

THE COUNTY PENSION SCHEME BILL, 2016
ARRANGEMENT OF CLAUSES

Clauses

PART I — PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Application.
- 4—Objects of the Act.

**PART II — ESTABLISHMENT, ADMINISTRATION
AND MANAGEMENT OF THE COUNTY PENSION
SCHEME**

- 5—Establishment of the County Pension Scheme.
- 6—Board of Trustees of the Scheme.
- 7—Qualifications for appointment of Trustees.
- 8—Functions of the Board.
- 9—Powers of the Board.
- 10—Committees of the Board.
- 11—Tenure of office.
- 12—Remuneration of Trustees.
- 13—Removal from Office.
- 14—Vacation of office.
- 15—Filling of Vacancy.
- 16—Meetings of the Board.
- 17—Common Seal.

**PART III—ADMINISTRATION AND
MANAGEMENT OF THE COUNTY PENSION FUND**

- 18—Appointment and functions of the Fund Manager.
- 19—Appointment and functions of the Custodian.
- 20—The Corporate Administrator.

21—Liability to contribute.

22—Method of Contribution.

23—Phasing of Contributions.

PART IV—FINANCIAL PROVISIONS

24—County Pension Fund.

25—Trust and administrative expenses of the Scheme.

26—Investment of surplus funds.

27—Reserve account.

28—Annual Estimates.

29—Accounts and audit.

30—Financial year.

31—Actuarial review of the Scheme.

PART V—GENERAL PROVISIONS

32—Duty of care.

33—Protection from personal liability.

34—Offences.

35—Proceedings for recovery of deductions from sponsors.

36—General Penalty.

37—Exemption from other statutory schemes.

38—Amendments.

PART VI— AMENDMENTS TO EXISTING LAWS SAVINGS AND TRANSITIONAL PROVISIONS

39—Amendments to the Pensions Act, Cap. 189.

40—Amendment to the Public Service Superannuation Scheme, No. 8 of 2012.

41—Amendment to the Local Authorities Provident Fund Act, Cap. 272.

42—Amendment to the Intergovernmental Relations Act, No. 2 of 2012.

43—Amendment to the County Governments Act, No. 17 of 2012.

44—Amendment to the Urban Areas and Cities Act, 2011.

SCHEDULES

FIRST SCHEDULE: Provisions relating to the appointment, conduct of business and affairs of the Board

SECOND SCHEDULE: The general rules of the County Pension Fund

THIRD SCHEDULE: List of sponsoring County Governments

List of Sponsoring Associated Organizations

FOURTH SCHEDULE: Model deed of adherence for participating employers who join the scheme after the commencement date.

Model Special Rules for participating employers who join the scheme after the commencement date.

Model Special Rules governing Members of the Sharia Compliant Pension Fund.

THE COUNTY PENSION SCHEME BILL, 2016**A Bill for****AN ACT of Parliament to establish the County Pension Scheme; to provide for the management and administration of the scheme; and for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

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|---|---|
| <p>1. This Act may be cited as the County Pension Scheme Act, 2016.</p> | Short title |
| <p>2. In this Act, unless the context otherwise requires—</p> <p>“actuary” has the meaning assigned to it in section 2 of the Retirement Benefits Act;</p> <p>“annuity” means a pension purchased under a contract with a Registered Insurer;</p> <p>“approved issuer” means an Approved Issuer appointed by the Board to provide the services of an Approved Issuer as defined in the Retirement Benefits Act;</p> <p>“associated organization” means any person, firm, company, county agency or county corporation or organization of employees or association of employers created by, owned by or associated with county governments, urban areas and cities or other institution, established under the County Governments Act, Urban Areas and Cities Act, or their staff or any other person or body providing services to county governments or to their employees and includes those organizations whether associated with county governments or not that choose to participate in the Scheme by signing a deed of adherence;</p> <p>“Auditor” means the Auditor-General appointed under Article 229 of the Constitution;</p> <p>“Authority” means the Retirement Benefits Authority;</p> <p>“Board” means the Board of Trustees established under section 6;</p> <p>“Cabinet Secretary” means the Cabinet Secretary responsible for Public Service;</p> | <p>Interpretation.</p> <p>No. 3 of 1997.</p> <p>No. 17 of 2012.
No. 13 of 2011.</p> |

“Chairperson” means the chairperson of the Board of Trustees elected in accordance with section 6 (6);

“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 member wholly or mainly dependent on the deceased;

“Closed Schemes” means Local Authorities Pension Trust (Defined Benefits) scheme established under Legal Notice No. 50 of 2007 and the Local Authorities Provident Fund established under the Local Authorities Provident Fund Act, Laws of Kenya Cap. 272;

“Commencement Date” means the date of coming into force of this Act;

“Contribution” means the amount payable by a member or sponsor into the Scheme under section 20;

“Corporate Administrator” means a retirement benefit scheme administrator jointly established by the Closed Schemes and the County Pension Fund Scheme in accordance with the Retirement Benefits Act and shall include a Corporate Administrator previously incorporated by a Closed Scheme;

“Corporate Trustee” means a trust corporation duly registered by the Retirement Benefits Authority as a corporate Trustee;

“County Assemblies Service Boards Forum” means the forum established to bring together all the County Assemblies Service Boards established under section 12 of the County Governments Act;

“County Assemblies Forum” means the forum established to bring together all County Assemblies from all the County Governments in the Republic of Kenya;

“County Public Service” means the act of performing a public duty or work by a person employed by a county government;

“County Public Service Boards Forum” means a forum bringing together all the County Public Services Board established under section 57 of the County Governments Act;

“custodian” means a person registered under the Retirement Benefits Act and appointed by the Board under section 20;

“continuous service” means the uninterrupted service with the sponsor from the original date of entry, and includes any period or periods of authorized leave of absence (with or without pay), a break condoned by the Board, or a period of suspension followed by reinstatement in the same or other pensionable post, but excluding any period during which no contributions were made to the Scheme by or on behalf of the member;

“deed of adherence” means the legal instrument to be executed by a participating employer who joins the Scheme after the Commencement Date and which shall bind that employer to the Trust and Scheme’s Rules for the Benefit of its eligible employees;

“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;

“early retirement age” means the age specified in the Regulations but which shall not be less than 50 years;

“eligible employee” means any employee of a county government, an associated organization, county agency, county corporation or such other body that may be approved by the Board and which has signed a Deed of Adherence in the prescribed form;

“employer” means a county government or any of its entities, a state organ or associated organization or any other person or body, approved by the Board to contribute to the Fund;

“Fund” means the County Pension Fund established under section 24;

“Fund Manager” means a manager registered under the Retirement Benefits Act and appointed by the Board under section 18;

“Gazette” means the Kenya Gazette or the County Gazette as may be appropriate;

“gender” a reference to a male gender shall include a reference to all other genders;

“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 investment income 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;

“minority groups” means youth, older members of society, persons with disabilities, or members of minority or marginalized communities;

“normal retirement age” means the retirement age marked by the sixtieth birthday where the exact date of birth is known, and where it is not known, the first day of January in the year in which his sixtieth birthday is deemed by the sponsor and the board to occur;

“Nominating Bodies” means entities vested with the mandate of nominating individuals persons to the Board of Trustees as provided for under section 6 of this Act;

“Pensionable Emoluments” means basic salary and housing allowances payable to an employee by an employer who is a member of the Scheme;

“public funds” means the totality of moneys provided in article 206 of the Constitution but does not include contributions to a retirement benefit scheme by an employer as part of consideration under an employment contract;

“Public Officer” has the meaning assigned to it under Article 260 of the Constitution of Kenya 2010;

“public service” means the action of performing work or duty of a public nature by individuals employed in a public office other than as a state officer;

“Salih” means a pension arrangement developed by the Board specifically for individuals who profess Islam religion and submit to Muslim law and who wishes to have their pension funds managed and invested in a sharia compliant manner;

“Scheme” means the County Pension Scheme established under section 5;

“State Organ” has the meaning assigned to it under Article 260 of the Constitution of Kenya, 2010;

“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;

“trustee” means a member of the Board of Trustees who, under the law of trust, alone or collectively with other trustees is the legal owner of the assets of the Scheme;

“Trust Secretary” means the secretary to the Board of Trustees who shall also serve as the chief executive officer of the Corporate Administrator established under section 21; and

“Regulations” means the Regulations made by the Cabinet Secretary under the First Schedule.

3. This Act applies to—

Application.

- (a) a County Government;
- (b) a person employed by a County Government;
- (c) a County Agency, County Corporation or Associated Organizations;
- (d) a person employed by a County Agency, County Corporation or Associated Organization;
- (e) a person seconded or transferred from the National Government to a County Government; or
- (f) an officer approved by the Board to become a member of the scheme under the auspices of a Sponsor who has signed a Deed of Adherence.

- 4.** (1) The object and purpose of the Act is to—
- (a) provide for the adoption of an existing umbrella pension scheme for all staff and officers of County Governments, County Agencies, County Corporations, Associated Organizations and other related entities;
 - (b) establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the Scheme and former employees of local and central government who transfer their service to a County Government, County Agency, or County Corporation;
 - (c) protect the benefits of employees of county governments;
 - (d) maximise employer compliance with employer duties and the employment safeguards in accordance with the Retirement Benefits Act;
 - (e) improve the social security of members of the Scheme by ensuring that the members save in order to cater for their livelihoods during their retirement;
 - (f) promote and improve the understanding of the good administration of county government scheme;
 - (g) reduce or minimise the risk of situations arising which may lead to members losing their benefits;
 - (h) provide for the transition from the existing system of retirement benefits schemes for staff of County Governments and former local and central governments to a uniform, inclusive and comprehensive pension scheme for County Governments, County Agencies, County Corporations and other Associated Organizations;
 - (i) provide for a unified corporate administrative framework for the umbrella pension scheme established under this Act and the Closed Schemes; and
 - (j) provide for the establishment or adoption of an existing Corporate Administrator to provide

Objects of the Act.

No. 3 of 1997.

scheme administration services to all retirement benefits schemes within the county governments sector.

PART II—ESTABLISHMENT, ADMINISTRATION AND MANAGEMENT OF THE SCHEME

5. (1) There is established the County Pension Scheme which shall be administered by the Board in accordance with this Act and the Retirement Benefits Act.

Establishment of the County Pension Scheme.

(2) The Scheme is established as an statutory trust and shall vest in, operated and managed by the Board.

Cap. 197.

(3) The Scheme is an umbrella pension scheme for all persons in service in the County Governments, County Agencies, County Corporations and Associated Organizations.

(4) The Scheme shall be the successor to the Laptrust (Umbrella) Retirement Fund previously established and registered under Trust Deed and Rules under Retirement Benefits Authority Certificate Registration no. 01305, and all rights, obligations, assets and liabilities of the Laptrust (Umbrella) Retirement Fund existing on the date of the coming into force of this Act shall be deemed to be transferred to the Fund and any reference to the Laptrust (Umbrella) Retirement Fund in any contract or document shall for all intents and purposes be deemed to be a reference to County Pension Fund.

6. (1) There is established the Board of trustees for the scheme.

Board of Trustees of the Scheme.

