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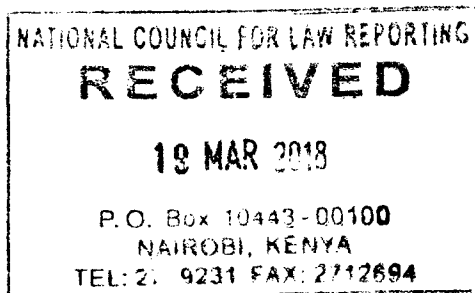
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THE COUNTY GOVERNMENTS' RETIREMENT SCHEME BILL, 2018

A Bill for

AN ACT of Parliament to establish the County Governments' Retirement scheme for persons in the County Government Service and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the County Governments' Retirement Scheme Act, 2018.

Short title.

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

Interpretation.

“actuary” means a person as defined in the Retirement Benefits Authority Act.

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

“annuity” means a Pension purchased under a contract with a Registered Insurer;

“appointing bodies” means bodies responsible for appointing and nominating members of the Board.

“approved issuer” means an Approved Issuer appointed by the Trustee to provide the services of Approved Issuer as defined in the Retirement Benefits Act and Regulations;

“associated organization” means any person, firm, company or organization of employees or association of employers created by, owned by or associated with county governments, urban areas and cities or any other institution, established under the County Governments Act No. 17 of 2012, Urban Areas and Cities Act No. 13 of 2011, 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;

“authority” means the Retirement Benefits Authority;

“board” means the Board of Trustees established under section 7;

“cabinet secretary” means the Cabinet Secretary responsible for the National Treasury;

“chairperson” means the chairperson of the Board of Trustees established under section 7;

“chief executive officer” means the chief executive officer of the scheme appointed under section 20 who shall also be the secretary to the Board;

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

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

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

“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 this Act;

“county public service” means the individuals performing a function within a County Government;

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

“deed of adherence” means the legal instrument to be executed by the employer who joins the scheme after the commencement date of the scheme and which shall bind that employer to the scheme’s rules.

“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 county public service employee or any employee of an associated organization or body, as may be approved by the board and which has signed a Deed of Adherence in accordance with this Act;

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

“existing schemes” means Laptrust (Umbrella) Retirement fund, (LAPTRUST DC and DB /LAPFUND) and any other.

“fund” means the fund established under section 8;

“fund manager” means a manager registered under the Retirement Benefits Act and appointed by the board under section 23;

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

“insured benefit” means the death in service lump sum benefit and the disability lump sum benefit to be provided in terms of section 26;

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

“member” means an eligible employee who has become 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;

“membership” means the fact of having been admitted as a member of the scheme and a member’s period of

membership shall for the purposes of determining the member's entitlement to access his benefits upon resignation or termination of service be deemed to include his period of membership of other registered retirement benefits schemes in respect of which benefits have been transferred into the scheme in accordance with the provisions of this Deed;

"normal retirement age" means the age as set by the Public Service Commission or any other Act of Parliament;

"pensionable emoluments" means basic salary excluding housing, transport and any other allowances or fluctuating emoluments

"public officer" has the meaning as set out in the Constitution;

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

"scheme" means the County Governments' Retirement scheme established under this Act;

"sponsor" means an employer or any other 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 under any other law, whether monogamous or not immediately before their death; and

"trustee" means a member of the Board of Trustees established under section 7.

3. This Act applies to all eligible employees of the County Governments and Associated Organisations.

Application Clause.

4. A public officer or any other person approved by the Board may become a member of the scheme under the auspices of a sponsor.

Scope of the Act.

5. (1) The object and purpose of the Act is to—

Objects of the Act.

- (a) provide for the establishment of a County Governments' Retirement scheme;
- (b) provide for the payment of retirement benefits to members of the scheme;
- (c) provide a framework to improve the social security of members of the scheme by ensuring that the members save for their retirement;

- (d) establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the scheme; and
- (e) establish transitional provisions for existing schemes.

