
- (d) borrowing and investing money; and

- (e) doing or performing all such other things or acts as may be necessary in furtherance of its purpose and functions.

(3) The Scheme shall be a defined contribution scheme providing social security benefits including—

- (a) periodic payments through the purchase of annuities;
- (b) a lump sum as a commutation of pension or trivial pension in accordance with the RBA Regulations;
- (c) income drawdown;
- (d) gratuity; and
- (e) any other benefit approved by the Board under this Act.

5. Membership of the Scheme

A county public officer or any other person approved by the Board may become a member of the Scheme under the auspices of a sponsor.

6. Board of Trustees of the Scheme

(1) The management of the Scheme shall vest in a Board of Trustees of the Scheme.

(2) The Board shall consist of—

- (a) the Chairperson elected by the Trustees from among the members under paragraph (c), (d), (e) and (f);
- (b) the Principal Secretary responsible for matters relating to finance or a representative;
- (c) a person nominated by Council of County Governors;
- (d) a person nominated by County Public Service Boards;
- (e) a person nominated by County Assembly Service Boards;
- (f) five persons nominated by most representative trade unions representing employees of county governments of whom at least two shall not be of the same gender as follows—
 - (i) four persons from trade unions representing the employees within the county executive; and
 - (ii) a person from trade unions representing the employees within the county assemblies' service; and
- (g) the Chief Executive Officer who shall be an *ex officio* member and the secretary to the Board with no voting rights.

(3) The vice-Chairperson of the Board shall be elected by the Trustees from among their number.

(4) The Chairperson and vice-Chairperson shall be of the opposite gender.

(5) The Cabinet Secretary shall ensure that not more than two thirds of the members of the Board are of the same gender.

(6) The Cabinet Secretary shall appoint the persons nominated under subsection (2) by notice in the gazette.

(7) -The procedure for nomination and appointment of Trustees under subsection (2) shall be as prescribed in the regulations.

7. Qualifications for appointment of Trustees

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;
- (c) has at least five years experience in—
 - (i) finance;
 - (ii) law;
 - (iii) economics;
 - (iv) actuarial science; or
 - (v) any other profession or work experience directly relevant to the functions of the Board; and
- (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

8. Disqualification from appointment as a Trustee.

A person shall not be appointed as a Trustee if that person—

- (a) has been convicted of a criminal offence, and sentenced to imprisonment for a term of six months or more;
- (b) is an adjudged bankrupt or enters into a composition or arrangement with creditors; or
- (c) is disqualified under the provisions of any other written law from appointment as such.

9. Tenure of office

(1) A Trustee shall hold office for a term of three years and may be eligible for re-appointment for a further and final term of three years.

(2) Where a Trustee opts to apply for re-appointment under subsection (1), the re-appointment may be considered based on the performance of the applicant.

(3) The Board shall put in place arrangements to ensure that one-third of the Trustees are appointed in a staggered manner.

10. Removal from office

(1) A Trustee may be removed from office by the Cabinet Secretary for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or negligence of duty;
- (d) bankruptcy;
- (e) absence from two consecutive meetings of the Board without a reasonable explanation; and
- (f) failure to meet the requirements of leadership and integrity set out in chapter six of the Constitution.

(2) Before a Trustee is removed from office under subsection (1), the Trustee shall be given an opportunity to be heard against the intended removal.

(3) Notwithstanding subsection (1), the Authority may remove a Trustee on grounds specified in the Retirement Benefits Act, 1997.

11. Vacation of office

A person ceases to be a Trustee if the person—

- (a) resigns in writing to the Cabinet Secretary;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
- (c) is declared bankrupt or enters into composition with his or her creditors;
- (d) is unable to perform the functions of their office by reason of mental or physical infirmity;
- (e) is removed in accordance with section 10; or
- (f) dies.

12. Filling of vacancy

Where a vacancy occurs in the membership of the Board under section 10 or 11, the Cabinet Secretary shall appoint a new Trustee in accordance with the provisions of this Act.

