



LAWS OF KENYA

PROVIDENT FUND ACT

CHAPTER 191

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CHAPTER 191

PROVIDENT FUND ACT
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CHAPTER 191
PROVIDENT FUND ACT

[Date of assent: 24th March, 1951.]

[Date of commencement: 1st April, 1951.]

An Act of Parliament to establish a Provident Fund for certain employees of the staff of the Government, and to provide for contributions to the Fund by those employees and by the Government, and for matters incidental thereto and connected therewith

[Act No. 12 of 1951, Act No. 21 of 1961, Act No. 3 of 1962, G.N. 1450/1955, G.N. 1451/1955, L.N. 242/1956, L.N. 253/1956, L.N. 416/1963, L.N. 2/1964, L.N. 168/1964, L.N. 321/1964, Act No. 21 of 1966, Act No. 14 of 1971, Act No. 19 of 1985.]

1. Short title

This Act may be cited as the Provident Fund Act.

2. Interpretation

(1) In this Act, except where the context otherwise requires—

“**Board**” means the Board of Management appointed under section 3;

“**bonus**” means the sum of money provisionally credited to a depositor under section 7;

“**deposit**” means the deposit under section 5;

“**depositor**” means any person—

- (a) by whom or on whose behalf deposits in the Fund are made under this Act; or
- (b) in respect of whom any amount is standing to his credit in the Fund;

“**Fund**” means the Provident Fund established by section 3;

“**General Fund Services**” means services which were being administered by the East African Community on behalf of the Republic of Kenya, The United Republic of Tanzania, and the Sovereign State of Uganda under the provisions of Article 43(2) of the Treaty for East African Co-operation, as listed in the Sixth Schedule to the Pensions Act (Cap. 189);

“**Government employee**” means—

- (a) a person who has been issued with a letter of appointment (other than a letter of temporary appointment) to the service of the Government;
- (b) an enlisted police officer, prisons officer, administration police officer or forest guard:

Provided that such a person shall be deemed not to be a Government employee whilst he is serving as a recruit; or

- (c) such other person or class of persons as the Minister may, by notice in the *Gazette*, direct;

“**holder of a provident fund office**” means a Government employee who is the substantive holder of such an office whether or not he is on probation therein;

“**other public service**” means public service other than service under the Government;

“**pensionable office**” has the same meaning as in the Pensions Act (Cap.189);

“**provident fund office**” means an office which has been declared by the Minister, by notification in the *Gazette*, to be a provident fund office for the purposes of this Act with effect from such date as may be specified in the notification; and any such notification may from time to time be amended, added to or revoked by another notification so made and published; but, where by virtue of any such amendment or revocation any office ceases to be a provident fund office, then, unless such office becomes a pensionable office under the Pensions Act, so long as the substantive holder of that office continues therein, the office shall, as respects that person, continue to be a provident fund office;

“**public service**” means service under the Government and such other service as the Minister may determine to be public service for the purposes of this Act;

“**salary**” means the substantive salary payable to a depositor and does not include any other payment or allowance whatsoever.

(2) When it appears to the Minister that there is no satisfactory proof of the correct age of a depositor, the Minister may, upon such evidence as he thinks fit, presume the age of the depositor, and that presumed age shall be taken to be the correct age of the depositor for the purposes of this Act..

[Act No. 19 of 1985, Sch.

3. Establishment and management of Fund

(1) There is hereby established a fund, to be known as the Provident Fund.

(2) The Minister shall appoint a Board of Management, which shall be responsible for the control and management of the Fund in accordance with the provisions of this Act and of any regulations made thereunder; the Accounts Controller, Treasury, shall be chairman of the Board; and the procedure of the Board may be regulated by regulations made under section 20.

(3) The moneys paid into the Fund shall, so far as practicable, be invested by the Permanent Secretary to the Treasury on behalf of the Fund in such security or securities yielding interest as the Board may approve or, with the approval of the Board, deposited by him in the Kenya Post Office Savings Bank or otherwise employed at interest.

(4) The Permanent Secretary to the Treasury shall keep a separate account for the moneys of the Fund.

