

CHAPTER 197

THE RETIREMENT BENEFITS ACT

SUBSIDIARY LEGISLATION

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**THE RETIREMENT BENEFITS (MANAGERS
AND CUSTODIANS) REGULATIONS**

ARRANGEMENT OF REGULATIONS

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THE RETIREMENT BENEFITS (MANAGERS AND CUSTODIANS) REGULATIONS

[Legal Notice 123 of 2000, Legal Notice 102 of 2002, Legal Notice 82 of 2003, Legal Notice 86 of 2007, Legal Notice 87 of 2009, Legal Notice 49 of 2011, Legal Notice 110 of 2015]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Retirement Benefits (Managers and Custodians) Regulations.

2. Application

These Regulations shall apply to managers and custodians of schemes.

3. Interpretation

In these Regulations unless the context otherwise requires—

"pooled fund" means a fund established by a limited liability company other than approved issuer for purposes of pooling scheme funds for collective investment.

PART II – REGISTRATION OF MANAGER AND CUSTODIAN

4. Application for registration of manager

(1) An application for registration as a manager shall be submitted to the Authority in the prescribed form together with registration of the prescribed fee.

Provided that where the applicant has been registered as a fund manager under the Capital Markets Act (Cap. 485A) the Authority may accept that registration to constitute registration as a manager under the Act, subject to an agreement to that effect between the Capital Markets Authority and the Retirement Benefits Authority.

(2) The minimum paid up share capital including unimpaired reserves of a manager shall be ten million shillings or as may be prescribed from time to time.

(3) A manager shall at all times have in its top management including the board of directors persons who are academically and professionally qualified in matters relating to either banking, insurance, law, accounting, actuarial studies finance, economics or investment of scheme funds.

(4) The Authority shall within ninety days from the date of receipt of an application for registration consider the application of a manager and notify the applicant in writing whether the manager is acceptable for registration and the reason is thereof if it is not acceptable.

(5) The Authority shall after notifying the applicant that it is acceptable for registration proceed to register the applicant and forward to the applicant the certificate of registration.

[L.N. 102/2002, r. 2, L.N. 87/2009, r. 2.]

5. The manager

(1) A manager of a scheme fund or a pooled fund shall be appointed by the trustees of the scheme on such terms and conditions of service as shall be determined by the trustees in the instrument of appointment or otherwise in writing from time to time.

Provided that—

- (a) this regulation shall not apply to schemes that have invested all the funds in guaranteed funds;
- (b) the approved issuer of the scheme whose funds are in a guaranteed fund shall submit quarterly investment reports to the Authority.

(2) A manager shall have all the powers necessary for the performance of his functions under this Act and in particular the manager shall —

[Subsidiary]

- (a) advise the scheme or pooled fund on the asset classes which are available for investment;
- (b) assist the scheme or pooled fund to formulate a prudent investment policy on the investment of scheme funds or pooled fund;
- (c) invest capital moneys which form part of the scheme or pooled fund subject to the investment policy;
- (d) reinvest any income of the scheme fund or pooled fund which is not required by the trustees for any immediate payments;
- (e) submit to the scheme or pooled fund at least quarterly from the date of commencement of the financial year of the scheme or pooled fund—
 - (i) a valuation of the scheme fund or pooled fund and of all the investments representing the same including details of the cost of such investments and their estimated yields;

Provided that, for assets tradable at a stock exchange, the investment report shall provide, at a minimum, a one-year and three-year time weighted performance figure calculated on the basis of a "mark to market" value using official prices as issued by the primary exchange where the assets are ordinarily traded;
 - (ii) a report reviewing the investment activity and performance of the investment portfolios comprising the scheme fund or pooled fund since the last report date and containing the manager's proposals for the investment of the scheme fund or pooled fund during the following period as recommended by the Authority;
 - (iii) a record of all investment transactions during the previous period;
- (f) sit in-attendance, in the case of a scheme whose funds are not invested in a pooled fund, at the meetings of the Board of trustees whenever the trustees have an agenda item involving management of the scheme fund;
- (g) issue instructions on behalf of the trustees or the pooled fund to the custodian to transfer, exchange, deliver in the required form and manner scheme or pooled fund assets held by such custodian;
- (h) issue instructions on behalf of the trustees or pooled fund to the custodian to effect payment in respect of purchased securities or any other assets;
- (i) keep or cause to be kept such books, records and statements as may be necessary to give a complete record of —
 - (i) the scheme fund or pooled fund and investment portfolio held by the custodian;
 - (ii) the investment transactions carried out by the custodian as instructed by the manager, and shall permit the scheme or pooled fund, their officers or duly authorized agents to inspect within the premises of the manage such books, records and statements a any time during business hours.

(3) A manager shall ensure that minutes, statements and resolutions in respect of a scheme fund or pooled fund investment portfolio shall be properly filed.

(4) A manager shall not be liable for any loss, damage or depreciation in the value of the scheme fund or pooled fund of any investment comprised therein or the income therefrom which may arise by reason of depreciation of the market value of the securities and other assets in which scheme funds or pooled funds are invested unless such loss, damage or depreciation in the value of the scheme fund or pooled fund arises from negligence whether professional or otherwise, willful default or fraud by the manager or any of his agents or employees.

(5) A Manager shall submit to the Authority within thirty days from the date of his or her appointment and subsequently within thirty days after every quarter—

- (a) a statement of the scheme fund or pooled fund and investment portfolio including details of the cost of such investments;
- (b) a statement detailing the investment transactions carried out within the quarter period of reporting;
- (c) a report reviewing the investment activity and performance of the investment portfolio comprising the scheme fund or pooled fund and proposed investments of the scheme fund or pooled fund during the following quarter.

(6) A manager shall invest the assets of the pooled fund in the name of the pooled fund and all accrued investments income, commissions, fees and direct and indirect gains from investing the pool fund shall be credited into the pooled fund account which is maintained by a custodian on behalf of the pooled fund.

(7) A manager shall not engage the services of a property manager on behalf of the scheme or pooled fund without the written approval by the trustees or pooled fund.

(7A) A manager shall not provide management or custodial services to any scheme or pooled fund in respect of which the custodian is a company related to such manager:

Provided that where a manager and the related company are, at the commencement of this paragraph, already providing such services, the manager shall—

- (a) within thirty days from the date of commencement of this paragraph notify the Authority of the fact; and
- (b) comply with the provisions of this paragraph within three years from the date of such notification.

(8) All monetary benefits, commissions or gains arising directly or indirectly out of managing scheme or pooled funds shall be credited into the scheme fund or pooled fund by the manager or custodian as the case may be.

(9) An agreement between a scheme or pooled fund and manager shall make provision for the computation of the management fee in respect of management services.

[L.N. 102/2002, r. 3, L.N. 86/2007, r. 2, L.N. 87/2009, r. 3, L.N. 49/2011, r. 2, L.N. 110/2015, r. 2.]

6. Termination of management agreement

(1) Either party to the management agreement referred to in regulation 5(1) may at any time terminate the agreement.

(2) In the event of termination of the agreement referred to in paragraph (1) the manager shall within thirty days, or in the case of a manager of a pooled fund, within ninety days, from the date of termination, hand-over, transfer and deliver to a manager appointed in writing by the scheme all the information in relation to its contractual duties to the scheme including—

- (i) statements pertaining to the entire scheme fund;
- (ii) investment portfolio including details of the cost of such investments and their estimated yields;
- (iii) statements pertaining to all incomplete transactions;
- (iv) any other information as may be reasonably required by the scheme:

Provided that copies of the said information shall be submitted to the Authority within the same period.

(3) A manager shall within twenty-one days or such shorter period as may be stipulated in the agreement from the date of deregistration or from the date a winding up order has been issued by a competent court against such manager hand over, transfer and deliver all minutes, statements and resolutions in respect of the scheme fund or pooled fund investment portfolio together with any other information as may be reasonably required by the scheme or pooled fund to a manager appointed in writing by such scheme or pooled fund.

7. Application for registration of custodian

(1) An application for registration as a custodian in accordance with section 25A of the Act shall be in the prescribed form together with the prescribed fee.

[Subsidiary]

Provided that where the applicant has been registered as an authorized depository under the Capital Markets Act, (Cap. 485A) the Authority may accept that registration to constitute registration as an authorized depository under the Act, subject to an agreement to that effect between the Capital Markets Authority and the Authority.

(2) The minimum paid up share capital including unimpaired reserves of a custodian shall be two hundred and fifty million shillings, or as may be prescribed from time to time.

(3) The Authority shall within ninety days from the date of receipt of an application for registration consider the application of a custodian and notify the applicant in writing whether the custodian is acceptable for registration and the reason thereof if it is not acceptable.

(4) The Authority shall after notifying the applicant that it is acceptable for registration proceed to register the applicant and forward to the applicant the certificate of registration.

[L.N. 102/2002, r. 4, L.N. 87/2009, r. 4.]

8. The custodian

(1) A custodian of a scheme fund or a pooled fund shall be appointed by the trustees of the scheme on such terms and conditions of service as shall be determined by the trustees in the instrument of appointment or otherwise in writing from time to time.

(2) A custodian shall have all the powers necessary for the performance of his functions under this Act and in particular the custodian shall—

- (a) receive and keep in safe custody the title documents, securities and cash of the scheme fund or pooled fund;
- (b) open a bank account or banking accounts with a bank duly registered under the Banking Act on behalf of the scheme, or a pooled fund, for the exclusive benefit of such scheme or pooled fund.
- (c) transfer exchange or deliver in the prescribed form securities held by a custodian upon receipt of proper instructions from the manager;
- (d) keep or cause to be kept such books, records and statements as may be necessary to give a complete record of—
 - (i) the entire scheme fund, or pooled fund investment portfolio held by the custodian;
 - (ii) the transactions carried out by the custodian on behalf of the scheme, or pooled fund, and shall permit the scheme or pooled fund, their officers or duly authorized agents to inspect such books, records and statements within the premises of the custodian at any time during business hours;
- (da) submit to the scheme or pooled fund at least quarterly from the date of commencement of the financial year of the scheme or pooled fund—
 - (i) a valuation of the scheme fund or pooled fund and of all the investments representing the respective fund including details of the cost of such investments and their estimated yields;
 - (ii) a report reviewing the investment activity and performance of the investment portfolios comprising the scheme fund or pooled fund for the period succeeding the date of the last report and containing the manager's Proposals for the investment of the forthcoming period as recommended by the Authority;
 - (iii) a record of all investment transactions during the period after the date of the last report.
- (e) deliver to the scheme, or pooled fund or to such other persons as the scheme or pooled fund may in writing authorize copies of all notices, proxies, proxy soliciting materials received by the custodian in relation to any of the securities held in the scheme or pooled fund account, all public information financial reports and stockholder communications as the custodian may receive from issuers of securities and all information the custodian may receive from an

offer relating to exchange or tender offers or other rights or offerings or as may be agreed upon from time to time;

- (f) submit to the scheme, or pooled fund—
 - (i) a written report on specified dates listing all assets of the scheme, or pooled fund, in the scheme or pooled fund account together with a full account of all receipts and payments made and other actions taken by the custodian;
 - (ii) advice or notification of any transfers of property or securities to or from the scheme or pooled fund account indicating securities acquired for the account and, the identity of the party in possession of such securities;
 - (iii) a copy of the most recent audited financial statements of the custodian prepared together with such information regarding the policies and procedures of the custodian as the scheme, or pooled fund, may request in connection with the agreement or the duties of the custodian under that agreement.
- (g) exercise subscription, purchase or other similar rights represented by the securities subject to receipt of proper instructions from the manager,
- (h) exercise the same standard of care that it exercises over its own assets in holding, maintaining, servicing and disposing of property and in fulfilling any other obligations in the agreement:

Provided that the custodian shall exercise the degree of care expected of a prudent professional custodian for hire.

(3) Except in cases where a scheme, or a pooled fund, has offshore investments, a custodian in discharging its contractual functions to the scheme, or a pooled fund, shall not contract out the discharge of the custodial services to third parties.

(3A) A custodian shall not provide custodial services to any scheme or pooled fund in respect of which the manager is a company related to such custodian:

Provided that where the custodian and the related company are, at the commencement of this paragraph, already providing such services, the custodian shall—

- (a) within thirty days from the date of commencement of this paragraph notify the Authority of the fact; and
- (b) comply with the provisions of this paragraph within three years from the date of such notification.

(4) An agreement between a scheme or a pooled fund and a custodian shall make provision for the computation of the fee in respect of custodial services.

[L.N. 102/2002, r. 5, L.N. 83/2003, r. 2.]

9. Termination of custodial agreement

(1) An agreement between a scheme, or a pooled fund, custodial custodian may be terminated at any time agreement.

(2) In the event of termination of the agreement between a custodian and a scheme, or a pooled fund, the custodian shall within thirty days from the date of such termination hand over, and deliver all the assets documents and funds including the bank account of the scheme held by such custodian to a custodian appointed in writing by the scheme, or pooled fund.

(3) A custodian shall within thirty days or such shorter period as may be stipulated in an agreement, from the date of deregistration or from the date a winding up order has been issued by a competent court against such custodian handover, transfer and deliver all the assets, documents and funds including the bank account of the scheme, or pooled fund, held by such custodian to a custodian appointed in writing by the scheme, or pooled fund.

[Subsidiary]

(4) A custodian shall within thirty days from the date of termination of the agreement arising out of a breach of such agreement by either party submit to the Authority an audit report indicating the assets, liabilities and an inventory of the scheme fund or pooled fund, securities and title documents of the scheme, or pooled fund and assets which have been handed-over, transferred and delivered to the appointed custodian.

(5) The party liable for the termination of the agreement shall meet the cost of the audit report referred to in paragraph (4).

(6) A scheme, or a pooled fund, shall be served with an audit report and inventory as specified in paragraph (4) before the handing-over, transfer and delivery to the appointed custodian is effected.

10. Insolvency and winding up of a manager and custodian

(1) A manager or a custodian shall be deemed to be insolvent in accordance with the provisions of the Companies Act (Cap. 486).

(2) A manager or custodian which is insolvent shall be wound up in the manner provided for in the Companies Act (Cap. 486).

THE RETIREMENT BENEFITS (FORMS AND FEES) REGULATIONS

[Legal Notice 124 of 2000, Legal Notice 80 of 2002, Legal Notice 101 of 2002, Legal Notice 11 of 2003, Legal Notice 60 of 2006, Legal Notice 96 of 2007, Legal Notice 152 of 2007, Legal Notice 74 of 2008, Legal Notice 89 of 2009, Legal Notice 109 of 2015, Legal Notice 107 of 2016, Legal Notice 115 of 2020, Legal Notice 191 of 2020, Legal Notice 72 of 2022]

1. These Regulations may be cited as the Retirement Benefits (Forms and Fees) Regulations.
2. Application for registration as a custodian in accordance with section 23(1) of the Act shall be in Form A1 set out in the First Schedule to these Regulations.
3. The certificate of registration to be issued by the Authority in accordance with section 23(4) of the Act shall be in Form C1 set out in the First Schedule to these Regulations.
4. Application for registration as a manager in accordance with section 23(1) of the Act shall be in Form A2 set out in the First Schedule to these Regulations.
5. The certificate of registration to be issued by the Authority in accordance with section 23(4) of the Act shall be in Form C2 set out in the First Schedule to these Regulations.
6. Application for registration of an Individual Retirement Benefits Scheme in accordance with section 23(1) of the Act and regulation 5(1) of the Retirement Benefits (Individual Retirement Benefits Schemes) Regulations shall be in Form A3 set out in the First Schedule to these Regulations.
7. Application for registration of an existing Occupational Retirement Benefits Scheme in accordance with section 23(1) of the Act and regulation 4(1) of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations shall be in Form A4 set out in the First Schedule to these Regulations.
8. Application for registration of a new Occupational Retirements Benefits Scheme in accordance with section 23(1) of the Act and regulation 4(1) of Retirement Benefits (Occupational Retirement Benefit Schemes) Regulations shall be in Form A5 set out in the First Schedule to these Regulations.
- 8A. Application for registration of an administrator in accordance with section 23(1) of the Act and regulation 4(1) of the Retirement Benefits (Administrators) Regulations shall be in Form A6 set out in the First Schedule to these Regulations.
9. The certificate of registration of a scheme to be issued by the Authority in accordance with section 23(4) of the Act shall be in Form C3 set out in the First Schedule to these Regulations.
- 9A. The certificate for registration of an administrator in accordance with section 23(4) of the Act and regulation 4(5) of the Retirement Benefits (Administrators) Regulations shall be in Form C6 set out in the First Schedule to these Regulations.
10. Notice of refusal to register a custodian, manager or scheme to be issued by the Authority in accordance with section 27(2) of the Act shall be in Form N1 set out in the First Schedule to these Regulations.
11. Notice of intention to deregister a custodian, manager or scheme to be issued by the Authority in accordance with section 28(5) of the Act shall be in Form N2 set out in the First Schedule to these Regulations.
12. Notice to a custodian, manager or scheme requiring compliance with the directions of the Authority in accordance with section 44 of the Act shall be in Form N3 set out in the First Schedule to these Regulations.
13. A return on the quarterly record of contributions for an Individual Retirement Benefits Scheme in accordance with regulation 15 of the Retirement Benefits (Individual Retirement

[Subsidiary]

Benefits Schemes) Regulations shall be in Form R1 set out in the First Schedule to these Regulations.

14. A return on the quarterly record of contribution for an Occupational Retirement Benefits Scheme in accordance with regulation 15 of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations shall be in Form R2 set out in the First Schedule to these Regulations.

14A. A return on the quarterly record of contributions for an Umbrella Retirement Benefits Scheme in accordance with regulation 22 of the Retirement Benefits (Umbrella Retirement Benefits Schemes) Regulations (Sub. Leg) shall be in Form R3 set out in the First Schedule to these Regulations.

15. An actuarial valuation report to be submitted to the Authority in accordance with section 35 of the Act and regulation 5(2) of the Retirement Benefits (Transitional) Regulations shall be in the form of Table AR 1 set out in the First Schedule to these Regulations.

16. An actuarial review report to be submitted to the Authority in accordance with section 35 of the Act and regulation 6(2) of the Retirement Benefits (Transitional) Regulations shall be in the form of Table AR 2 set out in the First Schedule to these Regulations.

17. The certificate by an actuary to exempt a scheme from review in accordance with regulation 31(1) of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations shall be in Form C4 set out in the First Schedule to these Regulations.

18. The investment guidelines prescribed by the Authority in accordance with section 38(1) (b) of the Act, regulation 31(1) of the Retirement Benefits (Individual Retirement Benefits Schemes) Regulations and regulation 38(1) of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations are specified in Table G set out in the First Schedule to these Regulations.

18A. Retirement Benefit Schemes shall not invest more than 15% of—

- (a) the pension funds in one issue in any asset class; and
- (b) the total available securities issued by a single issuer:

Provided that this provision shall not apply to government securities.

19. The levy to be remitted to the Authority in accordance with section 16 of the Act, regulation 39(3) of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations and regulation 32(3) of the Retirement Benefits (Individual Retirement Benefits Schemes) Regulations is specified in Table L set out in the First Schedule to these Regulations.

20. The annual report on the income and expenditure account and the statement of assets and liabilities of a scheme required to be submitted to the Authority in accordance with section 34 of the Act, regulation 23(2) of the Retirement Benefits (Individual Retirement Benefits Schemes) Regulations and regulation 30(2) of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations shall be in such format as may, from time to time, be developed by the Authority in consultation with the Institute of Certified Public Accountants of Kenya in accordance with the International Accounting Standards (IAS) format.

21. The certification by trustees in accordance with regulation 26(2) of the Retirement Benefits (Individual Retirement Benefits Schemes) Regulations and regulation 31(6) of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations shall be in Form C5 set out in the First Schedule to these Regulations.

22. The fees set out in the Second Schedule to these Regulations shall be payable in respect of the matters set out therein.

FIRST SCHEDULE

[r. 5]

FORMS

[L.N. 101/2002, r. 2, L.N. 11/2003, r. 2(a), L.N. 60/2006, r. 2, L.N. 96/2007, r. 3, L.N. 152/2007, r. 4, L.N. 74/2008, r. 2, L.N. 89/2009, r. 2, L.N. 109/2015, r. 3, L.N. 107 of 2016, r. 2, L.N. 115/2020, r. 3, L.N. 191/2020, r. 30, L.N. 72/2022, r. 2.]

FORM A1**RETIREMENT BENEFITS AUTHORITY****APPLICATION FOR REGISTRATION OF A CUSTODIAN**

Provide the following Particulars

A. GENERAL

- i) Name of Custodian
- ii) Registered office
- Building
- Road
- Town
- iii) Postal Address
- Telephone
- Fax/email
- iv) Date of incorporation
- Certificate of incorporation No.
- Country of incorporation
- v) Income Tax Personal Identification Number
- vi) Income Tax Reference Number

MANAGEMENT

- i) Members of the Board of Directors (Appendix A)
- ii) Chief Executive, Company Secretary and Heads of Departments (Appendix B)
- iii) Bankers, Auditors and Legal Advisors (Appendix C)

SHARE CAPITAL

(i) Authorised capital

Types of shares	No of shares	Nominal Value (Kshs)	Total Value (Kshs)
		Total	

(ii) Paid up capital

No of share and holding	No of share holders	No of shares	Nominal Value (Kshs)	Total amount (Kshs)	% of total
(a) Shares					
(i) Local					
(ii) Foreign					
Total					
(b) Shares					
(i) Local					
(ii) Foreign					

(a) Shares

(i) Local

(ii) Foreign

Total

(b) Shares

(i) Local

(ii) Foreign

[Subsidiary]

Total
(c) Shares
(i) Local
(ii) Foreign
Total

D BUSINESS PARTICULARS

- (i) State briefly the main object of the custodian
.....
.....
- (ii) State date of last Annual General meeting
.....
.....
- (iii) List the retirement benefit schemes the custodian has offered custodial services for within the period of three years ending the date of application

(In case of insufficient space provide separate attachment)

E ATTACHMENTS

Please attach certified copies of the following

- (i) Latest audited report and accounts
- (ii) Certificate of incorporation
- (iii) CMA Registration Certificate (if registered by the Capital Markets Authority);
- (iv) Memorandum and Articles of Association

I hereby declare section 25A of the Act has been complied with and that statements contained herein and the documents submitted herewith are true and accurate to the best of my knowledge and belief. Any alterations in particulars stated herein or in the said documents will be promptly communicated to the Authority within a period not later than thirty days from the date of alteration

Signed on this day of

Chief Executive/Secretary

Full Name

Designation

APPENDIX A

PARTICULARS OF THE BOARD OF DIRECTORS

Name of the custodian

Director (full name)	Nationality	Permanent Address	Occupation	Date of Appointments	No. of shares held
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APPENDIX B

PARTICULARS OF TOP MANAGEMENT OF THE CUSTODIAN

Name of custodian

Executive (full name)	Designation	Nationality	Permanent Address	Date of Appointment	Academic and professional qualifications	Years of experience
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APPENDIX C

PARTICULARS OF AUDITORS LEGAL ADVISORS AND BANKERS

Name of custodian

[Subsidiary]

Name of firm/ institution	Income Tax PIN	Postal Telephone and fax address	Affiliated Professional body	Date of appointment
Auditors				
Bankers				
Legal Advisor				

FORM C1 _____ (s. 23(4))
RETIREMENT BENEFITS AUTHORITY
CERTIFICATE OF REGISTRATION OF A CUSTODIAN

REGISTRATION NO.

This is to certify that (custodian) is registered as a Custodian of retirement benefits schemes funds subject to the provisions of the Retirement Benefits Act and the conditions endorsed hereon

CONDITIONS

Given under my hand and seal of the Retirement Benefits Authority this day of

Chief Executive Officer
Retirement Benefits Authority

FORM A2 _____ (r. 4)
RETIREMENT BENEFITS AUTHORITY
APPLICATION FOR REGISTRATION OF A MANAGER

Provide the following particulars—

A. GENERAL

- i) Name of manager
- ii) Registered office
- Building
- Road
- Town
- iii) Postal Address
- Telephone Fax/Email
- Telex

B. MANAGEMENT

- i) Members of the Board of Directors (Appendix A)
- ii) Chief Executive Company Secretary and Heads of Departments (Appendix B)
- iii) Bankers Auditors and Legal Advisors (Appendix C)
- iv) Date of incorporation certificate of incorporation no

[Subsidiary]

v) Income Tax Personal Identification Number

vi) Income Tax Reference Number

C. SHARE CAPITAL

i) Authorised capital

Types of shares	Number of shares	Nominal value (Kshs)	Total value (Kshs)
		Total	

Paid up capital

Type of share and holding	Number of shareholders	Number of shares	Nominal value (Kshs)	Total Amount (Kshs)	% of total
a)					
Shares					
Local					
Foreign					
Total					
b)					
Shares					
Local					
Foreign					
Total					
c)					
Shares					
Local					
Foreign					
Total					
TOTAL					

a)

Shares

Local

Foreign

Total

b)

Shares

Local

Foreign

Total

c)

Shares

Local

Foreign

Total

TOTAL

D. BUSINESS PARTICULARS

- (i) State briefly the main object of the manager
- (ii) State date of last Annual General Meeting
- (iii) List the retirement benefit schemes the manager has managed their funds within the period of three years ending as at the date of application (*Incase of insufficient space provide separate attachment*)

E. ATTACHMENTS

Please attach certified copies of the following

i) Latest audited report and accounts

ii) Certificate of incorporation

iii) CMA registration certificate (if registered by the Capital Markets Authority)

I hereby declare section 25 of the Act has been complied with and that statements contained herein and the documents submitted herewith are true and accurate to the best of my knowledge and belief. Any alterations in particulars stated herein or in the said documents will be promptly communicated to the Authority within a period not later than thirty days from the date of alteration

Signed on this day of

Chief Executive/Secretary

Full Name

Designation

APPENDIX A

PARTICULARS OF THE BOARD OF DIRECTORS

Name of the Manager

Director (full Nationality name)	Permanent Address	Occupation	Date of Appointment	No of shares held
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APPENDIX B

PARTICULARS OF TOP MANAGEMENT OF THE MANAGER

Name of Managers

Executive Designation (full name)	Nationality	Permanent Address	Date of Appointment	Academic and professional qualifications	Years of experience
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APPENDIX C

PARTICULARS OF AUDITORS, LEGAL ADVISORS AND BANKERS

Name of Manager

Name of firm/institution	Income Tax PIN	Postal Telephone and fax address	Affiliated Professional body	Date of appointment
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Auditors
Bankers
Legal
Advisors

FORM C2 _____ (s. 23(4))
RETIREMENT BENEFITS AUTHORITY
CERTIFICATE OF REGISTRATION OF A MANAGER

REGISTRATION NO.

This is to certify that (manager) is registered and authorised to manage retirement benefit schemes fund subject to the provisions of the Retirement Benefits Act and the conditions endorsed hereon

CONDITIONS

Given under my hand and seal of the Retirement Benefits Authority this day of

Chief Executive Officer
Retirement Benefits Authority

FORM A3 _____ (r. 6)
RETIREMENT BENEFITS AUTHORITY
APPLICATION FOR REGISTRATION OF AN INDIVIDUAL
RETIREMENT BENEFITS SCHEME
PART I - DETAILS OF THE SCHEME

- (i) Name of scheme
- (ii) Income Tax PIN Number

[Subsidiary]

B. Provide the following information regarding the proposed scheme

- (i) Proposed number of members
- (ii) Registered office of the scheme
 - Building
 - Road
 - Postal Address
 - Telephone Address
 - Telex Fax
 - Email
- (iii) Is the scheme registered under the Income Tax (Retirement Benefit) Rules?
YES/NO
 - If yes, state the Income Tax Reference Number
.....

C. Provide the following details in the appendices

- (i) Directors of the Trust corporation or institution rendering trust services (Appendix A)
- (ii) Auditors, Legal Advisors Actuary, Managers, Custodians and Administrators (if any) (Appendix B) partners
- (iii) Directors or partners of the sponsor (Appendix "c")

PART II - PARTICULARS OF TRUSTEES

- A Name of trustees
- B Physical Address
- Building Road
- Town
- Postal Address Telephone Fax
- (i) Income Tax PIN
- (ii) Income Tax Reference Number
- (iii) Certificate of Incorporation number

D. Has the trust corporation or the institution rendering trust services previously been convicted of a criminal offence with a sentence of a period of six months or more?**PART III - PARTICULARS OF SPONSOR**

(Incase of more than one sponsor provide the following particulars for each on a separate attachment)

- (i) Name of sponsor
- (ii) If a company, certificate of incorporation number
- (iii) If not a company state the number of the certification of registration under the Business Names Act

B. Physical Address

- Building Road
- Town
- Telephone
- E-mail/fax Nos
- (i) Income Tax PIN Number

(ii) Income Tax Reference Number

PART IV - ATTACHMENTS

Please attach copies of the following

- (i) Trust deed and Rules.
- (ii) Certificate of incorporation of the trust corporation.
- (iii) Latest audited report and accounts of the trust corporation.
- (iv) An actuarial certificate certifying the design and financial viability of the scheme.
- (v) A feasibility study on a proposed scheme.
- (vi) Certified copies of;
 1. certificate of incorporation of the sponsor, or
 2. certificate of registration as a Business Name of sponsor

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

Signed on this day of

Signature of Applicant

Full Name

Designation

APPENDIX A

PARTICULARS OF DIRECTORS OF TRUST CORPORATION

Name of Trust corporation

Name of Director	Citizenship	Address/Tel/ Fax or E mail	Occupation	Date of Appointment
-------------------------	--------------------	---------------------------------------	-------------------	----------------------------

APPENDIX B

PARTICULARS OF AUDITORS LEGAL ADVISORS ACTUARIES ADMINISTRATORS MANAGER AND CUSTODIANS

Name of Scheme

Name of firm	Income Tax PIN Number	Address Telephone Fax or E mail	Professional body to which Partners are members	Date of appointment
---------------------	----------------------------------	--	--	--------------------------------

- Actuaries
- Administrators
- Auditors
- Custodians
- Legal
- Advisors
- Manager

APPENDIX C

PARTICULARS OF DIRECTORS OR PARTNERS OF A SPONSOR

Name of Sponsor

[Subsidiary]

Name of Directors/ Partners*	Citizenship	Address/Tel/ Fax or E mail	Occupation	Date of Appointment
---------------------------------	-------------	-------------------------------	------------	---------------------

*Delete as appropriate

FORM A4 (r. 7)
RETIREMENT BENEFITS AUTHORITY
REGISTRATION OF EXISTING SCHEMES
APPLICATION FOR THE PURPOSE OF REGISTRATION UNDER s. 23(2) OF
THE RETIREMENT BENEFITS ACT
Read attached notes before completing the form)
PART I - DETAILS OF THE SCHEME

- A (i) Name of scheme
- (ii) Income Tax PIN Number

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

.....
.....

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

D Provide the following particulars regarding the scheme:

- (i) Is it a provident or pension fund?
.....
- (ii) Is it an individual based? YES/NO
- (iii) Is it an employee based? YES/NO
- (iv) Is the scheme contributory or non contributory?
.....
- (v) If other, specify
- (vi) What is the current status of the scheme?
(1) Is it an open scheme? YES/NO
(2) Is it a paid up scheme? YES/NO
(3) Is it a closed scheme? YES/NO

(4) If other specify

(vii) State whether the scheme is a defined contribution or a defined benefit scheme

(viii) If other specify

E (i) Give the following information as at the end of the last financial year from 20 to 20

- (1) State the number of members of the scheme
- (2) State the number of members of the scheme who were active members in service
- (3) State the number of members in whom the scheme benefit have been fully vested
- (4) State the scheme's vesting formula
- (5) State the number of members who are drawing pension, if any
- (6) State the number of members whose retirement benefits are deferred
- (7) State the number of the total permanent workforce of the sponsoring employer(s)

.....

Retirement Benefits

[Subsidiary]

- (8) Is membership of the scheme compulsory or voluntary?
- (ii) Do those permanent employees of the sponsoring employer(s) who are not members of the scheme belong to any other scheme? YES/NO
 If yes, give details of the scheme.

- Give the following information as at the end of the last financial year
 from 20 to 20
- (i) Where applicable state the contribution formula for the employee and the employer, and in the case of an individual based scheme the individual contribution formula.
 Employee
 Employer
 Individual contribution
- (ii) State the amount contributed
 Employee's contributions
 Kshs
 Individual's contribution
 Kshs
- (iii) State the total benefits as follows
 Lumpsum payments Kshs
 Commuted payments Kshs
 Pension payments Kshs
 Death benefits payments Kshs
 Disability benefits payments Kshs
 Deferred benefits
 Other specify
- (iv) (1) State the total value of the scheme fund Kshs.
- (2) State basis of valuation eg market value, historical cost etc.
 G (1) Provide the following particulars of the establishment of the scheme as follows:
 Country
 Date of establishment
 Registered office of the scheme
 Building
 Road
 Postal Address
 Telephone
 Telex
 Fax/Email
- ii) Is the scheme established under an irrevocable trust? YES/NO
 If no state the basis of establishment

[Subsidiary]

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

If yes state the Income Tax Reference Number.....

H Provide details for the following

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

ii) Fund manager, if any (Appendix B)

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

Please complete the tables in the above mentioned appendices)

I If the scheme does not engage the services of trustees a scheme administrator or fund manager, then provide the following particulars-

- (i) Who administers the scheme?
- (ii) Who makes decisions on the investment of the scheme funds?
- (iii) Are the scheme funds separated from those of the sponsor? Explain
- (iv) Are scheme funds or assets separated from those of the fund manager? YES/NO
- (v) Provide the list of investment portfolio as per the latest audited or management accounts for the period from 20 to 20 showing the cost, market and book values and the respective percentages in relation to the total fund of the scheme, as in appendices D1 and D2 annexed

NOTE

1. In case the assets of the scheme are managed by an Insurance Company/Bank/Asset Manager on a pooled basis such manager to complete Appendix D2.

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

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

K List all Bankers of scheme funds showing the branches and address for such branches

L (i) Is the custodian of the scheme assets registered under the Capital Markets Authority? YES/NO

- (ii) If the custodian is registered by any other authority provide the following-

Full Name

Physical Address

Building

Road

Town

Postal Address

Telephone Fax

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

- (iv) Give full details of the person who keeps scheme's assets and documents.

Full Name

Physical Address

Building Road

Town

Postal Address

Telephone Fax

PART II - PARTICULARS OF SPONSOR(S)

Incase of more than one sponsor provide the following particulars for each on a separate attachment)

A Name of Sponsor(s)

B Physical Address

Building Road

Town

Postal Address Telephone Fax/Email

C (i) Income Tax PIN Number

(ii) Income Tax Reference Number

D Number of members in service of the sponsor

PART III - ATTACHMENTS

Please attach copies of the following

- (i) Trust deed and Rules
- (ii) Latest actuarial report
- (iii) Latest audited or management accounts
- (iv) An actuarial certificate certifying the design and financial viability of the scheme (if applicable)
- (v) For insured schemes a copy of the insurance policy document and a copy of the latest fund value statement and revenue account
- (vi) For schemes with funds invested by an asset manager firm a copy of the latest scheme fund investment report and revenue account
- (vii) Fund management agreement(s) *(where applicable)*

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

Signed on this day of

Full name

Designation

Chairperson/Secretary

Authorised signature of Applicant

APPENDIX A

PARTICULARS OF BOARD OF TRUSTEES

Name of Scheme	Citizenship	Residential Address	Occupation	Date of Appointment	Whom do the Trustees represent in the Board
Trustees					

[Subsidiary]

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

1.
2.
3.
4.

APPENDIX B

**PARTICULARS OF SENIOR MANAGEMENT OF THE FUND MANAGER
(Complete this form for each fund manager where applicable)**

Name of Scheme

Name of Fund Manager

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

Income Tax PIN Number

Full Name	Designation	Nationality	Age	Postal Address	Date of appointment	Experience (No of years)	Academic and professional qualification
-----------	-------------	-------------	-----	----------------	---------------------	--------------------------	---

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

** (The Chief Executive and his core team)*

APPENDIX C

PARTICULARS OF AUDITORS LEGAL ADVISORS ACTUARIES ADMINISTRATORS AND CUSTODIANS

Name of Scheme

Name of firm	Income Tax PIN Number	Postal/ Telephone or Fax Address	Professional body to which Partners are members	Date of appointment
--------------	-----------------------	----------------------------------	---	---------------------

- Auditors
- Legal
- Advisors
- Custodians
- Actuaries
- Administrators

APPENDIX D1

LIST OF INVESTMENT PORTFOLIO

Name of Scheme

Income Tax PIN Number

INVESTMENTS	Cost	Initial %	AMOUNT IN KSH		Market Value	%	Date of valuation	Basis of Valuation
			Book Value	%				
(a) Real Estate*								

-
- i) Land
(underdeveloped)
 - ii)
Residential
 - iii)
Commercial
 - iv)
Agricultural
 - v) Any
other
 - (b)
Quoted
Equity+
 - i)
Agricultural
 - ii)
Commercial
and
allied
 - iii)
Financial
&
Investment
 - (c)
Unquoted
Equity+
 - i)
Agricultural
 - ii)
Commercial
& Allied
 - iii)
Financial
&
investment
 - iv)
Industrial
& allied
 - v)
Others
 - (d)
Government
Paper
 - i) Bonds
 - ii) Stock
 - iii)
Treasury
Bills
 - iv) Any
other
(specify)

[Subsidiary]

(e)
Cash &
Deposits
in Banks
(State
the
name(s)
of the
Banks)

(f)
Offshore
investment

(g)
Other
Specify

TOTAL 100% 100% 100%

*(Provide on a separate paper a list of land reference title numbers in which scheme funds are invested)

+(Provide on a separate paper a list of companies in which investments are held)

APPENDIX D2

LIST OF INVESTMENT PORTFOLIO

Name of Insurance Company/Bank/Asset Management

Income Tax PIN Number

TOTAL AMOUNT IN KSH

**INVESTMENTS
IN THE
POOL**

INVESTMENTS	Cost %	Book Value %	Market Value %	Date of Valuation	Basis of Valuation
-------------	--------	--------------	----------------	-------------------	--------------------

(h) Real Estate*
vi) Land (underdeveloped)

vii) Residential
viii) Commercial
ix) Agricultural

x) Any other

(i) Quoted Equity+
vi)

Agricultural
vii)
Commercial

and
 allied
 viii)
 Financial
 &
 Investment
 ix)
 Industrial
 and
 allied
 x)
 Others
 (j)
 Unquoted
 Equity+
 v)
 Agricultural
 vi)
 Commercial
 & allied
 vii)
 Financial
 &
 investment
 viii)
 Industrial
 & allied
 (k)
 Government
 Paper
 v) Bonds
 vi) Stock
 vii)
 Treasury
 Bills
 viii) Any
 other
 (specify)
 (l)
 Cash &
 Deposits
 in Banks
 (State
 the
 name(s)
 of the
 Banks)
 (m)
 Offshore
 investments

[Subsidiary]

(n)

Other

Specify

TOTAL **100%** **100%** **100%**

*(Provide on a separate paper a list of land reference title numbers in which scheme funds are invested)

+(Provide on a separate paper a list of companies in which investments are held)

NOTES TO REGISTRATION APPLICATION FORM A4

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

(1) Actuarial liabilities

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

(2) Administrator

A person* charged with the responsibility of the day-to-day management of a scheme such as keeping records paying benefits to an providing members with information relating to their benefits

(3) Banks

Bank of financial institution licensed under the Banking Act and in which schemes' accounts are operated or held

(4) Commuted Payment

The whole or part of a pension entitlement paid to a member on retirement subject to scheme rules and/or Income Tax Regulations

(5) Contribution Formula

The rate(s) of contribution to the fund by members and/or sponsors

(6) Contributory Scheme

- (i) A retirement benefits scheme in which both the sponsor(s) and the members contribute to the fund

(ii) Non-contributory Scheme

A retirement benefit scheme in which only the sponsor(s) contributes to the fund

(6) Custodian

A person* who has custody of schemes' assets including cash and title documents as an agent of the scheme

(8) Defined Benefit Scheme

- (i) A scheme in which benefits to be provided or paid are specific based on a specified criteria such as service, earnings etc.

(ii) Deferred Contribution (money purchase) Scheme

A scheme which specified contributions to be made whether by employer and/or employee. The accumulated contributions and interest earned determine the value of the benefit

(9) Financial Year

Financial year of the scheme

(10) Fund Manager

A person charged with the responsibility of investing scheme funds

(11) Lump-sum

Full and final payment of retirement benefit upon cessation of employment on attaining the normal retirement age

(12) (i) Open Scheme

A running scheme which is open to new members to join

(ii) Paid up Scheme

A scheme where contributions to the scheme have ceased eg due to winding up, merger/ acquisition of sponsor(s)

(iii) Closed Scheme

A scheme which is closed to new members but which otherwise functions as a normal scheme for its continuing members

(13) Scheme

Any scheme or arrangement (other than a contract for life assurance) whether established by a written law for the time being in force or by any other instrument, under which persons are entitled to benefits in the form of payments, determined by age, length of service, amount of earnings or otherwise and payable primarily upon the retirement, or upon death, termination of service, or upon the occurrence of such other even as may be specified in such written law or other instrument

(14) (i) Vested Benefit

Any accrued benefit to which a member would be immediately entitled to on withdrawal from service of sponsor, from the scheme or at retirement

(ii) Vesting Formula

The method of determining the benefits to be vested

* A person includes a body corporate or a company

FORM A5 **(r. 8)**
RETIREMENT BENEFITS AUTHORITY
APPLICATION FOR REGISTRATION OF A NEW OCCUPATIONAL
RETIREMENT BENEFITS SCHEME
PART I - DETAILS OF PROPOSED SCHEME

A (i) Name of scheme

(ii) Income Tax PIN Number

B Provide the following particulars regarding the proposed scheme:

(i) Is it a provident or pension fund?

