# THE NATIONAL SOCIAL SECURITY FUND ACT, 2013

## A VISION 2030 FLAGSHIP PROJECT

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**No. 45 of 2013**

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# THE NATIONAL SOCIAL SECURITY FUND ACT, 2013

**AN ACT of Parliament to establish a National Social Security Fund, to provide for contributions to and the payment of benefits out of the Fund; and for matters connected therewith and incidental thereto.**

**ENACTED** by the Parliament of Kenya as follows—

## PART I – PRELIMINARY

**1.** This Act may be cited as the National Social Security Fund Act, 2013. Short title.

**2.** (1) In this Act, unless the context otherwise requires– Interpretation.

"Actuary" means a fellow of the institute of Actuaries in England or to the Faculty of Actuaries in Scotland or of the Canadian Institute of Actuaries , or a person holding such equivalent qualifications as the Board may, by notice in the Gazette, prescribe; Cap. 197

"Annual General Meeting" means an annual general meeting convened in accordance with section 63;

"Auditor General" means the Auditor General appointed under Article 229 of the Constitution;

"Authority" means the Retirement Benefits Authority established under section 3 of the Retirement Benefits Act; Cap. 197

"benefit" means a benefit payable under this Act;

"brother" means brother by any law obtaining in Kenya and includes half-brother;

"Board" means the National Social Security Fund Board of Trustees established under section 5;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to Social security;

"contract of service" means an agreement, whether entered into orally or in writing, and whether express or implied, to employ or to serve as an employee for a period of time and includes a contract of apprenticeship or indentured learnership;

"contracted-out scheme" means an occupational retirement benefits scheme including an umbrella retirement benefits scheme or an individual retirement benefit scheme which has been approved and registered by the Authority for purposes of receiving Tier II Contributions and, where applicable, Tier II Fund Credit transfers from the Fund;

"contribution" means a contribution payable under this Act;

"court" means the High Court of Kenya;

"daughter" includes a stepdaughter, an illegitimate daughter and a daughter adopted in any manner recognized under the law of Kenya;

"dependent relative" means, in relation to a deceased member of the Fund, any relative of the deceased who survives the deceased and who, on the date of the deceased's death was-

(a) a wife or husband of the deceased;

(b) a son or daughter of the deceased who had not attained the age of twenty five years; or

(c) parent, grandparent, grandchild, brother, sister son, daughter or such other relative who was wholly or substantially dependent on the deceased for the provision of the ordinary necessities of life suitable for a person of his station;

"emigration benefit" means the benefit payable under section 39 and 46;

"employee" means any person who has attained the age of eighteen years and who is-

(a) employed in Kenya under a contract of service;

(b) ordinarily resident in Kenya and is employed outside Kenya (or partly in and partly outside

Kenya) under a contract of service entered into with an employer who resides in or has a place of business in Kenya; or

(c) is ordinarily resident in Kenya and is employed under a contract of service as master or a member of the crew of any ship, or as pilot, commander, navigator or member of the crew of any aircraft, where the owner of the ship or aircraft (or managing owner if there is more than one owner) or the manager resides in or has a place of business in Kenya;

but does not include any person who-

(i) is undergoing full-time instruction in a school, or in any such place of education or training as may be prescribed for the purposes of this definition, or who is an apprentice; and

(ii) is not in receipt of wages which provide him wholly or substantially with a livelihood;

"employer" means a person, public body, firm, corporation or company who or which has entered into a contract of service and includes the Government;

"employee's share" in relation to a contribution, means such part of that contribution, if any, as the employer may lawfully deduct from the wages of the employee in respect of whom that contribution is payable;

"exempt person" means any person of a class or description specified in the First Schedule;

"financial year" means a period of twelve months ending on the 30th June in every year;

"Fund" means the National Social Security Fund established by section 3;

"funeral grant" means a grant payable under section 40;

"Government" means the Government of the Republic of Kenya;

'grandchild" means a son or daughter of a son or daughter;

"grandparent" means a parent of a parent;

"guardian" means a person who is not the child, parent, or spouse of a deceased member of the Fund, but who upon the death of a member has the care of a child or the children of the deceased member;

"income" means any income received or accrued, including penalties referred to in section 27 and, if applicable, part or all of any expenses paid or accrued, and any capital appreciation or depreciation realized and unrealized;

"interest" means, in relation to each Member, the investment income credited to the accounts of individual members at such rates as the Board may, in consultation with the Actuary or such other qualified person, determine, in their reasonable discretion from time to time declare, at least annually, having regard to the income on the Fund's assets;

"invalidity benefit" means the invalidity benefit payable under section 38 and section 44;

"Lower Earnings Limit" means, subject to the Third Schedule, for each financial year , the amount gazetted by the Cabinet Secretary from time to time as the average statutory minimum monthly basic wage for the top urban centres, second tier urban centres and rural areas for the year;

"managing trustee" means the chief executive officer of the Fund appointed under section 15 and includes any person acting in the office of the managing trustee whenever the office is vacant or the holder of the office is absent for any reason incapable of acting;

"member" means a person who is registered as a member of the Provident Fund or Pension Fund pursuant to this Act;

"National Average Earnings" means for each financial year, the average wage earnings per employee as published by the Kenya National Bureau of Statistics in the Economic Survey for the prior year;

"Old Provident Fund" means Old Provident Fund retained under section 18(2);

"parent" - means a father or mother, and includes a step parent and a parent by adoption of a child adopted in any manner recognized under the law of Kenya;

"pensionable age" means the age of sixty years;

"pensionable earnings" means for a Pension Fund Member, the lower of the member's monthly wages and the Upper Earnings Limit;

"Pension Fund" means the Pension Fund established under section 18(1) (a).

"Pension Fund Credit" means, in relation to each Pension Fund member at any particular date, an amount equal to the aggregate of the prescribed Pension Fund contributions by and in respect of the member and any transfer payment received in respect of the member with interest thereon;

"Pension Fund Member" means a member of the Pension Fund;

"permanent total incapacity" means such incapacity of a permanent nature that renders a person incapable of performing any duty or task that the person was capable of undertaking before the accident, illness or other occurrence that was the cause of that incapacity;

"previous Fund" means the body corporate formerly known as the National Social Security Fund Board of Trustees under the repealed National Social Security Fund Act;

"Protected Rights" means the benefits under a contracted out scheme which derive from Tier II Contributions and which must be provided in a specified form as a condition of contracting out.

"Provident Fund" means the Provident Fund established by section 18(1) (b);

"Provident Fund Member" means a member of the Provident Fund;

"Provident Fund Credit" means, in relation to each member of the Provident Fund at any particular date, an amount equal to the aggregate of the voluntary contributions made by the Provident Fund Member including any transfer payment received in respect of the

Provident Fund member with interest thereon;

"reference Scheme Test" means the test of scheme quality which schemes have to meet in order to contract out of the pension as described in the Fourth Schedule hereto;

"Registered Insurer" means an insurance company authorized to carry on long term business as such under the Insurance Act;

"Retirement pension" means the pension benefit payable under section 36;

"self employed person" means a person who has no other employer but works on his own account;

"sister" means sister by any law obtaining in Kenya and includes half-sister;

"spouse" means a female or male spouse;

"social security" means basic social security provided under this Act;

"son" includes a stepson, an illegitimate son and a son adopted in any manner recognized under the law of Kenya;

"Survivor's pension" means the benefit granted under section 37 and section 43;

"Tier I Contributions" means for any month, contributions in respect of Pensionable Earnings up to the Lower Earnings Limit;

"Tier II Contributions" means for any month, contributions in respect of Pensionable Earnings above the Lower Earnings Limit;

"Tier 1 Pension Fund Credit" means in relation to each Pension Fund Member, the portion of the Pension Fund Credit at any particular date equal to the aggregate of the Tier I Contributions by and in respect of the Member less deduction for covering the estimated annual cost of minimum benefits on death and disability with interest thereon provided that the maximum deduction for the funeral grant and minimum benefits on death and disability shall not exceed two per cent of the Lower Earning Limit per Pension Fund member;

"Tier II Pension Fund Credit" means the portion of the Pension Fund Credit, if any, at any particular date equal to the aggregate of the Tier II contributions by and in respect of the member with interest thereon and any transfer payment received in respect of the member with interest thereon;

"Tribunal" has the meaning assigned to it under the Retirement Benefits Act; Cap. 197

"Trivial Amount" means any amount which shall be, from time to time, determined by the Authority which shall not be less than fifty percent of the average statutory minimum wage prescribed by the Cabinet Secretary;

"Upper Earnings Limit" subject to the Third Schedule, for each financial year means the level of earnings equal to four times National Average Earnings;

"voluntary contributions" means voluntary contributions which a member may choose to pay to the Provident Fund or Pension Fund in order to secure benefits;

"wages" include all emoluments payable to an employee under a contract of service if no deductions were made, in pursuant to any law requiring or permitting the making of any deduction or otherwise excluding fluctuating emoluments;

(2) In this Act, any reference to this Act includes a reference to regulations made thereunder.

## PART II - ESTABLISHMENT AND OBJECTS OF THE NATIONAL SOCIAL SECURITY FUND

Establishment of the Fund.