(5) The Board shall submit to the Minister, as soon as practicable after the 31st December in each year, a full audited statement showing the workings of the Fund and all claims thereon, and containing full particulars of all transactions connected with the workings of the Fund.

(6) The accounts of the Fund shall be audited by the Controller and Auditor-General.

[Act No. 3 of 1962, s. 2, G.N. 1451/1955, L.N. 253/1956, L.N. 168/1964, Act No. 14 of 1971, Sch., Act No. 19 of 1985, Sch.]

4. Who shall become a depositor

(1) Every person in the service of the Government who immediately before the commencement of this Act was a depositor in the Government Staff Provident Fund established under the Government Staff Provident Fund Ordinance (Cap. 71 (1948)) (now repealed) shall on such commencement become a depositor.

(2) Every Government employee who—

- (a) immediately before the commencement of this Act was not a depositor to the Government Staff Provident Fund but who is the holder of a provident fund office shall become a depositor on the commencement of this Act, or on completion of twelve months' service, whichever is the later;
- (b) becomes the holder of a provident fund office on or after the commencement of this Act, shall become a depositor as from the date of his appointment to that office, or on completion of twelve months' service, whichever is the later;
- (c) is the holder of an office declared subsequently to his appointment thereto to be a provident fund office shall become a depositor as from the date of the publication of such declaration, or on the completion of twelve months' service, whichever is the later:

Provided that a Government employee who—

- (i) is transferred from a pensionable office to a provident fund office or whose office becomes a provident fund office and who is permitted under the Pensions Act (Cap. 189) to have his service in the provident fund office taken into account as pensionable service under that Act; or
- (ii) is a married woman,

shall not, subject to the provisions of section 16, become or continue to be a depositor.

(2A) Every Kenya citizen who on the first July, 1977 was an employee in the General Fund Services of the East African Community and on that date was a depositor to the East African Community Staff Provident Fund established under the Provident Fund Act of the Community shall be deemed to have been a depositor to the Fund established under this Act from the date on which he became a depositor to the East African Community Staff Provident Fund.

(2B) Subsection (2A) and the definition of "**General Fund Services**" shall be deemed to have come into force on the 1st July, 1977.

(3) Every Government employee who is required to become a depositor—

- (a) under paragraph (a) of subsection (2) and whose office has been declared to be a provident fund office with effect from a date before the commencement of this Act may elect by notice in writing, addressed to the Permanent Secretary to the Treasury, within three months of the date of the commencement of this Act; or

- (b) under paragraph (c) of subsection (2) and whose office has been declared to be a provident fund office with effect from a date before the date of publication of such declaration may elect by notice in writing, addressed to the Permanent Secretary to the Treasury, within three months of such date of publication,

to become a depositor as from the date with effect from which his office is declared to be a provident fund office, or on the completion of twelve months' service, whichever is the later—

Provided that such a Government employee shall not elect to become a depositor in respect of a period when he was a contributor to any other provident or contributory pension fund except with the approval of the Minister, which approval may be given either generally or in any particular case.

(4) Where under subsection (3) a Government employee elects and is permitted to become a depositor as from a date earlier than that on which he is required to become a depositor under subsection (2), then—

- (a) a sum equal to the arrears which are due from him in respect of the deposits he would have made during the earlier period shall be advanced to the employee from moneys provided by Parliament and deposited in the Fund, and shall be deemed for the purposes of this Act to be a deposit; and
- (b) a sum equal to the amount referred to in paragraph (a) shall be paid out of moneys provided by Parliament into the Fund, and shall be deemed for the purposes of this Act to be a bonus,

and the sums so paid in shall be deemed for the purposes of this Act to have been deposited, or provisionally credited, as the case may be, to the depositor's account on the last day of the month immediately preceding the month in which the employee was required to become a depositor under paragraph (a) or paragraph (c) of subsection (2), as the case may be.

(5) Where, under paragraph (a) of subsection (4), an amount is advanced to a Government employee, that amount shall be recovered from his salary by such instalments as the Permanent Secretary to the Treasury shall direct.

[Act No. 19 of 1985, Sch.]