(2) The Board shall be 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) entering 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.

Cap. 164.

(3) The Board shall comprise of the following trustees appointed by the Cabinet Secretary—

- (a) a representative of the Council of Governors;
- (b) a representative of the Public Service Commission;
- (c) a representative of the County Public Service Boards;
- (d) a representative of the County Assembly Service Boards; and
- (e) five other nominees from the county governments nominated from the three most representative employee unions, two of whom shall be of the opposite gender on one part and one representative from persons with disability.

(4) The nominee from the Public Service Commission shall serve to ensure gender balance on the Board of in accordance with the two-thirds gender rule enshrined in the Constitution.

(5) The Trust Secretary shall serve as the Secretary to the Board and the Chief Executive Officer of the Scheme.

(6) A chairperson shall be elected by the trustees from amongst the trustees set out under sub-section (3).

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

(8) The nomination and appointment of trustees shall be carried out in the manner prescribed under the first schedule.

(9) The Trust Secretary shall be an *ex officio* member of the Board with no rights to vote at a meeting of the Board.

7. A person is qualified for appointment as a trustee if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;

Qualifications for
appointment of
Trustees.

- (c) has at least five years' experience in any of the following fields—
- (i) finance;
 - (ii) administration;
 - (iii) law;
 - (iv) economics;
 - (v) investment;
 - (vi) engineering and technology;
 - (vii) nursing;
 - (viii) medicine;
 - (ix) agriculture;
 - (x) actuarial science; or
 - (xi) any other profession represented in the wide membership of the Scheme directly relevant to the functions of the Board; and
- (d) meets the requirements of Chapter Six of the Constitution.

8. The functions of the Board shall be to—

Functions of the Board.

- (a) formulate the policies relating to the Scheme in accordance with the provisions of Retirement Benefits Act;
- (b) collect contributions and income payable to the Fund under this Act;
- (c) pay out the various benefits to persons entitled to the benefits as provided under the Act;
- (d) protect the Fund's assets and ensure long term viability of the Scheme;
- (e) ensure efficient administration of the Scheme;
- (f) ensure prudent investment of the monies forming part of the Fund and where necessary establish companies to perform such functions as the Board may consider necessary and relevant to the Scheme including offer administration services, fund management, and consultancy services;
- (g) negotiate competitive annuity rates on behalf of retiring and withdrawing members;

No. 3 of 1997.

- (h) ensure that the Scheme observes high standards of corporate governance and business ethics; and
- (i) perform any other functions assigned to it under this Act or under any other law.

9. (1) In the exercise of its functions under this Act the Board shall be accountable to the sponsors and the members of the Scheme.

Powers of the Board.

(2) The Board shall have all powers necessary for the proper performance of its functions under this Act.

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

- (a) invest the assets of the Scheme in such manner as best promotes the purpose for which the Scheme is established;
- (b) appoint a custodian and fund manager, and jointly with other schemes in the county governments incorporate or invest in the corporate administrator established under section 21 to carry out their functions as specified in the Retirement Benefits Act;
- (c) determine the provisions to be made for administrative expenses as provided for under section 26 (2) and for reserves of the Fund as provided for under section 28;
- (d) to protect the assets of the Scheme;
- (e) collaborate with any other institution so as to further the purpose for which the Scheme is established;
- (f) receive grants, gifts, donations or endowments and make legitimate disbursements from them;
- (g) enforce remittance of outstanding contributions by a Sponsor;
- (h) invest any monies of the Scheme not immediately required for its purposes in the manner provided in section 25; and
- (i) undertake any activity necessary for the fulfilment of any of the functions of the Scheme.

No. 3 of 1997.

(4) The Board may subject to such conditions as it may consider appropriate, by directions in writing, delegate any of its powers to any one or more of the Trustees or to the Trust Secretary or employees of the Schemes' Corporate Administrator.

10. (1) The Board may establish such committees as it may consider necessary for the better carrying out of its functions under this Act.

Committees of the Board.

(2) The Board may co-opt to sit in the committees, persons with such skills and knowledge as it may consider necessary for the effective functioning of the Board.

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

11. (1) There is established a Shariah Supervisory Committee which shall consist of at least three and not more than five members.

The Shariah Supervisory Committee.

(2) The membership of the Committee shall be drawn from the most renowned muslim scholars with expertise in the management of a sharia compliant pension scheme and who shall be persons of integrity.

(3) The quorum for the conduct of the business of the Committee shall be three members or by resolution circulated and approved by the number forming a quorum.

(4) The function of the Shariah Supervisory Committee shall be to—

- (a) advise the Board on the requirements of Shariah law in respect to Sharia compliant pension schemes to ensure that at all times, the Board is managed and invested in a Sharia compliant manner; and
- (b) monitor and supervise the management and investment of Salih to ensure that the same is Shariah Compliant.

12. (1) The trustee shall hold office on part-time basis for a term of three years and may be eligible for re-appointment for one further final term of three years.

Tenure of office.

(2) The Board shall put in place arrangements to ensure that one-third of the trustees are appointed in a staggered manner separated by at least six months.

13. The trustees shall be paid such allowances, and reimbursement of expenses as the Board may approve. Provided only that an extensive remuneration survey shall be conducted through a qualified human resource consultant prior to such proposals and approvals.

Remuneration of Trustees.

14. (1) A trustee may be removed from office by the Cabinet Secretary for—

Removal from Office.

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or negligence of duty;
- (d) bankruptcy; or
- (e) absence from three consecutive meetings of the Board without a reasonable written explanation addressed to the Chairman.

(2) Before the Cabinet Secretary makes a decision to remove a trustee pursuant to subsection (1), the trustee shall be given an opportunity to be heard on any allegation.

15. A person shall cease 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;
- (e) is removed in accordance with section 14; or
- (f) dies.

16. Where a vacancy occurs in the membership of the Board under section 14 or 15, the Cabinet Secretary shall appoint a new member in accordance with the provisions of this Act.

Filling of casual vacancy.

17. (1) The business and affairs of the Board shall be conducted in accordance with the Second Schedule.

Meetings of the Board.

(2) Except as provided in the Second Schedule, the Board may regulate its own procedures subject to

compliance with the provisions as to meetings under the Retirement Benefits Act.

Cap. 197.

(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.

18. (1) The common seal of the Board shall be kept in such custody as the Board may direct and shall be used under the directions and authority of the Board.

Common seal of the Board.

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

PART III—ADMINISTRATION AND MANAGEMENT OF THE COUNTY PENSION FUND

19. The Board shall appoint fund managers of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act—

Appointment and functions of the fund manager.

Cap. 197.

- (a) implement the investment policy of the Scheme as approved by the Board;
- (b) invest the scheme funds and assets in accordance with the provisions of the Retirement Benefits Act and the investment policy of the Board;
- (c) maintain books of account on all investment 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.

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

Appointment and functions of the Custodian.

Cap. 197.

- (a) receive the total contributions remitted by the member and Sponsor under this Act on behalf of the Board;

- (b) not later than the next business day following of receipt of the Contributions from a Sponsor, notify the Fund Manager and the Corporate 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 Scheme;
- (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, on behalf 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.

21. (1) The Scheme shall be administered by a Corporate Administrator jointly established or owned by the Scheme established under this Act and the Closed Schemes. Provided that the Board of the Scheme established under this Act and the Boards of the Closed Schemes may adopt any existing Corporate Administrator owned by any of the Closed Schemes and modify its structure to suit the joint needs of the three partner schemes.

The Corporate Administrator.

(2) The Corporate Administrator shall be a Company established in accordance with this Act, the Companies Act, and the Retirement Benefits Act, 1997.

The Companies Act.

Act No. 3 of 1997.

- (3) The functions of the Administrator shall be to—
- (a) carry out daily administration of the affairs of the Scheme in accordance with the provisions of the Trust Deed and Rules in this Act, the Retirement Benefits Act, the Income Tax Act, and its amendments, any other relevant legislation in force and all other legal documents related to the scheme;
 - (b) ensure that the scheme is at all times administered in the best interest of the Members and Sponsors of the Scheme;
 - (c) liaise with the trustees, the Authority, the Department for the time being responsible for collecting domestic taxes and the scheme service providers in the course of administration of the Scheme;
 - (d) Collate, collect and maintain accurate data of all the assets of the Schemes under its administration, the members, the service providers, the beneficiaries, and any other information necessary for the day to day administration of the Scheme.
 - (e) Keep all the proper books and records of account in respect to income, expenditure, assets and liabilities of the Schemes under its administration including preparing scheme budgets, cash flows and liquidity requirements as may from time to time be required.
 - (f) offer advisory and training services to the trustees, members and the Sponsor on their rights and obligations in the scheme;
 - (g) avail the required data of the scheme to the service providers to enable preparation of statutory returns to the Authority;
 - (h) submit or cause to be submitted required statutory returns to the Authority;
 - (i) compute and pay benefits to the members and their beneficiaries directly as provided for in the law and the Trust Deed and Rules;

Cap. 470.

Act No. 3 of 1997.

No. 3 of 1997.

- (j) offer secretarial services to the Board of Trustees of the Scheme established under this Act and the Closed Schemes by organizing meetings, issuing notices for the same and taking minutes during the meetings and keeping custody of such minutes;
- (k) advise the trustees to ensure that the manager is investing the scheme funds in compliance with the provisions of the Retirement Benefits Act, the Regulations, the Trust Deed, the Special Rules and other relevant legislation in force;
- (l) open and maintain an account for each Member;
- (m) upon receiving details of the Contributions remitted under this Act, the Administrator shall cause the amount of the Contributions to be credited in the account of the Member in respect of whom the Sponsor has made the payment;
- (n) inform the Board if a Member's Contribution details differ from the expected;
- (o) provide customer support services to Members, including access to Members' account balances and statements;
- (p) cause to be paid retirement benefits to a Member who has retired;
- (q) be responsible for all calculations relating to retirement benefits;
- (r) offer procurement agency services, under delegated authority of the Board of Trustees, to the scheme; and
- (s) carry out such other functions as may be directed by the Board from time to time.

(4) The Corporate Administrator ensures that all income earned from the investment of the Scheme is distributed to the credit of the Members' retirement savings accounts save for transfers to reserve accounts of portion of surplus, clearly defined and reasonable fees, charges, costs and expenses of transactions approved by the Board.

(5) The Corporate Administrator shall have all the powers necessary for the proper performance of its

functions under the Retirement Benefits Act and the regulations therein.

22. (1) Every Member shall, so long as he remains in the employment of a Sponsor, contribute to the scheme an amount equal to twelve percent of his Pensionable Emoluments, or higher or lower rate as may be prescribed by the Board on the advice of the Actuary and in the manner prescribed under section 22 of this Act.

Liability to contribute.

(2) The sponsor shall make its own contribution on behalf of the member of the Scheme who is his employee at the rate of fifteen percent of a member's Pensionable Emoluments, or any higher or lower amount as may be prescribed by the Board on the advice of the Actuary.

23. (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.

(3) Despite 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 contributors account in the scheme on the last day of the month in respect of which the salary is due.

24. The Contributions by the members of the Scheme who were previously employed by the national government shall be phased-out in the first three years after the commencement of this Act, at the rates of five per cent, eight per cent and twelve per cent of a Member's Pensionable Emoluments in the first, second and third years respectively.