13. Functions of the Board

The Board shall—

- (a) formulate policies relating to the Scheme in accordance with the provisions of the Retirement Benefits Act (Cap. 197);
- (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 management of the Scheme;
- (f) ensure prudent investment of the monies forming part of the Fund;
- (g) negotiate competitive annuity rates on behalf of members;
- (h) ensure that the Scheme observes high standards of corporate and business ethics;
- (i) advise the Cabinet Secretary on any matter relating to the objects and functions of the Board under this Act; and
- (j) perform any other functions assigned to it under this Act.

14. Powers of the Board

(1) In the exercise of its functions, the Board shall be accountable to the sponsors and the members of the Scheme.

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

(3) Without prejudice to the generality of subsection (2), the Board shall have power to—

- (a) supervise the assets of the Scheme in such manner as best promotes the purpose for which the Scheme is established;
- (b) appoint a custodian, fund manager and administrator to carry out their functions as specified in the Retirement Benefits Act (Cap. 197);
- (c) determine the provisions to be made for administrative expenses as provided for under section 38 and for reserves of the Fund as provided for under section 39;

- (d) ensure protection, where necessary, of the assets of the Scheme;
- (e) associate 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;
- (i) delegate any of its powers; and
- (j) undertake any activity necessary for the fulfilment of any of the functions of the Scheme.

(4) The Board may, subject to such conditions as it may consider necessary, by directions in writing, delegate any of its powers to any one or more of the Trustees or to the chief executive officer or employees of the Scheme.

15. Committees of the Board

(1) The Board may establish committees consisting of the Trustees for the better carrying out of its functions.

(2) The Board may co-opt persons to committees established under subsection (1) for a particular reason and such persons shall hold office for such period as the Board may determine.

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

(4) Subject to any specific or general direction of the Board, a committee established under subsection (1) may regulate its own procedure.

16. Remuneration of Trustees

The Trustees shall be paid such remuneration as the Authority may determine in accordance with the Retirement Benefits Act (Cap. 197).

17. Meetings of the Board

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

(2) Except as provided in the Schedule, the Board may regulate its own procedures subject to compliance with the Retirement Benefits Act (Cap. 197) and the regulations thereunder.

(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. Chief executive officer of the Scheme

(1) There shall be a chief executive officer of the scheme who shall be appointed by the Board through a competitive recruitment process on such terms and conditions as may be specified in the instrument of appointment.

(2) The chief executive officer shall be an *ex-officio* member of the Board.

(3) A person is qualified for appointment as the chief executive officer if that person—

- (a) is a citizen of Kenya;

- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years of experience of which five years should be at senior management level in a profession relevant to the functions of the Scheme as may be defined in the Regulations; and
- (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(4) The Chief Executive Officer shall be the accounting officer of the Scheme and secretary to the Board and, subject to the direction of the Board, shall be responsible for the—

- (a) implementation of the decisions of the Board;
- (b) day to day management of the affairs of the Scheme;
- (c) management and discipline of the employees of the Scheme; and
- (d) any other function that may be assigned by the Board.

(5) The Chief Executive Officer shall hold office for a term of three years and may be eligible for re-appointment for a further final term of three years.

(6) The Chief Executive Officer may be removed from office by the Board such grounds as may be set out in the instrument of appointment.

(7) Before the Chief Executive Officer is removed from office under subsection (5), the Chief Executive Officer shall be given—

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to be heard either in person or by a legal representative.

19. Employees of the Scheme

(1) The Board may engage such other employees as it may consider necessary for the performance of its functions under this Act.

(2) The terms and conditions of service of employees of the Scheme shall be determined by the Board.

20. Common seal of the Scheme

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

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

PART III – ADMINISTRATION OF THE SCHEME

21. Fund manager

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

- (a) implement the investment policy of the Scheme as approved by the Board;
- (b) manage the Scheme funds and assets in accordance with the provisions of the Retirement Benefits Act (Cap. 197);
- (c) maintain books of accounts on all investment transactions relating to the Scheme;

- (d) submit reports on a quarterly basis 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.