PART II—ESTABLISHMENT AND MANAGEMENT OF THE COUNTY GOVERNMENTS' RETIREMENT SCHEME

6. (1) There is established the County Governments' Retirement scheme.

Establishment of the County Governments' Retirement scheme.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) 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.

(3) The scheme shall be a defined contribution scheme out of which the following shall be payable —

- (a) periodic payments through the purchase of annuities;
- (b) a lump sum as a commutation of pension or trivial pension in accordance with the Retirement Benefits Authority Regulations;
- (c) income drawdown; and
- (d) such other benefits as may approved by the Board under this Act.

PART III—THE BOARD OF TRUSTEES AND THE COUNTY GOVERNMENTS' RETIREMENT SCHEME FUND

7. (1) There is established the Board of Trustees of the scheme which shall comprise of—

Board of Trustees.

- (a) a representative of the Council of County Governors;
- (b) two elected representatives of the County Public Service Boards who shall not be of the same gender;
- (c) an elected representative of the County Assembly Service Boards;
- (d) two Trustees nominated by trade union umbrellas representing public servants;
- (e) three other persons nominated by employees of county governments of whom at least two shall not be of the same gender; and
- (f) the chief executive officer who shall be an ex officio member and the secretary to the Board.

(2) The persons under subsection (2) shall be —

- (a) nominated in such a manner as the Cabinet Secretary shall prescribe; and
- (b) appointed by notice in the *Gazette*.

(3) A chairperson shall be elected by the trustees from among the trustees set out under subsection (2).

(4) The Cabinet Secretary shall appoint the persons nominated under subsection (2) by notice in the *Gazette*.

(5) Regulations shall prescribe the procedure for nomination and appointment of the Trustees under subsection (2).

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

Qualifications for appointment of Trustees.

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least five years' experience in—
 - (i) finance;
 - (ii) law;
 - (iii) economics;
 - (iv) actuarial science; or

- (v) any other profession or work experience directly relevant to the functions of the Board; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

9. A person shall not qualify for appointment as a trustee under section 7 if that person—

Disqualification from appointment as a Trustee.

- (a) has been convicted of an offence involving fraud;
- (b) is adjudged bankrupt or enters into a composition or arrangement with creditors; or
- (c) is disqualified under the provisions of any other written law from appointment as such.

10. (1) A Trustee appointed under section 7 shall hold office for a term of three years and be eligible for re-appointment for one final term of three years based on performance.

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 six months.

11. (1) A Trustee may be removed from office for—

Removal from office.

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or negligence of duty;
- (d) bankruptcy;
- (e) absence from three consecutive meetings of the Board without a reasonable explanation; or
- (f) failure to meet the requirements of leadership and integrity set out in chapter six of the Constitution.

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

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

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

Vacation of office.

- (a) by notice resigns in writing addressed 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 by reason of mental or physical infirmity;
- (e) is removed in accordance with section 11; or
- (f) dies.

13. Where a vacancy occurs in the membership of the Board under section 11 or 12, the Cabinet Secretary shall appoint a new Trustee in accordance with the provisions of this Act.

Filling of vacancy.

14. The Board shall—

Functions of the Board.

- (a) formulate 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 prudent investment of the monies forming part of the fund;
- (f) negotiate competitive annuity rates on behalf of members;
- (g) ensure that the scheme observes high standards of corporate and business ethics; and
- (h) perform any other functions assigned to it under this Act or any other law.

15. (1) In the exercise of its functions the Board shall be accountable to the sponsors and the members of the fund.

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) supervise the assets of the scheme in such manner as best promotes the purpose for which the scheme is established;
- (b) appoint a custodian, fund manager and administrator 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 40 and for reserves of the fund as provided for under section 39;
- (d) ensure protection, where necessary, of the assets of the scheme;
- (e) associate 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; and
- (i) undertake any activity necessary for the fulfilment of any of the functions of the scheme.

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

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

Committees of the Board.

