

**THE RETIREMENT BENEFITS (AMENDMENT) ACT, 1998**

**No. 7 of 1998**

*Date of Assent: 31st December, 1998.*

*Date of Commencement: 8th January, 1999.*

**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, 1998. 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 definition in proper alphabetical sequence -

"custodian" means a company whose business includes taking responsibility for the safe custody of the funds, securities, financial instruments and documents of title of the assets of scheme funds;

(b) by deleting the definition of the word "manager" and substituting therefor the following new definition -

"manager" means a company whose business includes -

(i) undertaking, pursuant to a contract or other arrangement, the management of the funds and other assets of a scheme fund for purposes of investment;

(ii) providing consultancy services on the investment of scheme funds; or

(iii) reporting or disseminating information concerning the assets available for investment of scheme funds.

Replacement of heading of Part III of No. 3 of 1997.

3. The principal Act is amended by deleting the heading of Part III and inserting the following new heading-

**PART III - REGISTRATION OF RETIREMENT BENEFITS SCHEMES, MANAGERS AND CUSTODIANS**

Replacement of section 22 No. 3 of 1997.

4. The principal Act is amended by repealing section 22 and substituting therefor the following new section -

Retirement benefits schemes, managers and custodians to be registered.

22.(1) No person shall establish a retirement benefits scheme except in accordance with the provisions of this Act and under the authority of a certificate issued under this Act.

(2) No person shall act as a manager or a custodian unless such person is duly registered under this Act and holds a valid certificate of registration issued pursuant to the provisions of this Act.

(3) The Authority shall, in consultation with the Minister, by notice in the Gazette and by public advertisement in at least two daily newspapers of wide circulation, publish a list of all registered managers and custodians once in every calendar year.

(4) A person who -

(a) establishes a retirement

benefits scheme; or

(b) acts as a manager or a custodian

contrary to the provisions of this section commits an offence and shall be liable on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

5. The principal Act is amended in section 23 -

Amendment of  
section 23 of  
No. 3 of 1997.

(a) by deleting subsection (1) and substituting therefor the following new subsection -

(1) A person proposing to establish a retirement benefits scheme or to act as a manager or a custodian shall apply to the Authority for, and obtain, a certificate of registration before establishing the scheme or commencing the performance of any of the functions of a manager or a custodian.

(b) in subsection (4), by deleting the words "or to manage a scheme fund" and substituting therefor the words "or to act as a manager or a custodian";

(c) by deleting subsection (5) and inserting the following new subsection -

(5) A certificate issued under this section shall

be subject to such conditions as the Authority may, in consultation with the Minister, impose.

Insertion of section 25A to No. 3 of 1997. **6.** The principal Act is amended by inserting the following new section immediately after section 25 -

Requirements for registration of custodians.

**25A.** No applicant for registration as a custodian shall be registered unless such applicant -

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(a) is a limited liability company incorporated under the Companies Act whose main object is to perform the functions of a custodian within the meaning of this Act; and

(b) has the professional and technical capacity and adequate operational systems to perform the said functions; and

(c) has never been a custodian of any scheme fund which was deregistered due to any fault, either fully or partially, of the custodian;

(d) meets such additional requirements as may be prescribed.

Amendment of section 27 of No. 3 of 1997. **7.** Section 27 of the principal Act is amended by deleting the words "scheme or manager" wherever they

occur and inserting "any scheme, manager, or custodian".

**8. Section 28 of the principal Act is amended-**

Amendment of  
section 28 of  
No. 3 of 1997.

**(a) in subsection (3) -**

(i) by inserting the words "or custodian" immediately after the word "manager" wherever it occurs;

(ii) by deleting all the words appearing after the word "manage" in paragraph (b) and inserting the words " or provide custodial services to a scheme fund, as the case may be;

(iii) by inserting the expression "or custodian's" immediately after the expression "manager's" appearing in paragraph (c) thereof;

**(b) in subsection (4) by inserting the words "or custodian" immediately after the word "manager" wherever it occurs.**

**9. The principal Act is amended by repealing section 29 and replacing it with the following new section -**

Replacement of  
section 29 of  
No. 3 of 1997.

Duration and  
renewal of  
certificates.

**29.(1) Subject to this Act, a certificate of registration issued in respect of a scheme shall be valid from the date of issue and shall remain in force until the scheme is deregistered or wound up in**

accordance with the scheme rules or the provisions of the written law under which the scheme is established.