22. Custodian of the Scheme

(1) The Board shall appoint a custodian of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act (Cap. 197)—

- (a) receive the contributions remitted by the sponsors and members under this Act on behalf of the Board;
- (b) not later than the next business day following receipt of the contributions from a sponsor, notify the fund manager and the 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) submit to the Board a report on a quarterly basis, of the reconciliations with respect to the funds held by the Custodian;
- (h) execute, on behalf of the Board, the relevant proxy for the purpose of voting in relation to the investments; and
- (i) 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.

23. Administrator

(1) The Scheme shall be administered by an administrator appointed by the Board.

(2) The administrator shall be an employee of the Board.

(3) The functions of the administrator shall be to—

- (a) open and maintain an account for each member;
- (b) upon receiving details of the contributions remitted under this Act, cause the amount of the contributions to be credited in the account of the member in respect of whom the sponsor has made the payment;
- (c) inform the Board if a member's contribution details differ from the expected;
- (d) provide customer support services to members, including access at least on a quarterly basis to members' account balances and statements;
- (e) keep and maintain proper books of accounts of the Scheme;

- (f) cause to be paid retirement benefits to a member who has retired;
- (g) be responsible for all calculations relating to retirement benefits; and
- (h) carry out any other functions as may be directed by the Board from time to time.

(4) The administrator shall ensure that all income earned from the investment of the Fund is distributed to the credit of the members' retirement savings accounts save for clearly defined and reasonable fees, charges, costs and expenses of transactions as may be approved by the Board.

24. Contributions

(1) A member shall, so long as the member remains in the employment of a sponsor, contribute not less than twelve percent of that member's pensionable emoluments to the Scheme.

(2) Every sponsor shall contribute to the Scheme not less than fifteen per cent of the pensionable emoluments of every employee who is a member of the Scheme plus the amounts necessary to cover the premiums for insured benefit.

(3) Subject to such guidelines as the Board may issue, in consultation with the members and sponsors of the Scheme, a member of the Scheme may make additional contributions to the Scheme.

(4) In addition to the contributions specified in subsections (1) and (2), the sponsor shall take out and maintain a life insurance policy that has disability benefits in favour of every member of the Scheme, for a minimum of three times of the member's annual pensionable emoluments.

(5) Upon commencement of this Act, contributions required to be made under subsections (1) and (3) shall be deducted by a sponsor from the salary of the contributor in each month on which the salary is paid and shall be paid into the Scheme together with the sponsor's contribution before the 10th day of every calendar month or before any other day which may be notified in writing and approved by the Authority.

(6) Any contributions not paid to the Scheme by a sponsor within ten days after the last day of the calendar month to which the contributions relate shall attract interest during the period they remain unpaid at a rate specified by the Board from time to time provided that such rate shall not be less than the rate specified in the Retirement Benefits Act and Regulations.

(7) All unpaid contributions and interest thereon shall constitute a civil debt of the respective sponsor and shall be recoverable summarily by the Board as provided for by law.

(8) The Board shall report to the Authority at such intervals as specified by the Authority, all remittances of contributions outstanding and not received after the deadlines specified herein.

25. Vesting of benefits

All the benefits derived from contributions by a member and a sponsor shall vest immediately in the member.

26. Withdrawal of membership or benefits

(1) A member shall not withdraw membership or retirement benefit from the Scheme while the member is in the employment of a Sponsor.

(2) A member may withdraw benefits from their account before normal retirement age in the following circumstances—

- (a) resignation;
- (b) dismissal;
- (c) ill health;
- (d) emigration.