Phasing of contributions.

PART IV—FINANCIAL PROVISIONS

25. (1) There is adopted a Fund to be known as the County Pension Fund which shall be administered by the Board.

County Pension Fund.

(2) The Fund consists of—

- (a) such 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) income from investments made by the Scheme that are approved by the Board;
 - (d) monies earned by the Scheme from any other source; and
 - (e) monies from any other source provided, 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.

26. (1) The Board shall establish an account into which may be paid—

Trust and administrative expenses.

- (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; and
- (b) income from the investment of the monies held in the account established under this section.

(2) The Corporate Administrator shall establish an account into which shall be paid 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 Actuary, may prescribe.

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

Investment of surplus funds. Cap. 197.

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

Reserve account.

- (a) any special contribution, if any which may be 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.

29. (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) expenses of the Corporate Administrator incurred in the administration of the Scheme which shall include:-

- (i) payment of the salaries, allowances, and other charges in respect of the employees of the Corporate Administrator;
- (ii) funding of members' training, research and development of activities of the Scheme coordinated by the Corporate Administrator;
- (iii) such other administrative expenses as the Board may deem fit.

(b) trust expenses incurred by the scheme in the maintenance of the scheme which shall include:-

- (i) funding of registration, monitoring, and evaluation of the Scheme;
- (ii) maintenance of the buildings and grounds owned by the Scheme;
- (iii) funding of corporate social responsibility of the Scheme.
- (iv) such other trust expenses as the Board may deem fit to approve.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate.

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

30. (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 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 assets and liabilities of the Scheme during that year.

(3) The annual accounts of the Scheme must be prepared, audited and reported upon in accordance with the Scheme Rules, the Retirement Benefits Act and the International Financial Reporting Standards.

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

Financial year.

32. (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 action recommended by the Actuary.

PART V—GENERAL PROVISIONS

33. (1) The Board shall—

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 shall—
- (a) report to the Board and the Authority, as soon as reasonably practicable, any unusual occurrence with respect to the Scheme which in their view could adversely affect the rights of the members under the Scheme; and
 - (b) report to the Board and the Authority, as soon as is reasonably practicable, if a sponsor has not remitted the required contribution and such remittance remains due for more than fifteen days.

34. No action or omission by any member of the Board, or of the Corporate Administrator 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.

35. (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 an employee of the Corporate Administrator, 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 the 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 circumstances.

36. (1) Where a sponsor, having made deduction from a member's emoluments for remittance to the Scheme or under an obligation to do so, fails to remit the contribution within fifteen days of the deadline for the deduction, the Scheme may, after giving such sponsor not less than seven days' notice, institute proceedings for the recovery of the deduction made or which ought to have been made and remitted.

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 he fails to pay such sum before the expiration of the notice, proceedings for summary recovery of the sum shall be filed in court without further reference to 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 to him under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings, or in the case of a natural person, to imprisonment for a term not exceeding three years, or to both;

(5) Where an offence under subsection (4) is a continuing offence, the person convicted shall, in addition

to the prescribed penalty, be liable to a further fine of one thousand shillings for every day or part thereof during which the offence continues.

37. 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.

38. The sponsors and members of the Scheme shall be exempt from making contributions to the National Social Security Fund or any other statutory Scheme.

Exemption from other statutory schemes.

39. This Act and its regulations may be amended by Parliament or other authorized organ on its own motion or on the recommendation of the Board of Trustees after consultation with the Cabinet Secretary, County Public Service Boards Forum and the County Assembly Service Boards Forum on behalf of all sponsors and members of the Scheme.

Amendments to this Act.

PART VI—AMENDMENTS TO EXISTING LAWS, SAVINGS AND TRANSITIONAL PROVISIONS

40. The Pensions Act is amended by inserting the following new section immediately after section 12—

Amendment to the Pensions Act, Cap. 189.

12A (1) Where a person to whom pension is payable under this Act is transferred from the service of the national government to the county public service, he shall on the date of effective transfer be a member of and liable to contribute to the umbrella pension scheme established under the County Pension Scheme Act, without any break in service and his benefits during his past service shall be preserved and paid under the Pensions Act, Cap 189.

(2) Where a person transferred under sub-section (1) is transferred back to the service in the national government, the persons shall resume his membership of the scheme established under this Act without any break in service.

(3) Notwithstanding the provisions of subsection (1), the membership of a person transferred from the service of the national government to the county public service and whose remaining term of service to mandatory retirement is ten years or less may opt to have his pension paid out under the provisions of this Act.

(4) Where a member opts to have his pension paid out under subsection (3), the total pension benefits accrued to the member under this Act shall be assessed and transferred to the County Pension Fund for combination and totalisation with benefits under the county public service.

41. The Public Service Superannuation Scheme Act, is amended by deleting section 33 and substituting therefor the following new section—

Amendment to S. 33 of the Public Service Superannuation Scheme Act, No. 8 of 2012.

33. (1) Where a member transfers his service to the national government public Service, the same savings account shall be maintained for the member;

(2) Where a member transfers his service from the county government public service to the national government public service, the account of the member for his past service under the County Government shall be preserved under the Fund established under this Act;

(3) Where a member transfers his service to the County Public Service or associated organization to another, the same savings account shall be maintained for the member; and

(4) Where a member transfers his service from the national government public service to the County Public Service, the account of the member with respect to his past service shall be preserved under the Public Service Superannuation Scheme Act and the sponsor and the employee shall henceforth contribute to the Fund established under the County Pension Scheme Act.

34. The Local Authorities Provident Fund Act is amended—

Amendment to the Local Authorities Provident Fund Act, Cap. 272.

(a) in section 4 by inserting the following new paragraph immediately after section 4 (1)—

- (1A) The Fund shall be administered by a Corporate Administrator established under section 21 of the County Pension Scheme Act, 2016.
- (b) in section 5 (1) by deleting and substituting therefor with the following new paragraphs—
- (1) There shall be nine Trustees appointed by the Cabinet Secretary and shall comprise of—
- (a) two persons nominated by the County Public Service Boards National Coordinating Forum to represent the County Public Service Boards one of whom must be serving as a secretary of a County Public Service Board while the other shall be a serving chairperson of a County Public Service Board;
 - (b) a person who shall be a serving chairperson or secretary of a County Assembly Service Boards nominated by the County Assembly Service Boards National Coordinating Forum to represent the County Assembly Service Boards;
 - (c) a Governor nominated by the Council of Governors to represent the forty-seven Governors;
 - (d) five persons nominated by three most representative workers unions to represent employees of county governments and associated organisations three of whom must be holders of a degree with at least six years

professional experience in finance, administration, law, economics, investment, engineering, technology, nursing, medicine or any other related field.

(1A) Not more than three trustees shall be of the same gender and the Board must represent the face of Kenya.

- (c) in section 5 (1A) by deleting and substituting therefor with the following new section—

(1A) The members of the Board shall elect one person from among their number to be the chairperson.

(1B) In the absence of the chairperson from any of the meetings of the Board, the members of the Board shall elect a chairperson for their meetings.

(1C) The Trust Secretary shall be the Secretary to the Board and the Chief Executive Officer of the Corporate Administrator of the Fund.

(1D) The Regulations shall prescribe the procedure for nomination and appointment of the trustees under subsection (1).

(1E) Any person who immediately before the commencement of this section was a chairperson,

or Member of the Board of Directors shall continue to serve for the remainder of his term after which new board members shall be constituted in accordance with section 5 (1) above.

- (d) by inserting the following new section immediately after section 6—

6A. In addition to the powers provided for under section 6, the Board shall have the following powers and duties—

Cap. 486.
No. 17 of 2015.

- (a) to incorporate under the provisions of the Companies Act a corporate administrator jointly with other related retirement benefits schemes within the county governments sector or invest by buying shares in an existing corporate administrator established to provide administration services for any related retirement benefits scheme within the County Government sector in accordance with section 24 of this Act;
- (b) to nominate at least one director to the Board of the Corporate Administrator referred to in subsection (1) above in accordance with its shareholding;
- (c) to contribute or transfer the staff of the Fund to the Corporate Administrator

No. 2 of 2012.
Cap. 5G.

referred to in subsection (1) above and such assets as may be necessary for the efficient performance by the staff of their duties which contribution or transfers shall be treated as part of their contribution to shareholding in the Corporate Administrator;

(d) to participate in the affairs of the Inter-scheme Consultative Committee in accordance with the County Governments Act, 2012.

(e) in section 8 by inserting the following new subsection immediately after subsection (4)—

(4) This section shall on the commencement of the County Governments Act cease to apply to any person who on or before the said commencement date was not a member or a Contributor of the Fund established under this Act.

(5) A person to whom subsection (5) refers is not eligible to contribute to the Fund established under this Act but shall be liable to contribute to the umbrella retirement benefits scheme

established under the
County Pension Fund
Act, 2016.

- (6) Without prejudice to sub-section (5), this section shall at the commencement of the County Governments Act, continue to apply to any person who prior to the commencement of the County Governments Act was a Contributor or Member and such a contributor or member shall remain liable to contribute to the Fund.
- (f) by deleting sections 16 and 18.
- (g) The Local Authorities Provident Fund Act is amended in section 20 by inserting the following new sections immediately after section 20—

Closure to New
Entrants.

20A The Fund shall on the commencement of the County Governments Act be closed to new entrants but shall function as a normal scheme for its continuing members subject to section 8 (5) and (6) of this Act.

20B All moneys, assets and liabilities of the Fund as at the commencement of the County Governments Act shall remain vested in the Fund until such time the contributors or their

beneficiaries are paid off in full.

35. The Intergovernmental Relations Act is amended in Section 20 by inserting the following new paragraph immediately after paragraph (i)—

Amendment to Intergovernmental Relations Act No. 2 of 2012.

(ia) promoting and facilitating the establishment of shared inter-county agencies, corporations, and Retirement Benefits Schemes in accordance with Section 118 of the County Governments Act, and the Retirement Benefits Act.

No. 2 of 2012, Cap. 5G.

36. The County Government Act is amended—

Amendment to the County Governments Act, No. 17 of 2012.

(a) in section 2 by inserting the following new definitions, in proper alphabetical sequence—

“Council” means the Council of Governors established under section 19 of the Intergovernmental Relations Act;

No. 2 of 2012 Cap. 5G.

“County Assemblies Service Boards Forum” means the forum established to bring together all the County Assemblies established under section 12 of the County Governments Act;

“County Assemblies Forum” means the forum established to bring together all County Assemblies from all the forty seven County Governments in the Republic of Kenya;

“County Public Service Boards Forum” means a forum bringing together all the County Public Services Board established under section 57 of the County Governments Act;

No. 3 of 1997.

