

LAWS OF KENYA

The Retirement Benefits Act

ACT No. 3 of 1997

THE RETIREMENT BENEFITS ACT, 1997

No. 3 of 1997

Date of Assent: 22nd August, 1997

Date of Commencement: 8th January 1999

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

THE RETIREMENT BENEFITS ACT, 1997

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.

ENACTED by the Parliament of Kenya as follows-

PART I - PRELIMINARY

Short title and commencement. 1. This Act may be cited as the Retirement Benefits Act, 1997 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and different dates may be appointed for different provisions.

Interpretation 2. In this Act, unless the context otherwise requires-

LN. No. 168 Of 19.1. 1999. "Actuary" means a person recognised as such by 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 the Actuaries of Australia or a person holding such equivalent qualification as the Board may, by notice in the Gazette, prescribe;

"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;

Act No. 7 of 1998
Comm. 8.1. 1999.

"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.

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"Fund" means the Retirement Benefits Authority Fund established by section 17;

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

Act No. 7 of 1998
Comm. 8.1.1999.

"**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;

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of 2003
Commencement
19.12.2003

"**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 payment 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;

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"**statutory fund**" has the meaning assigned to it in section 2 of the Insurance Act.

"**sponsor**" means a person who establishes a scheme;

"**Tribunal**" means the Appeals Tribunal established under section 48;

"**trustee**" means a trustee of a scheme fund.

PART II - THE RETIREMENT BENEFITS AUTHORITY

Establishment and 3. (1) There is established an Authority to be known as the

incorporation of the Retirement Benefits Authority

Retirement Benefits Authority

- (2) The Authority shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of -
- (a) suing and be sued;
 - (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
 - (c) borrowing or lending money; and
 - (d) doing or performing all other things or acts for the furtherance of the provisions of this Act, which may be lawfully done or performed by a body corporate.

Headquarters.

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

Object and functions of the Authority.

- 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 sector;
 - (c) promote the development of the retirement benefits sector;
 - (d) advise the Minister on the national policy to be followed with regard to retirement benefits schemes and to implement all Government policies relating thereto; and
 - (e) perform such other functions as are conferred on it by this Act or by any other written law.

Board of Directors.

- 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.

Powers of the Board. **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 funds of the Authority not currently required for its purposes in the manner provided in section 18.

Conduct of business and affairs of the Board. **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.

Delegation by the Board. **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.

- Remuneration of Board members. **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.
- The Chief Executive Officer. **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.
- Staff 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.
- The common seal of the Authority. **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.
- Protection from personal liability **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.

Liability of the Authority for damages. **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.

The Retirement Benefits Levy. **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.

The Retirement Benefits Authority Fund. **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 or the levy established by section 16;

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

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

(d) such sums as may be granted to the Authority by the

Minister pursuant to subsection (3); and

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

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

Investment of funds of the Authority. **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.

Financial Year. **19.**

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

Annual Estimates. **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.

Accounts and audit.

21.

- (1) The Authority shall cause to be kept all proper books and audit 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 Cap. 412. 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.

Act No. 7 of 1998
Comm.8.1.1999.

PART III - REGISTRATION OF RETIREMENT BENEFITS SCHEMES, MANAGERS AND CUSTODIANS

Retirement benefits schemes, managers and Custodians to be registered.

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 or custodian unless such person is registered under this Act and holds a valid certificate of registration issued pursuant to the provisions of this Act.

Act No. 7 of 1998
Comm.8.1.1999.

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

(4) A person who –

(a) establishes a retirement benefits scheme; or

(b) acts as a manager or custodian

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

Registration.
Act No. 7 of 1998
Comm.8.1.1999.

23. (1) A person proposing to establish a retirement benefits scheme or to act as a manager or a custodian 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.

Act No.7 of 1998
Comm. 8.1.1999.

(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 or a custodian as the case may be.

Act No. 7 of 1998
Comm.8.1.1999.

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

Requirements
registration.
schemes.

for 24.
of

(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.

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

Requirements
registration
managers.

for 25.
of

No applicant for registration as a manager shall be registered unless such applicant-

- (a) is a limited liability company incorporated under 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 sponsor specified in the scheme rules;
- (d) has the professional capacity to manage scheme funds;
- (e) has never been involved in the management of the scheme fund of any scheme which was deregistered due to any failure on the part of the management;
- (f) meets such additional requirements as may be prescribed.