(3) Despite subsection (1)—

- (a) where a member leaves employment before one year of membership, the member may opt for payment of his own and the whole of the sponsor's contributions, together with allocated investment income;
- (b) where a member leaves employment after one year of membership but before attaining the specified early retirement age, the member may opt for payment of—
 - (i) his or her own contribution and the sponsor's contribution as may be prescribed by the Retirement Benefits Authority and the investment income that has accrued in respect of those contributions; and
 - (ii) the balance shall be retained in the Scheme and continue to accrue interest until the member attains early retirement age, or transferred to another registered Scheme of the members choice;
- (c) a member may opt for payment to him or her of the total amount of vested accrued benefits before attaining the early retirement age—
 - (i) on grounds of ill health or subsequently during deferment, if the member becomes incapacitated due to ill health, to the extent that it would occasion his or her retirement, if he or she was in employment; or
 - (ii) if the member has emigrated from Kenya to another country without the intention of returning to reside in Kenya and the Board has approved the payment of the retirement benefits and submitted, fourteen days prior to payment of the benefits, the approval to the Authority.

27. Retirement from service

(1) Despite any other provisions in this Act, a member who retires is entitled to make withdrawals—

- (a) on attaining the normal retirement age, or where their exact date of birth is not known, on the 1st July in the year in which the Board deems that they have reached normal retirement age;
- (b) on the advice of a qualified medical practitioner appointed by the Board certifying that the member is no longer mentally or physically capable of carrying out the functions of their office.

(2) The proof of age of a retiring member for the purposes of subsection (1) is the date of birth in any of the following documents—

- (a) birth certificate;
- (b) national identification card; or
- (c) a valid passport.

28. Early retirement

(1) Notwithstanding the provisions of section 27, any member who retires on attaining the early retirement age is entitled to make withdrawals in accordance with section 29.

(2) The proof of age of a retiring member for the purposes of subsection (1) is the date of birth in any of the following documents—

- (a) birth certificate;
- (b) national identification card; or
- (c) a valid passport.

29. Payment of retirement benefits.

(1) Where a member retires as provided in this Act, the member may request the Board in writing to pay to him or her—

- (a) a lump sum from the balance in his or her retirement savings account that shall not exceed the equivalent of one-third of that balance:

Provided that a Member may withdraw any additional voluntary contributions made into the Scheme and accrued interest in full;

- (b) monthly or quarterly income drawdown in accordance with a formula prescribed by the Board on the advice of an actuary;
- (c) monthly or quarterly annuity for life purchased from an approved issuer of their choice:

Provided that the annuity shall include a provision for benefits payable to dependants upon a member's death.

(2) Despite the provisions of any other written law, a benefit granted under this Act shall not be—

- (a) assignable or transferable except in accordance with the terms of a mortgage guarantee facility approved by the Board; and
- (b) liable to be attached in settlement of any claim.

(3) The payment of a retirement benefits shall commence from the end of the month immediately following the month of the retirement of the member.

(4) Every payment of benefits from the Scheme may be subject to deduction of the amount outstanding due by the member under any mortgage guarantee facility approved by the Board.

30. Particulars of member and dependants of the member

(1) Every member shall provide his or her particulars and those of his or her dependants to the administrator in the prescribed manner.

(2) A member may update the particulars provided under subsection (1) at any time and, in any event, at least three years before retirement.

31. Dispute on nomination

(1) If a dispute relating to a nomination under this Part arises, the Board has power to consider evidence presented and determine the rightful dependant.

(2) Nothing in this Part may be construed as limiting or otherwise affecting the inherent power of the Board, either on its own motion or on the application of a party, to make such decisions as may be necessary.

32. Benefits to be paid upon the death of a member

If upon the death of a member, benefits are paid to a person validly nominated under this Part, no other person shall have any other claim to the benefits against the Fund.

33. Death of a member in service

(1) Upon the death of a member, the benefits accrued to the member shall be paid to the person whose particulars the Member had provided or at the Board's discretion as otherwise provided in the Retirement Benefits Act and Regulations thereunder.

(2) In the absence of a nomination, the Board shall apply the benefits referred to in subsection (1) to such of dependants of the deceased and in such amounts as the Board shall determine.

(3) Where a dispute arises under this section, the Board shall consider any evidence presented before it and determine the rightful beneficiary.