“existing pension scheme” for purposes of this Act means the County Pension Fund;

“corporate administrator” means an existing administrator or a corporate administrator jointly established by the Closed Schemes and the County Pension Fund in accordance with the Retirement Benefits Act;

“closed schemes” means a pension or provident scheme that is closed to new members

but which continues to exist for its continuing members;

“pension scheme” means any scheme or arrangement (other than a contract for life assurance, or a provident fund) whether established by a written law or any other instrument, under which persons are entitled to benefit in the form of payment upon retirement or death, determined by age, length of service, amount of earnings, contributions or otherwise and payable as a lump sum and periodic monthly payments;

“Provident Fund” means a scheme for the payment of lump sums and other similar benefits to employees when they leave employment or to the dependents’ of employees on the death of those employees.

- (b) by inserting the following new sections immediately after section 132—

Pension for
County
Employees.

132 A (1) All officers and staff employed by a county government, county agency, county corporation or associated organization shall after the commencement of the County Government Act, subscribe to the County Pension Fund established under the County Pension Scheme Act.

No. 17 of 2012.

(2) All county governments, county agency, county corporation or associated organization shall, upon the commencement of this Act subscribe their employees to whom subsection (1) applies and remit the contributions to the County Pension Fund.

(3) Gratuity for all staff and officers of a county government shall be managed by an Individual Pension Scheme administered by the Corporate Administrator established in accordance with this Act to manage the three county government schemes.

Gratuity.

(4) Notwithstanding subsection (1), any person who, at the commencement of this section—

- (a) is employed by a county government or transferred thereto under Part VII of this Act; and
- (b) has attained the age of fifty years,

may, within a period of five (5) years after such commencement, elect to remain in the Local Authorities Pensions Trust or the Local Authorities Provident Fund, as the case may be or transfer his Membership and accrued benefits to the County Pension Fund.

S.132B (1) Notwithstanding any other provision of this Act or any other written law, Local Authorities Pensions Trust and Local Authorities Provident Fund shall upon the commencement of this Act become Closed Schemes for the benefit of their existing members only.

The Closed Schemes.

(2) The Closed Schemes shall exist alongside the County Pension Fund established under the County Pension Scheme Act, until such time that the last member, contributor or beneficiary of the Closed Schemes is paid off or transfers to the County Pension Fund.

S.132C Any person who immediately before the commencement of this Act was a chairperson or member of the Board of the Closed Schemes shall continue to serve for the remainder of their unexpired term.

Tenure of Board Members during the transition period.

S.132D (1) The Closed Schemes and the County Pension Scheme shall establish or own a Corporate Administrator jointly to manage the three Schemes and any other scheme in accordance with the Retirement benefits Act.

Transition to The Corporate Administrator.

(2) The Corporate Administrator shall render administration services to the Closed Schemes, the County Pension Scheme and such other retirement benefits schemes who may require its services.

Cap. 486.

Transfer of staff assets and staff liabilities to the Corporate Administrator.

(3) The Corporate Administrator shall be a Company established under the Companies Act in accordance with the Retirement Benefits Act.

(4) The Closed Schemes or their administrators whichever is applicable shall at the commencement date transfer their staff together with such assets to be used by the staff to the Corporate Administrator and the transferred staff shall be the first staff of the Corporate Administrator retaining their accrued benefits, terms and conditions of service subject to a suitability assessment and evaluation, and placement in the corporate structure of the Corporate Administrator.

(5) At the Commencement of this Act, the respective Chief Executive Officers of the Closed Schemes shall be interviewed and the most suitable between them shall be appointed the Chief Executive Officer of the Corporate Administrator and the other shall be paid off his salary entitlement and pensions for the remainder of his term of service.

(6) The share capital of the Corporate Administrator shall be apportioned to all the three Schemes in proportion to their asset value at the time of commencement of this section of the Act.

(7) The assets previously used by the in-house administrators of the Closed Schemes shall after valuation count as part of their previous owner's shareholding in the Corporate Administrator.

(8) The Board of the Corporate Administrator shall be constituted as follows—

- (a) one person appointed by Local Authorities Provident Fund Board—
- (b) one persons appointed by Local Authorities Pensions Trust Board;

- (c) one member appointed by the County Public Service Boards Forum;
- (d) one Member appointed by the County Assembly Public Service Boards Forum;
- (e) one member appointed by the Associated Organizations and the water service providers association;
- (f) three independent Members possessing technical expertise in the pensions industry or any other profession appointed by the Cabinet Secretary from the relevant professional bodies representing Members in the three schemes; and
- (g) the Chief Executive Officer of the Corporate Administrator.

(9) The Board of the Corporate Administrator shall elect a chairperson from among their number.

(10) Without prejudice to the foregoing, the Memorandum and Articles of Association of the Corporate Administrator shall provide for the institutional framework of the Corporate Administrator.

S.132E (1) There shall be a Trust Secretary who shall also serve as the Secretary to the Board of Trustees of the Schemes under its Administration.

Trust Secretary and Employees of the Corporate Administrator.

No. 3 of 1997.

(2) In addition to the staff and officers transferred from the Closed Schemes or any of their administrators to the Corporate Administrator, the Corporate Administrator may engage such other employees as it may consider expedient for the performance of its functions under the Retirement Benefits Act and the Companies Act.

(3) Without prejudice to the provisions of the 132D (4) the terms and conditions of service of employees of the Corporate Administrator shall be determined by the Board of the Corporate Administrator.

(4) The terms of employment of the staff transferred from the Closed Schemes into the Corporate Administrator shall neither be varied to their disadvantage nor their accrued benefits interfered with in any way.

S.132F (1) There is established a Forum to be known as the Inter-scheme Consultative Forum.

The Inter-scheme
Consultative
Forum.

(2) The Forum shall be constituted by all the members of the Boards of the Closed Schemes and the County Pension Fund.

(3) The Chairmanship of the Forum shall be rotational among the Chairmen of the three Schemes. Each Chairman shall serve for a term of two years at each rotation circle.

(4) The Forum may meet on a quarterly basis and on such other times as the presiding chairman, the Corporate Administrator, the County Pension Fund and the Closed Schemes may request considering the urgency of any matters to be addressed.

(5) The quorum for the conduct of the business of the Forum shall be fifteen members present or by resolution circulated and approved by the number forming a quorum.

(6) Any costs incurred or expenses expended by the Forum in the discharge of their duties and responsibilities under this Act shall be apportioned to each of the three Schemes equally.

(7) A member of the Forum who absents himself from three consecutive

meetings of the Forum without written permission from the chairperson of the Forum and is unable or has neglected to provide any reasonable excuse for his absence shall lose his membership in the Board of the Scheme in which he represents.

(8) The meetings of the Forum shall be convened and records kept by Corporate Administrator at the request of the chairperson of the Forum in accordance with the Regulations made by the Forum.

(9) The Forum shall stand dissolved ten years after the commencement date or upon the complete discharge of their responsibilities under this Act, whichever is earlier.

S.132G (1) The responsibilities of the Inter-scheme Consultative Forum shall be to provide a forum for—

Responsibilities of the Inter-scheme Consultative Forum.

- (a) consultations between the Schemes and the Corporate Administrator on matters of common interests between the Schemes;
- (b) dealing with any differences and disagreements among the schemes that may arise regarding transfer of data, assets, liabilities and members to the County Pension Fund and of employees and administrative assets to the Corporate Administrator and bringing consensus among the Schemes on areas of common interests or divergence;
- (c) considering any policies and plans formulated, developed and implemented by the County Pension Scheme, in conjunction with the Corporate Administrator and Closed Schemes to ensure a

smooth transition to a Umbrella pension scheme in accordance with this Act, the County Pension Fund Act and the Retirement Benefits Act;

- (d) receiving reports from the Corporate Administrator on the progress of implementation of the County Pension Scheme, any agreement between the closed schemes and the County Pension Fund, and particularly deliberating on the implementation of the following—
 - (i) the transfer of human resources and their accrued benefits and rights to the Corporate Administrator in accordance with this Act;
 - (ii) the transfer of such assets as may be required for the efficient functioning of the resources transferred under paragraph (i); and
 - (iii) the audit, valuation and verification of assets and liabilities of the Closed Schemes, and settlement of the liabilities to the Closed Schemes by their Sponsors.
- (e) Consultation for the proper implementation of the process described in sub-section (2) (d) above is done in a harmonious manner and to amicably address any divergence that may arise therefrom; and
- (f) carrying out such other connected and or incidental functions.

S.132H The liabilities of the Closed Schemes shall be resolved and settled by the

Liabilities of the
Closed Schemes.

national and county governments through budgetary allocations or by the respective county government being the successor of the responsible local authorities opting to settle the same through property debt-swap agreements among other ways as may be considered appropriate; Provided however that all the liabilities shall be cleared within a maximum period of six years as provided for under the Retirement Benefits Act.

S.132I Notwithstanding the provisions on retirement ages in the three Schemes, no member of a county scheme shall be released to retire from service by the relevant employer until all his retirement benefits have been remitted to the relevant Scheme by the relevant employer. Any employer's representative who contravenes this Section commits an offence punishable on conviction by a fine of one million shillings or a jail term of five years or both.

Remittance of contributions of retiring employees.

(a) in section 134 by inserting the following new paragraph immediately after sub-section (2)—

Institutions established under the repealed Local Governments Act.

(3) The institutions established under the former Local Government Act, which on the Commencement of the County Government Act still remains in operation including those established under the Kenya (Local Government) (Pensions) Regulations, 1963 [LN. No. 200 of 1963), shall on the Commencement Date be deemed to be established under this Act.

Cap. 165.

(b) in section 135 by deleting and substituting therefor with the following paragraph—

Regulations.

S.135 (1) The Cabinet Secretary, the County Public

Service Boards Forum, County Assembly Service Boards Forum and other relevant county agencies may—

- (a) make policies and regulations for the inter-county agencies, corporations and retirement benefits schemes including any regulations required to be made for any institutions to which section 134 (3) refers; and
- (b) make regulations for the better carrying out of the purposes and provisions of this Act and such Regulations may be made in respect of all county governments, county agencies, county corporations, retirement benefits schemes and further units of decentralization generally or for any class of county governments and further units of decentralization.

37. The Urban Areas and Cities Act is amended by deleting section 49 by deleting and substituting therefor the following new section—

Amendment to the Urban Area and Cities Act, 2011.

49. All officers and staff of urban areas and cities shall subscribe to a pension scheme in accordance with the provisions of the County Governments Act.

FIRST SCHEDULE (s.13)

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

1. (1) The Board should have at least four meetings in every financial year and not more than four months may elapse between the date of one meeting and the date of the next meeting.

Meetings.

(2) Meetings shall be convened by the Trust Secretary 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 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 in a physical location or via electronic medium.

Quorum.

(2) For special meetings, the quorum is five Trustees present as per 2 (1) above.

3. A decision of the Board shall be by consensus or by a majority of Trustees constituting a quorum 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 by the Trust Secretary.

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.

THE BOARD OF TRUSTEES NOMINATION RULES

6. (1) The process of nomination of a member of the Board of Trustees shall commence with the Cabinet

The process of nomination of a Trustee.

Secretary issuing to a nominating body or nominating bodies a notice of vacancy in the Board of Trustees after being advised by the Schemes Corporate Administrator or Trust Secretary in writing.

(2) Upon receipt of the notice of vacancy, each nominating body shall, through a newspaper of national circulation or such other medium approved by the Cabinet Secretary, invite its members to apply for the vacancy.

