

THE COUNTY RETIREMENT SCHEME BILL, 2014

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SCHEDULE

Provisions Relating to the Conduct of Business and Affairs of the Board

THE COUNTY RETIREMENT SCHEME BILL, 2014**A Bill for**

An ACT of Parliament to: establish the County Retirement Benefits Scheme; provide for the establishment of the Board of Trustees; provide a defined contribution scheme for county employees, State officers in the counties and self employed persons; provide for the management and administration of the Scheme; and for related matters.

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

1. This Act may be cited as the County Retirement Scheme Act, 2014. Short title

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

“Administrator” means the person appointed under an instrument by the Trustees to manage the administrative affairs of the Scheme;

“Authority” means the Retirement Benefits Authority;

“Board” means the Board of Trustees established under section 5;

“Cabinet Secretary” means the Cabinet Secretary responsible for the national Treasury;

“Chairperson” means the chairperson of the Board of Trustees established under section 5;

“Chief Executive Officer” means the chief executive officer of the Scheme appointed under section 17;

“child” means any child of a deceased member who has not attained eighteen years of age or if the child is receiving full time education, not more than twenty-five years of age and was at the time of the death of the deceased wholly or mainly dependent on the deceased. This category of dependants—

(a) is closed at the death of the member; and

(b) includes an unborn child who, if already born, would have been a child of the deceased;

“contribution” means the amount payable by a member or sponsor into the Scheme;

“custodian” means a person registered under the Retirement Benefits Act and appointed by the Board under section 23;

“dependant” in relation to a deceased member, means a relative of the deceased who survives the deceased and who, on the date of the deceased’s death, was —

- (a) a spouse to the deceased;
- (b) a child of the deceased; or
- (c) a parent of the deceased who was dependent on the deceased for the provision of the ordinary necessities of life;

“employer” means a county government or any of its entities, a state organ or associated organization or any other person or body, as may be approved by the Board and has signed a Deed of Adherence in accordance with this Act;

“Fund” means the fund established under section 38;

“Fund Manager” means a manager registered under the Retirement Benefits Act and appointed by the Board under section 22;

“income drawdown” means the facility to continue to keep retirement savings invested and take an income at a specified period rather than buy an annuity;

“investment return” means a portion of the return of the investment declared by the Board and appropriated to the account of a member;

“member” means a person who is a member of the Scheme and includes a person entitled to or receiving a benefit under the Scheme;

“member account” means an account maintained by the Scheme for an individual member;

“public service” means the collectivity of individuals, other than State officers, performing a function within a state organ;

“Scheme” means the County Retirement Scheme established under this Act;

“Secretary” means the Secretary appointed by the Board under section 18;

“sponsor” means an employer or any other person or body who makes contributions on behalf of a member;

“spouse” means a male or female person to whom a member is married or was married immediately before their death under the law, whether monogamous or not; and

“Trustee” means a member of the Board of Trustees established under section 5.

3. This Act applies to all County Government employees.

Application
Clause

4. A public officer or any other person approved by the Board may become a member of the Scheme.

Scope of the Act

PART II—ESTABLISHMENT AND MANAGEMENT OF THE COUNTY RETIREMENT SCHEME

5. (1) There is established the County Retirement Scheme.

Establishment of
the County
Retirement
Scheme

(2) The Scheme is a body corporate with perpetual succession and a common seal and is in its corporate name capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) enter into contracts;
- (d) borrowing and lending money; and
- (e) doing or performing all such other things or acts as may be necessary in furtherance of its purpose and functions.

(3) The Scheme shall be a defined contribution providing social security benefits including —

- (a) periodic payments as pension;
- (b) lump sum payments as provident benefits;
- (c) income drawdown; and
- (d) any other benefit approved by the Board under this Act.

6. (1) There is established the Board of Trustees of the Scheme.

Board of Trustees
of the Scheme

(2) The Board comprises of the following members-

- (a) a Chairperson appointed by the Cabinet Secretary by virtue of their knowledge and experience in matters relating to administration of scheme funds, actuarial science, insurance, accounting and auditing or law;
- (b) the Cabinet Secretary to the national treasury or a representative appointed in writing by the Cabinet Secretary;
- (c) a representative of the Council of Governors nominated by the Council of governors;
- (d) a representative of the County Public Service Boards;
- (e) a representative of the County Assembly Service Boards; and
- (f) four other Trustees nominated by employees two of whom shall not be of the same gender.

