

1. This Act may be cited as The Retirement Benefits Act
An Act of Parliament to establish a Retirement Benefits Authority for the regulation, supervision and promotion of retirement benefits schemes, the development of the retirement benefits sector and for connected purposes."], Style[0])' onMouseOut='htm()'> the Retirement Benefits Act, 1997, and shall come into operation on 20th November, 1997.
2. In this Act, unless the context otherwise requires

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

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

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

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

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

“custodian” means a company whose business includes taking responsibility for the safe custody of the funds, securities, financial instruments and documents of title of the assets of scheme funds;

“financial year” –

(a) in relation to the Authority, has the meaning assigned to it in section 19;

(b) in relation to a scheme, means such accounting period as may be prescribed in the scheme rules;

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

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

“manager” means a company whose business includes

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

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

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

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

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

“scheme” means a retirement benefits scheme;

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

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

“sponsor” means a person who establishes a scheme;

“statutory fund” has the meaning assigned to it in section 2 of The National Hospital Insurance (Repealed by A 9/1998) Act

An Act of Parliament to establish a National Hospital Insurance Fund and a National Hospital (Voluntary) Insurance Fund; to provide for contributions to and the payment of benefits out of those Funds; and for matters connected therewith and incidental thereto”, Style[0])' onMouseOut='htm()'> the

Insurance Act;

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

“trust corporation” means a company incorporated under The Companies Act An Act of Parliament to amend and consolidate the law relating to the incorporation, regulation and winding up of companies and other associations, and to make provision for other matters relating thereto and connected therewith”, Style[0])’ onMouseOut=’htm()’> the Companies Act having a subscribed capital of not less than ten million shillings and which is for the time being empowered (by or under any written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining it’ s powers) to undertake trusts;

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

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

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

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

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) borrowing or lending money; and

(d) doing or performing all other things or acts for the furtherance of the provisions of this Act, which may be lawfully done or performed by a body corporate.

4. The headquarters of the Authority shall be in Nairobi.

5. The object and functions of the Authority shall be to-

(a) regulate and supervise the establishment and management of retirement benefits schemes;

(b) protect the interests of members and sponsors of retirement benefits schemes;

(c) promote the development of the retirement benefits sector;

(d) advise the Minister on the national policy to be followed with regard to retirement benefits schemes and to implement all Government policies relating thereto; and

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

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

(a) a chairman to be appointed by the Minister from amongst the members appointed under paragraph (f);

(b) the Chief Executive Officer appointed under section 11;

(c) the Permanent Secretary in the Ministry for the time being responsible for matters relating to finance or his representative;

(d) the Commissioner of Insurance;

(e) the Chief Executive of the Capital Markets Authority; and

(f) five members, not being public officers, appointed by the Minister by virtue of their knowledge or experience in matters relating to the administration of scheme funds, banking, insurance, law or actuarial studies:

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

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

(a) control, supervise and administer the assets of the Authority in such manner and for such purposes as best promote the purpose for which the Authority is established;

(b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority;

(c) receive any grants, gifts, donations or endowments on behalf of the Authority and make legitimate disbursements therefrom;

(d) enter into association with other bodies or organisations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purpose for which the Authority is established;

(e) open a banking account or banking accounts for the funds of the Authority; and

(f) invest the funds of the Authority not currently required for its purposes in the manner provided in section 18.

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

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

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

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

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

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

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

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

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

13. (1) The common seal of the Authority shall be kept in such custody as the

Board may direct and shall not be used except on the order of the Board.

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

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

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

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

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

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

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

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

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

(2) There shall be paid into the Fund—

(a) all proceeds of the levy established by section 16;

(b) such moneys or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under

this Act;

(c) such sums as may be payable to the Authority pursuant to this Act or any other written law, or pursuant to any gift or trust;

(d) such sums as may be granted to the Authority by the Minister pursuant to subsection (3); and

(e) all moneys from any other source provided for or donated or lent to the Authority.

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

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

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

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

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

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

(a) the payment of the salaries, allowances and other charges in respect of the staff of the Authority;

(b) the payment of pensions, gratuities and other charges in respect of the retirement benefits which are payable out of the funds of the Authority;

(c) the proper maintenance of the buildings and grounds of the Authority;

(d) the maintenance, repair and replacement of the equipment and other property of the Authority;

(e) the creation of such reserve funds to meet future or contingent

liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

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

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

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

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

(a) a statement of income and expenditure during that year; and

(b) a statement of the assets and liabilities of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with sections 29 and 30A of The Exchequer and Audit Act An Act of Parliament to provide for the control and management of the public finances of Kenya; for the appointment terms of office, duties and powers of the controller and Auditor-General; for the collection, issue and payment of public moneys; for the audit of public accounts and the protection of public property; for the control of powers of statutory boards and commissions; and for matters connected therewith."], Style[0])' onMouseOut='htm()'> the Exchequer and Audit Act, by the Auditor-General (Corporations) or by an auditor appointed by the Board under the authority of the Auditor-General (Corporations), given in accordance with section 29 (2) (b) of that Act.

