SPECIAL ISSUE

Kenya Gazette Supplement No. 171 — *25th September, 2020*

(Legislative Supplement No. 106)

LEGAL NOTICE No. 188

THE VALUED ADDED TAX ACT

(No. 35 of 2013)

IN EXERCISE of the powers conferred by section 67 of Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE VALUE ADDED TAX (AMENDMENT) REGULATIONS, 2020

1. These Regulations may be cited as the Value Added Tax (Amendment) Regulations, 2020. Citation.

2. The Value Added Tax Regulations, 2017, are amended by deleting regulation 9. L.N. 54/2017.

Made on the 10th September, 2020.

UKUR YATANI,
Cabinet Secretary for National Treasury and Planning.

LEGAL NOTICE No. 189

THE VALUE ADDED TAX ACT

(No. 35 of 2013)

THE VALUE ADDED TAX (ELECTRONIC TAX INVOICE) REGULATIONS, 2020

ARRANGMENT OF REGULATIONS

Regulation

THE VALUE ADDED TAX ACT

(No. 35 of 2013)

IN EXERCISE of the powers conferred by section 67 of Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE VALUE ADDED TAX (ELECTRONIC TAX INVOICES) REGULATIONS, 2020

3. These Regulations may be cited as the Value Added Tax (Electronic Tax Invoices) Regulations, 2020. Citation.

4. In these Regulations, unless the context otherwise requires— Interpretation.

"authorised officer" means an officer appointed under section 3 of the Tax Procedures Act, 2015; No. 29 of 2015

"Personal Identification Number" or "PIN" has the meaning assigned to it under section 2 of the Tax Procedures Act, 2015; No. 29 of 2015

"register" means an electronic tax invoicing or receipting system that is maintained and used in accordance with these Regulations; and

"user of a register" means a person registered under section 34.

5. These Regulations shall apply to a person registered under section 34 of the Act. Application.

6. (1) A user of a register shall use the register in accordance with these Regulations and ensure that— Use of a register.

(a) each sale is recorded with the use of the register;

(b) an invoice is generated in respect of each sale;

(c) each invoice generated in respect of each sale shall contain the information specified in regulation 7.

(2) The user of the register shall—

(a) transmit or deliver the invoice generated with respect to a purchase to the purchaser; and

(b) transmit or deliver the invoice details to the Commissioner in accordance with regulation 9 (a) .

(3) A register shall be exclusively used by the registered user of that register.

7. (1) The user of a register shall ensure continuity of operations of the register if there is an interruption of power supply. Availability of a register.

(2) Where a user of a register cannot use the register for any reason, the user shall—

(a) notify the Commissioner in writing within twenty-four hours of the user's inability to use the register; and

(b) record sales using any other means as may be specified by the Commissioner.

(3) Once the user of a register is able to use the register, the user shall enter into the register the sales recorded under paragraph (2) (b).

Obligations of the user of a register.

8. (1) A user of a register shall—

(a) ensure availability of the register at the point of sale;

(b) facilitate the inspection of the register by an authorised officer;

(c) ensure the register is regularly serviced to ensure the register's proper functioning at all times;

(d) keep and maintain a register ledger in which a record of the servicing of the register shall be entered and which shall contain—

(i) the name and address of the person servicing the register; and

(ii) an entry for each time the register is serviced, describing the servicing and shall be signed by the person performing the service; and

(e) comply with such other requirements as may be specified by the Commissioner.

(2) Where a user of a register intends to discontinue the use of a register due to—

(a) closure of business;

(b) cessation to supply vatable supplies; or

(c) any other reason,

that user shall notify the Commissioner, in writing, of the intended discontinuation within thirty days prior to the discontinuation.

(3) Where a notification has been made under paragraph (2), the Commissioner may, by notice in writing and within thirty days, retire the register.

9. (1) A tax invoice generated from a register shall contain— Tax invoices, credit notes and debit notes.

