APTAK

Association of Pension Trustees and Administrators of Kenya

POLICY PROPOSALS TO AMEND THE RETIREMENT BENEFITS ACT AND REGULATIONS

THE RETIREMENT BENEFITS ACT, CAP 197			
Pension Scheme procurement guidelines - Retirement Benefits Act, CAP 197	**1.**	The principal Act is amended under Section 5 to insert the following new paragraph immediately after section 5B. **5C. Authority may issue Guidelines** **(1) The Authority may issue guidelines to govern all procurement of goods, works and services by a retirement benefits scheme.**	• Amend the Retirement Benefits Act to provide for regulation of retirement benefits procurement by RBA. • Ensure compliance with the Constitution of Kenya, the Law of Trust and the Retirement Benefits Act in treating procurement and disposals for pension schemes in Kenya. • Avoid multiplicity of regulatory authorities within the pension sectors.
Amendment of the Retirement Benefits Act, CAP 197	**2.**	We propose the amendment of section 5 of the Principal Act by inserting a new subparagraph (f) immediately after subparagraph (e) –	• Ensure Trust funds established out of pension benefits are also regulated by the Retirement Benefits Authority.

		(f) register, regulate and supervise shariah compliant retirement benefits scheme arrangements. (g) register, regulate and supervise trust funds .	• Ensure the benefits are managed to the best interest of beneficiaries.
Mandatory membership in a retirement scheme	**3.**	**The Principal Act is amended by inserting the following new section immediately after section 32—** "32A (1) "Every employee in Kenya shall join and contribute to a pension scheme registered under this Act at a minimum of six per centum of the employee's basic salary or wage." (2) An employer shall ensure that all employees within its service are members of a pension scheme, and contribute its own portion on their behalf at a minimum of six per centum of the employee's basic salary or wage. (4) An employer shall either— (a) establish a pension scheme for its employees, on their behalf contribute to that pension scheme provided the scheme offers its members benefits equivalent to or higher than benefits offered in a mandatory national statutory social security scheme; (b) subscribe its employees and contribute on their behalf to any pension scheme registered under this Act provided the pension scheme offers its members benefits equivalent to or higher than	• Broaden coverage of pension throughout the Republic of Kenya. • Ensure mandatory membership of every citizen in a retirement scheme, albeit with freedom to join NSSF or an already registered pension scheme or form a new one. • The amendment entrenches in an Act of Parliament the decision of courts on mandatory membership to the NSSF. **Honorable, Odunga, J In** ***Republic v National Social Security Fund Board of Trustees & another ex parte Town Council of Kikuyu [2014] eKLR*** in holding that NSSF is not the Social Security Scheme contemplated as a mandatory Scheme under Article 43 of the Constitution stated as follow— ***"In my view to compel the very people for whom the Act was meant to protect and cushion to double contributions for substantially the same purpose would defeat the purpose for***

Cap 490 Cap 108		benefits offered in a mandatory statutory national social security scheme; or (c) Where the options in sub-sections (a) and (b) above are not applicable, the employer shall subscribe its employees and contribute on their behalf to a mandatory statutory national social security scheme. (4) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both. **4. The principal Act is amended in section 32 by inserting a new paragraph—** 32B (1) A person who is self-employed either in private or family business, small-scale craft or artisan business or farming or any other similar employment, or who has no formal employment shall join and contribute to a pension scheme registered under this Act; (2) A group of self-employed individuals including members in self-help groups, cooperative societies registered under the Cooperative Societies Act and societies registered under the Societies Act, religious organizations and any other similar groups, may subject to Regulations issued by the Cabinet Secretary—	*which the Act was enacted. What Article 43 requires the state to do is to ensure that there are adequate pension scheme/facilities available for its citizens and the enactment of the Act is meant to achieve this purpose. As long as this is achieved in accordance with the law, I do not agree that membership to the 1st respondent is mandatory in all circumstances. In this case I have already found that there is in place a legal instrument which exempts the applicant from the provisions of the section 5 of the Act.* • The amendment intends to extent coverage of pension to the informal sector to ensure that they save for retirement. • It is established that informal sector demonstrates proclivity for self-regulating grouping such as chamas and saccos and group projects are a success in Kenya. • Kenyans spend huge amounts of money daily on mobile data, messages and airtime, which behavior may easily be exploited to ensure that they save for retirement.