(2) The Board may co-opt to sit in the sub-committees such persons not exceeding three to sub-committees established under subsection (1) having such knowledge or expertise as the sub-committee determines necessary for the performance of its functions under this Act.

(3) Subject to any specific or general direction of the Board, a committee established under subsection (1) may regulate its own procedure

17. The Trustees shall be paid such remuneration or allowance as the Board may determine in consultation with the Salaries and Remuneration Commission.

Remuneration of Trustees.

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

Meetings of the Board.

(2) Except as provided in the Schedule, the Board may regulate its own procedures subject to compliance with the Retirement Benefits Act.

(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.

19. (1) There shall be a chief executive officer of the scheme who shall be competitively recruited and appointed by the Board.

Chief Executive Officer of the Scheme.

(2) The chief executive officer shall be appointed by the Board of Trustees on such terms and conditions as may be specified in the instrument of appointment.

(3) A person is qualified for appointment as the chief executive officer if that person—

- (a) is a citizen of Kenya;
- (b) holds a master's degree from a university recognized in Kenya;
- (c) has at least ten years of experience of which five years should be at senior management level in a profession relevant to the functions of the scheme as the Board may determine;
- (d) is a member of the professional body regulating the relevant profession; and
- (e) meets the requirements of Chapter Six of the Constitution.

(4) The chief executive officer is the accounting officer of the scheme and Secretary to the Board and, subject to the direction of the Board, is responsible for the

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

(5) The Board may appoint the chief executive officer as the administrator of the scheme.

(6) The chief executive officer shall be appointed for a term of five years and shall be eligible for re-appointment for one further final term of five years based on satisfactory performance.

(7) The chief executive officer may be removed from office on the recommendation of the Board if the chief executive officer —

- (a) breaches the terms of and condition of employment contract;
- (b) is unable to perform the functions of the office by reason of a mental or physical infirmity;
- (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months; or
- (d) adjudged or admits in writing to be bankrupt; or
- (e) conducts himself in a manner deemed to be inconsistent with this Act.

(8) Before the chief executive officer is removed under subsection (7), the Board shall give the chief executive officer —

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

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

Employees of the Scheme.

(2) The terms and conditions of service of employees of the scheme shall be determined by the Board.

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

Common seal of the Scheme.

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

PART IV—ADMINISTRATION OF THE COUNTY GOVERNMENTS' RETIREMENT SCHEME

22. (1) The Board shall appoint a fund manager of the scheme.

Appointment and functions of the fund Manager.

(2) The fund manager shall, in addition to the duties prescribed under the Retirement Benefits Act —

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

23. (1) There shall be a custodian of the scheme who shall be appointed by the Board.

Appointment and Functions of the Custodian.

(2) The Custodian shall in addition to the duties prescribed under the Retirement Benefits Authority —

- (a) receive the total Contributions remitted by the sponsors and members 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 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.

24. (1) The scheme shall be administered by an administrator appointed by the Board.

Appointment and Functions of the Administrator.

(2) The functions of the administrator shall be to—

- (a) open and maintain an account for each member;
- (b) upon receiving details of the Contributions remitted under this Act, 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;
- (c) inform the Board if a member's contribution details differ from the expected;
- (d) provide customer support services to members, including access to members' account balances and statements;
- (e) cause to be paid retirement benefits to a member who has retired;
- (f) be responsible for all calculations relating to retirement benefits; and
- (g) carry out any other functions as may be directed by the Board from time to time.

(3) The administrator shall distribute to the credit of the members retirement savings accounts all income earned from the investment of the fund save for clearly defined and reasonable fees, charges, costs and expenses of transactions approved by the Board.

25. (1) A member shall, so long as he remains in the employment of a sponsor, contribute not less than seven and a half per cent of his pensionable emoluments to the scheme.

Contributions.

(2) A sponsor shall contribute to the scheme fifteen per cent of the pensionable emoluments of every employee who is a member of the scheme and the amounts necessary to cover the premiums for Insured Benefit.

