



LAWS OF KENYA



RETIREMENT BENEFITS ACT

CHAPTER 197

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CHAPTER 197

RETIREMENT BENEFITS ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title.
2. Interpretation.

PART II – THE RETIREMENT BENEFITS AUTHORITY

3. Establishment and incorporation of the Retirement Benefits Authority.
4. Headquarters.
5. Object and functions of the Authority.
6. Board of directors.
7. Powers of the Board.
8. Conduct of business and affairs of the Board.
9. Delegation by the Board.
10. Remuneration of Board members.
11. The Chief Executive Officer.
12. Staff of the Authority.
13. The Common Seal of the Authority.
14. Protection from personal liability.
15. Liability of the Authority for damages.
16. The Retirement Benefits Levy.
17. The Retirement Benefits Authority Fund.
18. Investment of funds of the Authority.
19. Financial year.
20. Annual estimates.
21. Accounts and audit.

PART III – REGISTRATION OF RETIREMENT BENEFITS SCHEMES, MANAGERS,
CUSTODIANS AND ADMINISTRATORS

22. Retirement benefits schemes managers, and custodians to be registered.
23. Registration.
24. Requirements for registration of schemes.
25. Requirements for registration of managers and custodians.
- 25A. Requirements for registration of custodians.
- 25B. Requirements for registration of administrators.
26. Requirements with regard to trustees.
27. Refusal of registration.
28. Deregistration.
29. Duration and renewal of certificates.
30. Register.
31. Use of register in evidence.

PART IV – REGULATION AND SUPERVISION OF RETIREMENT BENEFITS
SCHEMES*Section*

- 32. Scheme funds.
- 33. Statutory contributions.
- 34. Annual report and accounts.
- 35. Actuarial evaluations.
- 36. Protection against attachment.
- 36A. Treatment of death benefits.
- 37. Investment of scheme funds.
- 38. Restrictions on use of scheme funds.
- 39. Unsafe and unsound practices.
- 40. General obligations of trustees and managers.

PART V – INSPECTION AND APPOINTMENT OF INTERIM ADMINISTRATOR

- 41. Inspection.
- 42. Powers of the inspector.
- 43. Inspection report.
- 44. Directions to manager.
- 44A. Sharing information.
- 45. Appointment of interim administrator.
- 45A. Establishment of Trust Fund.

PART VI – APPEALS

- 46. Appeals to the Chief Executive Officer.
- 47. Establishment of Appeals Tribunal.
- 48. Appeals to the Tribunal.
- 49. Powers of Appeals Tribunal.
- 50. Refusal or failure to give evidence.
- 51. Costs.
- 52. Rules for appeals to the Appeals Tribunal.

PART VII – MISCELLANEOUS

- 53. General penalty.
- 53A. Proceedings for recovery of deductions from employers.
- 54. Offences by corporate bodies, partnerships, principals and employees.
- 54A. Conduct of prosecutions.
- 55. Regulations.
- 56. Exemption from Cap. 446.
- 57. Transitional provisions.
- 58. Supersession.
- 59. Exemption from compliance with provisions of this Act.

SCHEDULE – PROVISIONS AS TO THE CONDUCT OF THE BUSINESS
AND AFFAIRS OF THE BOARD

CHAPTER 197

RETIREMENT BENEFITS ACT

[Date of assent: 22nd August, 1997.]

[Date of commencement: 20th November, 1997, Sections 2 to 15,
17 to 31 and 55 to 58;
: 21 August, 2000, Sections 16 and 32 to 154.]

An Act of Parliament to establish a Retirement Benefits Authority for the regulation, supervision and promotion of retirement benefits schemes, the development of the retirement benefits sector and for connected purposes

[L.N. 537/1997, Act No. 7 of 1998, Act No. 4 of 1999, L.N. 103/2000, Act No. 7 of 2002, Act No. 8 of 2003, Act No. 15 of 2003, Act No. 2 of 2006, Act No. 9 of 2007, Act No. 8 of 2008, Act No. 8 of 2009, Act No. 10 of 2010.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Retirement Benefits Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**actuary**” means a person who is a Fellow of the Institute of Actuaries in England, or the Faculty of Actuaries in Scotland, or the Canadian Institute of Actuaries, or the Society of Actuaries of the United States of America or the Institute of Actuaries of Japan or the Institute of Actuaries of Australia or a person holding such equivalent qualification as the Board may, by notice in the *Gazette*, prescribe;

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

“**authority**” means the Retirement Benefits Authority established by section 3;

“**Board**” means the Board of Directors of the Authority constituted under section 6;

“**Chief Executive Officer**” means the Chief Executive Officer of the Authority appointed under section 11;

“**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;

“financial year”—

- (a) in relation to the Authority, has the meaning assigned to it in section 19;
- (b) in relation to a scheme, means such accounting period as may be prescribed in the scheme rules;

“Fund” means the Retirement Benefits Authority Fund established by section 17;

“Levy” means the Retirement Benefits Levy to be imposed under section 16;

“manager” means a company whose business includes—

- (i) undertaking, pursuant to a contract or other arrangement, the management of the funds and other assets of a scheme fund for purposes of investment;
- (ii) providing consultancy services on the investment of scheme funds; or
- (iii) reporting or disseminating information concerning the assets available for investment of scheme funds;

“member” means a member of a retirement benefits scheme and includes a person entitled to or receiving a benefit under a retirement benefits scheme;

“Minister” means the Minister for the time being responsible for matters relating to Finance;

“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;

“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;

“scheme” means a retirement benefits scheme;

“scheme fund” means the retirement benefits scheme fund to be established pursuant to the provisions of section 32;

“scheme rules” means the rules specifically governing the constitution and administration of a particular scheme;

“sponsor” means a person who establishes a scheme;

“statutory fund” has the meaning assigned to it in section 2 of the Insurance Act (Cap. 487);

“**Tribunal**” means the Appeals Tribunal established under section 48;

“**trust corporation**” means a company incorporated under the Companies Act (Cap. 486) having a subscribed capital of not less than ten million shillings and which is for the time being empowered (by or under any written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers) to undertake trusts:

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

“**trustee**” means a trustee of a scheme fund and includes a trust corporation.

[Act No. 7 of 1998, s. 2, Act No. 4 of 1999, s. 105A, Act No. 8 of 2003, s. 2, Act No. 2 of 2006, s. 2, Act No. 8 of 2009, s. 67.]

PART II – THE RETIREMENT BENEFITS AUTHORITY

3. Establishment and incorporation of the Retirement Benefits Authority

(1) There is established an Authority to be known as the Retirement Benefits Authority.

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

- (a) suing and be sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing all other things or acts for the furtherance of the provisions of this Act, which may be lawfully done or performed by a body corporate.

4. Headquarters

The headquarters of the Authority shall be in Nairobi.

5. Object and functions of the Authority

The object and functions of the Authority shall be to—

- (a) regulate and supervise the establishment and management of retirement benefits schemes;
- (b) protect the interests of members and sponsors of retirement benefits sector;
- (c) promote the development of the retirement benefits sector;
- (d) advise the Minister on the national policy to be followed with regard to retirement benefits schemes and to implement all Government policies relating thereto; and

- (e) perform such other functions as are conferred on it by this Act or by any other written law.

6. Board of Directors

The management of the Authority shall vest in a Board of Directors of the Authority which shall comprise—

- (a) a chairman to be appointed by the Minister from amongst the members appointed under paragraph (f);
- (b) the Chief Executive Officer appointed under section 11;
- (c) the Permanent Secretary in the Ministry for the time being responsible for matters relating to finance or his representative;
- (d) the Commissioner of Insurance;
- (e) the Chief Executive of the Capital Markets Authority; and
- (f) five members, not being public officers, appointed by the Minister by virtue of their knowledge or experience in matters relating to the administration of scheme funds, banking, insurance, law or actuarial studies:

Provided that no person shall be eligible to be appointed under paragraph (f) if such person is an employee or director of any company, firm or institution where such employment or directorship may lead to a conflict of interest.

[Act No. 8 of 2008, s. 77.]

7. Powers of the Board

The Board shall have all powers necessary for the performance of its functions under this Act and in particular, the Board shall have power to—

- (a) control, supervise and administer the assets of the Authority in such manner and for such purposes as best promote the purpose for which the Authority is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority;
- (c) receive any grants, gifts donations or endowments on behalf of the Authority and make legitimate disbursements therefrom;
- (d) enter into association with other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purpose for which the Authority is established;
- (e) open a banking account or banking accounts for the funds of the Authority; and
- (f) invest funds of the Authority not currently required for its purposes in the manner provided in section 18.

8. Conduct of business and affairs of the Board

The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule but subject thereto, the Board shall regulate its own procedure.

9. Delegation by the Board

The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act or under any other written law.

10. Remuneration of Board members

The Authority, in consultation with the Minister shall pay members of the Board such remuneration, fees or allowances for expenses as it may determine.

11. The Chief Executive Officer

(1) There shall be a Chief Executive officer who shall be appointed by the Board in consultation with the Minister and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time.

(2) No person shall be appointed under this section unless he has at least ten years experience in a managerial capacity in the retirements benefits, accounting, finance, insurance or the banking sectors.

(3) The Chief Executive Officer shall be an *ex officio* member of the Board but shall have no right to vote at any meeting of the Board.

(4) The Chief Executive Officer shall, subject to the directions of the Board, be responsible for the day to day management of the affairs of the Authority.

12. Staff of the Authority

(1) The Board shall appoint a secretary to the Board on such terms and conditions of service as the Board may determine.

(2) The Board may appoint such officers or servants as are necessary for the proper discharge of the functions of the Authority under this Act or any other written law, upon such terms and conditions of service as the Board may determine.

13. The Common Seal of the Authority

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

(2) The common seal of the Authority when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

14. Protection from personal liability

No matter or thing done by a member of the Board or any officer, employee or agent of the Authority shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Authority, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

15. Liability of the Authority for damages

The provisions of this Act shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interest caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.

16. The Retirement Benefits Levy

(1) The Minister may, in consultation with the Board, by order published in the *Gazette*, impose a levy to be known as the Retirement Benefits Levy on the contributions made to scheme funds, or on the assets of such funds, or on such other base as he may determine.

(2) A levy imposed under this section shall be payable at such rate as may be specified in the order.

(3) An order under this section may contain provisions as to the time at which any amount payable by way of the levy shall become due.

(4) All moneys received in respect of the levy shall be paid into the Fund and if not paid on or before the date prescribed by the order, the amount due and any sum payable under subsection (5) shall be a civil debt recoverable summarily by the Authority.