(a) the PIN of the registered user of a register;

(b) the time and date of issuance;

(c) the serial number of the invoice;

(d) the buyer's PIN;

(e) the total gross amount;

(f) the total tax amount;

(g) the item code of supplies (for exempt, zero-rated and other rate supplies) as provided by the Commissioner in accordance with the Act;

(h) a brief description of goods and services;

(i) the quantity of supply;

(j) the unit of measure;

(k) the tax rate charged;

(l) the unique register identifier;

(m) the unique invoice identifier;

(n) a quick response (QR) code; and

(o) any other requirement as may be specified by the Commissioner.

(2) Where a user of a register issues a credit note or debit note, the credit note or debit note shall indicate the PIN and invoice number to which the supply relates.

10. A register shall— Specifications of a register.

(a) be capable of interconnectivity with information technology networks;

(b) have sufficient storage to maintain records;

(c) display clear messages in the official languages;

(d) be secure and tamperproof; and

(e) be capable of—

(i) integrating with the Authority's systems;

(ii) transmitting or connecting to a device that will transmit the recorded data to the systems;

(iii) allowing updates for any changes in the tax laws; and

(iv) capturing the information required under these Regulations.

Transmission of invoice data and security.

11. A register shall be capable of—

(a) transmitting to the Authority's system the tax invoice data and the end of day summary of the respective day's data in the manner specified by the Commissioner;

(b) printing or providing stored data;

(c) storing data in an unintelligible manner to persons not authorised to access it;

(d) maintaining the integrity of the data;

(e) securing authentication for authorised users;

(f) capturing the log of all activities; and

(g) assigning a unique identifier to each invoice.

Offence.

12. (1) A person commits an offence if that person—

(a) fails to comply with any of the provisions of these Regulations; or

(b) tampers, manipulates or interferes with the proper functioning of the register.

(2) A person convicted of an offence under these Regulations shall be liable to pay the penalty specified under section 63 of the Act.

Transitional provisions.

13. A person who is registered under section 34 of the Act shall comply with these Regulations within a period of twelve months from the coming into operation of these Regulations:

Provided that—

(a) where the person is unable to comply with these Regulations within the period specified under this regulation, that person shall apply to the Commissioner for the extension of time which shall not exceed six months; and

(b) the application under paragraph (a) shall be made at least thirty days before the expiry of the period specified.

Date the 10th September, 2020.

UKUR YATANI,
Cabinet Secretary for National Treasury and Planning.

LEGAL NOTICE No. 190

THE VALUE ADDED TAX ACT

(No. 35 of 2013)

THE VALUE ADDED TAX (DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2020

ARRANGEMENT OF REGULATIONS

Regulation

THE VALUE ADDED TAX ACT

(*No*. 35 *of* 2013)

IN EXERCISE of the powers conferred by section 5 (8) as read with section 67 of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE VALUE ADDED TAX (DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2020

Citation.

14. These Regulations may be cited as the Value Added Tax (Digital Marketplace Supply) Regulations, 2020.

Interpretation.

15. In these Regulations, unless the context otherwise requires—

"business-to-business transaction" means a transaction between a supplier from an export country to a tax registered or non-registered business entity in Kenya that is required to account for tax on imported services under section 10;

"business-to-consumer transaction" means a transaction between a supplier from an export country and a consumer in Kenya;

"digital marketplace supply" means the supply of a service made on a digital marketplace;

"digital marketplace" has the meaning assigned to it in section 5 (9);

"export country" means any country other than Kenya and includes any place which is not situated in Kenya;

"intermediary" means any person who facilitates the supply of services through the digital marketplace and is responsible for issuing invoices or collecting payments for the supply;

"Personal Identification Number" or "PIN" has the meaning assigned to it in section 2 of the Tax Procedures Act, 2015;

"recipient", in relation to any supply of services, means the person to whom the supply is made;

"tax" has the meaning assigned to it under section 2 (1); and

"tax period" means a calendar month.

Scope of taxable supply through a digital marketplace.

