

**NO. 3 OF 1997**

**RETIREMENT BENEFITS ACT**

SUBSIDIARY LEGISLATION

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

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**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, L.N. 56/2012, L.N. 99/2016, L.N. 49/2017.]

## 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;

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“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;

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- (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, rr. 2(a) and 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.

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(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.

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

[L.N. 99/2002, r. 3, L.N. 75/2008, r. 3, L.N. 56/2012, r. 2, L.N. 99/2016, 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;

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- (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 by the fifteenth day of the month following the end of the 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.

[L.N. 49/2017, r. 2.]

**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

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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 immediately.

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

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

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

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

**22. Appointment of auditors**

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

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

**23. Annual accounts**

(1) Trustees shall submit audited accounts including the trustees' and 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.

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(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

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- (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**

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**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. 111/2015, L.N. 101/2016, L.N. 50/2017.]

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;

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

“**new scheme**” means a scheme which was established after the date of publication of these Regulations;

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“**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;

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- (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 for a further term of three years;
- (h) power of investment of scheme funds;
- (i) pensionable emoluments applicable in relation to each category of members;
- (j) rate of contributions by sponsors and or members as the case may be;
- (k) interest chargeable on the contributions which have not been remitted;
- (kk) interest chargeable on late payment of withdrawal benefits from the scheme:  
 Provided that such interest shall not be less than the investment interest declared by the scheme in the year the payment was due;
- (l) mode of recovery of unremitted contributions:  
 Provided that such mode shall include treatment of unremitted contributions as a civil debt recoverable summarily by a scheme;
- (m) vesting formula of benefits in its members;
- (n) manner of determining surplus and deficit and disposing of such surplus or providing for such deficit;
- (o) the normal retirement age of members;
- (oo) the period upon which a member may withdraw his benefits from the scheme:  
 Provided that such period shall not exceed thirty days from the date of retirement or of giving notice of such withdrawal, as the case may be;
- (p) the manner in which contracts and other documents binding the scheme shall be executed;
- (q) the procedure of amending scheme rules;
- (r) appointment and term of the auditor of the scheme and any other person rendering professional services to a scheme;
- (s) custody of the scheme fund, title deeds and other securities belonging to the scheme;
- (t) the appointment of the liquidator in case of a voluntary dissolution;
- (u) the manner in which the scheme shall be dissolved subject to the provisions of the Act and the regulations made thereunder; and
- (v) the manner in which disputes between the parties of a scheme shall be resolved.

[L.N. 12/2003, r. 2, L.N. 57/2005, rr. 2(a) and 2(b), L.N. 93/2007, r. 2, L.N. 88 of 2010, r. 2, L.N. 111/2015, r. 2.]

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**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 two consecutive meetings shall be disqualified from serving as a trustee.

(2) The duties of the trustees shall include—

- (a) administering the scheme in accordance with the provisions of the Act, these regulations and scheme rules;
- (b) keeping all proper books and records of account in respect to income, expenditure, liabilities and assets of the scheme fund;
- (c) computing and preparing statements of payments of benefits to members;
- (d) 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;

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- (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.

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

(4) A Corporate Trustee shall not appoint an administrator who is related to the Trust Corporation by way of ownership, directorship or employment.

[L.N. 100/2002, rr. 2(a) and 2(b), L.N. 57/2005, rr. 3(b)(i), 3(b)(ii) and 3(e), 93/2007, rr. 3(a)(i), 3(a)(ii), 3(c) and 3(d), L.N. 77/2008, rr. 2(a)(i), 2(a)(ii) and 2(b), L.N. 88/2010, r. 3, L.N. 101/2016, r. 2, L.N. 50/2017, r. 2.]

## **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.

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

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(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 contributions received for the 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, L.N. 50/2017, r. 3.]

#### **11. No penalty clauses in agreements**

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

#### **12. Rules relating to pooled funds**

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

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

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

- (a) receiving and accounting for the scheme fund in the pooled fund;



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- (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.

(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,

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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.

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

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

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

(4) A scheme may, 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 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, rr. 4(a) and 4(b), L.N. 101/2016, r. 3.]

### 15. Record of contributions

(1) Every scheme shall maintain or cause to be maintained a quarterly record of contributions as prescribed and the original shall be submitted to the Authority by the fifteenth day 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.

[L.N. 50/2017, r. 4.]

### 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;

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- (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, rr. 5(a) and 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 benefits 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

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- (ii) if the member has emigrated from Kenya to another country without the intention of returning to reside in Kenya and the trustees have approved the payment of the retirement benefits and submitted, fourteen days prior to payment of the benefits, the approval to the Authority.

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

[L.N. 57/2005, r. 6, L.N. 61/2006, rr. 3(a) and 3(b), L.N. 93/2007, rr. 5(a), 5(b) (i), 5(b)(ii) and r. 5(b)(ii), L.N. 165/2010, r. 2, L.N. 13/2011, r. 2, L.N. 101/2016, r. 4.]

**20. Benefits to fully vest within one year**

The scheme rules shall provide that benefits be fully vested in a member immediately on commencement of pensionable service:

Provided that—

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

[L.N. 85/2003, r. 2, L.N. 93/2007, r. 6, L.N. 101/2016, r. 5.]

**21. Leaving service benefits**

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

- (a) payment of benefits to the leaving member, provided that the member shall not be entitled to the employer's contribution save as provided in the trust deed;
- (b) deferment of benefits until the leaving member attains the normal retirement age; 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, rr. 3(a) and 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 sub-regulation (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.

(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.

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(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, rr. 9(a) and 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.

(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.

- (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.

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

### **32. Surpluses not refundable**

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

Provided that—

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

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

- (i) any surplus of the scheme fund available after the winding up of a scheme may be refunded to the sponsor;
- (ii) where in the opinion of an actuary the actuarial surplus disclosed is excessive in relation to the accrued liabilities and 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.

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

### **33. Accounting procedure for investments**

(1) The statement of income and expenditure of a scheme where applicable shall be credited with income receivable, the amount debited to the reserve account created under 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 be valued in accordance with the International Financial Reporting Standards.

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

**35. Repair and maintenance of investments**

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

**36. Minimum disclosure requirements**

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

- (a) 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.

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(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, rr. 5(a)(i), 5(a)(ii), 5(a)(iii) and 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;

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- (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 three months after the end of its financial year remit a levy to the Authority.

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

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

Provided that—

- (a) the value of the scheme fund to be 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, rr. 13(a) and 13(b), L.N. 84/2009, r. 2, L.N. 111/2015, r. 5.]

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## 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*

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**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, L.N. 112/2015, L.N. 100/2016.]

## 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.

(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 he 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 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

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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. 94/2007, r. 2L.N. 76/2008, rr. 2(a), 2(b) and 2(c).]

**6. Deleted by L.N. 55/2005, r. 4.**

## **7. Voluntary dissolution of a scheme**

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

Provided that—

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

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

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

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

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

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

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(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 re 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 he 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) and 5(b), L.N. 112/2015, r. 2.]

**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.]

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

[L.N. 100/2016, r. 2.]

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**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

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[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 fee 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 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;
- (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;

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- (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.

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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

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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, L.N. 110/2015.]

## 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;



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- (b) the approved issuer of the scheme whose funds are in a guaranteed fund shall submit quarterly investment reports to the Authority.

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

- (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

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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 thirty days from the date of his or her appointment and subsequently within thirty days after every quarter—

- (a) a statement of the scheme fund or pooled fund and investment portfolio including details of the cost of such investments;
- (b) a statement detailing the investment transactions carried out within the 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, L.N. 110/2015, r. 2 (a) & (b)(i).]

## **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;

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- (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).

(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, L.N. 109/2015, L.N. 107/2016.]

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.
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.

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**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.

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

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

Provided that this provision shall not apply to government securities.

[L.N. 109/2015, r. 2.]

**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.





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FIRST SCHEDULE, FORM A1—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 .....