(3) The Cabinet Secretary shall formally appoint the nominees forwarded under sub-section (2) by notice in the Gazette.

(4) The Board of Trustees shall, subject to section 6, make regulations specifically on the procedure for nomination, appointment and reappointment of the Trustees under subsection (2).

(5) The Chief Executive Officer and the Secretary are *ex officio* members of the Board with no voting rights.

7. (1) The nomination of the Trustees listed in section 5 must be carried out—

Procedure for
appointment of
Trustees

- (a) in a competitive and transparent manner;
- (b) based on merit; and
- (c) in line with the principles of public service under the Constitution.

(2) The Vice-chairperson shall—

- (a) be elected by the Trustees at their first sitting; and
- (b) not be of the same gender as the chairperson.

8. (1) A person is qualified for appointment as a Trustee if that person—

Qualifications for
appointment of
Trustees

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least five years experience in—
 - (i) finance;
 - (ii) law;
 - (iii) economics;
 - (iv) actuarial science; or
 - (v) any other profession directly relevant to the functions of the Board; and
 - (vi) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

9. The Board shall—

Functions of the Board

- (a) formulate policy relating to the Scheme;
- (b) collect contributions from members and sponsors;
- (c) pay out the various benefits to persons entitled to the benefits as provided under the Act;
- (d) protect the long term viability of the Scheme;
- (e) ensure efficient management of the Scheme;
- (f) ensure prudent investment of the monies forming part of the Scheme;
- (g) ensure that the Scheme observes high standards of corporate and business ethics; and
- (h) perform any other functions assigned to it under this Act.

10. (1) The Board shall have all powers necessary for the proper performance of the functions of the Scheme under this Act.

Powers of the Board

(2) Without prejudice to the generality of subsection (1), the Board shall have power to—

- (a) supervise the assets of the Scheme in such manner as best promotes the purpose for which the Scheme is established;

- (b) ensure protection, where necessary, of the assets of the Scheme;
- (c) associate with any other institution so as to further the purpose for which the Scheme is established;
- (d) receive grants, gifts, donations or endowments and make legitimate disbursements from them;
- (e) enforce remittance of outstanding contributions by a sponsor;
- (f) invest any monies of the Scheme not immediately required for its purposes in the manner provided in section 40;
- (g) delegate any of its powers; and
- (h) undertake any activity necessary for the fulfilment of any of the functions of the scheme.

(3) The Board may subject to such conditions as it may think fit, by directions in writing, delegate any of its powers to any one or more of the Trustees or to the Chief Executive Officer or employee of the Scheme.

11. (1) The Board may establish committees for the better carrying out of its functions.

Committees of the Board

(2) The Board may co-opt persons to committees established under subsection (1) for a particular reason and such persons shall hold office for such period as the Board may determine.

(3) The persons co-opted under subsection (2) must not be more than two.

12. (1) Each Trustee holds office on a part-time basis for a term of three years and may be eligible for re-appointment for one further term of three years.

Term of office

(2) Where a Trustee opts to apply for re-appointment under subsection (1), the re-appointment may be considered based on the performance of the applicant.

(3) The Board shall put in place arrangements to ensure that one-third of the Trustees are appointed in a staggered manner separated by a year.

13. The Board shall be paid such allowances as the Cabinet Secretary may from time to time, determine in

Remuneration of Trustees

consultation with the Salaries and Remuneration Commission.

14. (1) The business and affairs of the Board must be conducted in accordance with the Schedule.

Meetings of the Board

2) Except as provided in the Schedule, the Board may regulate its own procedure subject to the provision of the law governing the meetings and proceedings of the boards of state corporations.

(3) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any of its decisions.

15. (1) A Trustee may be removed from office by the Cabinet Secretary in consultation with the Authority for:—

Removal from office

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct or misbehaviour;

(c) incompetence or negligence of duty; or

(d) absence from three consecutive meetings of the Board without a reasonable explanation.

(2) Before the Cabinet Secretary makes a decision under subsection (1), a Trustee must be given an opportunity to provide a defence against any allegation.

(3) Despite subsection (1), the Authority may remove a trustee on grounds specified in the Retirement Benefits Act.