34. Presumption of death of member

(1) Where a member is missing and it is proved that the member has not been heard of for such period as prescribed by the law relating to presumption of death by those who might be expected to have heard of the member if that member was alive, there shall be a rebuttable presumption that the member is dead as provided under the law.

(2) Where a person is presumed dead under this section, the provisions of section 33 apply.

35. Death of member in retirement

(1) If a member who was receiving a retirement benefit under an income drawdown dies, a benefit that is equivalent to the unutilized balance of the account of the member shall be paid to the nominated beneficiaries of the member.

(2) The payment under subsection (1) shall be made to the beneficiaries either as a lump sum or as an annuity commencing from the day following the death of the member.

36. Prohibited payments from the Scheme

The retirement benefits under this Act shall not be paid by the Scheme to—

- (a) a member, while the member is still in the employment of a Sponsor except where a member works on a contractual basis for the Sponsor after their resignation or early retirement ; or
- (b) any person as a loan, advance or other similar benefit or payment except as provided under this Act.

PART IV – FINANCIAL PROVISIONS**37. County Governments Retirement Scheme Fund**

There is established a Fund to be known as the County Governments Retirement Scheme Fund which shall be administered by the Board in accordance with this Act and other relevant written laws.

38. Sources of funds

(1) The Fund shall consist of—

County Governments Retirement Scheme

- (a) monies as may vest in or accrue to the Scheme in the performance of its functions under this Act or under any other written law;
 - (b) contributions from sponsors and members;
 - (c) grants, gifts, donations or other endowments given to the Scheme;
 - (d) income from investments made by the Scheme that are approved by the Board;
 - (e) fees and charges authorized by the Board;
 - (f) monies earned by the Scheme from any other source; and
 - (g) monies from any other source provided or donated or lent to the Scheme.
- (2) There shall be paid out of the Fund—
- (a) all benefits provided for under this Act;
 - (b) the expenses incurred in the management and administration of the Scheme subject to the limits provided under this section.
- (3) For the avoidance of doubt, nothing in this Act is intended to or may be construed as providing for or dealing with—
- (a) taxes;
 - (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
 - (c) the appropriation, receipt, custody, investment or issue of public money;
 - (d) the raising or guaranteeing of any loan or its repayment except as provided in any written law; or
 - (e) matters incidental to any of those matters.
- (4) The Board shall establish an account into which may be paid—
- (a) the monies transferred from the Fund for the trust expenses incurred by the Board in the exercise of its powers or the performance of its functions under this Act;
 - (b) the annual administrative expenses deducted from the value of the Fund at the rate approved from time to time by the Board but subject to a maximum of one and half percent of the Fund value or any such rate as the Board in consultation with the Authority may prescribe;
 - (c) monies that may vest in the Board in the course of the exercise of the powers of the Board;
 - (d) income from the investment of the monies held in the account established under this section; and
 - (e) all monies from any other source provided for or donated or lent to the Board.
- (5) Any unspent monies budgeted for annual administrative expenses shall lapse back into the Fund at the end of the financial year.
- (6) The Board may invest any surplus monies held in the account established under this Act in asset classes approved under the Retirement Benefits Act.

39. Reserve account

- (1) The Board may maintain a reserve account of the Scheme into which the following shall be deposited—

- (a) any special contribution paid into the Scheme by a sponsor or the Government for the purpose of improving the benefits of the members; and
- (b) any income of the Scheme that the Board determines should be set aside to stabilize the returns to members subject to a maximum of ten per cent of such income with consideration to the Income Tax Act, (Cap. 470) or regulations made thereunder.

(2) Money shall not be drawn out of the reserve account except as directed by the Board for the purposes provided for under subsection (1).

(3) Any monies determined to be income of the reserve account shall be treated as income forming part of the general income of the Scheme.

40. Annual estimates

(1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Scheme for that year.