(3) Interested individuals shall tender their applications to the relevant nominating body which shall consider the application of the applicants based on the following nomination formula—

(a) Each nominating body shall select individuals who possess all the required professional qualifications, experience and competencies to come up with a priority list.

(b) From the priority list, each nominating body shall consider gender representation in the first instance, geographical or ethnic origin representation in the second instance and representation of the minority groups in the third instance to nominate three individuals for the vacancy of a trustee to be forwarded to the Cabinet Secretary.

(4) Each nominating body shall forward the names of the nominated candidates to the Cabinet Secretary for consideration for appointment.

(5) Upon receipt of the list of nominees, the Cabinet Secretary shall interview all nominees presented to them and shall appoint the most suitable nominees and shall ensure that the Board of Trustees constituted consists of a proper mix of professional competencies and meets the two-third gender rule, represents the geographical face of Kenya and the minority groups;

(6) The Cabinet Secretary shall then publish a notice in the Gazette of the names of the successful appointees formally appointing them into the Board of Trustees.

7. (1) The Cabinet Secretary may on behalf of the county governments make regulations generally for the carrying out of any provisions of the Act—

Other regulations.

- (2) Without prejudice to the generality of subsection (1), such regulations may provide for the—
- (a) mode of paying out pension benefits;
 - (b) mode of provision of the details of members and their dependents;
 - (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;
 - (h) rules for closing down and winding up the closed schemes; and
 - (i) such other matters as the Scheme considers necessary.

(3) The Cabinet Secretary shall publish the regulations in the gazette.

(4) The Regulations made under this Act shall not conflict with the Retirement Benefits Act.

THE GENERAL RULES OF COUNTY PENSION SCHEME

The Rules of the Scheme comprise these General Rules, which are applicable to all Participating Employers and their employees and the Special Rules that apply to individual participating Employers and their employees or individual members. In the event of a conflict between a General Rule and a Special Rule, the provisions of the Special Rules shall prevail.

1. MEMBERSHIP

- (a) Each Employer with Employees in Service on the Participation Date, may, choose to become a Sponsor of the Scheme. Such choice shall be exercised within twelve months after the Participation Date which is to be indicated upon enrollment into the fund or if later, on the date agreed by the parties.
- (b) Each Employer who was a Sponsor of a Previous or Closed Scheme shall transfer to the Scheme on

the Participation Date or if later, on the date set out in the Special Rules.

- (c) Employers whose Employees have left employment by way of resignation or retirement but wish to transfer to the Scheme may, in terms of the Rules herein, choose to become Members of the Fund.
- (d) Employees of those Employers who enter Service after the Participation Date shall join the Scheme as a condition of employment. For the purposes of the Insured Death Portion and the Insured Disability Portion, Eligible Employees shall join the Scheme immediately on joining Service. For the purposes of retirement benefits Eligible Employees shall join the Scheme on the first day of the month coincident with or next following the date of joining Service, or such earlier date as advised by the Employer from time to time.
- (e) If a Member transfers to another Registered Scheme then it is specifically provided that with effect from the date on which he becomes a Member of such Scheme, contributions in terms of Rule 2 shall cease and in the event of death, of any of its Employee prior to transfer of his benefit from the Scheme to such other Scheme, the Insured Portion, if any, shall not be payable.
- (f) A Sponsor shall not be permitted to withdraw from Membership while its Employees remain in Service.
- (g) An Employee who has left Service for any reason and has received all the benefits which may be due to him in terms of these Rules shall on the date of the receipt of all the benefits, cease to be a beneficiary of the Scheme.
- (h) For the purposes of this section, Participation Date means the date on which an Employer commences participation in the Fund as specified in the Deed of Adherence.

2. CONTRIBUTIONS

(1) Contributions by the Employee

- (a) Each Employee shall, where required to make contributions throughout the period of his Service, do so at the rate provided for in the Act.
- (b) Each Employee's contributions shall be deducted by his Employer from his salary or wages.
- (c) If Employees are not required to contribute to the Fund, this shall be specified in the Special Rules.

(2) Contributions by the Sponsor

- (a) Each Sponsor shall contribute to the Scheme for the benefit of each Employee in its employment at the rate provided for in the Act.
- (b) Out of the amount paid in terms of Rule 2 (2) (a), less the cost of the risk based benefits if applicable—
 - (i) such amounts as are required to meet the Fund's expenses for the month concerned up to a maximum amount of 2% and, if applicable, the Insured Death Portion, Funeral Arrangement, Unemployment Benefits and Insured Disability Portion, shall be applied for this purpose;
 - (ii) the balance, less the cost of the administration and general expenses of the Scheme for the month concerned, shall be applied toward the Employee's retirement benefit under the Sponsor's Portion.

PROVIDED THAT a Sponsor may elect to make the contributions required for the risk based benefits which include Funeral Arrangement, Unemployment Benefits, Insured Death Portion and the Insured Disability Portion in addition to the contributions made for an Employee's retirement benefit; such election shall be set out in the Special Rules.

PROVIDED THAT, should the amount referred to in Rule 2 (2) (a) be at any time in excess of the amount required to meet the cost of these benefits, the excess shall be applied towards the Employee's retirement benefit under

the Employer's Portion. Should such amount be at any time insufficient to meet the cost of these benefits, the Trustees may decide that the benefits shall be reduced to the proportion for which the cost has been paid.

- (c) Any variations in Employer's contribution, the rate or the manner of its application towards retirement or other benefits shall be set out in the Special Rules.

(3) Limits on Contributions

The aggregate of the contributions to the Scheme that may be paid in any Financial Year by an Employee and the Employer in respect of the Employee shall together not exceed the lesser of 30% of that Employee's pensionable income (as defined in the Income Tax Act) for such Contribution Year or Kenya Shillings Two Hundred and Forty Thousand (KSh. 240,000) or such other greater amount as may be prescribed from time to time under the Income Tax Act.

(4) Variation of Contributions

Notwithstanding any other provisions of this Rule, but subject to the limits on contributions prescribed in the Income Tax Act, a participating Employer may on giving three months' written notice to the Board, vary the rate of contributions to be made by the Employer. In such an event, the Board shall cause the Special Rules to be amended appropriately.

(5) Termination of Contributions

Contributions by and in respect of an Employee shall cease to be payable as from the day he reaches his Normal Retirement Date or from any earlier date upon which he ceases to be a Member.

(6) Temporary Absence

- (a) When an Employee is on leave with full pay or with pay less than full pay and he is required to contribute to the Fund in terms of the Special Rules, he shall contribute in accordance with Rule 2 (1) and the Employer shall continue to contribute in respect of him in accordance with Rule 2 (2) and all benefits under the Fund in respect of him shall be maintained.

- (b) If an Employee is on leave without pay, no contributions, if required in terms of Rule 2 (2) and the Special Rules, shall be made by him and the Employer may elect whichever of the following options is acceptable to the Employer in his case:
- (i) to limit his contributions during such period to the amount required to maintain the Insured Death Portion and the Insured Disability Portion, which benefits shall continue to be payable
 - (ii) throughout the period of leave, if the Employee's leave is due to sickness; or
 - (iii) if the Employee's leave is due to reasons other than sickness, for no longer than six months or such longer period up to twenty-four months as determined by the Employer and agreed by the Registered Insurer;

PROVIDED THAT the Employer shall give notice, in terms of which option above the Employee is absent, in writing to the Trustees before the date on which the Employee's leave commences; or to maintain contributions under Rule 2(1) and (2) by reference to the Employee's Fund Salary immediately prior to the commencement of the period of leave whereupon the Employee shall be deemed to remain in Service. An option provided for in Rule 2(6) (b) shall be exercisable by the Employer's giving notice of the option elected in writing to the Trustees before the date on which the Employee's leave commences or within such reasonable period of time after the Employee's leave has commenced as the Trustees may from time to time determine. If the Employer fails to exercise the option he shall be deemed to have exercised option (bb) in Rule 2 (6)(b).

(7) Schedule of Contributions

The Board shall prepare and maintain a schedule showing the rates of contributions payable by and in respect of the Employees of each participating Employer. The schedule shall be certified by the Actuary and approved by the Trustees and the Employer. The schedule may be revised with the agreement of the Employer and

certified by the Actuary. A copy of the revised schedule(s) shall be submitted to the Authority within 30 days of such revision.

(8) Remittance of Contributions

Contributions by and in respect of the Employees in accordance with the Schedule of Contributions shall be paid to the Trustees before the tenth day of every calendar month or any other day as may be notified or approved by the Authority. Any contributions not remitted within the stipulated period shall attract interest at the rate determined by the Board on the advice of the Actuary and shall be payable by the Employer on demand by the Trustees or otherwise recoverable as civil debt owed by the Employer to the Fund.

(9) Record of Contributions

The Trustees shall maintain and submit to the Authority a quarterly record of contributions within ten days of the end of every third calendar month. The quarterly record of contributions will comply with the Act

3. RETIREMENT BENEFITS

(1) Vesting of Benefits

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

(2) Retirement from the Service

- (c) A Member who retires is entitled to make withdrawals—
- (i) 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;
 - (ii) on attaining the retirement age agreed between the Sponsor and the Board;
 - (iii) on compulsory retirement under Rule 3 (2) (c);
 - (iv) 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;

- (v) if such employee has qualified to receive the Insured Disability Portion in terms of Rule 5; or
- (vi) on termination of service in the public interest.
- (b) The proof of age of a retiring member for the purposes of Rule 3

(2) (a) (1) is the date of birth in any of the following documents—

- (i) birth certificate;
- (ii) national identification card; or
- (iii) a valid passport.
- (c) The sponsor may require an officer to retire from public service in any other case, at any time after the officer attains the age of fifty years.
- (d) For the purposes of this section, “retirement age” means the standard retirement age as prescribed by the Scheme.
- (e) Notwithstanding Rule 3 (2) (a) (i) and (iv), a member may continue membership of the Scheme past the retirement age provided that the member has signed an agreement with the Board.

(3) Nature of Benefits

The benefits payable to an Employee on his retirement shall either be—

- (a) Such amount in lumpsum or Monthly Pension as may have accumulated to his Fund Credit at the date of his retirement in the following manner—
 - (i) a one-off lump sum payment equivalent to one-third of his accumulated Fund Credit, with the balance two-thirds used to secure a monthly pension until the pensioner’s Fund Credit is exhausted;
 - (ii) a one-off lump sum payment of the accumulated Fund Credit at the date of his retirement; or;
- (b) The Employee may exercise any option in terms of Rule 3 (6) and upon which an annuity shall

be purchased from a Registered Insurer in accordance with Rule 3 (5) or an Income Drawdown arranged and paid from the Fund;

PROVIDED THAT all benefits derived from contributions made by an Employee shall vest immediately in the Employee and the retirement benefits accrued from Membership shall be fully vested in an Employee on completion of one year of Service with the Employer.

(4) Withdrawal of Membership or Benefits.