**3.** (1) There is established a fund to be known as the National Social Security Fund which shall be vested in, operated and managed by the Board.

(2) There shall be -

(a) paid into the Fund, all contributions and other payments required by this Act to be paid into the Fund;

(b) prudent investments of all contributions and other payments therein; and

(c) paid out of the Fund, all benefits and other payments required by the Act to be paid out of

the Fund.

(3) The Fund replaces the previous National Social Security Fund and, subject to this Act, the provisions of section 72 and the Second Schedule apply to all transitional arrangements from the previous Fund to the Fund.

Objects of the Fund.

**4**. The objects of the Fund are to-

(a) provide basic social security for its members and their dependants for various contingencies as provided under this Act;

(b) increase membership coverage of the social security scheme;

(c) improve adequacy of benefits paid out of the scheme by the Fund;

(d) provide a full opt-out at Tier II level of contributions for employers who have or are contributing to pension schemes approved and registered by the Authority;

(e) bring within the ambit of this Act self-employed persons to access social security for themselves and their dependants.

(f) operate and manage a scheme that is value-adding to its members by, *inter alia*-

(i) ensuring that the Fund and its social security systems are sustainable and affordable; and

(ii) retaining the Old Provident Fund for purposes of dealing separately with liabilities, obligations, assets and any matters or issues connected therewith to avoid transferring the same to the Fund established under this Act;

(g) ensuring that the liabilities of the Old Provident Fund are settled within five years from the commencement of the new Provident Fund and the close of the Old Provident Fund.

(h) do any other thing or take any measure permitted by this Act for purposes of attaining any or all these objects and for purposes of effective enforcement and application of this Act.

## PART III - NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES

Establishment of the Board of Trustees.

**5**. (1) There is established a body to be known as the National Social Security Fund Board of Trustees which shall, *inter alia,* be vested with the responsibility of directing and managing the Fund.

(2) The Board shall, by that name be a body corporate with perpetual succession and a common seal, and may in its corporate name be capable of –

(a) suing and be sued;

(b) purchasing, holding, managing and disposing of movable and immovable property; and

(c) entering into such contracts as it may consider necessary or desirable and for the purposes of this act.

Membership of the Board.

**6.** The Board shall comprise

(a) the Chairperson appointed by the Cabinet Secretary from amongst the Trustees appointed under paragraph (d) (iii);

(b) the Principal Secretary responsible for matters relating to finance;

(c) the Principal Secretary in the Ministry for the time being responsible for matters relating to social security;

(d) seven persons appointed by the Cabinet Secretary as follows **-**

(i) two persons , one of whom shall be of opposite gender, nominated by the most representative employers' organization with knowledge and experience in matters relating to employers to represent employers in Kenya;

(ii) two persons , one of whom shall be of opposite gender, nominated by the most representative workers organization by virtue of their knowledge and experience in matters relating to

employees to represent employees in Kenya;

(iii) three persons one of whom shall be of opposite gender, not being public officers nor employees or directors of any public company, appointed by the Cabinet Secretary by virtue of their knowledge and experience in matters relating to administration of scheme funds, actuarial science, insurance, accounting and auditing or law;

(iv) the Managing Trustee as ex officio member.

Disqualification fron appointment.

**7.** A person shall not be appointed as a Trustee if the person –

(a) is convicted of a criminal offence and sentenced to imprisonment by a court of competent jurisdiction for a period exceeding six months without the option of a fine.

(b) is a member of a governing body of a political party;

(c) is currently disqualified under any written law to hold office of director in a public company, corporation or similar organization;

(d) has been removed from public office for contravention of the provisions of the Constitution or any other written law;

(e) is adjudged bankrupt or enters into a composition or arrangement with his creditors; or

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

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

(h) is disqualified under chapters six and thirteen of the Constitution or any other provisions thereof or

any written law.

Tenure of office of Members of the Board.

**8.** (1) A Trustee appointed under section 6 (d) (i), (ii) and (iii), shall hold office for a term of three years and shall be eligible for re-appointment for one further and final term.

(2) The Cabinet Secretary shall appoint one third of the members of the Board under section 6 (d) (i), (ii) and (iii) in a staggered manner separated by two months so that the respective expiry dates of their terms shall fall at a different time.

(3) Notwithstanding subsection (1) of this section, the chairperson or a Trustee appointed under section 6 (d) (i), (ii) and (iii) may.

(a) at any time resign from office by notice in writing to the Cabinet Secretary or otherwise cease to represent the interests of the nominating body; or

(b) be removed from office by the Cabinet Secretary if the Trustee –

(i) has been absent from three consecutive meetings of the Board without the permission of the chairperson and is unable or has neglected to furnish any plausible reason for his absence;

(ii) is adjudged bankrupt or enters into a composition or arrangement with his creditors;

(iii) is disqualified under any provision of the Constitution or any other written law from holding a public office;

(iv) is convicted of a criminal offence, which brings to question his capacity or integrity to serve as a Trustee, and sentenced to imprisonment for a term of six months or more;

(v) is incapacitated by prolonged physical or mental illness; or

(vi) is otherwise unable or unfit to discharge his responsibilities under section 10(3) of this Act.

Filling of vacancy.

**9.** Whenever the office of Chairperson and a Trustee appointed under section 6 (d) (i), (ii) and (iii) prematurely falls vacant, the vacancy shall be filled in the same manner specified for that office under section 6 and the person thereby appointed shall serve for the remainder of the term.

The powers and responsibilities of the Board.

**10.** (1) The Board shall exercise all the powers necessary for the proper performance of its responsibilities under this Act.

(2) Without prejudice to the generality of subsection (1), the Board may -

(a) acquire, control, and supervise the funds and assets of the Fund in such manner that best promotes the objects for which the Fund is established;

(b) impose levies, fees or charges for such services as the Fund may offer;

(c) lay down such policies and guidelines as may be necessary for the proper operations and management of all the contributions and funds collected by the Fund and for any other matter concerning the Fund;

(d) receive grants, gifts, donations or endowments and make legitimate disbursements;

(e) approve contracts, undertakings, hiring of senior staff and other activities entered into by the Management or otherwise undertaken in the name of the Fund whose value requires Board approval;

(f) appoint any agent the Board may require or subcontract any person or firm of proven experience in the particular function for which appointment or subcontracting is necessary, to perform any of its functions under this Act;

(g) invest any funds of the Fund not immediately required for its purposes in the manner allowed by this Act;

(h) out of its own funds and together with funds it may require its employees and officers to contribute, establish and make contributions to

pension, superannuation, provident or medical social security scheme for the benefit of its employees or officers and, grant pensions, gratuities or retirement allowances to its officers or employees from the funds established;

(i) open and operate an account in a bank, registered building society, the or any registered financial institutions.

(j) exercise such other powers as may be conferred upon the Board by this Act or any other written law.

(3) The Board shall be responsible for –

(a) ensuring that every Trustee-

(i) observes the provisions of the Constitution in the performance of his duties under this Act;

(ii) acts in the best interests of the Fund and avoids any form of conflict of interest;

(iii) acts in good faith and with integrity at all times; and

(iv) exercises care and skill, due diligence in the conduct of the affairs of the Board and demonstrates commitment in serving the Board.

(b) enforcement of good corporate governance practices within the Board and senior management;

(c) formulation of strategy and policies of the Fund in accordance with this Act and best practices of good corporate governance;

(d) effective leadership of the Fund and guidance of the Management in their day to day management of the Fund;

(e) protection of the funds, property and assets of the Fund;

(f) the effective administration and implementation of this Act; and

(g) doing all other things as are necessary to give

effect to the provisions of this Act.

(4) In the performance of its responsibilities under this Act, the Board shall be accountable to the members of the Fund.

(5) The seal of the Fund shall-

(a) be authenticated by the signatures of the Chairperson and the managing trustee; and

(b) where the Chairperson or managing trustee is absent, be authenticated by any Officer of the Fund and Trustee of the Board duly appointed by the Board for that purpose, on behalf of either the Chairperson or the Managing Trustee.

Meetings of the Board.

**11.** (1) The Board shall hold not less than four meetings in every financial year for the conduct of its business and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) The quorum for the conduct of the meetings of the Board shall be two thirds of the Trustees.

(3) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a simple majority of the votes of the members present and voting, and in the case of an equality of votes the Chairperson or person presiding in that capacity shall have a casting vote.

(4) The notice of a meeting of the Board shall be seven days from the date the notice is duly sent out unless three quarters of the total members of the Board otherwise agree and, a meeting of the Board or deliberations thereof or decisions or resolutions taken thereat shall not be invalid by reason only of misdirection of notice or failure by a member to receive the notice.

(5) The chairperson shall preside at every meeting of the Board but the members present shall elect one of their members to preside whenever the chairperson is absent or otherwise unable to preside and the person so elected shall have all the powers of the chairperson with respect to the conduct of that meeting and the business transacted thereat.

(6) The Board may if it deems appropriate, invite any

person to attend deliberations of the Board but such person shall have no right to vote.

(7) Subject to this Act, the Board may regulate its own procedures at their meetings.

Committees of the Board.