16. Taxable supplies made through a digital marketplace include—

(a) downloadable digital content including downloadable mobile applications, e-books and films;

(b) subscription-based media including news, magazines and journals;

(c) over-the-top services including streaming television shows, films, music, podcasts and any form of digital content;

(d) software programmes including software, drivers, website filters and firewalls;

(e) electronic data management including website hosting, online data warehousing, file-sharing and cloud storage services;

(f) music, and games;

(g) search engine and automated helpdesk services including customisable search engine services;

(h) tickets for live events, theatres or restaurants;

(i) distance teaching through pre-recorded media or e-learning including online courses and training;

(j) digital content for listening, viewing or playing on any audio, visual or digital media;

(k) services that links the supplier to the recipient including transport hailing services or platforms;

(l) electronic services under section 8 (3); and

(m) any other service provided through a digital marketplace that is not exempt under the Act.

Application of tax.

17. (1) Tax shall apply to taxable supplies specified under regulation 3 when supplied in Kenya.

(2) Where the supply under regulation 3 is made in a business-to-business transaction, the provisions of section 10 shall apply.

(3) A business entity that is required to account for the value added tax on taxable supplies made on a digital marketplace under section 10 shall notify the supplier from the export country that the supplier is not required to account for the tax in Kenya for the supply.

(4) Where the supplier from an export country is notified as provided under paragraph (3), the supplier shall not be required to charge the tax on the supply to the business entity.

(5) Where a business entity fails to notify the supplier under paragraph (3) and the supplier charges tax, the business entity shall not be allowed to deduct the tax charged.

18. (1) A person supplying the taxable services specified in regulation 3 shall register for tax in Kenya if— Registration.

(a) the supplies are made by a person from an export country to a recipient in Kenya in a business-to-consumer transaction; and

(b) the person is conducting business in Kenya in accordance with section 8 (2) and any of the following circumstances apply—

(i) the recipient of the supply is in Kenya;

(ii) the payment for the services is made to the supplier in the export country from a bank registered under the Banking Act; or

(iii) the payment for the services that is made to the supplier in the export country is authorised in Kenya

(2) A person from an export country who makes a business-to-consumer supply of services to a recipient who is in Kenya shall register for tax through a simplified tax registration framework in accordance with regulation 7.

(3) A person registered under paragraph (2) shall declare and pay tax on the supplies made on the digital marketplace at the rate specified in section 5 (2) (b).

19. Despite regulation 5 (2), a person from an export country making a business-to-consumer supply to a recipient in Kenya who elects not to register in accordance with regulation 7 shall appoint a tax representative in accordance with section 15A of the Tax Procedures Act, 2015. Appointment of tax representatives.

20. (1) A supplier from an export country who makes supplies on a digital marketplace shall register under the simplified tax registration framework specified under this regulation. Simplified tax registration framework.

(2) An application for registration under the simplified tax registration framework shall be done through an online registration form prescribed by the Commissioner.

(3) The information required for registration under paragraph (2) shall include—

(a) the name of the business including the business's trading name;

(b) the name of the contact person responsible for tax matters;

(c) the postal address or registered address of the business and its contact person;

(d) the telephone number of the contact person;

(e) the email address of the contact person;

(f) the websites or uniform resource locators (URLs) of the supplier through which business is conducted;

(g) the national tax identification number issued to the supplier in the supplier's jurisdiction;

(h) the certificate of incorporation or registration issued to the business in the country where the business is incorporated; and

(i) any other information that the Commissioner may require.

(4) An applicant under paragraph (2) may be required to submit to the Commissioner additional documents that may be necessary to substantiate the information provided in the application.

(5) Upon registration under this regulation, the Commissioner shall issue the applicant with a PIN for the purpose of filing returns and the payment of tax.

(6) A person registered under this regulation who ceases to make taxable supplies on a digital marketplace shall apply to the Commissioner for deregistration in accordance with section 36.

Place of supply.

21. (1) A supply on a digital marketplace shall be deemed to have been made in Kenya where the recipient of the supply is in Kenya.