Cap. 486

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

- (a) is a limited liability company incorporated under the Companies Act whose main function is to perform the functions of a custodian within the meaning of this Act; and
- (b) has the professional and technical capacity and adequate operational systems to perform the said functions; and
- (c) has never been a custodian of any scheme fund which was deregistered due to any fault, either

fully or partially, of the custodian;

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

Requirements with **26.**
regard to trustees.

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

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

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

- (b) is adjudged bankrupt;

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

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

Refusal of registration. **27.**

Act No. 7 of 1998
Comm.8.1.1999.

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

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

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

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

Deregistration. **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

Act No. 7 of 1998
Comm.8.1.1999.

- (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 or custodian if-
 - (a) it discovers after registration that the manager or custodian 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 or custodian ineligible to manage or provide custodial services to a scheme fund, as the case may be;
 - (c) the manager's or custodian 's business is wound up or is otherwise dissolved;
 - (d) the manager or custodian is in breach of any condition attached to the certificate of registration;
 - (e) the manager or custodian does not comply with any of provisions of this Act, or with any regulations made or directions issued there under.
- (4) The Authority shall, before deregistering a manager or custodian, give the manager or custodian and the sponsors or trustees of the scheme at least twenty-eight days notice of its intention, and shall consider any representations made to it in writing by the manager or custodian within that period before deregistering the manager or custodian.
- (5) Every notice under subsections (2) and (4) shall be in the prescribed form and shall specify the reasons for the intended deregistration.
- (6) The deregistration of a scheme shall not in any way prejudice the claims of members under the scheme.

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

Duration and renewal of certificates **29.**

Act No. 7 of 1998
Comm.8.1.1999.

(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 or a custodian shall be valid from the date of issue and shall, unless earlier revoked, expire on the thirty-first December next following the date of issue but shall thereafter, upon application in such manner and upon the payment of such fee as may be prescribed, be renewable annually.

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

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

Register.

30.

Act No. 7 of 1998
Comm.8.1.1999.

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

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

Use of register in evidence. **31.**

Act No. 7 of 1998
Comm.8.1.1999.

(1) For the purposes of ascertaining the facts concerning the registration of a scheme, manager or custodian, 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.

PART IV - REGULATION AND SUPERVISION OF RETIREMENT BENEFITS SCHEMES

- Scheme funds. **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.
- Statutory contributions. **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.
- Annual report and accounts. **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 -

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- (a) a statement of assets and liabilities;
 - (b) a statement of income and expenditure;
 - (c) a statement of the assets and liabilities of the scheme as on the last day of that year;
 - (d) such other documents as may be prescribed.
- (3) The accounts of the scheme fund in respect of each financial year shall be audited by an auditor appointed by the trustees with the approval of the Board.

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

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- (4) Within four 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.

Amended Finance Act No. 7
of 2002 on 13th June, 2002

Act No. 7 of
1998.

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

Actuarial evaluations. 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.

Protection against attachment. 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 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.

Investment of scheme funds. **37.**

Act No. 7 of 1998
Comm.8.1.1999.

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(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 five 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.

Restriction on use of scheme funds. **38.**

Act No.7 of 1998.
Comm.8.1.1999.

(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, including mortgages, at a preferential rate of interest or for any other consideration to the sponsor, trustees, members or the manager of such scheme.

(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.

Unsafe and unsound practices. **39.**

Act No. 7 of 1998
Comm.8.1.1999.

(1) Where, in the opinion of the Chief Executive Officer, a trustee, manager or custodian 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 or custodian to refrain from pursuing such act or course of conduct.

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

General obligations of trustees and managers. Act No.7 of 1998. Comm.8.1.1999.

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

- (a) ensure that the scheme fund is at all times managed in accordance with this Act, any regulations made there under, 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.

PART V - INSPECTION AND APPOINTMENT OF INTERIM ADMINISTRATOR

Inspection. Act No.7 of 1998. Comm.8.1.1999.

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 or custodian registered under this Act, and of its books, accounts and records.

- (2) When an inspection is made under subsection (1), the manager or custodian 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;

(c) 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.

Powers of the inspector. **42.**
Act No. 7 of 1998.
Comm.8.1.1999.

(1) An inspector may, by notice in writing, require any person who is or has at any time been a trustee, manager or custodian 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

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misleading in any material particular,
commits an offence.