**12.** (1) The Board may for the purposes of performing its responsibilities under this Act, establish such committees of the Board as it deems necessary for the effective functioning of the Board and the Board may delegate to any such Committee such of its responsibilities as it deems fit.

(2) The Board may appoint persons, not exceeding the number of Trustees on the Committee, who are not members of the Board to Committees established under subsection (1), and such persons shall serve on such terms and conditions of service as the Board may determine.

(3) The provisions of subsection (6) of section 11 shall, *mutatis mutandis,* apply to meetings of committees of the Board.

Remuneration of Board Members

**13.** (1) There shall be paid to the members of the Board or of any Committee of the Board such remuneration, fees or allowances as the Board may determine.

(2) Remuneration and allowances payable under subsection (1) shall be subject to the approval of the Cabinet Secretary.

Conflict of interest affecting a Board member

**14.** (1) If a member of the Board is present at a meeting of the Board or any Committee of the Board at which any matter is the subject of consideration and in which matter the member, the member's spouse or the member's immediate relative or associate is directly or indirectly interested in a private capacity, the member shall as soon as practicable after the commencement of the meeting, disclose such interest and shall not take part in any consideration or discussion, or vote on any question touching on such matter unless the Board determines otherwise.

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

(3) Any member who contravenes the provisions of subsection (1) commits an offence and may, on conviction by a competent court, be disqualified from holding office of member of the Board in addition to any other penalty the court may deem appropriate in the circumstances.

Appointment of the Managing Trustee .

**15.** (1) The Board shall appoint a managing trustee who shall hold office on such terms and conditions of service as maybe specified in the instrument of his or her appointment.

(2) The managing trustee shall be the chief executive officer of the Fund and responsible to the Board of Trustees for its management.

(3) The Managing Trustee shall be an ex officio member and secretary to the Board.

(4) The managing trustee shall be selected through a competitive process and shall be accountable to the Board in the performance of his duties.

(5) The managing trustee shall, unless prematurely terminated, serve for a term of three years and shall be eligible for re-appointment for one further term of three years.

(6) The terms and conditions referred to under subsection (1) shall be specified by the Board in the instrument of his appointment.

(7) A person is not qualified for appointment under this section unless that person—

(a) holds a Masters degree in a relevant field of study as may be specified by the Board from a university recognized in Kenya;

(b) has not less than ten years of working experience at managerial level in a relevant field specified by the Board and must be registered with a recognised professional body; and

(c) meets the requirement of Chapter six and thirteen of the Constitution.

(8) The Managing Trustee shall be under the general direction of the Board-

(a) ensure that contributions by members are paid in full and in time;

(b) determine claims to benefits, and make payments thereof;

(c) refer any dispute arising under this Act to the Tribunal or defend any claim or action brought before the Tribunal against the Board;

(d) with the approval of the Board, initiate programmes and strategies for advancing the objects of the Fund in general or for educating and mobilizing members of the public, or organised groups to become members of the Fund;

(e) ensure the proper management of reciprocal agreements entered into by the Fund;

(f) advise the Board from time to time to adopt policies intended to enable the Board to effectively lead the Fund;.

(g) be in charge of all the staff of the Fund;

(h) facilitate the preparation of the budget, strategies, operational proposals, annual plans and corporate policies for discussion by the Board and implement decisions and resolutions adopted by the Board;

(i) consistently strive to achieve the financial and operating goals of the Fund;

(j) ensure the effective management of the Fund, foster a conducive corporate culture that promotes ethical practices in respect to the Fund;

(k) be answerable in the performance of all his duties and functions to the Board.

(l) be the accounting officer of the Fund and, in that capacity, keep proper books of account and cause, under the general guidance of the Board, the annual accounts of the Fund to be prepared in accordance with the provisions of this Act;

(m) under the guidance of the Board, cause the Fund's Annual General Meeting to be convened as provided under this Act; and

(n) perform such other functions as assigned by the Board from time to time.

(9) Subject to the term limit under subsection (5), the Managing Trustee may cease to be a Managing Trustee upon-

(a) death;

(b) resignation;

(c) bankruptcy;

(d) insanity;

(e) conviction of any criminal offence; is adjudged bankrupt or enters into a composition or arrangement with his creditors;

(f) incapacitated on any ground; or

(g) by operation of any written law.

(10) The Board may remove the Managing Trustee from office on any of the following grounds-

(a) incompetence,

(b) insubordination,

(c) corruption,

(d) failure to observe any of the terms and conditions of his appointment,

(e) gross misconduct

(f) violation of the Constitution; or

(g) inability to discharge his or her duties.

(11) Before the Managing Trustee is removed from office under subsection (10) he -

(a) may be suspended from office by the Board ;

(b) shall be informed in writing of the reasons for the intended removal; and

(c) shall be given an opportunity to put in a defence against any such allegations and shall be afforded ample opportunity to be heard.

**16.** (1) The Board may appoint such officers and other staff of the Fund as are necessary for the proper discharge of the functions of the Fund under this Act, upon such terms and conditions of service as it may determine.

(2) The Board may, subject to such terms and conditions as the Board may think fit and by direction in writing, delegate any of its powers under this Act to any one or more of the Trustees, the Managing Trustee or any officer of the Fund.

Appointment of Compliance Officers.

**17.** (1) The Board shall, for the purposes of the enforcement of this Act, appoint officers known as Compliance Officers.

(2) A Compliance Officer appointed under subsection (1) shall ensure a premise or place liable to inspection complies to this Act

(3) A Compliance Officer shall have power to enter any such premises or places at all reasonable times, and to interview any person whom he finds therein on any matters relevant to this Act.

(4) An occupier of premises or place liable to inspection under this section, and any employer, servants and agents of such occupier, and any employee, shall furnish to a Compliance Officer all such information and documents for inspection.

(5) The premises and places liable to inspection under this section are any premises or places where a Compliance Officer has reasonable ground for suspecting that any persons are employed, but do not include any private dwelling not used for the purposes of a trade or business.

(6) Any person who-

(a) willfully delays or obstructs a Compliance Officer in the exercise of any power under this section; or

(b) refuses or neglects to answer any question or to furnish any information or to produce any document when required to do so under this Section commits an offence and shall be liable on conviction to a fine not exceeding Kenya Shillings one hundred thousand and where the offence is a continuing one, such person shall be liable to a further fine of Kenya Shillings one thousand for every day during which the offence continues.

(7) Every Compliance Officer shall, if so required on applying for admission to any premises or place for the purposes of this Act, produce a certificate of his appointment signed by the Board or on its behalf by an authorised officer of the Fund.

(8) Where any premises or place are or is liable to be inspected by a public officer for the purpose of enforcing any law other than this Act, the Board may make arrangements for any of the powers and duties of Compliance Officers under this section to be carried out by that public officer under this section, and, where such an arrangement is made, that public officer shall have all the

powers of a Compliance Officer under this section.

(9) Besides compliance officers, the Board may appoint any other officers and authorize them to go out and collect any data on social security matters the Board considers necessary for the successful implementation of this Act.

(10) The provisions of this section shall, *mutatis mutandis*, apply to such other officers in the performance of their duties under subsection (9).

The Old Provident Fund and other Funds.

**18.** (1) There are established two funds to be known as-

(a) the Pension Fund, and

(b) the Provident Fund,

for the purposes of the social security scheme provided under this Act.

(2) The Board shall retain and continue to operate the Old Provident Fund previously operated under the now repealed National Social Security Fund Act exclusively for purposes specified under the Second Schedule.

(3) All members of the Old Provident Fund other than members making voluntary contributions to the Old Provident Fund shall, on the commencement date, become members of the Pension Fund and the Managing Trustee shall cause a new account to be opened in accordance with section 24 for each member into which they will start making contributions as provided under this Act.

(4) All persons who are subject to the provisions of the Employment Act and are eighteen years old or above and have not attained the pensionable age shall be members of the Pension Fund.

(5) The following members of the Fund shall be subject to the Provident Fund in terms of payment of contributions into and benefits out of the Provident Fund –

(a) self-employed persons who voluntarily register to be members of the Fund;

(b) persons referred to under paragraphs (a) and (b) of section 26; and

(c) any other member of the Fund who does not,

for whatever reason under this Act, meet the eligibility criteria for membership of the Pension Fund.

Registration of employer and employee.

**19.** (1) Every employer who, under a contract of service, employs one employee or more shall register with the Fund as a contributing employer and shall, register his employee or employees, as members of the Fund;

(2) Any person who is registerable as an employer under this section shall produce proof of registration with the scheme as a precondition of dealing with or accessing public services;

(3) Without prejudice to the provisions of subsection (1), a self- employed person who wishes to become a member of the Fund, may register as a voluntary member and shall, register his employee under a contract of service as a member of the Fund.

(4) The Fund shall inform employers and employees of the requirement to register under this Act,

(5) Every employer or employee shall be registered with the Fund .