(2) In determining whether the recipient of a supply is in Kenya, the Commissioner shall consider—

(a) whether the payment proxy including credit card or debit card information and bank account details of the recipient of the digital supplies is in Kenya; or

(b) whether the residence proxy including the billing or home address or access proxy including internet address, mobile country code of the SIM card of the recipient is in Kenya.

Time of supply.

22. The time of supply on a digital marketplace shall be the earlier of—

(a) the date on which the payment for the supply is received in whole or in part; or

(b) the date on which the invoice or receipt for the supply is issued.

23. A business-to-consumer supplier on a digital marketplace from an export country who is registered under these Regulations shall not be required to issue an electronic tax invoice: — Exemption from issuing an electronic tax invoice.

Provided that the supplier shall issue an invoice or receipt showing the value of the supply and the tax deducted thereon.

24. A deduction of input tax by a supplier shall not be allowed for business-to-consumer transactions for a supply on a digital marketplace. — Claim for input tax.

25. (1) The tax for a supply made on a digital marketplace from an export country to a recipient in Kenya in a business-to-consumer transaction shall be paid by the supplier or the tax representative of the supplier. — Accounting for and payment of tax.

(2) A registered person shall submit a return in the prescribed form and remit the tax due in each tax period to the Commissioner on or before the twentieth day of the month following the end of the tax period.

(3) Where an intermediary makes a supply on a digital marketplace on behalf of another person, the intermediary shall be required to charge and account for the tax on the supply whether such other person is registered for tax or not.

26. (1) Any amendments to a return submitted in accordance with these Regulations shall be made in accordance with section 31 of the Tax Procedures Act, 2015. — Amendment of returns.

(2) Where an amendment under paragraph (1) results in the overpayment of tax, the amount overpaid shall be retained as a credit in favour of the person who overpaid and offset against the tax payable in the subsequent tax period.

27. A person who fails to comply with the provisions of these Regulations shall be liable to the penalties prescribed under the Act or the Tax Procedures Act, 2015. — Penalties.

28. A supplier on a digital marketplace from an export country who is required to register under these Regulations shall apply to the Commissioner for registration within six months from the date of publication of these Regulations. — Transitional provisions.

Dated the 10th September, 2020.

UKUR YATANI,
Cabinet Secretary for National Treasury and Planning.

LEGAL NOTICE NO. 191

THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

IN EXERCISE of the powers conferred by section 55 of the Retirement Benefits Act, 1997, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE RETIREMENT BENEFITS (FORMS AND FEES) (AMENDMENT) REGULATIONS, 2020

29. These Regulations may be cited as the Retirement Benefits (Forms and Fees) (Amendment) Regulations, 2020. Citation.

30. Table G in the First Schedule to the Retirement Benefits (Forms and Fees) Regulations, 2000 is amended by inserting the following new row immediately after row 14— L.N. 124/2000.

15. Debt instruments for the financing of infrastructure or affordable housing projects approved under the Public Private Partnerships Act, 2013 or as may be prescribed by the Cabinet Secretary responsible for matters relating to housing.	10%

No 15 of 2013

Dated the 14th September, 2020.

UKUR YATANI,
Cabinet Secretary for National Treasury and Planning.

LEGAL NOTICE NO. 192

THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

IN EXERCISE of the powers conferred by section 55 of the Retirement Benefits Act, 1997, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE RETIREMENT BENEFITS (MORTGAGE LOANS) (AMENDMENT) REGULATIONS, 2020

1. These Regulations may be cited as the Retirement Benefits (Mortgage Loans) (Amendment) Regulations, 2020. Citation.

2. Regulation 3 of the Retirement Benefits (Mortgage Loans) Regulations, 2009, hereinafter referred to as the principal Regulations, is amended— L.N. 85/2009.

(a) by deleting the definition of "house".

(b) by inserting the following paragraph immediately after paragraph (b) of the definition of "institution"—

(c) any other entity offering a residential house for sale.

(c) by inserting the following new definitions in proper alphabetical sequence—

"residential house" means a dwelling built wholly or in part for the provision of residential accommodation in urban or rural areas and "house" shall have the same meaning as residential house.