(5) If a person fails to pay any amount payable by him by way of the levy on or before the date prescribed by the order, a sum equal to five per centum of the amount shall be added to the amount due for each month or part thereof during which the amount due remains unpaid.

17. The Retirement Benefits Authority Fund

(1) There is established a fund to be known as the Retirement Benefits Authority Fund which shall vest in the Authority.

(2) There shall be paid into the Fund—

- (a) all proceeds or the levy established by section 16;
- (b) such moneys or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
- (c) such sums as may be payable to the Authority pursuant to this Act or any other written law, or pursuant to any gift or trust;
- (d) such sums as may be granted to the Authority by the Minister pursuant to subsection (3); and
- (e) all moneys from any other source provided for or donated or lent to the Authority.

(3) There shall be made to the Authority out of moneys provided by Parliament for that purpose, grants towards the expenditure incurred by the Board in the exercise of its powers or the performance of its functions under this Act.

18. Investment of funds of the Authority

(1) The Authority may invest any of its funds in securities which for the time being trustees may by law invest trust funds, or in any other securities which the Treasury may, from time to time, approve.

(2) The Authority may place on deposit with such bank or banks as it may determine, any moneys not immediately required for the purposes of the Authority.

19. Financial year

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

20. Annual estimates

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

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

- (a) the payment of the salaries, allowances and other charges in respect of the staff of the Authority;
- (b) the payment of pensions, gratuities and other charges in respect of the retirement benefits which are payable out of the funds of the Authority;
- (c) the proper maintenance of the buildings and grounds of the Authority;
- (d) the maintenance, repair and replacement of the equipment and other property of the Authority;
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be prepared at least three months before commencement of the financial year to which they relate and shall be submitted to the Board for approval and after such approval, the Authority shall not increase the annual estimates without the consent of the Minister.

(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under this section or in pursuance of an authorisation of the Authority given with the prior approval of the Minister.

21. Accounts and audit

(1) The Authority shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Authority.

(2) Within a period of four months after the end of each financial year, the Board shall submit to the Auditor-General (Corporations) or an auditor appointed under this section, the accounts of the authority together with—

- (a) a statement of income and expenditure during that year; and
- (b) a statement of the assets and liabilities of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with sections 29 and 30A of the Exchequer and Audit Act (Cap. 412), by the Auditor-General (Corporations) or by an auditor appointed by the Board under the authority of the Auditor-General (Corporations), given in accordance with section 29(2)(b) of that Act.

PART III – REGISTRATION OF RETIREMENT BENEFITS SCHEMES, MANAGERS, CUSTODIANS AND ADMINISTRATORS

[Act No. 7 of 1998, s. 3, Act No. 2 of 2006, s. 3.]

22. Retirement benefits schemes, managers, custodians and administrators to be registered

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

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

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

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

(4) A person who—

- (a) establishes a retirement benefits scheme; or
- (b) acts as a manager or custodian,

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

[Act No. 7 of 1998, s. 4, Act No. 8 of 2003, s. 3, Act No. 2 of 2006, s. 4(a), s. 4(b), s. 4(c).]

23. Registration

(1) A person proposing to establish a retirement benefits scheme or to act as a manager, a custodian or an administrator shall apply to the Authority for, and

obtain, a certificate of registration before establishing the scheme or commencing the performance of any of the functions of a manager, a custodian or an administrator.

(2) An application under subsection (1) shall be—

- (a) addressed to the Chief Executive Officer;
- (b) in the prescribed form; and
- (c) accompanied by the prescribed fee.

(3) In considering an application under this section, the Authority may request the applicant to supply such additional information as it considers necessary in determining the application.

(4) The Authority may, subject to the provisions of this Act and on payment of the prescribed fee, register the applicant and issue to the applicant a certificate of registration in the prescribed form, authorising the applicant to establish a retirement benefits scheme, or to act as a manager, a custodian or an administrator as the case may be.

(5) A certificate issued under this section shall be subject to such conditions as the Authority may, in consultation with Minister, impose.

[Act No. 7 of 1998, s. 5, Act No. 2 of 2006, s. 5.]

24. Requirements for registration of schemes

(1) No scheme, other than a scheme established by a written law shall be registered under this Act unless—

- (a) it is proposed to be established under an irrevocable trust; and
- (b) the proposed scheme rules adequately protect the rights and interests of the sponsors and members thereof.

(2) No scheme shall be registered under this Act unless the trustees thereof satisfy the requirements specified in section 26.

25. Requirements for registration of managers and custodians

(1) No applicant for registration as a manager shall be registered unless such applicant—

- (a) is a limited liability company incorporated under the Companies Act (Cap. 486) whose liability is limited by shares and whose main object is to manage scheme funds;
- (b) has such minimum paid up share capital as may be prescribed;
- (c) is capable of meeting the obligations to members and sponsor specified in the scheme rules;
- (d) has the professional capacity to manage scheme funds;
- (e) has never been involved in the management of the scheme fund of any scheme which was deregistered due to any failure on the part of the management;
- (f) meets such additional requirements as may be prescribed.

25A. Requirements for registration of custodians

No applicant for registration as a custodian shall be registered unless such applicant—

- (a) is a limited liability company incorporated under the Companies Act (Cap. 486) whose main function is to perform the functions of a custodian within the meaning of this Act; and
- (b) has the professional and technical capacity and adequate operational systems to perform the said functions; and
- (c) has never been a custodian of any scheme fund which was deregistered due to any fault, either fully or partially, of the custodian;
- (d) meets such additional requirements as may be prescribed.

[Act No. 7 of 1998, s. 6.]

25B. Requirements for registration of administrators

No applicant for registration as a scheme administrator shall be registered unless such applicant—

- (a) is a limited liability company incorporated under the Companies Act (Cap. 486), whose liability is limited by shares and whose main objective is to render administrative services to schemes;
- (b) has such minimum paid up share capital as may, from time to time, be prescribed;
- (c) is capable of meeting the obligations to members and sponsors specified in the scheme rules;
- (d) has the professional and technical capacity and adequate operational systems to perform its functions;
- (e) has never been an administrator of any scheme fund which has been either deregistered, wound up or placed under an interim administrator due to any fault, either fully or partially, of the administrator;
- (f) meets such additional requirements as may, from time to time, be prescribed.

[Act No. 2 of 2006, s. 6.]

26. Requirements with regard to trustees

(1) Every scheme, other than a scheme established by a written law shall be established under an irrevocable trust.

(2) No person shall be a trustee of any scheme fund if such person—

- (a) has been sentenced to imprisonment by a court of competent jurisdiction for a period of six months or more;
- (b) is adjudged bankrupt;
- (c) was previously 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;

- (d) is disqualified under any other written law, or his holding office as such is deemed by the Authority as being, in any way, detrimental to the scheme.

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

[Act No. 2 of 2006, s. 7.]

27. Refusal of registration

(1) The Authority may refuse to register any scheme, manager, custodian or administrator under section 23 if satisfied that—

- (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.

(2) Where the Authority refuses to register any scheme, manager, or custodian, it shall forthwith notify the applicant in the prescribed form, specifying the reasons for such refusal.

[Act No. 7 of 1998, s. 7, s. 8.]

28. Deregistration

(1) Subject to subsection (2), the Authority may deregister a scheme if—

- (a) it discovers after registration that a statement was made in connection with the application therefore which the applicant knew to be false or untrue in any material particular; or
- (b) the scheme is wound up or is otherwise dissolved; or
- (c) the scheme does not conform to the provisions of this Act or any regulations made or directions issued under this Act or any condition of the certificate of registration.

(2) The Authority shall, before deregistering a scheme, give the trustees, sponsors and members of the scheme at least twenty-eight days notice of its intention and shall consider any representations made to it in writing by the trustees, sponsors or members within that period before deregistering the scheme.

(3) Subject to subsection (4), the Authority may deregister a manager, custodian or administrator if—

- (a) it discovers after registration that the manager, custodian or administrator made a statement in or in connection with the application there for which was false or untrue in any material particular; or
- (b) any event occurs which renders the manager, custodian or administrator ineligible to manage or provide custodial services to a scheme fund, as the case may be;
- (c) the manager's, custodian's or administrator's business is wound up or is otherwise dissolved;
- (d) the manager, custodian or administrator is in breach of any condition attached to the certificate of registration;

- (e) the manager, custodian or administrator does not comply with any of provisions of this Act, or with any regulations made or directions issued thereunder.

(4) The Authority shall, before deregistering a manager or custodian, give the manager or custodian and the sponsors or trustees of the scheme at least twenty-eight days notice of its intention, and shall consider any representations made to it in writing by the manager or custodian within that period before deregistering the manager or custodian.

(5) Every notice under subsections (2) and (4) shall be in the prescribed form and shall specify the reasons for the intended deregistration.

(6) The deregistration of a scheme shall not in any way prejudice the claims of members under the scheme.

(7) Where the assets of a deregistered scheme are insufficient to fully discharge its obligations to its members, the Chief Executive Officer may, subject to the approval of the Board, take over the distribution or transfer of the assets and the supervision of the scheme in order to protect the interests of members.

[Act No. 7 of 1998, s. 8. Act No. 2 of 2006, s. 9.]

29. Duration and renewal of certificates

(1) Subject to this Act, a certificate of registration issued in respect of a scheme shall be valid from the date of issue and shall remain in force until the scheme is deregistered or wound up in accordance with the scheme rules or the provisions of the written law under which the scheme is established.

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

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

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

[Act No. 7 of 1998, s. 9, Act No. 2 of 2006, s. 10.]

30. Register

(1) The Chief Executive Officer shall keep a register in such form as the Board may determine, of all schemes, managers, custodians and administrators registered under this Act and shall enter therein, in respect of the schemes, managers and custodians, such particulars as the Board may specify.

(2) The Board may determine the time or times during which, and the extent to which any person may, on payment of the prescribed fee, inspect the register kept under this section or obtain copies thereof.

[Act No. 2 of 2006, s. 11.]

31. Use of register in evidence

(1) For the purposes of ascertaining the facts concerning the registration of a scheme, manager, custodian or administrator, entries made in the register shall be *prima facie* evidence as to the facts specified in the register.

(2) A document certified by the Chief Executive Officer as a true copy or extract from the register shall be admissible in any court as *prima facie* evidence of the contents of the register.

[Act No. 7 of 1998, s. 11, Act No. 2 of 2006, s. 12.]