\_\_\_\_\_

*Retirement Benefits*

[Subsidiary]

FIRST SCHEDULE, FORM A1—*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

\_\_\_\_\_

*Retirement Benefits*

[Subsidiary]

FIRST SCHEDULE, FORM A1—*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

\_\_\_\_\_

*Retirement Benefits*

[Subsidiary]

FIRST SCHEDULE, FORM A1—*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

(s. 23(4))

RETIREMENT BENEFITS AUTHORITY  
CERTIFICATE OF REGISTRATION OF A CUSTODIAN

REGISTRATION NO.
------------------

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

CONDITIONS

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

.....  
*Chief Executive Officer  
Retirement Benefits Authority*

FORM A2

(r. 4)

[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 .....

Retirement Benefits

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FIRST SCHEDULE, FORM A2—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, FORM A2—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 .....

\_\_\_\_\_



*Retirement Benefits*

[Subsidiary]

FIRST SCHEDULE, FORM A2—*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, FORM A2—*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

\_\_\_\_\_

*Retirement Benefits*

[Subsidiary]

FIRST SCHEDULE, FORM A2—*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

(s. 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

(r. 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

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FIRST SCHEDULE, FORM A3—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, FORM A3—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 28 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: .....

\_\_\_\_\_

*Retirement Benefits*

[Subsidiary]

FIRST SCHEDULE, FORM A3—*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, FORM A3—*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					

\_\_\_\_\_



*Retirement Benefits*

[Subsidiary]

FIRST SCHEDULE, FORM A3—*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

(r. 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.  
.....

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE, FORM A4—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, FORM A4—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, FORM A4—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, FORM A4—*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*

\_\_\_\_\_

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE, FORM A4—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, FORM A4—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)

\_\_\_\_\_



Retirement Benefits

[Subsidiary]

FIRST SCHEDULE, FORM A4—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					

\_\_\_\_\_

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE, FORM A4—continued

APPENDIX D1

LIST OF INVESTMENT PORTFOLIO

Name of Scheme .....  
 Income Tax P.I.N. Number .....

INVESTMENTS	AMOUNT IN KSH							
	Original Cost	%	Book Value	%	Market Value	%	Date of Valuation	Basis of Valuation
(a) Real Estate* (i) Land (underdeveloped) (ii) Residential (iii) Commercial (iv) Agricultural (v) Any other								
(b) Quoted Equity+ (i) Agricultural (ii) Commercial and allied (iii) Financial & Investment (iv) Industrial and allied (v) Others								
(c) Unquoted Equity+ ..... (i) Agricultural ..... (ii) Commercial & allied .....								

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE, FORM A4—continued

INVESTMENTS	AMOUNT IN KSH							
	Original Cost	%	Book Value	%	Market Value	%	Date of Valuation	Basis of Valuation
(iii) Financial & Investment								
.....								
(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, FORM A4—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							
	Original Cost	%	Book Value	%	Market Value	%	Date of Valuation	Basis of Valuation
(h) Real Estate:*								
(vi) Land (underdeveloped)								
(vii) Residential								
(viii) Commercial								
(ix) Agricultural								
(x) Any other								
(i) Quoted Equity+								
(vi) Agricultural								
(vii) Commercial and allied								
(viii) Financial & Investment								
(ix) Industrial and allied								
(x) Others								
(j) Unquoted Equity+								
.....								
(v) Agricultural								
.....								
(vi) Commercial & allied								
.....								
.....								

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE, FORM A4—continued

TOTAL INVESTMENTS IN THE POOL	AMOUNT IN KSH							
	Original Cost	%	Book Value	%	Market Value	%	Date of Valuation	Basis of Valuation
(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%		

\* (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]

*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) **Commutated payment**

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

(5) **Contribution formula**

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

(6) **Contributory scheme**

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

(ii) Non-contributory scheme

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

(7) **Custodian**

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

(8) **Defined benefit scheme**

(i) A scheme in which benefits to be provided or paid are 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.

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE, FORM A4—continued

(12) Open scheme

(i) 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 Vested benefit

(i) 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

(r. 8)

RETIREMENT BENEFITS AUTHORITY

APPLICATION FOR REGISTRATION OF A NEW OCCUPATIONAL RETIREMENT BENEFITS SCHEME

PART I – DETAILS OF PROPOSED SCHEME

A. (i) Name of scheme .....

(ii) Income Tax 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, FORM A5—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  
 .....



*Retirement Benefits*

[Subsidiary]

FIRST SCHEDULE, FORM A5—*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 28 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: .....

*Retirement Benefits*

[Subsidiary]

FIRST SCHEDULE, FORM A5—*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)

\_\_\_\_\_

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE, FORM A5—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, FORM A6—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. (Incase 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, FORM A6—*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, FORM A6—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

(s. 23(4))

RETIREMENT BENEFITS AUTHORITY

CERTIFICATE OF REGISTRATION OF A SCHEME

REGISTRATION NO.
------------------

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

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE, FORM C3—continued

CONDITIONS

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

Chief Executive Officer
Retirement Benefits Authority

FORM N1 (s. 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 (s. 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:—



Retirement Benefits

[Subsidiary]

FIRST SCHEDULE, FORM N2—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

(s. 44)

NOTICE TO A CUSTODIAN, MANAGER OR SCHEME REQUIRING COMPLIANCE OF DIRECTIONS

To .....

RE: .....

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

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

Yours faithfully,

.....  
Chief Executive Officer

FORM R1

(r. 13)

[L.N. 60/2006, s. 2(a), L.N. 98/2007, 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, FORM R1—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

(r. 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

Retirement Benefits

[Subsidiary]

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

(r. 17)

CERTIFICATE BY THE ACTUARY IN SUPPORT OF AN APPLICATION FOR EXEMPTION

In terms of Regulation 31(1)(c)(iii) of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations

Name of the scheme: .....

I have scrutinised:

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

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

- (a) The method used to allocate investment returns to individual account has been as follows:

.....  
.....

- (b) Expenses (including the premiums paid for the insurance of death and disability risks) have been handled as follows:

.....  
.....

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

- (d) All risk benefits falling due were fully covered by insurance or reinsurance.
- (e) All pension payments falling due were fully recovered by life office annuities.
- (f) The assets of the fund at all 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]

- (i) all periodic retirement benefit payments will be fully secured by the purchase of annuities from an insurer;
- (ii) 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, L.N. 109/2015, r. 3, L.N. 107/2016, r. 2.]

## INVESTMENT GUIDELINES

<i>Item</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 Certificate of Deposits in institutions licensed under the Banking Act of the Republic of Kenya.	30%
3.	Listed Corporate Bonds, Mortgage Bonds and Fixed Income Instruments; loan stocks approved by the Capital Markets Authority; collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category; and global depository receipts.	20%
4.	Commercial Paper, Non listed bonds and other debt 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.	10%
5.	East African Community Government Securities and infrastructure bonds issued by public institutions and collective investment schemes incorporated in East African Community (EAC) and approved by an EAC Capital Markets regulator reflecting this category.	90%, or 100% in the case of scheme receiving statutory contributions

*Retirement Benefits*

[Subsidiary]

6.	Preference shares and ordinary shares of companies listed in a securities exchange in the East African Community and collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category; Exchange Traded Funds; and global depositary receipts.	70%
7.	Unlisted shares and equity instruments of companies incorporated in Kenya and collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category.	5%
8.	Offshore investments in bank deposits government securities, listed equities and rated Corporate Bonds and offshore collective investment schemes reflecting these assets.	15%
9.	Immovable property in Kenya.	30%
10.	Guaranteed Funds.	100%
11.	All exchange traded derivatives contracts approved by the Capital Markets Authority.	5%
12.	All listed Real Estate Investment Trusts incorporated in Kenya and approved by the Capital Markets Authority.	30%
13.	Private Equity & Venture Capital.	10%
14.	Any other assets.	10%

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

(r. 21)

## CERTIFICATION BY TRUSTEE

I .....