(3) Subject to such guidelines as the Board may from time to time issue a member of the scheme may make additional voluntary contributions to the scheme.

(4) All Contributions to the scheme by a members and a sponsors shall be reduced by the amounts of the contributions to National Social Security fund by and in respect of the members.

(5) In addition to the contributions specified in subsections (1) and (2), the sponsor shall take out and maintain a life insurance policy that has disability benefits in favour of every member of the scheme, for a minimum of three times of the member's annual pensionable emoluments.

(6) Contribution required to be made under subsection (1) and (3) 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 before the tenth day of every calendar month or before any other day which may be notified in writing and approved by the Authority.

(7) Contribution not paid to the scheme by a sponsor within ten days after the last day of the calendar month to which the Contributions relate shall attract interest during the period they remain unpaid at a rate specified by the Board from time to time provided that such rate shall not be less than the rate specified in the Retirement Benefits Act and Regulations.

(8) All unpaid contribution and interest there on shall constitute a civil debt of the respective sponsor and shall be recoverable summarily by the Board as provided for by law.

(9) The Board shall report to the authority at such intervals as specified by the Authority all remittances of contribution outstanding and not received after the deadlines specified herein.

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

Vesting of
benefits.

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

Withdrawal of membership or benefits.

(2) A member may withdraw benefits from their account before Normal Retirement Age in the following circumstances—

(a) resignation;

(b) dismissal;

(c) ill health; or

(d) emigration;

(3) Despite subsection (1)—

(a) where a member leaves employment before one year of membership he may opt for payment of his own and the whole of the sponsor's contribution together with allocated investment income; or

(b) where a member leaves employment after one year of membership but before attaining the specified early retirement age, he may opt for payment of—

(i) his own Contribution and fifty per cent of his sponsor's Contribution and the investment income that has accrued in respect of those Contributions; and

(ii) the balance shall be retained in the scheme and continue to accrue interest until the member attains early retirement age; or transferred to another registered scheme of the members choice.

(d) a member may opt for payment to him of the total amount of vested accrued benefits before attaining the Early Retirement Age—

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

(ii) if the member has emigrated from Kenya to another country without the intention of returning to reside in Kenya and the Board has

approved the payment of the retirement benefits and submitted, fourteen days prior to payment of the benefits, the approval to the Authority.

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

Retirement from the Service.

- (a) on attaining the normal 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 normal retirement age;
- (b) on the advice of a qualified medical practitioner appointed by the Board certifying that the member is no longer mentally or physically capable of carrying out the functions of their office; or

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

- (a) birth certificate;
- (b) national identification card; or
- (c) a valid passport.
- (d) at the discretion of the Board as to acceptance a written declaration of date of birth by the member on first appointment

29. (1) Notwithstanding the provisions of section 28, any member who retires on attaining the early retirement age is entitled to make withdrawals in accordance with section 28.

Early Retirement.

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

- (a) birth certificate;
- (b) national identification card; or
- (c) a valid passport.
- (d) at the discretion of the Board as to acceptance a written declaration of date of birth by the member on first appointment

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

Payment of Retirement Benefits.

- (a) a lump sum from the balance in his retirement savings account that shall not exceed the equivalent of one third of that balance:

Provided that a member may withdraw any additional voluntary contributions made into the scheme and accrued interest in full;

- (b) a monthly or quarterly income drawdown in accordance with a formula prescribed by the Board on the advice of an Actuary;

- (c) a 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

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

- (a) assignable or transferable except in accordance with the terms of a mortgage guarantee facility approved by the Board; or
- (b) liable to be attached in settlement of any claim.

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

(4) Every payment of benefits from the scheme may be subject to deduction of the amount outstanding due by the member under any mortgage guarantee facility approved by the Board.

31. (1) Every member shall provide their particulars and those of their dependants to the administrator in the prescribed form.

Particulars of member and dependants of the member.

