

**THE RETIREMENT BENEFITS
(AMENDMENT) ACT, 2006**

No. 2 of 2006

Date of Assent: 14th July, 2006

Date of Commencement: 19th July, 2006

**AN ACT of Parliament to amend the Retirement Benefits
Act, 1997**

ENACTED by the Parliament of Kenya, as follows -

1. This Act may be cited as the Retirement Benefits (Amendment) Act, 2006. Short title.

2. Section 2 of the Retirement Benefits Act, 1997, in this Act referred to as “the principal Act” is amended - Amendment of section 2 of No.3 of 1997.
 - (a) by inserting the following new definitions in proper alphabetical sequence-

“administrator” means a person appointed by trustees to administer a scheme in accordance with such terms and conditions of service as may be specified in the instrument of appointment;

“trust corporation” means a company incorporated under the Companies Act having a subscribed capital of not less than ten million shillings and which is for the time being empowered (by or under any written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining it’s powers) to undertake trusts;

Provided that such company does not, by any prospectus, circular, advertisements, or other documents issued by it or on its behalf, state or hold out that any liability attaches to the Public Trustee or to the Consolidated Fund in respect of any act or omission of the company when acting as an executor or administrator;

- (b) by adding the words “and includes a trust corporation” at the end of the definition of the word “trustee”.

3. Part III of the principal Act is amended in the heading by deleting the words “MANAGERS AND CUSTODIANS” and substituting therefor the words “MANAGERS, CUSTODIANS AND ADMINISTRATORS.”

Amendment of heading to Part III.

4. Section 22 of the principal Act is amended -

Amendment of section 22 of No.3 of 1997.

- (a) by deleting the words “manager or custodian” wherever they appear and substituting therefor the words “manager, custodian or administrator”;
- (b) by deleting the words “managers and custodians” wherever they appear and substituting therefor the words “managers, custodians and administrators”;

(c) by inserting a new subsection immediately after subsection (2) as follows-

(2A)The provisions relating to administrators under subsection (2) shall not apply to natural persons who are employees of a scheme.

5. Section 23 of the principal Act is amended by deleting the words “manager or a custodian” wherever they appear and substituting therefor the words “manager, a custodian or an administrator”.

Amendment of section 23 of No.3 of 1997.

6. The principal Act is amended by inserting the following new section immediately after section 25A –

Insertion of section 25B in No.3 of 1997.

Requirements for registration of administrators.

25B No applicant for registration as a scheme administrator shall be registered unless such applicant -

- Cap. 486
- (a) is a limited liability company incorporated under the Companies Act, whose liability is limited by shares and whose main objective is to render administrative services to schemes;
 - (b) has such minimum paid up share capital as may, from time to time, be prescribed ;
 - (c) is capable of meeting the obligations to members and sponsors specified in the scheme rules;

(d) has the professional and technical capacity and adequate operational systems to perform its functions;

(e) has never been an administrator of any scheme fund which has been either deregistered, wound up or placed under an interim administrator due to any fault, either fully or partially, of the administrator;

(f) meets such additional requirements as may, from time to time, be prescribed .

Amendment of
section 26 of
No.3 of 1997.

7. Section 26 of the principal Act is amended by adding a new subsection after subsection (2) as follows -

(3) Notwithstanding the provisions of subsection (2), the appointment of any person as a trustee shall be subject to approval by the Authority.

Amendment of
section 27 of
No.3 of 1997.

8. Section 27 of the principal Act is amended by deleting the words “manager or custodian” wherever they appear and substituting therefor the words “manager, custodian or administrator”.

Amendment of
section 28 of
No.3 of 1997.

9. Section 28 of the principal Act is amended, in subsection (3) -

(a) by deleting the words “manager or custodian” wherever they appear and substituting therefor the words “manager, custodian or administrator”;

(b) by deleting the words “manager’s or custodian’s” appearing in paragraph (c) and substituting therefor the words “manager’s, custodian’s or administrator’s”.