(Chairman Board of Trustees/Authorized Trustee)

Retirement Benefits

[Subsidiary]

FIRST SCHEDULE, C5—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

**RETIREMENT BENEFITS (EXTENSION  
OF TIME OF COMPLIANCE) ORDER, 2004**

[L.N. 3/2005.]

1. This Order may be cited as the Retirement Benefits (Extension of Time of Compliance) Order, 2004.
  2. The time of compliance by the National Social Security Fund with the provisions of sections 16 and 34 (4) of the Act and regulations 8 (2)(h), 8 (2)(k), 15 (1) and 39 (1) of the Retirement Benefits (Occupational Retirement Benefits Scheme) Regulations, 2000 (L.N. 119/2000) is extended up to 30th June, 2006.
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**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.
-

**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*

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[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.
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[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;



*Retirement Benefits*

[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.

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[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.

(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.

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[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.

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**EXTENSION OF PERIOD FOR COMPLIANCE**

Revoked by LN. 102/2003

[LN. 84/2003.]

IN EXERCISE of the powers conferred by section 57 of the Retirement Benefits Act, 1997, and notwithstanding anything to the contrary hitherto provided in this Act or in any other written law, the Minister for Finance, in consultation with the Authority, extends the period for compliance with the requirements of that section to the 30th June, 2006.

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**EXEMPTION**

[LN. 85/2016.]

IN EXERCISE of the powers conferred by section 59 (a) of the Retirement Benefits Act, 1997, the Cabinet Secretary for the National Treasury exempts the National Social Security Fund from compliance with the provisions of section 38 (1) (c) of the Act for the purpose of investing through a prescribed institution in affordable housing for the members of the Fund.

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**RETIREMENT BENEFITS (UMBRELLA RETIREMENT  
BENEFITS SCHEMES) REGULATIONS, 2017**

[L.N. 55/2017.]

## PART I – PRELIMINARY

**1. Citation**

These Regulations may be cited as the Retirement Benefits (Umbrella Retirement Benefits Schemes) Regulations, 2017.

**2. Interpretation**

In these Regulations, unless the context otherwise requires—

“**Act**” means the Retirement Benefits Act, 1997 (No. 3 of 1997);

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

“**contract of service**” means an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for any period of time, and includes a contract of apprenticeship and internship;

“**contribution**” means a payment in money form in which members' and employers' contributions are fixed either as a percentage of pensionable earnings or as a shilling amount;

“**deed of adherence**” means an instrument in writing between an employer, the trustees and the sponsor in which the employer irrevocably undertakes and binds itself to the trusts of the scheme upon which the sponsor and the trustees in reliance thereto have without other conditions admitted the employer to join and participate in the provision of retirement benefits to its employees on the terms expressed in the scheme rules;

“**dependant**” means the member's spouse, sons, daughters, grandsons, grand-daughters, adopted children, parents, grand-parents, brothers and sisters living at the time of the member's death and such other person or persons as were, in the opinion of the trustees, immediately before the member's death substantially dependent upon the member (whether alone or with others) for the provision of all the necessaries of life and such other person or persons as may be entitled to any beneficial interest in the member's estate under any testamentary disposition made by the member provided that the class of dependants shall be closed at the death of a member except that it shall include unborn children who if born would have been dependants;

“**employee**” means an individual employed by an employer under a contract of service for wages or salary and includes an apprentice and an indentured learner who has become a member of the scheme;

“**employer**” means any person, or public body or any firm, corporation or company, who or which has entered into a contract of service to employ any employee, and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company who is participating in the scheme;

“**existing scheme**” means an umbrella scheme existing prior to the commencement of these Regulations;

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[Subsidiary]

**“guaranteed fund”** means an asset class—

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

**“related company”** in relation to a company means—

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

**“special rules”** means the rules that are unique to a specific participating employer and are binding to employees of the participating employer who are members of the scheme;

**“trust deed”** means the document in which the declaration for establishment of the scheme is made specifically governing the constitution of the scheme; and

**“umbrella scheme”** means a retirement benefits scheme with members employed by several employers, in which employee’s and employer’s contributions are paid into.

## PART II – REGISTRATION AND SPONSORSHIP OF AN UMBRELLA SCHEME

### 3. Application for registration of a scheme

(1) An application for registration of an umbrella scheme shall be—

- (a) in case of an existing scheme, in Form I set out in the Schedule; and
- (b) in case of a new scheme, in Form II set out in the Schedule.

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

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

(4) In considering an application under this regulation, the Authority may request the applicant to provide any additional information which may include ownership, directorship, shareholding and staff establishment.

### 4. Registered office of a scheme

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

### 5. Constitution of sponsor

(1) A sponsor of a scheme shall at all times have in its board of directors and top management at least four persons who are academically and professionally qualified in matters relating to either administration of schemes, insurance, law, accounting, actuarial science, economics, banking, finance, investment of scheme funds and a person possessing at least five years' experience in administration of retirement benefits schemes.

(2) The sponsor shall be—

- (a) a company;
- (b) a co-operative;
- (c) partnership;
- (d) associations;
- (e) societies; or
- (f) any other legal entity as may be appropriate:

Provided that where any of the legal entities are regulated, they must meet the requirements of their primary regulator.

## 6. Suitability of sponsor

In order to determine the professional suitability of a sponsor, the Authority shall have regard to the following qualities, in so far as they are reasonably determinable, of the sponsor concerned—

- (a) its general probity;
- (b) its competence and soundness of judgment for the fulfilment of the responsibilities attached to marketing the scheme;
- (c) the diligence with which it is likely to fulfil those responsibilities;
- (d) qualifications and experience of the sponsor's top management or directors in administration and management of trusts;
- (e) the previous conduct and activities of the sponsor concerned in business or financial matters, and in particular to any evidence that any of the directors or top management personnel of the sponsor—
  - (i) has been convicted of the offence of fraud, or any other offence of which dishonesty is an element; or
  - (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in the provision of banking, insurance, investment or other financial services;
- (f) any additional information as may be necessary in determining the professional suitability of a company proposing to establish or operate a scheme.

## 7. Inspection of register

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

### PART III – TYPES AND MANAGEMENT OF UMBRELLA SCHEME

## 8. Types of umbrella schemes

An umbrella scheme may be established for, either—

- (a) employers within an industry, trade, profession, group or association, county governments; or
- (b) employers who do not have any commercial or professional relationship with each other.

## 9. Scheme rules

(1) Every umbrella scheme shall have scheme rules written in an official language and shall make provision for the following—

- (a) the full name of the scheme, including reference to any prior change of name;

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[Subsidiary]

- (b) the physical address of the registered office of the scheme;
- (c) the date of commencement of the scheme;
- (d) requirements for admission to membership into the scheme and the circumstances under which membership may cease;
- (e) conditions under which and when a member may become entitled to any benefit including death benefits, the nature and extent of any such benefit, the period of guarantee for the benefits and the mode of calculating the benefit;
- (f) requirements under which an employer may remit contributions on behalf of its employees who are members of the scheme;
- (g) conditions under which an employer may cease making contributions to the scheme;
- (h) conditions under which an employer may terminate its participation in the scheme;
- (i) the appointment, term, removal from office, powers and remuneration of trustees;
- (j) the appointment, term, removal from office, powers and remuneration of manager, custodian, administrator, auditor and other service providers to the scheme;
- (k) powers of investment of scheme funds;
- (l) rate, mode and method of remitting contributions;
- (m) the vesting of contributions immediately;
- (n) conditions under which a member shall become entitled to the benefits in the scheme;
- (o) provision for a member to defer benefits in the scheme or another scheme including an occupational or individual retirement benefits scheme;
- (p) custody of the scheme fund, title documents and securities belonging to the scheme;
- (q) period upon which a member may withdraw his benefits from the scheme;
- (r) interest chargeable on late payment of withdrawal or other benefits from the scheme;
- (s) partial liquidation of the scheme where a participating employer ceases to remit member contributions or commits an act contrary to the provisions of the Act and the trust deed and rules;
- (t) the appointment of a liquidator in case of a voluntary dissolution of the scheme;
- (u) the manner in which the scheme shall be dissolved subject to the provisions of the Act and the regulations made thereunder;
- (v) the manner in which contracts and other documents binding the scheme shall be executed;
- (w) the normal retirement age;
- (x) the procedure of amending the scheme rules;
- (y) the manner in which disputes between the parties in the scheme shall be solved;
- (z) manner of receiving and accounting for the contributions made by or on behalf of each member in the scheme;
- (aa) the manner in which participating employers are kept informed on a quarterly and annual basis; and
- (bb) such other matters as may be prescribed.