.....

(ii) State whether the scheme is a defined contribution or a defined benefit scheme

.....

If other, specify

C Provide the following information regarding the proposed scheme:

(i) Proposed number of members of the scheme.

.....

[Subsidiary]

- (ii) Number of the total permanent workforce of the sponsoring employer(s)
.....
- (iii) Is membership of the scheme proposed to be compulsory or voluntary
.....
- (iv) Proposed scheme's vesting formula
.....
.....

D Where applicable state the contribution formula for the employee and the employer.

Employee

Employer

E Provide the following particulars on the proposed scheme

i) Registered office

Building

Road

Postal Address

Telephone

Telex

Fax/Email

ii) Is the scheme established under an irrevocable trust? YES/NO

If no, state the basis of establishment

iii) Is the scheme registered under the Income Tax (Retirement Benefits Scheme) Rules?

YES/NO

If yes state the Income Tax Reference Number

Provide the following details in the appendices

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

ii) Auditors, Legal Advisors Actuary Managers Custodian and Administrators (Appendix

B)

PART II - PARTICULARS OF SPONSOR(S)

(Incase of more than one sponsor provide the following particulars for each on a separate attachment)

A Name of Sponsor(s)

B Physical Address

Building Road

Town

Postal Address Telephone Fax/Email

C (i) Income Tax PIN Number

(ii) Income Tax Reference Number

D Number of members in service of the sponsor

PART III - ATTACHMENTS

Please attach copies of the following

Retirement Benefits

[Subsidiary]

- (i) Trust deed and Rules
- (viii) An actuarial report certifying the design and financial viability of such proposed scheme
- (ix) Schedule of the rates of contributions to be payable to the scheme

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

Signed on this day of

Signature of Applicant

Full name

Designation

Full name

Designation

APPENDIX A

PARTICULARS OF PROPOSED BOARD OF TRUSTEES

Name of Scheme

Trustees (Full Name)	Nationality	Permanent Address	Occupation	Date of Appointment	Representation in Board (employer or employee or independent)
-------------------------	-------------	----------------------	------------	------------------------	---

APPENDIX B

PARTICULARS OF PROPOSED AUDITORS LEGAL ADVISORS ACTUARIES MANAGERS CUSTODIANS AND ADMINISTRATORS

Name of Scheme

Name of firm	Income Tax PIN Number	Address/ Telephone or Email	Professional body to which Partner/ company are member	Date of appointment
--------------	--------------------------	-----------------------------------	---	------------------------

- Auditors
- Actuaries
- Administrators
- Custodian
- Legal
- Advisors
- Managers

[Subsidiary]

APPLICATION FOR REGISTRATION OF AN ADMINISTRATOR

Provide the following particulars:

A. GENERAL

- (i) Name of Administrator.....
- (ii) Registered office
- Building
- Road
- Town
- (iii) Postal address
- Telephone Fax/Email
- Telex

B. MANAGEMENT

- (i) Members of the Board of Directors. (Appendix A)
- (ii) Chief Executive, Company Secretary and Heads of Departments. (Appendix B)
- (iii) Bankers, Auditors and Legal Advisors. (Appendix C)
- (iv) Date of incorporation
- Certificate of incorporation No
- (v) Income Tax Personal Identification Number
- (vi) Income Tax Reference Number

C SHARE CAPITAL

- (i) Authorized Capital

Type of shares	Number of shares	Nominal value (KSh)	Total value (KSh)
-----------------------	-------------------------	----------------------------	--------------------------

Total

Paid-up Capital

Type of share and holding	Number of shareholders	Number of shares	Nominal value (KSh)	Total Amount (KSh)	% of total
(a) Shares					
Local					
Foreign					
Total					
(b) Shares					
Local					
Foreign					
Total					
(c) Shares					
Local					
Foreign					
TOTAL					

D. BUSINESS PARTICULARS

- (i) State briefly the main object of the Administrator
-
-

Retirement Benefits

[Subsidiary]

.....
 (ii) State date of last Annual General Meeting.

.....
 (iii) List the retirement benefit schemes the Administrator has provided Administration Services to within the period of three years ending as at the date of application. *(Incase of insufficient space provide separate attachment).*

E. ATTACHMENTS.

Please attach certified copies of the following:

- (i) Latest audited report and accounts
- (ii) Certificate of incorporation
- (iii) Memos and Articles of Incorporation

I hereby declare that section 25B of the Act has been complied with and that statements contained herein and the documents submitted herewith are true and accurate to the best of my knowledge and belief. Any alterations in particulars stated herein or in the said documents will be promptly communicated to the Authority within a period not later than thirty days from the date of alteration.

Signed on this day of

Chief Executive/Secretary

Full name

Designation

APPENDIX A

PARTICULARS OF THE BOARD OF DIRECTORS

Name of the Administrators

Director (full name)	Nationality	Permanent Address	Occupation	Date of Appointment
----------------------	-------------	-------------------	------------	---------------------

APPENDIX B

PARTICULARS OF TOP MANAGEMENT OF THE ADMINISTRATOR

Name of Administrator

Executive (full name)	Designation	Nationality	Permanent Address	Date of Appointment	Academic and professional qualifications	Years of experience
-----------------------	-------------	-------------	-------------------	---------------------	--	---------------------

APPENDIX C

PARTICULARS OF AUDITORS, LEGAL ADVISORS AND BANKERS

Name of Administrator

Name of firm/institution	Income Tax P.I.N.	Postal, Telephone	Affiliated Professional body	Date of appointment
--------------------------	-------------------	-------------------	------------------------------	---------------------

[Subsidiary]

and fax
address

Auditors
Bankers
Legal
Advisors

FORM C6 _____ **(s. 23(4))**
RETIREMENT BENEFITS AUTHORITY
CERTIFICATE OF REGISTRATION OF AN ADMINISTRATOR

REGISTRATION NO

This is to certify that..... (Administrator) is registered and authorised to manage retirement benefits schemes subject to the provisions of the Retirement Benefits Act and the conditions endorsed hereon.

CONDITIONS

Given under my hand and seal of the Retirement Benefits Authority this day of 20

Chief Executive Officer
Retirement Benefits Authority

FORM C3 _____ **(s. 23(4))**
RETIREMENT BENEFITS AUTHORITY
CERTIFICATE OF REGISTRATION OF A SCHEME

REGISTRATION NO

This is to certify that (scheme) is registered as a retirement benefits scheme subject to the provisions of the Retirement Benefits Act and the conditions endorsed hereon

CONDITIONS

Given under my hand and seal of the Retirement Benefits Authority this day of

Chief Executive Officer
Retirement Benefits Authority

FORM N1 _____ **(27(2))**

NOTICE OF REFUSAL TO REGISTER A CUSTODIAN, MANAGER OR SCHEME

To
RE

TAKE NOTICE that upon consideration of your application for registration as a custodian/ manager/retirement benefits scheme* in accordance with the provisions of the Retirement

Benefits Act and the regulations made thereunder, the Authority has found your application unsuccessful and consequently refused to register you due to the following reasons -

Yours faithfully,

Chief Executive Officer

**Delete whichever is inapplicable*

FORM N2 (28(5))
NOTICE OF INTENTION TO DEREGISTER A CUSTODIAN MANAGER OR SCHEME

To

RE

TAKE NOTICE that the Authority intends to deregister you on the following reasons-

TAKE FURTHER NOTICE that you may make your representations in writing to the Authority in regard to the said intention within the next twenty-eight (28) days from the date hereof which representations the Authority shall consider in accordance with the provisions of the Retirement Benefits Act and the regulations made thereunder before finally making its decision on the said intended deregistration

Yours faithfully,

Chief Executive Officer

cc Scheme

Manager

Sponsor

FORM N3 (s. 44)
NOTICE TO A CUSTODIAN, MANAGER OR SCHEME REQUIRING COMPLIANCE OF DIRECTIONS

To

RE

TAKE NOTICE that pursuant to an inspection made and report thereof written and furnished on the Authority, particular matters arise out of the said report which require urgent correction. Consequently the Authority hereby requires your compliance of the following directions

TAKE FURTHER NOTICE that you are required to comply with the said directions within the next days from the date hereof or by the day of

Yours faithfully

Chief Executive Officer

Form R1 (r. 13, L.N. 60 of 2006)
INDIVIDUAL SCHEMES
RETURN ON QUARTERLY RECORD OF CONTRIBUTIONS FOR THE QUARTER ENDING

1. Name of scheme
2. Registration Number
3. Contribution remittance during the quarter ending of

[Subsidiary]

- (a) Total Contribution received Kshs
- (b) Unremitted contributions Kshs

4. Total contributions which have not been remitted for a period of more than three months from the date they became due Kshs

5. Total number and details of active members of the scheme

(provide list as follows-)

Item No.	Name of Member	Gender (Male/ Female)	Age
-----------------	-----------------------	----------------------------------	------------

Date this.....day of.....

Signature of Trustee/Administrator

Form R2 **(r. 14)**

**OCCUPATIONAL SCHEMES
RETURN ON QUARTERLY RECORD OF CONTRIBUTIONS
FOR THE QUARTER ENDING**

1. Name of scheme
2. Registration Number
3. Contribution remittance during the quarter ending
 - (a) Remitted contributions
 - (i) members' contributions Kshs
 - (ii) sponsor's contributions received Kshs
 - (iii) total contributions received Kshs
 - (b) Unremitted contributions
 - (i) by the members Kshs
 - (ii) by the sponsors Kshs
 - (iii) total unremitted contributions Kshs
 - (c) Total contributions which have not been remitted for a period of more than three months from the date they became due shs

4. Total number and details of active members of the scheme

Item No.	Name of Member	Gender (Male/ Female)	Age
-----------------	-----------------------	----------------------------------	------------

Date this day of

Signature of Trustee/Administrator

Form R3 **(r. 14)**

**UMBRELLA SCHEME
RETURN ON QUARTERLY RECORD OF CONTRIBUTIONS
FOR THE QUARTER ENDING:**

Name of Scheme:

Registration Number:

Remitted Contributions	Unremitted Contributions	Membership (number of active members in service)
---------------------------	--------------------------	--

Name of Participating	MemberSponsor	Up to 3 Months	Over 3 Months	MemberSponsor	MemberSponsor	Total	Male	Female
--------------------------	---------------	-------------------	------------------	---------------	---------------	-------	------	--------

Employer

- 1.
- 2.
- 3.

TOTAL

Signature of Trustee/Administrator: _____

Date: _____

TABLE AR 1 (r. 15)*Deleted by LN 89 of 2009, r. 2.***TABLE AR 2** (r. 16)*Deleted by LN 89 of 2009, r. 2.***FORM C4** (r. 17)**CERTIFICATE BY THE ACTUARY IN SUPPORT OF AN APPLICATION FOR EXEMPTION****In terms of Regulation 31(1)(C)(iii) of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations**

Name of the scheme

I have Scrutinised

(a) the rules and the method of operation of the scheme since the issue of the previous certificate**(b)** a sample explanatory booklet given to members, and**(c)** a sample of an individual member's benefit statement

In respect of the period since the issue of the previous certificate

(a) The method used to allocate investment returns to individual account has been as follows**(b)** Expenses (including the premiums paid for the insurance of death and disability risks) have been handled as follows**(c)** Members of the scheme were/were not (delete whichever is not applicable)

Provided with projections of their expected ultimate benefits If they were provided with such projections, the basis of such projections was/was not approved by an actuary (delete whichever is not applicable)

(d) All risk benefits falling due were fully covered by insurance or reinsurance**(e)** All pension payments falling due were fully recovered by life office annuities**(f)** The assets of the fund at all time adequately matched its liabilities

Having taken account of the manner in which expenses, including the premiums paid for the insurance of death and disability risks investment returns and any surpluses or strains will be distributed between members in future, I am satisfied that

- (i) all benefits, other than those fully secured by an insurer are limited in value to the contributions, net of expenses including the premiums paid for the insurance of death and disability risks, accumulated with investments return as determined by the person managing the business of the scheme,
- (ii) all periodic retirement benefit payments will be fully secured by the purchase of annuities from an insurer,
- (iii) any surplus or strains will be distributed amongst members such that the value of the accrued liabilities of the scheme will not exceed the market value of the assets of the scheme Such method of distribution of surpluses or strains

[Subsidiary]

is equitable between classes of member and by duration of membership, is consistent with the nature of the surpluses or strains and will not conflict with the reasonable benefit expectations of member.

In my opinion continued exemption in terms of regulation 34(7) is warranted

The certificate should state the actuary's qualification and capacity in which he has signed the report

Notes

(1) Where the actuary is unable to make the statements above without qualification, but feels that the refusal of exemption would be unduly harsh, the actuary must qualify the statement above where appropriate and give reasons why exemption should still be granted

(2) The actuary may add any other matters relevant to the principles upon which exemption is sought

TABLE G

(r. 18)

INVESTMENT GUIDELINES

<i>Item</i>	Column 1 <i>Categories of Assets</i>	Column 2 <i>Maximum percentage of aggregate market value of total assets of scheme or pooled fund</i>
1	Cash and Demand Deposits in institutions licensed under the Banking Act of the Republic of Kenya.	5%
2	Fixed Deposits, Time Deposits and Certificate of Deposits in institutions licensed under the Banking Act of the Republic of Kenya.	30%
3	Listed Corporate Bonds, Mortgage Bonds and Fixed Income Instruments; loan stocks approved by the Capital Markets Authority collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category Exchange Traded Funds; and global depository receipts.	20%
4	Commercial Paper, Non listed bonds and other debt instruments issued by private companies provided that the bond	10%

	or instrument has been given investment grade rating by a credit rating agency registered by the Capital Markets Authority, and collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category.	
5	East African Community Government Securities and infrastructure bonds issued by public institutions and collective investment schemes incorporated in East African Community (EAC) and approved by an EAC Capital Markets regulator reflecting this category and Exchange Traded Funds.	90%, or 100% in the case of scheme receiving statutory contributions
6	Preference shares and ordinary shares of companies listed in a securities exchange in the East African Community and collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category; Exchange Traded Funds; and global depository receipts.	70%
7	Unlisted shares and equity instruments of companies incorporated in Kenya and collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category.	5%
8	Offshore investments in bank deposits, government securities, listed equities and	15%

[Subsidiary]

	rated Corporate Bonds and offshore collective investment schemes reflecting these assets.	
9	Immovable property in Kenya; Property funds, Unit Trust Schemes incorporated in Kenya or collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category.	30%
10.	Guaranteed Funds.	100%
11.	All exchange traded derivatives contracts approved by the Capital Markets Authority.	5%
12.	All listed and unlisted Real Estate Investment Trusts incorporated in Kenya and approved by the Capital Markets Authority.	30%
13.	Private Equity & Venture Capital.	10%
14	Any other assets.	10%
15	Debt instruments for the financing of infrastructure or affordable housing projects approved under the Public Private Partnerships Act (Cap. 430) or as may be prescribed by the Cabinet Secretary responsible for matters relating to housing.	

TABLE L**(r. 19)****LEVY****Column 1****Size of Scheme Fund as indicated in latest Audited Accounts (Kenya Shillings)**

Upto 500 million

More than 500 million but not exceeding 1,000 million

More than 1,000 million but not exceeding 5,000 million

More than 5,000 million

Column 2

Annual Levy Rate - Percentage of Fund

0.2%

0.15%

0.1%

0.05%

FORM C5**(r. 21)**

CERTIFICATION BY TRUSTEE

I (Chairperson Board of Trustees/authorised trustee) Being a trustee of (Name and address of scheme)

hereby do declare that to the best of my knowledge and belief the information furnished to the Actuary for the purpose of the Actuanal valuation was correct and complete in every material respect and that a copy of the valuation report has been sent to the sponsor of the scheme

Date

Signature

SECOND SCHEDULE

[r. 22]

FEES

[L.N. 80/2002, r. 2, L.N. 101/2002, r. 3, L.N. 152/2007, r. 5.]

	ITEM	KSHS
1	Annual registration of a manager	50,000 00
2	Annual registration of a custodian	50,000 00
3	Annual registration of an administrator	50,000 00

**THE RETIREMENT BENEFITS (INDIVIDUAL
RETIREMENT BENEFITS SCHEMES) REGULATIONS**

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

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3. Interpretation

PART II – REGISTRATION OF A SCHEME

4. Registered office of a scheme
5. Application for registration of schemes
6. Inspection of registers

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7. Contents of scheme rules
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9. Duties of trustees
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15. Record of contributions
16. Benefits from the scheme
- 16A. *[Deleted by L.N. 95/2007, r. 5.]*
17. Access to pension benefits
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THE RETIREMENT BENEFITS (INDIVIDUAL RETIREMENT BENEFITS SCHEMES) REGULATIONS

[Legal Notice 118 of 2000, Legal Notice 99 of 2002, Legal Notice 83 of 2003, Legal Notice 56 of 2005, Legal Notice 62 of 2006, Legal Notice 95 of 2007, Legal Notice 75 of 2008, Legal Notice 88 of 2009, Legal Notice 12 of 2011, Legal Notice 56 of 2012, Legal Notice 99 of 2016, Legal Notice 49 of 2017, Legal Notice 144 of 2018, Legal Notice 89 of 2019, Legal Notice 163 of 2021, Legal Notice 73 of 2022]

PART I – PRELIMINARY

1. Citation

These regulations may be cited as The Retirement Benefits (Individual Retirement Benefits Schemes) Regulations.

2. Application

These Regulations shall apply to individual retirement benefits schemes.

3. Interpretation

In these Regulations, unless the context otherwise interpretation requires—

"administrator" means the person appointed under a written instrument by the trustees of a scheme to manage the administrative affairs of the scheme;

"approved issuer" means an insurer registered under the Insurance Act (Cap. 487) or any other issuer approved in writing under the Capital Markets Authority Act (Cap. 485A) or under any other written law;

"custodian" means a custodian registered by the Authority;

"guaranteed fund" means an asset class—

- (a) issued by an approved issuer, whereby the approved issuer, guarantees the accumulated capital of the scheme fund or pooled fund together with the investment income thereof in accordance with the terms of the guaranteed fund contract entered into between the approved issuer and the scheme or pooled fund;
- (b) which is referred to as the Retirement Benefits Fund established as a statutory fund within the meaning of the provisions of the Insurance Act in which the capital of the scheme fund or pooled fund together with investment income thereof is guaranteed by the approved issuer in accordance with the terms of the policy of insurance issued to the scheme or pooled fund by the approved issuer.

"manager" means a manager registered by the Authority;

"pooled fund" means a fund established by a limited liability company other than an approved issuer for purposes of pooling scheme funds for collective investment;

"related company" in relation to a company means—

- (a) its holding company or subsidiary;
- (b) a subsidiary of its holding company;
- (c) any person who controls it whether alone or with his associates or with other associates of the related company.

"scheme" means an individual retirement benefits scheme established for the benefit of individual beneficiaries for purposes of paying a retirement benefit;

"scheme rules" means the trust deed and rules of the scheme;

"trustees" means a trust corporation;

[Subsidiary]

"trust corporation" means a trust company incorporated under the Companies Act having a subscribed capital of not less than ten million shillings including unimpaired reserves which is for the time being empowered (by or under any written law, its charter, memorandum or association, deed of settlement or other instrument constituting it or defining its powers), to undertake trusts but for so long a time only as that body corporate shall not, by any prospectus, circular, advertisement 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 that body corporate when acting as an executor or administrator;

[L.N. 75/2008, r. 2.]

PART II – REGISTRATION OF A SCHEME

4. Registered office of a scheme

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

5. Application for registration of schemes

(1) An application for registration of an Individual Retirement Benefits Scheme shall be in the prescribed form.

(2) The Authority shall within ninety days from the date of receipt of an application for registration submitted under paragraph (1)—

- (a) consider the application and notify the applicant in writing whether the scheme is acceptable for registration and the reason therefor if it is not acceptable; and
- (b) proceed to register the scheme and forward to the applicant a certificate of registration in the prescribed form if the scheme is acceptable for registration.

6. Inspection of registers

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

PART III – ADMINISTRATION AND BENEFITS

7. Contents of scheme rules

Every scheme shall have rules which shall provide for the following:

- (a) the full name of the scheme, including reference to any prior change of the name;
- (b) the physical address of the registered office of the scheme;
- (c) the date of commencement of the scheme;
- (d) a list of definitions, in alphabetical order, defining the terms which are frequently used in the rules and which bear a special connotation;
- (e) requirements for admission to membership into the scheme and the circumstances under which membership may cease;
- (f) requirements under which an employer may remit contributions on behalf of the members;
- (g) the appointment, term, removal from office, powers and remuneration of trustees;
- (h) powers of investment of scheme funds;
- (i) mode and method of remitting contributions;
- (j) immediate vesting of contributions;

Provided that where employment is on contract for a period not exceeding one year or less the vesting period in the case of the employer's contribution shall not exceed the term of the employee's contract of employment.

- (k) conditions under which a member shall become entitled to and the mode of calculating his benefits;
- (ka) the distribution of reserve funds to exiting members where the scheme maintains a reserve fund.
- (kk) the normal retirement age of the members:
Provided that the normal retirement age shall not be less than fifty years;
- (l) custody of the scheme fund, title deeds and other securities belonging to the scheme;
- (m) the appointment of the liquidator in case of a voluntary dissolution;
- (n) the manner in which the scheme shall be dissolved subject to the provisions of the Act and the regulations made thereunder;
- (o) the manner in which contracts and other documents binding the scheme shall be executed;
- (p) *deleted by L.N. 56/2005, r. 2 (b)*;
- (pp) the period within which a member who has attained a normal retirement age, or a member wishing to withdraw his benefits from the scheme shall be entitled to receive their lump sum benefits or to withdraw their benefits shall not exceed sixty days from the date of retirement or of giving notice or intention to withdraw such benefits as the case may be;
- (q) the procedure of amending the rules;
- (r) the appointment and term of the auditor of the scheme and other persons rendering professional services to the scheme;
- (s) the manner in which disputes between the parties of a scheme shall be solved; and
- (t) such other matters as the Authority may approve.

[L.N. 99/2002, r. 2, L.N. 56/2005, r. 2, L.N. 95/2007, r. 2, L.N. 89/2019, r. 2, L.N. 163/2021, r. 2.]

8. Amendment of scheme rules

- (1) A scheme may amend its rules, but no such amendment shall be valid—
 - (a) if it purports to invalidate or reduce the rights of a member of the scheme;
 - (b) if it purports to affect any right of a creditor of the scheme, other than as a member thereof;
 - (c) unless it has been approved by the Authority and registered as specified in paragraph (3).

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

Provided that if any such amendment affects the financial position of the scheme, the trustees shall transmit to the Authority a certificate signed by an actuary.

(3) If the Authority finds that any such amendment is consistent with the Act, and is satisfied that the financial soundness of the scheme will not be affected by the amendment, it shall register the amendment and return the copy of the resolution to the trustees with the date of registration endorsed thereon, and such amendment, shall be deemed to take effect as from the date determined by the scheme concerned, or, if no date has been so determined, from the date of registration.

9. Duties of trustees

- (1) The scheme rules shall make provision for—
 - (a) the manner of appointment of trustees and their term of office;
 - (b) the functions, powers and duties of the trustees which shall include the general supervision and administration of the scheme;

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- (c) the procedure of and grounds for the removal from office of trustees;
- (d) the procedure for convening meetings of the scheme.

(2) The duties of the trustees shall include—

- (i) Administering the scheme in accordance with the provisions of the Act, these regulations and scheme rules;
- (ii) Keeping all proper books and records of account with respect to income, expenditure, liabilities and assets of the scheme fund;
- (iii) Computing and preparing statements of payments of benefits to members;
- (iv) liaising with the Authority, sponsors, members, manager, custodian and any other professional engaged by the scheme;
- (v) collecting, keeping and updating retirement benefits data of each member including maintenance of individual membership records;
- (vi) ensuring that the agreed contributions have been remitted to the custodian as required by the Act, these regulations and the scheme rules;
- (vii) communicating regularly with the members of the scheme with respect to the affairs of the scheme;
- (viii) providing members with annual membership benefits statements;
- (ix) convening an annual meeting of members to enable them raise any matters pertaining to their schemes; and
- (x) ensuring that documents intended to bind the scheme are professionally prepared.

(3) The trustees of a scheme shall be a trust corporation which shall be appointed under a deed and which shall have at least one director vetted by the Authority.

(4) Notwithstanding paragraph (3), a scheme shall not appoint a trust corporation whose ownership or directorship is related to that of its sponsor to be the trustee of the scheme.

(4A) A trust corporation shall not appoint an administrator, fund manager, custodian or approved issuer who is related to the trust corporation by way of ownership, directorship or employment.

(5) A trustee shall not be victimized, removed from office of trustee or discriminated against for having performed the functions of office in accordance with the Trust Deed and Rules of a Scheme or any law, without due process of the law.

(6) No trustee engaged in any profession or business shall be engaged in professional services done by him or his firm in connection to the scheme.

[L.N. 99/2002, r. 3, L.N. 75/2008, r. 3, L.N. 56/2012, r. 2,
L.N. 99/2016, r. 2, L.N. 144/2018, r. 2, L.N. 163/2021, r. 3.]

10. Effect of notice to transfer benefits

Where a member of a scheme gives notice to the scheme of intention to transfer benefits the scheme shall within sixty days from the date of the notice transfer to another scheme specified in writing by such member all benefits of such member:

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

11. Rules relating to administrators

(1) The scheme rules may provide for the appointment, functions, powers, duties, remuneration and removal from office of an administrator, who may sit in attendance at all meetings of the board of trustees.

- (2) (a) The instrument appointing the administrator shall—
 - make provision for the computation of the administrator's fees;
 - make provision for the extent of the rights and obligations of the administrator to the trustees.

- (b) The administrative costs of a scheme debited to the scheme fund shall not exceed the budget approved by the trustees for that purpose.
- (c) The Authority may if it deems appropriate require the scheme to avail its annual administration budget to the Authority.

(3) Where the administrator is for any reason unable to discharge any duties imposed upon him by these regulations or the scheme rules or any other instrument, an acting administrator shall be appointed.

(4) The trustees of the scheme shall notify the Authority of the details and qualifications of the person administering the scheme.

12. No penalty clauses in agreements

An agreement between a scheme and the pooled fund, or custodian or manager shall not include a clause whose purpose and intent is to penalise a scheme financially or otherwise where such scheme terminates the agreement.

13. Rules relating to a pooled fund

(1) The scheme rules may provide for the appointment, functions, powers, duties and termination of appointment of a pooled fund for purposes of investment and custody of the scheme fund.

(2) The instrument appointing the pooled fund shall make provision for the rights and obligations of the pooled fund to the trustees.

(3) A scheme authorized by its scheme rules to appoint a pooled fund may under a written instrument appoint a pooled fund whose duties shall include—

- (a) receiving and accounting for the scheme fund in the pooled fund;
- (b) keeping or causing to be kept such books, records and statements as may be necessary to give a complete record of—
 - (i) the value of a scheme fund in the pooled fund;
 - (ii) the investment transactions in respect of the pooled fund carried out by the custodian as instructed by the manager and shall permit, subject to notice, the scheme or any duly authorized agent to inspect within the premises of the pooled fund such books, records and statements at any time during business hours.
- (c) submitting to the scheme within a period of three months from the end of the financial year the audited accounts of the pooled fund;
- (d) notifying the scheme immediately of the particulars of the manager and custodian of the pooled fund as may be sought by the scheme which particulars shall include—
 - (i) the full name of the manager and custodian;
 - (ii) the physical and postal address of the registered office of the manager and custodian;
 - (iii) the dates of the first and subsequent financial years of the manager and custodian;
 - (iv) the contents of an agreement between the pooled fund and the manager and custodian; and
 - (v) any other particulars the scheme may deem appropriate to request from the pooled fund.
- (e) submitting to the scheme at least quarterly from the date of commencement of the financial year of the scheme—
 - (i) a valuation of the scheme fund in the pooled fund;
 - (ii) a report reviewing the investment activity and performance of the investment portfolios comprising the pooled fund since the last report

[Subsidiary]

date and containing the manager's proposals for the investment of the pooled fund;

- (iii) a record of all investment transactions of the pooled fund during the previous period.
- (f) issuing proper instructions as provided for in the agreement with the custodian and manager;
- (g) providing to the scheme a copy of the most recent audited financial statements of the manager and custodian with such information as may be sought by the scheme;
- (h) exercising the same standard of care that it exercises over its own assets in fulfilling any other obligation in the agreement:

Provided that the pooled fund shall exercise the degree of care expected of a prudent professional in the respective business for hire.

(4) All monetary benefits, commissions or gains arising directly or indirectly out of the pooling of the scheme funds shall be credited to the pooled fund account.

(5) An agreement between a scheme and a pooled fund shall make provision for the computation of fees in respect of the pooling services.

(6) In the event of termination of the agreement referred to in paragraph (2) hereof, the pooled fund shall within ninety days from the date of termination, hand-over, transfer and deliver to a manager or another pooled fund appointed in writing by the scheme—

- (a) the funds representing the value of the scheme fund in a pooled fund which shall be equal to the market value, at the time of transfer, of the scheme fund invested in the pool plus a proportionate share of all accrued investment income, commissions, fees and direct and indirect gains from investing the pool fund less the proportionate share of all accrued investment income, commissions, fees and direct and indirect gains from investing the pool fund less the proportionate share pre-agreed professional fee due to the pooled account:

Provided that, where the liquidation of assets of the pooled fund may lead to adverse financial loss, the pooled fund and the scheme may negotiate an *in-specie* transfer of assets to the scheme at arms length market values;

- (b) the statements pertaining to the entire scheme fund; and
- (c) any other information as may be reasonably required by the scheme.

(7) Trustees shall jointly and severally be liable for any appointment of the pooled fund that does not meet the qualifications and requirements set out for pooled funds in these Regulations.

14. Qualifications of a pooled fund

(1) In determining whether a pooled fund qualifies to be appointed by a scheme for the purpose of investing scheme funds, a scheme shall consider whether a pooled fund—

- (a) is established by a limited liability company with a minimum paid up share capital of ten million shillings;
- (b) has—
 - (i) the professional and technical capacity and adequate operational systems to manage a pooled fund; and
 - (ii) developed a prudent investment policy for the investment of pooled funds.

(2) A scheme shall not appoint a pooled fund unless such pooled fund consists only of scheme funds maintained separately at all times from any other funds under the control of the pooled fund.

(3) A scheme shall ensure that a pooled fund keeps causes to be kept a designated account for the scheme fund of such scheme in the pooled fund.

15. Record of contributions

(1) Every scheme shall maintain or cause to be maintained a quarterly record of contributions in the prescribed form and the original record shall be submitted to the Authority by the fifteenth day of the month following the end of the quarter.

(1A) A scheme shall allow for additional voluntary contributions by a member in respect of funding of a medical fund to be accessed at retirement:

Provided that the funds shall be segregated and invested as per the investment policy of the fund for this purpose.

(1B) The scheme rules shall provide that a member may transfer a portion of the member's benefits to a medical cover provider where the member has been unable to build a sufficient post-retirement medical fund from additional contributions.

(2) The quarterly record provided for in paragraph (1) may be delivered to the Authority by electronic mail or facsimile.

(3) Scheme funds including the title deeds, securities and income that shall accrue thereof, shall at all times be held and maintained in custody by a custodian on behalf of the trustees or the pooled fund.

(4) Notwithstanding the provisions of paragraph (3) where scheme funds or pooled funds are invested fully in guaranteed funds, the only asset of such funds shall be the guaranteed fund contract or the policy of insurance and such asset shall be held and maintained in custody by a custodian on behalf of the trustees or the pooled fund.

(5) Contributions payable in respect of a member shall be paid directly to the custodian on the dates specified in the scheme rules and the custodian shall, not later than the first business day following the day on which the custodian receives the contributions, deposit the contributions in an account with a bank duly registered under the Banking Act (Cap. 488) and such account shall be maintained by the custodian on behalf of and in the name of the scheme or pooled fund:

Provided that in cases where a scheme, or pooled fund has invested its scheme funds fully in guaranteed funds, contributions may be paid directly to the approved issuer.

[L.N. 49/2017, r. 2, L.N. 144/2018, r. 3.]

16. Benefits from the scheme

(1) The scheme rules shall specify the amount of every benefit payable by the scheme and the manner in which such benefit is calculated.

(2) The scheme rules shall provide that—

- (a) where a member of an occupational retirement benefits scheme leaves employment before attaining the specified retirement age and transfers his accrued retirement benefits to an individual retirement benefits scheme, that member may opt for payment of not more than fifty per cent of his total accrued benefits and the investments income that has accrued in respect of those contributions.
- (b) A member may opt for payment to him of the total amount of the vested accrued benefits before attaining the 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 retirement, if he 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 trustees have approved the payment of the retirement benefits and submitted, fourteen days prior to payment of benefits, the approval to the Authority.

[L.N. 56/2005, r. 4, L.N. 62/2006, r. 2, L.N. 95/2007, r. 4, L.N. 12/2011, r. 2, L.N. 163/2021, r. 4.]

[Subsidiary]

16A.

[Deleted by L.N. 95/2007, r. 5.]

17. Access to pension benefits

The scheme rules shall provide that—

- (a) where an employer makes contributions on behalf of an employee, the benefits shall vest immediately;
- (b) where the employee leaves employment before attaining the retirement age, that employee shall not be entitled to more than fifty per cent of his total accrued benefits and the investment income that has accrued in respect of those contributions; and
- (c) where a member makes his own contributions to the scheme, the member may opt for payment of the member's total accrued benefits and the investment income that accrued in respect of those contributions.

[L.N. 83/2003, r. 6, L.N. 95/2007, r. 6, L.N. 163/2021, r. 5.]

18. Non-assignability of benefits

The scheme rules shall provide that no benefits or contributions accruing or payable thereunder shall be capable of assignment.

19. Payments of benefits to a nominated beneficiary

The scheme rules shall provide that on the death of a member the lump sum benefits payable from the scheme shall be paid to the nominated beneficiary, and if the deceased member had not named a beneficiary then the trustees shall exercise their discretion in the distribution of the benefits to the dependants of the deceased member:

Provided that the trustees may refuse to pay the nominated beneficiary and furnish reasons for the refusal which reasons shall be recorded.

20. Constitution of scheme fund

Contributions by or on behalf of a member together with interest and other accrued income thereon shall constitute the scheme fund and it shall vest in a member immediately.

[L.N. 99/2016, r. 3]

PART IV – FINANCIAL PROVISIONS AND STATEMENTS**21. Schemes to keep books and accounts**

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

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

22. Appointment of auditors

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

(2) Where the Authority refuses to approve the appointment of an auditor appointed under paragraph (1) or revokes its approval of an auditor, the auditor shall vacate office as an auditor of the scheme and the trustees shall appoint another auditor subject to approval by the Authority.

23. Annual accounts

(1) Trustees shall submit audited accounts including the trustees' and investments reports to the Authority together with a certificate signed by the trustees that to the best of their knowledge and belief the information furnished to the auditor for the purpose of audit is correct and complete in every respect.

(2) The income and expenditure account and the statement of assets and liabilities of the scheme shall be prepared in an accrual basis in the prescribed form and the annual accounts shall be accompanied by a report signed by the auditor of the scheme fund, and where the auditor signs the report with a qualification, the report shall disclose reasons for such qualification.

(3) Trustees shall within thirty days from the end of each financial year—

- (a) conspicuously display in the office of the scheme a notice notifying the members that the audited accounts together with the trustees' and investments reports are available for inspection; and
- (b) send to the members a summary of its audited accounts together with the members' benefit statements.

[L.N. 73/2022, r. 2.]

24. Accounting procedure for investments

The statement of income and expenditure of the scheme shall be credited with income receivable, the profits arising from sale of investment and any other receivable income.

25. Valuation of assets

(1) In this regulation, "net realizable value" means the value which an asset or investment can realise upon disposal at an arms length transaction less expenses payable to effect the disposal.

(2) For the purposes of these Regulations, assets of the scheme shall be valued at values not exceeding their market or net realizable value and in particular—

- (a) the value of the land and buildings shall not exceed the value determined on the basis of a valuation by a registered valuer who is a member of the Institute of Surveyors of Kenya once in every three years or at such shorter intervals as the Authority may otherwise permit in writing;
- (b) where the market value of any security, share or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable, having regard to the financial position of the issuing concern, the dividend paid by it during the preceding five years and other relevant factors.

26. Actuarial valuation

(1) A scheme which has created and maintained a reserve fund shall, at least once after every five years from the date of registration, be valued by an actuary in the prescribed form and submit a copy of the valuation report to the Authority within five months from the end of the financial year:

Provided that a scheme shall not create and maintain a reserve fund exceeding five per centum of the total value of the scheme fund.

(2) Trustees shall prepare a certificate in the prescribed form which shall form part of the actuarial valuation report stating that they furnished the actuary with correct and complete information in every material respect for the purposes of the actuarial valuation.

(3) Notwithstanding anything contained in paragraph (1), the Authority may by notice require a scheme to be valued at the cost of such scheme by an actuary any time in respect of any matter the Authority may deem appropriate and such valuation shall be in the prescribed form:

[Subsidiary]

Provided that if the scheme provides explicit guarantees to members an actuarial valuation shall be carried out every three years as if the scheme were a defined benefit scheme.

[L.N. 56/2005, r. 3.]

27. Repair and maintenance of investments

Repair and maintenance expenses in respect of investments shall be charged to income during the year the expense is incurred and if the repair costs are in the opinion of trustees material, the Authority may grant approval for it to be amortised over several financial years but which period shall not exceed three years.

28. Minimum disclosure requirements

The financial statements of a scheme, shall be in the prescribed form and shall disclose

- (a) unremitted contributions;
- (b) fees and expenses appropriately classified paid directly or indirectly to, or on behalf of the trustees;
- (c) returns on investments as per each category of investment;
- (ca) the net rate of return credited to the member's account;
- (d) related party transaction;
- (e) ownership of more than ten per centum equity in any one company or related companies; and
- (f) any other matter as may be prescribed by the Authority.

[L.N. 73/2022, r. 3.]

29. Protection against financial loss

The scheme rules may provide for the protection of the scheme fund and assets against any manner of insurable risk and financial loss arising out of any negligence, default or wilful default on the part of any of its officers, trustees, administrator, manager or custodian either by way of a guarantee from the sponsor or by way of insurance of such amount as the trustees may deem adequate.

PART V – INVESTMENT GUIDELINES

30. Investment policy

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

(2) The statement shall cover, among other things—

- (a) the policy of the scheme, or the pooled fund, in compliance with regulation 31;
- (b) the policy of the scheme or the pooled fund in the following matters—
 - (i) the categories of investments to be held;
 - (ii) risk;
- (c) the realisation of investments; and
- (d) such other matters as may be prescribed from time to time by the Authority.

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

(4) A scheme shall before a statement under this regulation is prepared or revised obtain and consider the written advice of a professional investment advisor or a certified investment and financial analyst registered under the Investment and Financial Analysts Act (Cap. 542).

(5) A scheme shall consider the latest actuarial report when determining the principles governing decisions on investments for the purposes of the scheme.

(6) Where in the case of a scheme, or a pooled fund—

- (a) a statement under this section has not been prepared or is not being maintained; or
- (b) the trustees of a scheme whose funds are not part of a pooled fund or the pooled fund have not obtained and considered advice from a manager, the Authority may remove any trustee of such scheme from being a trustee or disqualify a pooled fund from pooling scheme funds.

(7) The scheme funds shall not be invested in assets that shall defeat the right of a member in the event such member chooses to transfer his or its benefits respectively to another scheme specified in writing.

[L.N. 73/2022, r. 4.]

31. Investment guidelines

(1) Notwithstanding the provisions of regulation 30, a scheme, or pooled fund, shall invest only in an asset class referred to in column 1 of form G as prescribed to the extent to which the market value of the investment in the class expressed as a percentage of the total assets of the scheme or pooled fund does not exceed the percentage listed in column 2 of form G as prescribed in respect of such asset.

Provided that—

- (a) a scheme, or pooled fund, may exceed the maximum percentage indicated in column 2 in the event of an increase in the market price of assets, bonus issues or transfer of investment from one class of assets to another but any such excess shall not continue for a period of more than ninety days;
- (b) a scheme, or pooled fund, may exceed the maximum percentage indicated in column 2 in the event of revaluation of real property but any such excess shall be reported immediately to the Authority together with an action plan as to how the trustees intend to return the scheme into compliance and the Authority shall within thirty days of receipt of the action plan advise the scheme in writing if the plan is acceptable or require the scheme to implement the plan subject to such terms and conditions as the Authority may deem appropriate;
- (c) the maximum investment in the quoted equity of any one company shall be thirty per centum of the aggregate market value of the total assets of the scheme or pooled fund;
- (d) the maximum investment in the quoted equity, unquoted equity, commercial paper loan stock and debenture issued by a company controlled by or a related company of the sponsor shall be three per centum of the aggregate market value of the total assets of the scheme; and
- (e) Investments in the category "any other asset" shall be subject to the prior written approval of the Authority which shall be given or denied by the Authority within thirty days of application by a scheme.