Cap 197

16. A person ceases to be a Trustee if the person—

Vacation of office

(a) resigns in writing, to the Cabinet Secretary;

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of more than six months;

(c) is declared bankrupt;

(d) is unable to perform the functions of their office by reason of mental or physical infirmity; or

(e) dies.

17. Where a vacancy occurs in the membership of the Board under section 14 or 15, the cabinet secretary shall

Filling of vacancy

appoint a new member in accordance with the provisions of this Act.

18. (1) There shall be a Chief Executive Officer of the Scheme who shall be the Administrator of the Scheme.

Chief Executive
Officer of the
Scheme

(2) The Chief Executive Officer shall be appointed by the Cabinet Secretary, on recommendation of the Board, on such terms and conditions as may be specified in the instrument of appointment.

(3) Despite subsection (1), the appointment of the Chief Executive Officer shall be through a competitive recruitment process.

(4) A person is qualified for appointment as the Chief Executive Officer if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least five years experience at management level in a profession directly relevant to the functions of the Scheme;
- (d) is a member of the professional body regulating the relevant profession; and
- (e) meets the requirements of leadership and integrity set out in chapter six of the Constitution.

(5) The Chief Executive Officer is the accounting officer of the Scheme and, subject to the direction of the Board, is responsible for the—

- (a) implementation of the decisions of the Board;
- (b) day to day management of the affairs of the Scheme;
- (c) organization and management of the employees; and
- (d) any other function that may be assigned by the Board.

(6) The Chief Executive Officer holds office for a term of four years and is eligible for re-appointment for one further term of four years based on satisfactory performance.

(7) The Chief Executive Officer may be removed from office on the recommendation of the Board on the grounds set out in the instrument of appointment.

(8) Before the Chief Executive Officer is removed under subsection (7), the chief executive officer must be given—

- (a) sufficient notice of the allegations made against them; and
- (b) an opportunity to be heard either in person or by a legal representative.

19. (1) There is a Secretary of the Board who shall be appointed by the Board on such terms and conditions as may be specified in the instrument of appointment.

Secretary of the
Board

(2) A person is qualified for appointment as Secretary if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least five years experience in senior management in any of the following fields—
 - (i) public administration;
 - (ii) business administration;
 - (iii) finance;
 - (iv) management;
 - (v) governance; or
 - (vi) law.
- (d) is a member of the Institute of Certified Public Secretaries of Kenya in good standing as provided under the Certified Public Secretaries Act; and
- (e) meets the requirements of leadership and integrity set out in chapter six of the Constitution.

(3) The Secretary is subject to the direction of the Board and shall—

- (a) record the minutes of the Board meetings;
- (b) advise the Trustees on corporate governance

principles and plans;

- (c) facilitate professional development programs for the Board;
- (d) maintain and monitor a calendar of the Scheme's statutory due dates;
- (e) keep all the records of the Scheme in a safe place;
- (f) ensure effective information flows —
 - (i) within the Board;
 - (ii) from the Board to its committees; and
 - (iii) from the committees to the Board; and
- (g) any other function that may be assigned by the Board.

20. (1) The Scheme may engage such other employees as it may consider sufficient for the performance of its functions under this Act.

Employees of the Scheme

(2) The terms and conditions of service of employees of the Scheme shall be determined by the Board in consultation with the Salaries and Remuneration Commission.

21. (1) The Board may create within the Scheme such directorates, units, divisions, committees or offices and appoint to these offices such employees as it may determine.

Offices of the Scheme

(2) Every directorate, unit, division or committee created by the Board shall act in accordance with the mandate approved by the Board and directives given in writing by the Chief Executive Officer.

22. (1) The affixing of the common seal of the Scheme may be authenticated by the signature of the Chairperson and the Chief Executive Officer.

Common seal of the Scheme

(2) A document not required by law to be made under seal and all decisions of the Scheme may be authenticated by the signatures of the Chairperson and the Chief Executive Officer.

(3) If the Chairperson, the Vice-chairperson or the Chief Executive Officer is absent, the Board may nominate a Trustee to authenticate the seal on behalf of the

Chairperson, Vice-chairperson or the Chief Executive Officer.

(4) The common seal of the Scheme shall be kept in such custody as the Board may direct and must not be used except on the order of the Board.