5. Amount of deposit

(1) Every depositor shall, so long as he remains the holder of a provident fund office, deposit in the Fund monthly an amount equal to one shilling and fifty cents for each twenty shillings of his monthly salary; and such deposits shall be calculated on full salary, whether the depositor is on full, reduced or no salary:

Provided that, when a depositor is on reduced salary or no salary for a period exceeding two consecutive months, he may elect to contribute in respect of such period in excess of two months at the rate of one shilling and fifty cents for each twenty shillings of the salary which he actually receives.

(2) For the purposes of ascertaining the amount to be deposited under subsection (1) where the monthly salary of a depositor includes any fraction of twenty shillings, an amount of salary less than ten shillings shall be disregarded and an amount of salary of ten shillings or more shall be regarded as twenty shillings.

(3) Deposits required to be made under this section shall be deducted from the salary of the depositor on each occasion on which his salary is paid and shall be paid into the Fund; and notwithstanding the actual date on which the deduction is made a deposit shall be deemed for the purposes of this Act to be credited to the depositor's account on the last day of the month in respect of which the salary is due.

6. Interest

(1) Interest shall be credited on deposits at a rate of not less than three per centum per annum, to be fixed annually by the Minister—

- (a) on the balance of deposits on hand at the beginning of each year; and
- (b) on half the total of the deposits made during each year,

and shall begin to accrue from the 1st January in each year, and, subject to the provisions of this Act, interest shall be calculated to the 31st December in each year and shall then, subject to the provisions of subsection (2), be added to and become part of the principal, and be deemed for the purposes of this Act to be a deposit.

(2) Where the interest calculated to the 31st December in each year includes any fraction of a shilling which is—

- (a) one-quarter or less, that fraction shall be disregarded;
- (b) more than one-quarter but less than three-quarters, that fraction shall be regarded as one-half;
- (c) three-quarters or more, that fraction shall be regarded as a shilling,

and the amount of interest to be added to and become part of the principal shall be determined accordingly.

7. Bonuses

(1) On the 31st December in each year, there shall be paid into the Fund out of moneys provided by Parliament—

- (a) in the case of a depositor who has not, before the 1st July in that year, completed a period of ten years continuous service under the Government, a sum equal to the aggregate of the deposits made by the depositor to the Fund during the year;
- (b) in the case of a depositor who has, before the 1st July in that year, completed a period of ten or more years continuous service under the Government but less than twenty years continuous service, a sum equal to one and one half times the amount payable under paragraph (a);
- (c) in the case of a depositor who has, before the 1st July in that year, completed a period of twenty years or more continuous service under the Government, a sum equal to twice the amount payable under paragraph (a),

and that sum shall be provisionally credited to the account of the depositor:

Provided that—

- (i) in the event of the account of the depositor being closed under section 10 before the 31st December in any year, the amount to be

- (ii) where any sum payable under this section includes a fraction of a shilling, the provisions of paragraphs (a), (b) and (c) of subsection (2) of section 6 shall have effect.

(2) In determining whether service is continuous for the purposes of this Act, the Minister may, either generally or in any particular case, direct that a break in service which has been caused other than by voluntary resignation or dismissal for misconduct may be disregarded.

(3) The provisions of section 6 relating to the crediting and calculation of interest and the addition thereof to the principal shall apply in the same manner to all sums provisionally credited under this section to the account of a depositor.

[Act No. 21 of 1961, Sch., L.N. 168/1964.]

8. Gratuities

The Minister may grant from moneys provided by Parliament to each depositor on his leaving the public service—

- (a) in any of the circumstances mentioned in paragraphs (a), (b), (d) and (f) of section 11, after seven years' continuous service; or
- (b) in any of the circumstances mentioned in paragraph (e) of section 11, after fifteen years' continuous service; or
- (c) in the circumstances mentioned in paragraph (g) of section 11,

a gratuity not exceeding one-twelfth of a month's salary at the highest rate drawn by him during his service under the Government in respect of each completed month of such service before the date on which he became a contributor to the Fund or, as the case may be, to the Government Staff Provident Fund established under the Government Staff Provident Fund Ordinance ((Cap. 71 (1948)) (now repealed)—

Provided that in the case of a depositor who was a contributor to the fund established under that Ordinance—