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

Provided that the prescribed investment guidelines shall not apply to the approved issuer with regard to the investment of guaranteed funds.

[L.N. 99/2002, r. 4.]

[Subsidiary]

PART VI – LEVY

32. Retirement Benefits Levy

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

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

(3) The basis of the annual levy shall be a percentage of the net asset value of the total scheme fund indicated in column 2 of form L as prescribed corresponding to the category in column 1, which includes the total value of the scheme fund.

Provided that:

- (a) the value of the scheme fund to be used in determining the levy shall be the total fund value indicated in the latest audited accounts of the scheme less the amount of the medical fund;
- (b) notwithstanding anything contained in this regulation, the levy payable to the Authority per annum shall be a minimum of two thousand shillings and a maximum of five million shillings.

[L.N. 99/2002, r. 5, L.N. 56/2005, r. 5, L.N. 88/2009, r. 2, L.N. 144/2018, r. 4.]

**THE RETIREMENT BENEFITS (MINIMUM FUNDING
LEVEL AND WINDING-UP OF SCHEMES) REGULATIONS**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
 2. Application
 3. Interpretation
 4. Minimum funding level of the scheme
 5. Winding up of scheme
 6. *[Deleted by L.N. 55/2005, s. 4.]*
 7. Voluntary dissolution of a scheme
 8. Qualifications of a liquidator
-

THE RETIREMENT BENEFITS (MINIMUM FUNDING LEVEL AND WINDING-UP OF SCHEMES) REGULATIONS

[Legal Notice 120 of 2000, Legal Notice 55 of 2005, Legal Notice 63 of 2006, Legal Notice 94 of 2007, Legal Notice 76 of 2008, Legal Notice 86 of 2009, Legal Notice 112 of 2015, Legal Notice 100 of 2016]

1. Citation

These Regulations may be cited as The Retirement Benefits (Minimum Funding Level and Winding up of Schemes) Regulations.

2. Application

These Regulations shall apply to all schemes.

3. Interpretation

In these Regulations—

"court" means the High court of Kenya;

"individual retirement benefits Scheme" means a scheme established for the benefit of individual beneficiaries for purposes of paying a retirement benefit;

"occupational retirement benefits schemes" means a retirement benefits scheme established by employers for the benefit of the employees.

4. Minimum funding level of the scheme

(1) A scheme fund shall be deemed to be below the minimum funding level if—

- (a) in the case of an occupational retirement benefits scheme—
 - (i) the assets of the scheme are less than one hundred per centum of the value of the accrued liabilities of the scheme;
 - (ii) the scheme is unable to meet liabilities as and when they fall due; or
- (b) in the case of an individual retirement benefits scheme the scheme is unable to meet its liabilities as and when they fall due.

(2) Where the Authority is of the opinion that a scheme fund is below the minimum funding level, the Authority shall direct such scheme to submit an actuarial valuation report together with a remedial plan within thirty days from the date of such direction, setting out the arrangements intended to eliminate the deficiency in the scheme fund.

(3) Where the Authority finds that a remedial plan submitted in accordance with paragraph (2) is consistent with the provisions of the Act and the regulations made thereunder, and it is satisfied that the arrangements set out therein shall raise the funding level of the scheme in accordance with this regulation it may approve the remedial plan.

(4) Where the Authority is not satisfied that the remedial plan submitted in accordance with paragraph (2) shall raise the funding level of a scheme in accordance with this regulation, it may appoint an interim administrator to manage the scheme in accordance with the provisions of section 45 of the Act, or direct the scheme to amend the remedial plan or submit a new remedial plan within thirty days from the date of such direction, and such amendment or new remedial plan shall be accompanied by an actuarial report in respect of the amendment or new remedial plan.

(5) A scheme shall implement the terms of the remedial plan duly approved by the Authority under this regulation within a period of three years for a scheme on discontinuous basis, and within a period of six years for a scheme on ongoing basis from the date of the approval.

Provided that—

- (a) The Authority may—

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- (i) permit a scheme to amend such remedial plan, from time to time, at intervals of not more than ten years.
 - (ii) recommend to the Cabinet Secretary to vary in writing the period of implementing the terms of the approved remedial plan to such period as it may deem appropriate;
- (b) where any return submitted to the Authority during the currency of such remedial plan shows, in the opinion of the Authority, that the remedial plan will not improve the funding level of the scheme in accordance with this regulation, the Authority may withdraw its approval of the remedial, plan and the scheme concerned shall, within thirty days from the date of withdrawal of the approval, prepare a further remedial plan to which the provisions of this regulation shall apply; and
- (c) where any such return shows, in the opinion of the Authority, that the financial condition and the funding level of the scheme is sound, the Authority may communicate with the trustees of the scheme to that effect and on receipt of such communication the obligations of the scheme in respect to the remedial plan shall terminate immediately.

[L.N. 55/2005, s. 2, L.N. 63/2006, s. 2, L.N. 86/2009, s. 2.]

5. Winding up of scheme

(1) A scheme shall not be de-registered unless the winding up process has been determined subsequent to a final actuarial valuation done on a winding up basis and the benefits of all members transferred to other schemes to purchase a retirement benefit.

(2) Where the Authority is of the opinion that—

- (a) a scheme is in such an unsound financial condition or its funding is below the minimum funding level and that arrangements by the trustees to improve the condition are ineffective, impracticable or unsatisfactory; or
- (b) a scheme is in breach of section 28(1)(a) and (c) of the Act;

the Authority, subject to section 28(2) of the Act may apply to the court for an order to wind up the scheme.

(3) The court may make an order in accordance with paragraph (2), subject to the provisions contained in paragraphs (4) to (10).

(4) The provisions of the Companies Act (Cap. 486) shall apply *mutatis mutandis* to the winding up of a scheme under this regulation in so far as the said provisions refer to the winding by the court in terms of the Companies Act, (Cap. 486) and in so far as that said provisions are applicable and not inconsistent with the Act and the regulations made thereunder.

(5) The Authority shall have the right to be heard in all petitions for winding up a scheme.

(6) The court may direct that the provisions of the Companies Act, (Cap. 486) referred to in paragraph (4) may, for the purpose of the winding up of a scheme be suitably modified in an particular case if the court is satisfied that having regard to the circumstances of the scheme concerned, it would be impracticable or onerous to comply with the said provisions in every particular and that in spite of such modification the interests of the creditors and members of the scheme will remain sufficiently safeguarded.

(7) In the winding up of a scheme the value of the interests and benefits of the members shall be ascertained in such manner as the court may direct.

(8) The liquidator appointed pursuant to the winding-up order issued under these Regulations shall give the Authority such information as the Authority may from time to time require and shall whenever he intends to apply to the court for instructions report to the Authority who shall be entitled to be heard in person or by a representative at any such application, and may itself make an application to the court in reference to the winding up process.

(8A) The liquidator shall be required, in the preparation of the preliminary accounts, to provide for the distribution of surpluses identified which shall be on a 50-50 basis between the members and the sponsor.

(9) The fees payable to the liquidator shall be borne by the scheme at such rates as shall be determined by the court issuing the winding up order.

(10) The committee of inspection for the purposes of winding up a scheme shall include the Authority sponsors, members and creditors.

(11) In the event of the winding up of a scheme the benefits of members of the scheme still in the service of the sponsor shall not be paid but shall be transferred to a registered individual retirement benefits scheme specified in writing for that purpose by the members.

(12) The members of a scheme shall be treated as deferred creditors, and their claims against the scheme in their capacity as members shall not be settled until the debts of ordinary creditors have been fully paid.

[L.N. 55/2005, s. 3, L.N. 63/2006, s. 3, L.N. 94/2007, s. 2, L.N. 76/2008, s. 2, L.N. 100/2016, s. 2.]

6.

[Deleted by L.N. 55/2005, s. 4.]

7. Voluntary dissolution of a scheme

(1) Subject to the provisions of the Act and this regulation, a scheme may be wound up or dissolved in such circumstances as may be specified for that purpose in its rules and in the manner provided by such rules, and the assets of the scheme shall in that event be distributed as prescribed by the said rules.

Provided that—

- (a) a resolution by trustees to voluntarily dissolve in winding up a scheme shall not be effected until the authority has approved in writing;
- (b) schemes transferring to Umbrella Schemes or Individual Retirements Benefits Schemes shall not be compelled to go through the winding up process but shall submit to the Authority the following-
 - (i) a trustee resolution indicating the reason behind winding up and transfer;
 - (ii) current audited accounts or fund statement for the scheme;
 - (iii) signed member consent forms acknowledging the benefits to be transferred;
 - (iv) nil accounts to close the scheme;
 - (v) proof of transfer; and
 - (vi) any other information as required by the Authority.

(2) A liquidator shall be appointed as prescribed by the scheme rules, but such appointment shall be subject to the approval of the Authority, and the liquidation shall be deemed to commence as from the date of such approval.

(3) During the liquidation of a scheme, the provisions of the Act and these regulations shall continue to apply to such scheme as if the liquidator were the trustee of the scheme.

(4) The liquidator shall within thirty days from the date of appointment deposit with the Authority preliminary accounts signed and certified by him as a correct record reflecting the assets and liabilities of the scheme at the commencement of the liquidation process, and the manner in which it is proposed to realise the assets and to discharge the liabilities, including any liabilities and contingent liabilities to or in respect of members.

(4A) The liquidator shall be required, in the preparation of the preliminary accounts, to provide for the distribution of surpluses identified in the scheme as follows—

- (a) surpluses accruing from investment income shall be used wholly to augment members' benefits;

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- (b) surpluses arising from unvested benefits in the scheme shall be refunded to the scheme sponsors.

(5) The Authority may, in its discretion, and of the scheme direct the liquidator to furnish a report on the preliminary accounts drawn up by an independent actuary or other competent person approved by the Authority.

(6) The preliminary accounts and report referred to in paragraph (5) shall be availed for inspection by interested persons, at the office of the Authority and at the registered office of such scheme for a period of thirty days.

(7) The Authority may, at the cost of the scheme, cause to be published in the *Gazette*, and in a widely circulated newspaper, a notice stating the period during which, and the places at which the preliminary accounts and report may be inspected and any interested person who has an objection to the said preliminary accounts and report may lodge their objections in writing with the Authority and a copy thereof shall be served on the liquidator within a period stated in the notice, not being less than fourteen days as from the last day on which the aforesaid documents were inspected.

(8) Where no objections are lodged with the Authority under paragraph (7), the Authority shall direct the liquidator to complete the liquidation process.

(9) Where objections are lodged with the Authority under sub-regulation (7), the Authority may, after considering the said objections, direct the liquidator to amend the preliminary accounts or, give such other directions as are not inconsistent with the rules of the scheme, and such direction shall be binding upon the liquidator.

(10) The liquidator shall, within fourteen days of receipt by him of any direction of the Authority under paragraph (9), provide a copy thereof to every member and creditor of the scheme, and the liquidator or any person aggrieved by any such direction of the Authority may apply to the Appeals Tribunal, established under section 47 of the Act, within thirty days after such direction has been communicated to the liquidator, for an order to set aside the decision of the Authority, and the Appeals Tribunal may confirm or vary the said decision as it deems fit.

(11) Where the Authority's directions have not been varied or set aside by the Appeals Tribunal, it shall direct the liquidator to complete the liquidation process.

(12) The liquidator shall within thirty days after the completion of the liquidation, lodge with the Authority the final accounts signed and certified by him as a correct record showing the assets and liabilities of the scheme at the commencement of the liquidation process and the manner in which the assets have been realised and the liabilities, including any liabilities and contingent liabilities to or in respect of members, which have been discharged.

(13) The provisions of the Companies Act (Cap. 486) shall apply *mutatis mutandis* to the dissolution of a scheme in terms of this regulation, in so far as they relate to voluntary winding-up and in so far as the said provisions are applicable and not inconsistent with the Act and these regulations.

(14) All claims against the scheme shall be proved to the satisfaction of the liquidator, subject to a right of appeal to the Appeals Tribunal, and the liquidator may require any claim to be made by way of an affidavit.

(15) Where the Authority is satisfied that the final accounts are correct and that the liquidation process has been completed, it shall de-register the scheme and thereupon the scheme shall be deemed to be dissolved.

(16) Upon dissolution of the scheme and subject to the Limitation of Actions Act (Cap. 22) no further claim shall lie against the trustees, liquidator or the Authority with respect to the payment of benefits.

[L.N. 55/2005, s. 5, L.N. 94/2007, s. 3, L.N. 112/2015, s. 2.]

8. Qualifications of a liquidator

A liquidator appointed for purposes of these Regulations shall be a person who have not—

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- (a) provided professional services to the scheme for a period of five years before the resolution to wind up the scheme;
- (b) been sentenced to imprisonment for a period of six months or more by a court of competent jurisdiction;
- (c) been adjudged bankrupt;
- (d) been previously involved in the management or administration of a scheme which was de-registered for failure on the part of the management or administration;
- (e) been disqualified under any other written law.

[L.N. 94/2007, s. 4.]

THE RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS SCHEMES) REGULATIONS

ARRANGEMENT OF REGULATIONS

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THE RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS SCHEMES) REGULATIONS

[Legal Notice 119 of 2000, Act No. 100 of 2002, Legal Notice 12 of 2003, Legal Notice 85 of 2003, Legal Notice 57 of 2005, Legal Notice 84 of 2005, Legal Notice 61 of 2006, Legal Notice 93 of 2007, Legal Notice 77 of 2008, Legal Notice 84 of 2009, Legal Notice 88 of 2010, Legal Notice 165 of 2010, Legal Notice 13 of 2011, Legal Notice 111 of 2015, Legal Notice 101 of 2016, Legal Notice 50 of 2017, Legal Notice 139 of 2018, Legal Notice 88 of 2019, Legal Notice 164 of 2021, Legal Notice 71 of 2022]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations.

2. Application

These Regulations shall apply to occupational retirement benefits schemes.

3. Interpretation

In these regulations unless the context otherwise requires—

"administrator" means the person appointed under an instrument by trustees to manage the administrative affairs of the scheme;

"approved issuer" means an insurer registered under the provisions of the Insurance Act (Cap. 487) or any other issuer approved in writing under the provisions of the Capital Markets Authority Act (Cap. 485A) or under any other written law;

"contribution holiday" means a period when an employer is not required to make contributions into a scheme fund;

"custodian" means a custodian registered by the Authority;

"defined benefit scheme" means a scheme other than a defined contribution scheme;

"defined contribution scheme" means a scheme in which members' and employers' contributions are fixed either as a percentage of pensionable earnings or as a shilling amount, and a members retirement benefits has a value equal to those contributions, net of expenses including premiums paid for insurance of death or disability risks, accumulated in an individual account with investment return and any surpluses or deficits as determined by the trustees of the scheme;

"existing scheme" means a scheme which existed prior to the coming into force of these Regulations;

"guaranteed fund" means an asset class—

- (a) issued by an approved issuer, whereby the approved issuer, *inter alia*, guarantees the accumulated capital of the scheme fund or pooled fund together with past investment income thereof in accordance with the terms of the guaranteed fund contract entered into between the approved issuer and the scheme or pooled fund; or
- (b) which shall be referred to as the Retirement Benefits Fund established as a statutory fund within the meaning of the provisions of the Insurance Act (Cap. 487) in which the capital of the scheme fund or pooled fund together with past investment income thereof is guaranteed by the approved issuer in accordance with the terms of the policy of insurance issued to the scheme or pooled fund by the approved issuer.

"manager" means a manager registered by the Authority;

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"medical fund" means a fund into which all contributions, investment earnings, income and all other moneys payable under the scheme rules or the provisions of this Act and subsidiary Regulations shall be paid for the purposes of accessing medical benefits in retirement;

"new scheme" means a scheme which was established after the date of publication of these Regulations;

"occupational retirement benefits scheme" means a retirement benefits scheme established by employers for the benefit of the employees including schemes established under a written law;

"pooled fund" means a fund established by a limited liability company other than an approved issuer for purposes of pooling scheme funds for collective investment;

"provident fund" means a scheme for the payment of lump sums and other similar benefits to employees when they leave employment or to the dependents of employees on the death of those employees;

"related company" in relation to a company means—

- (a) its holding company or subsidiary;
- (b) a subsidiary of its holding company;
- (c) any person who controls it whether, alone or with his associates or with other associates of the related company.

"scheme" means an occupational retirement benefits scheme;

"scheme rules" means the trust deed and rules of the scheme.

[L.N. 139/2018, r. 2.]

PART II – REGISTRATION OF A SCHEME

4. Applications for registration of schemes

(1) Application for registration of an existing scheme or a new scheme in accordance with section 23 of the Act shall be in the prescribed forms.

(2) The Authority shall within ninety days from the date of receipt of an application for registration submitted under paragraph (1)—

- (a) consider the application and notify the applicant in writing whether the scheme is acceptable for registration and the reason therefor if it is not acceptable; and
- (b) proceed to register the scheme and forward to the applicant a certificate of registration.

5. Registered office of scheme

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

6. Inspection of registers

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

PART III – ADMINISTRATION, MEMBERSHIP AND BENEFITS

7. Content of the scheme rules

Every scheme shall have rules which shall be written in English and shall provide the following—

- (a) the full name of the scheme, including any change of name;
- (b) the physical address of the registered office of the scheme;

- (c) the date of commencement of the scheme;
- (d) a list of definitions, in alphabetical order, defining the terms which are frequently used in the rules and which bear a special connotation;
- (e) requirements for admission to membership and the circumstances under which membership is to cease;
- (f) conditions under which and when a member may become entitled to any benefit including death benefits, the nature and extent of any such benefit and the mode of calculating the benefits;
- (fa) the distribution of reserve funds to exiting members where the scheme maintains a reserve fund;
- (g) the appointment, term, removal from office, powers and remuneration of trustees and officers or administrators of the scheme:

Provided that, unless otherwise stipulated, the term of office of trustees shall not exceed three years, but shall be subject to renewal for a further term of three years.
- (h) power of investment of scheme funds;
- (i) pensionable emoluments applicable in relation to each category of members;
- (j) rate of contributions by sponsors and, or members as the case may be;
- (k) interest chargeable on the contributions which have not been remitted;
- (kk) interest chargeable on late payment of withdrawal benefits from the scheme—

Provided that such interest shall not be less than the investment interest declared by the scheme in the year the payment was due.
- (l) mode of recovery of unremitted contributions:

Provided that such mode shall include treatment of unremitted contributions as a civil debt recoverable summarily by a scheme:
- (m) vesting formula of benefits in its members;
- (n) manner of determining surplus and deficit and disposing of such surplus or providing for such deficit;
- (o) the normal retirement age of members;
- (oo) the period upon which a member may withdraw his benefits from the scheme:

Provided that such period shall not exceed thirty days from the date of retirement or of giving notice of such withdrawal, as the case may be.
- (p) the manner in which contracts and other documents binding the scheme shall be executed;
- (q) the procedure of amending scheme rules;
- (r) appointment and term of the auditor of the scheme and any other person rendering professional services to a scheme;
- (s) custody of the scheme fund, title deeds and other securities belonging to the scheme;
- (t) the appointment of the liquidator in case of a voluntary dissolution;
- (u) the manner in which the scheme shall be dissolved subject to the provisions of the Act and the regulations made thereunder; and
- (v) the manner in which disputes between the parties of a scheme shall be resolved.

[L.N. 12/2004, r. 2, L.N. 57/2005, r. 2, L.N. 97/2007, r. 2, L.N 111/2015, r. 2, L.N 88/2010, r. 2]

8. Rules relating to trustees and their duties

- (1) The scheme rules shall make provision for—
 - (a) manner of appointment or election of trustees and their term of office;

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- (b) functions, powers and duties of the trustees which shall include the general supervision and administration of the scheme;
- (c) the number of trustees:

Provided that—

- (i) no defined benefit scheme shall have less than three trustees and the number of trustees nominated by members shall not be less than one third of the Board of trustees unless the scheme has appointed a corporate trustee;
- (ii) no defined contribution scheme shall have less than four trustees trustee and the number of trustees nominated by members shall not be less than a half of the Board of trustees unless the scheme has appointed a corporate trustee;
- (iii) a scheme or a corporate trust shall have in the Board of trustees at least one member who has been vetted by the Authority to provide trust services.

Provided that—

- (i) no scheme shall have less than three trustees unless it has appointed a corporate trustee;
- (ii) the number of trustees nominated by members shall not be less than a third of the Board of trustees;
- (d) method of and grounds for the removal from office of a trustee;
- (e) manner of election of a chairperson of the board of trustees:

Provided that the administrator of the scheme, the chief executive officer of the sponsor or the chairperson of the Board of Directors shall not be eligible to be appointed as chairperson of the Board of Trustees; and

- (f) procedure for convening meetings of the board of trustees.

Provided that —

- (i) the trustees shall meet at least four times in every calendar year; and
- (ii) not more than four months shall elapse between the date of one meeting and the next;
- (iii) a trustee who fails to attend three consecutive meetings shall be disqualified from serving as a trustee.

(2) The duties of the trustees shall include—

- (a) administering the scheme in accordance with the provisions of the Act, these regulations and scheme rules;
- (b) keeping all proper books and records of account in respect to income, expenditure, liabilities and assets of the scheme fund;
- (c) computing and preparing statements of payments of benefits to members;
- (d) basing with the Authority, sponsors members, manager, custodian and any other professional engaged by the scheme;
- (e) collecting, keeping and updating retirement benefits data of each member including maintenance of individual membership records and bank account details of the members for the purpose of payment of benefits;
- (f) updating the sponsor at least quarterly during fee financial year on all matters regarding fee scheme;
- (g) ensuring feat contributions based on correct pensionable emoluments have been remitted to fee custodian as specified in fee Act, these regulations and fee scheme rules;

- (gg) ensuring that scheme funds are being invested by a manager, duly appointed by the trustees, as specified in the Act, these Regulations and the scheme rules;
- (h) communicating regularly with fee members with respect to fee affairs of fee scheme and furnishing them with annual membership benefits statements;
- (i) ensuring that all documents intended to bind fee scheme are professionally prepared;
- (k) ensuring all minutes, statements and resolutions in respect of a scheme are properly kept and maintained.

Provided that as a minimum, the agenda for the meeting shall comprise, but not be limited to, the following —

- (i) a report on any changes to the benefits and contribution structure;
- (ii) a report on audited accounts;
- (iii) a report on investments;
- (iiia) the net rate of return credited to the member's account;
- (iv) a report on remuneration of trustees; and
- (v) questions from members.

(3) An authorized employee of an external administrator of a scheme may sit in attendance in meetings of trustees.

(4) A trustee shall not be victimized, removed from office of trustee or discriminated against for having performed the functions of a trustee in accordance with the trust deed and rules of a Scheme or this Act without due process of the law.

(4A) A trust corporation shall not appoint an administrator, fund manager, custodian or approved issuer who is related to the trust corporation by way of ownership, directorship or employment.

(5) No trustee engaged in any profession or business shall be engaged in professional services done by him or his firm in connection to the scheme.

[L.N. 100/2002, r. 3, L.N. 57/2005, r. 3, L.N. 93/2007, r. 2, L.N. 77/2008, r. 2, L.N. 88/2010, r. 3, L.N. 101/2016, r. 2, L.N. 50/2017, r. 2, L.N. 139/2018, r. 3, L.N. 164/2021, r. 2, L.N. 71/2022, r. 2]

9. Rules relating to administrators

(1) The scheme rules may provide for fee appointment, functions, powers, duties, remuneration and removal from office of an administrator, who may sit in attendance at all meetings of fee board of trustees.

- (2) (a) The instrument appointing fee administrator shall—
 - make provision on fee computation of fees in respect of administrative services;
 - make provision on the rights and obligations of the administrator to the trustees.

(3) The administrative costs debited to the scheme fund with regard to schemes administered by in-house administrators shall not exceed the budget approved by the trustees for that purpose.

(4) The Authority may if it deems appropriate require the scheme to avail its annual administration budget to the Authority.

(5) The scheme rules shall provide that if the administrator is for any reason unable to discharge any duties imposed upon him by these regulations or the scheme rules or any other instrument, an acting administrator shall be appointed.

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

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10. Rules relating to custody of scheme funds

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

(2) Notwithstanding the provisions of paragraph (1), no custodian may be appointed where the scheme funds or pooled funds are invested fully in a guaranteed fund.

(3) Notwithstanding any provision of the scheme rules to the contrary any contribution payable in respect of any member of the scheme to an appointed custodian shall be paid, net of outstanding benefit payments and operational expenses, directly to the custodian by or on behalf of the trustees.

Provided that in cases where a scheme, or pooled fund, has invested its scheme funds fully in guaranteed funds contributions may be paid directly to the approved issuer.

(4) The payment of contributions under paragraph (3) shall be made before the tenth day of every calendar month or before any other day which may be notified in writing and approved by the Authority.

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

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

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

(8) Scheme funds shall at all times be invested by the manager of the fund on behalf of the trustees or the pooled fund.

[L.N. 61/2006, r. 2, L.N. 93/2007, r. 4.]

11. No penalty clauses in agreements

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

12. Rules relating to pooled funds

(1) The scheme rules may provide for the appointment, functions, powers, duties and termination of appointment of a pooled fund for purposes of investment and custody of the scheme fund.

(2) The instrument appointing the pooled fund shall make provision on the rights and obligations of the pooled fund to the trustees.

(3) A scheme authorized by its scheme rules to appoint a pooled fund may under a written instrument appoint a pooled fund whose duties shall include—

- (a) receiving and accounting for the scheme fund in the pooled fund;
- (b) keeping or causing to be kept such books, records and statements as may be necessary to give a complete record of Kenya—
 - (i) the virtue of a scheme fund in the pooled fund;
 - (ii) the investment transactions in respect of the pooled fund earned out by the custodian as instructed by the manager and shall permit, subject to notice, the scheme or any duly authorized agent, to inspect within the premises of the pooled fund such books, records and statements at any time during business hours;

- (c) submitting to the scheme within a period of three months from the end of the financial year, the audited accounts of the pooled fund;
- (d) notifying the scheme of the particulars of the manager and custodian of the pooled fund as may be sought by the scheme which particulars shall include—
 - (i) full name of the manager and custodian;
 - (ii) physical and postal address of the registered office of the manager and custodian;
 - (iii) the dates of the first and subsequent financial years of the manager and custodian;
 - (iv) the contents of an agreement between the pooled fund and the manager and custodian; and
 - (v) any other particulars as the scheme may request from the pooled fund.
- (e) submitting to the scheme at least quarterly from the date of commencement of the financial year of the scheme;
 - (i) a valuation of the scheme fund in the pooled fund;
 - (ii) a report reviewing the investment activity and performance of the investment portfolios comprising the pooled fund since the last report date and containing the manager's proposals for the investment of the pooled fund;
 - (iii) a record of all investment transactions of the pooled fund during the previous period;
- (f) issuing proper instructions as provided for in the agreement to the custodian and managers;
- (g) furnishing the scheme with a copy of the most recent audited financial statements of the manager and custodian with such information as may be sought by the scheme;
- (h) exercising the same standard of care that it exercises over its own assets in fulfilling any other obligation in the agreement:

Provided that the pooled fund shall exercise the degree of care expected of a prudent professional in the respective business for hire.

(4) All monetary benefits, commissions of gains arising directly or indirectly out of the pooling of the scheme funds shall be credited into the pooled fund account.

(5) An agreement between a scheme and a pooled fund shall make provision on the computation of fees in respect of the pooling services.

(6) In the event of termination of the agreement referred to paragraph (2) the pooled fund shall within ninety days from the date of termination, hand-over, transfer and deliver to a manager or another pooled fund appointed in writing by the scheme—

- (i) the funds representing the value of a scheme fund in a pooled fund which shall be equal to the market value, at the time of transfer, of the scheme fund invested in the pool plus a proportionate share of all accrued investment income, commissions, fees and direct and indirect gains from investing the pool fund less the proportionate share of all accrued investment income, commissions, fees and direct and indirect gains from investing the pool fund less the proportionate share pre-agreed professional fee due to the pooled account;

Provided that, where the liquidation of assets of the pooled fund may lead to a material adverse financial loss, the pooled fund and the scheme may negotiate an *in-specie* transfer of assets to the scheme at arms length market values:

- (ii) the statements pertaining to the entire scheme fund;
- (iii) any other information as may be reasonably required by the scheme.

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(7) Trustees shall jointly and severally be liable for any appointment of the pooled fund which does not meet the qualifications and requirements set out for pooled funds in these regulations.

13. Qualifications of a pooled fund

(1) In determining whether a pooled fund has the qualification to be appointed by a scheme for the purposes of a investing scheme funds, a scheme shall consider whether a pooled fund—

- (a) is established by a limited liability company with a minimum paid up share capital of ten million shillings;
- (b) has—
 - (i) the professional and technical capacity and adequate operational systems to manage a pooled fund; and
 - (ii) developed a prudent investment policy for the investment of pooled funds.

(2) A scheme shall not appoint a pooled fund unless such a pooled fund consist only of scheme funds maintained separately at all times from any other funds under the control of the pooled fund.

(3) A scheme shall ensure that a pooled fund keeps or has caused to be kept a designated account for the scheme fund of such scheme in the pooled fund.

14. Formula and Schedule of contributions

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

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

(2A) The schedule of rates of contributions shall allow for additional voluntary contributions by a member in respect of funding of a medical fund to be accessed at retirement:

Provided that the funds shall be segregated and invested as per the investment policy of the fund for this purpose.

(3) In the case of defined benefit schemes a schedule of the rates of contributions referred to in paragraph (1) shall be certified by an actuary and approved by both the trustees and the sponsor.

(4) A scheme may, as may be agreed upon by the sponsor, from time to time revise the schedule of the rates of contributions and any such revision shall in the case of a defined benefit scheme be certified by an actuary and, without prejudice to the provisions in regulation 16, a copy thereof submitted to the Authority within thirty days from the date of the revision.

[L.N. 57/2005, r. 4, L.N. 101/2016, r. 3.]

15. Record of contributions

(1) Every scheme shall maintain or cause to be maintained a quarterly record of contributions as prescribed and the original shall be submitted to the Authority within ten days following the end of every third calendar month.

(2) The quarterly record referred to in paragraph 1 may be delivered by electronic mail or facsimile.

16. Amendment of Rules

(1) A scheme may amend its rules as specified in the rules, but no such amendment shall be valid—

- (a) if It purports to invalidate or reduce accrued rights and interests of the sponsors and members of the scheme;

- (b) if it purports to effect any right of a creditor of the scheme, other than as a member thereof;
- (c) unless it has been approved by the Authority and registered as provided in paragraph 3.

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

Provided that if any such amendment affects the financial position of the scheme, the trustees shall transmit to the Authority a certificate signed by an actuary.

(3) Where the Authority finds that any such amendment is consistent with the Act and is satisfied that the financial soundness of the scheme will not be affected it shall within sixty days register the amendment and return the copy of the resolution to the trustees with the date of registration endorsed thereon and such amendment shall be deemed to take effect as from the date determined by the scheme concerned or if no date has been so determined, as from the date of registration.

17. Protection against imminent loss

The scheme rules may provide for the protection of the scheme fund and assets against any manner of insurable risk and financial loss arising out of any negligence default or willful default of its officers trustees administrator manager or custodian either by way of a guarantee from the sponsor or by way of insurance of such amount as the trustees may deem appropriate.

18. Eligibility for membership

(1) No scheme rules shall—

- (a) restrict eligibility to membership of a scheme on the basis of gender race or religion or in any manner which is discriminatory;
- (b) contain any provision which would render admission to membership subject to any discretionary power; and
- (c) unless it is a defined contribution scheme allow an employee to join the scheme where such employee has less than five years remaining before attaining retirement age:

Provided that the scheme may reduce a qualifying period or vary an age limit in any special case provided for in the scheme rules:

- (d) provide for the qualifying period for membership to the scheme to be more than one year from the date of employment unless approved by the Authority:

Provided that—

- (i) where an employee is moving from his previous employer to join a new employer he may transfer his membership from the previous scheme which the former employer sponsored, to the scheme sponsored by the new employer and he shall become a member of the scheme on completion of transfer proceedings with the qualifying period for membership waived;
- (ii) the transfer value of the accrued rights in respect of a member transferring his membership from one scheme to another shall be transferred to the scheme to which he is transferring his membership within a period of sixty days from the date of service of application for such transfer on the scheme from which he is transferring a copy of which shall be served on the Authority.

(2) Where a scheme is established or the scheme rules relating to eligibility for membership are amended the scheme rules or amending scheme rules, as the case may be, shall provide in relation to any person who—

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- (a) at the date the scheme is established or the amending scheme rules become operative, as the case may be is an employee of a participating sponsor and—
 - (i) is eligible, or by virtue of the amendment made by the scheme rules becomes eligible for membership of the scheme, that he may elect to become a member within such period, being not more than twelve months, and on such conditions as may be specified in the scheme rules, failing which he shall cease to be eligible for membership unless the Authority approves;
 - (ii) is ineligible for membership of the scheme but subsequently becomes eligible, that he may elect to become a member within such period being not more than twelve months from the date he becomes eligible, and on such conditions as may be specified in the rules, failing which he shall cease to be eligible for membership unless the Authority approves; or
- (b) after the date referred to in (a) above, becomes an employee of a sponsor and is eligible for membership of the scheme, that he shall, as a condition of his employment, become a member.

(3) The scheme rules shall provide that a member of the scheme shall not be permitted to withdraw from membership or withdraw his benefits from the scheme whilst he remains an employee of the sponsor unless—

- (a) *deleted by L.N. 164/2021, r. 3.*
- (b) he attains the retirement age provide for in the scheme rules.

[L.N. 57/2005, r. 5, L.N. 164/2021, r. 3.]

19. Benefits from a scheme

(1) In this regulation—

"Pension factor" means a fraction, percentage or proportion of a member's pensionable emoluments which, when multiplied by all or part of his pensionable service, defines the amount of benefit payable to him under the scheme rules.

(2) The scheme rules shall specify every benefit payable from the scheme and where applicable the method by which any such benefit is calculated.

(3) The scheme rules shall not provide different pension factors for members employed by the same sponsor unless—

- (a) the difference is based on actuarial considerations; and
- (b) the difference is designed to favour members engaged in hazardous occupations, in which event the same pension factors shall apply equally to all members engaged in such occupation; and
- (c) the Authority has approved the difference.

Provided that the Authority shall not approve different pension factors where the differentiation is based on differences in the employees' salaries, wages, gender, rank seniority at the work place or any discriminatory factor.

(4) The scheme rules shall provide for the transfer to or receipt from another scheme of benefits of a member and a provision that the benefits arising from the employer's contribution shall be treated as vested benefits arising from employer's contribution at the point of receipt for the purpose of paragraph (5) below.

Provided that—

- (i) such transfer of benefits includes the cash equivalent of the present value of the deferred benefits of the member;
- (ii) every member who is entitled to or has transferred such benefits from one scheme to another shall if so required by the trustees, provide in writing the amount of such benefits and the names of the scheme from which the benefits will become payable and any other information as may be required;

- (iii) the basis of paying a transfer value from a scheme shall be certified by an actuary.

Provided that this proviso shall not be applicable in case of a member transferring from a defined contribution scheme which does not have a reserve fund.

(5) The scheme rules shall provide that—

- (a) where a member leaves employment before attaining the specified early retirement age, that member may opt for payment of not more than fifty per cent of his total accrued benefits and the investment income that has accrued in respect of those contributions; or
- (b) a member may opt for payment to him, of the total amount of the vested accrued benefits before attaining the 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 retirement, if he 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 trustees have approved the payment of the retirement benefits and submitted, fourteen days prior to payment of the benefits, the approval to the Authority.

(6) The scheme rules may provide that a member may transfer a portion of the member's benefits to a medical-cover provider where the member has been unable to build a post-retirement medical fund from additional contributions.

[L.N. 57/2005, r. 6, L.N. 61/2006, r. 4, L.N. 165/2010, r. 2, L.N. 13/2011, r. 2, L.N. 88/2019, r. 3, L.N. 164/2021, r. 4.]

20. Benefits to fully vest within one year

The scheme rules shall provide that benefits shall fully vest in a member immediately on commencement of pensionable service.

Provided that—

- (i) all benefits derived from statutory contributions and contributions made by a member shall vest immediately in the member;
- (ii) the periods of service of a member for the purposes of this regulation shall be determined without regard to temporary interruptions of employment of continuous periods of up to nine months or less.

[L.N. 85/2003, r. 2, L.N. 93/2007, r. 5, L.N. 101/2016, r. 5.]

21. Leaving service benefits

(1) The scheme rules shall make provision as to the treatment of the retirement benefits of a member where such member ceases to be an employee of the sponsor before attaining the retirement age and such provisions may include—

- (a) payment of benefits to the leaving member, provided that the member shall not be entitled to the employer's contribution save as provided in the trust deed;
- (b) deferment of benefits until the leaving member attains the normal retirement age;
- (c) transferring of benefits to another scheme elected in writing by the leaving member.

(2) The scheme rules shall make, in a defined benefit scheme, provisions for the actuary during an actuarial valuation to provide for annual increments in deferred pensions for members and scheme trustees to implement the same.

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(3) Where a member elects in writing to have the retirement benefits referred to in paragraph 1 transferred to another scheme for the purpose of purchasing a retirement benefit—

- (a) the basis of paying transfer values shall reviewed and certified by an actuary;
- (b) in case of a member transferring from a defined contribution scheme which does not have a reserve fund, the basis of paying transfer values shall not be required to be certified by an actuary.

[L.N. 57/2005, r. 7, L.N. 77/2008, r. 3.]

22. Non assignability of benefits

The scheme rules shall provide that no benefits or contributions accruing or payable thereunder shall be capable of assignment.

[L.N. 57/2005, r. 8, L.N. 84/2005 r. 2.]

23. Payments of benefits to a nominated beneficiary

The scheme rules shall provide that on the death of a member the benefits payable from the scheme shall be paid to the nominated beneficiary and if the deceased member had not named beneficiary then the trustees shall exercise their discretion in the distribution of the benefits to the dependants of the deceased member.

Provided that the trustees may refuse to pay the nominated beneficiary and the reasons for such refusal shall be recorded.

24. Discretionary powers of trustees in payment of benefits

(1) The scheme rules may authorize the trustees to exercise their discretion in the following—

- (a) the amount of retirement benefits payable to a nominated beneficiary;
- (b) the amount of retirement benefits payable to the children of a member;
- (c) the apportionment of a lumpsum benefit amongst all dependants;
- (d) the apportionment of a retirement benefit amongst surviving spouses and children;
- (e) the reinstatement of a surviving spouses retirement benefit that had ceased on re-marriage.

(2) Trustees shall not increase any retirement benefit unless such increase has been recommended and certified by an actuary.

25. Commutation of retirement benefits

(1) The formula for the commutation of the retirement benefits which may be paid to a member who has attained the normal retirement age or persons entitled to receive a benefit under the scheme, shall be provided for in the scheme rules and such formula shall be the recommended by an actuary.

Provided that—

- (a) subject to the amount not exceeding ten percent of the total accrued benefits transferred to a medical fund, not more than one-quarter of the remaining retirement benefits may be commuted in a scheme where members do not make contributions and not more than one-third of the remaining retirement benefits may be commuted in a scheme where members make contributions;
- (b) benefits arising from additional voluntary contributions may be fully commuted.

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

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

- (a) to a scheme which is a provident fund; or
- (b) to benefits payable to a member where the portion of retirement benefits remaining after commutation of the pension will result in a trivial pension.

(4) For the purposes of paragraph (3), "trivial pension" shall be the amount, from time to time determined by the Authority, which shall not be less than fifty percent of the average of the minimum wage prescribed by the Cabinet Secretary for the time being responsible for matters relating to labour in the year in which the benefit becomes due.

(5) Where the scheme rules provide for the purchase of an annuity for members at retirement age, the members shall have the option of selecting the service provider from whom to purchase the annuity;

Provided that the scheme shall allow retiring members a period of one year from the date of retirement to exercise their option under this paragraph.

(6) The scheme rules may provide for the payment of retirement benefit by way of an income draw down, as an alternative or in addition to the purchase of annuity for members at retirement age:

Provided that the scheme members shall take a minimum period of ten years.

[L.N. 57/2005, r. 9, L.N. 84/2005, r. 9, L.N. 93/2007, r. 6, L.N. 77/2008, r. 4, L.N. 88/2010, r. 4, L.N. 139/2018, r. 4.]

26. Lump sum payment of death benefits

In the event of the death of a member of a scheme before attaining the retirement age, or of a member drawing payment of retirement benefits, the scheme rules may provide that the death benefits which shall include a capital sum and any other amount payable as benefits, may be payable in lumpsum to the nominated beneficiary, spouse, dependant child, any other dependant or estate should any such entitled beneficiary elect in writing for lumpsum payment.

27. Retirement of a disabled member

The Scheme rules may provide that a member be permitted to receive benefits before attaining retirement age if medical evidence is submitted to the scheme showing that he is permanently incapacitated and cannot perform his normal gainful employment or any other occupation for which he is reasonably suited by education, training or experience.

PART IV – FINANCIAL PROVISIONS AND STATEMENTS

28. Schemes to keep books and accounts

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

(2) A scheme shall cause to be kept records of the account of every member and all transactions in respect of each member shall be duly recorded.

29. Appointment of Auditors

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

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

30. Annual Accounts

(1) Trustees shall submit audited annual accounts including the trustees and investments reports to the Authority with a certificate signed by the chairperson of the board of trustees or any authorized trustee certifying that to the best of their knowledge and belief

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the information furnished to the auditor for the purpose of audit was correct and complete in every respect.