**PART IV – REGULATION AND SUPERVISION OF RETIREMENT
BENEFITS SCHEMES****32. Scheme funds**

(1) There shall be, in respect of every scheme other than a scheme funded out of the Consolidated Fund, a scheme fund into which all contributions, investment earnings, income and all other moneys payable under the scheme rules or the provisions of this Act shall be paid.

(2) The scheme fund and all monies therein shall at all times be maintained separately from any other funds under the control of the trustees or the manager thereof.

(3) Subject to the provisions of this Act, the Minister may, in consultation with the Authority, make regulations with regard to the funding, vesting, custody, management, application and the transfer of scheme funds and the accounting for such funds.

33. Statutory contributions

(1) Notwithstanding the provisions of any written law for the time being in force, an employer may, with the approval of his employees, pay any statutory contributions in respect of such employees into any scheme fund prescribed for that purpose:

Provided that where such payment involves a transfer of funds from another scheme fund, the employer shall, at least sixty days before commencing such payment, give written notice thereof to the Authority and to the trustees of the scheme fund from which such funds shall be transferred.

(2) In this section, the expression “**statutory contributions**” means contributions required under the provisions of a written law to be paid into a retirement benefits scheme.

34. Annual report and accounts

(1) The trustees of every scheme shall cause to be kept all proper books and records of account of the income, expenditure and assets of the scheme fund.

(2) Within a period of three months after the end of each financial year, the trustees shall cause to be prepared in respect of the scheme fund—

- (a) statement of assets and liabilities;
- (b) a statement of income and expenditure;
- (c) a statement of the assets and liabilities of the scheme as on the last day of that year;
- (d) such other documents as may be prescribed.

(3) The accounts of the scheme fund in respect of each financial year shall be audited by an auditor appointed by the trustees with the approval of the Board:

Provided that the appointed auditor shall not be a member, trustee or sponsor of the scheme.

(4) Within six months after the end of each financial year, the trustees shall submit a copy of the audited accounts of the scheme to the Chief Executive Officer.

(4A) A trustee who fails to submit a copy of the audited accounts, in respect of a scheme, to the Chief Executive Officer pursuant to subsection (4) commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding two years or to both.

(4B) Where an offence under subsection (4A) is continuing offence, the person convicted shall, in addition to the penalty prescribed under the subsection, be liable to further fine of five thousand shillings for each day or part thereof during which the offence continues.

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

[Act No. 7 of 1998, s. 12, Act No. 7 of 2002, s. 61, Act No. 8 of 2003, s. 4, Act No. 9 of 2007, s. 71.]

35. Actuarial evaluations

The Board may require the trustees of such schemes or categories of schemes as it may specify, to cause the schemes to be evaluated by an actuary appointed by the trustees with the approval of the Board and to present the actuarial report to the Chief Executive Officer at such regular intervals as the Board may specify.

36. Protection against attachment

Notwithstanding anything to the contrary contained in any other written law, where a judgement or order against a member of a scheme is made, no execution or attachment or process of any nature shall be issued in respect of the contributions or funds of the member or his employer except in accordance with the scheme rules and such contributions shall not form part of the assets of the member or of his employer in the event of bankruptcy.

36A. Treatment of death benefits

Upon the death of a member of a scheme, the benefit payable from the scheme shall not form part of the estate of the member for the purpose of administration and shall be paid out by the trustees in accordance with the scheme rules.

[Act No. 9 of 2007, s. 72.]

37. Investment of scheme funds

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

Provided that a scheme with a fund value of one hundred million Kenya shillings or less may invest up to one hundred *per centum* of its scheme funds in Government securities.

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

(3) There shall be submitted to the Chief Executive Officer, in respect of every scheme, a statement of all investments of the scheme fund, in such form, manner and at such intervals as may be prescribed.

[Act No. 7 of 1998, s. 13, Act No. 8 of 2003, s. 5, Act No. 8 of 2009, s. 69.]

38. Restriction on use of scheme funds

(1) No scheme funds shall be—

- (a) used to make direct or indirect loans to any person; or
- (b) invested contrary to any guidelines prescribed for that purpose; or
- (c) invested with a bank, non-banking financial institution, insurance company, building society or other similar institution with a view to securing loans, at a preferential rate of interest or for any other consideration to the sponsor, trustees, members or the manager of such scheme,

or in the case of scheme funds which comprise any statutory contributions, be placed in any investment other than Government securities or infrastructure bonds issued by public institutions.

(1A) Notwithstanding the provisions of subsection (1), a prescribed proportion of the benefits accruing to a member in a scheme may be assigned and used by the member to secure a mortgage loan from such institutions and on such terms as may be prescribed in regulations made by the Minister.

(2) The Authority may disqualify a person who acts in contravention of the provisions of this section from participating in any way in the management custody or administration of any scheme fund:

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

[Act No. 7 of 1998, s. 14, Act No. 9 of 2007, s. 73(a), s. 73(b), Act No. 8 of 2009, s. 69.]

39. Unsafe and unsound practices

(1) Where, in the opinion of the Chief Executive Officer, a trustee, manager, custodian or administrator of a scheme is pursuing an act or course of conduct which the Chief Executive Officer considers to be an unsafe or unsound practice, or in any way detrimental to the scheme, the Chief Executive Officer shall, by notice in writing, direct such trustee, manager, custodian or administrator to refrain from pursuing such act or course of conduct.

(2) A trustee, manager or custodian who acts in contravention of a direction under this section commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

[Act No. 7 of 1998, s. 15, Act No. 2 of 2006, s. 13.]

40. General obligations of trustees and managers

The trustee, manager, custodian or administrator of a scheme shall—

- (a) ensure that the scheme fund is at all times managed in accordance with this Act, any regulations made thereunder, the scheme rules and any directions given by the Chief Executive Officer;
- (b) take reasonable care to ensure that the management of the scheme is carried out in the best interests of the members and sponsors of the scheme;
- (c) report to the Chief Executive Officer, as soon as reasonably practicable, any unusual occurrence which in his view could jeopardise the rights of the members or sponsors of the scheme; and
- (d) report to the Chief Executive Officer, as soon as reasonably practicable, if any contributions into a scheme fund remain due for a period of more than thirty days.

[Act No. 7 of 1998, s. 16, Act No. 2 of 2006, s. 14.]

PART V – INSPECTION AND APPOINTMENT OF INTERIM ADMINISTRATION

41. Inspection

(1) The Chief Executive Officer may, at any time and from time to time, and shall, if so directed by the Board, cause an inspection to be made by an inspector authorized by him in writing, of any scheme or of the business of any manager, custodian or administrator registered under this Act, and of its books, accounts and records.

(2) When an inspection is made under subsection (1), the manager, custodian or administrator of the scheme concerned and every officer, trustee or employee thereof shall make available to the inspector all the books, accounts records and other documents of the scheme and such correspondence, statements and information relating to the scheme as the inspector may require, within seven days or such longer period as the inspector may direct in writing.

(3) Any failure to produce any books, accounts, records, documents, correspondence, statements, returns or other information within the period specified in the direction under subsection (2) constitutes an offence:

Provided that—

- (a) the books, accounts and other documents shall not, in the course of inspection, be removed from the premises at which they are produced;
- (b) the inspector may make copies of any books, accounts and other documents required for the purposes of his report; and
- (c) all information obtained in the course of the inspection shall be treated as confidential and used solely for the purposes of this Act.

[Act No. 7 of 1998, s. 17, Act No. 2 of 2006, s. 15.]

42. Powers of the inspector

(1) An inspector may, by notice in writing, require any person who is or has at any time been a trustee, manager, custodian or administrator of the scheme being inspected, or an officer, employee, agent, accountant, auditor or actuary appointed by such trustee or manager to—

- (a) give to the inspector all reasonable assistance in connection with the inspection; or
- (b) appear before the inspector for examination concerning matters relevant to the inspection; or
- (c) produce any books or documents relating to the affairs of the scheme being inspected.

(2) A person who—

- (a) refuses or fails to comply with a requirement of an inspector which is applicable to him, to the extent to which he is able to comply with it; or
- (b) obstructs or hinders an inspector in the exercise of his powers under this Act; or
- (c) furnishes information or makes a false statement which he knows to be false or misleading in any material particular; or
- (d) when appearing before an inspector for examination, makes a statement which he knows to be false or misleading in any material particular,

commits an offence.

(3) A person convicted of an offence under subsection (2) shall be liable to a fine not exceeding five hundred thousand shillings, or, in the case of a natural person, to imprisonment for a term not exceeding three years, or to both.

(4) Where an offence under subsection (2) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in subsection (3), be liable to a further fine of one thousand shillings for every day during which the offence continues.

(5) Where the person convicted under this section is a body corporate, the Authority may, notwithstanding any other penalty imposed under this Act, apply to court for the winding up of such body corporate.

[Act No. 7 of 1998, s. 18, Act No. 7 of 2002, s. 62, Act No. 2 of 2006, s. 16.]

43. Inspection report

An inspector appointed under this Part shall submit his report to the Chief Executive Officer and the report shall draw attention to any breach of the requirements of this Act and any regulations made thereunder, any mismanagement or lack of management skills in the manager and any other matter revealed or discovered in the course of the inspection warranting, in the opinion of the inspector, remedial action or further investigation.

44. Directions to manager

The Chief Executive Officer may, by notice in the prescribed form, require the trustees, manager, custodian or administrator of a scheme inspected under this Part to comply, by such date or within such period as may be specified therein, with such directions as the Authority considers necessary in connection with any matter arising out of the report made under section 43.

[Act No. 7 of 1998, s. 19, Act No. 2 of 2006, s. 17.]

44A. Sharing information

The Authority may share information with other regulatory authorities.

[Act No. 10 of 2010, s. 76.]

45. Appointment of interim administrator

(1) This section applies and the powers conferred by subsection (2) may be exercised in the following circumstances—

- (a) if the trustees of a scheme fail to submit to the Chief Executive Officer the annual accounts required under section 34 for over six months after the end of the financial year to which they relate;
- (b) if the trustees are found to have submitted or provided any accounts, returns, statements, books, records, correspondence, documents or other information relating to the scheme fund which are false or misleading; or

- (c) if the Chief Executive Officer, whether on inspection or otherwise, becomes aware of any fact or circumstance which, in his opinion, warrants the exercise of the relevant power in the interests of the sponsors and members of the scheme or in the public interest.