- (a) A Member shall not withdraw membership or retirement benefit from the scheme while the member is in the employment of a Sponsor.
- (b) A Member may withdraw benefits from their account before normal retirement age in the following circumstances—
 - (i) Early retirement;
 - (ii) resignation;
 - (iv) dismissal;
 - (v) ill health;
 - (vi) emigration; or
 - (vii) transfer to another scheme.
- (c) Notwithstanding Rule 3 (4) (a) a member may withdraw—
 - (i) their own contribution and investment return in full and fifty percent of employer's contribution, on leaving employment for any other reason; and
 - (ii) the aggregate of any additional voluntary contributions made into the Fund together with investment return in full, on leaving employment for any other reason.
- (d) A Member may be permitted to receive benefits before attaining normal 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.

(5) Payment of Retirement Benefits

- (a) Where a Member retires as provided for under these Rules, the Member may in writing, request the Board to pay that member—
- (i) A lump sum from the balance in his retirement savings account that shall not exceed the equivalent of one third of that balance;-
 - (ii) Monthly or quarterly income drawdown in accordance with a formula prescribed by the Board on the advice of an Actuary;
 - (iii) Monthly or quarterly Annuity for life purchased from an Approved Issuer of their choice provided that the Annuity shall include a provision for benefits payable to dependants upon a Members death.
- (b) Notwithstanding Rule 3 (5) (a) (i), a member may withdraw any additional voluntary contributions made into the Scheme and accrued interest in full.
- (c) Notwithstanding the provisions of any other written law, a benefit granted under this Rules shall not be assignable or transferable except for the purpose of satisfying—
- (i) tax due to the national and county government;
 - (ii) in accordance with the terms of a mortgage guarantee facility approved by the Board; or
 - (iii) liable to be attached in settlement of any claim.
- (d) The payment of a retirement benefits shall commence from the end of the month immediately following the month of the retirement of the member.
- (e) The Pension or annuity payable on an Employee's retirement shall either be offered by the Scheme out of the retiring member's fund credit only spread over his or her lifetime or if annuity be

purchased in the Employee's name from a Registered Insurer of the Employee's choice. The terms and conditions applicable to such Pension, including options elected by the Member and the determination of any benefits arising on his death, shall be agreed between the Member and the Fund or the Registered Insurer and shall be set out in writing by the Registered Insurer or the Fund as the case may be; PROVIDED THAT—

- (i) the annuity or pension so purchased shall be compulsory, non-commutable, non-assignable and payable for life; and
- (ii) on purchase of an annuity in terms of this Rule from a Registered insurer, the Scheme shall have no further liability in respect of the Employee, such liability resting with the Registered Insurer from whom the Pension is purchased.

(6) Commutation

At the commencement date of his retirement, prior to the payment of Monthly Pension in the Scheme or purchase of his Pension in terms of Rule 3 (5), an Employee may elect to commute for a lump sum;

- (i) if the amount available for the purchase of such Pension does not exceed the limit set by the relevant legislation from time to time, the whole of the available amount; or
- (ii) if the whole of such amount exceeds the limit referred to in (i), not more than one third of such amount.

PROVIDED THAT if the Special Rules denote the type of participation by the participating Employer to be on a Provident Fund basis, then the Employee may elect to commute the whole of such benefit for a lump sum.

4. DEATH AND DISABILITY BENEFITS

(1) Death in Service

- (a) Upon death of a member in service, the Board shall apply the benefits of the Member in favour of the nominated beneficiary.

- (b) In the absence of a nomination, the Board taking into account any evidence presented before it, shall apply the benefits referred to in (i) to either the dependents or personal representatives of the estate of the deceased.
- (c) There shall be payable in respect of an employee who dies in service or before attaining the normal retirement age a lump sum benefit equal to:-
 - (i) his Insured Death Portion; plus
 - (ii) his Fund Credit at the date of his death.

(2) Death in Retirement

- (a) If a 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.
- (b) The payment under (a) shall be made to the beneficiaries commencing from the day following the death of the Member.

(3) Presumption of death of Member

- (i) 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.
- (ii) Where a person is presumed dead under this section, the provisions of section 30 apply.

(4) Restrictions

- (i) The Insured Death Portion payable in terms of Rule 5 (1) (c) (i) shall be insured with a reputable Registered Insurer and shall not become due and payable unless the claim for the benefit has been admitted by the Registered Insurer. If the claim is admitted by the Registered Insurer, the Insured Death Portion shall be limited to the amount paid by the Registered Insurer in consequence of such claim.

- (ii) Where so required by the Registered Insurer who is underwriting the benefit, an Employee may need to be examined at the Registered Insurer's expense by a medical practitioner in terms of the Registered Insurer's underwriting requirements.
- (iii) Depending on the results of this examination, the benefit, or part of the benefit payable in terms of Rule 5 (1)(c) (i) may be restricted in such manner as determined by the Registered Insurer.

(5) Payment of Benefit

- (a) The benefit payable on the death of an Employee shall be paid in such shares and manner to such person or persons as the Trustees, in their absolute discretion, shall decide PROVIDED THAT—
 - (i) in so deciding, the Trustees shall take into consideration any expression of wishes by the Employee prior to his death and any person who in their opinion qualifies as a beneficiary, by reason of his relationship with the Member;
 - (ii) (1) the Board shall have the power in their absolute discretion to apply the whole or any part of the aforesaid benefit to the purchase of an annuity or annuities for the beneficiary or beneficiaries contemplated in (a) above or to make the payment of the benefit to the estate of the Employee. Such action shall be a complete discharge of the duties of the Trustees.
- (b) the Trustees shall have the power in their absolute discretion to transfer the whole or any part of the aforesaid benefits into a Trust Fund to administer the same on behalf of a minor.
- (c) Notwithstanding anything to the contrary contained in any contract or document, any benefit payable by the Fund upon the death of an Employee shall not form part of the assets in the estate of such Employee, but shall be dealt with in terms of the Rules.

(6) Suspension or Cancellation of death cover

Notwithstanding any other provision in this Rule 4, if any part of the death benefit in Rule 5 is insured with a Registered Insurer and the cover provided in terms of the policy issued by the Registered Insurer is suspended or cancelled for reasons beyond the control of the Trustees then that part of the death benefit in Rule 5 which was so insured shall not be payable by the Fund.

(7) Disability Benefit

(a) Definition

An Employee will be classified as “Disabled” in terms of this Rule if his condition is such as to satisfy the provisions governing disablement which is set out in the policy issued by the Registered Insurer. “Disablement” has a corresponding meaning.

(b) Benefit

Unless otherwise specified in the Special Rules, an Employee who has retired in terms of General Rule 3(3)(b) on becoming Disabled shall, in addition to the benefit to which he is entitled in terms of Rule 3(2), become entitled to his Insured Disability Portion which shall be payable as a lump sum benefit equivalent to three (3) times the Fund Salary at the date of disability subject to the maximum contribution provision in General Rule 2 (b), provided that:

- (i) the benefit so set out shall be subject to a maximum of such amount as may be specified from time to time by the Registered Insurer;
- (ii) if the Employee's Disablement occurs after he has reached such age as may be set out in the policy issued by the Registered Insurer the benefit will be reduced in accordance with the provisions of that policy;
- (iii) the benefit will be payable after a waiting period specified in the policy issued by the Registered Insurer;
- (iv) a benefit payable in terms of this Rule will be subject to any restrictions which may have been imposed in terms of Rule 4(b) on the benefit applicable in terms of General Rule 4(a) and, if applicable, the Special Rules, and to such

exclusions and further restrictions (if any) as may apply in terms of the policy issued by the Registered Insurer;

- (v) the benefit payable in terms of this Rule will be insured with a Registered Insurer and no such benefit will be paid unless the claim for the benefit has been admitted by the Registered Insurer. If the claim is admitted by the Registered Insurer the Insured Disability Portion shall be limited to the amount paid by the Registered Insurer in consequence of such claim.

(8) Insured critical illness Benefit

If an Employee is declared critically ill while in service in terms of the Rules there shall be payable a lump sum benefit equivalent to 30% of three (3) times the Employee's Fund Salary at the date of critical illness subject to the maximum contribution provision in General Rule 2 (b).

5. TERMINATION OF SERVICE

(1) Resignation or Dismissal

An Employee who leaves Service (other than in terms of Rule 3) of his own free will or is dismissed by his Employer for reasons other than those provided for in Rule 5 (2) below, shall become entitled to a lump sum benefit equal to—

- (a) his Employee's Portion at the date of leaving service; plus
- (b) (if applicable) a percentage of the Employer's Portion as determined in accordance with the provisions of the Special Rules and the balance shall be deferred until the member attains early retirement age whereof the member shall be paid the balance in lump sum or as a pension.

(2) Redundancy or Retrenchment

An Employee who leaves Service (other than in terms of Rule 4) as the result of his having been declared redundant or having been retrenched shall become entitled to his Fund Credit at the date of leaving Service, unless the Special Rules specify otherwise.

(3) Payment of Benefit

- (a) The benefit in terms of Rule 5(1) or (2) shall be paid to the Employee as a lump sum. Payment shall be made as soon as is reasonably possible after the date of his leaving Service but not later than thirty days from the date of notification of leaving Service.
- (b) Instead of receiving the benefit entirely as a lump sum, the Employee may transfer all or part of the benefit to another Registered Fund.
- (c) When a benefit has been paid to the Employee as a lump sum in terms of Rule 5 (3) (i) or transferred in terms of Rule 5 (3) (b), the Employee shall have no further claim on the Fund.
- (d) Any proportion of an Employer's Portion not utilized as aforesaid shall be retained by the Trustees and may be applied to meet the Employer's costs and expenses under Rule 2 (2) (b) or to offset against the Employer's contributions for the following year or held in the Employer's Reserve Account.

(4) Effect on Terms of Employment

- (a) Nothing in these Rules shall in any way restrict the right of the Employer to terminate the employment of a Member or affect any agreement between the Employer and an employee in regard to conditions of service.
- (b) No person shall have any claim concerning the Fund except in accordance with the Rules and the Trust Deed.
- (c) No benefit right or interest to which an Employee or his Dependents' may claim to be entitled in terms of the Rules shall be used as a ground for damages in any action brought by such Employee or his Dependents' against the Employer.

6. TAXES AND DUTIES

- (a) If upon the death of an Employee or other person in receipt of benefits under the Scheme, any

estate or other duty or taxes becomes payable by Trustees, the Trustees shall be entitled to recover any such amount paid (including any interest paid by them in respect of such payment and the cost of paying it) by deducting from any amount due or owing to such Employees or other person benefiting from the Scheme.

- (b) In the event of the Employer or the Trustees becoming accountable for tax or duty in respect of any payment under the Scheme the Employer shall have the right to deduct such tax or duty from the amount payable to such Employees or other person benefiting from the Scheme.

7. DISCRETIONARY BENEFITS

If the Employer requests and pays any additional contributions that the Trustees consider prudent (for which purpose the Board will seek and consider actuarial advice), the Board may provide—

- (a) increased or additional benefits in respect of any Employee or Pensioner or any other person entitled to a benefit under the Rules
- (b) subject to the approval of the Employer, benefits in respect of any Employee or Pensioner or any other person entitled to a benefit under these Rules different from those set out elsewhere in these Rules and may be of such amount as the Board may, on the advice of the Actuary, determine.