		(a) form as a group, register, join and contribute to their own pension scheme and register the Scheme with the Authority; (b) join as a group and contribute to a pension scheme of their own choosing; or	• Technology to automate contributions to the pension schemes is already available.
Pre-Retirement Benefits	**5.**	The Principal Act is amended by inserting the following new section immediately after paragraph 37: **37B. (1) Subject to the approval of the Authority, a retirement benefits scheme may provide the following benefits before the retirement of a member:** **(i) A residential house benefit;** **(ii) Education benefit;** **(iii) Life insurance benefit.** **(2) A member shall be eligible to access the benefits described in (1) above if the member register with the Scheme for a pre-retirement benefit and makes such additional contributions as may be prescribed in the Regulations.**	• Reinstate the residential house benefit and ensure that this goes through public participation to avert any future challenges on the same and correct the issues raised by court in **Republic v National Assembly & 2 others; Okoiti (Exparte); Retirement Benefits Authority (RBA) & 2 others (Interested Parties)**. • A sub-fund may be created within the Scheme to cater for the pre-retirement benefits. • To provide much-needed financial security to the members, pensioners, and their families. • To make pension services respond to the immediate and long term financial needs of the

			members, pensioners and their families.
Tenure of Trustees.	**6.**	The Principal Regulations are amended in Section 7 (g) by deleting the words "**three years**" wherever it appears and replacing therefor "**five years**".	• Increase the tenure of trustees to 5 years renewable only once. • Allow schemes to receive maximum benefits from investments incurred in training trustees. • Allow trustees implement and oversee long-term projects.
GUIDELINES ON TRUSTEES' REMUNERATION POLICY AND SCHEMES EXPENSES 2023			
Guidelines on Trustees' Remuneration Policy	**7.**	Amend the guidelines to ensure that all administrative aspects thereof, such as requirements for RBA to approve each and every training undertaken by the Trustees is removed. It is proposed that Scheme should file annual reports to the Authority on implementation of the guidelines as opposed to the requirement for approval of every step of trustee training.	• Allow the Authority to focus on its regulatory role and the Scheme administrator to do the administrative work. • The limits provided in the said guidelines require further reconsideration.
THE PUBLIC PROCUREMENT AND ASSETS DISPOSAL ACT, 2015			
Exemption from Public Procurement and Asset Disposal Act.	**8.**	1. The Principal Act is amended by deleting section 2 (o): *"public entity includes: -* *....* *(o) a pension fund for a public entity.*	• Pension funds worldwide are not regarded as public funds and do not fall within the public procurement laws. • Pension Funds comprise private property of a member. It

			comprises of contributions deducted from a member's salary and the same earned by employee at the point of deduction. • The same is therefore protected as such under Article 40 of the Constitution of Kenya. • Under the Retirement Benefits Act, pension Funds vest in a member immediately the same is received in the Scheme. • Pension Funds do not fall within the definition of public funds under the Public Finance Management Act. Section 2 thereof defines public money as follows: ***"public money includes all money that comes into the possession of, or is distributed by, a national government entity and money raised by a private body where it is doing so under statutory duty; and money held by national government entities in Trust for third parties and any money that can generate liability for government."***
THE INCOME TAX ACT, CAP 470			
Amendment to Paragraph 13 of first schedule of	**9.**	We propose the amendment of paragraph 13 of the Principal Act to inserting the following words	• Ensure a trust for vulnerable beneficiaries is established out of benefits of a deceased member.

Income Tax Act Cap 470		immediately after "the income of any registered trust scheme" **established out of pension and/or insurance benefits, donations for sole purpose of payment of upkeep, school fees and any other living expenses to beneficiaries of a deceased member.**	• Ensure longevity of benefits that can pay school fees for children who would otherwise drop out of school otherwise becoming a burden to the society