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

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

(2A) The provisions relating to administrators under subsection (2) shall not

apply to natural persons who are employees of a scheme.

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

(4) A person who—

(a) establishes a retirement benefits scheme; or

(b) acts as a manager, custodian or administrator;

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

23. (1) A person proposing to establish a retirement benefits scheme or to act as a manager, a custodian or an administrator shall apply to the Authority for, and obtain, a certificate of registration before establishing the scheme or commencing the performance of any of the functions of a manager or a custodian.

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

(a) addressed to the Chief Executive Officer;

(b) in the prescribed form; and

(c) accompanied by the prescribed fee.

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

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

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

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

(a) it is proposed to be established under an irrevocable trust; and

(b) the proposed scheme rules adequately protect the rights and interests of the sponsors and members thereof.

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

25. No applicant for registration as a manager shall be registered unless such applicant—

(a) is a limited liability company incorporated under The Companies Act An Act of Parliament to amend and consolidate the law relating to the incorporation, regulation and winding up of companies and other associations, and to make provision for other matters relating thereto and connected therewith", Style[0])' onMouseOut='htm()'> the Companies Act whose liability is limited by shares and whose main object is to manage scheme funds;

(b) has such minimum paid up share capital as may be prescribed;

(c) is capable of meeting the obligations to members and sponsors specified in the scheme rules;

(d) has the professional capacity to manage scheme funds;

(e) has never been involved in the management of the scheme fund of any scheme which was deregistered due to any failure on the part of the management;

(f) meets such additional requirements as may be prescribed.

25A. No applicant for registration as a custodian shall be registered unless such applicant—

(a) is a limited liability company incorporated under The Companies Act An Act of Parliament to amend and consolidate the law relating to the incorporation, regulation and winding up of companies and other associations, and to make provision for other matters relating thereto and connected therewith", Style[0])' onMouseOut='htm()'> the Companies Act whose main object is to perform the functions of a custodian within the meaning of this Act; and

(b) has the professional and technical capacity and adequate operational systems to perform the said functions; and

(c) has never been a custodian of any scheme fund which was deregistered due to any fault, either fully or partially, of the custodian;

(d) meets such additional requirements as may be prescribed.

25B. No applicant for registration as a scheme administrator shall be registered unless such applicant-

(a) is a limited liability company incorporated under The Companies Act An Act of Parliament to amend and consolidate the law relating to the incorporation, regulation and winding up of companies and other associations, and to make provision for other matters relating thereto and connected therewith", whose liability is limited by shares and whose main objective is to render administrative services to schemes;

(b) has such minimum paid up share capital as may, from time to time, be prescribed;

(c) is capable of meeting the obligations to members and sponsors specified in the scheme rules;

(d) has the professional and technical capacity and adequate operational systems to perform its functions;

(e) has never been an administrator of any scheme fund which has been either deregistered, wound up or placed under an interim administrator due to any fault, either fully or partially, of the administrator;

(f) meets such additional requirements as may, from time to time, be prescribed.

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

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

(a) has been sentenced to imprisonment by a court of competent jurisdiction for a period of six months or more;

(b) is adjudged bankrupt;

(c) was previously involved in the management or administration of a scheme which was deregistered for any failure on the part of the management or the administration thereof;

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

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

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

(a) the information contained in the application for registration is false or untrue in any material particular; or

(b) the applicant does not meet the requirements for registration.

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

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

(a) it discovers after registration that a statement was made in connection with the application therefor which the applicant knew to be false or untrue in any material particular; or

(b) the scheme is wound up or is otherwise dissolved; or

(c) the scheme does not conform to the provisions of this Act or any regulations made or directions issued under this Act or any condition of the certificate of registration.

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

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

(a) it discovers after registration that the manager, custodian or administrator made a statement in or in connection with the application therefor which was false or untrue in any material particular; or

(b) any event occurs which renders the manager, custodian or administrator ineligible to manage or provide custodial services to a scheme fund, as the case may be;

(c) the manager' s, custodian' s or administrator' s business is wound up or

is otherwise dissolved;

(d) the manager, custodian or administrator is in breach of any condition attached to the certificate of registration;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

retirement benefits scheme.

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

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

(a) a balance sheet;

(b) a statement of income and expenditure;

(c) a statement of the assets and liabilities of the scheme as on the last day of that year;

(d) such other documents as may be prescribed.

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

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

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

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

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

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

35. The Board may require the trustees of such schemes or categories of schemes as it may specify, to cause the schemes to be evaluated by an actuary appointed by the trustees with the approval of the Board and to present the

actuarial report to the Chief Executive Officer at such regular intervals as the Board may specify.