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

(3) A scheme shall within thirty days from the end of each financial year—

- (a) conspicuously display in the office of the scheme a notice notifying the members that the audited accounts together with the trustees and investments reports are available for inspection;
- (b) send to its members a summary of its audited accounts together with the members benefits statements.

(4) A scheme established under a written law shall publish its audited accounts together with the trustees and investment reports in a widely circulating newspaper in the country.

[L.N. 71/2022, r. 3.]

31. Actuarial Valuation

(1) (a) A defined benefit scheme shall at least once in every three years from the date of registration be valued by an actuary in the prescribed form and submit a copy of the valuation report to the Authority and to its sponsor within six months from the end of the financial year;

Provided that in the case of a pension scheme, the actuary shall provide for annual pension increases and determine a rate of increase of the pension which shall apply until the next valuation.

- (b) The Authority may, from time to time, require a defined contribution scheme to be reviewed by an actuary;
- (c) The Authority may exempt a scheme from the provisions of paragraph 1 (b) if such scheme has satisfied the following conditions—
 - (i) All benefits other than those fully secured by an approved issuer are limited to an amount or to the periodic retirement benefit which can be provided by an amount equal to an accumulation of actual contributions adjusted only in accordance with the direct investment return, both in terms of income and capital appreciation or depreciation;
 - (ii) No periodic retirement benefits have been paid by the scheme unless such benefits are fully secured by an approved issuer;
 - (iii) the scheme submits to the Authority at least once in every three years a certificate by an actuary prepared in the prescribed form.

(2) A scheme shall within three months upon receipt of the actuarial report from the actuary publish a notice to its members that such report, or an abstract thereof is available in its office for inspection.

(3) Notwithstanding anything contained in these regulations—

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

Provided that, in case of a defined contribution scheme or pooled fund the valuation shall be prepared as prescribed and, in the case of defined benefit scheme, the valuation shall be prepared as prescribed—

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

(4) Where a valuation under paragraph 3 is made as at a date other than the end of a financial year of the scheme, the Authority may require that the accounts for the period since the expiry of the last financial year and the statement of assets and liabilities on the date as at which the investigation is made, be prepared and audited in the manner prescribed in the Act and these regulations.

- (5) (a) The actuarial method and assumptions selected by an actuary shall be stated and explained taking into account the experience of the scheme to the extent that the information is available and significant, and shall reflect long term trends without giving undue weight to recent experiences;
- (b) The Authority may require an actuarial valuation or review to be prepared on whatever basis it might prescribe in specific circumstances.

(6) Trustees shall prepare a certificate in the prescribed form which shall form part of the actuarial valuation report.

[L.N. 85/2003, r. 3, L.N. 57/2005, r. 10, L.N. 164/2021, r. 5.]

32. Surpluses not refundable

(1) No surplus of a scheme fund shall be directly or indirectly refunded to the sponsor of the scheme—

Provided that—

- (a) a contribution holiday for both the employer and the member as shall be determined by the actuary shall not be construed to mean a refund of the surplus of a scheme fund and shall be limited to the surplus above 10% of the scheme's accrued liability;
- (b) during a winding up for a defined benefits scheme, there shall be 50-50 sharing of surplus between members and the sponsor;
- (c) if total accrued liabilities are being transferred to a different scheme, any surplus shall be allocated equally between the members and the sponsors;
- (d) the portion of the sponsor surplus may be used as a contribution holiday in the new scheme;
- (e) where partial liabilities are being transferred to a different scheme, the portion of surplus transferred shall be proportionate to the value of liabilities being transferred.

(2) Notwithstanding the provisions of paragraph (1)—

- (i) any surplus of the scheme fund available after the winding up of a scheme may be refunded to the sponsor;
- (ii) where in the opinion of an actuary the actuarial surplus disclosed is excessive in relation to the accrued liabilities and sufficient on the actuarial basis adopted to support a contribution holiday for a period exceeding the higher of ten years and half the expected future working lifetimes of the in-service scheme membership at the valuation date part of the actuarial surplus disclosed may be refunded to the sponsor subject to the approval of the Authority on receipt of a report from the actuary.

[L.N. 111/2015, r. 3.]

33. Accounting procedure for investments

(1) The statement of income and expenditure of a scheme where applicable shall be credited with income receivable the amount debited to the reserve account created under paragraph (2) and net profit arising from sale of investment after restitution of any shortfall in the reserve account and any other income accruing to the scheme.

(2) In preparing a statement of income and expenditure the trustees may create and maintain a reserve fund with such sum as they shall in their discretion determine:

Provided that—

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- (i) a scheme shall not create and maintain a reserve fund that exceeds five percent of the total value of the scheme fund; and
- (ii) the Authority may, in writing, require the trustees to adjust the reserve fund to such levels as it may determine.

[L.N. 88/2019, r. 5.]

34. Valuation of assets

(1) In this regulation net realisable value means the value which an asset or investment can realize upon disposal at arms length transaction less expenses payable to effect the disposal.

(2) Assets of a scheme shall be valued for the purpose of these regulations at values not exceeding their market or net realisable value and in particular—

- (a) the value of land and buildings shall not exceed the value determined on the basis of a valuation by a registered valuer who is a member of the Institute of Surveyors of Kenya once in every three years or at such shorter interval as the Authority may otherwise permit in writing;
- (b) where the market value of any security share or other investment is not ascertainable only such value if any shall be taken into account as is considered reasonable having regard to the financial position of the issuing concern the dividend paid by it during the preceding five years and other relevant factors;
- (c) office machinery, furniture, motor vehicles and computer equipment shall be valued in accordance with the International Financial Reporting Standards.

[L.N. 111/2015, r. 4.]

35. Repair and maintenance of investments

Repair and maintenance expenses in respect of investments as may be applicable shall be charged to income during the year the expense is incurred and if the repair costs in the opinion of trustees is material the Authority may grant approval for it to be amortised over several financial years but which period shall not exceed three years.

36. Minimum disclosure requirements

The financial statements of a scheme shall be in the prescribed form and shall disclose the following—

- (a) un-remitted contributions;
- (b) fees and expenses paid directly or indirectly to or on behalf of the trustees appropriately classified;
- (c) returns on investment as per each category of investment;
- (ca) the net rate of return credited to the member's account;
- (d) related party transactions;
- (e) ownership of more than ten per centum equity in any one company or related companies; and
- (f) the penalty, if any, payable by the sponsor for failure to remit contributions or accrued interest on unpaid benefits;
- (g) any other matter as may be prescribed by the Authority.

[L.N. 57/2005, r. 11, L.N. 71/2022, r. 4.]

PART V – INVESTMENT GUIDELINES**37. Investment Policy**

(1) A scheme and a pooled fund shall prepare and submit to the Authority and after every three years revise and submit to the Authority a written statement of the principles governing decisions on investments for the purposes of the scheme or the pooled fund.

(2) The statement shall be signed by the trustees and the investment adviser and cover among other things—

- (a) the policy of the scheme or the pooled fund in compliance with regulation 38;
- (b) the policy of the scheme, or the pooled fund in the following matters—
 - (i) the kinds of investments to be held;
 - (ii) risk;
 - (iii) the realisation of investments; and
 - (iv) asset liability matching;
 - (v) such other matters as may be prescribed by the Authority from time to time.

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

(4) A scheme shall, before a statement under this regulation is prepared or revised, obtain and consider the written advice from a registered Chartered Financial Analyst, actuary, investment advisor or fund manager registered under the Capital Markets Act (Cap. 485A) or manager under the Act.

Provided that the advisor shall not be the scheme manager, related to the company or an employee of the scheme.

(5) A scheme shall consider the latest actuarial report where applicable, when determining the principles governing decisions about investments for the purposes of the scheme.

(6) Where in the case of a scheme or a pooled fund—

- (a) a statement under this section has not been prepared or is not being maintained or
- (b) the trustees of a scheme whose funds are not Part of a pooled fund and the pooled fund itself have not obtained and considered advice from a manager, the Authority may by direction prohibit any trustee of such scheme from being a trustee or disqualify a pooled fund from pooling scheme funds.

[L.N. 61/2006, r. 4, L.N. 77/2008, r. 2.]

38. Investment Guidelines

(1) Notwithstanding the provisions of regulation 37 a scheme, or pooled fund, shall invest only in an asset class referred to in Column 1 of Form 1G as prescribed to the extent to which the market value of the investment in the class expressed as a percentage of the total assets of the scheme or pooled fund, does not exceed the percentage listed in column 2 of Form 1G as prescribed in respect of such asset.

Provided that—

- (a) a scheme, or pooled fund, may exceed the maximum indicated in column 2 in the event of increase in market price of assets bonus issues or transfer of investment from one class of asset to another but any such excess shall not continue for a period of more than ninety days;
- (b) a scheme, or pooled fund, may exceed the maximum indicated in column 2 in the event of revaluation of real property but any such excess shall be reported immediately to the Authority together with an action plan as to how the trustees intend to return the scheme into compliance and the Authority shall within 30 days of receipt of the action plan advise the scheme in writing if the plan is acceptable or require the scheme to implement the plan subject to such conditions as the Authority may deem appropriate;
- (c) the maximum investment in the quoted equity of any one company shall be fifteen per centum of the aggregate market value of the total assets of the scheme or pooled fund;

[Subsidiary]

- (d) the maximum investment in the unquoted equity, commercial paper, loan stock and debentures issued by the company controlled by or a related company of the sponsor shall be three percentum of the aggregate market value of the total assets of the scheme:

Provided that in the case of quoted equity, the maximum investment shall be ten per centum of the aggregate market value of the total assets of the scheme.

- (e) investments in the category "Any other asset" shall be subject to prior written approval of the Authority which shall be formally considered by the Authority within thirty days of application by a scheme.

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

Provided that the investment guidelines shall not apply to the approved issuer in regard to the investment of guaranteed funds.

[L.N. 57/2005, r. 12.]

PART VI – LEVY

39. Retirement Benefits Levy

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

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

(3) The basis of the annual levy shall be a percentage of the net asset value of the total scheme fund as prescribed in Form L.

Provided that

- (a) the value of the scheme fund to be used in determining the levy shall be the total fund value indicated in the latest audited accounts of the scheme less the amount of the medical fund;
- (b) notwithstanding anything contained in this regulation the minimum levy payable to the Authority shall be three thousand shillings per annum subject to a maximum of five million shillings.

[L.N. 57/2005, r. 13, L.N. 84/2009, r. 2, L.N. 111/2015, r. 3.]

PART VII – TRANSFERS AND AMALGAMATION OF SCHEMES

40. Amalgamation, division and transfers

(1) No amalgamation, division of schemes or transfer of any scheme fund from one scheme to another shall be valid unless—

- (a) the arrangements and particulars for the proposed amalgamation, division and transfer including copies of current actuarial reports in respect of the schemes and other statements taken into account for the purposes of the amalgamation, division and transfer have been submitted to the Authority;
- (b) the Authority has been furnished with such additional particulars or such special reports by an actuary or auditor, as it may deem necessary for the purposes of this regulation;
- (c) the Authority is satisfied that the arrangements referred to in paragraph (a) accords full recognition to the reasonable expectations of the members of the schemes concerned, and that the proposed transaction would not render

any scheme which is a party thereto and which will continue to exist if the proposed transaction completed is unable to—

- (i) meet the requirements of the Act and these regulations;
 - (ii) remain in a sound financial condition; or
 - (iii) in the case of a scheme which is not in a sound financial condition, to attain such condition within the period of time deemed by the Authority to be satisfactory.
- (d) the Authority has been furnished with such evidence as it may require to show that the provisions of the scheme rules of the concerned schemes in so far as they are applicable, have been carried out or that adequate arrangements have been made to carry out such provisions at such times as may be required by the concerned schemes;
- (e) the Authority has forwarded an approval in writing to the concerned schemes to the effect that all the requirements of this sub-regulation have been satisfied;

Provided that the Authority shall formally consider such application of approval within thirty days of receipt of all the information required under paragraph (d).

(2) An amalgamation, division or transfer of a scheme fund shall—

- (a) diminish the retirement benefits of a members of such scheme;
- (b) reduce the accrued benefits of its members.

(3) Whenever any transaction come into force in accordance with the provisions of this regulation, the relevant assets and liabilities of the schemes so amalgamated or divided shall respectively vest in and become binding upon the resultant scheme, or as the case may be, the relevant assets and liabilities of the scheme transferring its assets and liabilities or any portion thereof shall respectively vest in and become binding upon the scheme to which they are to be transferred.

(4) Trustees of a scheme being amalgamated, divided or transferred shall determine the application of the surpluses arising out of the amalgamation, division or transfer of such scheme.

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

[L.N. 71/2022, r. 5.]

THE RETIREMENT BENEFITS (TRANSITIONAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
 2. Application
 3. Interpretation
 4. Amendment of the scheme rules to comply with the Act
 5. Actuarial Valuation
 6. Viability of a scheme
 7. Owed contributions to be deducted
 8. Appointment of trustees
 9. Appointment of manager and custodian
 10. Transfer of funds
 11. Submission of plan of compliance
-

THE RETIREMENT BENEFITS (TRANSITIONAL) REGULATIONS

[Legal Notice 122 of 2000]

1. Citation

These Regulations may be cited as The Retirement Benefits (Transitional) Regulations.

2. Application

These Regulations shall apply to existing schemes.

3. Interpretation

In these Regulations:—

"defined benefit scheme" means a scheme other than a defined contribution scheme;

"defined contribution scheme" means a scheme in which members' and employers' retirement benefits are fixed either as a percentage of pensionable earnings or as a shilling amount, and a member's retirement benefits has a value equal to those contributions, net of expenses including premiums paid for insurance of death disability risks, accumulated in a individual account with investment return and any surpluses or deficits as determined by the trustees of the scheme;

"existing scheme" means a scheme which existed prior to the coming into force of these Regulations;

"pooled fund" means a fund established by a limited liability company other than an approved issuer for purposes of pooling scheme funds for collective investment.

4. Amendment of the scheme rules to comply with the Act

All existing schemes shall within three hundred and sixty five days from the date of publication of these Regulations amend their scheme rules to comply with the provisions of the Act and the regulations made thereunder.

5. Actuarial Valuation

(1) Every defined benefits scheme shall within seven hundred and thirty days from the days from the date of publication of these Regulations cause to be prepared in respect of the scheme fund an actuarial valuation and submit the report thereof to the Authority:

Provided that defined benefits schemes which have caused to be prepared an actuarial valuation in respect of the scheme fund within three years prior to the date of publication of these Regulations and submitted the actuarial valuation report thereof to the Authority, shall not be required to comply with this regulation.

(2) The actuarial valuation under paragraph (1) shall be prepared in the prescribed form.

6. Viability of a scheme

(1) Every defined contribution scheme shall, within three hundred and sixty five days from the date of publication of these Regulations, submit to the Authority a report and certificate signed by an actuary certifying the financial soundness of the scheme.

(2) The actuarial review referred to in paragraph (1) shall be prepared in the prescribed form.

7. Owed contributions to be deducted

Any contribution or loan owed to a scheme by a member shall become a first charge upon any retirement benefit payable to such member, his nominee or personal representative under the scheme rules, and shall be deducted therefrom and appropriate adjustment made in respect thereof.

[Subsidiary]

8. Appointment of trustees

Every scheme shall cause to be appointed trustees in accordance with section 26(2) of the Act and the regulations made thereunder, and submit to the Authority within three hundred and sixty five days from the date of publication of these Regulations a certified copy of the instrument of appointment.

9. Appointment of manager and custodian

Existing schemes or the pooled funds shall within three hundred and sixty days from the date of publication of these Regulations engage the services of a manager and custodian under written instruments and submit to the Authority duly signed copies of such instruments together with certificates signed by the appointed managers and custodians certifying that:—

- (a) in the case of a manager, it has commenced the management of scheme funds;
- (b) in the case of a custodian, it has received custody of scheme funds.

10. Transfer of funds

The transfer of funds from a scheme established under a written law within the meaning of section 33(1) of the Act shall not commence until the expiry of the transitional period provided for in section 57 of the Act.

11. Submission of plan of compliance

(1) Without prejudice to regulations (4), (5), (6), (8), (9) and (10) every scheme shall within three hundred and sixty five days from the date of publication of these Regulations present to the Authority a plan of compliance with the Act and the regulations made thereunder indicating:—

- (a) the extent to which the scheme is not within the provisions of the Act and the regulations made thereunder;
- (b) the proposed manner of bringing the scheme into compliance with the provisions of the Act and the regulations made thereunder;
- (c) the approved period within which the proposal in sub-paragraph (b) may be effected.

(2) The proposal made by a scheme under paragraph (1)(c) shall not be effected unless approved in writing by the Authority.

THE RETIREMENT BENEFITS (TRIBUNAL) RULES

ARRANGEMENT OF RULES

Rule

1. Citation
2. Interpretation
3. Appointment of Clerk
4. Form of lodging an Appeal
5. Memorandum of appeal
6. Statement of facts of appellant
7. Service of memorandum of appeal
8. Statement of facts of Chief Executive Officer
9. Receipt of memorandum of appeal
10. Procedure
11. Copies of documents admissible
12. Tribunal to Adopt Civil Procedure Rules
13. Costs
14. Scale of costs
15. Filing fees

SCHEDULES

SCALE OF COSTS

THE RETIREMENT BENEFITS (TRIBUNAL) RULES

[Legal Notice 121 of 2000]

1. Citation

These Rules may be cited as The Retirement Benefits (Tribunal) Rules.

2. Interpretation

In these Rules, unless the context otherwise requires:-

"appeal" means an appeal to the Tribunal under section 48;

"appellant" means a person entering an appeal and the advocate or duly authorized agent of that person;

"chairperson" means the chairperson of the Tribunal appointed under section 47(2);

"clerk" means the clerk of the Tribunal appointed pursuant to rule 3;

"memorandum" means a memorandum of appeal presented under rule 4(1);

"statement of claim" shall have the same meaning as a pleading in the Civil Procedure Act (Cap. 21).

3. Appointment of Clerk

(1) The Board shall appoint a clerk to the Tribunal, who shall be an officer of the Authority.

(2) The clerk shall, in matters relating to appeals to the Tribunal and procedure therefor, comply with the general and special directions lawfully given by the chairperson.

(3) The clerk shall by notice in the *Gazette* notify his address for the presentation or service of documents for the purposes of these Rules and shall in the same manner notify any change in that address.

4. Form of lodging an Appeal

(1) An appeal under section 48(1) of the Act shall be entered by presentation of a memorandum of appeal with five copies thereof together with the prescribed fee to the clerk within thirty days of receipt of the decision of the Chief Executive Officer.

(2) An appeal under section 48(2) of the Act shall be entered by presentation of a statement of claim with five copies thereof together with the prescribed fee to the clerk and for purposes of this paragraph, the provisions of the Civil Procedure Act subject to the provisions of the Act shall *mutatis mutandis* apply to lodging a memorandum of appeal and hearing of the appeal.

5. Memorandum of appeal

A memorandum shall be signed by the appellant and shall be set out concisely under distinct heads, numbered consecutively with the grounds of appeal without argument or narrative.

6. Statement of facts of appellant

Each copy of a memorandum shall be accompanied by a statement, signed by the appellant, setting out precisely all the facts on which the appeal is based and referring specifically to documentary or other evidence which it is proposed to adduce at the hearing of the appeal, and to which shall be annexed the original copy of the decision of the Chief Executive Officer on which the appeal is based, and each document or extract from a document referred to upon which the appellant proposes to rely as evidence at the hearing of the appeal.

[Subsidiary]

7. Service of memorandum of appeal

Within seven days after the presentation of a memorandum to the clerk, a copy thereof and the statement of facts of the appellant and the documents annexed thereto shall be served by the appellant upon the Chief Executive Officer.

8. Statement of facts of Chief Executive Officer

(1) The Chief Executive Officer shall, if he does not admit the facts of the appellant, within twenty-one days after service thereof upon him, file with the clerk a statement of defence and a statement of facts together with five copies thereof and the provisions of rule 6 shall *mutatis mutandis* apply to that statement of facts.

(2) At the time of filing a statement of facts pursuant to paragraph (1), the Chief Executive Officer shall serve a copy thereof, together with copies of any documents annexed thereto, upon the appellant.

(3) Where the Chief Executive Officer does not desire to file a statement of facts under this rule, he shall forthwith give written notice to that effect to the clerk and to the appellant, and in that case the Chief Executive Officer shall be deemed at the hearing of the appeal to have admitted the facts set out in the statement of facts of the appellant.

9. Receipt of memorandum of appeal

(1) The clerk shall within fourteen days after receiving the memorandum of appeal presented as provided for in rule 4 notify the chairperson thereof.

(2) The chairperson shall, after twenty-one days from the date of service upon the Chief Executive Officer of the memorandum of appeal under rule 7 fix a time, date and place for a meeting of the Appeals Tribunal for the purpose of hearing the appeal, and the clerk shall cause notice thereof to be served on the appellant and the Chief Executive Officer.

(3) The Clerk shall cause to be supplied to each member of the Appeals Tribunal a copy of the notice of hearing and of all documents received by him from the parties to the appeal.

(4) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the hearing of the appeal.

10. Procedure

At the hearing of an appeal, the following procedure shall be observed-

- (a) the Chief Executive Officer shall be entitled to be present or to be represented;
- (b) the appellant shall state the grounds of his appeal and may support it by any relevant evidence, but save with the consent of the Tribunal and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than a ground stated in the memorandum and may not adduce evidence of facts or documents unless those facts have been referred to in, and copies of those documents have been annexed to, the statement of facts of the appellant;
- (c) at the conclusion of the statement, and evidence on behalf of the appellant, the Chief Executive officer may make submissions supported by relevant evidence, and the conditions of subparagraph (b) shall *mutatis mutandis* apply to evidence of facts and documents to be adduced by the Chief Executive Officer;
- (d) the appellant shall be entitled to reply but may not raise a new issue or argument;
- (e) the chairperson or a member of the Tribunal may at any stage of the hearing ask any questions to the appellant or the Chief Executive Officer or a witness examined at the hearing, which he considers necessary to the determination of the appeal;
- (f) a witness called and examined by either party may be cross-examined by the other party to the appeal and if so cross-examined may be re-examined;

- (g) a witness called and examined by the Tribunal may be cross-examined by either party to the appeal;
- (h) the Tribunal may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary, on such terms as it may determine;
- (i) the Tribunal shall consider and reach its decision according to law which decision it shall read to the parties of the appeal;
- (j) the proceedings of the Tribunal and the decision arrived at shall be recorded and kept in each appeal file.

11. Copies of documents admissible

Save where the Tribunal in any particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence but the Tribunal may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

12. Tribunal to Adopt Civil Procedure Rules

In matters of procedure not governed by these Rules or the Act, the Tribunal may adopt the Civil Procedure Rules made under the Civil Procedure Act (Cap. 21) where applicable.

13. Costs

The Tribunal shall make an order as to costs on an appeal.

14. Scale of costs

The Tribunal in making an order for cost as provided for in rule 13 hereof shall be guided by a scale of costs set out in the Schedule to these Rules.

15. Filing fees

The fees specified in the second column of the Schedule shall be paid in respect of matters specified in the first column of the Schedule.

SCHEDULE

[r. 14]

SCALE OF COSTS

A. Party and Party costs

(1) Where the sum found due (in the case of a successful appellant) or the sum claimed for (in the case of a successful Authority).

Exceeds Shs	Does not exceed Shs	lower Shs	Higher Shs
-	300	150	200
300	500	200	400
500	1000	400	800
1000	1500	800	1,000
1500	2000	1,000	1,500
2000	3000	1,500	2,000
3000	3500	2,500	2,500
3500	5000	3,000	3,000
5000	7500	3,500	4,000
7500	10,000	4,000	4,500
10,000	20,000	4,500	5,000

[Subsidiary]

20,000 50,000 5,000 7,500
 Over 500,000 - a fee as for Shs. 50,000 plus an additional 5% on the lower scale or 10% on the higher scale in respect of the excess.

- (2) Under this rule the term "lower scale" shall be applied in all cases where the Chief Executive Officer has not filed a statement of facts in reply as provided in rule 8(3), and "upper scale" shall be applied in all other cases.
- (3) In any appeal by the nature of which no specific sum is claimed or awarded in the decision of the Tribunal; such costs as the Tribunal in its discretion awards but not less than Kshs. 3,000/= if the Chief Executive Officer has not filed a statement of facts in reply and (subject to any special order for good reason connected with the nature and importance or the difficulty or the urgency of the matter) not to exceed Shs. 10,000/=.
- (4) In any proceedings not otherwise provided for, such costs as the Tribunal may assess but not less than Shs. 1,000/=.
- (5)
 - (a) On any necessary attendance on the Tribunal other than at the hearing 1,000.00
 - (b) On any necessary attendance at the Tribunal registry 100.00
 - (c) attendance at the hearing— 1,500.00
 - (i) after the first day 700.00
 - (ii) for each half or part of the day after the first day 700.00
 - (d) where costs of adjournment of the case are awarded 50.00
 - (e) service— 50.00
 - (i) within three kilometres of the Tribunal 8.00
 - (ii) every additional kilometre over three kilometres such amount as is reasonable, not exceeding per kilometre 30.00
 - (iii) by post, authorized 50.00
 - (f) drawing and filing affidavit or return of service, to include swearing fee 50.00
 - (g) drawing and filling any other affidavits (for first four folios) (thereafter per folio)

B. Advocate and client costs

As between advocate and client the costs shall be -

- (a) the costs prescribed in A above, increased by one-third;
- (b) the costs ordered by the Tribunal, increased by one-third;
- or
- (c) the costs agreed by the parties, increased by one-third.

Retirement Benefits

[Subsidiary]

	APPEAL FILING FEES	KShs
1.	Presenting a memorandum of appeal under section 48(1).	1/8th of the value of the subject matter or of the amount awarded by the Tribunal subject to a maximum of 20,000
2.	Presenting of statement of facts by the Chief Executive Officer under rule 8	100.00
3.	Filing of any application, chamber summons, notice of motion	300.00
4.	Filing of affidavit	100.00
5.	Filing of a statement of claim or memorandum of appeal by nature of which no specific sum is claimed or awarded by the Tribunal	3,000.00

**THE RETIREMENT BENEFITS (EXTENSION
OF PERIOD FOR COMPLIANCE), 2003**

[Legal Notice 84 of 2003]

Revoked by Legal Notice 102 of 2003 on 27th June, 2003

**THE RETIREMENT BENEFITS (EXTENSION OF
PERIOD OF COMPLIANCE)(REVOCATION OF NOTICE)**

[Legal Notice 102 of 2003]

IN EXERCISE of the powers conferred by section 57 of the Retirement Benefits Act (Cap. 197), the Cabinet Secretary for Finance revokes Legal Notice No. 84 of the 12th June, 2003.

**THE RETIREMENT BENEFITS (EXTENSION
OF TIME OF COMPLIANCE) ORDER**

[Legal Notice 3 of 2005]

1. This Order may be cited as the Retirement Benefits (Extension of Time of Compliance) Order.
 2. The time of compliance by the National Social Security Fund with the provisions of sections 16 and 34(4) of the Act and regulations 8(2)(h), 8(2) (k), 15(1) and 39(1) of the Retirement Benefits (Occupational Retirement Benefits Scheme) Regulations, No. 119 of 2000, is extended up to 30th June, 2006.
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THE RETIREMENT (ADMINISTRATORS) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
 2. Interpretation
 3. Application
 4. Registration of administrators
 5. Qualifications of natural persons appointed to be administrators
 - 5A. Disqualification of Administrators
 6. Agreement in respect of administration
 7. The role of the administrator
 8. Termination of agreement
 9. Opening of trust account
 10. Processing, controls and systems
 11. Compliance with Regulations
 12. Transition
-

THE RETIREMENT (ADMINISTRATORS) REGULATIONS

[Legal Notice 151 of 2007, Legal Notice 87 of 2010]

1. Citation

These Regulations may be cited as the Retirement (Administrators) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires -

"administration services" means administration of the affairs of the scheme in accordance with the provisions of the Act and regulations, scheme trust deed and rules, any other relevant legislation in force, other legal documents related to the scheme and instrument of appointment of the administrator;

"administrator" means a person appointed by trustees to administer a scheme in accordance with the terms and conditions of service specified in the instrument of appointment.

3. Application

(1) These Regulations shall apply to any company incorporated under the Companies Act (Cap. 486) which is empowered under written law, memorandum of association or any other instrument constituting it or defining its powers to carry out administration services.

(2) The provisions of these Regulations relating to the role of the administrator, the process, controls and systems for administration shall also apply where a natural person has been appointed to be an administrator.

4. Registration of administrators

(1) An application for registration as an administrator shall be submitted to the Authority in the prescribed form together with the prescribed fee.

(2) Where a company is seeking registration as an administrator, the minimum paid up share capital including unimpaired reserves of the company shall be ten million shillings or such value as the Authority may from time to time prescribe.

(3) A company rendering administration services to a scheme shall at all, times have in its Board of Directors and top management at least four persons who are academically and professionally qualified in matters relating to administration of schemes, insurance, law, accounting, actuarial science, economics, banking, finance or investment of scheme funds.

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

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

(6) After registration, the administrator shall provide any additional information which may include but not be limited to ownership, directorship, shareholding and staff establishment when required to do so by the Authority.

(7) This regulation shall not apply to a natural person who has been appointed to be an administrator.

5. Qualifications of natural persons appointed to be administrators

A natural person rendering administration services shall be academically and professionally qualified in matters relating to insurance, law, accounting, actuarial science, economics, banking, finance, investment of scheme funds or has more than five years experience in matters relating directly to pensions and administration of schemes.

[Subsidiary]

5A. Disqualification of Administrators

No person shall be appointed as the administrator of a scheme if that person is related to the fund manager of the scheme.

[L.N. 18/2010, r. 2.]

6. Agreement in respect of administration

(1) An administrator shall enter into a written agreement with the relevant scheme which shall set out the specific arrangements for the required administration services prior to the commencement of the provision of administrative services with regard to a particular scheme.

(2) The agreement shall be a Service Level Agreement and shall—

- (a) set out clearly all the relevant agreed requirements and acceptable standards for delivery;
- (b) stipulate the basis on which the administrator is to be remunerated for conducting the administration.

(3) Any amendment to the agreement shall be in writing, effected by way of an addendum or new agreement between the administrator and the scheme.

7. The role of the administrator

An administrator shall -

- (a) have all the powers necessary for the performance of its functions under the Act;
- (b) carry out daily administration of the affairs of the scheme in accordance with the provisions of the Act, scheme trust deed and rules and its amendments, any other relevant legislation in force and all other legal documents related to 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) offer advisory and training services to the trustees, members and the Sponsor on their rights and obligations in the scheme;
- (e) avail the required data of the scheme to the service providers to enable preparation of statutory returns to the Authority;
- (f) submit or cause to be submitted required statutory returns to the Authority;
- (g) compute and pay benefits to the members and their beneficiaries directly as provided for in the law and the scheme rules;
- (h) prepare the scheme budgets, cash flows and liquidity requirements as may from time to time be required;
- (i) where required, offer secretarial services to the Board of Trustees by organising meetings, issuing notices for the same and taking minutes during the meetings;
- (j) advise the trustees to ensure that the manager is investing the scheme funds in compliance with the provisions of the Act, the Regulations, scheme trust deed and rules and other relevant legislation in force;
- (k) where required, organise and call annual general or special meetings, take minutes and keep record of those meetings; and
- (l) carry out all other functions stated in the instrument of appointment.

8. Termination of agreement

(1) Any party to an administration agreement or instrument of appointment may terminate the agreement, without penalty, by a notice not exceeding ninety days in writing to the other party.

(2) Upon the termination of the administration agreement or instrument of appointment, the administrator shall furnish a report to the Authority within thirty days of the termination, confirming—

- (a) that all documents of title in possession of the administrator, the assets register, minute books, members' records and all other records pertaining to the scheme have been delivered to the scheme trustees or the new administrator, as the case may be, mentioning specifically the identities of such persons.
- (b) the date and address of such delivery and the name of the trustee or person at the new administrator to whom the documents in (a) have been delivered.

(3) Where an administrator is, for some reason other than remuneration for the administration services, unable to comply fully or partially with paragraph (2), the administrator shall state in the report full particulars of the documentation which has not been delivered, the reasons therefor and a plan with the dates on which compliance will take place.

9. Opening of trust account

(1) An administrator may with regard to the schemes under administration, deposit benefits payable to beneficiaries from those schemes into a trust account to enable the administrator to make use of electronic bank transfer facilities.

(2) Notwithstanding paragraph (1), the administrator shall ensure that—

- (a) all benefits are transferred to the account of the beneficiary on the same day on which the deposit in the trust account is made, on condition that any delay caused by the bank's automated clearing bureau, shall not be regarded as a contravention of this regulation;
- (b) all payment to a beneficiary which has been rejected by the bank are repaid immediately to the relevant scheme's custodian;
- (c) the administrator reports to the trustees on a monthly basis on all transactions processed through the trust account;
- (d) the trust accounts are audited annually by the auditor of the administrator; and
- (e) the bank charges and interest are allocated annually to each scheme administered by the administrator in such proportion as the annual amount deposited on behalf of a particular scheme bears to the total annual amount deposited on behalf of all schemes administered by the administrator.

10. Processing, controls and systems

- (a) all applicable processes concerning the affairs of the scheme are performed in accordance with the provisions of the Act, the Regulations and the scheme rules;
- (b) all the administrative functions are performed in accordance with the relevant regulatory requirements;
- (c) general administration processing, accounting transactions and risk control measures are in place to ensure accurate, complete and timely processing of data, information reporting and the assurance of data integrity;
- (d) an appropriate internal control system is in place, monitored and managed by a suitable compliance function within the organization to ensure that the requirements of the Act are complied with;
- (e) an adequate operational system is in place capable of enabling performance of scheme administration functions particularly—
 - (i) keeping and updating an accurate record of scheme assets and contributions;
 - (ii) generating all required reports especially statutory reports and returns;

[Subsidiary]

- (iii) maintaining accurate membership records and respective accrued benefits on daily basis;
- (iv) calculating member benefits immediately when due.

11. Compliance with Regulations

(1) Where the Authority has proven that an administrator has contravened or failed to comply with any provision of these Regulations, it shall forthwith notify the administrator in writing at the administrator's last registered address, and require the administrator to furnish the Authority in writing with reasons why the registration as administrator should not be withdrawn within thirty days of the date of the notice.

(2) The Authority may, where no satisfactory reasons have been furnished within the specified period, after giving a notice in writing, withdraw the registration of the administrator.

(3) Where the administrator otherwise ceases to render administration services, perform administration business, or the business of the administrator is dissolved or liquidated, the registration of an administrator by the Authority shall be deemed to have lapsed, without prejudice to any legal obligations which may still be attaching to the former administrator under the Act.

12. Transition

Where, at the commencement of these Regulations, an arrangement and an administrator is administering a scheme under an existing arrangement which does not comply with these Regulations, the administrator shall, after having obtained approval and registration by the Authority, enter into a new agreement which complies with these Regulations with each scheme within six months from date of commencement or such time as the Authority may by notice direct.

THE RETIREMENT BENEFITS (MORTGAGE LOANS) REGULATIONS

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THE RETIREMENT BENEFITS (MORTGAGE LOANS) REGULATIONS

[Legal Notice 85 of 2009, Legal Notice 55 of 2012, Legal Notice 192 of 2020]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Retirement Benefits (Mortgage Loans) Regulations.

2. Application

These Regulations shall apply to registered retirement benefits schemes.

3. Interpretation

In these Regulations, unless the context otherwise requires—

"Authority" means the Retirement Benefits Authority established by section 3 of the Act;

"facility" means a retirement benefits mortgage facility or house ownership loan arrangement;

"house" *deleted by L.N. 192/2020, r. 2(a)*;

"institution" means—

- (a) a bank, mortgage or financial institution licensed under the Banking Act (Cap. 488) a building society licensed under the Building Societies Act (Cap. 489) a microfinance institution established and registered under the Microfinance Act (Cap. 493C), the National Housing Corporation; or
- (b) any other institution, including an issuer of a tenant purchase arrangement that is specifically approved by the Authority for the purpose of providing a facility;
- (c) any other entity offering a residential house for sale;

"member" means a member of a retirement benefits scheme, including any person who is entitled to a benefit under a retirement benefits scheme;

"residential house" means a dwelling built wholly or in part for the provision of residential accommodation in urban or rural areas and "house" shall have the same meaning as residential house;

"scheme" means a retirement benefits scheme registered under the provisions of the Act;

"scheme rules" means the trust deed and rules of the scheme;

"spouse" has the meaning assigned to it in section 2 of the Marriage Act (Cap. 150).

[L.N. 192/2020, r. 2.]

PART II – STRUCTURE OF FACILITY

4. Assignment of benefits

(1) A member may, if the rules of the scheme permit and subject to the Act, assign a proportion of his benefits to a scheme for consideration for the purposes of furnishing a guarantee, by the scheme, in favour of an institution, in respect of a loan granted or to be granted by the institution to a member, to enable the member to—

- (a) acquire immovable property on which a house has been erected;
- (b) erect a house on immovable property in respect of which, the member has, or the member and his spouse have obtained ownership or have the right to ownership through a right of occupation;

[Subsidiary]

- (c) add, alter or carry out repairs to a house of which ownership or the right to ownership was obtained through acquisition or a right of occupation by either the member or the member and his spouse;
- (d) secure financing or waiver, as the case may be, for deposits, stamp duty, valuation fees and legal fees, (but excluding arrangement and commitment fees), and any other transaction costs required in the course of acquisition of the immoveable on which a house has been erected.

(2) The furnishing of the guarantee shall be considered by the trustees of the scheme, upon formal application by the member, in the manner prescribed in the rules of the scheme.

(3) The scheme shall not issue more than one guarantee at a time in respect of an eligible member.

(4) A member of a scheme who has a mortgage existing prior to or after commencement of this subregulation, may upon formal application in the manner prescribed in the rules of the scheme, transfer the mortgage by way of assignment of benefits to an institution.

[L.N. 55/2012, r. 2.]

5. Institutions

An institution that requires a registered scheme to furnish the guarantee shall—

- (a) provide the relevant proof of registration, licensing or approval required under these Regulations;
- (b) have an adequate operational and internal control system for the purposes of—
 - (i) structuring and operating a facility;
 - (ii) keeping and updating an accurate record of the transactions from and to a member's loan account;
 - (iii) generating reports as may, from time to time, be required by the trustees of a scheme.

6. Application for approval

(1) Where an institution requires the approval of the Authority to provide a facility under these Regulations, the institution shall apply in writing for approval from the Authority.

(2) An application under paragraph (2) shall be accompanied by documentation relevant to the application, including—

- (i) the memorandum of association and articles of incorporation of the applicant or enabling legislation;
- (ii) details relating to the capitalization and reserves of the applicant;
- (iii) details relating to the professional and academic qualifications of the board of directors and top management of the applicant;
- (iv) the organizational and operational structure of the applicant; and
- (v) a report on the experience of the applicant in the provision of products and services relating to a facility.

(3) The Authority shall, within ninety days from the date of receipt of an application for approval, consider the application and notify the applicant, in writing, whether the application is successful, and where it is refused, the reasons for the refusal.

7. Security for a facility

(1) The scheme shall not furnish a guarantee under these Regulations unless the loan granted pursuant to the facility is secured by —

- (a) a first mortgage on a house in respect of which the loan is granted, or in the case of a rural house, where a first mortgage may not be secured, the guarantee shall be considered as the primary security acceptable to the institution;

- (b) an assignment to the scheme, by the member concerned, of a proportion of benefits to which the member is entitled to under the rules of the scheme.

(2) Prior to the disbursement of funds in respect of a facility, an institution shall satisfy the trustees of a scheme that adequate insurance arrangements have been made in respect of the loan and the property for which the loan is advanced.

[L.N. 55/2012, r. 3.]

8. Proportion of assignable benefits

(1) A guarantee under these Regulations shall not exceed, at the time it is furnished,—

- (a) sixty per cent of the accrued benefit which the member would be entitled to under the scheme rules at the time of the application for the facility; or
- (b) the market value of the immoveable property, whichever is less.

Provided that the trustees may provide a guarantee to cover the initial transaction fees including purchase deposit, applicable duties and taxes, valuation and legal fees for the acquisition of the house.

(2) Where a transaction is for the purpose of providing a refinancing opportunity on the guaranteed amount in respect of a loan advanced, the accrued benefit shall be re-evaluated at intervals of not less than three years until the time of redemption of the guarantee.

(3) Where a transaction for the purchase of immovable property has not been finalised and a purchase price has been agreed upon by the parties, the value of the property shall not be fixed at an amount higher than the purchase price declared by the parties for the purposes of stamp duty.

(4) Where a transaction for a facility for the erection of, or additions or alterations to, or to carry out repairs to a house is contemplated, the estimate of the fair market value of the immovable property shall not be fixed at an amount higher than an amount equal to the cost of such erection, additions, alterations, maintenance or repairs, as the case may be.

[L.N. 55/2012, r. 4.]

9. Transfers to another scheme or Institution

(1) A transfer by a member from one registered scheme to another shall not vitiate the assignment under these Regulations and the member may apply for the issuance of a new guarantee from the scheme which he has transferred to and a return of the guarantee issued by the scheme from which he transferred:

Provided that the trustees of the scheme to which the transfer has been made may, with the approval of all the parties, indemnify the trustees of the scheme from which the transfer is being made to the extent of that guarantee.