(5) The common seal of the Scheme when affixed to a document and authenticated shall be officially noticed and unless the contrary is proved, an order or authorization of the Board under this section shall be presumed to have been given.

PART III—ADMINISTRATION OF THE COUNTY RETIREMENT SCHEME

23. The Board shall appoint a Fund Manager of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act—

Appointment and
functions of the
Fund Manager

- (a) implement the investment policy of the Scheme as approved by the Board;
- (b) manage the scheme funds and assets in accordance with the provisions of the Retirement Benefits Act;
- (c) maintain books of account on all transactions relating to the Scheme;
- (d) provide regular information on investment strategy, market returns and other performance indicators to the Board; and
- (e) perform any other function that may be assigned in the instrument of appointment and other written law.

24. (1) The Board shall appoint a Custodian of the Scheme who shall, in addition to the duties under the Retirement Benefits Act—

Appointment and
functions of the
Custodian

- (a) receive the total contributions remitted by the member and sponsor under this Act on behalf of the Board;
- (b) within twenty four hours of receipt of the contributions from the sponsor, notify the Administrator of such receipt;
- (c) receive and keep in safe custody the title documents, securities and monies of the Scheme in trust for the members and beneficiaries;

- (d) collect dividends for the members;
- (e) report to the Board on any matter relating to the assets being held by the custodian on its behalf at such intervals as may from time to time be determined by the Board;
- (f) undertake statistical analysis on the investments and returns on investments with respect to funds in its custody and provide data and information to the Administrator and the Board;
- (g) execute, in favour of the Board, the relevant proxy for the purpose of voting in relation to the investments; and
- (h) perform any other function that may be assigned in the instrument of appointment or any other written law.

(2) The Custodian shall maintain all funds and assets in its custody to the order of the Board and shall not utilise any pension fund or assets in its custody to meet its own financial obligation.

25. (1) The Scheme shall be administered by an Internal Administrator who is the Chief Executive Officer appointed under section 18 and other Officers appointed by the Board in section 20 and 21.

Establishment of
the Administrator

(2) The Administrator established in subsection (1) may administer other retirement schemes as may be approved by the board.

(3) The Administrator shall open and operate an account for each member.

(4) Upon receiving the contributions remitted under this Act, the Administrator shall cause the contributions to be credited in the account of the member in respect of whom the sponsor has made the payment.

26. (1) Every member shall, so long as they remain in the employment of a sponsor, contribute to the Scheme in the manner prescribed by section 26 of this Act.

Liability to
contribute

(2) Every sponsor shall contribute to the Scheme, in addition to the sums deducted from its employees in (1) above, their part of the contributions.

(3) The contributions under subsections (1) and (2) are a percentage of the member's salary as the Board may, by regulations, prescribe.

27. (1) A contribution required to be made under this Act shall be deducted by a sponsor from the salary of the contributor on each occasion on which the salary is paid and shall be paid into the Scheme together with the sponsor's contribution within such period as the Board may prescribe.

Method of contribution

(2) Despite the actual date on which the deduction is made pursuant to subsection (1), each contribution shall be deemed for the purposes of this Act to be credited to the contributor's account in the Scheme on the last day of the month in respect of which the salary is due.

28. Despite any other provision in this Act, a person who does not have a sponsor may join the Scheme at any time and, with the consent of the Board, determine their retirement age for purposes of contributing to the Scheme.

Membership of the Scheme without a sponsor

29. All the benefits derived from contributions by a member and sponsor shall vest immediately in the member.

Vesting of benefits

30. (1) A member shall not withdraw membership or retirement benefit from the scheme while the member is in the employment of a sponsor.

Withdrawal of membership or benefits

(2) Despite subsection (1), a member may withdraw benefits from their account before normal retirement age in the following circumstances—

- (a) early retirement;
- (b) resignation;
- (c) dismissal;
- (d) ill health;
- (e) emigration; or
- (f) transfer to another scheme.

(3) Despite subsection (1), a member may withdraw —

- (a) their contribution and investment return in full, on leaving employment for any other reason; and
- (b) the aggregate of any additional voluntary contributions made into the Fund together with

investment return in full, on leaving employment for any other reason.