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

- (a) payment of the salaries, allowances, and other charges in respect of the employee of the Scheme;
- (b) payment of benefits and other charges which are payable out of the funds of the Scheme;
- (c) funding of the registration, monitoring and evaluation activities of the Scheme;
- (d) maintenance of the buildings and grounds of the Scheme;
- (e) funding of training, research and development of activities of the Scheme;
- (f) reserve funds to meet future or contingent liabilities in relation to retirement benefits, insurance or replacement of buildings or equipment; and
- (g) such other matters as the Board may consider necessary.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate.

(4) Expenditure of the Scheme shall not be incurred except in accordance with the annual estimates approved by the Board.

41. Accounts and audit.

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

(2) Within a period of three months after the end of each financial year, the Board shall submit to an auditor who is recognized and approved by the Authority the accounts of the Scheme in respect of that year together with—

- (a) balance sheet showing in detail the assets and liabilities of the Scheme as at the end of the financial year.
- (b) a statement of the income and expenditure of the Scheme during that year; and
- (c) such other statements as may be required by the Authority.

(3) The annual accounts of the Scheme shall be prepared, audited and reported upon in accordance with the Retirement Benefit Act and other relevant laws.

42. Financial year

The financial year of the Scheme shall be the period of twelve months ending on the thirtieth June in each year.

43. Annual distribution of profits.

The annual investment income earned by the Scheme shall after deduction of all expenses and costs properly paid out of the Scheme and any appropriation to a reserve account approved by the Board be credited to members' accounts on a pro-rata basis.

44. Actuarial review of the Scheme.

(1) The scheme shall be reviewed by an actuary appointed by the Board as provided for in the Retirement Benefits Act.

(2) The actuary appointed under subsection (1) shall—

- (a) prepare a report on the state of the Scheme; and
- (b) recommend any necessary action to be taken.

(3) The actuary shall submit the report prepared under subsection (2) to the Board within the stipulated time in the instrument of appointment.

(4) The Board shall, within six months of the receipt of such report, consider any recommendations made by the Actuary and in so doing, may take any action recommended by the actuary.

PART V – MISCELLANEOUS PROVISIONS**45. Conflict with other written law**

Where there is a conflict between the provisions of this Act and the provisions of the Retirement Benefits Act, the provisions of the Retirement Benefits Act shall prevail.

46. Duty of care

(1) The Board shall—

- (a) ensure that the Scheme is at all times managed in accordance with the provisions of this Act, the Retirement Benefits Act and any other applicable law; and
- (b) take reasonable care to ensure that the management of the Scheme or safe keeping of the assets of the Scheme is carried out in the best interests of the members of the Scheme.

(2) The administrator, fund manager, actuary and custodian shall—

- (a) report to the Board and the Authority, as soon as reasonably practicable, any unusual occurrence with respect to the Scheme which in their view could adversely affect the rights of the owner of a member's account under the Scheme; and
- (b) report to the Board and the Authority, as soon as is reasonably practicable, if a sponsor has not remitted the required contribution and such remittance remains due for more than ten days.

47. Protection from personal liability

No action or omission by any member of the Board, or employee of the Scheme shall, if the act was done in good faith for the purpose of carrying out the provisions of this Act or any other law, subject the person to any liability, action, claim or demand.

48. Offences

(1) A person who—

- (a) wilfully fails to remit contributions to the Scheme as required;
- (b) knowingly gives false information to the Scheme; or
- (c) being a Trustee or employee of the Scheme, wilfully misappropriates the assets of the Scheme,

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

(2) Where an offence under this section is committed by a body corporate, every person, who at the time of the commission of the offence was—

- (a) a director, general manager, secretary of the company or other similar officer of the body corporate; or
- (b) purporting to act in any such capacity as provided in paragraph (a),

commits that offence.

(3) A person who is convicted of an offence under subsection (1)(c) shall, in addition to any fine that may be imposed, refund to the scheme three times the value of any loss that may be incurred by the scheme by reason of the commission of the offence.