"spouse" has the meaning assigned to it in section 2 of the Marriage Act, 2014. No. 4 of 2014

3. The marginal note to regulation 10 of the principal Regulations is amended by inserting the words "in relation to the assignment of benefits" immediately after the word "trustees".

4. The principal Regulations are amended by inserting the following new Part immediately after regulation 12—

PART III—PURCHASE OF RESIDENTIAL HOUSES

Application for approval.

13. (1) A member may utilise a portion of the member's accrued benefits to purchase a residential house from an institution.

(2) Every scheme shall prescribe the minimum requirements to be met by their members for an application made under these Regulations.

(3) Every scheme shall prescribe the procedure to be followed in relation to the purchase of a residential house under these Regulations.

(4) A member who wishes to utilise a portion of the member's accrued benefits to purchase a residential house shall apply in writing to the trustees in the manner prescribed by the scheme.

(5) The trustees may require the applicant under paragraph (4) to supply such additional information as may be required for the processing of the application.

(6) The trustees shall determine the application under paragraph (4) within ninety days of the application being lodged, and where an application is not granted, the trustees shall notify the applicant of the reasons thereof in writing.

Portion of benefits.

14. (1) The portion available to a member for the purchase of a residential house at the time of the application under regulation 13 (4) shall be the lower of—

(a) in a defined contribution scheme, an amount not exceeding forty per cent of the member's accrued benefits:

Provided that such sum shall not exceed seven million shillings;

(b) in a defined benefits scheme, an amount not exceeding forty per cent of the member's accrued benefits as determined by an actuary:

Provided that such sum shall not exceed seven million shillings; or

(c) the purchase price of the residential house which shall not exceed the market value of the residential house.

(2) The member may opt to utilise the member's additional voluntary contributions to top up the portion of the benefits available to the member for the purchase of the residential house.

(3) The member's funds contained in a post-retirement medical fund shall not be used to determine the accrued retirement benefits of the member or be used for the purchase of a residential house under these Regulations.

(4) Where the applicant is a member of more than one scheme that have been established by the same sponsor, the trustees shall, on the option of the member, combine the member's accrued benefits in determining the proportion available to the member.

(5) For the purpose of determining the amount available to a member, the trustees shall take into account—

(a) in the case of a defined contribution scheme, the proportion of remitted contributions; or

(b) in the case of a defined benefits scheme, the funding level of the scheme where it falls below one hundred per cent according to the scheme's most recent actuarial valuation.

General requirements.

15. (1) Each scheme shall prescribe in the scheme rules the procedure to be followed when a member wishes to utilise a portion of the member's accrued benefits for the purchase of a residential house.

(2) A residential house eligible to be purchased under these Regulations shall only be a house that has been certified for occupation before the intended purchase.

(3) A member shall only be permitted to utilise the member's accrued benefits only once for the purchase of a residential house under these Regulations.

(4) A member who is paid a pension by the scheme, or who has taken early retirement, or has

attained retirement age shall not be eligible to utilise a portion of the member's retirement benefits to purchase a residential house.

(5) Where a member and the member's spouse are both members of the same scheme or different schemes, the trustees shall prescribe in the scheme rules the manner in which the member and member's spouse may combine their accrued benefits and utilise the total amount for the purchase of a residential house.

(6) For the purpose of determining the accrued benefits of a member who has retired before attaining retirement age, the funds applied to the purchase of a residential house under these Regulations shall—

(a) in the case of a defined contribution scheme, be deemed to have been drawn from the member's contribution together with the earned investment income, and any balance shall be applied from the employer's contribution and employer's earned investment income thereon; and

(b) in the case of a defined benefits scheme, as shall be determined by an actuary.

(7) Where a member already has mortgage facility from any other institution at the time of the application under regulation 13 (4), that member shall not be allowed to utilise the member's accrued benefits to offset the balance on that mortgage facility.