(2) A transfer by a member of a facility granted under guarantee from one institution to another shall not vitiate the assignment and the trustees of the scheme shall, upon the authorization of the member, establish mechanisms for the issuance of a new guarantee to the institution that the member has transferred to and a return of the guarantee issued to the institution that the member transferred from.

(3) Where the scheme to which a member has transferred to does not provide in its scheme rules for the issuance of guarantees under these Regulations, the member shall make appropriate arrangements for the maintenance or redemption of the guarantee, and shall inform the trustees of the scheme he has transferred from of these arrangements within a period not exceeding sixty days from the date of retirement or of giving notice of withdrawal from the scheme.

(4) In the event of the winding up of a scheme which has issued a guarantee under these Regulations on behalf of a member, the member may apply for the issuance of a new guarantee from a scheme that he has transferred to and the return of the guarantee issued by the scheme which is being wound up.

[Subsidiary]

10. Duties of trustees in relation to the assignment of benefits

The trustees of a scheme shall—

- (a) prior to, considering the assignability of the members benefit, ensure that the agreements made between its members and institutions, in respect of any facility contemplated under these Regulations, comply with the Act and the scheme rules;
- (b) consider applications for approval for assignment from the members;
- (c) verify that the institutions to which the assignments are to be made have complied with these Regulations;
- (d) after approval and prior to furnishing the guarantee to an institution, ensure the proper execution of the agreements and any other assignment documents;
- (e) monitor the repayment by each member to whom a facility has been issued and ensure that the assignment is discharged once the facility has been paid in full;
- (f) keep a record of the assignments and indemnities granted; and
- (g) ensure the disclosure, in the financial statements, of the amounts assigned and the institutions to which guarantees have been furnished.

[L.N. 192/2020, r. 3.]

11. Redemption of guarantee

Provided that—

- (i) upon presentation of evidence of default and liability arising to trustees by an institution, the guarantee shall be redeemable on demand in accordance with its terms; and
- (ii) in the event of default by a member arising on account of loss of employment, the trustees shall settle the outstanding mortgage with the institution if the outstanding loan is less or equal to the permitted guarantee under regulation 8(1).

(2) Where a dispute relating to a default arises, the trustees of a guaranteeing scheme shall give the concerned member an opportunity to prove that a default has not arisen.

(3) Upon the receipt of a notification from a member authorizing the redemption of a guarantee, the trustees of a scheme shall ensure that the proportion of funds assigned to guarantee the facility is sufficient to clear the outstanding balance of the guaranteed loan:

Provided that there shall be no consolidation of debts owed by the member to the institution for the purpose of redemption.

(4) The trustees of a scheme shall, by resolution, agree on the release of any payment in redemption of a guarantee.

(5) The trustees shall submit to the Authority, on a quarterly basis, a return indicating the number and amount of guarantees issued, as well as details of loans repaid and guarantees redeemed.

(6) Notwithstanding the provisions of this regulation an agreement entered into between parties in respect of a facility and any assignment documents that may be signed or issued shall be invalid where—

- (a) the agreement or assignment document does not comply with the Act; or
- (b) the facility is granted for any other purpose than as intended in these regulations.

[L.N. 55/2012, r. 5.]

12. Suits against Trustees

In the event of a dispute regarding a facility, the cost of any suit against trustees by an institution or any other party shall not be paid from the assets of the scheme, save for the portion assigned by a member, under these Regulations, that is the subject of the dispute.

PART III – PURCHASE OF RESIDENTIAL HOUSES

13. Application for approval

(1) A member may utilise a portion of the member's accrued benefits to purchase a residential house from an institution.

(2) Every scheme shall prescribe the minimum requirements to be met by their members for an application made under these Regulations.

(3) Every scheme shall prescribe the procedure to be followed in relation to the purchase of a residential house under these Regulations.

(4) A member who wishes to utilise a portion of the member's accrued benefits to purchase a residential house shall apply in writing to the trustees in the manner prescribed by the scheme.

(5) The trustees may require the applicant under paragraph (4) to supply such additional information as may be required for the processing of the application.

(6) The trustees shall determine the application under paragraph (4) within ninety days of the application being lodged, and where an application is not granted, the trustees shall notify the applicant of the reasons thereof in writing.

[L.N. 192/2020, r. 4.]

14. Portion of benefits

(1) The portion available to a member for the purchase of a residential house at the time of the application under regulation 13 (4) shall be the lower of—

- (a) in a defined contribution scheme, an amount not exceeding forty per cent of the member's accrued benefits:

Provided that such sum shall not exceed seven million shillings;

- (b) in a defined benefits scheme, an amount not exceeding forty per cent of the member's accrued benefits as determined by an actuary:

Provided that such sum shall not exceed seven million shillings; or

- (c) the purchase price of the residential house which shall not exceed the market value of the residential house.

(2) The member may opt to utilise the member's additional voluntary contributions to top up the portion of the benefits available to the member for the purchase of the residential house.

(3) The member's funds contained in a post retirement medical fund shall not be used to determine the accrued retirement benefits of the member or be used for the purchase of a residential house under these Regulations.

(4) Where the applicant is a member of more than one scheme that have been established by the same sponsor, the trustees shall, on the option of the member, combine the member's accrued benefits in determining the proportion available to the member.

(5) For the purpose of determining the amount available to a member, the trustees shall take into account—

- (a) in the case of a defined contribution scheme, the proportion of remitted contributions; or

- (b) in the case of a defined benefits scheme, the funding level of the scheme where it falls below one hundred per cent according to the scheme's most recent actuarial valuation.

[L.N. 192/2020, r. 4.]

[Subsidiary]

15. General requirements

(1) Each scheme shall prescribe in the scheme rules the procedure to be followed when a member wishes to utilise a portion of the member's accrued benefits for the purchase of a residential house.

(2) A residential house eligible to be purchased under these Regulations shall only be a house that has been certified for occupation before the intended purchase.

(3) A member shall only be permitted to utilise the member's accrued benefits only once for the purchase of a residential house under these Regulations.

(4) A member who is paid a pension by the scheme, or who has taken early retirement, or has attained retirement age shall not be eligible to utilise a portion of the member's retirement benefits to purchase a residential house.

(5) Where a member and the member's spouse are both members of the same scheme or different schemes, the trustees shall prescribe in the scheme rules the manner in which the member and member's spouse may combine their accrued benefits and utilise the total amount for the purchase of a residential house.

(6) For the purpose of determining the accrued benefits of a member who has retired before attaining retirement age, the funds applied to the purchase of a residential house under these Regulations shall—

- (a) in the case of a defined contribution scheme, be deemed to have been drawn from the member's contribution together with the earned investment income, and any balance shall be applied from the employer's contribution and employer's earned investment income thereon; and
- (b) in the case of a defined benefits scheme, as shall be determined by an actuary.

(7) Where a member already has mortgage facility from any other institution at the time of the application under regulation 13(4), that member shall not be allowed to utilise the member's accrued benefits to offset the balance on that mortgage facility.

(8) The trustees of a scheme shall cause the title of the residential house to be encumbered so as to prevent the transfer of the house to any other person unless any of the following occurs—

- (a) the member retires before attaining retirement age;
- (b) the member dies;
- (c) the member becomes incapacitated by ill health or permanent disablement to the extent that it would occasion the member's retirement before attaining retirement age; or
- (d) the member is emigrating from Kenya to another country without the intention of returning to Kenya, and approval has been granted by the Authority for the encumbrance to be removed.

[L.N. 192/2020, r. 4.]

16. Duties of trustees in relation to purchase of residential houses

The trustees of a scheme shall—

- (a) consider applications under regulation 13 and determine whether or not they comply with the provisions of the Act and these Regulations;
- (b) verify the institutions from which the purchase of the residential house is to be made in accordance with these Regulations;
- (c) ensure the terms of sale between the member and the vendor of the residential house are documented;
- (d) retain copies of titles of all purchases of residential houses under these Regulations; and

- (e) keep and maintain records of all transactions relating to the purchase of residential houses under these Regulations.

[L.N. 192/2020, r. 4.]

17. Reports

The trustees of a scheme shall submit to the Authority a report of the assignment of benefits and purchase of residential houses by members at least once in every three months from the date of the commencement of the financial year of the scheme.

[L.N. 192/2020, r. 4.]

18. Liability by trustees

Where a member utilises a portion of the member's accrued benefits for the purchase of a residential house, the trustees shall be liable to the member for the portion of the member's accrued benefits that remain unutilised.

[L.N. 192/2020, r. 4.]

19. Expenses

The member who wishes to purchase a residential house under these Regulations shall bear the transaction costs and taxes relating to the purchase.

[L.N. 192/2020, r. 4.]

20. Appeals

Any appeals against a decision of the trustees in relation to the purchase of a residential house under these Regulations shall be heard and determined in accordance with the provisions of the Act.

[L.N. 192/2020, r. 4.]

21. Approval by the Authority

The Authority may require the trustees of a scheme to submit for approval any information, rules or procedures relating to the purchase of a residential house under these Regulations.

[L.N. 192/2020, r. 4.]

22. Implementation

All schemes shall amend their scheme rules to comply with the provisions of this Part within twelve months from the date of the commencement of these Regulations.

[L.N. 192/2020, r. 4.]

**THE RETIREMENT BENEFITS (NATIONAL
SOCIAL SECURITY FUND) EXEMPTION**

[Legal Notice 85 of 2016]

IN EXERCISE of the powers conferred by section 59(a) of Retirement Benefits Act, 1997, the Cabinet Secretary for the National Treasury exempts the National Social Security Fund from compliance with the provisions of section 38(1)(c) of the Act for the purpose of investing through a prescribed institution in affordable housing for the members of the Fund.

**THE RETIREMENT BENEFITS (UMBRELLA
RETIREMENT BENEFITS SCHEMES) REGULATIONS**

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THE RETIREMENT BENEFITS (UMBRELLA RETIREMENT BENEFITS SCHEMES) REGULATIONS

[Legal Notice 55 of 2017, Legal Notice 87 of 2019, Legal Notice
193 of 2020, Legal Notice 165 of 2021, Legal Notice 74 of 2022]

PART I – PRELIMINARY

1. Citation

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

2. Interpretation

In these Regulations, unless the context otherwise requires—

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

"approved issuer" means an insurer registered under the Insurance Act (Cap. 487) or any other issuer approved in writing under the Capital Markets Act (Cap. 485A) or under any other written law;

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

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

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

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

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

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

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

"guaranteed fund" means an asset class —

- (a) issued by an approved issuer, whereby the approved issuer, guarantees the accumulated capital of the scheme fund together with the investment income

[Subsidiary]

thereof in accordance with the terms of the guaranteed fund contract entered into between the approved issuer and the scheme; or

- (b) which is referred to as the retirement benefits fund established as a statutory fund within the meaning of the provisions of the Insurance Act (Cap. 487) in which the capital of the scheme fund together with investment income thereof is guaranteed by the approved issuer in accordance with the terms of the policy of insurance issued to the scheme by the approved issuer;

"partial liquidation" means transfer of all assets and liabilities attributable to the members related to a withdrawing employer to another registered scheme, but the scheme otherwise continues to function as a normal scheme to the continuing participating employers;

"related company" in relation to a company means—

- (a) its holding company or subsidiary;
- (b) a subsidiary of its holding company;
- (c) any person who controls it whether alone or with his associates or with other associates of the related company;

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

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

"umbrella scheme" means a retirement benefits scheme established by a sponsor for the benefit of members employed by participating employers including schemes established under a written law.

[L.N. 193/2020, r. 32.]

PART II – REGISTRATION AND SPONSORSHIP OF AN UMBRELLA SCHEME

3. Application for restoration of a scheme

(1) An application for registration of an umbrella scheme shall be—

- (a) in case of an existing scheme, in Form I set out in the Schedule; and
- (b) in case of a new scheme, in Form II set out in the Schedule.

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

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

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

[L.N. 193/2020, r. 33.]

4. Registered office of a scheme

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

5. Constitution of sponsor

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

(2) The sponsor shall be—

- (a) a company;
- (b) a co-operative;
- (c) partnership;
- (d) associations;
- (e) societies; or
- (f) any other legal entity as may be appropriate:

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

[L.N. 193/2020, r. 34.]

6. Suitability of sponsor

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

- (a) the sponsor's general probity;
- (b) the sponsor's competence and soundness of judgment for the fulfilment of the responsibilities attached to marketing the umbrella scheme;
- (c) the diligence with which the sponsor is likely to fulfil the responsibilities attached to marketing the umbrella scheme;
- (d) qualifications and experience of the sponsor's top management or directors in administration and management of trusts;
- (e) the previous conduct and activities of the sponsor in business or financial matters and, in particular, to any evidence that any of the directors or top management personnel of the sponsor —
 - (i) has been convicted of the offence of fraud, or any other offence of which dishonesty is an element; or
 - (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in the provision of banking, insurance, investment or other financial services; and
- (f) any additional information as may be necessary in determining the professional suitability of a company proposing to establish or operate an umbrella scheme.

[L.N. 193/2020, r. 35.]

7. Inspection of register

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

PART III – TYPES AND MANAGEMENT OF UMBRELLA SCHEME

8. Types of umbrella schemes

An umbrella scheme may be established for, either —

- (a) employers within an industry, trade, profession, group or association, county governments; or
- (b) employers who do not have any commercial or professional relationship with each other.

[Subsidiary]

9. Scheme rules

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

- (a) the full name of the scheme, including reference to any prior change of name;
- (b) the physical address of the registered office of the scheme;
- (c) the date of commencement of the scheme;
- (d) requirements for admission to membership into the scheme and the circumstances under which membership may cease;
- (e) conditions under which and when a member may become entitled to any benefit including death benefits, the nature and extent of any such benefit, the period of guarantee for the benefits and the mode of calculating the benefit;
- (f) requirements under which an employer may remit contributions on behalf of its employees who are members of the scheme;
- (g) conditions under which an employer may cease making contributions to the scheme;
- (h) conditions under which an employer may terminate its participation in the scheme;
- (i) the appointment, term, removal from office, powers and remuneration of trustees;
- (j) the appointment, term, removal from office, powers and remuneration of manager, custodian, administrator, auditor and other service providers to the scheme;
- (k) powers of investment of scheme funds;
- (l) rate, mode and method of remitting contributions;
- (m) the vesting of contributions immediately;
- (n) conditions under which a member shall become entitled to the benefits in the scheme;
- (o) provision for a member to defer benefits in the scheme or transfer to another scheme including an occupational or individual retirement benefits scheme;
- (p) custody of the scheme fund, title documents and securities belonging to the scheme;
- (q) period upon which a member may withdraw his benefits from the scheme;
- (r) interest chargeable on late payment of withdrawal or other benefits from the scheme;
- (s) partial liquidation of the scheme where a participating employer ceases to remit member contributions or commits an act contrary to the provisions of the Act and the trust deed and rules;
- (t) the appointment of a liquidator in case of a voluntary dissolution of the scheme;
- (u) the manner in which the scheme shall be dissolved subject to the provisions of the Act and the regulations made thereunder;
- (v) the manner in which contracts and other documents binding the scheme shall be executed;
- (w) the normal retirement age;
- (x) the procedure of amending the scheme rules;
- (y) the manner in which disputes between the parties in the scheme shall be solved;
- (z) manner of receiving and accounting for the contributions made by or on behalf of each member in the scheme;

- (aa) the manner in which participating employers are kept informed on a quarterly and annual basis; and
- (bb) such other matters as may be prescribed.

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

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

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

[L.N. 193/2020, rr. 36 & 37.]

10. Amendment of scheme rules

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

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

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

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

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

11. Appointment of service providers

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

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

- (a) the computation of the fee in respect of any services;
- (b) the rights and obligations of the service providers to the trustees;
- (c) the rights and obligations of the trustees to the service providers.

(3) An authorized employee of any service provider may attend all meetings of the trustees.

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

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

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

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

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

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

12. Trustees of the scheme

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

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

- (a) five shall be nominated by participating employers from amongst members of the management committee constituted under regulation 18; and
- (b) four shall be nominated by the sponsor, of whom two shall not be employees or directors or have any business relationship with the sponsor, and be in good standing in a relevant professional body and approved by the Authority.

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

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

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

(6) A trust corporation shall not appoint an administrator, fund manager, custodian or approved issuer who is related to the trust corporation by way of ownership, directorship or employment.

[L.N. 193/2020, r. 38, L.N. 165/2021, r. 2.]

13. Duties of trustees

The duties of the trustees shall include—

- (a) administering and managing the scheme in accordance with the law and the scheme rules;
- (b) keeping all proper books and records of account with respect to income, expenditure, liabilities and assets of the scheme fund;
- (c) computing and preparing statements of payments of benefits to members;
- (d) liaising with and not limited to, the Authority, sponsor, employer, members, manager, custodian and any other professional person engaged by the scheme;
- (e) collecting, keeping and updating retirement benefits data of each member including maintenance of individual membership records;
- (f) ensuring that the agreed contributions have been remitted to the custodian or approved issuer as required by the law and the scheme rules;
- (g) communicating regularly with the members of the scheme with respect to the affairs of the scheme;
- (h) providing members with annual membership benefits statements;

- (i) keeping or causing to be kept such books, records and statements as may be necessary to give a complete record of—
 - (i) the value of contributions made by or on behalf of members of the scheme;
 - (ii) the investment transactions in respect of the scheme carried out by the custodian and permit, subject to notice, the sponsor or employer or any duly authorized agent, to inspect within the premises of the scheme such books, records and statements at any time during business hours;
- (j) submitting to the sponsor and the participating employer scheme within a period of three months from the end of the financial year, the audited accounts of the scheme;
- (k) notifying the sponsor and the employer of the particulars of the manager and custodian of the scheme as may be sought by any or both which particulars shall include —
 - (i) the full name of the manager and custodian;
 - (ii) the physical and postal address of the registered office of the manager and custodian;
 - (iii) the dates of the first and subsequent financial years of the manager and custodian;
 - (iv) the contents of the agreement limited to duties owed by the trustees to the service provider, duties of the service provider to the scheme and any other fixed timelines; and
 - (v) any other particulars as the sponsor or the participating employer may request from the trustees.
- (l) submitting to the sponsor and participating employers at least once in every three months from the date of commencement of the financial year of the scheme —
 - (i) the valuation of the scheme fund representing all the assets of the scheme, and separately valuation together with the investment return thereof of contributions made by or on behalf of members of the scheme who are employees of each participating employer;
 - (ii) reports reviewing the investment activity and performance of the investment portfolios comprising the scheme fund since the last report date and containing the manager's proposals for the investment of the scheme fund; and
 - (iii) a record of all investment transactions of the scheme during the previous period.
- (m) issuing proper instructions as provided for in the agreement to the custodian and manager;
- (n) furnishing the sponsor and participating employers with a copy of the most recent audited financial statements of the manager and custodian and with such other information as may be sought by the sponsor or participating employers;
- (o) exercising the same standard of care of a prudent professional in the respective business for hire; and
- (p) ensuring that documents intended to bind the scheme are professionally prepared.

[L.N. 193/2020, r. 39.]

14. Procedure for removal and meetings of trustees

The scheme rules shall make provision for—

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- (a) the procedure of and grounds for the removal from office of trustees;
- (b) procedure for convening meetings—

Provided that—

- (i) the trustees shall meet at least two times in every calendar year;
 - (ii) not more than six months shall elapse between the date of one meeting and the next meeting; and
 - (iii) an administrator of a scheme or an authorised external administrator of a scheme may attend meetings of the trustees;
- (c) remuneration of the trustees.

[L.N. 193/2020, r. 40.]

15. Criteria for suitability of trustee

In determining whether a person is suitable to be appointed a trustee of a scheme, the appointing authority shall have regard to the qualities set out in section 22A of the Act.

16. Appointment of Trust Corporation

Despite the provisions of these Regulations and scheme rules, the sponsor may by deed appoint a Trust Corporation to be a trustee or sole trustee on such terms and conditions as may be agreed in writing between such corporation and the sponsor or in default of such agreement in accordance with the Trust Corporation's published terms and conditions as to acceptance of trusts at the date of such appointment.

17. Engagement in professional services

A trustee who is an advocate, accountant or person engaged in any other profession or business shall not be engaged to provide professional services done by the trustee or trustee's firm in connection to the scheme.

[L.N. 193/2020, r. 41.]

18. Management committees

(1) Each participating employer together with its employees who are members of the scheme shall nominate not more than three representatives to form a management committee.

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

(3) The scheme rules shall provide for —

- (a) the procedure of and grounds for the removal from office of management committee members; and
- (b) the procedure for convening meetings.

[L.N. 193/2020, r. 42.]

19. Effect of notice to transfer benefits

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

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

20. No penalty clauses in agreements

An agreement between an employer and the scheme, custodian, administrator or manager shall not include a clause whose purpose and intent is to penalize a scheme

financially or otherwise on account solely of termination whenever such scheme opts to terminate the said agreement.

21. Suitability of scheme

In determining whether to participate in an umbrella scheme, an employer shall consider, among other things, whether the scheme —

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

[L.N. 193/2020, r. 43.]

22. Record of contributions and transmission

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

(1A) A scheme shall allow for additional voluntary contributions by members for the purpose of funding a medical fund to be accessed after retirement:

Provided that the funds in the medical fund shall be segregated and invested in accordance with the investment policy of the fund for this purpose.

(1B) The scheme rules shall provide that a member may transfer a portion of the member's benefits to a medical cover provider where the member has been unable to build up a sufficient post-retirement medical fund from additional contributions.

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

[L.N. 87/2019, r. 2.]

23. Custody of scheme funds and documents of title

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

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

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

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

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

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

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

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

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

(9) Scheme funds shall at all times be invested by the manager of the scheme on behalf of the trustees.

(10) An employer shall, in the deed of adherence, state the rate of contributions by the employer and the employees who are members of the scheme:

Provided that the rate of the contributions shall not be less than what is specified in the scheme rules.

[L.N. 193/2020, r. 44.]

24. Date for payment of contributions

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

25. Formula and schedule of contributions

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

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

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

26. Restriction of eligibility for membership

No scheme rules shall—

- (a) restrict eligibility to membership of a scheme on the basis of gender, race, grade, cadre, age, differences in the employees' salary, wages, rank, seniority at the work place, association, religion or in any manner which is discriminatory;
- (b) contain any provision which would render admission to membership subject to any discretionary power;
- (c) provide for the qualifying period for membership to the scheme to be other than from the date of employment unless approved by the Authority:

Provided that—

- (i) where an employee is moving from his previous employer to join a new employer he may transfer his membership from the previous scheme which the former employer sponsored, to the scheme sponsored by the new employer and he shall become a member of the scheme on completion of transfer proceedings; and
- (ii) the transfer value of the accrued rights in respect of a member transferring his membership from one scheme to another shall be transferred to the scheme to which he is transferring his membership

within a period of thirty days from the date of service of application for such transfer on the scheme from which he is transferring a copy of which shall be served on the Authority.

[L.N. 193/2020, r. 45.]

27. Withdrawal of membership or benefits

A member of the scheme shall not be permitted to withdraw from membership or withdraw his benefits from the scheme whilst he remains an employee of the employer unless he—

- (a) *deleted by L.N. 165/2021, r. 3.*
- (b) attains the retirement age provided for in the scheme rules; or
- (c) has need related to personal aptitude for which the trustees have given approval and obtained prior written consent of the Authority.

[L.N. 165/2021, r. 3.]

28. Treatment of retirement benefits before attaining early retirement age

(1) Where a member leaves employment but before attaining the specified early retirement age—

- (a) that member shall, upon request in writing to the trustees, opt for payment of not more than fifty per cent of his total accrued benefits and the investment income that has accrued in respect of those contributions;
- (b) a member shall defer his benefits until he attains the normal retirement age;
- (c) a member may elect in writing to transfer his benefits to another scheme.

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

(3) A member may opt for payment to him of the total amount of vested accrued benefits before attaining the retirement age where —

- (a) the member retires on grounds of ill-health or subsequently during deferment, becomes incapacitated on grounds of ill-health which if the member was in employment, would occasion the member's retirement;
- (b) the member is emigrating from Kenya to another country without any present intention of returning to reside in Kenya and has obtained the approval of the trustees, which shall be copied to the Authority, to withdraw his benefits.

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

[L.N. 87/2019, r. 3, L.N. 193/2020, r. 46, L.N. 165/2021, r. 4.]

29. Payments of benefits to a nominated beneficiary and other beneficiaries

(1) Upon the death of a member the benefits payable from the scheme shall be paid to the nominated beneficiary and if the deceased member had not named a beneficiary the trustees shall exercise their discretion in the distribution of the benefits to the dependants of the deceased member:

Provided that the trustees may refuse to pay the nominated beneficiary giving reasons thereof, in writing.

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

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- (a) the amount of retirement benefits payable to a nominated beneficiary;
- (b) the amount of retirement benefits payable to the children of a member;
- (c) the apportionment of a lump-sum benefit amongst all dependants;
- (d) the apportionment of a retirement benefit amongst surviving spouses and children; or
- (e) the reinstatement of a surviving spouse's retirement benefit that had ceased on remarriage:

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

30. Commutation of retirement benefits

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

Provided that—

- (a) no more than one quarter of the retirement benefits may be commuted in a scheme where members do not make any contributions and not more than one third of the retirement benefits may be commuted in a scheme where members make contributions; and
- (b) benefits arising from additional voluntary contributions may be fully commuted.

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

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

- (a) to a scheme which makes a lump-sum payment of accrued benefits to a member upon attaining the specified retirement age; or
- (b) to benefits payable to a member where the portion of retirement benefits remaining after commutation the periodic pension shall become trivial pension.

(4) For the purposes of paragraph (3)(c), "trivial pension" means the amount determined from time to time by the Authority, which shall not be less than fifty percent of the average of the minimum wage prescribed by the Cabinet Secretary for the time being responsible for matters relating to labour in the year in which the benefit becomes due.

(5) Where the scheme rules provide for the purchase of an annuity and income drawdown for members at retirement age, the members shall have the option of selecting the annuity and/or income draw down provider from whom to purchase the annuity and/or income draw down.

[L.N. 193/2020, r. 47.]

31. Non-assignment of benefits

No benefits or contributions accruing or payable under the scheme shall be capable of assignment.

32. Cessation of participation by an employer

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

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

[L.N. 193/2020, r. 48.]

33. Schemes to keep books and accounts

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

- (a) any changes to the benefits and contributions structure;
- (b) audited accounts;
- (ba) the net rate of return credited to the member's account;
- (c) investments;
- (d) remuneration of trustees;
- (e) statutory compliance; and
- (f) questions from members.

[L.N. 74/2022, r. 2.]

PART IV – FINANCIAL PROVISIONS AND STATEMENTS

34. Schemes to keep books and accounts

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

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

35. Appointment of auditor

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

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

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

36. Submission of audited accounts and format of scheme accounts

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

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

(3) The trustees shall within thirty days from the end of each financial year—

- (a) conspicuously display in the registered office of the scheme a notice that the audited accounts together with the trustees' and investments reports are available for inspection; and
- (b) send to the sponsor and employer a copy of the audited accounts and to each member a summary of the audited accounts of the scheme together with the member's benefit statement by appropriate means.

(4) The auditor shall be required to certify on an annual basis the adequacy of the systems and controls operated by the fund, and in the case of the administrator, in respect of

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the fund administration business carried out by it, and determine whether they are adequate for purposes of compliance with the provisions of the Act.

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

[L.N. 193/2020, r. 49, L.N. 74/2022, r. 3.]

37. Review of scheme by actuary publication of actuarial report and supervision by the Authority

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

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

- (a) all benefits, other than those fully secured by an approved issuer, being limited to an amount, or to the periodic retirement benefit which can be provided by an amount, equal to an accumulation of actual contributions, adjusted only in accordance with the direct investment return, both in terms of income and capital appreciation or depreciation;
- (b) no periodic retirement benefits have been paid by the scheme, unless such benefits are fully secured by an approved issuer;
- (c) the scheme submits to the Authority, at least once in every three years, a certificate by an actuary prepared in accordance with the approved form.

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

(4) Notwithstanding anything contained in these Regulations—

- (a) the Authority may by notice require a scheme to be valued in a prescribed manner at the cost of such scheme by an actuary any time in respect of any matter the Authority may deem appropriate;
- (b) a trustee shall cause an actuarial valuation or actuarial review to be carried out in the event of major benefits improvements, group transfers of members, significant changes in the membership size, termination, amalgamations or other special circumstances that affect its financial position.

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

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

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

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

38. Distribution of surplus of scheme fund

The surplus of a scheme fund shall not be directly or indirectly refunded to the sponsor of the scheme:

Provided that—

- (a) a contribution holiday for both the employer and the member as shall be determined by an actuary shall not be construed to mean a refund of the

surplus of a scheme fund, and shall be limited to the surplus above 10% of the scheme's accrued liability;

- (b) if the total accrued liabilities are being transferred to a different scheme, any surplus shall be allocated equally between the members and the employer;
- (c) the portion of the surplus due to the employer may be used as a contribution holiday by the sponsor in the new scheme; and
- (d) subject to the surplus being sufficient for the purpose, where partial liability is being transferred to a scheme, a portion of surplus proportionate to the value of the liability may be transferred.

[L.N. 193/2020, r. 50.]

39. Accounting procedure for investments

(1) The statement of income and expenditure of the scheme shall be treated in accordance with international financial reporting standards.

(2) In preparing a statement of income and expenditure, the trustees may, at their discretion, create and maintain a reserve fund with such sum as they shall in their discretion so determine:

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

40. Valuation of assets

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

- (a) the value of land and buildings shall not exceed the value determined on the basis of a valuation by a registered valuer who is a member of the Institute of Surveyors of Kenya once in every three years or at such shorter interval as the Authority may otherwise permit in writing;
- (b) where the market value of any security, share, or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable, having regard to the financial position of the issuing concern, the dividend paid by it during the preceding five years and other relevant factors; and
- (c) office machinery, furniture, motor vehicles and computer equipment shall be valued in accordance with the International Financial Reporting Standards.

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

41. Repair and maintenance of investments

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

42. Minimum disclosure requirements and allowable scheme expenses

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

- (a) un-remitted contributions;
- (b) fees and expenses paid directly or indirectly to, or on behalf of the trustees appropriately classified;
- (c) fees and expenses paid by any other party, including the sponsor of the scheme, on behalf of the scheme;
- (d) returns on investment as per each category of investment;

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- (da) the net rate of return credited to the member's account;
- (e) related company transactions;
- (f) ownership of more than ten per centum equity in any one company or related companies; and
- (g) the penalty, if any, payable by the sponsor for failure to remit contributions or accrued interest on unpaid benefits and any other matter as may be prescribed by the Authority.

(2) For the purpose of these Regulations, an expense is allowable if it is incurred by the trustees in the—

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

[L.N. 74/2022, r. 4.]

43. Protection against financial loss

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

PART V – INVESTMENT GUIDELINES

44. Investment policy

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

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

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

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

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

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

45. Permitted asset classes of investment

(1) Notwithstanding the provisions herein, a scheme shall invest only in the asset classes specified in column 2 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 (LN No. 124 of 2000) to the extent to which the market value of the investment in the class expressed as a percentage of the total assets of the scheme does not exceed the percentage listed in column 3 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 in respect of such asset—

Provided that—

- (a) a scheme may exceed the maximum percentage indicated in column 3 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 in the event of an increase in the market price of assets,

bonus issues or transfer of investment from one class of assets to another but any such excess shall not continue for a period of more than ninety days;

- (b) a scheme may exceed the maximum percentage indicated in column 3 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 in the event of revaluation of real property but any such excess shall be reported immediately to the Authority together with an action plan as to how the trustees intend to return the scheme into compliance and the Authority shall within thirty days of receipt of the action plan advise the scheme in writing if the plan is acceptable or require the scheme to implement the plan subject to such terms and conditions as the Authority may deem appropriate;
- (c) the maximum investment in the quoted equity of any one company shall be fifteen per centum of the aggregate market value of the total assets of the scheme;
- (d) the maximum investment in the unquoted equity, commercial paper loan stock and debenture issued by a company controlled by or a related company of the sponsor shall be five per centum of the aggregate market value of the total assets of the scheme; and
- (e) investments in the category "any other asset" under item 14 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 shall be subject to the prior written approval of the Authority, which may be given or denied by the Authority within thirty days of application by a scheme.

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

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

PART VI – LEVY

46. Retirement benefits levy

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

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

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

Provided that—

- (a) the value of the scheme fund to be used in determining the levy shall be the total fund value indicated in the latest audited accounts of the scheme;
- (b) notwithstanding the provisions of this regulation, the minimum levy payable to the Authority shall be two thousand shillings per annum and a maximum of five million shillings.

PART VII – TRANSFERS AND AMALGAMATION OF SCHEMES

47. Transfers from scheme

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

[Subsidiary]

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

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

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

48. Amalgamation of schemes

(1) An amalgamation of schemes shall not take place unless the following conditions have been satisfied and approved by the Authority in writing—

- (a) the arrangements and particulars for the proposed amalgamation, including copies of current actuarial reports, in respect of the schemes and other statements taken into account for the purposes of the amalgamation, have been submitted to and approved by the Authority;
- (b) the Authority has been furnished with such additional particulars, or such specific reports by an actuary or auditor, as it may deem necessary for the purposes of this regulation;
- (c) the Authority is satisfied that the arrangements referred to in subparagraph (a) accords full recognition to the reasonable expectations of the members of the schemes concerned, and that the proposed transaction would not render any scheme which is a party thereto and which will continue to exist if the proposed transaction when completed is unable to—
 - (i) meet the requirements of the Act and these regulations;
 - (ii) remain in a sound financial condition; or
 - (iii) in the case of a scheme which is not in a sound financial condition, to attain a sound condition within the period of time deemed by the Authority to be satisfactory;
- (d) the Authority has been furnished with such evidence as it may require to show that the provisions of the scheme rules of the concerned schemes in so far as they are applicable, have been carried out or that adequate arrangements have been made to carry out such provisions at such intervals as may be required by the concerned schemes; and
- (e) the approval referred to herein shall be given within thirty days of receipt of all the information required under paragraph (d).

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

- (a) diminish the retirement benefits of the members of such scheme; and
- (b) reduce the accrued benefits of its members.

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

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

[L.N. 193/2020, r. 51.]

PART VIII – TRANSITION PROVISION

49. Existing schemes to amend scheme rules

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

[L.N. 193/2020, r. 52.]

SCHEDULE

FORMS

[L.N. 193/2020.]

FORM I
RETIREMENT BENEFIT AUTHORITY REGISTRATION OF EXISTING SCHEMES

APPLICATION FOR THE PURPOSE OF REGISTRATION UNDER s. 23(2) OF THE RETIREMENT BENEFITS ACT (Cap. 197)

(read attached notes before completing the form)

PART I- DETAILS OF THE SCHEME

- A.
 - (i) Name of the scheme.....
 - (ii) Income Tax Pin Number.....
- B. Any other names under which the scheme has been known previously:

.....
- C. Any other names under which the scheme has been known together with the names of the schemes which have in whole or part been merged with or replaced by the scheme in the past five years:.....
- D. Provide the following particulars regarding the scheme: Is it a provident or pension fund? Yes/ No
 - (i) Is it a provident or pension fund? Yes/ No
 - (ii) Is it employee based? Yes / No
 - (iii) Is the scheme contributory on non-contributory
 - (iv) If other specify
 - (v) Current status of the scheme?
 - 1. Is it an open scheme? Yes/No
 - 2. Is it a paid up scheme? Yes/No
 - 3. Is it a closed scheme? Yes/No
 - 4. If other, specify
 - (vi) State whether the scheme is a defined contribution or a defined benefit scheme
 - (vii) If other, specify

[Subsidiary]

- E. Give the following information as at the end of the last financial year from20..... to20.....
- (i) State number of members of the scheme.
 - (ii) State the number of members of the scheme who were active members in this service
 - (iii) State the numbers in whom the scheme benefits have been fully vested
 - (iv) Scheme vesting formula
 - (v) State the number of members who are drawing pension, if any
 - (vi) State the numbers of members whose retirement benefits are deferred
 - (vii) State the number of the total permanent workforce of the sponsoring employers.
 - (viii) Is the membership of the scheme compulsory or voluntary?
 - (ix) Do those permanent employees of the sponsoring employers who are not members of the scheme belong to any scheme? Yes/ No
If Yes, give details of the scheme

- F. Give the following information as at the end of the last financial year from 20..... to 20
- (i) Where applicable, state the contribution formula for the employee and the employer, and in the case of an individual based scheme, the individual contribution formula
Employee
Employer
Individual contribution
 - (ii) State the amount contributed:
Employee's contribution:
Kshs.
Employer's contribution
Kshs.
 - (iii) State the total benefits as follows
Lump sum payments:
Kshs
Commutated payments
Kshs
Death benefits payments:
Kshs

Disability benefits payments:
 Kshs.
 Deferred benefits:
 Kshs.
 Others
 specify.....

- (iv) State the total value of the scheme fund.
 Kshs.
- (v) State the basis of valuation
 of the scheme fund e.g.
 Market value, Historical cost,
 etc.

G. (i) provide the following particulars of the schemes:
 Country
 Date of establishment.....
 Registered office of the scheme:

Building
 Road
 Postal
 address
 Telephone.....
 Telex
 Fax/email

- (ii) Is the scheme established under an
 irrevocable trust? Yes /No. If No, state
 the basis of the establishment

- (iii) Is the scheme approved under the
 Income Tax (Retirement Benefits
 Scheme)Rules? Yes/ No
 If Yes, state the income Tax Reference
 Number

H Provide details for the following:

- (i) Members of the Board of Trustees
 (Appendix A)
- (ii) Fund Managers, if any (Appendix B)
- (iii) Auditors, Legal Advisors, Actuary,
 Managers, Custodian and
 Administrators (Appendix C)

(please complete the tables in the above mentioned appendices)

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

- (i) Who administers the scheme?

- (ii) Who makes decisions on the investment
 of the scheme funds?

[Subsidiary]

- (iii) Are the funds separated from those of the sponsors? Explain
.....
.....
- (iv) Are the scheme funds separated from those of the fund manager? Yes/ No
- (v) Provide the list of investment portfolio as per the latest audited or management accounts for the period from20 to 20..... showing the cost .market and book values and the respective percentages in relation to the total fund of the scheme as in appendices D1 and D2 annexed
NOTE:
1. In case the assets of the scheme are managed by an Insurance Company/ Bank/ Asset Manager on a pooled basis, such
2. The said manager in completing appendix D2 to provide the investments of the pool and submit on a separate list all the schemes which form the pool together with their respective shares of the pooled investment
- (vi) Where applicable, state the ratio of fund assets in relation of actuarial liabilities as per the latest actuarial report
.....
.....
.....

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

K. Custodian of scheme assets

- (i) Is the custodian of the scheme assets registered under the Capital Markets Authority Act? yes/ No
- (ii) If the custodian is registered by any other authority provide the following:
Full
Name
Physical
Address
Building
Road
Town

- Postal Address
Telephone
Fax
- (iii) State in whose name the title documents for the assets of the scheme are registered?
.....
.....
- (iv) Give full details of the person who keeps scheme,s assets and documents:
Full Name.....
Physical Address
Building
Road
Town
Postal Address
Telephone
Fax

PART II-PARTICULARS OF SPONSOR(S)

(In case of more than one Sponsor, provide the following particulars for each on aseparate attachment)

- A. Name of Sponsors
.....
.....
- B. Contact information of sponsors:
Full Name:
Physical Address:
Building :
Road
Town
Postal Address
Telephone Fax.....
- C. Tax information of sponsor:
Income Tax P.I.N Number
Income Tax Reference Number
- D. Number of Members in service of the sponsor

PART III - PARTICULARS OF EMPLOYERS

(Provide the following; Particulars for each on a separate attachment)

- A. Name of sponsor:
.....
.....
.....

[Subsidiary]

- B. If a company, certificate of incorporation number:
- C. If not a company state the number of the certification of registered under the Business Names Act:
- D. Contact information:
 Full Name
 Physical Address
 Building
 Road
 Town
 Postal Address
 Telephone Fax
- E. Tax information
 Income Tax PIN Number
 Income Tax Reference Number

PART IV - ATTACHMENTS

Please attach copies of the following:

- (i) Trust deed and rules
- (ii) Latest actuarial report
- (iii) Latest audited or management accounts
- (iv) An actuarial certificate certifying the design and financial viability of the scheme(if applicable)
- (v) For insured schemes, a copy of the insurance policy document and a copy of the latest fund value statement and revenue account
- (vi) For schemes with funds invested by an asset manager firm, a copy of the latest scheme fund investment report and revenue account
- (vii) Fund management agreements (*where applicable*)

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

Signed on this day of

Full Name:

Designation:

Chairperson/Secretary

Authorized

signature of Applicant

APENDIX A

PARTICULARS OF THE BOARD OF TRUSTEES

Trustees	Citizenship	Residential Address	Occupation	Date of Appointment	Whom do the Trustees
----------	-------------	---------------------	------------	---------------------	----------------------

[Subsidiary]

**represent in
the board**

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

- 1
- 2.....
- 3.....