(2) Subject to subsection (4), a certificate of registration issued to a manager or a custodian shall be valid from the date of issue and shall, unless earlier revoked, expire on the thirty-first December next following the date of issue but shall thereafter, upon application in such manner and the payment of such fee as may be prescribed, be renewable annually.

(3) An application for the renewal of a certificate of registration under subsection (2) shall be made at least three months before the expiry of the certificate of registration.

(4) Notwithstanding the provisions of subsection (2), where an application for the renewal of a certificate of registration has been made, such certificate shall continue in force until the application for the renewal is determined.

Amendment of  
section 30 of  
No. 3 of 1997.

**10.** Section 30 of the principal Act is amended in subsection (1) by deleting the words "schemes and managers" and inserting "schemes, managers and custodians".

11. Section 31 of the principal Act is amended by deleting the words "scheme or a manager" and inserting "scheme, manager or custodian".

Amendment of section 31 of No. 3 of 1997.

12. Section 34 of the principal Act is amended by inserting the following new subsection immediately after subsection (4)-

Amendment of section 34 of No. 3 of 1997.

(5) Every scheme shall publish its annual accounts in such manner as the Minister may, in consultation with the Authority, prescribe.

13. Section 37 of the principal Act is amended by deleting subsections (1) and (2) and substituting therefor the following new subsections -

Amendment of section 37 of No. 3 of 1997.

(1) Every scheme shall have a prudent investment policy on the investment of the funds of the scheme so as to maintain the capital funds of the scheme and generally to secure market rates of return on such investment.

(2) Notwithstanding the provisions of any other written law, the investment policy of a scheme shall be implemented subject to any regulations the Minister may, in consultation with the Authority, make for that purpose.

14. Section 38 of the principal Act is amended by deleting subsection (2) and inserting the following new subsection -

Amendment of section 38 of No. 3 of 1997.

(2) The Authority may disqualify a person who

acts in contravention of the provisions of this section from participating in any way in the management, custody or administration of any scheme fund:

Provided that the Authority may, on the expiry of at least five years from the date of disqualification, upon application by such person and payment of the prescribed fee, lift the disqualification subject to such conditions as it may deem appropriate.

Amendment of section 39 of No. 3 of 1997.

**15.** Section 39 of the principal Act is amended by deleting the words " trustee or manager" wherever they occur and inserting "trustee, manager or custodian".

Amendment of section 4 of No. 3 of 1997.

**16.** Section 40 of the principal Act is amended by deleting the words "trustee or manager" and inserting "trustee, manager or custodian".

Amendment of section 41 of No. 3 of 1997.

**17.** The principal Act is amended in section 41 by inserting the words "or custodian" immediately after the word "manager" wherever it occurs.

Amendment of section 42 of No. 3 of 1997.

**18.** The principal Act is amended in section 42 by deleting the words "trustee or manager" wherever they occur and inserting "trustee, manager or custodian".

Amendment of section 44 of No. 3 of 1997.

**19.** The principal Act is amended in section 44 by deleting the words "trustees or the manager" and inserting "trustees, managers or custodians".

Amendment of section 45 of No. 3 of 1997.

**20.** Section 45 of the principal Act is amended -

(a) by deleting the words "trustees or the manager" wherever they occur and inserting "trustees, the

manager or the custodian";

(b) in subsection (4), by inserting "the custodian," immediately before the words "the members";

(c) in subsection (5), by deleting paragraph (d) and inserting the following new paragraph -

"(d) assessing the schemes, the manager's and the custodian's compliance with the provisions of this Act and any regulation made thereunder;"

**21.** Section 46 of the principal Act is amended by deleting the words "manager or trustees" wherever they occur and inserting "manager, custodian or trustees".

Amendment of section 46 of No. 3 of 1997.

**22.** Section 55 of the principal Act is amended in subsection (2) by renumbering paragraph (f) as paragraph (g) and inserting the following new paragraph (f) -

Amendment of section 55 of No. 3 of 1997.

"(f) subject to the provision of this Act and of any other written law, make provisions with regard to the winding up of schemes and the transfer of the assets of the schemes upon such winding up;"

**23.** The Schedule to the principal Act is amended -

Amendment to schedule of No. 3 of 1997.

(a) in paragraph 2, by deleting the words "the chairman or" appearing in the first line;

(b) in paragraph 3, by inserting a comma immediately after the expression "Chief Executive Officer" appearing in subparagraph (3) and the words -

"of whom at least one shall be from amongst the members of the Board appointed under paragraph (f) of section 6."