(2) A participating employer may have special scheme rules which may make provision for the following—

- (a) date of participation;
- (b) rate of contribution which must not be below the limit of the rate in the trust deed and rules;
- (c) normal retirement age which must not be less than prescribed in the trust deed and rules;
- (d) power of amendment of the special rules by the parties:

Provided that the special rules shall be an enhancement of the general rules of the fund.

#### **10. Amendment of scheme rules**

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

- (a) if it purports to invalidate or reduce the accrued rights of a member or sponsor of the scheme;
- (b) if it purports to affect any right of a creditor of the scheme, other than as a member thereof;
- (c) unless it has been approved by the Authority and registered as specified in paragraph (3) hereof.

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

Provided that if any such proposed amendment affects the financial position of the scheme, the amendment shall be accompanied by a certificate signed by an actuary.

(3) If the Authority finds that any such amendment is consistent with the Act, and is satisfied that the financial soundness of the scheme shall not be adversely affected by the amendment, it shall register the amendment and return the copy of the resolution to the trustees with the date of registration endorsed thereon, and such amendment, shall be deemed to take effect as from the date of registration.

#### **11. Appointment of service providers**

(1) There shall be service providers for the scheme whose process of appointments, functions, powers, duties, remuneration and removal from office shall be in accordance with the scheme rules.

(2) The instrument appointing any service provider shall make provision for the—

- (a) the computation of the fee in respect of any services;
- (b) the rights and obligations of the service providers to the trustees;
- (c) the rights and obligations of the trustees to the service providers.

(3) An authorized employee of any service provider may attend all meetings of the trustees.

(4) The administrative costs debited to the scheme fund shall not exceed the budget approved for that purpose and the Authority may, if it deems appropriate, require a scheme to give further particulars of its budget.

(5) If the service provider is for any reason unable to discharge any duties imposed upon him by these Regulations or the scheme rules or any other instrument, an acting service provider shall be appointed pending procurement and contracting of a substantive service provider.

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

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(7) Any agreement between the trustees and the service provider shall be submitted to the Authority.

(8) Where the service provider ceases to provide services to the scheme, a new service provider shall be appointed and the Authority shall be notified of the same within 30 days of appointment.

(9) For the purposes of this regulation, "service provider" means an administrator, custodian, manager and any other person appointed by the trustees as the case may be to render services to the scheme.

## **12. Trustees of the scheme**

(1) There shall be trustees of the scheme whose appointment, term of office, removal from office, powers and duties including remuneration shall be in accordance with the Act, these Regulations and scheme rules.

(2) Where the sponsor elects not to appoint a trust corporation under regulation 16 as a sole trustee, the sponsor shall appoint nine trustees of a scheme of whom—

- (a) five shall be nominated by participating employers from amongst members of the management committee constituted under regulation 18; and
- (b) four shall be nominated by the sponsor, of whom two shall not be employees, directors or have any business relationship with the sponsor, with good standing in a relevant professional body and approved by the Authority.

(3) A trustee shall hold office for a period of three (3) years but shall be eligible re-appointment for one more final term of three years.

(4) Where a trustee resigns, is removed from office or otherwise ceases to be a trustee, that trustee shall be replaced in accordance with the provisions of paragraph (2).

(5) Upon such appointment or removal of a trustee, any assurance or thing requisite for vesting the trust property or any part thereof jointly in the persons who are the trustees shall be executed or done forthwith.

## **13. Duties of trustees**

(1) The duties of the trustees shall include—

- (a) administering and managing the scheme in accordance with the law and the scheme rules;
- (b) keeping all proper books and records of account with respect to income, expenditure, liabilities and assets of the scheme fund;
- (c) computing and preparing statements of payments of benefits to members;
- (d) liaising with and not limited to, the Authority, sponsor, employer, members, manager, custodian and any other professional person engaged by the scheme;
- (e) collecting, keeping and updating retirement benefits data of each member including maintenance of individual membership records;
- (f) ensuring that the agreed contributions have been remitted to the custodian or approved issuer as required by the law and the scheme rules;
- (g) communicating regularly with the members of the scheme with respect to the affairs of the scheme;
- (h) providing members with annual membership benefits statements;
- (i) keeping or causing to be kept such books, records and statements as may be necessary to give a complete record of—
  - (i) the value of contributions made by or on behalf of members of the scheme;

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- (ii) the investment transactions in respect of the scheme carried out by the custodian and permit, subject to notice, the sponsor or employer or any duly authorized agent, to inspect within the premises of the scheme such books, records and statements at any time during business hours;
- (j) submitting to the sponsor and the participating employer scheme within a period of three months from the end of the financial year, the audited accounts of the scheme;
- (k) notifying the sponsor and the employer of the particulars of the manager and custodian of the scheme as may be sought by any or both which particulars shall include—
  - (i) 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 the agreement limited to duties owed by the trustees to the service provider, duties of the service provider to the scheme and any other fixed timelines.
  - (v) any other particulars as the sponsor or the participating employer may request from the trustees;
- (l) submitting to the sponsor and the participating employers at least quarterly from the date of commencement of the financial year of the scheme—
  - (i) valuation of the scheme fund representing all the assets of the scheme, and separately valuation together with the investment return thereof of contributions made by or on behalf of members of the scheme who are employees of each participating employer;
  - (ii) report reviewing the investment activity and performance of the investment portfolios comprising the scheme fund since the last report date and containing the manager's proposals for the investment of the scheme fund;
  - (iii) a record of all investment transactions of the scheme during the previous period;
- (m) issuing proper instructions as provided for in the agreement to the custodian and manager;
- (n) furnishing the sponsor and the participating employers with a copy of the most recent audited financial statements of the manager and custodian and with such information as may be sought by any or both;
- (o) exercising the same standard of care of a prudent professional in the respective business for hire; and
- (p) ensuring that documents intended to bind the scheme are professionally prepared.

**14. Procedure for removal and meetings of trustees**

The scheme rules shall make provision for—

- (a) the procedure of and grounds for the removal from office of trustees;
- (b) procedure for convening meetings—

Provided that—

- (i) the trustees shall meet at least two times in every calendar year;
- (ii) not more than six months shall elapse between the date of one meeting and the next meeting; and

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- (iii) an administrator of a scheme or an authorised external administrator of a scheme may attend meetings of the trustees;
- (c) remuneration of the trustees.

### **15. Criteria for suitability of trustee**

In determining whether a person is suitable to be appointed a trustee of a scheme, the appointing authority shall have regard to the qualities set out in section 22A of the Act.

### **16. Appointment of Trust Corporation**

Despite the provisions of these Regulations and scheme rules, the sponsor may by deed appoint a Trust Corporation to be a trustee or sole trustee on such terms and conditions as may be agreed in writing between such corporation and the sponsor or in default of such agreement in accordance with the Trust Corporation's published terms and conditions as to acceptance of trusts at the date of such appointment.

### **17. Engagement in professional services**

No trustee being an advocate, accountant or other person engaged in any profession or business shall be engaged in professional services done by him or his firm in connection to the scheme.

### **18. Management committees**

- (1) Each participating employer together with its employees, who are members of the scheme, shall nominate a maximum of three members to form a management committee.
- (2) The management committee shall keep its corresponding participating employer and members informed regarding matters and activities of the scheme.
- (3) The scheme rules shall make provision for—
  - (a) the procedure of and grounds for the removal from office of management committee member; and
  - (b) procedure for convening meetings.