49. Proceedings for recovery of deductions from sponsors

(1) Notwithstanding the provision of section 26, where a sponsor, having made deduction from a member's emoluments for remittance to the Scheme, fails to remit the contribution within fifteen days of the deduction, the Scheme shall, after giving such sponsor not less than seven days' notice, institute proceedings for the recovery of the deduction.

(2) A notice under subsection (1) shall be in writing and copied to the Authority, and shall—

- (a) require the sponsor to pay the sum deducted to the Scheme within seven days of the notice; and
- (b) inform the sponsor that if he fails to pay such sum before the expiration of the notice, proceedings for summary recovery of the sum shall be filed in court without further reference to him.

(3) Any sum which is the subject of proceedings of summary recovery under this section shall attract a compound interest at the rate of three per cent per month.

(4) Without prejudice to any proceedings instituted under the provisions of this section, a person who refuses or fails to comply with a notice given to him or her under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five million shillings, or in the case of a natural person, to imprisonment for a term not exceeding two years, or to both.

(5) Where an offence under subsection (4) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in that subsection be liable to

a further fine of one thousand shillings for every day or part thereof during which the offence continues.

50. General penalty

A person who—

- (a) contravenes any provision of this Act which is expressly stated to be an offence but for which no other penalty is prescribed; or
- (b) fails to comply with any direction given by the Authority,

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

51. Regulations

The Cabinet Secretary may, in consultation with the Board, make regulations generally for the better carrying into effect the provisions of this Act.

52. Repeal and revocation

- (1) The Local Authorities Provident Fund Act (Cap. 272).
- (2) The Local Authorities Pensions Trust Rules, (L.N. 50 of 2007) are revoked.
- (3) The Laptrust (Umbrella) Retirement Fund Trust Deed and Rules registered under the Retirement Benefits Act are revoked.

PART VI – SAVINGS AND TRANSITION**53. Extent of exemption from other statutory schemes**

The sponsors and members of the Scheme may be exempt from making Tier I 1 contributions to the National Social Security Fund.

54. National government employees transferred to county governments

(1) Eligible employees to whom this Act applies and who, prior to the commencement date, were members of a contributory pension scheme may, subject to the Regulations made by the Cabinet Secretary, transfer any such contributions to the Fund.

(2) Eligible employees to whom this Act applies and who join a sponsor on or after the commencement date and were members of a contributory pension scheme may, subject to the Regulations made by the Cabinet Secretary, transfer any such contributions to the Fund.

(3) A person who, at the commencement date, is an employee of the national government and whose remaining period of service is five years or less, is not eligible to join the Scheme and shall have his or her pension paid out under the provisions of the Pensions Act (Cap. 189) and the Widows and Children Pensions Act, or any other relevant legislation.

(4) A person who was an employee of a local authority and was a member of the Local Authorities Pensions Trust and whose remaining period of service is five years or less, is not eligible to join the Scheme and shall have his or her pension paid in accordance with the provisions of the Local Authorities Pensions Trust Rules, (L.N. 50 of 2007) or any other relevant legislation.

(5) Eligible employees to whom this Act applies and who, prior to the commencement date, were employees of the national government shall have their

Pension paid out under the Pensions Act (Cap. 189) and the Widows and Children Pensions Act (Cap. 189) for the period they served in the national government.

(6) Eligible employees to whom this Act applies and who prior to its commencement date were employee of the local authorities and who are eligible for benefits under a defined benefits scheme shall have their prior pension benefits paid out of the closed funds, as the case may be, for the period they served the local authorities.

55. Transition of closed funds to the Scheme

(1) The members of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall be transitioned into the Scheme.

(2) The funds, assets and other property, movable and immovable which immediately before the commencement date were held by or on behalf of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall vest in the Scheme.

(3) All the records of the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall be transferred to the Scheme administrator.

(4) All rights, liabilities and duties whether arising under any written law or otherwise, which immediately before the commencement date were accruing, imposed or enforceable by or against the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall vest in, be imposed on, or be enforceable against the Scheme.

(5) Any suit or legal proceedings by or against the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund shall continue as if they were instituted by the Scheme or against and no such suit, action or legal proceedings shall abate or be terminated by the virtue of the transition of the schemes.