(2) The Chief Executive Officer may, with the approval of the Authority—

- (a) appoint any person (in this Act referred to as “an interim administrator”) to assume the management, control and conduct of the affairs and business of the trustees, the manager, the custodian or the administrator, as the case may be, to exercise all the powers of the trustees, the manager, the custodian or the administrator to the exclusion of such trustees, manager, custodian or administrator;
- (b) remove any officer or employee of the trustees, the manager, the custodian or the administrator who, in the opinion of the Chief Executive Officer, has caused or contributed to any contravention of the provisions of this Act or any regulations made thereunder or to any deterioration in the financial stability of the scheme or has been guilty of conduct detrimental to the interests of the members or sponsors of the scheme; or
- (c) by notice in the *Gazette*, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the trustees, the manager, the custodian or the administrator in favour of any officer, employee or any other person.

(3) The appointment of an interim administrator shall be for such period, not exceeding twelve months, as the Chief Executive Officer may specify in the instrument of appointment but may be extended by the High Court, upon application by the Chief Executive Officer, if such extension appears justified.

(4) An interim administrator shall, upon assuming the management, control and conduct of the affairs and business of the trustees, the manager, the custodian or the administrator, discharge his duties with diligence and in accordance with sound actuarial and financial principles and in particular, with due regard to the interests of the trustees, the manager, the custodian, the administrator, the members and sponsors of the scheme.

[Act No. 7 of 1998, s. 20, Act No. 2 of 2006, s. 18(b)(i), s. 18(b)(ii).]

(5) The responsibilities of the interim administrator shall be—

- (a) tracing, preserving and securing all the assets and property of the scheme;
- (b) recovering all debts and other sums of money due to and owing to the scheme;
- (c) evaluating the solvency and the liquidity of the scheme;
- (d) assessing the scheme’s, the manager’s, the custodian’s and the administrator’s compliance with the provisions of this Act and any regulations made thereunder;
- (e) determining the adequacy of the capital and reserves and the management of the scheme and recommending to the Chief Executive Officer any restructuring or re-organization which he

considers necessary and which, subject to the provisions of any other law, may be implemented by him on behalf of the trustees, the manager, the custodian or the administrator; and

- (f) obtain from any former trustee, manager or administrator of the scheme or any officer, employee or agent thereof, any documents, records, accounts, statements, correspondence or information relating to the scheme.

(6) The interim administrator shall, within a period of twelve months from the date of his appointment, prepare and submit to the Chief Executive Officer, a report on the financial position and the management of the scheme with recommendations as to whether—

- (a) the scheme is capable of being revived; or
(b) the scheme should be deregistered.

(7) The Chief Executive Officer shall, after taking into account the report of the interim administrator, make appropriate recommendations to the Board which shall take a decision on the matter.

(8) Neither the Chief Executive Officer nor any officer, employee or agent of the Authority nor the interim administrator nor any other person appointed, designated or approved by the Chief Executive Officer under the provisions of this Part shall be liable in respect of any act or omission done in good faith in the execution of the duties undertaken by him.

[Act No. 7 of 1998, s. 20, Act No. 2 of 2006, s. 18(a)(i), s. 18(a)(ii), s. 18(c)(i), s. 18(c)(ii), s. 18(c)(iii).]

45A. (1) The Authority shall establish a trust fund into which shall be paid the benefits and other accrued income of members of retirement benefits schemes who cannot be traced within a period of two years from the commencement of winding-up of the respective schemes under the Act.

(2) Any payment of the benefits from the fund established under this section shall be made in accordance with the rules of the scheme to which the member belonged at the time of its winding-up.

(3) The accounts of the fund established under this section shall be audited by the Controller and Auditor-General in accordance with the Public Audit Act, 2003.

(4) The Minister may make regulations for the management and operation of the fund.

[Act No. 9 of 2007, s. 74.]

PART VI – APPEALS

46. Appeals to the Chief Executive Officer

(1) Any member of a scheme who is dissatisfied with a decision of the manager, administrator, custodian or trustees of the scheme may request, in writing, that such decision be reviewed by the Chief Executive Officer with a view to ensuring that such decision is made in accordance with the provisions of the relevant scheme rules or the Act under which the scheme is established.

(2) A copy of every request under this section shall be served on the manager, administrator, custodian or trustees of the scheme.

[Act No. 2 of 2006, s. 19.]

47. Establishment of Appeals Tribunal

(1) The Minister shall, by order published in the *Gazette* establish an Appeals Tribunal for the purpose of hearing appeals under this Act.

(2) The Tribunal shall consist of a chairman and four other members who shall be appointed by the Minister and who shall hold office for a period of three years upon such terms and conditions as may be prescribed.

(3) The chairman of the Tribunal shall be an advocate of the High Court of Kenya of not less than seven years standing.

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

(4) Subject to subsection (3A), all matters before the Tribunal shall, in the event of a difference of opinion, be decided by the votes of the majority of the members thereof.

[Act No. 2 of 2006, s. 20(a), s. 20(b).]

48. Appeals to the Tribunal

(1) Any person aggrieved by a decision of the Authority or of the Chief Executive Officer under the provisions of this Act or any regulations made thereunder may appeal to the Tribunal within thirty days of the receipt of the decision.

(2) Where any dispute arises between any person and the Authority as to the exercise of the powers conferred upon the Authority by this Act, either party may appeal to the Tribunal in such manner as may be prescribed.

49. Powers of Appeals Tribunal

(1) On the hearing of an appeal, the Tribunal shall have all the powers of a subordinate court of the first class to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.

(2) Where the Tribunal considers it desirable for the purpose of avoiding expense or delay or any other special reason so to do, it may receive evidence by affidavit and administer interrogatories and require the person to whom the interrogatories are administered to make a full and true reply to the interrogatories within the time specified by the Tribunal.

(3) In its determination of any matter, the Tribunal may take into consideration any evidence which it considers relevant to the subject of an appeal before it, notwithstanding that the evidence would not otherwise be admissible under the law relating to admissibility of evidence.

(4) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be paid in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.

(5) All summons, notices or other documents issued under the hand of the chairman of the Tribunal shall be deemed to be issued by the Tribunal.

(6) Any interested party may be represented before the Tribunal by an advocate or by any other person whom the Tribunal may, in its discretion, admit to be heard on behalf of the party.

50. Refusal or failure to give evidence

Any person summoned by the Tribunal to attend and give evidence or to produce any records, books of account, statements or other documents, or required to answer interrogatories and who, without sufficient cause—

- (a) refuses or fails to attend at the time and place mentioned in the summons served on him; or
- (b) refuses or fails to answer, fully and satisfactorily, to the best of his knowledge and belief, all questions lawfully put to him by the Tribunal; or
- (c) refuses or fails to produce any records, books of account, statements or other documents which are in his possession or under his control or mentioned or referred to in any summons served on him,

commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

51. Costs

(1) Where the Tribunal awards costs in an appeal, it shall, on application by the person to whom the costs are awarded, issue to him a certificate stating the amount of the costs.

(2) Every certificate issued under subsection (1) may be filed in the High Court by the person in whose favour the costs have been awarded and upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such:

Provided that an order for costs against the Government shall not be enforced save in the manner provided for by the Government Proceedings Act.

52. Rules for appeals to the Appeals Tribunal

The Chief Justice may make rules governing the making of appeals and providing for the fees to be paid, the scale of costs of any such appeal, the procedure to be followed therein, and the manner of notifying the parties thereto; and until such rules are made and subject thereto, the provisions of the Civil Procedure Act (Cap. 21) shall apply as if the matter appealed against were a decree of a subordinate court exercising original jurisdiction.

PART VII – MISCELLANEOUS

53. General penalty

(1) Any person who—

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

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

(2) A person does not commit an offence under subsection (1), if he proves, to the satisfaction of the court, that the act or omission constituting the offence was done without his knowledge, consent or connivance and that he attempted to prevent the commission of the offence having regard to all the circumstances of the case.

53A. Proceedings for recovery of deductions from employers

(1) Where an employer, having with the agreement of an employee who is a member of a scheme, made a deduction from the employee's emoluments for remittance to the scheme, fails to remit the deduction within fifteen days of the deduction, the scheme may, after giving such employer not less than seven days' notice, institute proceedings for the recovery of the deduction.

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

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

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

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

(5) Where an offence under subsection (4) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in that subsection be liable to a further fine of one thousand shillings for every day or part thereof during which the offence continues.

[Act No. 2 of 2006, s. 21.]

54. Offences by corporate bodies, partnerships, principals and employees

(1) When an offence under the provisions of this Act is committed by a body corporate, the body corporate and every director or officer thereof who principals and employees had knowledge or should have had knowledge of the commission of the offence and who did not exercise due diligence to ensure compliance with this Act commits an offence.

(2) Where an offence is committed under this Act by a partnership, every partner or officer of the partnership who had knowledge or who should have had knowledge of the commission of the offence commits an offence.

(3) A person shall be personally liable for an offence against this Act whether committed by him on his own account or as an agent or servant of another person.

(4) An employer or principal shall be liable for an offence committed by an employee or agent against this Act unless the employer or principal proves that the offence was committed against his express or standing directions.

54A. Conduct of prosecutions

(1) The Attorney-General may, pursuant to the provisions of the Criminal Procedure Code (Cap. 75), appoint public prosecutors for the purposes of cases arising under this Act.

(2) The Authority shall, for the purposes of the Criminal Procedure Code (Cap. 75), be deemed to be a public authority.

[Act No. 8 of 2003, s. 6.]

55. Regulations

(1) The Minister may, in consultation with the Authority, make regulations generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) regulations under this section may—

- (a) prescribe anything required to be prescribed under this Act;
- (b) subject to this Act, provide for the procedure for registration and the conditions of registration;
- (c) provide the eligibility requirements for the membership of schemes and access to retirement benefits;
- (d) provide for any matter relating to the nature of benefits under schemes;
- (e) prescribe the fees and other charges payable to the Authority;
- (f) subject to the provisions of this Act and of any other written law, make provisions with regard to the winding up of schemes and the transfer of the assets of the schemes upon such winding up;
- (g) regulate the transitional period prescribed by section 57.

(3) Without prejudice to subsection (1), the Authority may from time to time, issue guidelines, practice notes or codes of conduct for better administration of the retirement benefits schemes.

[Act No. 7 of 1998, s. 22, Act No. 8 of 2008, s. 78.]

56. Exemption from Cap. 446

The provisions of the State Corporations Act shall not apply to the Authority.

57. Transitional provisions

Any person who, at the commencement of this Act, is a trustee or manager of a scheme to which this Act applies shall, within sixty days of the commencement, or within such longer period as the Minister may, in consultation with the Authority prescribe, apply for registration under this Act:

Provided that the period prescribed under this section shall not exceed three years.