31. (1) Despite any other provisions in this Act, a member who retires is entitled to make withdrawals—

Retirement from
the service

- (a) on attaining the retirement age, or where their exact date of birth is not known, on the 1st July in the year in which the Board deems that they have reached retirement age;
- (b) on attaining the retirement age agreed between the sponsor and the Board;
- (c) on compulsory retirement under subsection (4);
- (d) on the advice of a qualified medical practitioner appointed by the Board certifying that the member is no longer mentally or physically capable of carrying out the functions of their office; or
- (e) on termination of service in the public interest.

(3) The proof of age of a retiring member for the purposes of subsection (1) is the date of birth in either of the following documents—

- (a) birth certificate;
- (b) national identification card; or
- (c) a valid passport.

(4) The sponsor may require an officer to retire from the public service in any other case, at any time after the officer attains the age of fifty years.

(5) For the purposes of this section, “retirement age” means the standard retirement age as prescribed in the Scheme.

(6) Despite subsections (1) and (5), a member may continue membership of the scheme past the retirement age provided that the member has signed an agreement with the Board.

32. A member may be permitted to receive benefits before attaining retirement age if medical evidence is submitted to the scheme showing that the member is permanently incapacitated and cannot perform their normal gainful employment or any other occupation for which they are reasonably suited by education, training or experience.

Retirement of on
grounds of ill
health

33. (1) Where a member retires as provided in this Act, the member may request the Board in writing to pay to them—

Payment of
retirement
benefits

- (a) an income drawdown;
- (b) a pension;
- (c) an annuity purchased from an approved issuer of their choice; or
- (d) a lump sum.

(2) Despite subsection (1), a member may withdraw additional voluntary contributions made into the Scheme and investment return in full.

(3) The retirement benefits may be paid to a member who retires and elects to be paid.

(4) Despite the provisions of any other written law, a benefit granted under this Act shall not be—

- (a) assignable or transferable except for the purpose of satisfying—
 - (i) a tax due to the national or county government; or
 - (ii) a court order for the payment of periodical sums of money towards the maintenance of a spouse or child or as ordered by a Court; and
 - (iii) a cause for assignment approved under the Retirement Benefits Act; or
- (b) liable to be attached in settlement of any claim.

(4) The payment of a retirement pension shall commence from the end of the month immediately following the month of the retirement of the member.

34. (1) Every member must provide their particulars and those of their dependants to the Administrator in the prescribed manner.

Particulars of
member and
dependants of the
member

(2) A member may update the particulars provided under subsection (1) at any time and, in any event, at least three years before their retirement.

(3) Upon the death of a member, their benefits shall be paid to the person whose particulars the member had provided.

(4) Where a dispute arises under this section, the Board shall consider any evidence presented before it and determine the rightful beneficiary.

35. (1) Upon the death of a member, the Board shall apply the benefits of the member under this Act in favour of the nominated beneficiary.

Death of a
member in service

(2) In the absence of a nomination, the Board taking into, shall apply the benefits referred to in subsection (1) to either the dependants or the personal representatives of the estate of the deceased.

36. (1) Where a member is missing and it is proved that the member has not been heard of for such period as prescribed by the law relating to presumption of death by those who might be expected to have heard of the member if that member was alive, there shall be a rebuttable presumption that the member is dead as provided under the law.

Presumption of
death of member

(2) Where a person is presumed dead under this section, the provisions of section 34 apply.

37. (1) If a married member who was receiving a retirement benefit dies, a pension that is equivalent to the unutilized balance of the account of the member shall be paid to the nominated beneficiaries of the member.

Death of member
in retirement

(2) The payment under subsection (1) shall be made to the beneficiaries commencing from the day following the death of the member.

38. No retirement benefits under this Act shall be made by the Scheme to—

Prohibited
payments from the
Scheme

- (a) a sponsor without the prior written consent of the Authority and the Kenya Revenue Authority; or
- (b) a member while the member is still in the employment of a sponsor; or
- (a) any person as a loan, advance or other similar benefit or payment except as provided under this Act.

PART IV—FINANCIAL PROVISIONS

39. (1) There is established a Fund to be known as the County Retirement Scheme Fund which shall be administered by the Board.