### **19. Effect of notice to transfer benefits**

Where a member of an umbrella scheme gives notice in writing to the scheme of an intention to transfer benefits to another retirement scheme registered under the Act, the umbrella scheme shall, within thirty days from the date of the notice, transfer the benefits specified in the notice to that other scheme:

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

### **20. No penalty clauses in agreements**

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

### **21. Suitability of scheme**

- (1) In determining whether to participate in an umbrella scheme, an employer shall consider, among others, whether the scheme—
  - (a) is registered under the Act;
  - (b) has appointed an administrator, custodian, manager, as the case may be, who has the professional and technical capacity and adequate operational systems to manage the scheme;



- (c) has developed a prudent investment policy for the investment of the scheme fund;
- (d) is fully funded;
- (e) has the professional and technical capacity and adequate operational systems to manage a multi-employer scheme;
- (f) consist only of scheme funds maintained separately at all times from any other funds under the control of the trustees; and
- (g) keeps or has caused to be kept a designated account for the employees of each employer in the scheme.

## **22. Record of contributions and transmission**

(1) Every umbrella scheme shall maintain or cause to be maintained a quarterly record of contributions in respect of the employees of each employer in the prescribed form and the original record shall be submitted to the Authority within fifteen days following the end of every third calendar month.

(2) The quarterly record provided for in paragraph (1) may be delivered to the Authority electronically.

## **23. Custody of scheme funds and documents of title**

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

(2) Where the whole or a portion thereof of the scheme fund is invested in a guaranteed fund, the deposit administration policy for that whole or portion shall be held and maintained in the custody of the trustees.

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

(4) Notwithstanding any provision of the scheme rules to the contrary, any contribution payable in respect of any member of the scheme to a custodian shall be paid, directly to the custodian by or on behalf of the trustees:

Provided that in a case where a scheme has invested fully in guaranteed funds, contributions may be paid directly to the approved issuer.

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

(6) The custodian shall, not later than the first business day following the day on which the custodian receives the contribution, deposit the contribution in an account with a bank duly registered under the Banking Act (Cap. 488) and such account shall be maintained by the custodian on behalf of and in the name of the scheme.

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

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

(9) Scheme funds shall at all times be invested by the manager of the scheme on behalf of the trustees.

(10) An employer shall in the deed of adherence state the rate of contributions by the employer and the employees who have become members of the scheme:

Provided that the contributions shall not be less than that set in the scheme rules.

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**24. Date for payment of contributions**

The contributions which have not been paid on or before the tenth day of every calendar month following the month in which the contributions become due shall become payable together with interest thereon as a civil debt summarily recoverable from the employer by the trustees.

**25. Formula and schedule of contributions**

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

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

(3) A scheme may, if agreed upon by the sponsor, from time to time revise the schedule of the rates of contributions.

**26. Restriction of eligibility for membership**

No scheme rules shall—

- (a) restrict eligibility to membership of a scheme on the basis of gender, race, grade, cadre, age, differences in the employees' salary, wages, rank, seniority at the work place, association, religion or in any manner which is discriminatory;
- (b) contain any provision which would render admission to membership subject to any discretionary power;
- (c) provide for the qualifying period for membership to the scheme to be other than from the date of employment unless approved by the Authority:

Provided that—

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

**27. Withdrawal of membership or benefits**

A member of the scheme shall not be permitted to withdraw from membership or withdraw his benefits from the scheme whilst he remains an employee of the employer unless he—

- (a) becomes a member of another scheme established for the benefit of employees of that employer;
- (b) attains the retirement age provided for in the scheme rules; or
- (c) has need related to personal aptitude for which the trustees have given approval and obtained prior written consent of the Authority.

**28. Treatment of retirement benefits before attaining early retirement age**

(1) Where a member leaves employment but before attaining the specified early retirement age—

- (a) that member shall, upon request in writing to the trustees, be entitled to payment of his benefits comprising up to 100% and at most 50% together with the investment income thereon of the contributions made by the member and the employer respectively:

Provided that the member shall defer the remainder of the benefits save as provided in the scheme rules;

- (b) a member shall defer his benefits until he attains the normal retirement age;
- (c) a member may elect in writing to transfer his benefits to another scheme.

(2) Where a member elects in writing to have the retirement benefits referred to in paragraph (1)(c) transferred to another scheme for the purpose of purchasing a retirement benefit, the basis of paying transfer value where the scheme has a reserve fund shall be reviewed and certified by the actuary and the member shall get a proportionate share of the reserve fund.

(3) A member may opt for payment to him of the total amount of vested accrued benefits before attaining the retirement age where—

- (a) the member retires on grounds of ill-health or subsequently during deferment, becomes incapacitated on grounds of illhealth which if the member was in employment, would occasion the member's retirement;
- (b) the member is emigrating from Kenya to another country without any present intention of returning to reside in Kenya and has obtained the approval of the trustees, which shall be copied to the Authority, to withdraw his benefits.

(4) For the purposes of this regulation, a member of a scheme may be deemed to suffer ill-health and be paid his benefits therein before attaining retirement age if medical evidence is submitted to the scheme showing that he is permanently incapacitated and cannot be gainfully employed or engaged in any other occupation for which he is reasonably suited by education, training or experience.

**29. Payments of benefits to a nominated beneficiary and other beneficiaries**

(1) Upon the death of a member the benefits payable from the scheme shall be paid to the nominated beneficiary and if the deceased member had not named a beneficiary the trustees shall exercise their discretion in the distribution of the benefits to the dependants of the deceased member:

Provided that the trustees may refuse to pay the nominated beneficiary giving reasons thereof, in writing.

(2) In exercising the discretionary powers under this regulation, the trustees may further determine—

- (a) the amount of retirement benefits payable to a nominated beneficiary;
- (b) the amount of retirement benefits payable to the children of a member;
- (c) the apportionment of a lump-sum benefit amongst all dependants;
- (d) the apportionment of a retirement benefit amongst surviving spouses and children; or
- (e) the reinstatement of a surviving spouse's retirement benefit that had ceased on remarriage:

Provided that the trustees shall not increase any retirement benefit unless such increase has been recommended and certified by an actuary.

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### **30. Commutation of retirement benefits**

(1) The formula for the commutation of the retirement benefits which may be paid to a member who has attained the normal retirement age or persons entitled to receive a benefit under the scheme shall be provided for in the scheme rules:

Provided that—

- (a) no more than one quarter of the retirement benefits may be commuted in a scheme where members do not make any contributions and not more than one third of the retirement benefits may be commuted in a scheme where members make contributions; and
- (b) benefits arising from additional voluntary contributions may be fully commuted;

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

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

- (a) to a scheme which makes a lump-sum payment of accrued benefits to a member upon attaining the specified retirement age; or
- (b) to benefits payable to a member where the portion of retirement benefits remaining after commutation the periodic pension shall become trivial pension.

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

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

### **31. Non-assignment of benefits**

No benefits or contributions accruing or payable under the scheme shall be capable of assignment.

### **32. Cessation of participation by an employer**

(1) A scheme shall be partially liquidated where a participating employer ceases to remit members' contributions or commits an act contrary to the provisions of the Act and the scheme's trust deed and rules.

(2) For avoidance of doubt, the partial liquidation of a scheme shall not affect the members' benefits which shall be treated in accordance with the rules of the scheme.

### **33. Annual general meeting**

A scheme shall hold an annual general meeting to be attended by members of each participating employer whose agenda shall, without limiting, include a report on—

- (a) any changes to the benefits and contributions structure;
- (b) audited accounts;
- (c) investments;
- (d) remuneration of trustees;
- (e) statutory compliance; and
- (f) questions from members.

## PART IV – FINANCIAL PROVISIONS AND STATEMENTS

**34. Schemes to keep books and accounts**

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

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

**35. Appointment of auditor**

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

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

(3) Where an auditor vacates office under the circumstances envisaged under paragraph (2), the trustees shall appoint another auditor subject to approval by the Authority.