(8) The trustees of a scheme shall cause the title of the residential house to be encumbered so as to prevent the transfer of the house to any other person unless any of the following occurs—

(a) the member retires before attaining retirement age;

(b) the member dies;

(c) the member becomes incapacitated by ill health or permanent disablement to the extent that it would occasion the member's retirement before attaining retirement age; or

(d) the member is emigrating from Kenya to another country without the intention of returning to Kenya, and approval has been granted by the Authority for the encumbrance to be removed.

Duties of trustees in relation to purchase of residential houses.

16. The trustees of a scheme shall—

(a) consider applications under regulation 13 and determine whether or not they comply with the provisions of the Act and these Regulations;

(b) verify the institutions from which the purchase of the residential house is to be made in accordance with these Regulations;

(c) ensure the terms of sale between the member and the vendor of the residential house are documented;

(d) retain copies of titles of all purchases of residential houses under these Regulations; and

(e) keep and maintain records of all transactions relating to the purchase of residential houses under these Regulations.

Reports.

17. The trustees of a scheme shall submit to the Authority a report of the assignment of benefits and purchase of residential houses by members at least once in every three months from the date of the commencement of the financial year of the scheme.

Liability by trustees.

18. Where a member utilises a portion of the member's accrued benefits for the purchase of a residential house, the trustees shall be liable to the member for the portion of the member's accrued benefits that remain unutilised.

Expenses.

19. The member who wishes to purchase a residential house under these Regulations shall bear the transaction costs and taxes relating to the purchase.

Appeals.

20. Any appeals against a decision of the trustees in relation to the purchase of a residential house under these Regulations shall be heard and determined in accordance with the provisions of the Act.

Approval by the Authority.

21. The Authority may require the trustees of a scheme to submit for approval any information, rules or procedures relating to the purchase of a residential house under these Regulations.

Implementation.

22. All schemes shall amend their scheme rules to comply with the provisions of this Part within twelve months from the date of the commencement of these Regulations.

Dated the 14th September, 2020.

UKUR YATANI,
Cabinet Secretary for National Treasury and Planning.

LEGAL NOTICE NO. 193

THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

IN EXERCISE of the powers conferred by section 55 (8) Retirement Benefits Act, 1997, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE RETIREMENT BENEFITS (UMBRELLA RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2020

31. These Regulations may be cited as the Retirement Benefits (Umbrella Retirement Benefits Schemes) (Amendment) Regulations, 2020. Citation.

32. Regulation 2 of the Retirement Benefits (Umbrella Retirement Benefits Schemes) Regulations, 2017, hereinafter referred to as the principal Regulations, is amended— L.N. 55/2017.

(a) by deleting the definition of "contract of service" and replacing it with the following new definition—

"contract of service" means an agreement whether oral or in writing and whether expressed or implied, to employ or to serve as an employee for any period of time and includes a contract of apprenticeship and internship.

(b) by deleting the definition of "deed of adherence" and replacing it with the following new definition—

"deed of adherence" means an instrument in writing between an employer, the trustees and the sponsor in which the employer irrevocably undertakes and binds itself to the trusts of the scheme upon which the sponsor and the trustees in reliance thereto have without other conditions admitted the employer to join and participate in the provisions of retirement benefits to its employees on the terms expressed in the scheme rules.

(c) by deleting the definition of "existing scheme" and replacing it with the following new definition—

"existing scheme" means an umbrella scheme existing prior to the commencement of these Regulations.

(d) by deleting the definition of "special rules" and replacing it with the following new definition—

"special rules" means the rules that are unique to a specific participating employer and are binding to employees of the participating employer who are members of the scheme.

(e) by deleting the definition of "umbrella scheme" and replacing it with the following new definition—

"umbrella scheme" means a retirement benefits scheme established by a sponsor for the benefit of members employed by participating employers including schemes established under a written law.

(f) by inserting the following new definition in proper alphabetical sequence—

"partial liquidation" - means transfer of all assets and liabilities attributable to the members related to a withdrawing employer to another registered scheme, but the scheme otherwise continues to function as a normal scheme to the continuing participating employers.