County
Retirement
Scheme Fund

(2) The Fund consists of—

- (a) monies as may vest in or accrue to the Scheme in the performance of its functions under this Act or under any other written law;
- (b) contributions by a member or a sponsor;
- (c) grants, gifts, donations or other endowments given to the Scheme;
- (d) income from investments made by the Scheme that are approved by the Board;
- (e) monies earned by the Scheme from any other source; and
- (f) monies from any other source provided or donated or lent to the Scheme.

(3) There shall be paid out of the Fund—

- (a) all payments which are due as provided under this Act;
- (b) the expenses incurred in the management and administration of the Scheme.

(4) For the avoidance of doubt, nothing in this Act is intended to or

may be construed as providing for or dealing with-

- (a) taxes;
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or
- (e) matters incidental to any of those matters.

40. The Board shall establish an account into which shall be paid—

- (a) the monies transferred from the Fund for the trust expenses incurred by the Board in the exercise of its powers or the performance of its functions under this Act;

Trust and
administrative
expenses of the
Scheme

- (b) the annual administrative expenses deducted from the value of the Fund at the rate approved from time to time by the Board but subject to a maximum of five percent of the fund value or any such rate as the Board in consultation with the Authority may prescribe;
- (c) monies that may vest in the Board in the course of the exercise of the powers of the Board;
- (d) income from the investment of the monies held in the account established under this section; and
- (e) all monies from any other source provided for or donated or lent to the Board.

41. The Board may invest any surplus monies held in the account established under this Act in asset classes approved under the Retirement Benefits Act.

Investment of
surplus funds
Cap 197

42. (1) The Board shall maintain a reserve account of the Scheme into which the following shall be deposited—

Reserve account

- (a) any special contribution paid into the Scheme by a sponsor or the Government for the purpose of improving the benefits of the members; and
- (b) any income of the Scheme that the Board determines should be set aside to stabilize the returns to members subject to a maximum of ten per cent of such income or such sum as directed by the Authority.

(2) No money shall be drawn out of the reserve account except as directed by the Board.

(3) Any monies determined to be income of the reserve account shall be treated as income forming part of the general income of the Scheme.

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

Annual estimates

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

- (a) payment of the salaries, allowances, and other charges in respect of the employee of the Scheme;

- (b) payment of benefits and other charges which are payable out of the funds of the Scheme;
- (c) funding of the registration, monitoring and evaluation activities of the Scheme;
- (d) maintenance of the buildings and grounds of the Scheme;
- (e) funding of training, research and development of activities of the Scheme;
- (f) reserve funds to meet future or contingent liabilities in relation to retirement benefits, insurance or replacement of buildings or equipment; and
- (g) such other matters as the Board may consider fit.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for transmission to and tabling in the National Assembly.

(4) Expenditure of the Scheme shall not be incurred except in accordance with the annual estimates approved under subsection (3).

44. (1) The Board shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities.

Accounts and
Audit

(2) Within a period of three months after the end of each financial year, the Board must submit to the Auditor-General the accounts of the Scheme in respect of that year together with—

- (a) a statement of the income and expenditure of the Scheme during that year; and
- (b) a statement of the assets and liabilities of the Scheme on the last day of that financial year.

(3) The annual accounts of the Scheme must be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the law relating to public audit.

45. The financial year of the Scheme shall be the period of twelve months ending on the thirtieth June in each year.

Financial year

46. The annual income from investments of the scheme together with any profit and loss on realization of investment shall be carried to a profit and loss account maintained by the Board.

Profit and loss account

47. From the profit and loss account referred to in section 45, investment returns shall be credited to members' accounts on a pro rata basis.

Annual distribution of profits

48. (1) The Scheme shall be reviewed by an actuary appointed by the Board at such intervals as the Board may consider necessary.

Actuarial review of the Scheme

(2) The actuary appointed under subsection (1) shall—

- (a) prepare a report on the state of the Scheme; and
- (b) recommend any necessary action to be taken.

(3) The actuary shall submit the report prepared under subsection (2) to the Board within the stipulated time in the instrument of appointment.

(4) The Board shall, within six months of the receipt of such report, consider any recommendations made by the actuary and in so doing, may take any other action recommended by the actuary.

