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THE RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS SCHEMES) REGULATIONS

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Retirement Benefits Act

The Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations

Legal Notice 119 of 2000

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RETIREMENT BENEFITS ACT

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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 members retirement benefits has a value equal to those contributions, net of expenses including premiums paid for insurance of death or disability risks, accumulated in an individual account with investment return and any surpluses or deficits as determined by the trustees of the scheme;

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

"guaranteed fund" means an asset class -

(a) issued by an approved issuer, whereby the approved issuer, *inter alia*, guarantees the accumulated capital of the scheme fund or pooled fund together with past investment income thereof in accordance with the terms of the guaranteed fund contract entered into between the approved issuer and the scheme or pooled fund; or

(b) which shall be referred to as the Retirement Benefits Fund established as a statutory fund within the meaning of the provisions of the Insurance Act, (Cap. 487) in which the capital of the scheme fund or pooled fund together with past investment income thereof is guaranteed by the approved issuer in accordance with the terms of the policy of insurance issued to the scheme or pooled fund by the approved issuer.

"manager" means a manager registered by the Authority;

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

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

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

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

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

"related company" m 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.

[LN 139 of 2018, s. 2.]

Part II – REGISTRATION OF A SCHEME

4. Applications for registration of schemes

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

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

(a) consider the application and notify the applicant in writing whether the scheme is acceptable for registration and the reason therefor if it is not acceptable; and

(b) proceed to register the scheme and forward to the applicant a certificate of registration.

5. Registered office of scheme

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

6. Inspection of registers

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

Part III – ADMINISTRATION, MEMBERSHIP AND BENEFITS

7. Content of the scheme rules

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

(a) the full name of the scheme, including any change of name;

(b) the physical address of the registered office of the scheme;

(c) the date of commencement of the scheme;

(d) a list of definitions, in alphabetical order, defining the terms which are frequently used in the rules and which bear a special connotation;

(e) requirements for admission to membership and the circumstances under which membership is to cease;

(f) conditions under which and when a member may become entitled to any benefit including death benefits, the nature and extent of any such benefit and the mode of calculating the benefits;

(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 seheme 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 sixty 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.

[LN 12 of 2004, s. 2, LN 57 of 2005, s. 2, LN 97 of 2007, s. 2, LN 111 of 2015, s. 2.]

8. Rules relating to trustees and their duties

(1) The scheme rules shall make provision for -

(a) manner of appointment or election of trustees and their term of office;

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

(c) the number of trustees:

Provided that -

(i) no defined benefit scheme shall have less than three trustees and the number of trustees nominated by members shall not be less than one third of the Board of trustees unless the scheme has appointed a corporate trustee;

(ii) no defined contribution scheme shall have less than four trustees trustee and the number of trustees nominated by members shall not be less than a half of the Board of trustees unless the scheme has appointed a corporate trustee;

(iii) a scheme or a corporate trust shall have in the Board of trustees at least one member who has been vetted by the Authority to provide trust services.

Provided that -

(i) no scheme shall have less than three trustees unless it has appointed a corporate trustee;

(ii) the number of trustees nominated by members shall not be less than a third of the Board of trustees;

(d) method of and grounds for the removal from office of a trustee;

(e) manner of election of a chairman of the board of trustees:

Provided that the administrator of the scheme or chief executive officer of the sponsor shall not be the chairman of the Board of trustees; and

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

Provided that —

(i) the trustees shall meet at least four times in every calendar year; and

(ii) not more than four months shall elapse between the date of one meeting and the next;

(iii) a trustee who fails to attend three consecutive meetings shall be disqualified from serving as a trustee.