8. BENEFITS NON-ASSIGNABLE

Except for purposes of securing a mortgage and advances or loans as provided in the Act, any benefit payable or to be paid under the Rules is not assignable and shall cease to be paid or payable if the recipient or other person who would otherwise be entitled to such benefit under these Rules attempts to alienate charge or pledge the same or any part thereof PROVIDED THAT if any such benefit ceased to be paid or payable under the provisions of this Rule, the Trustees may in their absolute discretion in case of hardship pay or apply all or any part of such benefit for the support or maintenance or benefit of all or any one

or more to the exclusion of any other or others of the following persons as the Employer shall appoint namely such Employee and his Dependents' but in no circumstance shall any benefits under this Scheme be paid to an assignee.

9. OTHER PROVISIONS

In case of the occurrence of any event not expressly provided for in these Rules the appropriate share of the moneys held under the Scheme shall be paid in trust by the Board for either the Employee or his Dependents or his Personal Representatives as the Trustee may think fit according to the circumstances then applicable.

10. LIMITATION OF TRUSTEES' LIABILITY

The Board shall not be required to effect any payment or perform any obligation under the Scheme unless the Trustees shall have been notified by the Employer or by the Employee or beneficiary concerned of all events giving rise to or affecting the incidence of such liability or obligation.

11. PROHIBITED PAYMENTS AND BENEFITS

- (a) No payment shall be made to the Employer from the Fund without the prior written consent of the Authority and the Commissioner of Income Tax;
- (b) No payment shall be made hereunder to an Employee while he remains in the service of the Employer;
- (c) No loan, advance or other similar benefit or payment shall be provided out of the Fund to an Employee or any other person unless otherwise approved by the Authority.

12. ACCOUNTS, ANNUAL REPORTS AND ACTUARIAL REVIEWS

- (a) The Trustees will prepare annual accounts of the Fund and have them audited by the Auditor. The audited accounts will comply with the Act.
- (b) Any surplus funds not allocated to Employees' Accounts shall be identified and allocated to the Fund in lieu of further contributions by the Employer in the year during which the audit is

completed and subsequent years until the surplus is exhausted.

- (c) The Trustees will prepare annual reports which will contain—
 - (i) a copy of the audited accounts;
 - (ii) such other information as required by the Act.
- (d) The annual audited accounts and reports described in (a) and (d) above will be submitted by the Trustees to the Authority within six months after the end of the Financial Year to which they relate or such other period as is prescribed under the Act. The same shall also be submitted to the Commissioner within thirty days of the completion of the audit.
- (e) The Trustees shall within five months from the end of the financial year send to the Members a summary of the audited accounts together with the Employees' benefit statements.

13. ALTERATIONS TO STATUTORY FUNDS

The Cabinet Secretary on the recommendation of the Board may approve amendments to the Rules to take account of changes in other relevant statutory laws in Kenya.

14. PARTICULARS OF MEMBER AND DEPENDENTS OF A MEMBER

- (a) Every Member must provide their particulars and those of his Dependants to the Administrator in the prescribed manner.
- (b) A Member may update the particulars provided under (a) at any time and, in any event, at least three years before retirement.
- (c) Upon death of a member, the benefits of the member shall be paid to the person whose particulars the member had provided.
- (d) Where a dispute arises under this section, the Board shall consider any evidence presented before it and determine the rightful beneficiary.

15. RETAINED EARNINGS

The accumulated income both realized and unrealized brought forward from previous financial periods and earnings from the current period.

16. ANNUAL DISTRIBUTION OF PROFITS

The Board shall on annual basis declare investment returns out of retained earnings which shall be credited to the Member's Account.

17. EVIDENCE OF AGE

Every Employee shall produce to the Trustees satisfactory evidence of his age and that of his Dependents' and shall provide the Trustees with such information as they may require. In the absence of such satisfactory evidence of age, the Trustees and Employer may at their absolute discretion prescribe dates of birth for the purposes of the Scheme.

18. PROFIT AND LOSS ACCOUNT

The annual income from investments of the Scheme together with any profit and loss account maintained by the Board.

19. ANNUAL DISTRIBUTION OF PROFITS

From the profit and loss account referred to in Rule 17, investment returns shall be credited to the members' account on a pro rata basis.

20. SUSPENSION OF BENEFITS

If any Employee fails to comply with the provisions of Rules 16 and 17, the Trustees may suspend or withhold payment of any benefit from the Scheme due to or in respect of him until the said provisions are complied with.

21. RIGHT TO DOCUMENTS

Any Employee of a Member shall be entitled at any reasonable time to inspect a copy of the trust instruments, laws and rules of the Scheme and any amendments made thereto.

THIRD SCHEDULE

(1) The Scheme is founded and sponsored by the following County Governments—

List of
Founding and
Sponsoring
Counties

COUNTY NAME	COUNTY NO.
Mombasa County Government	001
Kwale County Government	002
Kilifi County Government	003
Tana River County Government	004
Lamu County Government	005
Taita/Taveta County Government	006
Garissa County Government	007
Wajir County Government	008
Mandera County Government	009
Marsabit County Government	010
Isiolo County Government	011
Meru County Government	012
Tharaka-Nithi County Government	013
Embu County Government	014
Kitui County Government	015
Machakos County Government	016
Makueni County Government	017
Nyandarua County Government	018
Nyeri County Government	019
Kirinyaga County Government	020
Murang'a County Government	021
Kiambu County Government	022
Turkana County Government	023
West Pokot County Government	024
Samburu County Government	025
Trans Nzoia County Government	026
UasinGishu County Government	027
Elgeyo/Marakwet County Government	028
Nandi County Government	029
Baringo County Government	030
Laikipia County Government	031
Nakuru County Government	032
Narok County Government	033
Kericho County Government	034

Kajiado County Government	035
Bomet County Government	036
Kakamega County Government	037
Vihiga County Government	038
Bungoma County Government	039
Busia County Government	040
Siaya County Government	041
Kisumu County Government	042
Homa Bay County Government	043
Migori County Government	044
Kisii County Government	045
Nyamira County Government	046
Nairobi City County Government	047

(2) The Scheme is sponsored by the following existing Associated Organizations:

List of Existing Sponsoring Associated Organizations.
ORGANISATION NO.

ASSOCIATED ORGANIZATION

Kenya County Governments Workers Union	001
Kenya National Union of Nurses	002
Kenya Association of County Governments	003
Eldoret Water and Sanitation Company Limited	004
Embu Water and Sanitation Company Limited	005
Gatanga Water and Sewerage Company Limited	006
Gatundu Water and Sewerage Company Limited	007
Gusii Water and Sanitation Company Limited	008
Kapsabet water and Sewerage Company Limited	009
Karimenu Water and Sewerage Company Limited	010
Kericho Water and Sanitation Company Limited	011
Kikuyu Water Company Limited	012
Kilifi-Mariakani Water and Sewerage Company Limited	013
Kiambu Water and Sanitation Company	014
Kisumu Water and Sewerage Company Limited	015
Kwale Water and Sewerage Company Limited	016
Lake Victoria North Water Services Limited	017
Limuru Water and Sewerage Company Limited	018

Machakos Water and Sewerage Company Limited	019
Malindi Water and Sewerage Services Limited	020
Mathira Water and Sewerage Services Limited	021
Mavoko Water and Sewerage Services Limited	022
Karimeru Water and Sewerage Services Limited	023
Mombasa Water and Sewerage Company Limited	024
Nairobi City Water and Sewerage Company Limited	025
Nakuru Water and Sanitation Services Company Limited	026
Nanyuki Water and Sewerage Company Limited	027
Nyahururu Water and Sanitation Company Limited	028
Nyeri Water and Sewerage Company Limited	029
Nzoia Water and Sanitation Services Company Limited	030
Thika Water and Sewerage Company Limited	031
CPF Financial Services and its subsidiaries (the CPF Group).	032

FOURTH SCHEDULE

MODEL DEED OF ADHERENCE AND SPECIAL RULES

This deed is made this day of.....
 20... Between the Trustees of **COUNTY PENSION SCHEME** (hereinafter referred to as “the Trustees”) which expression shall where the context so admits include its successors and assigns) of the first part; and (*Insert name of sponsor*)..... and of Post Office Box Number (Hereinafter referred to as the Employer”).

Model Deed of Adherence for participating Employers who join the Scheme after the Commencement Date.

A. WHEREAS the Trustees are the duly appointed to act as the Trustees of **COUNTY PENSION SCHEME** hereinafter referred to as ‘**The Fund**’.

B. WHEREAS the Employer has by a formal application requested to join the membership of the Scheme to allow its employees to become Members of the Scheme and in furtherance to the said objective has made a formal resolution which resolution forms part of this Deed, and;-

C. WHEREAS the Trustees of the Scheme having diligently considered the application has approved the same.

NOW THEREFORE THIS DEED WITNESSETH:

2. The Adhering Employer, with the Trustees’ consent, is admitted to participate in the Scheme as an

Employer for the purpose of the Scheme Trust Deed and Rules (as amended from time to time) from the date of execution of this Deed.

3. The Scheme and the Employer hereby covenant that by executing this Deed of Adherence and the Special Rules thereto, it shall be admitted into the scheme and participate fully as a sponsor in accordance with the provisions and rules set out therein as may be modified from time to time with the consent of the authority and which shall form part of and be construed in accordance with this Deed.

4. That upon the execution of this deed, the Employer assumes and adheres, irrevocably, to the rights and obligations pertaining to all sponsors in the scheme including but not limited to payment of contributions when they are due under the Scheme to the Fund, as set out in the General Rules.

5. That the powers, rights, privileges and responsibilities bestowed upon all the employers as sponsors by this deed presents without any reservation or caveat is granted to the employer for as long as this fund shall exists.

The Adhering Employer and the Fund agree with each other (and with each and every other Employer) to perform and observe those covenants and obligations that the Scheme Trust Deed and Rules requires of them.

IN WITNESS WHEREOF the parties hereto have executed this Deed as on the date and year first hereinabove mentioned.

SIGNED for and on behalf of:

(Insert name of the sponsor)

Signed.....

Signed

SIGNED by the duly authorized

Representatives of the Trustees of the

COUNTY PENSION SCHEME

In the Presence of

Trustee

.....

Trustee

.....

MODEL SPECIAL RULES

APPLICABLE TO (*Insert name of the Sponsor*).....

Employer Participation Number:
Special Rules Registration Number:

Model Special Rules for participating employer who join the Scheme after the Commencement Date.

The General Rules of the County Pension Fund (“the Fund”) shall be read in conjunction with these Special Rules which shall apply to the Eligible Employees of the Employer with effect from the Participation Date.

1. “Employer” means the sponsoring herein being (*insert the name of the sponsor*)..... which by these Special Rules agrees to participate in the Fund by, *inter alia*, making contributions thereto on behalf its employees or a substitute of the Employer who assumes this position upon execution of a deed of substitution and has been admitted to the Fund as a participating Employer as specified herein.

2. “Fund Salary” means the employee’s salary which comprises Basic Salary and House Allowance.

3. Participation Date:

4. Eligible Employee:

An employee in the employ of the employer herein on permanent and pensionable terms of service contract staff and/or state officers who the employer agrees to sponsor and who are over eighteen (18) years of age or such age as is stipulated by the Authority from time to time and has not attained the normal retirement age specified herein.