PART V-GENERAL PROVISIONS

49. (1) The Board must—

Duty of care

- (a) ensure that the Scheme is at all times managed in accordance with the provisions of this Act, the Retirement Benefits Act and any other law; and
- (b) take reasonable care to ensure that the management of the scheme or safe keeping of the assets of the Scheme is carried out in the best interests of the members of the Scheme;

(2) The Administrator, Fund Manager and Custodian must—

- (a) report to the Board, as soon as reasonably practicable, any unusual occurrence with respect to the Scheme which in their view could adversely affect the rights of the owner of a member's account under the Scheme; and
- (b) report to the Board, as soon as is reasonably practicable, if an employer has not remitted the

required contribution and such remittance remains due for more than ten days.

50. No action or omission by any member of the Board, or employee of the Scheme shall, if the act was done in good faith for the purpose of carrying out the provisions of this Act or any other law, subject the person to any liability, action, claim or demand.

Protection from
personal liability

51. (1) A person who—

Offences

- (a) wilfully fails to remit contributions to the Scheme as required;
- (b) knowingly gives false information to the Scheme; or
- (c) being a Trustee or employee of the Scheme, wilfully misappropriates the assets of the Scheme,

commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years or to both.

(2) Where an offence under this section is committed by a body corporate, every person who at the time of the commission of the offence was—

- (a) a director, general manager, secretary of the company or other similar officer of the body corporate; or
- (b) purporting to act in any such capacity as provided in paragraph (a), commits that offence.

(3) Despite subsection (2), it is a defence if a person proves that the offence was committed without their consent or involvement and that they exercised due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of their functions in that capacity and to all the circumstances.

52. (1) Where a sponsor, with the agreement of a member of the Scheme, made a deduction from the member's salary for remittance to the scheme, fails to remit the deduction within fifteen days of the deduction, the scheme may, after giving such sponsor not less than seven days' notice, institute proceedings for the recovery of the deduction.

Proceedings for
recovery of
deductions from
sponsors

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

- (a) require the sponsor to pay the sum deducted to the scheme within seven days of the notice; and
- (b) inform the sponsor that if the sponsor fails to pay the sum before the expiration of the notice, proceedings for summary recovery of the sum shall be filed in court without further reference to the sponsor.

(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 this section, a person who refuses or fails to comply with a notice given under subsection (1) commits an offence and is 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, in addition to the penalty prescribed in that subsection, is liable to a further fine of one thousand shillings for every day or part thereof during which the offence continues.

53. (1) A person who: —

General Penalty

- (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 of the Authority;

commits an offence and is 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 the person proves, to the satisfaction of the court, that the act or omission constituting the offence was done without their knowledge, consent or connivance and that they attempted to prevent the commission of the offence having regard to all the circumstances of the case.

54. (1) The Board may make regulations generally for the better carrying out of any provisions of this Act. Regulations

(2) Without prejudice to the generality of subsection (1), such regulations may provide for the—

- (a) mode of paying out pension and provident benefits;
- (b) mode of provision of the details of members and their dependants;
- (c) retirement age;
- (d) implementation of this Act;
- (e) guidelines for operating the Scheme;
- (f) general management of the Scheme;
- (g) rules for nomination and appointment of trustees; and
- (h) such other matters as the Scheme considers necessary.

(3) The Cabinet Secretary shall gazette the Regulations.

55. The Local Authorities Provident Fund Act is repealed. Repeal of Cap. 272

56. A person who is a member of this Scheme is exempt from making compulsory contributions to any other statutory Scheme. Exemption from other statutory schemes

57. (1) A person who immediately before the commencement of this Act was an employee of Local Authorities Provident Fund Board shall, upon the commencement of this Act, be deemed to be an employee of the Scheme. Saving and transitional provisions

(2) The persons who, immediately before the commencement of this Act, were the Chairperson and members of the Board of Local Authorities Provident Fund shall serve their unexpired term.

(3) The Scheme is the successor to the Local Authorities Provident Fund Board existing immediately before the commencement of this Act, and subject to this Act, all rights, obligations, assets and liabilities of that Scheme existing at the commencement of this Act shall be transferred to the Scheme.

(4) All the funds, assets, records and other property, movable and immovable which immediately before the coming into operation of this Act, were held by or on behalf of the former Local Authorities Provident Fund Board shall by virtue of this subsection vest in the Scheme.