58. Supersession

Where there is a conflict between the provisions of this Act and the provisions of any written law (other than the Constitution) with regard to the powers or functions of the Authority under this Act, the provisions of this Act shall prevail.

59. Exemption from compliance with provisions of this Act

The Minister may, by order published in the *Gazette*—

- (a) exempt any person or class of person from compliance with any specified provisions of this Act; or
- (b) extend the time for compliance by any person or class of persons with any specified provisions of this Act:

Provided that nothing in this section shall apply in respect of any of the provisions of Part III of this Act.

[Act No. 15 of 2003, s. 58.]

SCHEDULE

[Section 8.]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Tenure of office

(1) A member of the Board other than an *ex officio* member shall, subject to the provisions of this Schedule, hold office for a period not exceeding four years, on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for re-appointment for one more term of a period not exceeding four years.

(2) The members of the Board shall be appointed at different times so that the respective expiry dates of the members terms shall fall at different times.

2. Vacation of office

A member other than an *ex officio* member may—

- (a) at any time resign from office by notice in writing to the Minister;
- (b) be removed from office by the Minister if the member—
 - (i) has been absent from three consecutive meetings of the Board without permission from the chairman; or
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or
 - (iii) is convicted of an offence involving dishonesty, fraud or moral turpitude; or
 - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
 - (v) is incapacitated by prolonged physical or mental illness; or
 - (vi) is otherwise unable or unfit to discharge his functions.

[Act No. 7 of 1998, s. 23.]

3. Meetings

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(3) The quorum for the conduct of the business of the Board shall be three members excluding the Chief Executive Officer, of whom at least one shall be from amongst the members of the Board appointed under paragraph (f) of section 6.

(4) The chairman shall preside at every meeting of the Board at which he is present but in his 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 chairman.

(5) Unless a unanimous decision is reached a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the chairman or the person presiding shall have a casting vote.

(6) Subject to subparagraph (3), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(7) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make standing orders in respect thereof.

[Act No. 7 of 1998, s. 23.]

4. Disclosure of interest

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that if the majority of the members present are of the opinion that the experience or expertise that member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

5. The common seal

The affixing of the common seal of the Authority shall be authenticated by the signatures of the chairman and the Chief Executive Officer and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairman and the Chief Executive Officer:

Provided that the Board shall, in the absence of either the chairman or the Chief Executive Officer, in any particular matter nominate one member to authenticate the seal of the Board on behalf of either the chairman or the Chief Executive Officer.

6. Contracts and instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Authority by any person generally or specially authorized by the Authority for that purpose.

7. Minutes

The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books kept for that purpose.

CHAPTER 197

RETIREMENT BENEFITS ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

	<i>Page</i>
1. Retirement benefits (Individual retirement benefit schemes) regulations ..	35
2. Retirement benefits (Occupational retirement benefits schemes) regulations	49
3. Retirement benefits (Minimum funding level and winding-up of schemes) regulations	71
4. Retirement benefits (Tribunal) rules	77
5. Retirement benefits (Transitional) regulations	83
6. Retirement benefits (Managers and custodians) regulations	87
7. Retirement benefits (Forms and fees) regulations	95
8. The Retirements (Administrators) Regulations	143
9. Retirement Benefits (Mortgage Loans) Regulations	149

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

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

1. Citation.
2. Application.
3. Interpretation.

PART II – REGISTRATION OF A SCHEME

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

PART III – ADMINISTRATION AND BENEFITS

7. Contents of scheme rules.
8. Amendment of scheme rules.
9. Duties of trustees.
10. Effect of notice to transfer benefits.
11. Rules relating to administrators.
12. No penalty clauses in agreements.
13. Rules relating to a pooled fund.
14. Qualifications of a pooled fund.
15. Record of contributions.
16. Benefits from the scheme.
- 16A. *Deleted.*
17. Retirement of a disabled member.
18. Non-assignability of benefits.
19. Payments of benefits to a nominated beneficiary.
20. Constitution of scheme fund.

PART IV – FINANCIAL PROVISIONS AND STATEMENTS

21. Schemes to keep books and accounts.
22. Appointment of auditors.
23. Annual accounts.
24. Accounting procedure for investments.
25. Valuation of assets.
26. Actuarial valuation.
27. Repair and maintenance of investments.
28. Minimum disclosure requirements.
29. Protection against financial loss.

PART V – INVESTMENT GUIDELINES

30. Investment policy.
31. Investment guidelines.

Retirement Benefits

[Subsidiary]

PART VI – LEVY

Regulation

32. Retirement Benefits Levy.

**RETIREMENT BENEFITS (INDIVIDUAL RETIREMENT BENEFIT SCHEMES)
REGULATIONS, 2000**

[L.N. 118/2000, L.N. 99/2002, L.N. 83/2003, L.N. 56/2005, L.N. 62/2006, L.N. 95/2007, L.N. 75/2008,
L.N. 88/2009, L.N. 12/2011.]

PART I – PRELIMINARY**1. Citation**

These regulations may be cited as The Retirement Benefits (Individual Retirement Benefits Schemes) Regulations, 2000.

2. Application

These Regulations shall apply to individual retirement benefits schemes.

3. Interpretation

In these Regulations, unless the context otherwise 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;

[Subsidiary]

“**trustees**” means a trust corporation;

“**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 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;

[Subsidiary]

- (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) the vesting formula of contributions, so long as such period is immediate in the case of members' contributions and does not exceed one year in the case of employer 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;
- (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(a), L.N. 95/2007, r. 2(a), r. 2(c).]

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.

[Subsidiary]

(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;
- (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 to 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.

[L.N. 99/2002, r. 3, L.N. 75/2008, r.3, L.N. 56/2012, r. 2.]

10. Effect of notice to transfer benefits

Where a member of a scheme gives notice to the scheme of an 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—

- (i) make provision for the computation of the administrator's fees;
- (ii) 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;

Retirement Benefits

[Subsidiary]

- (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 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 within ten days from the end of every quarter.

(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 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.

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 a scheme who prior to leaving employment, was a member of an occupational retirement benefits scheme, but left employment before attaining the specified retirement age, upon transferring his accrued

[Subsidiary]

benefits to an individual retirement benefits scheme, the member may opt for payment of his benefits from the scheme as follows—

- (i) his own contributions to the scheme together with fifty per cent of his accrued benefits transferred from the occupational retirement scheme if the occupational retirement scheme was a defined benefit scheme; or
 - (ii) his own contribution and fifty per cent of the employer's contribution and the investment income that has accrued in respect of those contributions where the member is or was a member of a defined contribution scheme from where the employer's contribution were transferred.
- (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.]

16A. Deleted by L.N. 95/2007, s. 5.

17. Retirement of a disabled member

The scheme rules shall provide that—

- (a) where an employer contributes on behalf of an employee, the employee shall, where the employee leaves employment after one year of membership but before attaining the prescribed retirement age, be entitled to a refund of the employee's contribution together with the investment income accrued thereon;
- (b) contributions made by the employer which have vested in a member shall be deferred until the member attains the prescribed retirement age, unless the member retires—
 - (i) before the expiry of one year of service;
 - (ii) 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.

[L.N. 83/2003, r. 3, L.N. 95/2007, r. 6.]

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 within such period as shall be specified in the scheme rules so long as the period does not exceed five years.

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 investment 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 six months 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.

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.

[Subsidiary]

(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:

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;
- (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.

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.

(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.

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

*Retirement Benefits***[Subsidiary]**

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.]

PART VI – LEVY**32. Retirement Benefits Levy**

(1) Every scheme shall within six 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;
- (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.]

**RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS
SCHEMES) REGULATIONS, 2000**

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

1. Citation.
2. Application.
3. Interpretation.

PART II – REGISTRATION OF A SCHEME

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

PART III – ADMINISTRATION, MEMBERSHIP AND BENEFITS

7. Content of the scheme rules.
8. Rules relating to trustees and their duties.
9. Rules relating to administrators.
10. Rules relating to custody of scheme funds.
11. No penalty clauses in agreements.
12. Rules relating to pooled funds.
13. Qualifications of a pooled fund.
14. Formula and schedule of contributions.
15. Record of contributions.
16. Amendment of rules.
17. Protection against financial loss.
18. Eligibility for membership.
19. Benefits from a scheme.
20. Benefits to fully vest within three years.
21. Leaving service benefits.
22. Non-assignability of benefits.
23. Payments of benefits to a nominated beneficiary.
24. Discretionary powers of trustees in payment of benefits.
25. Commutation of retirement benefits.
26. Lump sum payment of death benefits.
27. Retirement of a disabled member.

PART IV – FINANCIAL PROVISIONS AND STATEMENTS

28. Schemes to keep books and accounts.
29. Appointment of Auditors.
30. Annual accounts.
31. Actuarial valuation.
32. Surpluses not refundable.
33. Accounting procedure for investments.

Retirement Benefits

[Subsidiary]

Regulation

- 34. Valuation of assets.
- 35. Repair and maintenance of investments.
- 36. Minimum disclosure requirements.

PART V – INVESTMENT GUIDELINES

- 37. Investment policy.
- 38. Investment guidelines.

PART VI – LEVY

- 39. Retirement benefits levy.

PART VII – TRANSFERS AND AMALGAMATION OF SCHEMES

- 40. Amalgamation and transfers.
-

RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS SCHEMES) REGULATIONS, 2000

[L.N. 119/2000, L.N. 100/2002, L.N. 12/2003, L.N. 85/2003, L.N. 57/2005, L.N. 84/2005, L.N. 61/2006, L.N. 93/2007, L.N. 77/2008, L.N. 84/2009, L.N. 88/2010, L.N. 165/2010, L.N. 13/2011.]

PART I – PRELIMINARY**1. Citation**

These Regulations may be cited as the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000.

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 member’s 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;

[Subsidiary]

“**manager**” means a manager registered by the Authority;

“**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 dependants 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.

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 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) 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;
- (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;
- (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;

[Subsidiary]

- (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. 12/2003, r. 2, L.N. 57/2005, r. 2(a), r. 2(b), L.N. 93/2007, r. 2, L.N. 88 of 2010, r. 2.]