(6) Any employer who fails, neglects or refuses to register under this section commits an offence and

shall be liable to a fine not exceeding Kenya shillings fifty thousand;

(7) An employer registered under this section shall -

(a) keep a proper and up-to-date register or record of the earnings and any other particulars of employees as may be prescribed by the Board;

(b) at all times produce the register or record on demand by a compliance or other officer of the Fund;

(c) retain such register or record for such period as the Board may prescribe, but such period shall not exceed ten years; and

(d)An employer who violates any of the provisions of this subsection commits an offence.

Mandatory Contributions to the

**20.** (1) From the commencement date and subject to

the provisions of subsection (3) and section 21, an employer shall pay to the Pension Fund in respect of each employee in his or her employment- Fund.

(a) the employer's contribution at six *per centum* of the employee's monthly pensionable earnings**;** and

(b) the employee's contribution at six *per centum* of the employee's pensionable earnings deducted from the employee's earnings.

(2) Notwithstanding the provisions of subsection (1), the contributions in the first five years shall be deducted in accordance with the Third Schedule.

(3) Tier I contributions shall be credited to the employee's Tier I Fund Credit and, subject to the provisions of section 21, Tier II contributions shall be credited to the employee's Tier II Fund Credit.

**21**. (1) An employer may opt to pay Tier II contributions in respect of its employees into a contracted–out scheme it participates in or opts to establish or to participate in. Contracting out by employer.

(2) The opt-out under subsection (1) may be exercised subject to the following conditions –

(a) the employer shall make written request of its intention to opt out to the Authority at least sixty days before opting to contract-out in such a way;

(b) the written request required under paragraph (a) shall clearly set out such details of the contracted-out scheme as the Authority shall require from time to time in order to ascertain that the contracted-out scheme meets the Reference Scheme Test;

(c) within thirty days from the date of receiving the written request and provided that the contracted-out scheme satisfies the Reference Scheme Test specified in the Fourth Schedule, the Authority shall respond in writing indicating its approval or otherwise to the employer and notify the Board accordingly;

(d) where such approval is received, Tier II Pension Fund Credits in respect of the employees shall be transferred from the Pension Fund to the

approved contracted- out scheme; and

(e) the contracted-out scheme shall maintain an accurate record of Protected Rights which shall be paid in the same manner as for benefits in respect of Tier II Contributions as prescribed in Part V of this Act.

(3) An employer shall pay Tier I contributions to the Pension Fund.

Restriction on employer in regard with deductions from earnings.

**22.** An employer is entitled to recover from his employee's earnings, the employee's contribution by way of a deduction there from for purposes of paying the employee's contribution, but is not permitted to deduct the employer's contribution from the employee's earnings, but shall instead pay from his own resources, and remit to the employee's account under this Act.

Voluntary contributions

**23.** (1) Every voluntary member shall contribute to the Provident Fund-

(a) a minimum amount of two hundred shillings;

(b) a minimum aggregate contribution in a year of four thousand eight hundred shillings;

(c) contributions may be paid directly to a designated Fund office, by mobile money or any other electronic transfer specified by the Board ; and

(d) the Fund shall notify the member of the receipt of the contribution as soon as the contribution is received.

(2) The contributions made under this section shall be paid into the Provident Fund and immediately credited to the member's individual account as the Provident Fund Credit provided under section 24

Creation of Individual Accounts for members of the Fund.

**24.** (1) The Board shall cause to be established and maintained for each member of the Pension Fund, an individual account to be known as the Pension Fund Credit to which shall be credited all contributions made to the Pension Fund by and in respect of each member of the Pension Fund.

(2) The individual Pension Fund Credit shall, in respect of each member of the Pension Fund, at any

particular date, show a full break down of-

(a) Tier I Fund Credit showing the employer and member contributions separately;

(b) where applicable Tier II Fund Credit showing employer and member contributions separately;

(c) transfer payments into the account, if any; and

(d) interest credited into the account.

(3) Individual Provident Fund Credit of each member of the Provident Fund shall be opened and shall, at any particular date, show a full breakdown of voluntary contributions, transfer payments, if any, and interest credited .

(4) Each member shall receive from the Fund, at the end of every financial year, an annual benefit statement indicating the Pension Fund Credit or the Provident Fund Credit or both as the case may be, and

(5) Notwithstanding the provisions of subsection (4), a member may, upon giving sufficient written notice to the Fund, obtain a benefit statement.

(6) Where the Fund has availed the information herein required online, a member may obtain the same online information and the Fund shall ensure that the information online is up to date and sufficient for purposes of getting the information required under this section.

(7) Where, the information required cannot be obtained, or a member is incapacitated to access the information electronically, the Fund shall give general notice to members informing them to access the information from the Fund manually at specified offices situate in locations convenient to the members.

Termination of a member's account.

**25.**(1) Subject to subsection (2), the account of a member established under section 24, shall be deemed closed when, and shall not be closed until-

(a) all the moneys due from that account have been paid out of that account in accordance with this Act;

(b) the member has ceased to be a member of the Fund; and

(c) no claim by or on behalf of that member to any benefit is pending determination.

(2) The membership of a member of the Fund shall cease, and his registration shall be cancelled, upon the payment to him of an emigration benefit.

(3) Notwithstanding the provisions of subsection (2), a person who has ceased to be a member by reason of the payment of an emigration benefit under subsection (2) shall be liable to compulsory or voluntary registration as a member of the Fund if at any time he becomes so liable or eligible in accordance with this Act.

Regulations to provide for voluntary registration.

**26.** The Cabinet Secretary, in consultation with the Board, shall subject to section 23, make regulations to provide, subject to such terms and conditions as may be prescribed therein, for-

(a) the voluntary registration of persons who are self-employed;

(b) the voluntary registration of any class or description of employees as members of the Fund;

(c) the voluntary registration of persons who have retired from employment, including persons referred to in section 29(3);

(d) review and adaptation of any provision of this Act for purposes of accommodation of circumstances peculiar to self-employed contributors;

(e) the time and manner of payment of self-employed contributions;

(f) the representation, in whatever manner or form possible, of an organization representing self-employed persons in the Board;

(g) the collection and the recovery or furnishing of details in relation to self-employment contributions;

(h) the waiving of interest due on arrears of self employment contributions;

(i) any matter ancillary or incidental to voluntary contributions.

Penalty for default in payment and incorrect contributions.

**27.** (1) If any contribution for which a contributing employer is required to pay to the Fund is not paid within one month after the end of the month in which the last day of the contribution period to which it falls, a sum equal to five per cent of the amount of that contribution shall be added to the contribution for each month or part of a month that the amount due remains unpaid, and any such additional amount shall be recoverable at the same time and in the same manner as the contribution to which it is added.

(2) Where it is established by a member or officer of the Fund to the satisfaction of the Managing Trustee that any amount has been paid to the Fund as a contribution when it was not payable under this Act and the amount was paid as a result of a *bona fide* error, the amount paid in error shall be refunded without interest thereon or may be applied, with the consent of the person who made the payment, to any current liability of that person to the Fund.

(3) Any amount which is payable under this Act as a contribution by an employer in respect of himself or his employee that is in excess of the statutory contribution payable under this Act for any period, the amount in excess shall be refunded to the employer or employee, as the case may be, without interest thereon or may be applied, with the consent of the employer or employee, to any current liability of the employer or employee to the Fund.

Payments into and out of the Provident Fund.

**28.** (1) There shall be paid into the Provident Fund monies specified under subsections (1) and (2) of section 23.

(2) The Board shall pay out of the Provident Fund, such monies as it shall determine, to persons who do not qualify to be paid benefits from the Pension Fund and the payment shall be in accordance with the provisions of Part V.

Exempt persons

**29.** (1) Every person of a class or description specified in the First Schedule shall be an exempt person.

(2) An exempt person shall not be registered as a member of the Fund.

(3) Subject to subsection (2) an exempt person may elect to register as a voluntary contributor.

Account and benefits of member inalienable and not assignable.

**30.** (1) Notwithstanding any provision to the contrary in any written law, any benefit payable out of a member's

account under this Act shall not be-

(a) assigned, pledged, transferred or sequestered;

(b) set off against any debt of the member entitled to the benefit; or

(c) attached, levied or executed in any form under a judgment or order of a court of law.

(2) An director, officer, servant or agent of the Fund who contravenes the provisions of this section commits an offence.

Assignment of benefits for housing

**31.** Despite the provisions of section 30, a prescribed proportion of the benefits accruing to a member under this Fund may be assigned and used by the member to secure a mortgage loan from a bank, building society or other similar institutions and on such terms and conditions as may be prescribed under the Retirement Benefits Act.

Member employed by more than one employer.

**32** (1) Where a member is concurrently employed by more than one employer, each individual employer shall be responsible only for his obligations under this Act.

(2) Regulations may –

(a) provide for the determination of liability for the payment of contributions in the case of a person who works under the general control or management of a person who is not his immediate employer; and

(b) determine the circumstances in which a person is to be regarded for the purposes of subsection (1), as being concurrently employed by more than one employer.

(3) For the purposes of this section any amount in excess of the amount due from an employer shall be refunded to both the employer and the employee.

## PART V - BENEFITS

Pension Fund and Provident Fund benefits.

**33.** Any benefits under this Part shall comprise of benefits payable out of the Provident Fund in this Act referred to as Provident Fund Benefits and benefits payable from the Pension Fund, in this Act referred to as the Pension Fund Benefits.