APPENDIX B

PARTICULARS OF SENIOR MANAGEMENT OF THE FUND MANAGER*

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

Name of the Scheme

Full Name	Designation	Nationality	Age	Postal Address	Date of Appointment	Experience (No. of years)	Academic and professional experience
------------------	--------------------	--------------------	------------	-----------------------	----------------------------	----------------------------------	---

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

.....
*(The Chief Executive and his/her core team)

APPENDIX C

Name of firm	Income Tax P. JN Number	Address, Telephone No. or Email	Professional body to which partners are members	Date of appointment
---------------------	--------------------------------	--	--	----------------------------

- Actuaries
- Administrators
- Auditors
- Custodians
- Legal Advisors

APPENDIX D 1

LIST OF INVESTMENT PORTFOLIO

Income Tax P.I.N Number.....

INVESTMENTS IN

	KSHS Original % cost	Original % cost	Original % cost	Original % cost
(a) Real Estate:*				
(i) Land (underdeveloped)				
(ii) Residential				
(iii) Commercial				
(iv) Agricultural				
(v) Any other				

[Subsidiary]

(b)
Quoted
Equity*

(i)
Agricultural
(ii)
Commercial
and
allied
(iii)
Financial
and
Investment

(iv)
Industrial
and
allied

(v)
Others

(c)
Unquoted
Equity*

.....
(i)
Agricultural

.....
(ii)
Commercial
and
allied

.....
(iii)
Financial
and
Allied

.....
(iv)
Industrial
and
allied

.....
(d)
Government
paper

(i)
Bonds

(ii) Stock

(iii)
Treasury
Bills

(iv) Any other (specify)

.....

(e) Cash and Deposits in Banks (state the name(s) of the Bank(s)

.....

(f) Offshore investments

.....

(g) Listed REITS

(h) Others

(as applies per investment guidelines)

.....

TOTAL 100 100 100 100

**Provide on a separate paper a list of land reference title numbers in which scheme funds are invested*

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

NOTES FOR APPLICATION FOR REGISTRATION

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

- (1) Actuarial liabilities: A debt or an obligation of a retirement benefits scheme arrived at using actuarial principles and assumptions.
- (2) Administrator: A person charged with the responsibility of day to day management of a scheme such as keeping records, paying benefits to and providing members with information relating to their benefits.
- (3) Banks: Bank of financial institution licensed under the Banking Act and registered as custodian by the Authority in which schemes accounts are operated or held.
- (4) Commuted payment: Whole or part of a pension entitlement paid to a member on retirement subject to scheme rules and/or Income Tax regulations.
- (5) Contribution formula: The rate(s) of contribution of the fund by members and/or employers.

[Subsidiary]

- (6) Contributory scheme: A retirement benefit scheme in which both the employer and the members contribute to the fund.
- (7) Non-contributory scheme: A retirement benefit scheme in which only the employers contributes to the fund.
- (8) Custodian: A person who has custody of scheme assets including cash and title documents, as an agent of the scheme.
- (9) Defined Benefit Scheme: A scheme in which benefits to be provided or paid are specific based on a specified criterion such as service, earnings e.t.c.
- (10) Defined Contribution (money purchase) scheme: A scheme which specified the contributions to be made whether by employer and or employee. The accumulated contributions and interest earned determine the value of the benefit.
- (11) Financial year: Financial year of the scheme.
- (12) Fund manager: A person charged with the responsibility of investing scheme funds.
- (13) Lump sum: Full and final payment of retirement benefit upon cessation of employment on attaining the normal retirement age.
- (14) Open scheme: A running scheme which is open to new members to join.
- (15) Paid up scheme: A scheme where contributions to the scheme have ceased e.g. due to winding up.
- (16) Closed scheme: A scheme which is closed to new members but which otherwise function as a normal scheme for its continuing members.
- (17) Scheme: Any scheme or arrangement (other than a contract for life assurance) whether established by a written law for the time being in force or by any other instrument, under which persons are entitled to benefits in the form of payments, determined by age, length of service, amount of earnings or otherwise and payable primarily upon the retirement, or upon death, termination of service, or upon the occurrence of such other event as may be specified in such written law or other instrument.
- (18) Vested benefit: Any accrued benefit to which a member would be immediately entitled to on withdrawal from service of the sponsor from the scheme or at retirement.
- (19) Vesting formula: The method of determining the benefits to be vested.

**person includes a body corporate or a company.*

THE RETIREMENT BENEFITS (GOOD GOVERNANCE PRACTICES) GUIDELINES**ARRANGEMENT OF GUIDELINES****PART I – PRELIMINARY***Guideline*

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2. Interpretation
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4. Application and scope of guidelines
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-

THE RETIREMENT BENEFITS (GOOD GOVERNANCE PRACTICES) GUIDELINES

[Legal Notice 193 of 2018]

PART I – PRELIMINARY

1. Citation

These guidelines may be cited as the Retirement Benefits (Good Governance Practices in the Management of Retirement Benefits Schemes) Guidelines.

2. Interpretation

In these guidelines, unless the context otherwise requires—

"actuary" has the meaning assigned to it in section 2 of the Act;

"administrator" means a person appointed by trustees of a scheme under such terms and conditions as may be specified by the trustees;

"beneficiary" means a person, other than the member of the scheme, who is entitled to receive or is receiving a benefit under a retirement benefits scheme;

"corporated trustee" means a trust corporation;

"custodian" has the meaning assigned to it in section 2 of the Act;

"independent trustee" means a trustee who has been nominated by the sponsor and who does not have a material or pecuniary relationship with the scheme;

"insider information" means information that comes into the trustees' or service providers' possession because of their role in the management of the management of the scheme which may be used to the detriment of the scheme;

"key person" means a person who has authority to plan and control the business operations of a scheme and whose absence would materially affect the performance of the scheme;

"manager" has the meaning assigned to it in section 2 of the Act;

"member" means a member of a scheme including a person entitled to receive or is receiving benefits under a scheme;

"public" includes persons who are not sponsors or members of schemes, service providers or any person whose interests are not represented in the scheme;

"related company" has the meaning assigned to it in section 3 of the Act;

"retirement benefits scheme" has the meaning assigned to it in section 2 of the Act;

"scheme" has the meaning assigned to it in section 2 of the Act;

"scheme rules" means the rules specifically governing the constitution and administration of a particular scheme;

"service provider" means a person who has entered into an agreement with the trustees of a scheme to provide services required under the Act to the scheme and includes a company registered under the Companies Act (Cap. 486) custodians, managers and administrators;

"sponsor" means a person who establishes a scheme;

"trustee" means a trustee of a scheme fund and includes a trust corporation;

"trust corporation" has the meaning assigned to it in section 2 of the Act; and

[Subsidiary]

"unusual occurrence" means any act or outcome that is considered to be in contravention of any written law and which may jeopardise the rights of members or sponsors of a scheme.

3. Purpose of the guidelines

(1) The purpose of these guidelines shall be—

- (a) to enable sponsors, members, trustees and service providers to implement and promote proper standards of conduct and sound governance practices; and
- (b) to ensure that sponsors, members, trustees and service providers exercise their fiduciary duties effectively and diligently.

(2) These guidelines shall not restrict or supersede the proper judgment of sponsors, members, trustees or service providers in conducting the day to day affairs of the scheme.

4. Application and scope of guidelines

(1) These guidelines shall apply to all schemes regulated by the Authority in respect of the duties, responsibilities and expected behaviour of sponsors, members, trustees and service providers in the conduct of the affairs of the scheme.

(2) Unless otherwise provided in these guidelines, these guidelines shall apply in respect of individual trustees and individual directors of corporate trustees.

5. Responsibility

(1) The trustees of a scheme shall be responsible for formulating and documenting the policies and procedures of the scheme.

(2) The objectives of these guidelines are to—

- (a) provide a framework to facilitate schemes to establish and maintain minimum standards of best practices in the governance of schemes;
- (b) enable and equip sponsors, trustees and service providers to better perform their functions; and
- (c) provide governance criteria for evaluating the performance of trustees and service providers.

6. Compliance with guidelines

(1) Trustees, administrators and trust secretaries shall be responsible for ensuring compliance with these guidelines and shall report to members in the scheme's audited financial statements on the scheme governance disclosure as provided in these guidelines.

(2) The Authority shall regularly comprehensively evaluate schemes' governance and assess the implementation of these guidelines by schemes.

(3) Where a scheme fails to comply with any provision of these guidelines, the trustees of the scheme shall submit a remedial action plan if the Authority so directs which shall state the measures the trustees shall take to comply with these guidelines.

7. Proportionality

(1) These guidelines shall not be prescriptive about specific methods that trustees shall be required to employ in order to comply with these guidelines.

(2) The Authority shall use a "Disclose, Apply or Explain" approach to ensure compliance with these guidelines.

8. Limitations

These guidelines shall not contravene the provisions of the Act or any other written law and in the case of any conflict between these guidelines and the Act or any other written law, the Act or that other written law shall prevail.

9. Principles of these guidelines

These guidelines are based on, and shall be applied in accordance with, the following principles—

- (a) the general principles of corporate governance;
- (b) the voluntary commencement of schemes by sponsors;
- (c) the fiduciary responsibility of trustees;
- (d) equity in the treatment of members;
- (e) non-discrimination of members on any ground including age, race, nationality, ethnicity, gender, staff rank, disability, religion or political affiliation in the management of the scheme;
- (f) participation in the governance of a scheme by sponsors and members in accordance with the Act or any other written law; and
- (g) the prudent management of scheme expenses.

PART II – CODE OF CONDUCT FOR SCHEMES

10. Trustees to establish code of conduct

Trustees of a scheme shall establish a code of conduct of the scheme that shall set the values and ethical standards, corporate governance values and standards of integrity to be applied in the management of the scheme.

11. Scheme values and code of conduct

(1) Trustees shall—

- (a) implement the scheme's ethics policies and code of conduct, and oversee the recruitment, remuneration and discipline of the staff of the scheme;
- (b) oversee the whistleblowing and independent assessment policies of the scheme;
- (c) collectively and individually, at all times place the interests of members and their beneficiaries before the trustees' interests by—
 - (i) acting honestly;
 - (ii) not using insider information;
 - (iii) exercising the highest standard of care and diligence in the discharge of their functions that a reasonable person in a similar position would exercise in the circumstances; and
 - (iv) performing their duties with the required degree of skill;
- (d) recognise, avoid and report conflicts of interest, and deal at arm's length in any transaction that relates to the scheme;
- (e) protect scheme property including information, products, services and assets;
- (f) properly manage personal finances and avoid pecuniary embarrassment;
- (g) treat fairly and respectfully members, staff, service providers and other stakeholders;
- (h) ensure that the scheme does not engage in improper or unlawful activity including money laundering and corruption; and
- (i) communicate with all relevant stakeholders in respect of the scheme values, policies and procedures.

(2) Each trustee of a scheme shall sign a copy of the scheme's code of conduct as a commitment to principles established by this guideline.

[Subsidiary]

12. Compliance with written laws

(1) Trustees of a scheme shall have an understanding of, and ensure that the scheme complies with, the Constitution, the Act and any other written laws governing retirement benefits schemes.

(2) Trustees shall obtain professional advice and in respect of the affairs of the scheme.

PART III – MEMBER REPRESENTATION AND PARTICIPATION

13. Members' rights of representation and participation

(1) Trustees of a scheme shall ensure effective member representation and participation in the governance of the scheme in accordance with the Act and any other relevant written law.

(2) Members shall participate in the governance of the scheme on the basis of "one member, one vote" rule notwithstanding the size of the members' contributions in the scheme.

(3) The following shall apply in respect of representation—

- (a) members shall be entitled to representation in the board, but not in a trust corporation, in the proportions stipulated in the Act or regulations thereunder, any other relevant written law and the scheme rules;
- (b) members' representation shall be by election of qualified persons in accordance with the scheme rules;
- (c) members offering themselves as candidates for election under paragraph (b) shall be required to meet the conditions set out in these regulations;
- (d) the scheme rules shall provide for the qualification of members' representatives to be elected, the procedure of electing members' representatives, the procedure for removing trustees from office and the grounds for the removal of trustees from office;
- (e) the scheme rules shall ensure that the board of trustees possesses a mix of skills and competencies among the trustees, and the succession process in the board of trustees.

14. Annual general meeting

(1) Trustees shall convene an annual general meeting by issuing a reasonable notice of the meeting to all members at which the members shall be given reasonable opportunity to interrogate the scheme's affairs.

(2) The notice of the annual general meeting shall be accompanied by a written agenda for the meeting and relevant documentation including a summary of the audited financial statements of the scheme.

(3) The agenda of an annual general meeting of a scheme shall comply with the Act and the regulations thereunder and shall be provided to members at least fourteen days before the date of the annual general meeting.

(4) Where voting is required at an annual general meeting, it shall be conducted in accordance with the scheme rules.

(5) The trustees shall ensure that the minutes of the annual general meeting are available at the scheme office for members' review as soon as possible after the meeting but in any case not more than three months after the date of the meeting.

15. Members' days

(1) Trustees may organise members' days in such frequency as may be required as part of the good governance practices of the schemes.

(2) Trustees may use members' days to educate members on their rights, obligations, benefits calculation and financial management.

(3) Trustees shall determine the most appropriate and cost-effective means of conducting member education.

16. Retirement planning seminars

(1) Trustees and administrators shall ensure that members are prepared adequately to cope with the changes associated with retirement.

(2) Trustees and administrators may arrange retirement planning seminars for members to address the financial, psychological and health issues encountered in retirement.

17. Other members' rights

Other members' rights include—

- (a) the right to share in the net returns of the scheme including the right to share in the surplus of a defined benefits scheme in accordance with the Act or any other relevant written law;
- (b) the right to enjoy all the services offered by the scheme including collateral for mortgage facilities and participation in a post-retirement medical scheme where approved;
- (c) the right to nominate beneficiaries; and
- (d) the right to report any unusual occurrences in respect of the scheme to the trustees or the Authority.

PART IV – STRUCTURE, ROLES AND PROCESSES OF BOARDS OF TRUSTEES

18. Part not applicable

This part shall not apply to corporate trustees or trust corporations.

19. Structure of the board of trustees

(1) The sponsor and the trustees of a scheme shall ensure that the board of trustees is properly constituted in accordance with the Act and the regulations thereunder.

(2) Notwithstanding the provisions of paragraph (1), the composition of the board of trustees shall consider the following things—

- (a) the size of the board of trustees shall be as provided in the Act, any other relevant written laws and the scheme rules based on the design and size of the scheme;
- (b) the scheme sponsor may appoint a corporate trustee as the sole trustee of a scheme;
- (c) the board of trustees shall have a broad mix of skills and competencies and shall include at least one trustee who shall be professional qualified in any matter related with finance as may be recognised by a relevant industry body;
- (d) the composition of the board of trustees shall take into account gender balance, and the age and experience of trustees;
- (e) the tenures of trustees shall be staggered so that not more than one-third of the trustees shall simultaneously retire;
- (f) any scheme that was registered under the Act at the time of the coming into force of these guidelines shall take steps to ensure that the tenures of trustees are staggered as set out in subparagraph (e);
- (g) scheme rules shall set out the election or nomination rules of trustees; and
- (h) a person seeking to be elected or nominated as a trustee shall possess the following qualifications—
 - (i) leadership and integrity;
 - (ii) commitment and devotion to duty including the ability to explain clearly why he or she wants to be a trustee and what he or she believes that he or she can contribute to the governance of the scheme;

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- (iii) prudence; and
- (iv) good character as determined through a generally accepted certification process.

20. Powers and functions of trustees

(1) Trustees shall exercise all the powers of the scheme save for the powers reserved to the members and subject to the limitations set out in the Act or any other written law.

(2) Notwithstanding the generality of paragraph (1), the board of trustees shall ensure that—

- (a) it exercises leadership, enterprise, integrity and sound judgment in directing the affairs of the scheme to achieve continuity and sustainability;
- (b) it promotes good governance in the scheme;
- (c) it approves and reviews overall strategies and significant policies relating to the scheme;
- (d) the scheme has sufficient and appropriate resources to achieve its strategic goals;
- (e) it is responsible for the appointment of service providers and experts advising the trustees for the purposes of the scheme;
- (f) it is prudent in the oversight of the negotiation of the fees charged to the scheme by services providers having considered the value received and the long term sustainability of the scheme;
- (g) it takes responsibility for the performance of the scheme in achieving the scheme's objectives and meeting the scheme's obligations;
- (h) effective financial and other internal controls are established and maintained to achieve the scheme's financial reporting and risk-management objectives;
- (i) it monitors the effectiveness of the internal control and risk-management systems of the scheme;
- (j) it deals fairly with stakeholders' interests, demands and expectations; and
- (k) the scheme complies with all statutory requirement including these guidelines.

21. Appointment of trustees

(1) The scheme rules shall specify—

- (a) the manner for the nomination of a trustee by a sponsor; or
- (b) the manner of the election of a trustee by members.

(2) A trustee shall be deemed to be duly appointed upon his or her nomination or election and shall be issued with a letter of appointment by—

- (a) the sponsor of the scheme in the case of a new scheme; or
- (b) the trust secretary in the case of an existing scheme.

(3) The letter of appointment shall state the terms of appointment, the expectations of the sponsors and members, and also include—

- (a) the tenure of the trustee;
- (b) the role and responsibilities of the trustee;
- (c) the requirement that the trustee shall adhere to the code of conduct of trustees of the scheme; and
- (d) the trustee's expected remuneration in accordance with the scheme's trustees remuneration policy.

(4) The recruitment process of a trustee shall include a fit and proper assessment as may be prescribed in the scheme rules and shall require the submission of a certificate of good conduct by the prospective trustee.

(5) Any vacancy in the board of trustees shall be filled within a reasonable time but in any case within twelve months from the date of the vacancy.

(6) A trustee may be reappointed after the end of his or her first term:

Provided that the reappointment shall be based on the most recent evaluation of the trustee's performance.

(7) A person shall not simultaneously serve on more than three boards of trustees of schemes.

(8) A chairperson of a board of trustees shall not simultaneously serve on more than two boards of trustees of schemes.

22. Trustees' remuneration policy

(1) A trustee shall not be entitled to receive a salary or honorarium for the services he or she offers to a scheme.

(2) A trustee may be paid a sitting allowance and be reimbursed for reasonable expenses he or she incurs in the course of rendering his or her services to the scheme.

(3) The board of trustees shall ensure that—

- (a) there is an approved trustees remuneration policy in place that sets out the approved sitting allowances and rates of reimbursement for expenses;
- (b) the trustees remuneration policy is not discriminatory towards the different categories of trustees;
- (c) the sponsor has been consulted during the development of the trustees remuneration policy;
- (d) the trustee remuneration policy requires that any remuneration paid to the trustees by the sponsor is disclosed and that trustees do not draw separate remunerations for the same meeting;
- (e) the trustees remuneration policy is approved by members at an annual general meeting of the scheme at least once in every three years and where approval shall not have been granted, the policy prevailing at the time shall continue to apply until the Authority makes a determination regarding the proposed new policy;
- (f) the implementation of the trustees remuneration policy shall be in compliance with the provisions of the Act and any other relevant written law; and
- (g) the details of the remuneration and benefits of trustees are included in the scheme's annual audited financial statements:

Provided that where the board of trustees has resolved not to pay any remuneration or allowances to the trustees, a statement to this effect shall also be included in the scheme's annual audited financial statements.

23. Trustees' induction and skills development

(1) The sponsor of a new scheme or the chairperson of the board of trustees an existing scheme shall ensure that each trustee undergoes a well-structured induction process in respect of the trustees role and responsibilities in the scheme.

(2) An induction process shall include training required under the Act or any other relevant written law to ensure that—

- (a) trustees are trained and certified in a training programme approved by the Authority within six months of the trustees' appointments or such other period as may be provided under the Act;
- (b) trustees have appropriate knowledge and understanding of the law relating to retirement benefits and trusts;
- (c) trustees have appropriate knowledge of the principles of funding and investment relating to retirement benefits schemes;

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- (d) trustees have received orientation on the scheme governance structure, strategic plan, financial status, financial policies, risk management, compliance programmes and the code of conduct of the scheme; and
- (e) independent trustees and key persons of corporate trustees meet a higher standard of care and are able to demonstrate appropriate knowledge and understanding from the date of their appointments.

(3) The board of trustees should seek to enhance its knowledge and skills where relevant through appropriate training.

(4) The Authority shall specify the minimum number of training hours trustee are required to meet.

24. Board of trustees evaluations

(1) Each board of trustees shall, at least once in each year, undertake an evaluation of its performance and the performance of the chairperson, individual trustees, the trust secretary and the person in charge of the internal administrator.

(2) During an evaluation, the board of trustees may conduct a self-assessment.

(3) Each scheme may conduct a third party evaluation of the board of trustees with the assistance of independent external advisors to review the effectiveness of the board and committees of the board.

(4) Where a scheme conducts a third party evaluation, the board of trustees shall determine the scope and frequency of the evaluations.

(5) The results of the evaluations shall be used to improve the overall performance of the board of trustees and the scheme.

25. Accountability of the board of trustees

(1) The board of trustees shall be jointly and severally accountable for the management of the scheme and all trustees shall be equally responsible for the decisions of the board.

(2) The board of trustees shall ensure clarity and appropriate separation in the leadership roles of the scheme.

26. Role of the chairperson of the board of trustees

(1) The chairperson shall be elected by the board of trustees at its first meeting after the appointment of the board or at the expiry of the term of the chairperson.

(2) Notwithstanding paragraph (1), statutory schemes shall adhere to the process set out in the Act or other relevant law in the election of the chairperson of the board of trustees.

(3) In addition to the general qualifications to be a member of a board of trustees, trustee shall possess the following qualities to be eligible to be appointed as a chairperson—

- (a) effective leadership and governance skills;
- (b) prudent judgment and effective decision-making;
- (c) the ability to develop a coherent and effective team among the trustees including ensuring that all trustees are treated equally;
- (d) effective communication skills;
- (e) the ability to mentor newly appointed trustees; and
- (f) sociable, reliable, dependable and non-partisan.

(4) The chairperson shall preside at each meeting of the board of trustees and in the absence of the chairperson, the trustees present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, enjoy all the powers of the chairperson.

(5) The chief executive officer of the sponsor, the chairperson of the board of directors of the sponsor and the administrator of the scheme shall not be eligible to be appointed or elected as the chairperson of the board of directors.

(6) The chairperson of the board of trustees shall provide overall leadership to the board, ensure the efficient and timely conduct of the board's business and act as the spokesperson of the scheme in respect of the scheme's policies.

(7) Where the decisions of the board of trustees are made by way of a vote and there is a tie in a vote, the chairperson or the person presiding as chairperson in his or her absence shall have the deciding vote.

(8) The tenure of the chairperson shall be as set out in the Act or any other relevant written law.

27. Trust secretary

(1) The board of trustees may appoint a trust secretary from the staff of the administrator of the scheme.

(2) Where a board of trustees intends to appoint a trust secretary, the scheme rules shall set out the terms and conditions of appointment and the remuneration, if any, of the trust secretary.

(3) The role of the trust secretary shall be to—

- (a) provide guidance to the board of trustees on the trustees' duties and responsibilities and on matters of governance;
- (b) ensure the timely preparation and circulation of papers and minutes of the board of trustees and committees of the board;
- (c) maintain and update the register of conflicts of interest;
- (d) ensure that the trustees are aware of the relevant laws relating to the scheme;
- (e) facilitate effective communication between the board of trustees and other stakeholders;
- (f) co-ordinate the evaluations of the performance of the board of trustees including the evaluations of the performance of the chairperson, individual trustees and committees of the board;
- (g) participate in the meetings of the board of trustees as an *ex officio* member without the right to vote on any of the decision of the board;
- (h) identify any links or duplication in the roles of the committees of the board of trustees; and
- (i) provide feedback on the overall scheme governance and management.

(4) The trust secretary shall attend all the meetings of the board of trustees and in his or her absence, the board shall appoint from among their number a temporary trustee for the purposes of the meeting.

(5) It is preferable for a trust secretary to be lawyer, possess a law qualification or be a certified public secretary.

(6) In appointing a trust secretary, the board of trustees shall take into account a person's prior experience as a trust secretary in lieu of the qualifications contemplated in paragraph (5).

28. Meetings of the board of trustees

(1) Each board of trustees shall devote an appropriate the amount of time to its oversight role over the affairs of the scheme based on the size of the scheme, the complexity of the scheme rules and structure, and the complexity of the issues affecting the scheme.

(2) Boards of trustees shall convene regular meetings to transact the business of the schemes.

(3) Quorum at a meeting of a board of trustees shall be half the number of trustees which shall include the trustee nominated by the sponsor and at least one elected trustee.

(4) The chairperson, working with the trust secretary or the administrator of the scheme, and in consultation with the trustees, shall convene the meetings of the board and develop the agenda of the meetings.

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(5) The notice of the meetings of the board of trustees shall be issued at least fourteen days before the date of the meeting.

(6) The agenda of the meeting of the board and any other relevant document shall be issued to the trustees at least seven days before the date of the meeting.

(7) The administrator of the scheme or the trust secretary, where relevant, shall sit in on the meetings of the board of trustees but shall have no vote unless he or she is also the scheme secretary.

(8) The scheme rules shall specify the requirements for the holding of a special meeting of the board of trustees and the procedure to be followed to convene a special meeting.

(9) The board of trustees shall—

- (a) meet with such frequency as may be provided under the scheme rules but not less than the frequency provided under the Act or any other written law;
- (b) prepare a board charter, annual work plan and calendar of meetings to guide the business of the board;
- (c) ensure that trustees are sensitised on the need for adequate preparation before a meeting of the board in order to make the meeting effective;
- (d) ensure that the minutes of the meeting of the board are recorded accurately and stored safely; and
- (e) ensure that regular reports on the general affairs of the scheme are submitted to the sponsor including a copy of the approved minutes of each meeting of the board.

29. Committees of the board of trustees

(1) The board of trustees may appoint committees to facilitate the work of the board by conducting detailed analysis of, and holding discussions on, specific areas of scheme operations.

(2) Committees of the board shall make recommendations to the board in respect of scheme operations for approval.

(3) The board may delegate the power to make decisions to committees of the board but in every case, the decisions of the committees shall be ratified by the board before implementation.

(4) The number of committees of the board shall not exceed four at any one time.

(5) The following shall be the recommended committees of the board of trustees—

- (a) investment committee especially for schemes invested in segregated funds;
- (b) audit and risk-management committee, where schemes are encouraged to separate the two oversight roles; and
- (c) administration and communications committee, which should be established for each scheme.

(6) Scheme rules may provide for the board of trustees to engage the services of experts to provide consultancy services or to co-opt experts to sit in committees of the board to provide guidance.

(7) The engagement and co-opting of experts shall be done through a competitive process.

(8) The board of trustee shall determine the terms of reference for all committees of the board which shall include objectives of the committee, any delegation of the power or functions of the board, operations and reporting procedures of the committees.

(9) Template terms of reference for committees of the board are set out in appendices 1, 2 and 3.

30. Removal of trustees from office

(1) The scheme rules shall provide the procedure and grounds for the removal of a trustee from office.

(2) Notwithstanding the generality of paragraph (1), a person shall cease to be a trustee if that person—

- (a) is forbidden from acting as a trustee in accordance with the provisions of the Act or any other relevant written law;
- (b) fails to undergo statutory training within the period stipulated under the Act or regulations thereunder;
- (c) without reasonable cause, fails to attend two consecutive meetings of the board of trustees or such number of meetings as may be provided for under the Act;
- (d) resigns by notice in writing to the chairperson or in such other manner as may be provided for in the scheme rules;
- (e) is removed from office by the sponsor of the scheme in accordance with the instrument that established the scheme; or
- (f) in the case of a trustee who was elected by members, is removed by the members in accordance with the scheme rules.

(3) The removal of a trustee from office shall be finalised through a resolution of the board of trustees.

(4) Where a trustee has ceased to hold office, the board of trustees shall notify the sponsor and members in writing promptly.

PART V – RELATIONSHIP BETWEEN TRUSTEES
AND SPONSORS AND SERVICE PROVIDERS

31. Relationship to be positive

The board of trustees shall strive to maintain a positive relation with the sponsor and service providers for the purpose of creating an enabling environment for good governance and the efficient management of the scheme.

32. Roles of sponsors

The role of sponsors in the running of a scheme shall include—

- (a) providing key member data to trustees and scheme administrators;
- (b) paying contributions into the scheme, within the specified periods;
- (c) in the case of defined contributions schemes, ensuring the funding objectives of the scheme are met; and
- (d) ensuring that the cost of the benefits provided under the scheme rules are met.

33. Working effectively with sponsors

In order to work effectively with a sponsor the board of trustees shall—

- (a) have a full understanding of the sponsor's responsibilities;
- (b) work with the sponsor to ensure that the sponsor understands the trustees' responsibilities;
- (c) inform the sponsor of the potential impact on trustees and additional cost of operations of the scheme if the trustees or sponsor fail to meet their obligations;
- (d) regularly review the processes and mechanisms that the sponsor shall use to provide information with the aim of constantly improving the processes or mechanisms; and

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- (e) at least once in every three months, submit to the sponsor a report on the scheme in accordance with the Act and regulations thereunder.

34. Board of trustees relationship with internal

The board of trustees shall establish an effective relationship with the scheme's internal administrator by—

- (a) appointing key persons of the internal administrator; administrator.
- (b) establishing clear and transparent lines of responsibility and accountability between the trustees and the administrator;
- (c) establishing and maintaining effective communications channels at all levels;
- (d) establishing and enforcing appropriate codes of conduct;
- (e) at least once in each year, documenting and reviewing the functions of the key persons of the internal administrator;
- (f) monitoring the internal administrator's compliance with the approved strategies and policies of the scheme; and
- (g) establishing performance standards to be met by the internal administrator which shall be consistent with the long term objectives, strategy and financial health of the scheme.

35. Appointment and role of scheme administrator

(1) The board shall appoint an internal or external scheme administrator to manage the administrative affairs of the scheme on behalf of the board.

(2) Where the sponsor seconds a person to act as an internal scheme administrator of the scheme, the board of trustees shall ratify the secondment in writing.

(3) The board of trustees shall—

- (a) appoint a scheme administrator through a competitive process and in accordance with the objectives and policies of the scheme; and
- (b) prepare detailed job descriptions for key persons of the internal scheme administrator including key result areas and key performance indicators to be achieved by the scheme administrator.

(4) The terms and conditions of service of an external scheme administrator shall be set out in the instrument of appointment or service level agreement between the board of trustees and the scheme administrator and shall comply with the provisions of the Act and regulations made thereunder.

(5) The duties of the scheme administrator shall be as set out in the Act, the regulations made thereunder or as agreed between the scheme administrator and the board of trustees.

(6) The board of trustees shall communicate regularly with the representatives of service providers carrying on key day to day functions of the scheme and, where appropriate, invite them to attend meetings of the board.

(7) The board of trustees may remove a scheme administrator from office only in accordance with the Act and the regulations made thereunder.

(8) Where the board of trustees removes a scheme administrator from office, it shall appoint a replacement soon thereafter.

(9) Where the board of trustees issues instructions to the scheme administrator, the instructions shall be in writing or in any other form as may be agreed between the board and the scheme administrator.

36. Appointing and managing service providers

(1) A board of trustees may be required to appoint service providers and advisors to the scheme to perform specific tasks on behalf of the board and provide advice to the board.

(2) Where a board of trustees appoints service providers or advisors, the trustees shall retain ultimate accountability for the management and supervision of the affairs of the scheme.

(3) Before the board of trustees delegates any of its functions to service providers or advisors, the board shall ensure that it is familiar with—

- (a) the scope of services to be provided by the service providers or advisors;
- (b) the cost of the services to be provided by the service providers or advisors;
- (c) the arrangements and procedures for passing on relevant information to trustees or new advisors, including notification periods, and fees or penalties due, where the board appoints new service providers; and
- (d) any limitations on the liability of the service providers or advisors.

(4) The board of trustees shall appoint service providers or advisors through a competitive selection process and by considering the following matters during the process—

- (a) the different types and levels of services available in the market including the benefits to members and related costs;
- (b) the ability to provide relevant data including quality management information;
- (c) the type and capacity of technology used by the service providers or advisors;
- (d) work procedures and personnel capacities;
- (e) the processes for the protection of members' data;
- (f) experience in working with similar schemes with similar profiles; and
- (g) the level of the service provider's or advisor's professional indemnity and whether it is adequate for the purposes.

(5) The board of trustees shall determine the terms and conditions of service between the board and the service provider or advisor in accordance with the Act or any other written law and set them out in the service level agreement or instrument of appointment.

PART VI – AUDIT, ASSURANCE AND RISK MANAGEMENT

37. Schemes to have effective policies and guidelines

Schemes shall establish, document and maintain effective audit, assurance and risk management policies, procedures and guidelines.

38. Audit and assurance

(1) The internal audit function shall be an independent and objective assurance and consulting activity intended to add value and improve the organisational operations of the scheme.

(2) The board of trustees shall ensure that—

- (a) there is established for the scheme a comprehensive internal audit function that shall cover all the scheme's activities, provide independent and objective assurance, and improve the effectiveness of the scheme's risk management, control and governance processes;
- (b) there are established suitable oversight mechanisms for the scheme where the board intends to outsource the internal audit function to a third party or appoints an external advisor to perform the function:

Provided that smaller schemes may employ the internal audit services of the sponsor;

- (c) it acts expeditiously on the reports of its audit and risk management committee on any internal control issues that require the board's attention.

(3) The board shall appoint an external auditor who shall examine the accounting records of the scheme and provide the board with an opinion on the financial statements of the scheme.

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(4) The board shall—

- (a) on receiving the annual audit management report, discuss the content of the report and implement the recommendations therein; and
- (b) conduct a review of the services of the external auditor at least once every five years.

(5) Where an external auditor is replaced by the board of trustees, the external auditor may not be reappointed to offer services to the scheme for at least two years from the date of the lapsing of the previous appointment.

39. Compliance and enforcement of Guidelines

(1) The Authority may require a board of trustees to conduct a governance audit of the scheme to ensure that the scheme conforms to the highest standards of governance.

(2) A governance audit shall cover the governance practice of the scheme including—

- (a) leadership and strategic management;
- (b) transparency and disclosure;
- (c) statutory and regulatory compliance;
- (d) communication with stakeholders;
- (e) independence and governance structures of the board of trustees; and
- (f) scheme systems and procedures.

(3) A governance audit shall only be conducted by a person who is certified to do so by the relevant professional body.

40. Risk management

The board of trustees shall ensure that the scheme has a written risk management policy and procedures that guide the scheme in risk identification, assessment, mitigation monitoring and reporting.

41. Risk management and internal control systems

(1) The board of trustees shall determine the nature and extent of the risks it may take in achieving the strategic objectives of the scheme.

(2) The board shall establish and maintain sound risk management and internal control systems which shall encompass—

- (a) the identification of key risks;
- (b) the assessment of risks and determining the level of exposure of the scheme to those risks;
- (c) continually monitoring the identified risks and determining the scheme's needs in respect of the risks;
- (d) assessing the board's decisions in accepting particular risks, implementing risk mitigation measures and whether or not the decisions are in line with approved risk tolerance or risk appetite of the scheme and the risk policy; and
- (e) reviewing and reporting by the audit and risk committee on the matters set out in paragraphs (a), (b), (c) and (d).

(3) The board shall establish and maintain a risk register in which it shall record the identified risks, the board's assessment of the risks and the measures implemented to manage the risks.

PART VII – USE OF INFORMATION TECHNOLOGY IN GOVERNANCE

42. Use of information and communication technology in governance

The board of trustees shall be responsible for the scheme's management of information and shall—

- (a) ensure that the scheme takes advantage of the use of information technology in the management of the scheme's records including by ensuring that there is adequate information security;
- (b) ensure that the administrator of the scheme has established and is implementing a comprehensive information technology policy and has adequate information technology systems for the administration of the scheme;
- (c) ensure that the scheme administrator has competent and qualified officer for the management of information technology;
- (d) monitor and evaluate significant information technology investments and expenditures incurred by an internal administrator;
- (e) ensure that members' personal information is identified and managed appropriately;
- (f) retain the information held in the information technology system and, with the input of the scheme, protect the intellectual property in the information;
- (g) ensure that the scheme complies with the law relating to information technology including codes and standards; and
- (h) ensure that the scheme's administrator and service providers have adequate business continuity plans which shall be reviewed at least once in each year and tested as appropriate and which shall cover—
 - (i) loss of key personnel;
 - (ii) business disaster recovery;
 - (iii) the safeguarding of data; and
 - (iv) how to continue operations in the case of a disaster or emergency.

PART VIII – TRANSPARENCY, ACCOUNTABILITY AND DISCLOSURE

43. Communication

The scheme should establish and maintain a member communication system that is accessible and timely to allow members to engage with the scheme and make decisions for members' benefit.

44. Trustees communication obligations

The trustees shall ensure that—

- (a) the information shared with members is accurate, clear, relevant and provided in a language that members can understand; and
- (b) members who are challenged or are otherwise unable to use or comprehend written communication because of a disability are suitably accommodated.

45. Electronic communication

Electronic communication may be used to communicate with members as a substitute for written communication if—

- (a) a member wishes to receive information in electronic form and notifies the scheme of this desire in writing;
- (b) electronic signatures are recognised under any written law and the scheme has strict procedures for recognising electronic signatures; and
- (c) any other requirements under the Kenya Information and Communication Act (Cap. 411A) have been met by the scheme.

46. Retention and storage of information

The scheme shall retain and store information in accordance with the provisions of any relevant written law.

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47. Trustees to maintain formal and transparent strategy

The board of trustees of a scheme shall establish and maintain a formal and transparent strategy for engaging with key stakeholders in the decisions and management of the scheme.

48. Transparency, accountability and disclosure to stakeholders

The board of trustees shall—

- (a) conduct regular reviews of who the scheme's key stakeholders are and how their needs should be met;
- (b) public in each year the audited financial statements of the scheme indicating the business and financial performance and position of the scheme and share the report with its key stakeholders;
- (c) disclose the details of the scheme to new members through a scheme booklet including the disclosure of options to members at the point of exit from the scheme;
- (d) shall maintain the confidentiality of the minutes of its meetings but comply with reasonable requests for information from members and other stakeholders as provided under the Access to Information Act (7M);
- (e) not publish or otherwise disclose any information that may negatively affect the scheme including—
 - (i) planned investment decisions;
 - (ii) personal identification information; and
 - (iii) identities of dependents and beneficiaries;
- (f) establish a fair system to address accusations by whistle-blowers including members against trustees of negligence, or unwillingness or refusal to properly administer the affairs of the scheme; and
- (g) report any unusual occurrence to the Authority as soon as reasonably practicable.

49. Conflicts of interest reporting

(1) A conflict of interest may arise between a trustee and the scheme or between a service provider or advisor and the scheme.

(2) The board of trustees shall—

- (a) establish a written policy dealing with conflict of interest and it shall include—
 - (i) the escalation path of individual or other trustees' conflicted interests;
 - (ii) guidelines on allowable gifts to trustees, including the maximum value of individual gifts; and
 - (iii) the period within which a breach of the policy should be reported;
- (b) specify a period within which the conflict of interest policy should be reviewed to address new potential conflicts or incorporate relevant amendments to the policy;
- (c) establish and maintain a register of conflicts which shall be reviewed and updated at each meeting of the board of trustees;
- (d) ensure that trustees and advisors shall declare their conflicts of interest at the moment of their appointment; and
- (e) ensure that service providers and advisors of the scheme shall maintain conflicts of interest policies and declare their conflicts of interest to the board of trustees.

50. Scheme governance reporting

(1) The board of trustees of a scheme shall, in the scheme's audited financial statements, report the extent to which the board has adhered to the principles of good governance set out in these guidelines.

(2) The report under paragraph (1) shall be prepared through—

- (a) a declaration in the form set out in Appendix 5 to these guidelines;
- (b) a report to the members of the scheme at the annual general meeting of the scheme on the board's adherence to the principles of good governance; and
- (c) submitting to the Authority the declaration made under subparagraph (2) (a).

51. Responsible corporate citizenship

(1) The board of trustees shall be responsible for ensuring the scheme is a good corporate citizen by setting the direction for good corporate citizenship including compliance with laws, rules, regulations, scheme policies and procedures, and by adhering to the scheme's purpose, strategy and conduct.

(2) The board of trustees shall oversee and monitor the scheme's workplace and economic behaviour, and environmental, social and governance matters related to the activities of the scheme.

(3) The board of trustees is encouraged to adopt socially responsible investing including by considering the financial returns of investment and social or environmental benefits of investment for the members and the community in which the scheme invests.

(4) Where the board of trustees adopts socially responsible investing the board shall disclose how the investing shall be managed, the monitoring measures it has established and how corporate citizenship outcomes shall be managed.

PART IX – ENFORCEMENT AND COMPLIANCE

52. Act, etc. to provide adequate guidance on governance

The Act, regulations thereof and these guidelines shall provide adequate guidance on the Authority's expectations on a scheme's governance strategies, policies and procedures.

53. Evaluation and oversight

(1) The Authority shall regularly perform a comprehensive evaluation of a scheme's governance policies or strategies and assess the implementation of these guidelines.

(2) The Authority may require a scheme to undertake effective and timely remedial action to address the scheme's material deficiencies in its governance policies or strategies.

APPENDICES**APPENDIX I — TERMS OF REFERENCE FOR AUDIT AND RISK MANAGEMENT COMMITTEES OF THE BOARD OF TRUSTEES**

1. General terms of reference
 - (a) The board of trustees shall constitute the audit and risk management committee to review the financial conditions of the scheme, the scheme's internal controls and performance, and recommend remedial actions.
 - (b) The committee shall consist of not less than three and not more than five members appointed from the board, at least one of whom shall be knowledgeable in financial and accounting matters. However, where the

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- scheme has three trustees, two shall suffice as committee members.
- (c) The committee shall meet regularly but in any case not less than four times in a financial year with the period between one meeting and a subsequent one being not longer than three months.
- (d) The mandate of an audit and risk committee shall include oversight of the scheme's risk management.
- (e) The chairperson of the board of trustees shall not be a member of the audit and risk committee of the scheme.