8. Rules relating to trustees and their duties

(1) The scheme rules may make provision for—

- (a) the manner of appointment or election 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;
- (c) the number of trustees—

Provided that—

- (i) a defined benefit scheme shall not have less than three and not more than nine 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) a defined contribution scheme shall not have less than four and not more than nine trustees and the number of trustees 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;
- (d) the method of and grounds for the removal from office of a trustee;
 - (e) the manner of election of a chairman of the board of trustees:

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

- (f) the procedure for convening meetings of the Board of Trustees:

Provided that—

- (i) the trustees may meet at least four times in every calendar year; and
- (ii) not more than four months may 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;

[Subsidiary]

- (c) computing and preparing statements of payments of benefits to members;
- (d) liaising 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 the financial year on all matters regarding the scheme;
- (g) ensuring that contributions based on correct pensionable emoluments have been remitted to the custodian as specified in the Act, these Regulations and the 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 the members with respect to the affairs of the scheme and furnishing them with annual membership benefits statements; and
- (i) ensuring that all documents intended to bind the scheme are professionally prepared;
- (j) convening an annual meeting of members to enable them to raise any matters that relate to their scheme.
- (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 may 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;
- (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.

[L.N. 100/2002, r. 2(a), r. 2(b), L.N. 57/2005, r. 3(b)(i), r. 3(b)(ii), r. 3(e), 93/2007, r. 3(a)(i), r. 3(a)(ii), r. 3(c), r. 3(d), L.N. 77/2008, r. 2(a)(i), r. 2(a)(ii), r. 2(b), L.N. 88/2010, r. 3.]

9. 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) The instrument appointing the administrator shall—

- (i) make provision on the computation of the fee in respect of administrative services;
- (ii) 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.

[Subsidiary]

(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 of the details and qualifications of the person administering the scheme.

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 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 a case 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 that 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 (Cap. 488) 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.

[Subsidiary]

(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—
 - (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 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 and with such information as may be sought by the scheme; and
- (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 for hire in the respective business.

(4) All monetary benefits, commissions or 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 for the computation of the fees in respect of the pooling services.

[Subsidiary]

(6) In the event of termination of the agreement referred to in paragraph (2) the pooled fund shall within ninety days from the date of termination, hand-over, transfer and deliver to a manager of 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 fund 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.

(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.

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 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 funds 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.

(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, if 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

[Subsidiary]

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(a), r. 4(b).]

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 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 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;

[Subsidiary]

- (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; 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 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 shall provide that any person who—

- (a) is an employee of a participating sponsor and—
- (i) is eligible for membership of the scheme, 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, 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) he becomes a member of another scheme established for the benefit of employees of that sponsor; or
- (b) he attains the retirement age provided for in the scheme rules.

[L.N. 57/2005, r. 5(a), r. 5(b).]

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;
- (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 subregulation (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; and
- (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 after vesting of his benefit but before attaining the specified early retirement age, he may opt for payment—
 - (i) of not more than fifty per cent of his accrued benefits, as shall be determined by an actuary, where he is a member of a defined benefit scheme; or
 - (ii) of his own contribution and fifty per cent of his employer’s contribution and the investment income that has accrued in respect of those contributions, where he is a member of a defined contribution scheme; 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

[Subsidiary]

- (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.

[L.N. 57/2005, r. 6, L.N. 61/2006, r. 3(a), r. 3(b), L.N. 93/2007, r. 5(a), r. 5(b)(i), r. 5(b)(ii), r. 5(b)(iii), L.N. 165/2010, r. 2, L.N. 13/2011, r. 2.]

20. Benefits to fully vest within three years

The scheme rules shall provide that benefits be fully vested in a member within one year of 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. 6.]

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; and
- (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.

(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 be reviewed and certified by an actuary; and
- (b) in case of a member transferring from a defined contribution scheme that 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(a), r. 3(b).]

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 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 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 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.

(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 recommended by an actuary:

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 uncommuted 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 position.

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

[Subsidiary]

(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 to the purchase of annuity, for members at retirement age:

Provided that the minimum draw down period shall be ten years.

[L.N. 57/2005, r. 9(a), r. 9(b), L.N. 93/2007, r. 7, L.N. 77/2008, r. 4, L.N. 88/2010, 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 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 lump sum to the nominated beneficiary, spouse, dependant child, any other dependant or estate should any such entitled beneficiary elect in writing for lump sum 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 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 chairman 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 was correct and complete in every respect.

[Subsidiary]

(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 scheme 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 six months 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 its members a summary of its audited accounts together with the members' benefits statements.

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

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 five 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, 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;
- (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 accordance with the Seventh Schedule.

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

[Subsidiary]

- (b) a scheme 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.

(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 that shall form part of the actuarial valuation report.

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

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—

- (i) 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
- (ii) any surplus of the scheme fund shall be wholly credited to the scheme fund for the benefit of the members.

(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 is sufficient on the actuarial basis adopted to support a contribution holiday for a period exceeding the higher of ten years and half of the expected future working lifetimes of the in-service scheme membership as 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.

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 subregulation (2), and net profit arising from the 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 so determine:

Provided that the Authority may in writing require trustees to adjust the reserve fund to such levels as it may so determine.

34. Valuation of assets

(1) In this regulation, “**net realizable value**” means the value which an asset or investment can realise 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 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 in the year of purchase be valued at one-half of the cost thereof and shall be, in any subsequent financial year, left out of the accounts.

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) unremitted contributions;
- (b) fees and expenses paid directly or indirectly to, or on behalf of the trustees appropriately classified;
- (bb) fees and expenses paid by any other party, including the sponsor of the scheme, on behalf of the scheme;
- (c) returns on investment as per each category of investment;
- (d) related company 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. 93/2007, r. 8.]

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 investments decisions for the purposes of the scheme or the pooled fund.

[Subsidiary]

(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 categories of investments to be held;
 - (ii) risk;
 - (iii) the realisation of investments;
 - (iv) asset liability matching; and
 - (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 investments decisions 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. 5(a)(i), r. 5(a)(ii), r. 5(a)(iii), r. 5(b).]

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 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 increase in the 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;

[Subsidiary]

- (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 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 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 unquoted equity, commercial paper, loan stock and debentures issued by the 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:

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 of these 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. 100/2002, r. 3, L.N. 57/2005, r. 12.]

PART VI – LEVY

39. Retirement benefits levy

(1) Every scheme shall within six 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 adopted in determining the levy shall be the total fund value indicated in the latest audited accounts of the scheme;
- (b) notwithstanding anything contained in this regulation the minimum levy payable to the Authority shall be Kenya shillings two thousand per annum subject to a maximum of five million shillings.

[L.N. 57/2005, r. 13(a), r. 13(b), L.N. 84/2009, r. 2.]

[Subsidiary]

PART VII – TRANSFERS AND AMALGAMATION OF SCHEMES

40. Amalgamation and transfers

(1) No amalgamation 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 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 and transfer, have been submitted to 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 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 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 Authority has forwarded an approval in writing to the concerned schemes to the effect that all the requirements of this subregulation 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 or transfer of a scheme fund shall not—

- (a) diminish the retirement benefits of the members of such scheme;
- (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, 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 being transferred.

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

RETIREMENT BENEFITS (MINIMUM FUNDING LEVEL AND WINDING-UP OF SCHEMES) REGULATIONS, 2000

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

1. Citation.
 2. Application.
 3. Interpretation.
 4. Minimum funding level of the scheme.
 5. Winding-up of scheme.
 6. *Deleted.*
 7. Voluntary dissolution of a scheme.
 8. Qualifications of a liquidator.
-

[Subsidiary]

RETIREMENT BENEFITS (MINIMUM FUNDING LEVEL AND WINDING-UP OF SCHEMES) REGULATIONS, 2000

[L.N. 120/2000, L.N. 55/2005, L.N. 63/2006, L.N. 94/2007, L.N. 76/2008, L.N. 86/2009.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Retirement Benefits (Minimum Funding Level and Winding-up of Schemes) Regulations, 2000.

2. Application

These Regulations shall apply to all schemes.

3. Interpretation

(1) 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.

[Subsidiary]

(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—
 - (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 Minister 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, r. 2, L.N. 63/2006, r. 2, L.N. 86/2009, r. 1.]

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 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 up by the court in terms of the Companies Act, and in so far as the 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 of a scheme.

(6) The court may direct that the provisions of the Companies Act (Cap. 486) referred to in paragraph (4) may, for the purposes of the winding-up of a scheme be suitably modified in any 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

[Subsidiary]

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 in the scheme as follows—

- (a) surpluses accruing from investment income in a defined contribution scheme shall be used wholly to augment members' benefits;
- (b) surpluses arising from unvested benefits in the scheme shall be refunded to the defined contribution scheme sponsors;
- (c) surpluses arising from a defined scheme shall be apportioned between the scheme sponsors and the members in the proportions of their contribution.

(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 of a scheme shall include the Authority, sponsors, members and creditors.

(11) In the event of the winding-up of a scheme the benefits 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, r. 3, L.N. 63/2006, r. 3, L.N. 76/2008, r. 2(a), r. 2(c), L.N. 76/2008, r. 2(b), L.N. 94/2007, r. 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 resolution by trustees to voluntarily dissolve or wind up a scheme shall not be effected until the Authority has approved it in writing.

(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.

[Subsidiary]

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

(5) The Authority may, in its discretion, and at the cost 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, 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 paragraph (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 subregulation (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.

[Subsidiary]

(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 deregister 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. 94/2007, r. 3, L.N. 55/2005, r. 5(a), r. 5(b).]

8. Qualifications of a liquidator

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

- (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 deregistered for failure on the part of the management or administration;
- (e) been qualified under any other written law.

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

RETIREMENT BENEFITS (TRIBUNAL) RULES, 2000

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. Notice of hearing Appeal.
10. Procedure.
11. Copies of documents admissible.
12. Tribunal to adopt civil procedure rules.
13. Costs.
14. Scale of costs.
15. Filing fees.

SCHEDULE – SCALE OF COSTS

[Subsidiary]

RETIREMENT BENEFITS (TRIBUNAL) RULES, 2000

[L.N. 121/2000.]

1. Citation

These Rules may be cited as the Retirement Benefits (Tribunal) Rules 2000.

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;

“**chairman**” means the chairman 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 chairman.

(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 to the clerk and for purposes of this paragraph, the provisions of the Civil Procedure Act (Cap. 21) 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

[Subsidiary]

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.

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. Notice of Hearing Appeal

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

(2) The Chairman 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 grounds 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;

[Subsidiary]

- (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 Chairman 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.

Retirement Benefits

[Subsidiary]

SCHEDULE

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).