Description of Pension Fund Benefits.

**34.** (1) Pension Benefits shall be of the following

description-

(a) Retirement pension;

(b) Invalidity pension;

(c) Survivors' benefit;

(d) Funeral grant; and

(e) Emigration benefit.

(2) The Board may from time to time recommend to the Cabinet Secretary any additional benefits that may be provided under this section and any such additional benefits may obtain from the date provided or phased in gradually as circumstances may require.

(3) All the benefits derived from contributions made by a member and by an employer in respect of a member shall immediately vest in the member.

Nomination of dependants to receive benefits.

**35.** (1) Every person entitled to become a member of the Pension Fund or Provident Fund as the case may be shall furnish to the Fund, in the manner prescribed, particulars concerning himself and his dependant relatives who shall receive benefits under this Part upon his death.

(2) A member of the Fund shall update his nomination under subsection (1) at any time and, in any event, annually and the revised nomination shall be submitted to the Fund.

(3) A member's nomination under this section shall be regarded by the Board to be his absolute intention and the Board shall not be responsible for any errors of omission or inclusion contained in the nomination.

(4) Where a person has been validly nominated under this subsection, the Board may decline to pay or vary the nominated beneficiary and shall furnish in writing its reasons therefor.

Retirement Pension.

**36.** (1) A retirement pension shall be payable to a member who-

(a) has attained pensionable age; or

(b) opted for early retirement having attained the age of fifty years but not having attained pensionable age.

(2) A member may elect to have the value of his

Pension Fund Credit at the date of his retirement applied to a pension payable to the member.

(3) The pension payable to a member on his retirement under sub-section (1) shall be of such an amount as can be purchased by his Pension Fund Credit at the date of his retirement after the exercise of any option in terms of sub-section (6).

(4) A pension which becomes payable in terms of sub-section (2) may be purchased in the member's name from a Registered Insurer of the member's choice.

(5) Where the pension is purchased from a Registered Insurer, 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 Registered Insurer and shall be set out in writing by the Registered Insurer.

(6) The pension purchased pursuant to subsection (5)-

(a) shall be compulsory, non-commutable, non-assignable and payable for life,

(b) shall be subject to a minimum ten year guarantee period; and

(c) upon purchase, the Fund shall have no further liability in respect of the member, such liability having moved, from the date of purchase, to the Registered Insurer from whom the pension is purchased.

(7) A member who is entitled to receive a pension may-

(a) elect to receive part of his or her Pension Fund Credit as a lump sum but the option under this paragraph shall not extend to more than one-third of Tier II Pension Fund Credit;

(b) if entitled to receive benefits in respect of Protected Rights from a contracted-out scheme, combine benefits from the Pension Fund Credit with the Protected Rights in a contracted-out scheme for the purposes of securing a pension from the Fund or Registered Insurer of the member's choice;

(c) if entitled to a pension which is of a Trivial Amount after electing to take any part of the pension as a lump sum under paragraph (a) and after allowing for benefits in respect of Protected Rights from a contracted-out scheme, the member may elect to commute for a lump sum the total Pension Fund Credit due to him and that in determining the pension, the annuity rate applicable shall be for a non-increasing pension with a provision for a ten year guarantee;

(d) elect to take his Tier II Pension Fund Credit in the form of an income drawdown as provided in the Retirement Benefits Act or Cap. 197

(e) elect to delay receiving benefits which will harmonize with a higher retirement age in the contracted-out scheme in which case the member's Pension Fund Credit shall continue to accrue interest in the Fund until payment.

Survivors' Pension.

**37.** (1) A survivors' pension shall be paid to the dependants, if the member dies before pensionable age and was contributing to the Pension Fund at the time of his death and not less than thirty six monthly contributions had been made by the member immediately preceding the date of death.

(2) The survivors' pension payable under subsection (1) shall, in aggregate, be equal in value to the member's Pension Fund Credit except that the Tier I Credit in respect of the deceased member shall be increased by an amount equal to the last Tier I monthly contributions multiplied by the lower of half the number of months of potential employment between the member's date of death and attainment of pensionable age and 90 months.

(3) The survivors' pension payable under sub-section (2) shall be held by the Board on trust**,** and paid to the nominated beneficiary within one year after the death of the member in such proportions as stipulated by the member for the absolute use and benefit of the beneficiary.

(4) Despite the provisions of subsection (3), the Board may exercise its option under section 35 with regard to any nomination under this section.

(5) Notwithstanding any written law, a benefit payable by the Fund upon the death of a member shall not form part of the assets in the estate of a member .

(6) Where a deceased member did not satisfy the qualifying conditions prescribed in subsection (1), his dependants shall be entitled to the payment of a lump sum benefit equal to his Pension Fund Credit.

Invalidity pension.

**38.** (1) A member shall be entitled to invalidity pension if-

(a) he suffers such physical or mental disability of a permanent total incapacity as certified by a medical board established pursuant to this section and

(b) had made not less than 36 monthly contributions immediately preceding the date of the invalidity.

(2) The invalidity status determined under subsection (1) shall be subject to review at such intervals as the Board may determine.

(3) The rate of invalidity pension shall be determined and payable in the same manner as the retirement pension provided under section 36 except that the Tier I Credit in respect of the member shall be increased by an amount equal to the last Tier I monthly contribution by the member multiplied by the lower of half the number of months of potential employment between the member's date of invalidity and attainment of pension age and ninety months.

(4) A member who would have qualified for an invalidity pension but for the requirements of paragraph (b) of subsection (1) of this section shall be entitled only to the payment of a lump sum benefit equal to the member's Pension Fund Credit.

(5) The Board shall appoint medical boards for the purposes of examining persons who have claims to benefits under this section and may-

(a) require any person who has a claim to any benefit under this section to submit to an examination by a medical board.

(b) prescribe the procedure for medical boards, guidelines to be followed and reports to

be prepared

(6) A Medical Board appointed under subsection (5) may, examine or enquire into any matter relating to claims of any benefits under this Act.

Emigration Benefit.

**39.** A member shall be entitled to an emigration benefit, which shall be equal to the member's Pension Fund Credit, if the member migrates from Kenya to a country, other than a country with which a reciprocal agreement is made pursuant to section 64 without any present intention of returning to reside in Kenya.

Funeral grant.

**40.** (1) On the death of a member who has paid at least six monthly contributions immediately preceding his death, a grant for defraying funeral expenses shall be paid to the next of kin in one lump sum of ten thousand shillings.

(2) A claim for payment of a funeral grant shall be submitted not later than sixty days from the date of the death of the Member.

(3) For the purposes of this section, the next of kin shall be the surviving spouse, or, in the case of an unmarried person, the father or mother, brother or sister or the person responsible for the payment of funeral expenses.

Provident Fund Benefits.

**41.** (1) Benefits payable from the Provident Fund shall be of the following description

(a) age benefit;

(b) survivors' benefit;

(c) invalidity benefit;

(d) withdrawal benefit; and

(e) emigration benefit;

(2) The Board may from time to time recommend to the Cabinet Secretary additional benefits that may be provided under this section and any such additional benefits may obtain from the date provided or phased in gradually as circumstances may require.

Age Benefit.

**42.** (1) A member of the Provident Fund shall be entitled to age benefit if the member has attained the age of fifty years.

(2) The age benefit payable shall be a lump sum equal

to the member's Provident Fund Credit at date of entitlement to age benefit.

Survivors' Benefit.

**43.** (1) The dependant relatives of a member of the Provident Fund shall be entitled upon the member's death to a lump sum survivors' benefit equal to the member's Provident Fund Credit at the date of death, to the extent and subject to the conditions provided under this section.

(2) The provisions of section 36(3) to (6) shall apply to any claim to benefit under this section with such modification as shall be necessary.

Invalidity Benefit.

**44.** Subject to this Act, a member of the Fund shall be entitled to invalidity benefit if either—

(a) he is subject to such physical or mental disability as to be suffering from permanent total incapacity as certified by a medical doctor; or

(b) he is subject to such physical or mental disability as to be suffering from partial incapacity of a permanent nature and is unable by reason of such disability to earn a reasonable livelihood as certified by a medical board.

(2) The provisions of section 38(5) and (6) shall, apply to any claim to benefit under this section with such modifications as shall be necessary.

Withdrawal Benefit.

**45.** A member of the Provident Fund shall be entitled to a lump sum withdrawal benefit equal to the member's Provident Fund Credit at the date of withdrawal if at the time of claiming the benefit the member is no longer in self-employment.

Emigration benefit

**46.** A member of Provident Fund shall be entitled to emigration benefit if the member emigrates from Kenya to a country other than a country with which a reciprocal agreement is made pursuant to section 64 without any present intention of returning to reside in Kenya.

Regulations regarding benefits under this Act.