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

36A. Upon the death of a member of a scheme, the benefit payable from the scheme shall not form part of the estate of the member for the purpose of administration and shall be paid out by the trustees in accordance with the scheme rules.

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

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

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

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

38. (1) No scheme funds shall be-

(a) used to make direct or indirect loans to any person; or

(b) invested contrary to any guidelines prescribed for that purpose; or

(c) invested with a bank, non-banking financial institution, insurance company, building society or other similar institution with a view to securing loans, at a preferential rate of interest or for any other consideration to the sponsor, trustees, members or the manager of such scheme.

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

(1A) Notwithstanding the provisions of subsection (1), a prescribed proportion of the benefits accruing to a member in a scheme may be assigned and used by

the member to secure a mortgage loan from such institutions and on such terms as may be prescribed in regulations made by the Minister.

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

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

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

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

40. The trustee, manager, custodian or administrator of a scheme shall-

(a) ensure that the scheme fund is at all times managed in accordance with this Act, any regulations made thereunder, the scheme rules and any directions given by the Chief Executive Officer;

(b) take reasonable care to ensure that the management of the scheme is carried out in the best interests of the members and sponsors of the scheme;

(c) report to the Chief Executive Officer, as soon as reasonably practicable, any unusual occurrence which in his view could jeopardise the rights of the members or sponsors of the scheme; and

(d) report to the Chief Executive Officer, as soon as reasonably practicable, if any contributions into a scheme fund remain due for a period of more than thirty days.

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

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

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

Provided that

(a) the books, accounts and other documents shall not, in the course of inspection, be removed from the premises at which they are produced;

(b) the inspector may make copies of any books, accounts and other documents required for the purposes of his report; and

(c) all information obtained in the course of the inspection shall be treated as confidential and used solely for the purposes of this Act.

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

(a) give to the inspector all reasonable assistance in connection with the inspection; or

(b) appear before the inspector for examination concerning matters relevant to the inspection; or

(c) produce any books or documents relating to the affairs of the scheme being inspected.

(2) A person who

(a) refuses or fails to comply with a requirement of an inspector which is applicable to him, to the extent to which he is able to comply with it; or

(b) obstructs or hinders an inspector in the exercise of his powers under this Act; or

(c) furnishes information or makes a false statement which he knows to be false or misleading in any material particular; or

(d) when appearing before an inspector for examination, makes a statement which he knows to be false or misleading in any material particular, commits an offence.

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

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

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

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

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

44A. The Authority may share information with other regulatory authorities.

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

(a) if the trustees of a scheme fail to submit to the Chief Executive Officer the annual accounts required under section 34 for over six months after the end of the financial year to which they relate;

(b) if the trustees are found to have submitted or provided any accounts, returns, statements, books, records, correspondence, documents or other information relating to the scheme fund which are false or misleading; or

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

the scheme or in the public interest.

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

(a) appoint any person (in this Act referred to as “an interim administrator”) to assume the management, control and conduct of the affairs and business of the trustees, the manager, the custodian or the administrator, as the case may be, to exercise all the powers of the trustees, the manager, the custodian or the administrator to the exclusion of such trustees, manager, custodian or administrator;

(b) remove any officer or employee of the trustees, the manager, the custodian or the administrator who, in the opinion of the Chief Executive Officer, has caused or contributed to any contravention of the provisions of this Act or any regulations made thereunder or to any deterioration in the financial stability of the scheme or has been guilty of conduct detrimental to the interests of the members or sponsors of the scheme; or

(c) by notice in the Gazette, revoke or cancel any existing power of attorney, mandate, appointment or other authority by the trustees, the manager, the custodian or the administrator in favour of any officer, employee or any other person.

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

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

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

(a) tracing, preserving and securing all the assets and property of the scheme;

(b) recovering all debts and other sums of money due to and owing to the scheme;

(c) evaluating the solvency and the liquidity of the scheme;

(d) assessing the schemes, the manager' s, the custodian' s and the administrator' s compliance with the provisions of this Act and any regulation made thereunder;

(e) determining the adequacy of the capital and reserves and the management of the scheme and recommending to the Chief Executive Officer any restructuring or reorganisation which he considers necessary and which, subject to the provisions of any other law, may be implemented by him on behalf of the trustees, the manager, the custodian or the administrator; and

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

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

(a) the scheme is capable of being revived; or

(b) the scheme should be deregistered.

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

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

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

An Act of Parliament to make provision for the contents of, and for revisions of, the Laws of Kenya and for matters connected therewith"],Style[0])' onMouseOut=' htm()' > the Act.