(2) The duties of the trustees shall include -

(a) administering the scheme in accordance with the provisions of the Act, these regulations and scheme rules;

(b) keeping all proper books and records of account in respect to income, expenditure, liabilities and assets of the scheme fund;

(c) computing and preparing statements of payments of benefits to members;

(d) basing with the Authority, sponsors members, manager, custodian and any other professional engaged by the scheme;

(e) collecting, keeping and updating retirement benefits data of each member including maintenance of individual membership records and bank account details of the members for the purpose of payment of benefits;

(f) updating the sponsor at least quarterly during fee financial year on all matters regarding fee scheme;

(g) ensuring feat contributions based on correct pensionable emoluments have been remitted to fee custodian as specified in fee Act, these regulations and fee scheme rules;

(gg) ensuring that scheme funds are being invested by a manager, duly appointed by the trustees, as specified in the Act, these Regulations and the scheme rules;

(h) communicating regularly wife fee members wife respect to fee affairs of fee scheme and furnishing them wife annual membership benefits statements;

(i) ensuring feat all documents intended to bind fee scheme are professionally prepared;

(k) ensuring all minutes, statements and resolutions in respect of a scheme are properly kept and maintained.

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

(i) a report on any changes to the benefits and contribution structure;

(ii) a report on audited accounts;

(iii) a report on investments;

(iv) a report on remuneration of trustees; and

(v) questions from members.

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

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

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

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

[LN 100 of 2002, r. 3, LN 57 of 2005, r. 3, LN 93 of 2007, r. 2, LN 77 of 2008, r. 2, LN 101 of 2016, r. 2, LN 50 of 2017, r. 2, LN 139 of 2018, r. 3, LN 164 of 2021, r. 2.]

9. Rules relating to administrators

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

(2) (a) The instrument appointing fee administrator shall -

(i) make provision on fee computation of fees 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 admmistrators shall not exceed the budget approved by the trustees for that purpose.

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

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

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

10. Rules relating to custody of scheme funds

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

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

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

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

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

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

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

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

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

[LN 61 of 2006, r. 2, LN 93 of 2007, r. 4.]

11. No penalty clauses in agreements

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

12. Rules relating to pooled funds

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

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

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

- (a) receiving and accounting for the scheme fund in the pooled fund;
- (b) keeping or causing to be kept such books, records and statements as may be necessary to give a complete record of Kenya -
    - (i) the virtue of a scheme fund in the pooled fund;

(ii) the investment transactions in respect of the pooled fund earned out by the custodian as instructed by the manager and shall permit, subject to notice, the scheme or any duly authorized agent, to inspect within the premises of the pooled fund such books, records and statements at any time during business hours;

(c) submitting to the scheme within a period of three months from the end of the financial year, the audited accounts of the pooled fund;

(d) notifying the scheme of the particulars of the manager and custodian of the pooled fund as may be sought by the scheme which particulars shall include -

(i) full name of the manager and custodian;

(ii) physical and postal address of the registered office of the manager and custodian;

(iii) the dates of the first and subsequent financial years of the manager and custodian;

(iv) the contents of an agreement between the pooled fund and the manager and custodian; and

(v) any other particulars as the scheme may request from the pooled fund.

(e) submitting to the scheme at least quarterly from the date of commencement of the financial year of the scheme;

(i) a valuation of the scheme fund in the pooled fund;

(ii) a report reviewing the investment activity and performance of the investment portfolios comprising the pooled fund since the last report date and containing the manager's proposals for the investment of the pooled fund;

(iii) a record of all investment transactions of the pooled fund during the previous period;

(f) issuing proper instructions as provided for in the agreement to the custodian and managers;

(g) furnishing the scheme with a copy of the most recent audited financial statements of the manager and custodian with such information as may be sought by the scheme;

(h) exercising the same standard of care that it exercises over its own assets in fulfilling any other obligation in the agreement:

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

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

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

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

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

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

(ii) the statements pertaining to the entire scheme fund;

(iii) any other information as may be reasonably required by the scheme.

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

13. Qualifications of a pooled fund

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

(a) is established by a limited liability company with a minimum paid up share capital of ten million shillings;

(b) has -

(i) the professional and technical capacity and adequate operational systems to manage a pooled fund; and

(ii) developed a prudent investment policy for the investment of pooled funds.

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

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

14. Formula and Schedule of contibutions

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

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

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

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

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

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

[LN 57 of 2005, r. 4, LN 101 of 2016, r. 3.]