(5) All rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the coming into operation of the Act were vested in, imposed on or enforceable by or against the former Local Authorities Provident Fund Board shall by virtue of this subsection be transferred to, vested in, imposed on, or be enforceable against the Fund.

(6) On and after the coming into operation of this Act, all actions, suits or legal proceedings by or against the former Local Authorities Provident Fund Board shall be carried on or prosecuted by or against the Scheme and no such suit, action or legal proceedings shall abate or be affected by the coming into operation of this Act.

(7) The annual estimates approved for the former Local Authorities Provident Fund Board in respect to the financial year in which this Act comes into operation shall be considered to be the annual estimates of the Scheme for the remainder of the financial year but those estimates may be varied by the Cabinet Secretary.

SCHEDULE (s.13)

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

1. (1) The Board shall have at least four meetings 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.

Meetings

(2) Meetings shall be convened by the Secretary of the Board in consultation with the Chairperson and shall be held at such times and such places as the Chairperson shall determine.

(3) The Chairperson shall preside over all meetings and in the absence of the Chairperson, the Vice-chairperson or by a trustee elected by the Board at the meeting for that purpose.

(4) The Chairperson may at any time convene a special meeting of the Board, and shall do so within seven

days of the receipt by the Chairperson of a written request signed by at least five other trustees.

(5) Unless six Trustees otherwise agree, at least seven days' notice of a meeting shall be given to every trustee.

2. (1) The quorum of a meeting of the Board is five Trustees present and voting. Quorum

(2) For special meetings, the quorum is six Trustees present and voting.

3. A decision of the Board shall be by a majority of the trustees present and voting and, in the case of an equality of votes; the person presiding at the meeting shall have a second or casting vote. Voting

4. Minutes of all meetings shall be kept and entered in records kept for that purpose. Minutes

5. (1) If a person is present at a meeting of the Board or any committee at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest. Disclosure of interest

(2) The person making the disclosure of interest under subsection (1) must not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching on the matter.

(3) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(4) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(5) A trustee or employee of the Scheme shall not transact any business or trade with the Scheme.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to establish the County Retirement Scheme as a mandatory Scheme for all County Government Officers; provide for the establishment of the Scheme's Board of Trustees and provide for the Scheme's management and administration. The Bill proposes to have the scheme offer lump sum payments as provident, periodic payments as pensions and income draw-downs. The proposed Scheme will transition the former local authorities' retirement arrangements into one universal scheme for all the forty seven county governments besides being open to other public officers and any other person approved by the Board.

Part I (clauses 1-4) contains preliminary matters.

This part contains the short title, interpretation of terms, the application clause which includes all County Government employees as well as any public institution, organization or state officer who may wish to join and the scope of the Bill which is to extend the range of those who may access the Scheme's services.

Part II (clauses 5-22) provides for the establishment and management of the Scheme. It establishes the County Retirement Scheme and its Board of Trustees. It provides the procedure for appointment of the Trustees and the necessary qualifications. It also provides the Trustees' functions and powers and sets their tenure to four years renewable once based on performance.

Part III (clauses 23-38) contains provisions on the administration of the Scheme and provides for the appointment of the Fund Manager and the Custodian. It also sets out their functions. The functions of the Administrator, who is the Chief Executive Officer, are also set out. Further, the part provides for membership of the Scheme without a sponsor, the vesting of benefits, and withdrawal from the retirement savings account and retirement from the service among others. Finally, it sets out the prohibited payments from the Scheme.

Part IV (clauses 39-48) contains the financial provisions and establishes the County Retirement Scheme Fund. It also provides how surplus funds may be invested as well and sets out a requirement for the Board to have a reserve account.

Part V (clauses 49-57) sets out the general provisions including the duty of care of the Board, protection of the Trustees and employees of the Scheme from personal liability, offences, and proceedings for recovery of deductions from employers and a general penalty clause. It also contains a provision on the making of regulations and gives this power to the Board, in consultation with the Cabinet Secretary. The repeal of the Local

Authorities Provident Fund Actis also provided for in this part. Finally, this part contains a provision exempting members of the Scheme from contributing to other statutory schemes and concludes with the savings and transitional provisions.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate any legislative powers nor does it limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill concerns county governments in terms of Articles 110(1) (a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 21st May, 2014.

KITHURE KINDIKI,
Senate Majority Leader.