**36. Submission of audited accounts and format of scheme accounts**

(1) The trustees shall within three months of the end of year of the scheme submit audited annual accounts including the trustees and investments reports to the Authority with a certificate signed by the chairperson of the board of trustees or any authorized trustee certifying that to the best of their knowledge and belief the information furnished to the auditor for the purpose of audit is correct and complete in every respect.

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

(3) The trustees shall within three months from the end of each financial year—

- (a) conspicuously display in the registered office of the scheme a notice that the audited accounts together with the trustees' and investments reports are available for inspection; and
- (b) send to the sponsor and employer copy of the audited accounts and to each member a summary of the audited accounts of the scheme together with the member's benefit statement by electronic means.

(4) The auditor shall be required to certify on an annual basis the adequacy of the systems and controls operated by the fund, and in the case of the administrator, in respect of the fund administration business carried out by it, and determine whether they are adequate for purposes of compliance with the provisions of the Act.

(5) The auditor shall further be required to examine the systems and controls to monitor the receipt of contributions and the reporting of late payments to the fund and render an opinion thereof as to their adequacy for purposes of determining un-remitted contributions.

**37. Review of scheme by actuary, publication of actuarial report and supervision by the Authority**

(1) The Authority may, from time to time, require a scheme to be reviewed by an actuary.

(2) The Authority may exempt a scheme from the provisions of paragraph (1) if such a scheme has satisfied the following conditions—

- (a) all benefits, other than those fully secured by an approved issuer, being limited to an amount, or to the periodic retirement benefit which can be provided by

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an amount, equal to an accumulation of actual contributions, adjusted only in accordance with the direct investment return, both in terms of income and capital appreciation or depreciation;

- (b) no periodic retirement benefits have been paid by the scheme, unless such benefits are fully secured by an approved issuer;
- (c) the scheme submits to the Authority, at least once in every three years, a certificate by an actuary prepared in accordance with the approved form.

(3) The trustees shall within three months upon receipt of the actuarial report from the actuary publish a notice to the sponsor, employer and members that such report or an abstract thereof, is available in its office for inspection.

(4) Notwithstanding anything contained in these Regulations—

- (a) the Authority may by notice require a scheme to be valued in a prescribed manner at the cost of such scheme by an actuary any time in respect of any matter the Authority may deem appropriate;
- (b) a trustee shall cause an actuarial valuation or actuarial review to be carried out in the event of major benefits improvements, group transfers of members, significant changes in the membership size, termination, amalgamations or other special circumstances that affect its financial position.

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

(6) The actuarial method and assumptions selected by an actuary shall be stated and explained taking into account the experience of the scheme to the extent that the information is available and significant, and shall reflect long term trends without giving undue weight to recent experiences.

(7) The Authority may require an actuarial valuation or review to be prepared on whatever basis it might prescribe in specific circumstances.

(8) The trustees shall prepare a certificate in the prescribed form that shall form part of the actuarial valuation report.

**38. Distribution of surplus of scheme fund**

No surplus of a scheme fund shall be directly or indirectly refunded to the sponsor of the scheme:

Provided that—

- (a) a contribution holiday for both the employer and the member as shall be determined by an actuary shall not be construed to mean a refund of the surplus of a scheme fund, and shall be limited to the surplus above 10% of the scheme's accrued liability;
- (b) if the total accrued liabilities are being transferred to a different scheme, any surplus shall be allocated equally between the members and the employer;
- (c) the portion of the surplus due to the sponsor may be used as a contribution holiday by the sponsor in the new scheme;
- (d) subject to the surplus being sufficient for the purpose, where partial liability is being transferred to a scheme, a portion of surplus proportionate to the value of the liability may be transferred.

**39. Accounting procedure for investments**

(1) The statement of income and expenditure of the scheme shall be treated in accordance with international financial reporting standards.

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

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

**40. Valuation of assets**

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

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

(2) In this regulation, "**net realizable value**" means the value which an asset or investment may realize upon disposal at arm's length transaction less expenses payable to effect the disposal.

**41. Repair and maintenance of investments**

Repair and maintenance expenses in respect of investments shall, as may be applicable, be charged to income during the year the expense is incurred and if the repair costs, in the opinion of trustees, is material, the same shall be treated in accordance with the international accounting standards on amortization.

**42. Minimum disclosure requirements and allowable scheme expenses**

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

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

(2) For the purpose of these Regulations, an expense is allowable if it is incurred by the trustees in the—

- (a) ordinary course of the trade and business of the scheme; and
- (b) discharge of the powers and trusts of the scheme.

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#### **43. Protection against financial loss**

The scheme fund and assets shall be protected against any manner of insurable risk and financial loss arising out of any negligence, commission or omission or inadvertent default on the part of any of its officers, trustees, administrator, manager or custodian either by way of a guarantee from the sponsor or by way of insurance of such amount as the trustees may deem adequate.

#### **PART V – INVESTMENT GUIDELINES**

#### **44. Investment policy**

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

(2) The statement shall cover, among other things, the policy of the scheme or the pooled fund in the following matters—

- (a) the categories of investments to be held;
- (b) the level of risk;
- (c) the realization of investments; and
- (d) such other matters as may be prescribed from time to time by the Cabinet Secretary.

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

(4) A scheme shall obtain and consider the written advice of an investment advisor before a statement under this regulation is prepared or revised.

(5) A scheme shall take into account the latest actuarial report when determining the principles governing decisions on investments of the scheme fund.

#### **45. Permitted asset classes of investment**

(1) Notwithstanding the provisions herein, a scheme shall invest only in the asset classes specified in column 2 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 (L.N. No. 124/2000) to the extent to which the market value of the investment in the class expressed as a percentage of the total assets of the scheme does not exceed the percentage listed in column 3 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 in respect of such asset:

Provided that—

- (a) a scheme may exceed the maximum percentage indicated in column 3 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 in the event of an increase in the market price of assets, bonus issues or transfer of investment from one class of assets to another but any such excess shall not continue for a period of more than ninety days;
- (b) a scheme may exceed the maximum percentage indicated in column 3 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 in the event of revaluation of real property but any such excess shall be reported immediately to the Authority together with an action plan as to how the trustees intend to return the scheme into compliance and the Authority shall within thirty days of receipt of the action plan advise the scheme in writing if the plan is acceptable or require the scheme to implement the plan subject to such terms and conditions as the Authority may deem appropriate;



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- (c) the maximum investment in the quoted equity of any one company shall be fifteen per centum of the aggregate market value of the total assets of the scheme;
- (d) the maximum investment in the unquoted equity, commercial paper loan stock and debenture issued by a company controlled by or a related company of the sponsor shall be five per centum of the aggregate market value of the total assets of the scheme; and
- (e) investments in the category "any other asset" under item 14 of Table G of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 shall be subject to the prior written approval of the Authority, which may be given or denied by the Authority within thirty days of application by a scheme.

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

(3) The prescribed investment guidelines shall not apply to an approved issuer with regard to the investment of guaranteed funds.

## PART VI – LEVY

**46. Retirement benefits levy**

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

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

(3) The basis of the annual levy shall be a percentage of the net asset value of the total scheme fund indicated in column 2 of Table L of the First Schedule of the Retirement Benefits (Forms and Fees) Regulations, 2000 corresponding to the category in column I, which includes the total value of the scheme fund:

Provided that—

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

## PART VII – TRANSFERS AND AMALGAMATION OF SCHEMES

**47. Transfers from scheme**

(1) Subject to the provisions of the Act and these Regulations, a member may transfer his or her benefits from one scheme to another.

(2) Any member who intends to transfer or has transferred benefits from one scheme to another as provided for under paragraph (1), that member shall, if so required by the trustees, provide in writing the amount of such benefits and the names of the scheme from which the benefits shall become payable and any other information, as may be required.

(3) The basis of paying a transfer value in paragraph (2) above from a scheme that has a reserve fund shall be certified by an actuary.