15. Record of contributions

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

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

16. Amendment of Rules

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

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

(b) if it purports to effect any right of a creditor of the scheme, other than as a member thereof;

(c) unless it has been approved by the Authority and registered as provided in paragraph 3.

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

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

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

17. Protection against imminent loss

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

18. Eligibility for membership

(1) No scheme rules shall -

(a) restrict eligibility to membership ot a scheme on the basis of gender race or religion or in any manner which is discriminatory;

(b) contain any provision which would render admission to membership subject to any discretionary power; and

(c) unless it is a defined contribution scheme allow an employee to join the scheme where such employee has less than five years remaining before attaining retirement age:

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

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

Provided that -

(i) where an employee is moving from his previous employer to join a new employer he may transfer his membership from the previous scheme which the former employer sponsored, to the scheme sponsored by the new employer and he shall become a member of the scheme on completion of transfer proceedings with the qualifying period for membership waived;

(ii) the transfer value of the accrued rights in respect of a member transferring his membership from one scheme to another shall be transferred to the scheme to which he is transferring his membership within a period of sixty days from the date of service of application for such transfer on the scheme from which he is transferring a copy of which shall be served on the Authority.

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

(a) at the date the scheme is established or the amending scheme rules become operative, as the case may be is an employee of a participating sponsor and -

(i) is eligible, or by virtue of the amendment made by the scheme rules becomes eligible for membership of the scheme, that he may elect to become a member within such period, being not more than twelve months, and on such conditions as may be specified in the scheme rules, failing which he shall cease to be eligible for membership unless the Authority approves;

(ii) is ineligible for membership of the scheme but subsequently becomes eligible, that he may elect to become a member within such period being not more than twelve months from the date he becomes eligible, and on such conditions as may be specified in the rules, failing which he shall cease to be eligible for membership unless the Authority approves; or

(b) after the date referred to in (a) above, becomes an employee of a sponsor and is eligible for membership of the scheme, that he shall, as a condition of his employment, become a member.

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

(a) *deleted by LN 164 of 2021, s. 3.*

(b) he attains the retirement age provide for in the scheme rules.

[LN 57 of 2005, r. 5, LN 164 of 2021, r. 3.]

19. Benefits from a scheme

(1) In this regulation -

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

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

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

(a) the difference is based on actuarial considerations; and

(b) the difference is designed to favour members engaged in hazardous occupations, in which event the same pension factors shall apply equally to all members engaged in such occupation; and

(c) the Authority has approved the difference.

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

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

Provided that -

(i) such transfer of benefits includes the cash equivalent of the present value of the deferred benefits of the member;

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

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

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

(5) The scheme rules shall provide that—

(a) where a member leaves employment before attaining the specified early retirement age, that member may opt for payment of not more than fifty per cent of his total accrued benefits and the investment income that has accrued in respect of those contributions; or

(b) a member may opt for payment to him, of the total amount of the vested accrued benefits before attaining the retirement age—

(i) on grounds of ill health or subsequently during deferment, if the member becomes incapacitated due to ill health, to the extent that it would occasion his retirement, if he was in employment; or

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

(6) The scheme rules 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 post-retirement medical fund from additional contributions.

[LN 57 of 2005, r. 6, LN 61 of 2006 , r. 4, LN 165 of 2010, r. 2, LN 13 of 2011, r. 2, LN 164 of 2021, r. 4.]

20. Benefits to fully vest within one year

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

Provided that -

(i) all benefits derived from statutory contributions and contributions made by a member shall vest immediately in the member;

(ii) the periods of service of a member for the purposes of this regulation shall be determined without regard to temporary interruptions of employment of continuous periods of up to nine months or less.

[LN 93 of 2007, r. 5, LN 101 of 2016, r. 5.]

21. Leaving service benefits

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

(a) payment of benefits to the leaving member, provided that the member shall not be entitled to the employer's contribution save as provided in the trust deed;

(b) deferment of benefits until the leaving member attains the normal retirement age;

(c) transferring of benefits to another scheme elected in writing by the leaving member.