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

32. (1) If a dispute relating to the person nominated as a beneficiary under this part arises, the Board has power to consider evidence presented and determine the rightful dependant.

Dispute on nomination.

(2) Nothing in this part may be construed as limiting or otherwise affecting the inherent power of the Board,

either on its own motion or on the application of a party, to make such decisions as may be necessary.

33. If upon the death of a member, benefits are paid to a person validly nominated under this part, no person shall have claim to the benefits against the fund.

Benefits to be paid upon the death of a member.

34. (1) Upon the death of a member, the benefits accrued to the member shall be paid to the person whose particulars the member had provided or at the Board's discretion as otherwise provided in the Retirement Benefits Act and Regulations thereunder.

Death of a member in service.

(2) In the absence of a nomination, the Board shall apply the benefits referred to in subsection (1) to such of dependants of the deceased and in such amounts as the Board shall in its discretion determine.

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

Presumption of death of member.

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

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

36. (1) If a member who was receiving a retirement benefit under an income drawdown dies, a benefit that is equivalent to the unutilized balance of the account of the member shall be paid to the nominated beneficiary of the member.

Death of member in retirement.

(2) The payment under subsection (1) shall be made to the beneficiary either as a lump sum or as an annuity commencing from the day following the death of the member.

37. No retirement benefits under this Act shall be paid by the scheme to—

Prohibited payments from the scheme.

(a) a member while the member is still in the employment of a sponsor except where a member

works on a contractual basis for the sponsor after their resignation or early retirement ; or

- (b) any person as a loan, advance or other similar benefit or payment except as provided under this Act

PART V—ESTABLISHMENT AND MANAGEMENT OF THE COUNTY GOVERNMENTS' RETIREMENT SCHEME

38. (1) There is established a fund to be known as the County Governments' Retirement scheme fund which shall consist of—

Establishment and
Management of
the Scheme.

- (a) monies as may vest in or accrue to the scheme in the performance of its functions under this Act or under any other written law;
 - (b) Contributions from sponsors and members;
 - (c) grants, gifts, donations or other endowments given to the scheme;
 - (d) income from investments made by the scheme that are approved by the Board;
 - (e) fees and charges authorized by the Board;
 - (f) monies earned by the scheme from any other source; and
 - (g) monies from any other source provided or donated or lent to the scheme.
- (2) There fund shall be administered by the Board—
- (a) all benefits provided for under this Act; and
 - (b) the expenses incurred in the management and administration of the scheme subject to the limits provided under this section.

(3) (a) The Board shall establish an account into which may be paid—

- (b) 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;
- (c) 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 one and half percent of the fund

value or any such rate as the Board in consultation with the Authority may prescribe;

- (d) monies that may vest in the Board in the course of the exercise of the powers of the Board;
- (e) income from the investment of the monies held in the account established under this section; and
- (f) all monies from any other source provided for or donated or lent to the Board.

(5) Unspent monies budgeted for annual administrative expenses shall lapse back into the fund at the end of the financial year.

(6) 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.

39. (1) The Board may maintain a reserve account of the scheme into which the following shall be deposited—

Reserve Account.

- (a) any special contribution paid into the scheme by a sponsor or the Government for the purpose of improving the benefits of the members; and
- (b) any income of the scheme that the Board determines should be set aside to stabilize the returns to members subject to a maximum of ten per cent of such income with consideration to the Income Tax Act Regulations .

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

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

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

Annual Estimates.

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

- (a) payment of the salaries, allowances, and other charges in respect of the employee of the scheme;
- (b) payment of benefits and other charges which are payable out of the funds of the scheme;

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

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

(4) The expenditure of the scheme shall not be incurred except in accordance with the annual estimates approved by the Board.

41. (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 shall submit to an Auditor who is recognized and approved by the Authority the accounts of the scheme in respect of that year together with—

- (a) balance sheet showing in detail the assets and liabilities of the scheme as at the end of the financial year.
- (b) a statement of the income and expenditure of the scheme during that year; and
- (c) Such other statements as may be required by the Authority.