(4) For the purpose of this regulation, "**scheme**" includes an Individual Retirement Benefits Scheme or Occupational Retirement Benefits Scheme.

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#### **48. Amalgamation of schemes**

(1) No amalgamation of schemes shall take place unless all the conditions as listed below have been satisfied and approved by the Authority in writing to the concerned schemes—

- (a) the arrangements and particulars for the proposed amalgamation, including copies of current actuarial reports, in respect of the schemes and other statements taken into account for the purposes of the amalgamation, have been submitted to and approved by the Authority;
- (b) the Authority has been furnished with such additional particulars, or such specific reports by an actuary or auditor, as it may deem necessary for the purposes of this regulation;
- (c) the Authority is satisfied that the arrangements referred to in subparagraph (a) accords full recognition to the reasonable expectations of the members of the schemes concerned, and that the proposed transaction would not render any scheme which is a party thereto and which will continue to exist if the proposed transaction when completed is unable to—
  - (i) meet the requirements of the Act and these regulations;
  - (ii) remain in a sound financial condition; or
  - (iii) in the case of a scheme which is not in a sound financial condition, to attain a sound condition within the period of time deemed by the Authority to be satisfactory.
- (d) the Authority has been furnished with such evidence as it may require to show that the provisions of the scheme rules of the concerned schemes in so far as they are applicable, have been carried out or that adequate arrangements have been made to carry out such provisions at such intervals as may be required by the concerned schemes; and
- (e) the approval referred to herein shall be given within thirty days of receipt of all the information required under paragraph (d).

(2) An amalgamation of a scheme fund shall not be approved if its intent, purpose or effect will—

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

(3) Whenever any transaction comes into force in accordance with the provisions of this regulation, the relevant assets and liabilities of the schemes so amalgamated shall respectively vest in and become binding upon the resultant scheme.

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

#### **PART IX — TRANSITION PROVISION**

#### **49. Transition**

All existing schemes shall within ninety days from the date of commencement of these Regulations amend their scheme rules to comply with the provisions of the Act and these Regulations.

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SCHEDULE

FORM 1

[Rule 3(1)(a).]

RETIREMENT BENEFIT AUTHORITY REGISTRATION OF EXISTING SCHEMES

APPLICATION FOR THE PURPOSE OF REGISTRATION UNDER s. 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 the scheme .....
- (ii) Income Tax Pin Number.....
- B. Any other names under which the scheme has been known previously:  
.....  
.....
- C. Any other names under which the scheme has been known together with the names of the schemes which have in whole or part been merged with or replaced by the scheme in the past five years:  
.....  
.....
- D. Provide the following particulars regarding the scheme:
  - (i) Is it a provident or pension fund? Yes/No
  - (ii) it employee based? Yes / No
  - (iii) the scheme contributory on non-contributory
  - (iv) If other specify .....
  - (v) What is the current status of the scheme?
    - 1. Is it an open scheme?
    - 2. Is it a paid up scheme? Yes/ No
    - 3. Is it a closed scheme? Yes/ No
    - 4. If other specify .....
  - (vi) State whether the scheme is a defined contribution or a defined benefit scheme
  - (vii) If other, specify .....
- E. Give the following information as at the end of the last financial year from ..... 20 ..... to ..... 20 .....
  - 1) State number of members of the scheme.  
.....
  - 2) State the number of members of the scheme who were active members in this service  
.....
  - 3) State the numbers in whom the scheme benefits have been fully vested  
.....
  - 4) Scheme vesting formula  
.....
  - 5) State the number of members who are drawing pension, if any  
.....
  - 6) State the numbers of members whose retirement benefits are deferred  
.....

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- 7) State the number of the total permanent workforce of the sponsoring employers.  
.....
- 8) Is the membership of the scheme compulsory or voluntary?  
.....  
(ii) Do those permanent employees of the sponsoring employers who are not members of the scheme belong to any scheme? Yes/ No  
If Yes, give details of the scheme  
.....  
.....

F. Give the following information as at the end of the last financial year from ..... 20 ..... to ..... 20 .....

- i) Where applicable, state the contribution formula for the employee and the employer, and in the case of an individual based scheme, the individual contribution formula  
Employee .....  
Employer .....  
Individual contribution .....
- ii) State the amount contributed:  
Employee's contribution:  
Kshs. ....  
Employer's contribution  
Kshs. ....
- iii) State the total benefits as follows:  
Lump sum payments:  
Kshs. ....  
Commutated payments Kshs .....  
Pension Payments: kshs .....  
Death benefits payments: Kshs .....  
Disability benefits payments: Kshs .....  
Deferred benefits .....  
Others specify .....
- iv) .....  
(1) State the total value of the scheme fund; Kshs .....  
(2) State the basis of valuation eg Market value, Historical cost, etc  
.....

G. (i) Provide the following particulars of the schemes as follows:  
Country ... .....  
Date of establishment .....  
Registered office of the scheme:  
.....  
Building .....  
Road .....  
Postal address .....  
Telephone .....  
Telex .....  
Fax/email

(ii) Is the scheme established under an irrevocable trust? Yes /No.  
If No, state the basis of the establishment  
.....

(iii) Is the scheme approved under the Income Tax (Retirement Benefits Scheme) Rules? Yes/No  
If Yes, state the income Tax Reference Number .....

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[Subsidiary]

- H. Provide details for the following:
  - i. Members of the Board Of Trustees ( Appendix A)
  - ii. Fund Managers, if any (Appendix B)
  - iii. Auditors, Legal Advisors, Actuary, Managers, Custodian and Administrators (Appendix C)

(please complete the tables in the above mentioned appendices)

- I. If the scheme does not engage in the services of trustees, a scheme administrator or fund manager, then the following particulars:
  - i. Who administers the scheme?  
.....  
.....
  - ii. Who makes decisions on the investment of the scheme funds?  
.....  
.....
  - iii. Are the funds separated from those of the sponsors? Explain  
.....  
.....
  - iv. Are the scheme funds separated from those of the fund manager? Yes/No
- 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
- 2. The said manager in completing appendix D2 to provide the investments of the pool and submit on a separate list all the schemes which form the pool together with their respective shares of the pooled investment
  - (ii) Where applicable, state the ratio of fund assets in relation of actuarial liabilities as per the latest actuarial report  
.....  
.....

- J. List all Bankers of scheme funds showing the branches and address for such branches:  
.....  
.....

- K. (i) Is the custodian of the scheme assets registered under the Capital Markets Authority Act? Yes/ No
- (ii) If the custodian is registered by any other authority provide the following:  
Full Name .....  
Physical Address .....  
Building .....  
Road .....  
Town .....  
Postal Address .....  
Telephone ..... Fax .....
- iii. State in whose name the title documents for the assets of the scheme are registered?  
.....  
.....

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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 .....
Town .....
Postal Address .....
Fax/ Email .....
C. (i) Income Tax P.I.N Number
(ii) Income Tax Reference Number .....
D. Number of Members in service of the sponsor .....

PART III - PARTICULARS OF EMPLOYERS

(Provide the following; Particulars for each on a separate attachment)

- A. i) Name of Sponsor: .....
ii) If a company, certificate of incorporation number: .....
iii) If not a company state the number of the certification of registered under the Business Names Act .....
iv) Physical Address .....
Building ..... Road .....
Town .....
Telephone .....
Email/Fax .....
v) (i) Income Tax P.I.N Number .....
Income Tax Reference Number .....

Retirement Benefits

[Subsidiary]

PART IV - ATTACHMENTS

Please attach copies of the following:

- I) Trust deed and rules
- II) Latest actuarial report
- III) Latest audited or management accounts
- IV) An actuarial certificate certifying the design and financial viability of the scheme( if applicable)
- V) For insured schemes, a copy of the insurance policy document and a copy of the latest fund value statement and revenue account
- VI) For schemes with funds invested by an asset manager firm, a copy of the latest scheme fund investment report and revenue account
- VII) Fund management agreement(s) (*where applicable*)

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

Signed on this ..... day of .....