**47.**(1) The Cabinet Secretary, in consultation with the Board, may make regulations to regulate any matter relating to benefits payable from the Fund and such regulations may

(a) provide for the manner of making and determination of any claim to a benefit by a

member or as a dependant relative;

(b) require attendance for and submission to such medical or other examination as may be prescribed for members or dependant relatives claiming benefit;

(c) provide for the postponement of any payment of benefit pending the determination of any relevant inquiry;

(d) provide which benefit shall be paid in any case where a member of the Fund is entitled to claim more than one description of benefits at any one time;

(e) provide for any benefit, other than emigration grant, to be converted into and paid an annuity or other recurrent payment, or to be paid by installments in such circumstances and subject to such conditions and in such manner as my be prescribed;

(f) make provision for enabling or requiring a person to be appointed to receive a benefit on behalf of any other person, or to exercise any right or power under this Act on behalf of a person entitled to a benefit who is unable, for the time being, to act; or

(g) make provision for the imposition of any conditions on the application of any benefit paid to a person for the benefit of any other person.

(2) The regulations under this section may provide for the determination by an officer appointed by the Cabinet Secretary, or by a person or tribunal appointed or constituted in accordance with this Act, of any question arising under this Act, including any claim for benefit.

(3) Subject to the provisions of section 53, regulations under subsection (2) may provide for

(a) the enabling of appeals to be brought from the decisions of the Managing Trustee, any officer or agent of the Fund to the Tribunal to hear and determine such appeals; and

(b) the reference to the High Court for decision of any question of law arising in connection with the

determination of any question by the Managing Trustee any officer or agent of the Fund or the Tribunal, and for appeals to the High Court from the decision of the Managing Trustee, any officer or agent of the Fund or the Tribunal on any such question of law.

Misrepresentations when making benefit claims.

**48.** (1) Any person who fails to disclose or who misrepresents any material fact, whether or not such non-disclosure or misrepresentation is fraudulent, and receives any benefit he is not entitled to receive as a consequence of the non-disclosure or misrepresentation, is liable to repay the benefits so received within such period as the Board may direct.

(2) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three months or both.

## PART VI - FINANCE, ADMINISTRATION AND MANAGEMENT OF THE FUND

Monies of the Fund and investment thereof.

**49.** (1) The funds of the Fund shall comprise-

(a) monies received as contributions under this Act;

(b) fees, charges, monies or assets as may accrue to or vest in the Fund in the course of the exercise of its powers or the performance of its functions under this Act or under any written law; or

(c) all monies from any other sources provided for or donated or loaned to the Fund.

(2) The Fund shall invest any of its funds which are not for the time being required to be applied for the purposes of the Fund in accordance with the provisions of the Retirement Benefits Act.

(3) The Board may, in its sole discretion, make arrangements for or facilitate with any credit institution, loans or advances for staff on such terms and conditions as it may consider appropriate after taking into account the financial viability and obligations of the Fund under this Act.

Expenses of administering the Fund

**50** (1) There shall be paid out of the Fund expenses not exceeding two per cent of the total Fund assets for the administration of the Fund;

(2) The percentage provided in subsection (1) shall apply in the first year from the commencement date and the Board shall thereafter take necessary measures to ensure that the percentage reduces and is capped at one and a half per cent in the sixth year following the commencement date.

(3) In estimating expenses for the purposes of this section there may be included-

(a) an amount representing the accruing liability of the Fund in respect of any emoluments, pensions, staff medical insurance or other benefits to which any officers or servants employed for the purposes of this Act may become entitled in respect of that employment;

(b) office stationery, equipment and machines, motor vehicles and insurance;

(c) an amount representing maintenance and repairs of the Fund's buildings, grounds, facilities, and the rental value of any premises used for the purposes of this Act; and.

(d) an amount representing fees for Fund management, custodial, actuarial, and audit.

Accounts and Audit. No 18 of 2012

**51.** (1) The Board shall cause to be kept all proper books of account and records in relation to the Old Provident Fund, the Provident Fund and Pension Fund and of all the undertakings, the Fund's investment activities and property of the Fund.

(2) The Board shall, within a period of six months after the end of each financial year, prepare, sign and transmit to the Auditor General -

(a) a balance sheet showing in detail the assets and liabilities of the Fund;

(b) statement of income and expenditure of the Fund;

(c) such other statements of account as required by International Accounting and Audit Standards;

and

(d) a statement showing segregation of the Pension Fund assets, the Provident Fund assets and the Old Provident Fund assets.

(3) Subject to the provisions of any written law, the Auditor General may, in writing, allow the Fund to hire the services of a private Audit firm for the purposes of audit under this section.

(4) Within three months following the completion of the audit process by the Auditor General or a private audit firm allowed under subsection (3) the Board shall cause the audited accounts of the Fund to be published in at least two daily newspapers widely circulated throughout Kenya.

Actuarial valuation of the Fund.

**52.** The state of the Fund shall be valued at least once in every three years.

Resolution of Disputes. Cap. 197

**53.** Any dispute on matters relating to contributions, benefits, registration, rejection or variation of dependants or cancellation arising from the application of this Act the aggrieved person shall be referred to the Tribunal set out under the Retirement Benefits Act.

## PART VII-LEGAL PROCEEDINGS

Misconduct by officers of the Fund.

**54.** (1) An officer of the Fund who, while performing duties assigned to him by the Board—

(a) directly or otherwise solicits for, or receives a payment or other reward, whether or not he is entitled to claim; or

(b) enters into any agreement to do, abstain from doing, permit, conceal or conspire at any act whereby the Fund is or may be defrauded, or which is contrary to the provisions of this Act or the power of execution of the duty of that officer;

(c) discloses, except for the purposes of this Act or when required to do so by any written law or as a witness in a court of law or with the approval of the Fund, information acquired by him in the performance of his duties relating to a member, contribution, benefit or any information relevant to the purposes of this Act; or

(d) uses his position to improperly enrich himself or

others,

commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years or both and any money, property or reward obtained fraudulently shall be forfeited to the Fund.

(2) Any person who, with the intention of defrauding the Fund or in any way defeating the successful enforcement of this Act—

(a) directly or indirectly offers to give an officer of the Fund a payment or reward, or

(b) promises or enters into an agreement with any officer of the Fund in order to induce the officer to do, abstain from doing, permit, conceal or connive at any act as a result of which the purposes of this Act are defeated, or which is contrary to the provisions of this Act for the proper execution of the duty of that officer,

commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years, or both and any money, property or reward obtained fraudulently shall be forfeited to the Fund.

(3) Where an employee of the Fund conspires or aids and abets any other person in the commission of any offence specified in subsection (1), such employee shall, on conviction, be liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or both and any money, property or reward obtained fraudulently shall be forfeited to the Fund.

(4) Any penalty imposed on an employee or officer of the Fund under this section shall not prejudice any other disciplinary action the Board may decide to take against that employee or officer for that offence.

(5) The provisions of this section shall apply to the Trustees with such modifications as may be necessary.

Offences relating to contributions.

**55.** A person who—

(a) evades payment of any contribution or any other

amount that may be due;

(b) knowingly makes any false statement or representation, or produces or furnishes or causes to be produced or furnished any document or information which he knows to be false in a material particular;

(c) in order to benefit himself or some other person knowingly makes any false statement or representation or produces or furnishes, or causes to be produced or furnished, any document or information which he knows to be false in a material particular;

(d) wilfully misrepresents or fails to disclose any material fact, or fails to pay to the Fund within such period as may be prescribed, any amount which he is liable to pay under this Act or regulations made thereunder;

(e) initially fails to disclose or who misrepresents any material fact, whether or not such non-disclosure or misrepresentation is fraudulent and receives any benefit he was not entitled to receive;

(f) fails to comply with any regulations made under this Act as a result of which there is loss to the Fund or as a result of which the records of any member or matter under this Act cannot be properly maintained;

(g) obtains the consent of any employer or employee required under this Act by duress or undue influence; or

(h) knowingly deducts from an employee's earnings any sum in respect of contributions to the Fund greater than the employee's share of the statutory contribution;

commits an offence and is liable on conviction—

(i) in respect of an offence under paragraphs (a), (b), (c) or (e), of this subsection, to remit the contributions plus interest at mean bank rates, and in the case of (b) to produce the records in question, and in the case of (c) or (e) to a fine of a sum equivalent to any amount owed to the

Fund, or to imprisonment for a term not exceeding three years or to both;

(ii) in respect of an offence under paragraph (d), to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both;

(iii) in respect of an offence under paragraphs (f), to pay in full the loss to the Fund occasioned by the offence;

(iv) in respect of an offence under (g), to a fine not exceeding five hundred thousand shillings; and

(v) in respect of an offence under paragraph (h), to make a refund of the excess deductions to the employee, together with interest thereon at mean bank rates.

Institution of criminal proceedings

**56.** (1) Criminal proceedings under this Act may be instituted and conducted by the Director of Public Prosecutions or by an officer of the Fund authorized by the Director of Public Prosecutions.

(2) The Court before which any person is convicted of an offence under this Act may, without prejudice to any civil remedy, order such person to pay to the Fund the amount of any outstanding contribution together with any interest or penalty due from such person to the Fund at the date of conviction, and such amount may be recovered in the same manner as a fine and shall be paid to the Fund for the credit of the accounts of Members of the Fund.

Offences by body of persons.