(3) The annual accounts of the scheme shall be prepared, audited and reported upon in accordance with the Retirement Benefit Act and other relevant laws.

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

Financial year.

43. Annual investment income earned by the scheme shall, after deduction of all expenses and costs properly paid out of the scheme and any appropriation to a reserve account approved by the Board, be credited to members' accounts on a pro-rata basis.

Annual distribution of profits.

44. (1) The scheme may be reviewed by an actuary appointed by the Board as provided for in the Retirement Benefits Act may be considered by the Board.

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

45. Where there is a conflict between the provisions of this Act and the provisions of the Retirement Benefits Act, the provisions of the Retirement Benefits Act shall prevail.

Conflict in provisions of the Act

46. (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 applicable 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 owner of a member's account 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 ten days.

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

Protection from personal liability.

48. (1) A person who—

Offences.

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

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

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

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

49. (1) Notwithstanding the provision of Section 25, where a sponsor, having made deduction from a member's emoluments for remittance to the scheme, fails to remit the Contribution within fifteen days of the deduction, the scheme shall, after giving such sponsor not less than seven days' notice, institute proceedings for the recovery of the deduction.

Proceedings for recovery of deductions from sponsors.

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

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

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

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

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

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

50. 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 Authority.

Commits an offence and is liable, on conviction, to a fine not exceeding Kenya Shillings, one hundred thousand or to imprisonment for a term not exceeding one year, or to both.

51. The Cabinet Secretary in consultation with the Board shall make Regulations generally for the carrying out of any provisions of this Act.

Regulations.

52. The Contributions by the members of the scheme who were previously employed by the national government shall be phased in the first three years after the Commencement Date, at the rates of two per cent, five per cent and seven and a half per cent of a member's Pensionable Emoluments in the first, second and third years respectively.

Phasing of Contributions.

53. The sponsors and members of the scheme shall be exempt from making Tier II contributions to National Social Security Fund.

Extent of exemption from other statutory

schemes.

PART VI—SAVING AND TRANSITIONAL PROVISIONS.

54. This Act applies to all Eligible Employees in County Public Service and Associated Organisations as follows —

National Government employees transferred to County Governments.

- (a) Eligible Employees to whom this Act applies and who prior to its Commencement Date were members of a contributory pension scheme, may subject to the Regulations made by the Cabinet Secretary, port any such contributions to the fund.
- (b) Eligible Employees to whom this Act applies and who join a sponsor on or after the Commencement Date and were members of a contributory pension scheme, may subject to the Regulations made by the Cabinet Secretary, port any such contributions to the fund
- (c) a person who was an employee of National Government and whose remaining period of service is five years or less, is not eligible to join the scheme and shall have his or her pension paid out under the provisions of the Pensions Act, Cap. 189 and the Widows' and Children Pensions Act Cap. 195 or any other relevant legislation.
- (d) a person who was an employee of a Local Authority and was a member of Local Authorities Pensions Trust and whose remaining period of service is five years or less, is not eligible to join the scheme and shall have his pension paid under the provisions of the Local Authorities Pensions Trust in accordance with Legal Notice No 50 or any other relevant legislation.
- (e) those Eligible Employees to whom this Act applies and who prior to its Commencement Date were employees of the National Government shall have their Pension paid out under the Pensions Act, Cap. 189 and the Widows' and Children Pensions Act, Cap. 195, for the period they served the National Government.
- (f) those Eligible Employees to whom this Act applies and who prior to its commencement date

were employee of the local authorities and who are eligible for benefits under a defined benefits scheme shall have their prior Pension benefits paid out of the closed funds, as the case may be, for the period they served the local authorities.

55. (1) An Eligible Employee of a sponsor who immediately before the Commencement Date of this Act was a member of the, Local Authorities Provident fund or the Local Authorities Pension Trust fund or Laptrust Umbrella Retirement fund shall, upon the commencement of this Act be deemed to be a member of the scheme.