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

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

(a) the basis of paying transfer values shall reviewed and certified by an actuary;

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

[LN 57 of 2005, r. 7, LN 77 of 2008, r. 3.]

22. Non assignability of benefits

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

[LN 57 of 2005, r. 8, LN 84 of 2005 r. 2.]

23. Payments of benefits to a nominated beneficiary

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

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

24. Discretionary powers of trustees in payment of benefits

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

(a) the amount of retirement benefits payable to a nominated beneficiary;

(b) the amount of retirement benefits payable to the children of a member;

(c) the apportionment of a lumpsum benefit amongst all dependants;

(d) the apportionment of a retirement benefit amongst surviving spouses and children;

(e) the reinstatement of a surviving spouses retirement benefit that had ceased on re-marriage.

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

25. Commutation of retirement benefits

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

Provided that -

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

(b) benefits arising from additional voluntary contributions may be fully commuted.

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

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

(a) to a scheme which is a provident fund; or

(b) to benefits payable to a member where the portion of retirement benefits remaining after commutation of the pension will result in a trivial pension.

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

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

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

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

[LN 57 of 2005, r. 9, LN 84 of 2005, r. 9, LN 93 of 2007, r. 6, LN 77 of 2008, r. 4, LN 139 of 2018, r. 4.]

26. Lump sum payment of death benefits

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

27. Retirement of a disabled member

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

Part IV – FINANCIAL PROVISIONS AND STATEMENTS

28. Schemes to keep books and accounts

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

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

29. Appointment of Auditors

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

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

30. Annual Accounts

(1) Trustees shall submit audited annual accounts including the trustees and investments reports to the Authority with a certificate signed by the 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 fund and where the auditor is unable to sign the report without qualification the report shall disclose reasons for such qualification.

(4) 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;

(b) send to its members a summary of its audited accounts together with the members benefits statements.

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

31. Actuarial Valuation

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

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

(b) A defined contribution scheme shall, at least once in every five years from the date of registration be reviewed by an actuary in the prescribed form and submit a copy of the valuation report within five months from the end of the financial year;

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

(i) All benefits other than those fully secured by an approved issuer are limited to an amount or to the periodic retirement benefit which can be provided by an amount equal to an accumulation of actual contributions adjusted only in accordance with the direct investment return, both in terms of income and capital appreciation or depreciation;

(ii) No periodic retirement benefits have been paid by the scheme unless such benefits are fully secured by an approved issuer;

(iii) the scheme submits to the Authority at least once in every three years a certificate by an actuary prepared in the prescribed form.

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

(3) Notwithstanding anything contained in these regulations -

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

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

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

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

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

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

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

[LN 57 of 2005, r. 10, LN 164 of 2021, r. 5.]

32. Surpluses not refundable

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

Provided that-

(a) a contribution holiday for both the employer and the member as shall be determined by the actuary shall not be construed to mean a rdrnd 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 ditrerent scheme, any surplus shall be allocated equally between the members and the sponsors;

(d) the portion of the sponsor surplus may be used as a contribution holiday in the new scheme;

(e) where partial liabilities are being transferred to a different scheme, the portion of surplus transferred shall be proportionate to the value of liabilities being transferred.

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

(i) any surplus of the scheme fund available after the winding up of a scheme may be refunded to the sponsor;

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

[LN 111 of 2015, s. 3.]

33. Accounting procedure for investements

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

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

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

34. Valuation of assets

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

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

(a) the value of land and buildings shall not exceed the value determined on the basis of a valuation by a registered valuer who is a member of the Institute of Surveyors of Kenya once in every three years or at such shorter interval as the Authority may otherwise permit in writing;

(b) where the market value of any security share or other investment is not ascertainable only such value if any shall be taken into account as is considered reasonable having regard to the financial position of the issuing concern the dividend paid by it during the preceding five years and other relevant factors;

"(c) office machinery, fumiture, motor vehicles and computer equipment shall be valued in accordance with the International Financial Reporting Standards.

[LN 111 of 2015, s. 4.]