- (i) the gratuity under paragraph (a) may be granted to the depositor on his leaving the service in any of the circumstances mentioned in paragraphs (a), (b) and (d) of section 11 notwithstanding that he has not completed seven years' service;
- (ii) the gratuity under paragraph (b) may be granted to the depositor on his leaving the service after fifteen years' continuous service notwithstanding that the circumstances mentioned in paragraph (e) of section 11 do not apply in his case;
- (iii) in computing the gratuity under paragraph (a), paragraph (b) or paragraph (c) which may be granted to a depositor on his leaving the service, no regard shall be had to any period in respect of which payment of any sum has been made from the general revenue of Kenya under section 15 of that Ordinance.

[Act No. 21 of 1961, Sch., Act No. 3 of 1962, s. 3, L.N. 168/1964.]

9. Information to depositors

As soon as practicable after the 31st December in each year, the Board shall, if so required by the depositor, cause him to be informed of the total amount of the deposits credited and bonuses provisionally credited to him in the Fund at that date.

10. Closing of accounts

(1) Subject to the provisions of this Act, on the death of a depositor or on his ceasing to make deposits otherwise than in accordance with the proviso to subsection (1) of section 5, interest up to the end of the month preceding the date of his death or of his ceasing to be a depositor, as the case may be, shall be credited to his account, which shall then be closed.

(2) Where any account is closed under this section, notice of closure and of the amount standing to the credit of the account shall be given—

- (a) if the depositor is living, to the depositor; or
- (b) if the depositor is dead, to such person or persons mentioned in section 17 as the Board thinks fit,

and, in either case, to such other persons as, in the opinion of the Board, reasonably require such notice.

11. Where account closed by death or satisfactory termination of service

Subject to the provisions of this Act, if a depositor dies while in the service of the Government or in other public service or leaves the service in any of the following circumstances—

- (a) on retirement on medical evidence to the satisfaction of the Permanent Secretary to the Treasury that he is incapable by reason of some infirmity of mind or body of discharging the duties of his office, such incapacity being likely to be of such duration that the Permanent Secretary to the Treasury considers retirement reasonable;
- (b) on the abolition of his office;
- (c) on resignation after not less than ten years' continuous public service;
- (d) on termination of service by the Government, or in the case of other public service by the responsible authority of that service, otherwise than by dismissal or on the ground of inefficiency;
- (e) on or after attaining the age of fifty-five years or, with the approval of the Minister, fifty years, or in the case of retirement from other public service after attaining the age for retirement from that service or such other age as the Minister may, either generally or in any particular case, approve;
- (f) in the case of a female depositor, resignation on or with a view to marriage, or on being required to retire on account of marriage,

- (g) in the case of—
- (i) police officers who are subordinate officers within the meaning of the Police Act (Cap. 84);
 - (ii) prison officers below the rank of Chief Warder, Chief Warder Artisan or Chief Warder Clerk;
 - (iii) administration police officers of or below the rank of Senior Sergeant;
 - (iv) forest guards, grades I, II and III,
- on voluntary retirement on completion of twelve, sixteen or twenty years' public service as such an officer where he has indicated, in writing, not earlier than three months before and not later than three months after the date of his completion of the twelve, sixteen or twenty years' service as the case may be, his intention to retire from the service of the Government, or if he has been required to retire from the service of the Government under the provisions of section 12,

the amount of the deposits credited and bonuses provisionally credited to the depositor in the Fund at the closing of the account shall be paid to the depositor or to any other person to whom by virtue of this Act or otherwise payment may lawfully be made:

Provided that—

- (i) until the 31st December, 1951, or such later date as the Minister may declare, for the words "fifty-five years or, with the approval of the Minister, fifty years", where they appear in paragraph (e), there shall be substituted the words "forty-five years";
- (ii) if a depositor leaves the service in the circumstances set out in paragraph (c), then the amount of the bonuses which shall be paid to the depositor under this section shall be only such amount as would have been provisionally credited by the Board to his account if the sum paid out of moneys provided by the Parliament under section 7 in respect of each year of his service had not been increased by reason of the depositor having completed ten years or more continuous service; and any part of the bonuses not paid to the depositor shall be refunded to and paid into the Consolidated Fund.