Local Authorities Provident Fund and the Local Authorities Pension Trust Fund.

(2) The Local Authorities Provident fund and the Local Authorities Pensions Trust fund and Laptrust Umbrella Retirement fund shall, upon the Commencement Date of this Act, remain as closed funds to new entrants and must ensure the preservation of all accrued rights of members but shall continue paying any pensions and benefits as and when they fall due.

(3) The staff of the Existing schemes engaged in the administration of the Existing schemes on the Commencement Date shall, upon the commencement of this Act, and subject to any suitability test conducted by the Board of Trustees, provide administration services to the scheme and the Existing schemes

56. (1) Any Eligible Employees who joined the service of a sponsor on permanent and pensionable terms after the first general elections under the Constitution shall be deemed to be members of the scheme with effect from the date of employment.

New employees.

(2) Eligible Employees of a sponsor who are employed on contractual terms may opt, upon agreement with the sponsor, to join the scheme in lieu of gratuity for the duration of their contract term provided that the extent of Contribution in such case shall be in line with section 26 of this Act.

SCHEDULE**(s.13)****PROVISIONS RELATING TO THE CONDUCT OF
BUSINESS AND AFFAIRS OF THE BOARD**

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

Meetings.

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

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

(4) The Chairperson may at any time convene a special meeting of the Board, and shall do so within seven days of the receipt by the Chairperson of a written request signed by at least five other trustees.

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

2. (1) The quorum of a meeting of the Board is five Trustees present and voting provided that at least two Trustees appointed under section 7 (2) (a), (b) or (c) and at least two Trustees appointed under section 7 (2) (d) or (e) are present.

Quorum.

(2) For special meetings, the quorum is six Trustees present and voting provided that at least two Trustees appointed under section 7 (2) (a), (b) or (c) and at least two Trustees appointed under section 7 (2) (d) or (e) are present.

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

Voting.

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

Minutes.

5. (1) If a person is present at a meeting of the Board or any committee at which any matter is the subject of consideration and in which matter that person is directly or

Disclosure of
Interest.

indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest.

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

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

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

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

MEMORANDUM OF OBJECTS AND REASONS

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

Part I (clauses 1-5) contains preliminary matters.

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

Part II (clauses 6-21) provides for the establishment of the scheme. It establishes the County Retirement scheme fund and its Board of Trustees. It provides the procedure for appointment of the Trustees and the necessary qualifications. It also provides the Trustees' functions and powers and sets their tenure to three years renewable once based on performance.

Part III (clauses 22-37) contains provisions on the administration of the scheme and provides for the appointment of the fund Manager and the Custodian. It also sets out their functions. The functions of the Administrator, who is the Chief Executive Officer, are also set out. Further, the part provides for membership of the scheme without a sponsor, the vesting of benefits, and withdrawal from the retirement savings account and retirement from the service among others. Finally, it sets out the prohibited payments from the scheme.

Part IV (clauses 38-44) provides for the establishment and management of the County Governments' Retirement scheme. It contains the financial provisions and establishes the County Retirement scheme fund. It also provides how surplus funds may be invested as well and sets out a requirement for the Board to have a reserve account.

Part V (clauses 45-53) sets out the general provisions including the duty of care of the Board, protection of the Trustees and employees of the scheme from personal liability, offences, and proceedings for recovery of deductions from employers and a general penalty clause. It also contains a

provision on the making of regulations and gives this power to the Board, in consultation with the Cabinet Secretary. The repeal of the Local Authorities Provident fund Act is also provided for in this part. Finally, this part contains a provision exempting members of the scheme from contributing to other statutory schemes and concludes with the savings and transitional provisions.

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

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

Statement on how the Bill concerns county governments

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

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

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

Dated the 23rd February, 2018.

JOHNSON SAKAJA,
Chairperson, Committee of Labour and Social Services.