2.

Audit tasks

- (a) The committee shall ensure that the scheme's administrator establishes and effectively maintains internal controls in order to achieve the scheme's financial reporting objectives.
- (b) The committee shall review the scheme's internal controls including the scope of the internal audit programme and the internal audit findings, and recommend to the scheme administrator the action to be taken to mitigate any identified audit risks.
- (c) The committee shall review the scheme's internal audit reports, the overall effectiveness, scope and depth of audit coverage, the reports on internal controls and recommendations thereof, and confirm whether or not appropriate action has been taken by the scheme's administrator.
- (d) The committee shall ensure that the scheme's accounting records and financial reports are prepared within statutory and scheme timelines and accurately reflect the scheme's operations.
- (e) The committee shall recommend the appointment or replacement of the scheme's internal or external auditor, and review the audit fee from time to time.
- (f) The committee shall review the scheme's reports concerning any deviations or weaknesses in accounting and operational controls in the scheme's administrator's operations.

- (g) The committee shall monitor the ethical conduct within the scheme and develop the scheme's ethical standards and requirements including procedures for reporting and handling complaints.
- (h) The committee shall ensure that the scheme establishes and properly administers plans, policies and control procedures to safeguard against error, carelessness, conflicts of interest, self-dealing or fraud.
- (i) The committee shall investigate all complaints by members.
- (j) The committee shall keep minutes of its meetings and document all its work in writing.
- (k) The committee shall consider any other matter of significance that may be raised at the annual general meeting of the scheme.
3. Risk management tasks
- (a) The committee shall review and assess the integrity of the scheme's risk control systems established by the scheme's administrator and ensure that risk policies and strategies are effectively managed.
- (b) The committee shall monitor external developments connected to accountability of the scheme and the reporting of associated risks including emerging and prospective impacts of those risks.
- (c) In the performance of its functions, the committee may obtain outside or independent professional advice as may be necessary.
- (d) The committee shall report in writing to the board of trustees on the measures taken by the scheme to implement its recommendations in respect of the audit and risk function.
- (e) The committee shall be responsible for reviewing the placement of the scheme's insurance portfolio and any available options to cover all known insurable risks of the scheme.

APPENDIX 2—TERMS OF REFERENCE FOR THE FINANCE AND INVESTMENT COMMITTEE

1. General terms of reference

[Subsidiary]

- (a) The board of trustees shall constitute the finance and investment committee to review the scheme's budget and investments and, at least once in every three months, recommend to the board the necessary actions in respect of the budgets or investments. In respect of large scheme, the committee shall review all large projects and monitor the projects' implementation.
- (b) The committee shall consist of not fewer than three and not more than five members chosen from among the members of the board of trustees one of whom shall be conversant with financial and accounting matters. Where the scheme only has three trustees, it shall be sufficient for two to be chosen to be members of the committee.
- (c) The chairperson of the board of trustees shall not be a member of the finance and investment committee.

2. Investment matters

- (a) The committee shall manage the selection procedure for the scheme's fund manager and custodian, and shall oversee the performance evaluation in accordance with the terms of service agreed upon with the service providers.
- (b) The committee shall review and recommend to the board of trustees guidance to the fund manager regarding any significant investment action by the fund manager.
- (c) The committee's members shall have a firm grasp of the scheme guidelines and policies on the management of the scheme's assets including the scheme investment strategy.
- (d) The committee shall ensure that the scheme complies with its investment policy statement which shall include an investment philosophy and strategy.
- (e) The committee shall assess the scheme's investment performance by comparing the scheme's performance to the benchmarks set out in the investment policy statement.
- (f) The committee shall oversee the fund manager's compliance with the investment policy statement.

-
- (g) The committee shall ensure the scheme complies with its investment guidelines.
- (h) The committee shall review the scheme's financial reports as prepared by the auditor at least once in each year.
- (i) The committee shall review the placing of the scheme's insurance portfolio and options for covering the scheme's known insurable risks.
- (j) The committee shall report in writing to the board of trustees on its findings and recommendations on the execution of its mandate.
- (k) The committee may perform any other functions or projects as may be directed by the board of trustees.
3. Finance matters
- (a) The committee shall receive and consider the scheme's annual budget including its revisions before submitting the budget to the board of trustees for approval.
- (b) The committee shall receive and consider the financial analyses of all the scheme's proposed capital developments.
- (c) The committee shall, from time to time, review and propose any relevant or necessary amendments to the scheme's procurement and asset disposal procedures and ascertain whether or not all procurement by the scheme administrator comply with the scheme's procurement and asset disposal procedure and the relevant written law.
- (d) The committee shall receive and consider the financial implications of any act proposed by the scheme which involves expenditure or write-off of revenue or assets exceeding five percent of the value of the scheme's assets.
- (e) The committee shall review, recommend, do or cause to be done, in consultation with relevant committees of the board, all measures necessary to reduce the schemes expenditure.
- (f) The committee shall review the scheme's options for raising capital for any proposed projects.
-

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- (g) The committee shall monitor the implementation of any project undertaken by the scheme.

APPENDIX 3 — TERMS OF REFERENCE FOR THE ADMINISTRATION AND COMMUNICATIONS COMMITTEE

1. General terms

- (a) The board shall constitute the administration and communication committee to handle the scheme's administration, communication and reporting obligations.
- (b) The committee shall consist of not fewer than three and not more than five members chosen from among the members of the board of trustees.
- (c) Where the scheme has three trustees, the committee shall constitute of two trustees.
- (d) The chairperson of the board of trustees shall not be a member of the committee.
- (e) The committee shall be responsible for-
- (i) ensuring that the scheme complies with statutory and regulatory requirements and the scheme rules including all reporting and disclosure requirements to members and the Authority;
 - (ii) ensuring that the scheme shares accurate, clear, relevant and timely information with members to enable them to understand the operations of the scheme and make informed decisions; and
 - (iii) recommending to the board of trustees the necessary actions in respect of administration and communication at least once in every three months.

2. Administration and communication matters

- (a) The committee shall monitor, review and make recommendations to the board regarding the appointment of the administrator.
- (b) The committee shall review and make recommendations to the board regarding the trustees' remuneration policy and the fees payable to the scheme's administrator.
- (c) The committee shall review and make recommendations to the board regarding the human resource

- development policy, the scheme's organizational structure, and the scheme's compensation principles as they relate to the scheme's internal administrator.
- (d) The committee shall ensure the accurate determination of exiting members' benefits and respond to members' concerns over benefits.
 - (e) The committee shall provide guidance regarding any changes in members' benefits.
 - (f) The committee shall review any proposal for significant organizational changes in the scheme's administration and report in writing to the board on the proposals.
 - (g) The committee shall be responsible for the education of members, trustees and the staff of the internal administrator.
 - (h) The committee shall ensure that members have access to relevant scheme information in a clear and comprehensive format.
 - (i) The committee shall ensure that members' requests for information are met in a timely manner.
 - (j) The committee shall ensure the proper management of the scheme information and a smooth transition when there is change of scheme administrators.
 - (k) The committee shall establish and maintain good relations between the board of trustees and the scheme administrator.
 - (l) The committee shall advise the board of trustees and members on relevant matters including any changes to the policies or legislation affecting the scheme.
 - (m) The committee shall be responsible for organizing the annual general meeting and members' days.
 - (n) The committee shall determine the performance measures to be used in assessing the scheme's performance regarding all administration-related issues and oversee the annual performance review of the scheme, the board of trustees and the administrator.

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- (o) The committee shall supervise and monitor complaints made through the scheme's whistle blower mechanisms.
- (p) The committee shall investigate all allegations of violations of the scheme's code of conduct by trustees and make recommendations to the board on how to deal with the allegations.

APPENDIX 4 — BOARD OF TRUSTEES CODE OF CONDUCT

1. Trustees to sign
The code of conduct shall be signed by every member of the board of trustees.
2. Impartiality
Each member of the board of trustees shall interact with members or make decisions affecting members in an impartial manner.
3. Effective trusteeship
Trustees shall have relevant knowledge and understanding to achieve effective trusteeship including knowledge on-
 - (a) pension scheme funding and liabilities;
 - (b) the scheme investment policy statement; and
 - (c) other policies of the scheme.
4. Procedures for managing conflicts of interest
 - (a) The interests of a trustee conflict with those of the scheme if the trustee or a person directly associated with the trustee obtains or accepts a fee, gift or other benefit, whether of a material nature or otherwise, that is connected, directly or indirectly, with the performance of the trustee's office.
 - (b) Trustees shall conduct their personal affairs in such a manner as to avoid any conflict of interest with their duties or responsibilities as trustees. A trustee shall not derive any personal profit or gain, directly or indirectly, by reason of the trustee's service with the scheme.
 - (c) Conflicts of interest may arise in respect of-
 - (i) the trustee;
 - (ii) the trustee's spouse or child;
 - (iii) the trustee's business associate or agent; or
 - (iv) a corporation, private company, partnership or other body in which the trustee has a substantial or controlling interest.
 - (d) Conflicts of interest may arise from time to time. Where the board of trustees

- requires to make a decision or approve an action which shall give rise to a conflict of interest between the best interests of the scheme and a trustee's personal interests, the trustee shall immediately disclose to the board of the conflict which shall be recorded in the minutes of the meeting at which the disclosure is made so that the board's decision or approval shall be informed by the conflict.
- (e) A trustee shall ensure that the decisions of the board reflect independent thinking. If a trustee receives compensation from the scheme, the compensation shall be determined and approved by all members of the board of trustees before the compensation is paid.
- (f) Any conflict of interest including financial interests of a trustee shall be disclosed to the board when a matter that affects the trustee's interests becomes a matter for the board to decide. The board shall establish and review, at least once in each year, the procedure for trustees to disclose their interests.
- (g) A trustee with a conflict of interest on any matter shall not vote when the matter is determined by the board and shall not use his or her influence to determine the matter. Trustee with a conflict of interest shall not be counted when determining the quorum for the meeting at which the matter shall be determined by the board.
- (h) All conflicts of interest shall be recorded in the minutes of the meetings at which the conflicts have been disclosed. The minutes shall also state that the trustee with the conflict of interest did not vote on the matter during that meeting and was not included in the quorum for the purposes of that meeting.
- (i) The board of trustees shall establish and maintain a conflicts of interest register which shall be available for scrutiny by members of the scheme.
- (j) Each new trustee shall be informed of the conflict of interest policy during his or her induction. Each trustee shall be

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- reminded of the conflict of interest policy at least once in each year.
- (k) The conflict of interest policy shall apply to each trustee's immediate family and any other person acting on the trustee's behalf.
5. Prohibition against sexual harassment
The scheme, in the management of its affairs, shall ensure a workplace that is free of discrimination or harassment. All forms of harassment are prohibited but sexual harassment is especially singled out for prohibition. Any trustee who engages in discriminatory or harassing conduct shall be removed from the board of trustees.
Any complaint of discrimination or harassment against a trustee shall be promptly and confidentially investigated by a task force of other trustees.
6. Confidentiality
Trustees shall maintain the confidentiality of financial, personnel and other matters affecting the scheme, members, service providers or staff of the administrator. Trustees shall not disclose any confidential information except as may be provided for in any written law or in accordance with an order of a court of competent jurisdiction.
7. Active participation
Trustees shall perform their duties and responsibilities with integrity, collegiality and care by-
- (a) attending all meetings of the board;
 - (b) being prepared when discussing the issues or business on the agenda of the meetings of the board by reading all relevant background material;
 - (c) co-operating with, and respecting the views of, other trustees and avoiding personal prejudices during board meetings and by supporting the decisions or actions of the board regardless of the personal feelings of individual trustees;
 - (d) putting the scheme's interests above personal interests;
 - (e) representing the scheme in a positive and supportive manner;
 - (f) being respectful and courteous at all board and committee meetings;
 - (g) not interfering with administrative matters that are the responsibility of the scheme administrator except when monitoring the results of scheme activities or when ensuring that the

- (h) administrator is complying with the scheme's policies; and observing the established lines of communication and directing requests for information or assistance to the trust secretary or scheme administrator as the case may be.

Declaration

I,, recognizing the important responsibility that I am undertaking as a members of the board of trustees of this scheme, hereby pledge to carry out in a trustworthy and diligent manner the duties and obligations associated with my office as a trustee and shall abide by this code of conduct. I understand that any failure to abide by this code of conduct may result in my removal as a trustee in accordance with the requirements and processes of the scheme's governing documents.

Signed.....Dated

APPENDIX 5 — SCHEME GOVERNANCE DISCLOSURE STATEMENT IN ANNUAL REPORT AND ANNUAL AUDITED ACCOUNTS

1. Trustees in office. *(Full list of members of the board of trustees in office)*

Name of trustee	Age	Categories	No. of meetings attended	Certified (yes/No)	Highest qualification	Membership other boards (Provide organisation's name)

2. The board of trustees heldmeetings during the year ending the The meetings were held on the dates set out hereunder:

- (a)
- (b)
- (c)

3. The composition of the board of trustees is as hereunder:

- (a) Gender balance: Female%
Male%
- (b) Skills mix: No of trustees with financial skills
- (c) Age mix: Number of trustees who are younger than 35 years
Number of trustees who are older than 35 years

Committee name	No. of meetings held	Any external advisors, invitees to meetings (Yes/No) (if yes, mention the purpose)	Allowances paid (KSh.)

5. Fiduciary responsibility statement

[Subsidiary]

The board of trustees is the governing body of the (*Name of scheme*) and is responsible for the corporate governance of the scheme. The trustees are responsible for ensuring that the administration of the scheme is conducted in the best interests of the scheme's members and the sponsor. To achieve this, the trustees embraced their fiduciary responsibility by:

- (a) Acting honestly and did not improperly use inside information or abuse their position;
- (b) Exercising the highest degree of care and diligence in the performance of their duties that a reasonable person in a like position would exercise in the circumstances; and
- (c)) Performing their duties with the requisite degree of skill.

The scheme has complied with the laws, regulations and guidelines that govern retirement benefits schemes and the scheme's business operations.

The trustees have ensured that the fund manager has carried out all scheme investments and that all scheme assets and funds are held by the custodian.

The board charter for the scheme has been developed.

6. Responsible corporate citizenship

The scheme has participated in socially responsible investments and operations and has not been involved in any activity that may undermine the well-being of the sponsor, members or the community in which it operates.

7.

Key outcomes

The board of trustees seeks to achieve the following:

- (a) Building trust with the members and sponsor of the scheme so that they are satisfied with the administration of the scheme;
- (b) Supporting innovation and developing solutions that meet the members' and sponsor's needs; and
- (c) Ensuring that the schcme's administrative processes remain transparent and accessible to members and the sponsor.

The board of trustees will measure the progress towards these outcomes through:

- (a) Triennial members' survey score. The latest score was%
- (b) Regular reports and feedback from the sponsor. No. of reports

8.

Annual general meeting

The board of trustees held the annual general meeting on theat whichmembers,

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making up% of scheme members attended. The board adequately addressed the members' concerns.

9. The board conducted the following sensitization activities (Name of sensitization forum) Retirement planning seminar Members' day	Date held	No. of members who attended	Remarks
			During the sensitization activity, members were reminded of the Retirement Benefits Authority Whistle Blower portal to report any unusual occurrences in the management of scheme affairs.
10.			Trustees remuneration policy During the year under review, the trustees were paid a gross sum of Ksh..... The payments complied with the trustees remuneration policy of the scheme which was approved by members at the annual general meeting held on the and by the Authority on the
11.			Board of trustees evaluation The board and individual trustees undertook board evaluation in the year under review. The board review process was facilitated (<i>externally or internally</i>) and the process took the form of (<i>questionnaire, interviews, etc.</i>). The board was rated (<i>use the evaluation's rating</i>).

Signed Dated
(Chairperson)

**THE RETIREMENT BENEFITS (POST
RETIREMENT MEDICAL FUND) GUIDELINES**

ARRANGEMENT OF GUIDELINES

Guideline

1. Citation
 2. Interpretation
 3. Objectives of the guidelines
 4. Establishment of medical funds
 5. Contributions
 6. Administration and investment
 7. Access
 8. Transfer of member's portion
 9. Actuarial valuation
-

**THE RETIREMENT BENEFITS (POST
RETIREMENT MEDICAL FUND) GUIDELINES**

[Legal Notice 192 of 2018]

1. Citation

These guidelines may be cited as the Retirement Benefits (Post-Retirement Medical Fund) Guidelines.

2. Interpretation

In these guidelines, unless the context otherwise requires—

"employment-related emoluments" include allowances, bonuses, commissions, overtime remuneration, and any other fluctuating allowances;

"medical cover provider" means—

- (a) a post-retirement medical fund;
- (b) the National Hospital Insurance Fund established by the National Health Insurance Fund Act (Cap. 255); or
- (c) an insurer, broker or medical insurance provider registered under the Insurance Act (Cap. 487);

"medical fund rules" means rules relating to the establishment, administration and management of post-retirement medical funds;

"member" has the same meaning assigned to it under section 2 of the Act;

"post-retirement medical fund" means a fund established within a scheme to which contributions are made and from which the costs of medical benefits can be met as shall be determined in accordance with the medical fund rules;

"scheme" means an occupational retirement benefits scheme registered under the Act for the provision of cash payments, including one-off and regular payments, when a member exits the scheme;

"segregated" means that mean post-retirement medical funds shall be administered and managed jointly with scheme funds but shall be invested and reported separately in the statutory reports of the scheme;

"spouse" means a wife or husband of a member whose marriage is recognised under any written law in Kenya; and

"trustee" means a trustee of a scheme establishing a post-retirement medical fund and includes a trust corporation.

3. Objectives of the guidelines

The objective of these guidelines is to facilitate the establishment, regulations and supervision of the management of post-retirement medical funds by—

- (a) setting out the framework for the management and administration of post-retirement medical funds;
- (b) providing guidance to schemes to provide for additional voluntary contributions by members in respect of post-retirement medical funds;
- (c) providing guidance on transfers and access to post-retirement medical funds; and
- (d) other such guidance as may be required from time to time.

[Subsidiary]

4. Establishment of medical funds

(1) A scheme shall make provisions in the scheme rules to allow its members to make additional voluntary additional contributions in respect of the funding of a post-retirement medical fund.

(2) The trustees may seek, in writing, the professional advice of an actuary when determining the design and funding of a post-retirement medical fund, including advice on contribution levels that shall be expected to be made in order to meet the target set for the medical benefits of members upon retirement.

5. Contributions

(1) A member, sponsor or both shall make contributions to a post-retirement medical fund in accordance with the medical fund rules.

Provided that—

- (a) any contribution by the sponsor shall be supported by the sponsor's resolution in writing, which shall be submitted to the Authority; and
- (b) all contributions shall vest in the member immediately.

(2) The medical fund rules shall allow for the variation of contribution rates upon reasonable notice to the trustees.

(3) The contributions into a post-retirement medical fund shall be—

- (a) a fixed percentage of the member's pensionable emoluments, including other employment-related emoluments; or
- (b) a shilling amount.

(4) The contribution amount or rates may be based on a target level of post-retirement medical benefits.

6. Administration and investment

(1) Each post-retirement medical fund shall be administered and managed by trustees to the exclusive benefit of members and their beneficiaries.

(2) The trustees may appoint new service providers for the post-retirement medical fund or may retain the service providers of the scheme.

(3) Each post-medical retirement fund shall be segregated from the funds of the scheme.

(4) The contributions made into a post-retirement medical fund shall be invested in accordance with the investment policy of the scheme:

Provided that each scheme shall be required to prepare a separate investment strategy for the post-retirement medical fund where the value of the medical fund is at least fifty million shillings.

(5) The provisions of the Act and regulations thereunder in respect of reporting, communication, disclosure, administration and management of schemes shall apply in respect of post-retirement medical funds.

(6) The annual scheme benefit statement shall disclose the contributions made to the post-retirement medical fund and the investment income for the period under consideration.

(7) Except as may otherwise be agreed with the sponsor, the administration and management expenses of a post-retirement medical fund shall be paid out of the medical fund.

7. Access

(1) Medical fund rules shall provide that a member shall not be permitted to access the benefits while the member remains in the employment of the sponsor.

(2) A member may, subject to the approval of the trustees, be allowed to access the medical benefits on the ground of ill health or if the member becomes incapacitate due to ill health.

(3) Medical fund rules shall specify how the funds shall be accessed:

Provided that—

- (a) the scheme shall allow members a period of one year from the date of retirement to exercise their option under this paragraph; or
- (b) on exit from the employment of the sponsor before the attainment of retirement age, the medical funds shall be treated in the following manner—
 - (i) the funds may be transferred to another post-retirement medical fund elected in writing by the member:
Provided that the scheme shall, within sixty days from the date of the election, transfer the medical funds to the medical fund elected by the member;
 - (ii) the post-retirement medical fund may defer access to the benefits by the member until the member attains retirement age; or
 - (iii) the member may access the medical funds in the form of medical benefits.

(4) A member may opt for the payment of the total amount of accrued benefits from a post-retirement medical fund if—

- (a) that member leaves employment before attaining retirement age on the ground of emigrating from Kenya without the intention of returning to reside in Kenya; and
- (b) the trustees have approved the payment of the retirement benefits to that member and submitted, at least fourteen days before the payment of the benefits, the approval to the Authority.

(5) Scheme rules may allow members to access their medical benefits in any of the following ways—

- (a) retaining the funds within a post-retirement medical fund for the purpose of purchasing a medical cover;
- (b) retaining the funds within a post-retirement medical fund for the purpose of offsetting any medical expenses incurred as and when they fall due;
- (c) transferring the accrued amount to a medical cover provider other than another post-retirement medical fund for the purpose of purchasing a medical cover or offsetting any medical expenses incurred as and when they fall due; or
- (d) purchasing an annuity for the purpose of paying annual medical cover premiums.

(6) The benefits contemplated in paragraph (5) (a), (c) or (d) may be accessed by a spouse at the option of the member.

(7) On the death of a member, the benefits shall be paid to the beneficiaries in accordance with the medical fund rules.

8. Transfer of member's portion

The trustees may amend the scheme rules to allow members who have attained retirement age to transfer a portion of their scheme benefits to a medical cover provider:

Provided that a member—

- (a) shall not transfer more than ten percent of the accrued benefits before commutation to the medical cover provider; and
- (b) may transfer all the accrued benefits from additional voluntary contributions to the medical cover provider.

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9. Actuarial valuation

(1) Where a sponsor contributes to a post-retirement medical fund and the fund's design provides for guarantees regarding the level of medical benefits a member shall be entitled to, the consent of the sponsor shall be required in determining the level and design of the guarantees, including before amending the level and design of the guarantees.

(2) A post-retirement medical fund with the guarantees specified in subparagraph (1) shall be required to conduct actuarial valuations of the fund at least once in every three years.

(3) The scheme rules shall specify how deficits or surpluses in the post-retirement medical fund shall be offset or utilised.

THE RETIREMENT BENEFITS (TREATING FAIRLY) GUIDELINES

ARRANGEMENT OF GUIDELINES

PART I – PRELIMINARY

Guideline

1. Citation
2. Interpretation
3. Application
4. Responsibility
5. Objectives of the guidelines

PART II – RIGHTS AND OBLIGATIONS OF MEMBERS

6. Rights and obligations of members
7. Compliance with these guidelines
8. Limitations

PART III – PRINCIPLES OF TREATING CUSTOMERS FAIRLY

9. Organizational culture
10. Products and services
11. Clear and appropriate information
12. Customer advice
13. Performance and expectations
14. Benefits payments and complaints management

PART IV – ENFORCEMENT OF THESE GUIDELINES

15. Principles of enforcement
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THE RETIREMENT BENEFITS (TREATING FAIRLY) GUIDELINES

[Legal Notice 151 of 2019]

PART I – PRELIMINARY**1. Citation**

These guidelines may be cited as the Retirement Benefits (Treating Customers Fairly) Guidelines.

2. Interpretation

In these guidelines, unless the context otherwise requires—

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

"administrator" means a person appointed under a written instrument by the trustees of a scheme to manage the administrative affairs of the scheme;

"approved issuer" means an insurer registered under the Insurance Act (Cap. 487) or any other issuer approved in writing under the Capital Markets Act (Cap. 485A) or any other written law;

"Authority" means the Retirement Benefits Authority established under section 3 of the Act;

"beneficiary" means a person, other than a member, who is receiving or is entitled to receive a benefit under a scheme;

"board" means a board of directors of a service provider;

"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;

"customer" means a member, beneficiary or trustee of a scheme;

"manager" means a company registered by the Authority whose business includes investment and management of funds or other assets of a scheme;

"member" means a person contributing to a scheme and includes a person entitled to or receiving a benefit under the scheme;

"retirement benefits scheme" means any scheme or arrangement (other than a contract for life assurance) whether established by a written law for the time being in force or by any other instrument, under which persons are entitled to benefits in the form of payments, determined by age, length of service, amount of earnings or otherwise and payable primarily upon retirement, or upon death, termination of service, or upon the occurrence of such other event as may be specified in such written law or other instrument;

"regulations" means regulations made under the Act;

"scheme" means a retirement benefits scheme;

"senior management" means a person who has the authority to plan and control the business operations of a company and whose absence would materially affect the performance of the company;

"service provider" means an administrator, fund manager, custodian, auditor or approved issuer of a scheme or any other person that the Authority brings under the requirements of these guidelines;

"service-level agreement" or "SLA" means an agreement between trustees and service providers which sets out the terms of appointment and services to be rendered to the scheme by the service provider;

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"sponsor" means a person who establishes a scheme and also refers to a founder of a scheme; and

"trustee" means means a trustee of a scheme fund and includes a trust corporation.

3. Application

These guidelines shall apply to all service providers appointed by trustees.

4. Responsibility

(1) Trustees shall be responsible for the overall implementation of these guidelines.

(2) Generally, trustees shall appoint service providers that agree to abide by the principles of these guidelines.

(3) Trustees shall ensure that service-level agreements are entered into with service providers and provide for properly recorded processes, reporting mechanisms and systems, and controls used to monitor the implementation of the agreements.

5. Objectives of the guidelines

The objectives of these guidelines shall be to ensure that—

- (a) customers are treated fairly by the service providers;
- (b) service providers focus on the customers' needs and offer the best product or service solutions to the customers;
- (c) retirement benefits products or services account for customer needs;
- (d) customers are provided with clear, accurate and documented information;
- (e) service providers keep customers appropriately informed before, during and after the adoption of products and services;
- (f) service providers give customers advice that is suitable and responsive to customers' needs;
- (g) service providers offer services to customers that are of an acceptable standard and delivered in a timely manner;
- (h) customers are not presented with unreasonable rules, conditions or costs after they take up products or services, or when they intend to change products or services, switch service providers, submit claims, or lodge formal complaints unless the rules, conditions or costs are disclosed at the time of taking up the product; and
- (i) service providers fully disclose to customers the merits and demerits of the product or service at the point of sale.

PART II – RIGHTS AND OBLIGATIONS OF MEMBERS

6. Rights and obligations of members

(1) A member shall be the primary and ultimate customer of a service provider and shall have the right to be treated fairly when dealing with trustees and any service providers appointed by the trustees.

(2) A member has the rights and obligations set out in this Part so that the principles of these guidelines may be easily applied when offering the member products or services.

(3) A member shall have the right to receive the following information from trustees—

- (a) a summary of the scheme's trust deed and rules or the statutory instrument that established the scheme; particular emphasis should be placed in informing the member what the member's role shall be especially with respect to nominees and beneficiaries;
- (b) annual membership benefits statements;
- (c) the annual report from the trustees presented at the Annual General Meeting of the scheme including any changes to the scheme benefits and contribution structure;

- (d) a summary of the scheme's audited financial statements;
 - (e) a summary of the scheme's investments;
 - (f) a summary of the remuneration of trustees; and
 - (g) any other information that may be prescribed under the Act, regulations made thereunder or any other written law.
- (4) A member has the right to inspect the following information held by the trustees—
- (a) the scheme trust deed and rules or the statutory instrument that established the scheme;
 - (b) the scheme's audited financial statements;
 - (c) the register with the details of the sponsor, members, trustees and service providers; and
 - (d) any other information that may be prescribed under the Act, regulations made thereunder or any other written law.
- (5) The following are the additional rights of members—
- (a) the immediate vesting of benefits;
 - (b) the right to opt for payment, transfer or deferment of benefits on exiting from a scheme as set out in the scheme rules;
 - (c) the right to transfer accrued benefits within sixty days of issuing a written notice to transfer or within such period that may be prescribed in the Act or regulation made thereunder;
 - (d) non-assignment or attachment of benefits for any purpose not prescribed under the Act or regulations made thereunder;
 - (e) commutation of benefits as prescribed in the scheme's rules;
 - (f) one year's notice to select an annuity or income drawdown provider, where applicable;
 - (g) nomination of beneficiaries;
 - (h) election of members representatives to the board of trustees unless a corporate trustee has been appointed as the sole trustee;
 - (i) the right to attend annual general meetings; and
 - (j) any other rights prescribed by the Act, regulations made thereunder or any other written law.
- (6) A member has an obligation to—
- (a) obtain and make every effort to understand the scheme's documentation including the trust deed and rules or the statutory instrument that established the scheme;
 - (b) seek guidance from trustees or the administrator on any matter that is unclear or over which there is a dispute;
 - (c) make reasonable efforts to attend information briefing sessions where invited including annual general meetings and member education days;
 - (d) provide all necessary information as required under the scheme rules or the statutory instrument that established the scheme. Such information shall be accurate and timely to allow service providers carry out their functions effectively;
 - (e) conduct himself or herself with decorum and respect when dealing with trustees and service providers; and
 - (f) any other obligation prescribed by the Act, regulations made thereunder or any other written law.

[Subsidiary]

7. Compliance with these guidelines

(1) Trustees and service providers shall be responsible for ensuring compliance with these guidelines.

(2) Trustees and service providers shall report annually to the Authority using the Treating Customers Fairly toolkit and toolkit notes set out in the Schedule hereto.

(3) The reports required under subparagraph (2) shall be submitted to the Authority within three months of the service providers' year-end or anniversary of the service providers' registration with the Authority.

(4) The "disclose, apply or explain" principle may be used where there is non-compliance and a trustee or service provider shall submit a non-compliance report stating the areas of non-compliance, the reasons for non-compliance and the proposed timelines (where applicable) within which compliance shall be attained.

8. Limitations

These guidelines shall be subject to the Act, regulations made thereunder and any other relevant written law and where there is a conflict between these guidelines and the provisions of the Act, regulations made thereunder or any other relevant written law, the Act, regulations or that other written law shall prevail.

PART III – PRINCIPLES OF TREATING CUSTOMERS FAIRLY

9. Organizational culture

(1) For the purposes of these guidelines, "organisational culture" refers to the underlying beliefs, assumptions, values and ways in which a service provider interacts with customers.

(2) Service providers shall treat customers fairly as part of their organisational culture.

(3) Service providers shall, in order to incorporate fair treatment of customers in their organisational culture, ensure that—

- (a) the board and senior management have been sensitised on the requirements for the fair treatment of customers and the value of organisational culture change;
- (b) the board oversees the implementation of an appropriate organisational culture that supports the fair treatment of customers;
- (c) the board assigns to a specified senior manager the responsibility of ensuring that customers are treated fairly by the service provider;
- (d) senior management conduct initial and annual reviews of the main business processes in order to identify areas that require improvement so as to ensure conformity with an organisational culture that supports the fair treatment of customers;
- (e) senior management demonstrate to customers through practices and communication that the fair treatment of customers is essential to business operations;
- (f) senior management train and maintain staff with knowledge, behaviour and values that align with these guidelines; and
- (g) management information and reporting frameworks have been established to keep the board and senior management informed on the continuous implementation of an organisational culture that supports the fair treatment of customers.

10. Products and services

(1) Products and services offered by a scheme shall state the type of retirement benefits arrangement that is being offered, information on how to join the scheme, any ongoing information rights as prescribed by the Act, regulations made thereunder, and these guidelines, and the products and services offered to a member on exiting the scheme or retirement such as cash lump sums, pensions and annuities.

(2) Service providers shall ensure that products and services are designed to meet the needs of customers by—

- (a) conducting adequate research and targeting when designing the product or service;
- (b) establishing mechanisms to exhibit new innovations in products and services;
- (c) appropriate and continual sensitisation of employees on product or service design and the customers that products or services are targeted at;
- (d) appropriate promotion and distribution of products and services to customers;
- (e) providing adequate information to customers to ensure that they understand the products and services being offered;
- (f) disclosing and mitigating the risks arising from the adoption of products and services;
- (g) providing disclaimers for products and services being offered by the scheme;
- (h) collecting management information in order to track how products and services are targeted at customers; and
- (i) establishing a process for the withdrawal of products or services that are unsuitable for the targeted customers.

(3) The Authority may require service providers to undertake effective and timely remedial action to address material deficiencies in service providers' compliance with these guidelines.

11. Clear and appropriate information

(1) This paragraph sets out members' right to certain kinds of information held by the service provider and required to be provided to its customers before, during and after the sale or delivery of a product or service to keep the customer appropriately informed at each stage of the transaction.

(2) Trustees shall ensure that members are provided with appropriate information about the products or services offered by service providers including charges, fees, termination conditions and risks associated with the products or services.

(3) To achieve the objectives of this paragraph, service providers shall—

- (a) assess the clarity, suitable font size, appropriateness and fairness of information provided to customers;
- (b) put mechanisms in place to ensure that customers are informed appropriately and in a timely manner about the products and services they may have subscribed to;
- (c) disclose to customers any commissions or benefits received from the sale of products or services;
- (d) put mechanisms in place to protect customers' individual information and maintain the confidentiality of customers' information;
- (e) commission independent internal and external reviews of advertising materials and other customer communication used or published;
- (f) publish clear product or service summaries and answers to questions frequently asked by customers;
- (g) ensure that contract documents are drawn up and signed in time to ensure that customers' rights are protected;
- (h) establish feedback mechanisms to ensure that information received from customers about products or services is acted on appropriately; and
- (i) clearly state the dispute resolution mechanisms available to customers.

[Subsidiary]

12. Customer advice

(1) Trustees and service providers shall provide advice to sponsors and members to ensure that they get access to the best retirement arrangements and benefits under the scheme.

(2) Trustees and service providers shall ensure that the advice offered to customers is suitable and takes into account the specific circumstances under which the advice has been sought.

(3) To achieve the objectives of subparagraphs (1) and (2), service providers shall—

- (a) establish mechanisms for obtaining information from customers that shall be appropriate for customers' needs before giving customers any advice;
- (b) establish processes for ensuring that clear and appropriate advice is given to customers;
- (c) train their employees to continually give up-to-date advice to customers that is relevant to their needs;
- (d) clearly specify where and whom advice is not expected to be given;
- (e) establish feedback mechanisms about the advice given to customers;
- (f) establish redress mechanisms to mitigate the effects of wrong or misleading advice given to customers; and
- (g) trustees and service providers shall ensure that products and services meet the needs of identifiable customer groups such as persons with disabilities (PWDs), persons suffering from ill health, and other persons or classes of persons under the Act.

13. Performance and expectations

(1) Service providers shall ensure that products and services are offered at reasonable cost, conform to the given specifications and associated services are of acceptable standards and what the customer has been led to expect.

(2) Service providers shall, for the purposes of subparagraph (1) —

- (a) employ monitoring tools and mechanisms to track customer satisfaction with products and services offered by the service providers;
- (b) establish mechanisms that ensure the provision of up-to-date information to customers regarding products and services;
- (c) analyse management information to determine reasons for termination of products or services by customers;
- (d) institute awareness programmes on the merits or drawbacks of products or services offered by service providers; and
- (e) establish clear service standards that shall be appropriately communicated to customers and display their key features.

14. Benefits payments and complaints management

(1) Trustees and service providers shall ensure that the benefits payments and complaints management processes are well communicated to customers, particularly to members.

(2) Trustees and service providers shall not impose on customers any undisclosed post-sale barriers in contravention of the provisions of the Consumer Protection Act (Cap. 501) and shall inform customers about the process of filing complaints with the Authority or Tribunal.

(3) For the purposes of this paragraph, service providers shall—

- (a) establish and adhere to clear standards on benefits processing and complaints management;
- (b) establish mechanisms for updating customers on changes to products or services;

- (c) establish mechanisms to ensure that member and scheme records are maintained and updated;
- (d) keep customers informed about the scheme and enable them to track the processing of benefits or complaints including any information about the person or team dealing with the processing of benefits or complaints;
- (e) provide relevant information to customers on the benefits processing and complaints management processes;
- (f) provide customers with adequate information and evidence in case benefits are not payable; and
- (g) advise customers of other options for redress where customers are not satisfied with the handling of benefits processing or complaints management.

PART IV – ENFORCEMENT OF THESE GUIDELINES

15. Principles of enforcement

The following principles shall apply in the enforcement of these guidelines—

- (a) the Act, regulations made thereunder and these guidelines shall provide adequate guidance about the Authority's expectation of minimum standards for treating customers fairly in the management of schemes;
- (b) the Authority shall perform comprehensive evaluations of service providers' policies or strategies for treating customers fairly at regular intervals and assess the implementation of these guidelines; and
- (c) the Authority may require service providers to undertake effective and timely remedial action to address material deficiencies in their compliance with these guidelines.

How to score:

1. Approved Issuers will insert their self-score in column (c); column (d) is constant and auto-generated; the variance in (e) will appear once the score in (c) is inserted.
2. Where a required indicator is partially completed, the Approved Issuer will score themselves 50% of the target score.
3. Approved Issuers may insert remarks on progress towards achieving the activity required
4. The Threshold refers to minimum score a well-managed Approved Issuer is expected to attain as it works with the Authority towards full compliance.

THE RETIREMENT BENEFITS (CORPORATE TRUSTEES) REGULATIONS, 2023

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THE RETIREMENT BENEFITS (CORPORATE TRUSTEES) REGULATIONS, 2023

[Legal Notice 103 of 2023]

1. Citation

These Regulations may be cited as the Retirement Benefits (Corporate Trustees) Regulations, 2023.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"authorised officer" means suitably qualified and experienced person appointed by the board of directors of the corporate trustee to perform a delegated function;

"contract for services" means a contract entered into between a sponsor and a corporate trustee for the provision of corporate trustee services to a retirement benefits scheme;

"related party" means a person or entity that is related to the corporate trustee or sponsor of a scheme in any of the following ways—

- (a) the person has control over the sponsor or corporate trustee, or is a member of the key management personnel of the sponsor or corporate trustee or the parent, subsidiary or fellow subsidiary of the sponsor or corporate trustee;
- (b) the entity and sponsor or corporate trustee are members of the same group, through which each parent, subsidiary and fellow subsidiary of the sponsor or corporate trustee is related to the others; or
- (c) the person or entity is an associate or joint venture of the sponsor or corporate trustee, or an associate or joint venture of a member of a group of which the sponsor or corporate trustee is a member.

3. Application

These Regulations shall apply to corporate trustees under the Act.

PART II – REGISTRATION OF CORPORATE TRUSTEES

4. Application for registration

(1) A person proposing to act as a corporate trustee shall apply to the Authority for, and obtain, a certificate of registration before commencing the performance of any of the functions of a corporate trustee in Form 1 as set out in the Schedule.

(2) An application for registration shall be in accordance with section 23 of the Act.

(3) The applicant shall furnish the Authority with certified copies of the following documents—

- (a) a resolution by the board of directors to apply for registration;
- (b) the certificate of incorporation;
- (c) a certificate issued by the Registrar of Companies under the Companies Act, 2015 (No. 17 of 2015), indicating the details of shareholding and directorship of the applicant;
- (d) the memorandum and articles of association;
- (e) the academic certificates and *curricula vitae* of the directors and top management of the applicant;
- (f) the latest audited financial statements; and
- (g) any other information as may be required by the Authority.

(4) An application for registration shall be accompanied by the prescribed fee.

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(5) The Authority shall consider an application for registration within ninety days after receiving the application.

(6) Where the Authority is satisfied that the applicant meets the requirement for registration, it shall register the applicant and issue the applicant with a certificate of registration in Form II as set out in the Schedule.

5. Criteria for suitability

A person shall be registered by the Authority as a corporate trustee if that person—

- (a) is a limited liability company, incorporated under the Companies Act, 2015, whose main object is to provide corporate trustee services;
- (b) has a paid-up share capital, including unimpaired reserves, of at least ten million shillings;
- (c) has a registered office in Kenya;
- (d) has in its top management, including in the board of directors, persons who are academically and professionally qualified in matters relating to banking, insurance, law, accounting, actuarial studies finance, economic or investment of scheme funds;
- (e) has in its board of directors at least four persons who are Kenyan nationals, one of whom has expertise in finance;
- (f) has adequate professional, technical and operational capacity to meet the obligations to members and sponsor specified in the scheme rules;
- (g) has never been a corporate trustee of any scheme fund which has been deregistered, wound-up or placed under interim administration due to any fault, either fully or partially, of the corporate trustee;
- (h) has never been involved in the management or administration of a scheme which was deregistered for any failure on the part of the management or the administration thereof;
- (i) has submitted an application in the prescribed form and paid the prescribed application fees.