<i>Exceeds Shs.</i>	<i>Does not exceed Shs.</i>	<i>Lower Shs.</i>	<i>Higher Shs.</i>
—	300	150	200
300	500	200	400
500	1,000	400	800
1,000	1,500	800	1,000
1,500	2,000	1,000	1,500
2,000	2,500	1,500	2,000
3,000	3,500	2,500	3,000
3,500	5,000	3,000	3,500
5,000	7,500	3,500	4,000
7,500	10,000	4,000	4,500
10,000	20,000	4,500	5,000
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 KShs. 1,000/=.

	<i>Shs.</i>
(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—	
(i) after the first day	1,500.00
(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	700.00
(e) service—	
(i) within three kilometres of the Tribunal	50.00
(ii) every additional kilometre over three kilometres such amount as is reasonable, not exceeding per kilometre	8.00
(iii) by post, authorized	30.00

Retirement Benefits

[Subsidiary]

SCHEDULE—continued

	KShs.
(f) drawing and filing affidavit or return of service, to include swearing fee	30.00
(g) drawing and filling any other affidavits (for first four folios).....	50.00
(thereafter per folio)	20.00

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.

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

RETIREMENT BENEFITS (TRANSITIONAL) REGULATIONS, 2000

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.
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[Subsidiary]

RETIREMENT BENEFITS (TRANSITIONAL) REGULATIONS, 2000

[L.N. 122/2000.]

1. Citation

These Regulations may be cited as the Retirement Benefits (Transitional) Regulations, 2000.

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’ contributions 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 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;

“**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 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 representatives under the scheme rules, and shall be deducted therefrom and appropriate adjustments made in respect thereof.

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 five days from the date of publication of these Regulations engage the services of a manager and a 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 proposed period within which the proposal in subparagraph (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.

**RETIREMENT BENEFITS (MANAGERS AND CUSTODIANS)
REGULATIONS, 2000**

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

1. Citation.
2. Application.
3. Interpretation.

PART II – REGISTRATION OF A SCHEME

4. Application for registration of manager.
 5. The manager.
 6. Termination of management agreement.
 7. Application for registration of custodian.
 8. The role of a custodian.
 9. Termination of custodial agreement.
 10. Insolvency and winding-up of a manager and custodian.
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[Subsidiary]

**RETIREMENT BENEFITS (MANAGERS AND CUSTODIANS)
REGULATIONS, 2000**

[L.N. 123/2000, L.N. 102/2002, L.N. 82/2003, L.N. 86/2007, L.N. 87/2009, L.N. 49/2011.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Retirement Benefits (Managers and Custodians) Regulations, 2000.

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 A SCHEME

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 the prescribed fee:

Provided that where the applicant has been registered as a fund manager under the Capital Markets Act, 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 science, 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 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;

[Subsidiary]

- (b) the approved issuer of the scheme whose funds are in a guaranteed fund shall submit half yearly 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—

- (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 adopted 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 and or 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 manager such books, records and statements at any time during business hours.

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

(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

[Subsidiary]

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, wilful default or fraud by the manager or any of his agents or employees.

(5) A manager shall submit to the Authority within six months from the date of his appointment and subsequently after six months from the date of the previous submission—

- (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 six months period of reporting; and
- (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 ensuing six months.

(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 prior written approval of 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 fees 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.]

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; and
- (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 subsequently 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:

Provided that where the applicant has been registered as an authorized depository under the Capital Markets Act, 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 role of a 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 (Cap. 488) 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;

*Retirement Benefits***[Subsidiary]**

- (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;

- (dd) 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 investments representing the respective fund including details of the cost 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 scheme fund or pooled fund for 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 publicly available 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 would exercise 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 a case where a scheme, or a pooled fund, holds 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) *Deleted by L.N. 82/2003, r. 2(b).*

[Subsidiary]

(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. 82/2003, r. 2(a).]

9. Termination of custodial agreement

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

(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.

(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.

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

RETIREMENT BENEFITS (FORMS AND FEES) REGULATIONS, 2000

[L.N. 124/2000, L.N. 80/2002, L.N. 101/2002, L.N. 11/2003, L.N. 60/2006, L.N. 96/2007, L.N. 152/2007, L.N. 74/2008, L.N. 89/2009.]

1. These Regulations may be cited as the Retirement Benefits (Forms and Fees) Regulations, 2000.
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.

[L.N. 152/2007, r. 2.]
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.

[L.N. 152/2007, r. 3.]
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.

[Subsidiary]

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 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.

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.

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 in the Institute of Certified Public Accountants of Kenya in accordance with the International Accounting Standards (IAS) Format.

[L.N. 96/2007, r. 2.]

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
[L.N. 101/2002, s. 2(a)]

Form A1

(Rule 2)

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

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)

C. SHARE CAPITAL

(i) Authorized capital

Type of shares	No. of shares	Nominal Value (KShs)	Total Value (KShs)
		Total	

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

(ii) Paid-up Capital

Type 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					
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 that 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

FIRST SCHEDULE—continued
APPENDIX A
PARTICULARS OF THE BOARD OF DIRECTORS

Name of the custodian	Director (full name)	Nationality	Permanent Address	Occupation	Date of Appointment	No. of shares held
.....						

[Subsidiary]

FIRST SCHEDULE—continued

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

FIRST SCHEDULE—continued
 APPENDIX C
 PARTICULARS OF AUDITORS LEGAL ADVISORS AND BANKERS

Name of custodian

	Name of firm/institution	Income Tax P.I.N.	Postal, Telephone and fax address	Affiliated Professional body	Date of appointment
Auditors					
Bankers					
Legal Advisor					

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

Form C1

(Section 23(4))

RETIREMENT BENEFITS AUTHORITY
CERTIFICATE OF REGISTRATION OF A CUSTODIAN

REGISTRATION NO. [Empty box]

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

(Rule 4)

[L.N. 11/2003, r. 2(a).]

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

FIRST SCHEDULE—continued

- (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	No. of shares	Nominal Value (KShs)	Total Value (KShs)
Total			

(ii) 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					

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

Type of share and holding	Number of shareholders	Number of shares	Nominal value (KShs)	Total Amount (KShs)	%of 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. (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)

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

FIRST SCHEDULE—continued
APPENDIX A
PARTICULARS OF THE BOARD OF DIRECTORS

Name of the Manager

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

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

APPENDIX B

PARTICULARS OF TOP MANAGEMENT OF THE MANAGER

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

FIRST SCHEDULE—continued

APPENDIX C

PARTICULARS OF AUDITORS, LEGAL ADVISORS AND BANKERS

Name of Manager	Name of firm/institution	Income Tax P. I. N.	Postal, Telephone and fax address	Affiliated Professional body	Date of appointment
Auditors					
Bankers					
Legal Advisors					

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

Form C2

(Section 23(4))

RETIREMENT BENEFITS AUTHORITY CERTIFICATE OF REGISTRATION OF A MANAGER

REGISTRATION NO.

This is to certify that (manager) is registered and authorized to manage retirement benefits 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

(Rule 6)

RETIREMENT BENEFITS AUTHORITY APPLICATION FOR REGISTRATION OF AN INDIVIDUAL RETIREMENT BENEFITS SCHEME

PART I – DETAILS OF THE SCHEME

- A. (i) Name of scheme
- (ii) Income Tax P.I.N. number
- B. Provide the following information regarding the proposed scheme:
 - (i) Proposed number of members
 - (ii) Registered office of the scheme:
 - Building
 - Road
 - Postal address

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

Telephone Address
Telex Fax
E-mail

(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 trustee:
.....
.....
.....

B. Physical address
Building Road:
Town
Postal Address Telephone Fax

C. (i) Income Tax P.I.N. Number
(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

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

A. (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:

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

Telephone:

E-mail/fax Nos.:

C. (i) Income Tax P.I.N. 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.
- (iii) An actuarial certificate certifying the design and financial viability of the scheme.
- (iv) A feasibility study on a proposed scheme.
- (v) 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 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 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:

FIRST SCHEDULE—continued

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

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

APPENDIX B

PARTICULARS OF AUDITORS, LEGAL ADVISORS, ACTUARIES, ADMINISTRATORS, MANAGER AND CUSTODIANS

Name of Scheme	Name of firm	Income Tax P.I.N. Number	Address, Telephone Fax or E-mail	Professional body to which Partners are members	Date of appointment
Actuaries					
Administrators					
Auditors					
Custodians					
Legal Advisors					
Manager					

FIRST SCHEDULE—continued

APPENDIX C

PARTICULARS OF DIRECTORS OR PARTNERS OF A SPONSOR

Name of Sponsor

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

* Delete as appropriate.

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

Form A4

(Rule 7)

RETIREMENT BENEFITS AUTHORITY
REGISTRATION OF EXISTING SCHEMES

APPLICATION FOR THE PURPOSE OF REGISTRATION UNDER SECTION 23(2) OF
THE RETIREMENT BENEFITS ACT, 1997

(Read attached notes before completing the Form)

PART I – DETAILS OF THE SCHEME

- A. (i) Name of scheme
(ii) Income Tax P.I.N. 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.

FIRST SCHEDULE—continued

- (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 beneficiaries 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).
.....
- (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.
.....
.....
.....

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 contributions:
KShs
Individual's contributions:
KShs
- (iii) State the total benefits as follows:
Lump sum payments: KShs
Commutated 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 e.g. market value, historical cost, etc.
.....

G. (i) Provide the following particulars of the establishment of the scheme as follows:
Country
Date of establishment

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

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.

.....
.....

(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.

J. (i) 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.

FIRST SCHEDULE—continued

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 Act? YES/NO.

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 a separate attachment)

A. Name of sponsor(s):.....

B. Physical address
Building Road
Town
Postal address Telephone Fax/Email

C. (i) Income Tax P.I.N. Number
(ii) Income Tax Reference Number

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

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 stated 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:

.....

Chairman/Secretary
Authorized signature of Applicant

[Subsidiary]

FIRST SCHEDULE—continued
APPENDIX A
PARTICULARS OF BOARD OF TRUSTEES

Name of Scheme:

Trustees	Citizenship	Residential Address	Occupation	Date of Appointment	Whom do the Trustees 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.
4.