5. Early Retirement age:

For the purposes of these Rules, the Early Retirement Age of a member of the Fund shall be fifty (50) years or any other age agreed to by the Participating Employer and the Board provided the early retirement age shall not be less than fifty (50) years.

6. Normal Retirement Date.

For the purposes of these rules, the normal retirement age of a member shall be the last day of the month in which an Employee reaches age 60 years.

7. Insured Death Benefit:

If an Employee dies while in service in terms of General Rule 5, there shall be payable;

- a. A Funeral Grant equivalent to a lump sum of Kenya Shillings One Hundred Thousand (KSh. 100,000/=);
- b. A lump sum benefit equivalent to three (3) times the Employee's Fund Salary at the date of death subject to the maximum contribution provision in Special Rule 11 plus;
- c. His Fund Credit at the date of his death.

8. Insured Disability Benefit:

If an Employee becomes disabled while in service in terms of Regulation 18, there shall be payable a lump sum benefit equivalent to three (3) times the Employee's Fund Salary at the date of disability subject to the maximum contribution provision in Special Rule 11.

9. Insured critical illness Benefit:

If an Employee is declared critically ill while in service in terms of the General Rules there shall be payable a lump sum benefit equivalent to 30% of three (3) times the Employee's Fund Salary at the date of critical illness subject to the maximum contribution provision in Special Rule 11.

10. Member Contribution:

% of Fund Salary.

11. Employer Contribution:

% of the Employee's Fund Salary of which:

- (a) a maximum amount of 2% shall be applied towards the cost of the Insured Death Portion, Insured Funeral Arrangement and the Insured Disability Portion; and
- (b) the balance, less the cost of the Fund's expenses for the month concerned, shall be applied towards the Employee's retirement benefit under the Employer's Portion;

Provided that, should the amount referred to in (a) be at any time in excess of the amount required to meet the cost of these benefits, the excess shall be applied towards the Employee's retirement benefit under the Employer's Portion. Should such amount be at any time insufficient to meet the cost of these benefits, the Trustees may decide that the benefits shall be reduced to the proportion for which the cost has been paid.

12. Retirement Benefit

Upon attaining the normal retirement age, an employee shall be entitled to either—

1. a one-off lump sum payment of the accumulated Fund Credit at the date of his retirement; or

2. a one-off lump sum payment equivalent to one-third of his accumulated Fund Credit, with the balance two-thirds used

to secure a monthly pension. The Monthly pension will be secured through the purchase of an annuity from a Registered Insurer; or

3. an income drawdown in terms of Regulation 16 (4)(c).

13. Death in Service on or before Normal Retirement Date

If an Employee dies while in Service on or before attaining the normal retirement date there shall be payable a lump sum benefit equal to:

- (i) his Insured Death Portion; plus
- (ii) his Fund Credit at the date of his death.

Payable either as one-off lump sum to the nominated beneficiaries of the Member or used to secure a pension for the spouse's and/or dependents'.

14. Termination of Service Benefit

If an Employee leaves Service of the Employer, the Employee shall be entitled to a lump sum benefit equal to:

- (i) his Employee's Portion at the date of leaving service; plus 50% of the Employer's Portion;
- (ii) the balance 50% of the Employer's Portion shall be preserved in the Scheme until the Member's Retirement Age and shall then be used to secure a pension payable from Retirement Age, together with interest thereon.

Or

(ii) Alternatively, the balance of 50% of the Employer's Portion may be transferred from the Fund to the Member's new Employer's registered Retirement Arrangement or their personal pension plan as appropriate, together with interest thereon.

15. Unemployment Benefit

If an Employee becomes redundant or is retrenched while in the service of the Employer, there shall be payable a one-off lump sum benefit equivalent to an employee’s three months’ pensionable salary plus his Fund Credit as at the date of retrenchment/redundancy.

SIGNED & SEALED FOR & ON BEHALF OF;
.....(*Insert the name of the Sponsor*).....

Signed and sealed Seal

.....
Signed and sealed
.....

MODEL SPECIAL RULES GOVERNING MEMBERS OF THE SHARIAH COMPLIANT PENSION FUND

Applicable to
Employer Participation Number:
Special Rules Registration Number:

The General Rules of the County Pension Fund shall be read in conjunction with these Special Rules which shall apply to the Eligible Employees of the Employer with effect from the Participation Date.

1. Employer:

means the sponsoring County Government herein being which by these Special Rules agrees to participate in the Fund by, *inter alia*, making contributions thereto on behalf its employees or a substitute of the Employer who assumes this position upon execution of a deed of substitution and has been admitted to the Fund as a participating Employer as specified herein

2. “Fund Salary” means the employee’s salary which comprises Basic Salary and House Allowance

3. Participation Date:

4. Eligible Employee:

An employee in the employ of the employer herein on permanent and pensionable terms of service contract staff and/or state officers who the employer agrees to sponsor and who are over eighteen (18) years of age or such age as is stipulated by the Authority from time to time and has not attained the normal retirement age.

5. Early Retirement age:

For the purposes of these Rules, the Early Retirement Age of a member of the Fund shall be fifty (50) years or any other age agreed to by the Participating Employer and the Board provided the early retirement age shall not be less than fifty (50) years.

6. Normal Retirement Date.

For the purposes of these rules, the normal retirement age of a member shall be the last day of the month in which an Employee reaches age 60 years.

7. Insured Death Benefit:

If an Employee dies while in service in terms of General Rule 5, there shall be payable;

- (a) A Funeral Grant equivalent to a lump sum of Kenya Shillings One Hundred Thousand (KSh. 100,000/=)
- (b) A lump sum benefit equivalent to three (3) times the Employee's Fund Salary at the date of death subject to the maximum contribution provision in Special Rule 11 plus;
- (c) His Fund Credit at the date of his death

8. Insured Disability Benefit:

If an Employee becomes disabled while in service in terms of General Rules 4 (a) (iii) and 5 (e), there shall be payable a lump sum benefit equivalent to three (3) times the Employee's Fund Salary at the date of disability subject to the maximum contribution provision in Special Rule 11.

9. Insured critical illness Benefit:

If an Employee is declared critically ill while in service in terms of the General Rules there shall be payable a lump sum benefit equivalent to 50% of three (3) times the Employee's Fund Salary at the date of critical illness subject to the maximum contribution provision in Special Rule 11.

10. Member Contribution:

12% of Fund Salary

11. Employer Contribution:

15% of the Employee's Fund Salary of which—

- (a) a maximum amount of 2% less the cost of the Insured Disability Portion and Insured Funeral Arrangement, shall be applied towards the cost of

the Insured Death Portion and the Insured Disability Portion; and

- (b) the balance, less the cost of the Fund's expenses for the month concerned, shall be applied towards the Employee's retirement benefit under the Employer's Portion;

provided that, should the amount referred to in (a) be at any time in excess of the amount required to meet the cost of these benefits, the excess shall be applied towards the Employee's retirement benefit under the Employer's Portion. Should such amount be at any time insufficient to meet the cost of these benefits, the Trustees may decide that the benefits shall be reduced to the proportion for which the cost has been paid.

12. Retirement Benefit

Upon attaining the normal retirement age, an employee shall be entitled to either—

- (a) a one-off lump sum payment of the accumulated Fund Credit at the date of his retirement; or;
- (b) a one-off lump sum payment equivalent to one-third of his accumulated Fund Credit, with the balance two-thirds used to secure a monthly pension. The Monthly pension will be secured through the purchase of an annuity from a Registered Insurer or;
- (c) an income drawdown in terms of General Rule 4(b)(ii)

13. Death in Service on or before Normal Retirement Date

If an Employee dies while in Service on or before attaining the normal retirement date there shall be payable a lump sum benefit equal to—

- (i) his Insured Death Portion; plus
- (ii) his Fund Credit at the date of his death.

Payable either as one-off lump sum to the nominated beneficiaries of the Member or used to secure a pension for the spouse's and/or dependents'.

14. Termination of Service Benefit

If an Employee leaves Service in terms of the provisions of General Rule 6, the Employee shall be entitled to a lump sum benefit equal to:

- (i) his Employee's Portion at the date of leaving service; plus 50% of the Employer's Portion
- (ii) the balance 50% of the Employer's Portion shall be preserved in the Scheme until the Member's Retirement Age and shall then be used to secure a pension payable from Retirement Age, together with investment income thereon.

Or

- (iii) Alternatively, the balance of 50% of the Employer's Portion may be transferred from the Fund to the Member's new Employer's registered Retirement Arrangement or their personal pension plan as appropriate, together with investment income thereon.

15. Unemployment Benefit

If an Employee becomes redundant or is retrenched while in the service of the Employer, there shall be payable a one-off lump sum benefit equivalent to an employee's three months' pensionable salary plus his Fund Credit as at the date of retrenchment/redundancy

SIGNED FOR AND ON BEHALF OF;

Chairperson;

Secretary:

Employer's Details

Contact Name:

Contact Telephone Number:

Address:

Extract from the minutes of a meeting of the held at.....on the.....day of..... 20.....

Resolved

That with effect from participation in the County Pension Fund in terms of these Special Rules is hereby approved.

Certified a true extract for and on behalf of
.....

Chairperson:

Secretary:

The Trustees of the County Pension Fund hereby resolve that the attached Special Rules in respect of the participating employer be adopted

in accordance with the provisions of the General Rules of the Fund with effect from the Participation Date as set out in the Special Rules.

Certified that the above resolution has been adopted in accordance with the provisions of the Rules of the Fund.

Trustee Date.....

Trustee..... Date

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to establish the County Pension Scheme as a mandatory umbrella pension scheme for all county government officers. The Bill provides for 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 pension and income draw-downs. The proposed scheme will provide one umbrella pension scheme for all the forty seven county governments besides being open to other persons approved by the Board.

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

This part contains the short title, interpretation of terms, the application clause, and objects of the Act which includes all County Government employees as well as any public institution, organization or 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 5-17) provides for the establishment and management of the Scheme. It establishes the County Pension Scheme and its Board of Trustees. It provides for the procedure of the appointment of the Trustees and 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 18-23) contains provisions

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 are also set out. Further, the part provides for membership of the scheme without a sponsor, vesting of benefits, and withdrawal from the retirement savings account and retirement from service among other things. Finally, it sets out the prohibited payments from the scheme.

Part IV (Clauses 24-31) contains the financial provisions and establishes the County Pension Fund. It also provides how surplus funds may be invested as well as set out a requirement for the Board to have a reserve account.

Part V (Clauses 32-38) sets out the general provisions including the duty of care of the Board, protection of trustees and employees of the Scheme from personal liability, offences, and proceedings for recovery of deductions from employers and 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 certain

provisions of local Authorities Provident Fund Act and section 132 of the County Governments Act is also provided for in this part. Finally this part contains a provision exempting members of the scheme from Tier II contributions to the National Social Security Fund. The part also contains detailed provisions on the transitional, closure of the existing scheme and transition of staff and membership of the previous schemes to the new scheme.

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 14th November, 2016.

STEWART MADZAYO,
Chairman, Standing Committee of Labour and Social Services.