10. Section 29 of the principal Act is amended in subsection (2) by deleting the words “manager or a custodian” and substituting therefor the words “manager, custodian or administrator”.

Amendment of section 29 of No.3 of 1997.

11. Section 30 of the principal Act is amended by deleting the words “managers and custodians” appearing in subsection (1) and substituting therefor the words “managers, custodians and administrators”.

Amendment of section 30 of No.3 of 1997.

12. Section 31 of the principal Act is amended by deleting the words “manager or custodian” appearing in subsection (1) and substituting therefor the words “manager, custodian or administrator”.

Amendment of section 31 of No.3 of 1997.

13. Section 39 of the principal Act is amended by deleting the words “manager or custodian” wherever they appear and substituting therefor the words “manager, custodian or administrator”.

Amendment of section 39 of No.3 of 1997.

14. Section 40 of the principal Act is amended by deleting the words “manager or custodian” and substituting therefor the words “manager, custodian or administrator”.

Amendment of section 40 of No.3 of 1997.

15. Section 41 of the principal Act is amended by deleting the words “manager or custodian” wherever they appear and substituting therefor the words “manager, custodian or administrator”.

Amendment to section 41 of No.3 of 1997.

Amendment to
section 42 of
No.3 of 1997.

16. Section 42 of the principal Act is amended by deleting the words “manager or custodian” appearing in subsection (1) and substituting therefor the words “manager, custodian or administrator”.

Amendment to
section 44 of
No.3 of 1997.

17. Section 44 of the principal Act is amended by deleting the words “manager or custodian” and substituting therefor the words “manager, custodian or administrator.”

Amendment to
section 45 of
No.3 of 1997.

18. Section 45 of the principal Act is amended -

(a) in subsection (2) -

(i) by deleting the words “the manager or the custodian” wherever they appear and substituting therefor the words “the manager, the custodian or the administrator”;

(ii) by deleting the words “manager or custodian” appearing in paragraph (a) and substituting therefor the words “manager, custodian or administrator”;

(b) in subsection (4) -

(i) by deleting the words “the manager or the custodian” and substituting therefor the words “the manager, the custodian or the administrator”;

(ii) by inserting the words “the administrator immediately before the words “the members”;

(c) in subsection (5) -

- (i) by deleting the words “and the manager’s and the custodian’s” appearing in paragraph (d) and substituting therefor the words “the manager’s, the custodian’s and the administrator’s.”
- (ii) by deleting the words “the manager or the custodian” appearing in paragraph (f) and substituting therefor the words “the manager, the custodian or the administrator.”
- (iii) by deleting the words “or manager” appearing in paragraph (f) and substituting therefor the words “manager or administrator”.

19. Section 46 of the principal Act is amended by inserting the word “administrator” immediately after the word “manager” wherever it appears.

Amendment of section 46 of No.3 of 1997.

20. Section 47 of the principal Act is amended -

Amendment of section 47 of No.3 of 1997.

- (a) by inserting the following new subsection immediately after subsection (3) -

(3A) The quorum of the Tribunal for the purposes of a hearing under this section shall be the chairman and any two members.

- (b) by inserting the words “Subject to subsection (3A)” at the beginning of subsection (4).

Insertion of
section 53A to
No.3 of 1997.

21. The principal Act is amended by inserting the following new section immediately after section 53—

Proceedings for
recovery of
deductions from
employers.

53A. (1) Where an employer, having with the agreement of an employee who is a member of a scheme, made a deduction from the employee's emoluments for remittance to the scheme, fails to remit the deduction, within fifteen days of the deduction, the scheme may, after giving such employer 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 employer to pay the sum deducted to the scheme within seven days of the notice; and
- (b) inform the employer 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 for 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 under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings, or in the case of a natural person, to imprisonment for a term not exceeding three 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.