- (3) A person convicted of an offence under subsection (2) shall be liable to a fine not exceeding five hundred thousand shillings, or, in the case of a natural person, to imprisonment for a term not exceeding three years, or to both.
- (4) Where an offence under subsection (2) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in subsection (3), be liable to a further fine of one thousand shillings for every day during which the offence continues.
- (5) Where the person convicted under this section is a body corporate, the Authority may, notwithstanding any other penalty imposed under this Act, apply to court for the winding up of such body corporate.

Inspection report.

- 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 there under, 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.

Directions to manager.
Act No. 7 of 1998.
Comm.8.1.1999.

- 44.** The Chief Executive Officer may, by notice in the prescribed form, require the trustees, manager or custodian 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.

Appointment of interim
administrator.
Act No. 7 of 1998.
Comm.8.1.1999.

- 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 or the custodian, as the case may be, to exercise all the powers of the trustees, the manager or the custodian to the exclusion of such trustees, manager or custodian;
 - (b) remove any officer or employee of the trustees, the manager or the custodian 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 there under 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 or the custodian 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 or the custodian, 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 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 scheme's and the manager's and the custodian's compliance with the Provisions of this Act and any regulations made there under;
 - (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 or the Custodian; and
 - (f) obtain from any former trustee or manager 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.

PART VI - APPEALS

- Appeals to the Chief Executive Officer. Act No. 7 of 1998. Comm.8.1.1999. **46.**
- (1) Any member of a scheme who is dissatisfied with a decision of the manager, custodian or trustees of the scheme may request, in writing, that such decision be reviewed by the Chief Executive Officer with a view to ensuring that such decision is made in accordance with the provisions of the relevant scheme rules or the Act under which the scheme is established.
 - (2) A copy of every request under this section shall be served on the manager, trustees or custodian of the scheme.
- Establishment of Appeals Tribunal. **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.
 - (4) 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.
- Appeals to the Tribunal. **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.
- Powers of Appeals Tribunal. **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.

Refusal or failure to **50.**
give evidence.

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

- (a) refuses or fails to attend at the time and place mentioned in the summons served on him; or
- (b) refuses or fails to answer, fully and satisfactorily, to the best of his knowledge and belief, all questions lawfully put to him by the Tribunal; or
- (c) refuses or fails to produce any records, books of account, statements or other documents which are in his possession or under his control or mentioned or referred to in any summons served on him, commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

Costs.

- 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.

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Rules for appeals to the Appeals Tribunal. **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 shall apply as if the matter appealed against were a decree of a subordinate court exercising original jurisdiction'.

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PART VII - MISCELLANEOUS

General penalty.

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 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.

Offences by corporate bodies, partnerships, principals and employees. **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, appoint public prosecutors for the purposes of cases arising under this Act.

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

Regulations.
Act No. 7 of 1998.
Comm.8.1.1999.

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 provisions of this Act and of any other written law, make provisions with regard to the winding up of schemes and the transfer of the assets of the schemes upon such winding up;

(g) regulate the transitional period prescribed by section 57.

Exemption from Cap. 446. 56.

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

Transitional provisions 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.

Supersession. 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.

Exemption from compliance with provisions of this Act 59
Inserted: Finance Act, 2003 – 9.1. 2003

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) extent 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 111 of this Act.

SCHEDULE (s.8)

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

Tenure of office.

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

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

Vacation of office. Act No. 7 of 1998. Comm.8.1.1999.

2. A member other than an ex officio member may-

(a) at any time resign from office by notice in writing to the

Minister;

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

Meetings.

3. (1)The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
- (2)Unless three quarters of the total members of the, Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
- (3)The quorum for the conduct of the business of the Board shall be three members excluding the Chief Executive Officer, of whom at least one shall be from amongst the members of the Board appointed under paragraph (f) of Section 6.
- (4)The chairman shall preside at every meeting of the Board - it which he is present but in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.
- (5) Unless a unanimous decision is reached a decision on any matter before the Board shall be by a majority of

votes of the members present and in the case of an equality of votes, the chairman or the person presiding shall have a casting vote.

- (6) Subject to paragraph (3), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.
- (7) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make standing orders in respect thereof.

- Disclosure of interest. 4. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

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

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

- The common seal. 5. The affixing of the common seal of the Authority shall be authenticated by the signatures of the chairman and the Chief Executive Officer and any document required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairman and the Chief Executive Officer:

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

- Contracts and 6. Any contract or instrument which, if entered into or executed
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Instruments.

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

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

Minutes.