(6) Subject to section 40, the annual estimates approved for the Local Authorities Provident Fund and the Laptrust (Umbrella) Retirement Fund for the financial year in which this Act comes into operation shall be considered to be the annual estimates of the Scheme for the remainder of that financial year but those estimates may be varied by the Cabinet Secretary.

(7) The Auditor-General shall cause an actuarial audit and valuation to be carried out with respect to the closed schemes within six months upon the commencement of this Act to ascertain the following for the purpose of transitional management—

- (a) assets acquired by the schemes;
- (b) liabilities accrued by the schemes; and
- (c) employees of the schemes.

(8) The Auditor General shall submit a report on the findings of the audit and valuation to the Board, the Senate and the National Assembly within three months of carrying out of the audit under subsection (7).

56. Local Authorities Provident Fund and the Local Authorities Pensions Trust Fund

(1) An eligible employee of a sponsor who, immediately before the commencement date was a member of the Local Authorities Provident Fund or the Local Authorities Pensions Trust Fund shall, upon the commencement of this Act, be deemed to be a member of the Scheme.

(2) The Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund shall, on the commencement date remain closed Funds to new entrants and shall ensure the preservation of all accrued rights of members.

(3) Subject to subsection (2), the closed funds shall continue paying any pensions and benefits as and when they fall due for a maximum period of five years from the commencement date.

(4) The provisions of section 55 shall apply to any pension and benefits which shall not have been paid out of the closed Funds at the end of the fifth year from the date of commencement date.

(5) The staff of the existing schemes engaged in the administration of the existing schemes shall, upon the commencement of this Act, and subject to any suitability test conducted by the Board of Trustees, provide administration services to the Scheme and the existing schemes.

(6) The Retirement Benefits Authority shall, within five years from the commencement of this Act, ensure the implementation of this section.

57. New employees

(1) Subject to section 54 any eligible employee who joined the service of a sponsor on permanent and pensionable terms after the first general elections under the Constitution shall be deemed to be a member of the Scheme with effect from the date of employment.

(2) Eligible employees of a Sponsor who are employed on contractual terms may opt, upon agreement with the Sponsor, to join the Scheme in lieu of gratuity for the duration of their contract term provided that the extent of contribution in such case shall be in line with section 24 of this Act.

58. Date of transition

The provisions of sections 52 and 55 shall come into effect at the end of five years from the commencement date.

59. Amendment of section 132 of No. 17 of 2012

The County Governments Act is amended by deleting section 132.

SCHEDULE

[s. 17]

THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Meetings

(1) The Board shall hold at least four meetings in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Meetings shall be convened by the Secretary of the Board in consultation with the Chairperson and shall be held at such times and such places as the Chairperson shall determine.

(3) The Chairperson shall preside over all meetings and in the absence of the Chairperson, the vice-Chairperson, or in the absence of the vice-Chairperson, a

Trustee elected by the Board at the meeting for that purpose, shall preside over the meeting.

(4) The Chairperson may at any time convene a special meeting of the Board, and shall do so within seven days of the receipt by the Chairperson of a written request signed by at least five other Trustees.

(5) Unless six Trustees otherwise agree, at least seven days' notice of a meeting shall be given to every trustee.

2. Quorum

(1) The quorum of a meeting of the Board shall be five Trustees present and voting and shall include at least two Trustees appointed under section 6(2)(b), (c), (d) or (e) and at least three Trustees appointed under section 6(2)(f).

(2) For special meetings, the quorum shall be six Trustees present and voting and shall include at least three Trustees appointed under section 6(2)(b), (c), (d) or (e) and at least four Trustees appointed under section 6(2)(f).

3. Voting

A decision of the Board shall be by a majority of the Trustees present and voting and, in the case of a tie of votes, the person presiding at the meeting shall have a second or casting vote.

4. Minutes

Minutes of all meetings shall be kept and entered in records kept for that purpose.