[Act No. 21 of 1961, Sch., Act No. 3 of 1962, s. 4, G.N. 1450/1955, L.N. 242/1956, L.N. 168/1964.]

12. Compulsory retirement

The Minister may require a depositor who is an officer such as is referred to in paragraph (g) of section 11, on completion by him of twelve, sixteen or twenty years' public service as such an officer, to retire from the service of the Government, by giving to him, not earlier than three months before and not later than three months after the date of his completion of the twelve, sixteen or twenty years' service, as the case may be, a notice requiring him to retire.

[Act No. 3 of 1962, s. 5.]

13. Resignation or dismissal

(1) Subject to the provisions of this Act, if a depositor is dismissed, or removed from the public service on the ground of inefficiency, or resigns or leaves the public service for any reason or in any circumstances other than one specified in section 11—

- (a) the amount of his deposits in the Fund, and interest thereon, shall be paid to the depositor;
- (b) all or such part (if any) as the Board, with the approval of the Minister, may determine generally, or in any particular case, of the bonuses provisionally credited to the depositor, may also be paid.

(2) Any part of the bonuses not paid to the depositor under this section shall be refunded to and paid into the Consolidated Fund.

14. Transfer to pensionable office

(1) If a depositor is transferred to a pensionable office in the public service, his account shall be closed in accordance with section 10, and the amount of the deposits credited and the bonuses provisionally credited to the account of the depositor in the Fund at the time of closure shall not then be paid to the depositor but shall be dealt with in accordance with this section:

Provided that—

- (i) notwithstanding that the account is closed, interest on the amount of the deposits and bonuses therein shall continue to be credited at the rate of three per centum per annum calculated annually to the 31st December in each year, or, if the Minister so directs, at the approximate rate of interest earned by the Fund (as determined by the Board), and that rate shall not be subject to any minimum; and in the calculation of the interest subsection (2) of section 6 shall apply and the interest so calculated shall be added to and become part of the deposit or bonus, as the case may be;
- (ii) upon the depositor leaving the public service before the 31st December in any year, the interest on the deposits and bonuses shall be calculated up to the end of his last completed month in the public service.

(2) If a depositor who is transferred to a pensionable office in the public service

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- (a) is confirmed in that office, his service as a depositor shall be taken into account as pensionable service for the purposes of the Pensions Act (Cap. 89), and he shall surrender all claim to the amount then credited or provisionally credited to his account in the Fund and that amount shall be paid into the Consolidated Fund;
 - (b) is not confirmed in that office and leaves the public service, or dies in the service before his confirmation or non-confirmation in that office, the total amount credited or provisionally credited to him in the Fund up to the end of the month preceding the date of his

- (c) is not confirmed in that office but reverts to a provident fund office and continues in the service of the Government, he shall resume his deposits to the Fund with effect from the date of his reversion:

Provided that if he was not transferred to other public service he may elect to resume his deposits to the Fund with effect from the date on which he was transferred to a pensionable office, and in that case subsections (4) and (5) of section 4 shall apply.

15. Transfer to office other than pensionable or provident fund office in Government or other public service

(1) Where a depositor is transferred to any office in the Government which is neither a pensionable office nor a provident fund office, the depositor shall continue to make deposits and be subject to the provisions of this Act as if he were the holder of a provident fund office.

(2) Where a depositor is transferred to an office in other public service which is not a pensionable office—

- (a) his account shall be closed in accordance with section 10;
- (b) the amount of the deposits credited and bonuses provisionally credited to the depositor in the Fund at the time of closure shall not then be paid to the depositor but shall be dealt with in accordance with this subsection:

Provided that, notwithstanding that the account is closed, interest on the amount of the deposits and bonuses therein shall continue to be credited in accordance with the proviso to subsection (1) of section 14; and

- (c) subject to the provisions of this Act, upon the depositor subsequently leaving the public service or upon his death in such service, the amount of the deposits credited and the bonuses provisionally credited to his account in the Fund up to the end of the month preceding the date of his leaving the public service or of his death shall be paid out of the Fund in accordance with section 11 or section 13, as the case may be.