**57.** If a body of persons commits an offence under this Act—

(a) where the body of persons is a body corporate, every director and officer of that body corporate involved in the commission of the offence shall also be deemed to be liable for that offence; and

(b) where the body of persons is a firm, every partner of that firm shall also be deemed to be liable for that offence.

Civil Proceedings.

**58.** (1) All sums due to the Fund shall be recoverable debts due to the Board and, without prejudice to any other remedy, shall be a civil debt recoverable summarily.

(2) An action for the recovery of contributions or penalty under this Act may be instituted and conducted by an authorized officer of the Fund.

(3) Notwithstanding any other written law, the assets of the Fund shall not be liable to attachment under any process of law.

Priority for payment of contributions.

**59.** (1) Where—

(a) on application on behalf of the Fund, any attachment is issued against the property of an employer in execution of a decree against him and any such property is seized or sold or otherwise realized in pursuance of such execution; or

(b) on the application of a secured creditor, the property of an employer is sold,

the proceeds of the sale or other realization of such property shall not be distributed to any person entitled thereto until the court ordering the sale or other realization has made provision for the payment of any amount due by the employer under this Act before the date of such order.

Remission of interest on contributions.

**60.** (1) Despite the provisions of this Act, in any case where the Board is of the opinion that it should refrain from recovering any interest on unpaid contributions by reason of—

(a) uncertainty as to any question of law or fact;

(b) consideration of hardship or equity;

(c) impossibility, undue difficulty or expense of recovery of accumulated interest; or

(d) any other cogent and compelling circumstance,

the Board may recommend to the Cabinet Secretary to approve, in writing, the remission of the interest in question.

(2) This section shall not apply where—

(a) it appears or there is reasonable ground to suspect that the person liable to pay the accumulated interest has concealed any material particular concerning the case under

consideration;

(b) the person liable has, in any material way, been uncooperative or has made, directly or otherwise, fraudulent misrepresentation concerning his case; or

(c) the person liable is or was in any way under investigation on any matter relating to the enforcement of this Act.

(3) Despite subsection (1), the Board shall have the right to reopen its case to recover the remitted interest if any fact justifying such reopening comes to the notice of the Board.

## PART VIII – MISCELLANEOUS

Protection from personal liability

**61.** No matter or thing done by a member of the Board or any officer, employee or agent of the Fund shall, if the matter or thing is done in good faith while executing the functions, powers or duties of the Board, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

Liability of the Fund for damages.

**62.** The provisions of Section 61 shall not relieve the Fund of the liability to pay compensation or damages to any person for any injury to him, or damage to or loss of his property or to any of his interests caused by the exercise of any power or performance of any duty conferred by this Act or any other written law or by the failure, whether wholly or partially, of such exercise or performance.

Annual General Meeting.

**63.**(1) The Board shall, at the Fund's expense, within six months of the end of the financial year of the Fund, convene an annual general meeting of the members of the Fund to be attended by delegates representing employers and employees.

(2) The Annual General Meeting shall be conducted in accordance with the provisions of the Retirement Benefits Act.

Reciprocal Agreements.

**64.** (1) To give effect to any agreement providing for reciprocal arrangements with the government of any country beyond the East African Community in which a fund scheme similar to the Fund has been established, the

Cabinet Secretary may make Regulations to give effect in Kenya to any such arrangements and for modifying or adapting this Act in its application to cases affected by such arrangements.

(2) The modifications of this Act which may be made pursuant to subsection (1) may include provision for—

(a) securing the acts, omissions and events having any effect for the purposes of the law of the country in respect of which the agreement is made so as to have corresponding effect for the purposes of this Act, but shall not confer a right to double benefit;

(b) determining, in cases where rights accrue both under this Act and under the law of that country, which of those rights shall be available to the person concerned;

(c) making provisions as to administration and enforcement contained in this Act or in any regulations applicable also for the purposes of the law of the other country; and

(d) making any necessary financial adjustments by payments into or out of the Fund.

(3) Where the employee resides outside Kenya but is within the East African Community Member State, the Board shall coordinate with the social security scheme of the Member State, or a similar scheme by whatever name called, to ensure that—

(a) the member, while in the member state, is registered for purposes of the membership of the Member country's social security scheme;

(b) the member makes the required contributions in the said foreign scheme in accordance with the law of the Member State and that the contributions and corresponding benefits are preserved and protected whether they are due or not;

(c) the exportability of the benefits is guaranteed;

(d) where an employee decides to return to Kenya, the exportability of the benefits of the member

as at the date of that decision takes place;

(e) actual physical transmission of contributions and benefits under paragraph (d) to the Fund in order to facilitate the totalisation of contributions and benefits under this section;

(f) upon receipt of the said contributions and benefits, expeditiously credit the same into the appropriate account of the member in accordance with the requirements of Section 24;

(g) upon retirement of the member, the member is subjected to this Act in terms of the member's retirement benefits;

(h) where the member dies while still in the Member state, the Board pursues the member's account in the foreign scheme with a view to an appropriate and just conclusion of the member's rights; and

(i) the Board makes every endeavour to work with the foreign scheme of the Member state to ensure that the records pertaining to the member are preserved until all rights and entitlements of the member in the foreign scheme are fully exhausted in favour of the member and that there is no liability whatsoever in the foreign scheme with regard to the member.

(4) The Fund shall share all relevant information in its possession in regard to the member, with the foreign social security scheme of the Member country.

(5) The Fund may secure the assistance of the Government, where necessary, to ensure the effective application of this section.

(6) The provisions of this section shall, with the necessary modifications, apply to self-employed persons in similar circumstances.

(7) The provisions of subsection (3) may be applied, with the necessary modifications, to any reciprocal agreement involving employees working in Kenya but belong to schemes of other countries in order to give rights

and protection thereof under this section to such employees.

(8) Where an—

(a) employer transfers or seconds an employee to work in another country for a period of up to three years, it shall be the responsibility of that employer to continue remittance of his portion in respect with that employee as well as the portion of the employee' contribution as required by this Act; and

(b) employee works beyond a period of three years in the foreign country, it shall be the responsibility of the employer who transferred him to that country to ensure that the employee's contributions are remitted in the country where that employee works and shall give written notice to the Fund setting out the details of the contributions being made in the foreign country and particulars of the continued stay of the employee in the foreign country.

Exemption from Stamp Duty. Cap.480

**65.** Stamp Duty shall not be chargeable in respect of any receipt, contract, instrument or other document executed by or on behalf of the Fund, or in favour of the Fund or in respect of any instrument executed by any person on behalf of or in favour of the Fund or in respect of the payment of any benefit or the refund of any contribution under this Act in any case where, but for this exemption, the Fund or any person acting on behalf of the Fund would be liable to pay such duty.

Exemption from Income Tax. Cap 470

**66.** (1) The Fund shall not be liable to pay income tax on its income and no tax by whatever name called shall be payable in respect of any property vested in the Fund.

(2) Benefits payable by the Fund and benefits payable under Protected Rights for a contracted-out scheme shall—

(a) be exempted from taxation; and

(b) not be liable to attachment for debt under any process of law.

(3) Subject to section 30, contributions to the Fund shall not be assets for the benefit of creditors in the event of

the bankruptcy or insolvency of the contributor.

Contributions to be tax-deductible expense

**67.** Despite any other written law, contributions to the Pension Fund including where applicable a contracted out scheme at the prescribed rates by a person under this Act shall form part of tax-deductible expenses in the computation of taxes payable by the person or, as the case may be, by an employee under any relevant law applicable to income tax.

Regulations.

**68.** (1) The Cabinet Secretary may make regulations prescribing anything and generally for the better carrying out of the objects and purposes of this Act .

(2) Despite subsection (1), regulations made pursuant to this section may provide for—

(a) carrying into effect the provisions of this Act;

(b) preventing the receipt of more than one benefit, unless otherwise permitted under this Act, and the adjustments of benefits in special circumstances;

(c) the particulars, including the finger prints of members or their nominees, information, proof or evidence to be furnished as to any question or matter arising under this Act, including any question or matter relevant to the registration of any person, the payment of contributions by or in respect of any person, or the making or validity of any claim or application for the payment of any benefit under this Act;

(d) arrangements for the smooth and orderly transition from the operations of the previous Fund established under the National Social Security Fund Act now repealed, into the Fund established under this Act; and

(e) prescribing, in respect of any action required or permitted to be prescribed under this Act, the time and manner of taking that action, the procedure to be followed and the forms to be used.

Penalty where not expressly provided

**69.** Any person who is guilty of any offence under this Act or who contravenes any of the provisions of this Act or any regulations made under this Act for which no penalty is

expressly provided shall be liable to a fine not exceeding one hundred thousand shillings.

Act to apply to Government

**70.** This Act applies to the Government—

(a) as an employer and, consequent thereupon, for purposes of co-ordination and accommodation of public servants joining the Fund as members thereof and for dealing with any matter arising therefrom; and

(b) as a guarantor of public interest in the Fund, reason wherefor should the Fund suffer difficulties to the extent of liquidation thereof, the Government shall take necessary steps to avert that eventuality and or protect the interest of members as may be appropriate.