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

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 P.I.N. 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)

FIRST SCHEDULE—continued
APPENDIX C
PARTICULARS OF AUDITORS, LEGAL ADVISORS, ACTUARIES, ADMINISTRATORS AND CUSTODIANS

Name of Scheme:

	Name of firm	Income Tax P. I. N. Number	Postal/Telephone or Fax Address	Professional body to which Partners are members	Date of appointment
Auditors					
Legal Advisors					
Custodians					
Actuaries					
Administrators					

[Subsidiary]

FIRST SCHEDULE—continued

APPENDIX D1

LIST OF INVESTMENT PORTFOLIO

Name of Scheme Income Tax P.I.N. Number	AMOUNT IN KSH							
	Original Cost	%	Book Value	%	Market Value	%	Date of Valuation	Basis of Valuation
INVESTMENTS								
(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 & In vestment								
(iv) Industrial and allied								
(v) Others								
(c) Unquoted Equity+								
.....								
.....								
(i) Agricultural								
.....								
(ii) Commercial & allied								
.....								

[Subsidiary]

FIRST SCHEDULE—continued

INVESTMENTS	AMOUNT IN KSH						Date of Valuation	Basis of Valuation
	Original Cost	%	Book Value	%	Market Value	%		
(iii) Financial & In vestment								
(iv) Industrial & allied								
(d) Government Paper								
(i) Bonds								
(ii) Stock								
(iii) Treasury Bills								
(iv) Any other (specify)								
(e) Cash & Deposits in Banks (State the name(s) of the Banks)								
(f) Offshore investments								
(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)

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued
APPENDIX D2
LIST OF INVESTMENT PORTFOLIO

Name of Insurance Company/Bank/Asset Management
Income Tax P.I.N. Number

TOTAL INVESTMENTS IN THE POOL	AMOUNT IN KSH						Basis of Valuation
	Original Cost	%	Book Value	%	Market Value	%	
(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							
(i) Unquoted Equity+							
.....							
(v) Agricultural							
.....							
(vi) Commercial & allied							
.....							
.....							

FIRST SCHEDULE—continued

TOTAL INVESTMENTS IN THE POOL	AMOUNT IN KSH						Date of Valuation	Basis of Valuation
	Original Cost	%	Book Value	%	Market Value	%		
(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								
(n) Other, Specify								
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)

[Subsidiary]

FIRST SCHEDULE—*continued**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 and providing members with information relating to their benefits.

(3) Banks

Bank or 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) (i) Contributory scheme

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.

(7) Custodian

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

(8) (i) Defined benefit scheme

A scheme in which benefits to be provided or paid are specifically 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.

* A person including a body corporate or a company.

[Subsidiary]

A person including a body corporate or a company.

(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.

Form A5

(Rule 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 P.I.N. 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.
 - (ii) Number of the total permanent workforce of the sponsoring employer(s).

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

- (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.

F. 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)

(In case 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 P.I.N. Number

 (ii) Income Tax Reference Number

D. Number of members in service of the sponsor

FIRST SCHEDULE—*continued*

PART III – ATTACHMENTS

Please attach copies of the following:

- (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:

[Subsidiary]

FIRST SCHEDULE—continued

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, employee or independent)

FIRST SCHEDULE—continued
APPENDIX B

PARTICULARS OF PROPOSED AUDITORS, LEGAL ADVISORS, ACTUARIES, MANAGERS, CUSTODIANS, AND ADMINISTRATORS

Name of Scheme:

	Name of firm	Income Tax P.I.N. Number	Address/Telephone, or E-mail	Professional body to which Partner/company are members	Date of appointment
Auditors					
Actuaries					
Administrators					
Custodian					
Legal Advisors					
Managers					

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

Form A6

(L.N. 152/2007, r. 4.)

RETIREMENT BENEFITS AUTHORITY

APPLICATION FOR REGISTRATION OF AN ADMINISTRATOR

Provide the following particulars:

A. GENERAL

- (i) Name of Administrator
- (ii) Registered office
- Building
- Road
- Town
- (ii) 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 Department (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					

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

(c) Shares					
Local					
Foreign					
TOTAL					

D. BUSINESS PARTICULARS

(i) State briefly the main object of the Administrator

.....

.....

.....

.....

.....

(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. (In case of insufficient space provided 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 thirty days from the date of alteration.

Signed on this day of

.....

Chief Executive/Secretary

Full name

Designation

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—*continued*

APPENDIX A

PARTICULARS OF THE BOARD OF DIRECTORS

Name of Administrator

Director (full name)	Nationality	Permanent Address	Occupation	Date of Appointment	No. of shares hold

APPENDIX B

PARTICULARS 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

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

APPENDIX C

PARTICULARS OF AUDITORS, LEGAL ADVISORS AND BANKERS

Name of Administrator

	Name of firm/institution	Income Tax P.I.N.	Postal, Telephone and fax address	Affiliated Professional body	Date of appointment
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 authorized to manage retirement benefits schemes subject to the provisions of the Retirement Benefits Act and the conditions endorsed therein.

CONDITIONS

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

Chief Executive Officer Retirement Benefits Authority

Form C3

(Section 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.

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued
CONDITIONS

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

Chief Executive Officer
Retirement Benefits Authority

Form N1

(Section 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 reason:—

.....
.....
.....

Yours faithfully,

Chief Executive Officer

* Delete whichever is inapplicable.

Form N2

(Section 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 reason:—

.....
.....

FIRST SCHEDULE—continued

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

c.c. Scheme
Manager
Sponsor

Form N3

(Section 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

(Rule 13)

[L.N. 60/2006, s. 2(a), L.N. 96/2007, s. 3(c).]

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

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—*continued*

- 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

(Rule 14)

[L.N. 60/2006, s. 2, L.N. 96/2007, s. 3(d).]

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 KShs
- 4. 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

FIRST SCHEDULE—continued

TABLE AR 1
[Rule 15.]

CONTENTS OF AN ACTUARIAL VALUATION REPORT
[L.N. 89/2009, s. 2(a.)]

TABLE AR 2
[Rule 16.]

CONTENTS OF AN ACTUARIAL REVIEW REPORT
[L.N. 89/2009, s. 2(b.)]

Form C4

(Rule 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 times 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;

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—*continued*

- (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 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 members.

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

[Rule 18. L.N. 102/2002, L.N. 96/2007, r. 3(a), L.N. 74/2008, r. 2, L.N. 89/2009.]

INVESTMENT GUIDELINES

<i>Item</i>	<i>Column 1</i>	<i>Column 2</i>
	<i>Categories of Assets</i>	<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 Certificates of Deposits in institutions licensed under the Banking Act of the Republic of Kenya	30%
3.	Commercial Paper, Corporate Bonds, Mortgage Bonds and loan stocks approved by the Capital Markets Authority, non-listed bonds and other instruments issued by private companies, provided that the bond 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	30%
4.	Kenya, Uganda or Tanzania Government Securities and infrastructure bonds issued by public institutions and collective investment schemes incorporated in Kenya, Uganda or Tanzania and approved by the Capital Markets Authority reflecting this category	90% or 100% in the case of scheme receiving statutory contributions
5.	Preference shares and ordinary shares of companies quoted in a stock exchange in Kenya, Uganda or Tanzania and collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category	70%

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

<i>Item</i>	<i>Column 1</i>	<i>Column 2</i>
	<i>Categories of Assets</i>	<i>Maximum percentage of aggregate market value of total assets of scheme or pooled fund</i>
6.	Unquoted shares of companies incorporated in Kenya and collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category	5%
7.	Offshore investments in bank deposits, government securities, quoted equities and rated Corporate Bonds and offshore collective investment schemes reflecting these assets	15%
8.	Immovable property in Kenya and units in property Unit Trust Scheme incorporated in Kenya and collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category	30%
9.	Guaranteed Funds	100%
10.	Any other assets	10%

TABLE L

[Rule 19. L.N. 101/2002.]

LEVY

<i>Column 1</i>	<i>Column 2</i>
Size of Scheme Fund as indicated in latest Audited Accounts (Kenya Shillings)	Annual Levy Rate – Percentage of Fund
Up to 500 million	0.2%
More than 500 million, but not exceeding 1,000 million	0.15%
More than 1000 million, but not exceeding 5,000 million	0.1%
More than 5,000 million	0.05%

TABLE S

[L.N. 60/2006, r. 3, L.N. 96/2007, r. 3(b).]

Form C5

(Rule 21)

CERTIFICATION BY TRUSTEE

I

(Chairman Board of Trustees/Authorized Trustee)

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE—continued

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 actuarial 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

[L.N. 80/2002, r. 2, L.N. 101/2002, r. 3, L.N. 11/2003, L.N. 152/2007, r. 5.]

FEES

<i>Item</i>	<i>KShs</i>
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

RETIREMENTS (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 Administrator.
 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.
-

[Subsidiary]

RETIREMENTS (ADMINISTRATORS) REGULATIONS

[L.N. 151/2007, L.N. 87/2010.]

1. Citation

These Regulations may be cited as the Retirement Benefits (Administrators) Regulations, 2007.

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 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.

5A. Disqualification of Administrator

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. 87/2010, 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

(1) 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 organizing meetings, issuing notices for the same and taking minutes during the meetings;

*Retirement Benefits***[Subsidiary]**

- (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, organize 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

The administrator shall ensure that—

- (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;
 - (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.

RETIREMENT BENEFITS (MORTGAGE LOANS) REGULATIONS

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

1. Citation.
2. Application.
3. Interpretation.

PART II – STRUCTURE OF FACILITY

4. Assignment of benefits.
 5. Institutions.
 6. Application for approval.
 7. Security for a facility.
 8. Proportion of assignable benefits.
 9. Transfers to another scheme or institution.
 10. Duties of trustees.
 11. Redemption of guarantee.
 12. Suits against Trustees.
-

[Subsidiary]

RETIREMENT BENEFITS (MORTGAGE LOANS) REGULATIONS, 2009

[L.N. 85/2009, L.N. 55/2012.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Retirement Benefits (Mortgage Loans) Regulations, 2009.

2. Application

These Regulations shall apply to registered retirement benefit 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**” means a dwelling built wholly or in part for the provision of residential accommodation in urban or rural areas;

“**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 under the Microfinance Act, 2006 (No. 19 of 2006) 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;

“**member**” means a member of a retirement benefits scheme, including any person who is entitled to a benefit under a retirement benefits scheme.

“**scheme**” means a retirement benefits scheme registered under the provisions of the Act;

“**scheme rules**” means the trust deed and rules of the scheme.

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 a 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 immovable 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 a 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 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.

[Subsidiary]

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 immovable 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 interval 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 finalized 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 election 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 the 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 transferred from.

[Subsidiary]

(3) Where the scheme to which a member has transferred 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.

10. Duties of trustees

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.

11. Redemption of guarantee

(1) A guarantee issued under these Regulations shall remain valid until the concerned member expressly authorizes its redemption, or return:

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 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.

[Subsidiary]

(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.