6. Refusal of registration

(1) The Authority may refuse to register a corporate trustee if—

- (a) the information contained in the application for registration is false or untrue in any material particular; or
- (b) the applicant does not meet the requirements for registration set out in regulation 4.

(2) Where the Authority refuses to register a corporate trustee, it shall promptly notify the applicant in writing, specifying the reasons for such refusal.

7. Deregistration and suspension of corporate trustees

(1) A corporate trustee may apply to the Authority for deregistration, and the Authority shall deregister the corporate trustee if satisfied that such deregistration shall not prejudice the interest of the members or sponsor of the scheme.

(2) The Authority may, by notice in writing, suspend the registration of a corporate trustee if—

- (a) after registration, the Authority discovers that the corporate trustee made a statement in, or in connection with, the application which was false or untrue in any material particular;
- (b) the Authority becomes aware, after registration, of any fact or circumstance that would make the corporate trustee, or one or more of the directors or top managers of the corporate trustee, ineligible under section 22A and 26 of the Act;
- (c) the corporate trustee becomes insolvent or goes into liquidation;

- (d) the corporate trustee breaches any condition attached to the certificate of registration;
- (e) the corporate trustee fails to comply with any of the provisions of the Act, or with any Regulations made or directions issued thereunder;
- (f) the corporate trustee gives false or misleading information in the course of conduct of its business;
- (g) the corporate trustee's directors fail to perform their fiduciary duties; or
- (h) the directors and top management of the corporate trustee fail to undergo training and certification as required under regulation 13.

(3) A notice under subregulation (2) shall specify the reasons for suspension, and where the default is, in the reasonable opinion of the Authority, capable of remedy, the notice shall specify the period within which the corporate trustee shall undertake remedial action.

(4) Where the default is, in the reasonable opinion of the Authority, not capable of remedy, or where the corporate trustee fails to undertake remedial action within a specified period, the Authority shall give the corporate trustee at least twenty-eight days to make representations why it should not be deregistered.

(5) Upon considering any representations made under subregulation (4), the Authority may deregister the corporate trustee.

PART III – APPOINTMENT OF CORPORATE TRUSTEES

8. Appointment

(1) A corporate trustee shall be appointed by the sponsor by an instrument in writing on such terms as shall be agreed upon:

Provided that the terms of the appointment shall be in accordance with the Act and these Regulations, the scheme rules, and any other relevant written law.

(2) A sponsor shall not appoint a related party of the sponsor as a corporate trustee.

(3) A copy of the instrument of appointment contemplated in subregulation (1) shall be submitted to the Authority within thirty days after it has been executed by the sponsor and corporate trustee.

9. Content of a contract of service

(1) The corporate trustee's instrument of appointment shall specify the terms of the contract of service:

Provided that the term of appointment shall not exceed three years, but it may be renewed by the agreement of the parties upon satisfactory performance.

(2) The instrument shall specify the duties of the corporate trustee, the fees to be paid, the procedure of, and grounds for termination of the contract of service and a dispute resolution mechanism.

(3) The instrument shall not include a clause whose purpose and intent is to penalise a scheme financially or otherwise where such scheme terminates the appointment.

PART IV – DUTIES OF CORPORATE TRUSTEES

10. Duties of a corporate trustee

The duties of a corporate trustee include—

- (a) holding the assets of the scheme in a fiduciary capacity;
- (b) developing and implementing a prudent investment policy for the scheme;
- (c) supervising and administering the scheme in accordance with the applicable law and scheme rules;
- (d) keeping all proper books and records of account of the income, expenditure, liabilities and assets of the scheme;

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- (e) paying out benefits to members and making lawful payment for any professional services rendered to the scheme;
- (f) liaising with the Authority, sponsors, members, administrators, manager, custodian and any other service provider engaged by the scheme;
- (g) collecting, keeping and updating retirement benefits data and information of each member including the maintenance of individual membership records;
- (h) taking all reasonable steps to ensure that the agreed contributions have been remitted to the custodian or approved issuer as required by the Act, these Regulations and the scheme rules:

Provided that the corporate trustee shall report to the Authority if any contributions into the scheme fund remain outstanding for more than thirty days;

- (i) communicating regularly with the members of the scheme on the affairs of the scheme;
- (j) preparing and issuing annual benefit statements to members;
- (k) convening the annual meeting of members and granting members a reasonable opportunity to raise any relevant matter at that meeting;
- (l) ensuring that the scheme's service providers are qualified professionals who are duly registered or licensed as may be required;
- (m) ensuring that minutes, resolutions, contracts and all documentation in respect of the scheme are properly maintained;
- (n) ensuring that all documents intended to bind the scheme are professionally prepared;
- (o) submitting the annual scheme budget to the Authority upon request; and
- (p) updating the sponsor at least once in every three months on matters regarding the scheme.

11. General duties of a trustee

In addition to the duties outlined in regulation 10, a corporate trustee shall also be responsible for discharging all other duties of a trustee set out in the Act, these Regulations and any other written law, the scheme rules, and the instrument of appointment.

12. Duty of confidentiality

A corporate trustee shall hold in confidence all information, documentation and data that it shall obtain from the scheme and shall not make unauthorised use of, or divulge, the confidential information to any third party unless required by law or a lawful direction from a Government authority.

13. Professional development

The directors of a corporate trustee shall ensure that they and the top management of the corporate trustee comply with the directions of the Authority on the training and certification of trustees.

14. Power to appoint service providers

(1) Subject to requirements of any other written law, a corporate trustee shall have the power to appoint in writing such service providers as may be necessary for the discharge of its duties:

Provided that such service providers shall meet the required professional qualifications necessary to offer services to the scheme.

(2) Despite subregulation (1), a corporate trustee shall not appoint a related party as a service provider of the scheme.

15. Power to pay debts

Subject to the scheme rules and the instrument of appointment, a corporate trustee shall be entitled to apply scheme funds to pay the expenses of administering the scheme, and any debt lawfully incurred by the scheme:

Provided that a corporate trustee's fees shall only be applied with the concurrence of the sponsor.

16. Power to delegate

The corporate trustee may delegate any of its functions or duties relating to the Scheme:

Provided that the corporate trustee shall not have the power to so delegate any of its discretionary powers.

17. Power to insure

The corporate trustee may at the expense of the scheme and in the name of the scheme insure any of the scheme's assets and member benefits.

PART V – MEETINGS AND RESOLUTIONS

18. Resolutions

(1) A corporate trustee may, by a written resolution of its board of directors, appoint one or more of its directors or an authorised officer to carry out the day-to-day management of the affairs of the scheme:

Provided that the decision of the authorised officer shall be sanctioned by the board and the Authority shall be notified within thirty days of such appointment.

(2) The business and affairs of the corporate trustee shall be managed by its board of directors.

(3) The board of directors may determine its own procedure for meetings and may make standing orders in respect thereof:

Provided that—

- (a) the board of directors shall meet at least two times in each financial year;
- (b) not more than six months shall elapse between the date of one meeting and the date of the next meeting;
- (c) in convening a meeting, a corporate trustee shall give at least twenty-one days' notice, unless the corporate trustee's articles of association require a longer period of notice, or the directors agree that a meeting be convened by a shorter notice;
- (d) the quorum for the conduct of a duly constituted meeting shall be any three directors;
- (e) if a director's personal interest conflicts in any way with the interest of the scheme in a matter under consideration in a meeting of the board, the director shall declare the nature, and extent of that interest to the other directors and the director shall not take part in the meeting;
- (f) the chairperson shall preside at every meeting of the board at which he or she is present but, in his or her absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson;
- (g) minutes of all proceedings at meetings shall be recorded and preserved for at least seven years from the date of the meeting; and
- (h) minutes of a meeting of the directors recorded in accordance with this part, and resolutions extracted from the minutes, if authenticated by one director and the chairperson presiding at the meeting or by the chairperson presiding at the next directors' meeting, is evidence of the proceedings of the meeting.

[Subsidiary]

PART VI – GENERAL PROVISIONS

19. Termination

(1) The contract for services between a scheme and a service provider may be terminated before the expiration of the term of the contract if—

- (a) one or more of the events outlined in regulation 7 which would warrant the deregistration of the corporate trustee occurs;
- (b) the corporate trustee or any of its directors no longer meet the criteria for suitability set out in section 26A of the Act; or
- (c) one or more of the directors would be unfit to be a trustee for the reasons outlined in section 26(2) of the Act.

(2) The contract for services shall be terminated upon the issue of a notice from the Authority withdrawing its approval granted under section 26(3) of the Act.

20. Appointment of a successor

(1) Upon the expiry of the corporate trustee's term or determination of the contract for services, whichever is the earlier, the sponsor shall appoint a successor trustee or trustees.

(2) The Authority may appoint an interim administrator under section 45 of the Act to exercise all the powers of the corporate trustee before the appointment of a successor trustee or trustees under subregulation (1).

21. Handover

(1) Upon removal from office, the corporate trustee shall facilitate the transfer of all the scheme assets to the successor trustee or interim administrator appointed under section 45 of the Act.

(2) The corporate trustee shall within ninety days after receiving the notice of termination deliver to the successor trustee all relevant data and information obtained in the course of administering a scheme.

(3) Upon the lapse of the period specified in subregulation (2), the corporate trustee shall furnish a report to the Authority within thirty days, confirming—

- (a) that all documents of title in the possession of the corporate trustee, the assets register, minute books, members' records and all other records of the scheme have been delivered to the new trustee; and
- (b) the date and address of such delivery, and the name of the trustee or person to whom the documents specified in paragraph (a) have been delivered.

(4) Where a corporate trustee is unable to comply fully with subregulation (3) for reason other than non-payment of fees for the trustee services, the corporate trustee shall state in the report the full particulars of the documentation which has not been delivered, the reasons therefor, and a plan with the dates on which compliance will take place.

22. Insolvency and winding-up

(1) Where the board of a corporate trustee resolves that the corporate trustee be wound up, or the board is served with an order of court for the winding up of the corporate trustee, or a liquidator, provisional liquidator, receiver or manager is appointed in respect of the corporate trustee under the provisions of the Insolvency Act (Cap. 53), the corporate trustee shall in accordance with regulation 20 facilitate the transfer of all the scheme assets and hand over all relevant data and information obtained in the course of administering a scheme to the successor trustee or an interim administrator appointed under section 45 of the Act.

(2) The Authority shall require the directors of a corporate trustee to furnish a report within thirty days after the commencement of winding up proceedings confirming that all documents of title in the corporate trustee's possession, the assets register, minute books, member's records and all relevant data and information obtained in the course of administering a scheme have been delivered to the successor trustee or an interim administrator appointed under section 45 of the Act.

(3) The Authority may additionally require the directors of the corporate trustee to furnish evidence of such delivery and the indemnity of the recipient.

(4) Where the Authority is satisfied that the directors of a corporate trustee have complied with the requirements set out in subregulations (2) and (3), the Authority may deregister the corporate trustee.

23. Penalties

Where a corporate trustee or any of the directors contravenes any of the provisions of these regulations, the corporate trustee or director, as the case may be, shall be liable to any or all of the remedial actions provided for under the Act.

24. Transition

Each corporate trustee in operation on the date of the commencement of these Regulations shall comply with the provisions of these Regulations within twelve months after commencement of these Regulations.

[Subsidiary]

SCHEDULE

[r. 4(1), (6)]

FORMS

FORM I

REGISTRATION OF CORPORATE TRUSTEE

APPLICATION FOR REGISTRATION UNDER SECTION 25C OF THE
RETIREMENT BENEFITS ACT, 1997

PART I - GENERAL

- (i) Registration name.....
- (ii) Physical Address.....
- (iii) Postal address.....
- (iv) Telephone and Electronic mail contacts.....

PART II- REGISTRATON PARTICULARS

- (i) Registration Number.....
- (ii) Date of incorporation (*attach a copy of the certificate of incorporation- Appendix A*)
.....
- (iii) Main objects of the company (*attach copies of the memorandum and articles of association-Appendix B*).....
- (iv) Income Tax Personal Identification Number (*attach copies of the PIN and Tax Compliance Certificates- Appendix C*)
.....
- (v) List the retirement benefits schemes the applicant has served as corporate trustee (if any) (Appendix D).....

PART III – DIRECTORS AND MANAGEMENT

- (i) Attach details of Board of Directors in the following format– Appendix E

Full name	Relevant academic qualifications	Relevant professional experience	Number of shares held

- (ii) Name of Board chair.....
- (iii) Attach organogram of company- Appendix F
- (iv) Attach details of top managers in the following format- Appendix G

Full name	Relevant academic qualifications	Relevant professional experience

PART IV - CAPITAL AND SHAREHOLDING

- (i) Attach a copy of the latest audited financial statements - Appendix H
- (ii) Attach details of authorised capital in the following format - Appendix I

Types of shares	Number of shares	Nominal value (Kshs.)	Total Value (Kshs)

- (iii) Attach details of Paid-up Capital in the following format -Appendix J

Number of shares and holding	Number of shareholders	Number of shares	Nominal Value (Kshs)	Total Value (Kshs)	% of total

PART V - ACADEMIC AND PROFESSIONAL CERTIFICATES

- (i) Attach academic, professional and any other relevant certificates - Appendix K
- (ii) Attach evidence of trustee training for directors and top management - Appendix L

FORM II

CERTIFICATE OF REGISTRATION OF A CORPORATE TRUSTEE

This is to certify that.....is registered as a corporate trustee subject to the provisions of the Retirement Benefits Act and the conditions endorsed hereon.

CONDITIONS

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

Given under my hand and seal of the Retirement Benefits Authority this day of, 20

**THE RETIREMENT BENEFITS (INCOME
DRAWDOWN FUNDS) REGULATIONS, 2023**

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THE RETIREMENT BENEFITS (INCOME DRAWDOWN FUNDS) REGULATIONS, 2023

[Legal Notice 187 of 2023]

1. Citation

These Regulations may be cited as the Retirement Benefits (Income Drawdown Funds) Regulations, 2023.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"dependent" includes a member's spouse, son, daughter, grandson, granddaughter, adopted child, parent, grandparent, brother and sister living at the time of the member's death and such other person who is, in the option of the Trustees, immediately before the member's death substantially dependent upon the member for the provision of all the necessities of life;

"existing income drawdown fund" means an income drawdown fund established or in operation before the commencement of these Regulations;

"founder" means a person that establishes an income drawdown fund;

"income drawdown" means an arrangement that allows a member of a retirement benefits scheme to access his or her accumulated retirement benefits as a regular income through reinvesting his or her benefits from an income drawdown fund registered by the Authority;

"income drawdown fund" means a fund registered by the Authority established for the purposes of receiving accrued retirement benefits from members of a retirement benefits scheme upon retirement, reinvestment and paying regular income;

"income drawdown rules" means the trust deed and rules of an income drawdown fund; and

"member" means a person entitled to receive benefits from an income drawdown fund.

PART II – REGISTRATION OF INCOME DRAWDOWN FUNDS

3. Registration of income drawdown funds

(1) No person shall establish an income drawdown fund without registration by the Authority in accordance with these Regulations.

(2) Each income drawdown fund shall be established as an irrevocable trust.

4. Application for registration

(1) A person who intends to establish and operate an income drawdown fund shall apply to the Authority in writing.

(2) The Authority shall, within ninety days after receiving an application under subregulation (1)—

(a) consider the application and notify the applicant in writing whether the application is acceptable for registration and, if it is not acceptable, the reason for the decision; and

(b) if it is acceptable, issue the applicant with a certificate of registration.

(3) When considering an application under paragraph (1), the Authority may request the applicant to provide additional information including details on ownership, directorship, shareholding and staff establishment of the applicant.

[Subsidiary]

5. Requirements for registration of an income drawdown fund

An application for the registration of an income drawdown fund shall be accompanied by—

- (a) the resolution of the applicant approving the establishment of the income drawdown fund;
- (b) the trust deed and rules of the income drawdown fund;
- (c) an agreement between the applicant and the administrator of the income drawdown fund;
- (d) a custody agreement or deposit administration policy;
- (e) a manager agreement or deposit administration policy;
- (f) an investment policy statement;
- (g) a corporate trustee or corporation trust agreement, where applicable; and
- (h) an actuarial certificate certifying the design and financial viability of the income drawdown fund where auxiliary benefits are provided.

6. Constitution of the founder

(1) Where a founder of an income drawdown fund is not a registered retirement benefit scheme, the founder shall, at all times, have in its board of directors and top management—

- (a) at least four persons who are academically and professionally qualified in matters relating to the administration of retirement benefits schemes, insurance, law, accounting, actuarial science, economics, banking, finance, and investment of scheme funds; and
- (b) at least one person possessing at least five years' experience in the administration of retirement benefits schemes.

(2) The founder shall be—

- (a) a company incorporated under the Companies Act (Cap. 486).
- (b) a co-operative society registered under the Co-operative Societies Act (Cap. 490);
- (c) a society registered under the Societies Act (Cap. 108); or
- (d) any other legal entity as the Authority may, by notice, approve.

(2) Subregulations (1) and (2) shall not apply where the income drawdown fund draws its membership from an occupational retirement benefits scheme established by the same founder.

7. Suitability of a founder

The Authority shall, when determining the suitability of a founder, have regard to the following qualities of the founder so far as they are reasonably determinable—

- (a) the general probity of the founder including by undertaking background checks and risk assessments;
- (b) qualifications and experience of the founder's top management or directors in respect of the administration and management of trusts;
- (c) the previous conduct and activities of the sponsor concerned in business or financial matters, and particularly any evidence that any director or top management personnel of the founder—
 - (i) has been convicted of the offence of fraud, or any other offence of which dishonesty is an element; or
 - (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by a person engaged in the provision of banking, insurance, investment or other financial services; and

- (d) any additional information as may be necessary to determine the professional suitability of a founder.

8. Registered office

Each income drawdown fund shall have a registered office in Kenya.

PART III – ADMINISTRATION AND MEMBERSHIP

9. Content of the income drawdown fund rules

- (1) The income drawdown fund rules shall include the following—
- (a) the full name of the income drawdown fund, including reference to any prior change of name;
 - (b) the postal and physical address of the registered office of the income drawdown fund;
 - (c) the date of commencement of the income drawdown fund;
 - (d) a list of definitions, in alphabetical order, defining the terms which are frequently used in the rules, and which bear a special connotation;
 - (e) requirements for admission to membership and circumstances under which membership is to cease;
 - (f) conditions under which a member may become entitled to any benefit including payment of death benefits to beneficiaries;
 - (g) the appointment, term, removal from office, powers and remuneration of trustees and officers or administrators of the income drawdown fund;
 - (h) the investment of the funds held in the income drawdown fund;
 - (i) the procedure for the execution of contracts and other documents binding the income drawdown fund;
 - (j) the procedure of amending the income drawdown fund rules;
 - (k) appointment and term of the auditor of the income drawdown fund and any other provider of professional services;
 - (l) custody of the funds held in the income drawdown fund, documents of title and other securities belonging to the income drawdown fund;
 - (m) subject to the provisions of the Act and the Regulations made thereunder, the procedure for the dissolution of the income drawdown fund;
 - (n) the appointment of the liquidator of the income drawdown fund in the case of a voluntary dissolution;
 - (o) the procedure of members transferring their funds from one income drawdown fund to another:

Provided that the members shall only be allowed to make transfers from one income drawdown fund to another only once in every five years; and

- (p) dispute resolution processes and mechanisms between members and by members in respect of the income drawdown fund.

10. Amendment of income drawdown fund rules

- (1) An income drawdown fund may amend its rules.
- (2) The amendment of income drawdown fund rules shall not be valid—
- (a) if it purports to invalidate or reduce the rights or interest of a member;
 - (b) if it purports to affect any right of a creditor of the Income Drawdown Fund, other than as a member thereof;
 - (c) if it varies the main purpose of the fund;
 - (d) if in the opinion of the Authority the amendment is not in the best interest of the members or in the public interest.

[Subsidiary]

(3) Within thirty days from the date of the passing of a resolution for the amendment of the income drawdown fund rules, the trustees shall submit to the Authority a copy of the resolution and amendment for registration.

(4) Where an amendment to the income drawdown fund rules affects the benefits structure of the income drawdown fund, the trustees shall, in addition to the resolution of the trustees and proposed amendment, submit to the Authority an actuarial certificate confirming the continued viability of the income drawdown fund.

(5) Where the Authority approves the proposed amendment of the income drawdown fund rules, it shall register the amendment and return the copy to the trustees with the date of registration endorsed thereon, and such amendment shall be deemed to take effect as from the date determined by the income drawdown fund or, if no date has been so determined, from the date of registration by the Authority.

11. Duties, appointment and removal of trustees

(1) The income drawdown fund rules shall make provision for—

- (a) the procedure for the appointment of trustees and their tenure;
- (b) the functions, powers and duties of the trustees;
- (c) the procedure of, and grounds for, the removal from office of trustees; and
- (d) the procedure for convening meetings of trustees:

Provided that—

- (i) the trustees shall meet at least two times in each calendar year; and
- (ii) not more than six months shall elapse between the date of one meeting and the date of the next meeting.

(2) The income drawdown fund rules shall prescribe the duties of the trustees, and, notwithstanding the generality of the foregoing, the rules shall prescribe the following duties

- (a) administering the income drawdown fund;
- (b) keeping all proper books and records of account with respect to income, expenditure, liabilities and assets of the income drawdown fund;
- (c) processing of periodic withdrawals;
- (d) liaising with the Authority, founder, members, administrator, custodian, manager and any other professional engaged by the income drawdown fund;
- (e) maintenance of membership records including those of nominated beneficiaries;
- (f) communicating regularly with the members of with respect to the performance and affairs of the income drawdown fund;
- (g) providing members with annual membership benefits statements;
- (h) convening the annual meeting of members; and
- (i) ensuring that documents intended to bind the income drawdown fund are professionally prepared and duly executed.

(3) The trustees of the income drawdown fund shall be a trust corporation which shall be appointed under a deed, and which shall have at least one director vetted by the Authority.

(4) Where an income drawdown fund draws its membership from an occupational scheme established by the same founder, the trustees of the occupational scheme may act as the trustees of the income drawdown fund.

(5) Notwithstanding subregulation (3), an income drawdown fund shall not appoint a trust corporation to be a trustee of the fund if the trust corporation is related to the founder by way of ownership or directorship.

(6) A trustee shall not be removed from office without due process of the law.

(7) No trustee or director of the trust corporation shall provide professional services, conduct business with the income drawdown fund or be engaged in undertaking professional

services provided by the trustee or the trustee's firm in connection to the income drawdown fund.

12. Rules relating to administrators

(1) Trustees shall appoint administrators of the income drawdown fund.

(2) The functions, powers, duties, remuneration and removal from office of an administrator shall be guided by the instrument of appointment—

(3) In addition to the provisions of subregulation (2), the instrument of appointment shall prescribe—

- (a) the computation of the fee in respect of administrative services; and
- (b) the rights and obligations of the administrator to the trustees.

(4) The administrative costs debited to the fund regarding the administration of the fund shall not exceed the budget approved by the trustees for that purpose.

(5) The Authority may require the income drawdown fund to submit its annual administration budget.

(6) Where the administrator is for any reason unable to discharge the duties imposed upon him or her by these Regulations, the income drawdown fund rules or instrument of appointment, the trustees shall appoint an acting administrator pending the appointment of a new administrator.

13. Rules relating to custody and investment of income

(1) The funds held in an income drawdown fund and the documents of title, securities and income that shall accrue thereof, shall be held and maintained in custody on behalf of the trustees by a custodian appointed by the trustees.

(2) The trustees of an income drawdown fund shall not appoint a custodian where the funds held in the fund are invested fully in a guaranteed fund.

(3) The monies received by a custodian on behalf of the trustees of an income drawdown fund shall be deposited in an account with a bank registered under the Banking Act (Cap. 488), and such account shall be maintained by a custodian on behalf of and in the name of the income drawdown fund.

(4) A custodian shall open a client account on behalf of the trustees of the income drawdown fund.

(5) The funds held in the client account opened under subregulation (5) shall not form part of the assets or funds of such custodian.

(6) The funds held in an income drawdown fund shall be invested by the manager of the fund on behalf of the trustees.

(7) Each custodian of an income drawdown fund shall, at the end of each period of three months, submit to the Authority a detailed report of the assets of the income drawdown fund and drawdown funds received during that period.

(8) The custodian of an income drawdown fund shall, where its funds have been invested in an approved issuer, provide to the Authority a detailed report of the assets of the invested funds and drawdown funds received for the quarter.

(9) The report from the custodian and approved issuer of an income drawdown fund shall capture the cash inflows from other income drawdown funds or schemes and periodic payments of member's benefits.

14. Remittances into the income drawdown fund

(1) An income drawdown fund may receive funds from a registered retirement benefits scheme, a scheme established under or by an Act of Parliament, or from any other income drawdown fund.

(2) Each income drawdown fund shall prepare and maintain a record showing the individual member remittances and funds from other income drawdown funds.

[Subsidiary]

(3) Each income drawdown fund shall maintain a record of remittances to the fund for each period of three calendar months and submit the reports thereon to the Authority by the fifteenth day following the end of each such period.

15. Eligibility for admission

(1) The following persons shall be eligible to join an income drawdown fund—

- (a) a member of a retirement benefits scheme who has attained at least the specified early retirement age and in any case, who has attained the age of fifty years; or
- (b) a member transferring funds from another income drawdown fund or;
- (c) a beneficiary entitled to receive benefits from a retirement benefits scheme or income drawdown funds with the approval of the trustees.

Provided that where the beneficiary is a minor, he or she shall remain in the income drawdown fund until he or she attains the age of eighteen years after which he or she can exercise the option to transfer the funds to the new income drawdown fund.

(2) Prior to commencement of the income drawdown, the member shall sign a member consent form acknowledging that he or she understands the product design, benefits and associated risks.

(3) Income drawdown fund rules shall not—

- (a) restrict eligibility to membership in the income drawdown fund on the basis of gender, race, association, religion or any manner which is discriminatory; or
- (b) contain any provision which would render admission to membership subject to any discretionary power.

16. Disclosures to members

(1) Each income drawdown fund shall fully disclose to the members the following information at the point at the point of joining the income drawdown fund—

- (a) the terms of access including the minimum drawdown period and maximum drawdown rate;
- (b) a simplified benefit illustration projection for at least three scenarios covering best estimate, optimistic case and worst case over the course of the drawdown period;
- (c) the circumstances under which membership in the income drawdown fund shall cease which may include—
 - (i) transfer after the first five years; or
 - (ii) purchase of an annuity; or
 - (iii) access of balance on trivial grounds after the first ten years;
- (d) risks of the fund including investment risk, longevity risk, expense risk and inflation risk;
- (e) taxation of benefits;
- (f) fees and charges applicable;
- (g) payment of benefits to nominated beneficiaries in case of death;
- (h) timing and frequency of payments;
- (i) dispute resolution mechanisms; and
- (j) a summary of the rules of the income drawdown fund.

(2) Each income drawdown fund shall ensure that its members have signed a declaration form confirming receipt of the information prescribed under subregulation (1).

(3) The following ongoing disclosures shall be provided to the members—

- (a) members of an income drawdown fund shall be entitled to receive an annual member statement which containing the following minimum information—

- (i) opening balance;
 - (ii) investment income;
 - (iii) withdrawals;
 - (iv) expenses;
 - (v) closing balance; and
 - (vi) net rate of return credited to the member's account; and
- (b) a summary of the financial statement of the income drawdown fund and the performance report.

(4) The trustees shall provide each member of an income drawdown fund with information on options available to members upon expiry of the minimum drawdown period.

17. Protection against financial loss

Income drawdown fund rules may provide for the protection of the income drawdown fund and assets against any insurable risk and financial loss arising out of negligence, default or wilful default of the fund's officers, trustees, administrator, manager or custodian by way of insurance of such amount as the trustees may deem appropriate.

18. Benefits from the income drawdown fund

(1) Income drawdown fund rules shall specify the manner by which benefits are payable from the fund, the frequency, and the allowable limit.

(2) The members of the income drawdown fund shall have the freedom to choose the frequency of withdrawals and amounts payable not exceeding the limit set out in these regulations:

Provided that—

- (a) the minimum drawdown period allowable shall be ten years from the date of commencement of the drawdown;
- (b) a member may transfer his or her benefits from the income drawdown fund to another income drawdown fund after five years of membership;
- (c) the member may withdraw an income from his or her drawdown fund subject to a maximum of twelve per cent per year of the member's outstanding account balance determined at the beginning of the financial year of the income drawdown fund;
- (d) the structure of each individual income drawdown shall prescribe the frequency of the drawdown which may be monthly, every three months, every six months, or annually and the manner in which to effect such change; and
- (e) after the expiry of the minimum drawdown period, the following options shall be available to the member—
 - (i) the income drawdown arrangement can be continued (with the same provider or with a different provider);
 - (ii) purchase of an annuity; or
 - (iii) access the balance as a lump sum.

(3) If a member of an income drawdown fund chooses to continue with the income drawdown in accordance with subregulation (2)(e)(i), he or she may choose on whether to continue with the income drawdown fund or purchase an annuity after every five years.

(4) Funds relating to beneficiaries who have not attained the age of eighteen years shall not be subject to the restrictions prescribed under regulation 16(2) and the income drawdown fund rules shall provide the manner in which trustees shall manage funds held for beneficiaries' upkeep and maintenance.

(5) The trustees of an income drawdown fund shall submit to the Authority at least once in every three months a record of payments out of the fund to members in the prescribed form by the fifteenth day following the end of every third month.

[Subsidiary]

19. Portability of benefits

(1) Each member of an income drawdown fund has the right to transfer his or her funds from one income drawdown fund to any other registered income drawdown fund in Kenya of his or her choice subject to the minimum drawdown period:

Provided that the transfer shall only be allowed after a membership of five years and that the member shall have given a notice of not less than three months.

(2) Each transfer shall be done in lump sum and the income drawdown fund rules shall provide that there shall be no partial transfers of funds.

(3) No penalty or charges shall be applied to member's benefits upon transfer.

(4) Upon the expiry of the notice period of the transfer, the trustees shall effect the transfer within thirty days.

(5) The funds held in the income drawdown fund shall continue to accrue interest until the transfer is complete.

(6) Every income drawdown fund shall provide procedures for the transfer of members funds from one income drawdown fund to another.

(7) Each income drawdown fund shall submit to the Authority at least once in every three months a record of transfers out to any other income drawdown fund in the prescribed form by the fifteenth day following the end of every third calendar month.

20. Payment of benefits on the grounds of ill-health and emigration

A member may opt for the payment of the total amount of his or her benefits—

- (a) on grounds of incapacitation due to ill-health, upon approval by the trustees or
- (b) where the member is emigrating from Kenya to another country without any present intention of returning to reside in Kenya and has obtained the approval of the trustees, which shall be approved to the Authority, before payment is made.

21. Payment of benefits upon death

(1) On the death of an individual member of an income drawdown fund, his or her beneficiaries may opt to—

- (a) continue with the income drawdown arrangement or;
- (b) purchase an annuity or;
- (c) access the benefits as a lump sum.

(2) The income drawdown rules shall provide that upon the death of a member of the income drawdown fund, the benefits payable from the fund shall be paid to the nominated beneficiaries and if the deceased member had not nominated any beneficiaries, the trustees shall exercise their discretion in the distribution of the benefits to the dependents of the deceased member:

Provided that the trustees may refuse to pay nominated beneficiaries and the reason for such refusal shall be recorded.

(3) The trustees shall exercise their discretion in determining the amount payable to the dependants' of the deceased member.

PART IV – FINANCIAL PROVISIONS AND STATEMENTS

22. Books of accounts

(1) Each income drawdown fund shall keep and maintain such books of accounts and other records as may be necessary for the purpose of accounting for the fund's income and expenditure, and assets and liabilities.

(2) Each income drawdown fund shall maintain records of all transactions in respect of each member of the fund.

23. Appointment of auditors

(1) Each income drawdown fund shall, within three months after the date of registration by the Authority, appoint an auditor who shall be a member of the Institute of Certified Public Accountants of Kenya and the appointment shall be notified to the Authority within thirty days after the date of appointment for approval.

(2) The Authority may refuse or revoke the appointment of an auditor and the trustees shall appoint another auditor subject to approval by the Authority.

24. Annual accounts

(1) The trustees of an income drawdown fund shall submit audited annual accounts which shall include the trustees' and investments reports to the Authority, with a certificate signed by the chairman of the board of trustees or any authorized trustee certifying that, to the best of his or her knowledge and belief, the information furnished to the auditor for the purpose of audit was correct and complete in every respect.

(2) The income and expenditure account and the statement of assets and liabilities and notes thereto of the income drawdown fund shall be accompanied by a report signed by the auditor of the income drawdown fund and where the auditor is unable to sign the report without qualification, the report shall disclose reasons for such qualification.

(3) The income and expenditure account and the statement of assets and liabilities of each income drawdown fund shall be prepared on accrual basis in the prescribed form.

(4) Each income drawdown fund shall, within six months after the end of each financial year—

- (a) conspicuously display in the office of the income drawdown fund a notice notifying the members that the audited accounts together with the trustees' and investment reports are available for inspection; and
- (b) send to its members a summary of its audited accounts together with benefit statements.

25. Accounting procedure for investments

(1) The statement of income and expenditure of each income drawdown fund shall be treated in accordance with international financial reporting standards.

(2) The income of an income drawdown fund accruing from investment and gains on sale of investment and incurred expenses shall be reported on by the trustees.

26. Valuation of assets

The value of the assets of the income drawdown fund shall be the value realisable upon disposal at an arm's length transaction less expenses payable to effect the disposal.

27. Reserve fund

No income drawdown fund shall maintain a reserve fund.

28. Minimum disclosure requirements

The financial statements of each income drawdown fund shall be in the prescribed form and shall disclose—

- (a) fees and expenses, appropriately classified, paid directly or indirectly to, or on behalf of, the trustees;
- (b) returns on investments in each category of investment;
- (c) related party transactions;
- (d) ownership of more than ten per cent equity in any one company or related companies;
- (e) the overall rate of return credited to members' balances; and
- (f) any other matter as may be prescribed by the Authority.

[Subsidiary]

PART V – INVESTMENT GUIDELINES

29. Investment policy

(1) Each income drawdown fund shall prepare and maintain a written statement of the principles governing decisions on investments which shall be revised at least once in every three years.

(2) The statement prescribed in subregulation (1) shall cover, among other things—

- (a) the policy of the income drawdown, in compliance with regulation 30;
- (b) the policy of the income drawdown fund on—
 - (i) membership profile;
 - (ii) the categories of investment to be held; and
 - (iii) risk associated with each category of investment;
- (c) the realization of investment;
- (d) asset liability matching;
- (e) specific performance benchmarks; and
- (f) any other issue as may be prescribed from time to time by the Authority.

(3) The income drawdown fund and the statement of principles governing decisions on investments of the fund shall not impose restrictions on any power to make investments by reference to the consent of the founder.

(4) Each income drawdown fund shall, before a statement under this regulation is prepared or revised, obtain and consider the written advice from a financial analyst registered under the Investment and Financial Analysts Act (Cap. 542), an actuary, investment advisor or fund manager registered under the Capital Markets Act (Cap. 485A), or a manager under this Act:

Provided that the financial analyst, actuary, investment advisor or fund manager shall not be the income drawdown fund manager related to the founder or an employee of the income drawdown fund.

30. Investment guidelines

Notwithstanding the provisions of regulation 29, an income drawdown fund shall invest only in an asset class referred to in column 1 of Form G as prescribed to the extent to which the market value of the investment in the class expressed as a percentage of the total assets of the fund or pooled fund does not exceed the percentage listed in column 2 of Form G:

Provided that income drawdown fund shall not invest directly in immovable property.

PART VI – LEVY

31. Retirement Benefits Levy

An income drawdown fund shall not be required to pay the Retirement Benefits Levy.

PART VII – MERGERS, BULK TRANSFERS AND LIQUIDATION

32. Voluntary winding up of an income drawdown fund

(1) A resolution by trustees to voluntarily wind-up a fund shall not be effected until the Authority has approved the winding up of the fund in writing.

(2) A fund may be wound up or dissolved if—

- (a) the founder of the fund is dissolved or wound up or is undergoing a dissolution or winding up process;
- (b) the participation of the founder has ceased;
- (c) failure by the founder to observe or perform obligations as set out in the trust deed and income drawdown fund rules, and these Regulations;

- (d) on reorganization or reconstruction, the founder (or the founder's successor-in-title) enters an arrangement with another entity (to be known as the "new organization") which undertakes to assume all the business rights and obligations of the founder except that of an income drawdown fund; and
- (e) on such other grounds, as may be specified for that purpose in the income drawdown fund rules and in the manner provided by such rules.

33. Notification of winding up

Upon resolution for voluntary winding up of the income drawdown fund, the Trustees shall notify each member in writing on the intention to wind up the fund and the details of the winding up process.

34. Appointment of liquidator.

The trustees of an income drawdown fund that is intended to be wound up shall appoint a liquidator to carry out the winding up of the fund.

35. Bulk transfer

Notwithstanding regulation 34, in the case of a bulk transfer to another income drawdown fund, the trustees of an income drawdown fund intended to be wound up shall not be required to appoint a liquidator but shall submit the following to the Authority for approval—

- (a) a resolution by the founder to transfer the funds held in the income drawdown fund to another fund;
- (b) a resolution by the trustees indicating the reason for winding up and transfer;
- (c) current audited accounts or fund statement of the fund;
- (d) signed member consent forms acknowledging the benefits to be transferred to the other fund;
- (e) proof of transfer to the other fund;
- (f) proof of receipt of funds by the other fund;
- (g) nil accounts to close the fund;
- (h) original certificate of registration of the other fund; and
- (i) any other information as required by the Authority.

36. Approval by the Authority

(1) The transfer of an income drawdown fund to another fund shall not be approved by the Authority unless—

- (a) the Authority is satisfied that the arrangements by the Trustees accord full recognition on the drawdown obligations to the members of the funds concerned; and
- (b) the proposed transfer meets the requirements of the Act and these Regulations.

(2) The Authority shall consider an application to transfer an income drawdown fund to another fund for approval within thirty days after receipt of all the information required under regulation 36.

(3) Where the Authority is satisfied that all the required documentation has been received, it shall approve the bulk transfer of the funds.

37. Rights of members

The member of a transferring fund shall retain the right to transfer within rules of the merging funds.

[Subsidiary]

38. Benefits of members on transfer

The merger of one income drawdown fund with another or the bulk transfer of funds from one income drawdown fund to another shall not diminish or reduce the benefits of the members of the fund.

39. Provision for net investment income of members

The trustees of an income drawdown fund being merged with another or which transfers its funds to another income drawdown fund shall make provision for the distribution of any net investment income to members' accounts before the transfer or merger;

40. Deregistration of liquidated income drawdown fund

Upon completion of the liquidation of an income drawdown fund, and the Authority being satisfied that the final accounts are correct, and that all the funds have been transferred, it shall deregister the fund and the fund shall be deemed to be dissolved.

41. Claims

Subject to the provisions of the Limitation of Actions Act (Cap. 22), on the dissolution of an income drawdown fund no further claim shall lie against the trustees of the liquidated income drawdown fund or the Authority with respect to the members' benefits.

42. Winding up by the Authority

(1) Where the Authority is of the opinion that—

- (a) after registration of an income drawdown fund, a statement was made in connection with the application which the applicant knew to be false or untrue;
- (b) the continued existence of the fund is detrimental to the rights and interests of the members;
- (c) the founder's business is wound up or otherwise dissolved;
- (d) the founder or Trustees of the fund are in breach of any condition attached to the certificate of registration;
- (e) the Fund is not in compliance with any of provisions of the Act, or with any regulations made or directions issued thereunder; and
- (f) any other grounds as the Authority may deem fit, the Authority shall issue a notice of at least twenty-eight days to the trustees, founders and members of the income drawdown fund of the Authority's intention to wind up the fund.

(2) The Authority shall consider any representations made in writing by the trustees, founder and members of the income drawdown fund within the period prescribed under subregulation (2) before commencing winding up proceedings.

(3) Where the Authority is of the opinion that the representations made under subregulation (2) are not adequate or satisfactory it shall commence the winding up proceedings before a court of competent jurisdiction.

(4) The provisions of the Insolvency Act (Cap. 53), on statutory winding up, shall apply to the winding up of an income drawdown fund under this regulation.

(5) Subject to Limitation of Actions Act (Cap. 22), on the completion of the liquidation process under this Regulation, the Authority shall deregister the income drawdown fund and no claim shall lie against the trustees of the wound-up fund or the Authority with respect to the members' benefits.

PART VIII – TRANSITIONAL PROVISIONS

43. Compliance of existing income drawdown funds with these Regulations

Any registered income drawdown funds in existence on the date of the commencement of these Regulations shall, within twelve months after the date of commencement of these Regulations, amend its income drawdown fund rules to comply with the provisions of the Act and these Regulations.

44. Compliance of special arrangements in retirement benefits schemes with these Regulations

Any income drawdown arrangement established as a special fund within a retirement benefit scheme in existence on the date of the commencement of these Regulations shall be required to register within three years after the date of commencement of these Regulations and operate the fund solely as an income drawdown fund.

45. Continuation of existing income drawdown contracts

Any existing contracts of members in an income drawdown fund shall be deemed to continue until expiry of the contract:

Provided that the members of the income drawdown fund shall be allowed to transfer their benefits after five years from the date of commencement of these Regulations or expiry of their contracts, whichever is the earlier.