16. Special provisions relating to marriage

(1) Where the holder of a provident fund office is or becomes a married woman, the Minister may direct that she shall become or continue to be a depositor.

(2) Where a female depositor marries, then, whether or not she continues to be the holder of a provident fund office, unless the Minister has given any direction under subsection (1), interest up to the end of the month preceding the date of her marriage shall be credited to her account, which shall then be closed in accordance with section 10, and the amount of the deposits and bonuses credited or provisionally credited to her account in the Fund at the time of the closure shall be paid out of the Fund as if the service of the depositor had terminated in circumstances in which section 11 applies.

17. Payment on death of depositor

(1) Subject to the provisions of this Act, on the death of a depositor the amount of the deposits credited and of the bonuses provisionally credited to him in the Fund, together with any gratuity which might have been granted to him under section 8 if, instead of dying, he had left the public service in the circumstances specified in paragraph (a) of section 11, shall be paid out of the Fund to the appropriate District Commissioner for payment to be made to the person or persons appearing to the District Commissioner to be entitled to receive it:

Provided that—

- (i) where in respect of the race or community to which the deceased belonged there is in force any law regulating succession, the moneys referred to in this section shall be distributed in accordance with the provisions of that law;
- (ii) the Permanent Secretary to the Treasury may make an immediate payment, not exceeding three hundred shillings in any one case, out of the amount of the deposits credited and the bonuses provisionally credited to the account of the depositor in the Fund in order to give immediate relief to the widow or children or other dependants of the deceased, if in the opinion of the Permanent Secretary to the Treasury such relief is required.

(2) Any payment made in accordance with this section shall be valid and effectual against any demand made upon the Government, the Board, the Permanent Secretary to the Treasury or a District Commissioner by any other person in respect of the amount credited or provisionally credited to the depositor.

18. Deposits, etc., not to be assigned or attached

Subject to the provisions of this Act, no deposit, bonus or interest on a deposit or bonus shall be assignable or transferable or liable to be attached, sequestered or levied upon for, or in respect of any debt or claim whatsoever.

19. Deduction of sums due to Government

Any sum or sums due to the Government by a depositor may, on payment out of the Fund of any amount then standing to the credit of his account therein, be deducted from the amount otherwise payable.

20. Regulations

The Minister may make regulations generally for carrying out the provisions of this Act, and for prescribing anything required by this Act to be prescribed, and, without prejudice to the generality of the foregoing, regulations may provide that a depositor entitled to receive any amount out of the Fund may elect to receive the amount either in a lump sum or by annual payments or in such other manner as may be prescribed.

[L.N. 168/1964.]

21. Transfer of accounts maintained under (Cap. 71) (1948)

(1) On the commencement of this Act, there shall be transferred to the Fund from the Government Staff Provident Fund established under the Government Staff Provident Fund Ordinance (Cap. 71) (1948) (now repealed), and placed—

- (a) to the credit of every depositor who was a depositor under that Ordinance, a sum equal to the aggregate of his deposits in the Government Staff Provident Fund together with interest thereon; and
- (b) to the provisional credit of any such depositor, a sum equal to the bonus credited to his account in the Government Staff Provident Fund together with interest thereon,

and the sums so transferred shall, for the purposes of this Act, be deemed to be respectively a deposit and a bonus.

(2) Where the sum credited, or provisionally credited, includes any fraction of a shilling which is—

- (a) one-half or less, the fraction shall be regarded as a half;
- (b) more than one-half, the fraction shall be regarded as a shilling.

22. Transfer of assets of fund maintained under (Cap. 71) (1948)

With effect from the commencement of this Act—

- (a) all sums which on such date are standing to the credit of the Government Staff Provident Fund established under the Government Staff Provident Fund Ordinance Cap. 71 (1948) (now repealed) shall be transferred to and shall form part of the Fund;
- (b) all investments made in the name of or on behalf of the Government Staff Provident Fund shall for all purposes be deemed to have been made in the name of or on behalf of the Fund.

23. Exemptions

The Minister may exempt any person or class of persons from all or any of the provisions of this Act.