Retirement Benefits Act, to apply to the Fund. Cap 197

**71.** The requirements of this act are in addition to requirements imposed by the Retirement Benefits Act.

Repeal of Cap. 258 and Savings.

**72.**(1) The National Social Security Fund Act is repealed.

(2) Despite subsection (1), the transitional provisions set forth in the Second Schedule, shall apply with respect to transitional and saving arrangements from the commencement date.

## FIRST SCHEDULE: EXEMPT PERSONS (S.29)

The following categories of person are, for the time being, exempt from the provisions of this Act-

1. Persons entitled to exemption from contribution to social security under the act under any International Convention.

2. Persons not ordinarily resident in Kenya who are employed in Kenya for periods not exceeding three years at any one time (or such longer periods as the Cabinet Secretary may allow in any particular case or class of case), being persons who are liable to contribute to or are or shall be entitled to benefit from the social security Fund or similar body of any country other than Kenya approved by the Cabinet Secretary in writing for the purposes of this Schedule.

**SECOND SCHEDULE: TRANSITIONAL PROVISIONS [S. 18(2).**

1 (1) Pursuant to section 18(2) the Board shall, from the commencement date, continue to operate the closed Old Provident Fund exclusively for purposes of dealing with and or settling all matters still outstanding under the repealed Act.

(2) Without prejudice to the generality of the provisions of paragraph 1-

(a) all assets and liabilities of the Old Provident Fund shall, on the commencement date, be ring-fenced, remain to the account of the Old Fund and shall not in any way be transferred nor become transferrable to the Fund created under this Act;

(b) all benefits granted under the Old Provident Fund and any claims thereto by persons who were, prior to the commencement date, members of the Old Provident Fund, shall be processed from the Old Provident Fund;

(c) notwithstanding the provisions of this Act to the contrary, members of the Old Provident Fund shall, on the commencement date, become members of the Fund established under this Act in accordance with the provisions of section 18(3), (4) and (5) and new accounts for each one of them shall be opened as is provided under section 24 wherein each shall start making contributions to the scheme established under this Act;

(d) no further contributions shall be made to the Old Fund from the commencement date;

(e) the provisions of sections 9, 14,16, and 19 through 25 of the repealed Act shall apply, with necessary modifications, to the administration of the Old Provident Fund as if the same are contained in this Act as part thereof; and

(f) the Board shall keep in safe custody all records relating to the Old Fund and shall take all necessary steps and make such adjustments as may be required in the circumstances to ensure proper management of the affairs of the Old Fund and for the sake of an uninterrupted transit to this Act.

2. The statutory functions, rights, interests, obligations and liabilities of the Board of Trustees existing before the commencement date under any contract or instrument, or in law or in equity shall be subject to the provisions of section 18(2) and paragraph (1) of this Schedule.

3. The Board established under this Act may be sued on any issue

arising from the previous Fund or may themselves sue on any contract or issue arising from the previous Fund and whatever they do under this paragraph shall be on account of the Old Provident Fund and of the same force and effect against or in favour of the Board as if the same had been done under this Act.

4. Where immediately before the commencement of this Act any person is liable to pay any sum of money to the previous Fund in relation to any liability arising from the repealed Act, that person shall make such payment to the Old Provident Fund.

5. Any proceedings or cause of action pending or existing immediately before the commencement date, by or against the previous Fund or the Board of Trustees existing before the commencement date in respect of any right, interest, obligation or liability of the previous Fund or its Board of Trustees, may be continued or, as the case may be, commenced and any determination of a court of law, tribunal or other authority or person may be enforced by or against the Old Provident Fund.

6 (a) Subject to any terms and conditions prescribed by the Cabinet Secretary, the Board established under this Act may continue using the assets and properties of the previous Fund for purposes of administering the Old Provident Fund as well as the Fund established under this Act and, if circumstances require, the Board may dispose, lease or otherwise deal with the assets or property to meet the obligations of the Old Provident Fund, defray expenses or costs of the administration the Old Provident Fund or for any other legitimate purpose.

(b) For the avoidance of any doubt any costs and expenses incurred by the Board established under this Act shall be a debit on the account of the Old Provident Fund and where, in the circumstances it appears that expenses or costs of the Old Fund and the Fund established under this Act are intermingled, the same be shared out in accordance with standard accounting principles.

7. Notwithstanding any provision of this Act to the contrary, any person who immediately before the commencement date is an employee of the previous Fund, or is a member of its Board of Trustees shall, on the commencement date, continues in office and is deemed to have been appointed to his office by the Board established under this Act.

## THIRD SCHEDULE: [S 20(1) (c)]

## TABLE DEFINING PROGRESSION OF RATES OF CONTRIBUTIONS

1. The Lower Earnings Limit and the Upper Earnings Limit shall, for the first four years after the commencement date, be in accordance with the Table contained in this Schedule.

2. After the fourth year and thereafter-

the Lower Earnings Limit shall be, for each financial year, the amount gazetted by the Cabinet Secretary from time to time as the average statutory minimum monthly basic wage for the top urban centres, second tier urban centres and rural areas for the year; and

(b) the Upper Earnings Limit shall, for each financial year, be the level of earnings equal to four times National Average Earnings.

3. For the purposes of this Act, the calculations based on the Table herein shall be denominated in the Kenya shilling.

THE TABLE

| *Year* | *Lower Earnings Limit* | *Upper Earnings Limit* |
|---|---|---|
| 1 | 6,000 | 50% of National Average Earnings |
| 2 | 7,000 | 1 times National Average Earnings |
| 3 | 8,000 | 2 times National Average Earnings |
| 4 | 9,000 | 3 times National Average Earnings |
| Year 5 onwards | Lower Earnings Limit as provided in regulation 2(a) of this Schedule | 4 times National Average Earnings |

## FOURTH SCHEDULE (S. 21)

### REFERENCE SCHEME TEST

(1) A Reference Scheme is an occupational retirement benefits scheme including an umbrella retirement benefits scheme or an individual retirement benefits scheme which:

(a) is registered by the authority and has a valid registration certificate;
(b) is registered with the Kenya Revenue Authority as an exempt scheme;
(c) complies with sub-sections (2) and (3) below as applicable to the type of scheme;
(d) maintains an accurate record of Protected Rights in the manner prescribed by the Authority;
(e) complies with the Investment Guidelines in the Retirement Benefits Act;
(f) complies with any prescribed requirements by the Authority.

(2) In relation to a defined contribution scheme Reference Scheme is one which:

(a) Provides benefits in respect of Protected Rights in the same manner as benefits in respect of Tier II Contributions provided for in the Act and more specifically shall ensure that the benefits are provided in the form of a pension or income drawdown as provided for in the Act and subject to the same rules on preservation of benefits in respect of Tier II Contributions as provided for in the Act;
(b) Provides for Protected Rights to be portable on transfers of employment provided that Protected Rights may only be transferred to a contracted-out scheme or to the Pension Fund established under the Act as a Tier II Credit;
(c) On a winding up of the scheme, provides for Protected Rights to be either transferred to an alternative contracted-out scheme or to the Pension Fund as a Tier II Credit;

(3) In relation to a defined benefit scheme, a Reference Scheme is one which provides benefits which are EITHER :

(a) broadly equivalent to, or better than, the benefits based on the standard below as certified by the Actuary, Provides a pension to members of the scheme at a normal pension age of 60 and continuing for life with and:

For the annual rate of pension at that age to be 1/80ths of average Pensionable Earnings in respect of that portion of Pensionable Earnings above the Lower Earnings Limit in the last three years preceding the end

of pensionable service multiplied by the number of years and complete months during which Tier II contributions were made; or

(b) Provides for the benefits in respect of Protected Rights to be provided in the same manner as in subsection (3) above with the defined benefit benefit adjusted for the pension equivalent of the benefits in respect of the Protected Rights.

(4) For the avoidance of doubt, the benefits in respect of Protected Rights are in respect of the retirement pension, invalidity pension, survivors' benefit and emigration benefit as set out in Sections 34 to 39 of the Act and do not extend to the funeral grant or any other benefit that may subsequently be introduced under the Act.

(5) For the purposes of this schedule, all terms shall have the meanings defined in the Act and the following additional definitions apply:

"defined contribution scheme" has the meaning assigned to it under the Retirement Benefits Act

"defined benefits scheme" has the meaning assigned to it under the Retirement Benefits Act

"exempt scheme" is a scheme approved by the Kenya Revenue Authority as an exempt scheme under the Income Tax Act.

(2) In considering whether a scheme satisfies the Reference Scheme test, the Authority shall require a Reference Scheme Test Certificate from an Actuary for a defined benefit scheme or an Actuary or an Administrator for any other scheme in accordance with the Act.

(3) The Authority shall issue a Reference Scheme Certificate to a scheme which meets the Reference Scheme Test to qualify it to receive Tier II Contributions.

(4) A Contracting-out Certificate issued by the Authority is an employer's authority to remit Tier II Contributions to a contracted-out scheme.

(5) The Cabinet Secretary shall, in consultation with the Authority, make regulations for the proper management of contracting-out, including the manner of making applications to the Authority by Reference Schemes and for contracting-out by employers and the communication of approval or otherwise to such scheme or employer.