35. Repair and maintenance of investments

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

36. Minimum disclosure requirements

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

(a) un-remitted contributions;

(b) fees and expenses paid directly or indirectly to or on behalf of the trustees appropriately classified;

(c) returns on investment as per each category of investment;

(d) related party transactions;

(e) ownership of more than ten per centum equity in any one company or related companies; and

(f) the penalty, if any, payable by the sponsor for failure to remit contributions or accrued interest on unpaid benefits;

(g) any other matter as may be prescribed by the Authority.

[LN 57 of 2005, s. 11.]

Part V – INVESTMENT GUIDELINES

37. Investment Policy

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

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

(a) the policy of the scheme or the pooled fund in compliance with regulation 38;

(b) the policy of the scheme, or the pooled fund in the following matters-

(i) the kinds of investments to be held;

(ii) risk;

(iii) the realisation of investments; and

(iv) asset liability matching;

(v) such other matters as may be prescribed by the Authority from time to time.

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

(4) A scheme shall, before a statement under this regulation is prepared or revised, obtain and consider the written advice from a registered Chartered Financial Analyst, actuary, investment advisor or fund manager registered under the Capital Markets Act, (LN 77 of 2008) or manager under the Act.

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

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

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

(a) a statement under this section has not been prepared or is not being maintained or

(b) the trustees of a scheme whose funds are not Part of a pooled fund and the pooled fund itself have not obtained and considered advice from a manager, the Authority may by direction prohibit any trustee of such scheme from being a trustee or disqualify a pooled fund from pooling scheme funds.

[LN 61 of 2006, r. 4, LN 77 of 2008, r. 2.]

38. Investment Guidelines

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

Provided that -

(a) a scheme, or pooled fund, may exceed the maximum indicated in column 2 in the event of increase in market price of assets bonus issues or transfer of investment from one class of asset to another but any such excess shall not continue for a period of more than ninety days;

(b) a scheme, or pooled fund, may exceed the maximum indicated in column 2 in the event of revaluation of real property but any such excess shall be reported immediately to the Authority together with an action plan as to how the trustees intend to return the scheme into compliance and the Authority shall within 30 days of receipt of the action plan advise the scheme in writing if the plan is acceptable or require the scheme to implement the plan subject to such conditions as the Authority may deem appropriate;

(c) the maximum investment in the quoted equity of any one company shall be fifteen per centum of the aggregate market value of the total assets of the scheme or pooled fund;

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

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

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

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

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

[LN 57 of 2005, r. 12.]

Part VI – LEVY

39. Retirement Benefits Levy

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

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

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

Provided that

(a) the value of the scheme fund to be used in determining the levy shall be the total fund value indicated in the latest audited accounts of the scheme less the amount of the medical fund;

(b) notwithstanding anything contained in this regulation the minimum levy payable to the Authority shall be three thousand shillings per annum subject to a maximum of five million shillings.

[LN 57 of 2005, r. 13, LN 111 of 2015, r. 3.]

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 special reports by an actuary or auditor, as it may deem necessary for the purposes of this regulation;

(c) the Authority is satisfied that the arrangements referred to in paragraph (a) accords full recognition to the reasonable expectations of the members of the schemes concerned, and that the proposed transaction would not render any scheme which is a party thereto and which will continue to exist if the proposed transaction completed is unable to -

(i) meet the requirements of the Act and these regulations;

(ii) remain in a sound financial condition; or

(iii) in the case of a scheme which is not in a sound financial condition, to attain such condition within the period of time deemed by the Authority to be satisfactory.

(d) the Authority has been furnished with such evidence as it may require to show that the provisions of the scheme rules of the concerned schemes in so far as they are applicable, have been carried out or that adequate arrangements have been made to carry out such provisions at such times as may be required by the concerned schemes;

(e) the Authority has forwarded an approval in writing to the concerned schemes to the effect that all the requirements of this sub-regulation have been satisfied;

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

(2) An amalgamation or transfer of a scheme fund shall -

(a) diminish the retirement benefits of a members of such scheme;

(b) reduce the accrued benefits of its members.

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

(4) Trustees of a scheme being amalgamated 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.