Full Name: .....

Designation: .....

Chairman/Secretary

Authorized signature of Applicant

\_\_\_\_\_

APPENDIX A

PARTICULARS OF THE 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. ....

\_\_\_\_\_

*Retirement Benefits*

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**APPENDIX B**

PARTICULARS OF SENIOR MANAGEMENT OF THE FUND MANAGER\*

*(Complete this form for each fund manager, where applicable)*

Name of the Scheme .....

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

Income Tax P.I.N Number .....

<i>Full Name</i>	<i>Design- ation</i>	<i>Nationality</i>	<i>Age</i>	<i>Postal Address</i>	<i>Date of Appoint- ment</i>	<i>Experience (No. of years)</i>	<i>Academic and professional experience</i>
.							
.							
.							
.							
.							

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

.....

\*(The Chief Executive and his core team)

\_\_\_\_\_

**APPENDIX C**

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

	Name of firm	Income Tax P.I.N Number	Address, Telephone of Email	Professional body to which partners are members	Date of appointment
Actuaries					
.					
Administrators					
.					
Auditors					
.					
Custodians					
.					
Legal Advisors					
.					

\_\_\_\_\_



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**APPENDIX D1**

LIST OF INVESTMENT PORTFOLIO

Income Tax P.I.N Number.....

INVESTMENTS	AMOUNT IN KSHS						Date of valuation	Basis of valuation
	Original cost	%	Book value	%	Market value	%		
(a) Real Estate: <sup>*</sup>								
(i) Land (under developed)								
(ii) Residential								
(iii) Commercial								
(iv) Agricultural								
(v) Any other								
(b) Quoted Equity <sup>*</sup>								
(i) Agricultural								
(ii) Commercial & allied								
(iii) Financial and Investment								
(iv) Industrial & allied								
(v) Others								

**APPENDIX D1 (contd.)**

INVESTMENTS	AMOUNT IN KSHS						Date of valuation	Basis of valuation
	Original cost	%	Book value	%	Market value	%		
(c) Unquoted Equity <sup>*</sup>								
(i) Agricultural								
(ii) Commercial & allied								
(iii) Financial & Allied								
(iv) Industrial & allied								

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APPENDIX D1 (contd.)

INVESTMENTS

AMOUNT IN KSHS

	Original cost	%	Book value	%	Market value	%	Date of valuation	Basis of valuation
(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 Bank(s))	.	.	.	.	.	.	.	.
(f) Offshore investments	.	.	.	.	.	.	.	.
(g) Others, specify	.	.	.	.	.	.	.	.
TOTAL								

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LIST OF INVESTMENT PORTFOLIO

APPENDIX .....

Name of Scheme .....

Income Tax PIN Number .....

TOTAL INVESTMENT IN THE POOL	AMOUNT IN KSHS							
	Original Cost	%	Book Value	%	Market Value	%	Date if Valuation	Basis of Valuation
a) Real Estate								
(i) Land								
(ii) Residential								
(iii) Commercial								
(iv) Agricultural								
(v) Any other								
b) Quoted Equity								
i. Agricultural								
ii. Commercial and Allied								
iii. Financial & Investment								
iv. Industrial and Allied								
v. others								
c) Unquoted Equity								
(v) Agricultural								
(vi) Commercial & allied								
(vii) Financial & Allied								
(viii) Industrial & allied								
d) Government Paper								
i. Bonds								
ii. Stocks								
iii. Treasury Bills								
iv. Any other (specify)								
e) Cash and Deposits in Banks (state the names of the Banks)								
f) Offshore Investments								
g) Listed REITS								
h) Others (as applies per investment guidelines)								
<b>TOTAL</b>		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.

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## NOTES FOR APPLICATION FOR REGISTRATION

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

- (1) **Actuarial liabilities**  
A debt or an obligation of a retirement benefits scheme arrived at using actuarial principles and assumptions
- (2) **Administrator**  
A person charged with the responsibility of day to day management of a scheme such as keeping records, paying benefits to and providing members with information relating to their benefits
- (3) **Banks**  
Bank of financial institution licensed under the Banking Act and registered as custodian by the Authority in which schemes accounts are operated or held.
- (4) **Commutated payment**  
Whole or part of a pension entitlement paid to a member on retirement subject to scheme rules and/or Income Tax regulations.
- (5) **Contribution formula**  
The rate(s) of contribution of the fund by members and/or employers.
- (6) (i) **Contributory scheme**  
A retirement benefit scheme in which both the employer and the members contribute to the fund.  
(ii) **Non-contributory scheme**  
A retirement benefit scheme in which only the employers contributes to the fund.
- (7) **Custodian**  
A person who has custody of scheme 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 specific based on a specified criteria such as service, earnings e.t.c.  
(ii) **Defined Contribution (money purchase) scheme**  
A scheme which specified the contributions to be made whether by employer and or employee. The accumulated contributions and interest earned determine the value of the benefit.
- (9) **Financial year**  
Financial year of the scheme.
- (10) **Fund manager**  
A person charged with the responsibility of investing scheme funds.
- (11) **Lump sum**  
Full and final payment of retirement benefit upon cessation of employment on attaining the normal retirement age.
- (12) (i) **Open scheme**  
A running scheme which is open to new members to join.  
(ii) **Paid up scheme**  
A scheme where contributions to the scheme have ceased e.g. due to winding up.  
(iii) **Closed scheme**  
A scheme which is closed to new members but which otherwise function as a normal scheme for its continuing members.

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- (13) (i) Vested benefit  
Any accrued benefit to which a member would be immediately entitled to on withdrawal from service of the sponsor from the scheme or at retirement.
  - (ii) Vesting formula  
The method of determining the benefits to be vested.
- \* Person includes a body corporate or a company.

FORM II

[Rule 3(1)(b).]

RETIREMENT BENEFITS AUTHORITY  
APPLICATION FOR REGISTRATION OF A NEW  
UMBRELLA RETIREMENT BENEFITS SCHEME

PART I - DETAILS OF THE SCHEME

- A. (i) Name of the scheme .....
- (ii) ..... Income Tax Pin Number .....
- B. Provide the following information regarding the proposed scheme:
  - (i) Proposed number of employers .....
  - (ii) Proposed number of members .....
  - (iii) Registered office of the Scheme .....
  - Postal Address .....
  - Telephone .....Address .....
  - Telex ..... Fax .....
  - E- mail .....
  - (iv) 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 .....
- (iv) 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?  
.....  
.....

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PART III - PARTICULARS OF SPONSORS

(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 certificate of registration under The Business Names Act: .....
- B. Physical Address
  - Building ..... Road .....
  - Town .....
  - Postal Address ..... Telephone ..... Fax .....
- C. (i) Income Tax P.I.N Number .....
- (ii) Income Tax Reference Number .....

PART IV - ATTACHMENTS

Please attach copies of the following:

- (i) Trust Deeds and Rules
- (ii) Certificate of incorporation of the trust corporation
- (iii) Latest audited report and accounts of the Trust Corporation
- (iv) An actuarial certificate certifying the design financial viability of the scheme
- (v) A feasibility on a proposed scheme
- (vi) Certified copies of: .....
  - 1. Certificate of incorporation of the Sponsor; or
  - 2. Certificate of Registration as a business name of sponsor .....

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

Signed on this ..... day of .....

Signature of the applicant

Full Name: .....

Designation: .....

\_\_\_\_\_

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APPENDIX A

PARTICULARS OF DIRECTORS OF TRUST CORPORATION

Name of Trust Corporation .....

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

APPENDIX B

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

	Name of firm	Income Tax P.I.N Number	Address, Telephone of Email	Professional body to which partners are members	Date of appointment
Actuaries					
.					
Administrators					
.					
Auditors					
.					
Custodians					
.					
Legal Advisors					
.					
Managers					
.					

APPENDIX C

PARTICULARS OF DIRECTORS OR PARTNERS OF A SPONSOR

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

\* Delete as appropriate.