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

(3) The accounts of the fund established under this section shall be audited by the Controller and Auditor General in accordance with The Public Audit Act AN ACT of Parliament to provide for the audit of government, state corporations and local authorities, to provide for economy efficiency and effectiveness examinations, to provide for certain matters relating to the Controller and Auditor-General and the Kenya National Audit Office, to establish the Kenya National Audit Commission and to provide for other related matters "],Style[0])' onMouseOut='htm()'> the Public Audit Act, 2003.

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

46. (1) Any member of a scheme who is dissatisfied with a decision of the manager, administrator, custodian or trustees of the scheme may request, in writing, that such decision be reviewed by the Chief Executive Officer with a view to ensuring that such decision is made in accordance with the provisions of the relevant scheme rules or The Revision of the Laws Act An Act of Parliament to make provision for the contents of, and for revisions of, the Laws of Kenya and for matters connected therewith"],Style[0])' onMouseOut='htm()'> the Act under which the scheme is established.

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

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

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

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

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

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

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

(2) Where any dispute arises between any person and the Authority as to the

exercise of the powers conferred upon the Authority by this Act, either party may appeal to the Tribunal in such manner as may be prescribed.

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

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

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

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

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

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

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

(a) refuses or fails to attend at the time and place mentioned in the summons served on him; or

(b) refuses or fails to answer, fully and satisfactorily, to the best of his knowledge and belief, all questions lawfully put to him by the Tribunal; or

(c) refuses or fails to produce any records, books of account, statements or other documents which are in his possession or under his control or mentioned or referred to in any summons served on him,

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

two years, or to both.

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

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

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

An Act of Parliament to state the law relating to the civil liabilities and rights of the Government and to civil proceedings by and against the Government; to state the law relating to the civil liabilities of persons other than the Government in certain cases involving the affairs or property of the Government; and for purposes incidental to and connected with those matters"], Style[0])' onMouseOut='htm()'> the Government Proceedings Act.

52. The Chief Justice may make rules governing the making of appeals and providing for the fees to be paid, the scale of costs of any such appeal, the procedure to be followed therein, and the manner of notifying the parties thereto; and until such rules are made, and subject thereto, the provisions of the Civil Procedure Act

An Act of Parliament to make provision for procedure in civil courts"], Style[0])' onMouseOut='htm()'> the Civil Procedure Act shall apply as if the matter appealed against were a decree of a subordinate court exercising original jurisdiction.

53. (1) Any person who

(a) contravenes any provision of this Act which is expressly stated to be an offence but for which no other penalty is prescribed; or

(b) fails to comply with any direction given by the Chief Executive Officer under this Act;

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

(2) A person does not commit an offence under subsection (1), if he proves, to the satisfaction of the court, that the Revision of the Laws Act

An Act of Parliament to make provision for the contents of, and for revisions of, the Laws of Kenya and for matters connected therewith"], Style[0])' onMouseOut='htm()'> the act or omission constituting the offence was done without his knowledge, consent or connivance and that he attempted to prevent

the commission of the offence having regard to all the circumstances of the case.

53A. (1) Where an employer, having with the agreement of an employee who is a member of a scheme, made a deduction from the employee's emoluments for remittance to the scheme, fails to remit the deduction within fifteen days of the deduction, the scheme may, after giving such employer not less than seven days' notice, institute proceedings for the recovery of the deduction.

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

(a) require the employer to pay the sum deducted to the scheme within seven days of the notice; and

(b) inform the employer that if he fails to pay such sum before the expiration of the notice, proceedings for summary recovery of the sum shall be filed in court without further reference to him.

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

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

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

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

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

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

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

54A. (1) The Attorney-General may, pursuant to the provisions of The Criminal Procedure Code

An Act of Parliament to make provision for the procedure to be followed in criminal cases", Style[0])' onMouseOut='htm()'>The Criminal Procedure Code
An Act of Parliament to make provision for the procedure to be followed in criminal cases", Style[0])' onMouseOut='htm()'> the Criminal Procedure Code, appoint public prosecutors for the purposes of cases arising under this Act.

(2) The Authority shall, for the purposes of The Criminal Procedure Code
An Act of Parliament to make provision for the procedure to be followed in criminal cases", Style[0])' onMouseOut='htm()'>The Criminal Procedure Code
An Act of Parliament to make provision for the procedure to be followed in criminal cases", Style[0])' onMouseOut='htm()'> the Criminal Procedure Code, be deemed to be a public authority.

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

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

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

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

56. The provisions of The State Corporations Act

An Act of Parliament to make provision for the establishment of state corporations: for control and regulation of state corporations; and for connected purposes"], Style[0])' onMouseOut='htm()'> the State Corporations Act shall not apply to the Authority.

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

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

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

59. The Minister may, by order published in the Gazette-

(a) exempt any person or class of persons from compliance with any specified provisions of this Act; or

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

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