33. Regulation 3 of the principal Regulations is amended in paragraph (1) by deleting subparagraph (a) and replacing it with the following new subparagraph—

(a) in case of an existing scheme, in Form I set out in the Schedule.

34. Regulation 5 of the principal Regulations is amended by deleting paragraph (1) and replacing it with the following new paragraph—

(1) A sponsor of a scheme shall at all times have in its board of directors and top management at least four persons who are academically and professionally qualified in matters relating to administration of schemes, insurance, law, accounting, actuarial science, economics, banking, finance or investment of scheme funds and a person possessing at least five years' experience in the administration of retirement benefits schemes.

35. The principal Regulations are amended by deleting regulation 6 and replacing it with the following new regulation—

Suitability of sponsor.

6. In order to determine the professional suitability of a sponsor, the Authority shall have regard to the following qualities, in so far as they are reasonably determinable—

(a) the sponsor's general probity;

(b) the sponsor's competence and soundness of judgment for the fulfilment of the responsibilities attached to marketing the umbrella scheme;

(c) the diligence with which the sponsor is likely to fulfil the responsibilities attached to marketing the umbrella scheme;

(d) qualifications and experience of the sponsor's top management or directors in administration and management of trusts;

(e) the previous conduct and activities of the sponsor in business or financial matters and, in particular, to any evidence that any of the directors or top management personnel of the sponsor—

(i) has been convicted of the offence of fraud, or any other offence of which dishonesty is an element; or

(ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in the provision of banking, insurance, investment or other financial services; and

(f) any additional information as may be necessary in determining the professional suitability of a company proposing to establish or operate an umbrella scheme.

36. Regulation 9 of the principal Regulations is amended in paragraph (1)—

(a) by deleting subparagraph (g) and replacing it with the following new subparagraph—

(g) conditions under which an employer may cease making contributions to the scheme.

(b) by deleting subparagraph (h) and replacing it with the following new subparagraph—

(h) conditions under which an employer may terminate its participation in the scheme;

(c) by deleting subparagraph (m) and replacing it with the following new subparagraph—

(m) the vesting of contributions immediately.

(d) by deleting subparagraph (o) and replacing it with the following new subparagraph—

(o) provision for a member to defer benefits in the scheme or transfer to another scheme including an occupational or individual retirement benefits scheme.

(e) by deleting subparagraph (s) and replacing it with the following new subparagraph—

(s) partial liquidation of the scheme where a participating employer ceases to remit member contributions or commits an act contrary to the provisions of the Act and the trust deed and rules.

(f) by deleting subparagraph (z) and replacing it with the following new subparagraph—

(z) manner of receiving and accounting for the contributions made by or on behalf of each member in the scheme;

(g) by deleting subparagraph (aa) and replacing it with the following new subparagraph—

(aa) the manner in which participating employers are kept informed on a quarterly and annual basis.

37. Regulation 9 of the principal Regulations is amended by deleting paragraph (2) and replacing it with the following new paragraph—

(2) A participating employer may have special scheme rules which may make provision for the following—

(a) the date of participation;

(b) the rate of contribution which must not be below the limit of the rate in the trust deed and rules;

(c) the normal retirement age which must not be less than prescribed in the trust deed and rules; and

(d) the power of amendment of the special rules by the parties:

Provided that the special rules shall be an enhancement of the general rules of the fund.

38. Regulation 12 of the principal Regulations is amended by deleting paragraph (2) and replacing it with the following new paragraph—

(2) Where the sponsor elects not to appoint a trust corporation under regulation 16 as a sole trustee, the sponsor shall appoint nine trustees of a scheme of whom—

(a) five shall be nominated by participating employers from amongst members of the management committee constituted under regulation 18; and

(b) four shall be nominated by the sponsor, of whom two shall not be employees or directors or have any business relationship with the sponsor, and be in good standing in a relevant professional body and approved by the Authority.

39. Regulation 13 is amended in paragraph (1)—

(a) by deleting paragraph (f) and replacing it with the following new paragraph—

(f) ensuring that the agreed contributions have been remitted to the custodian or approved issuer as required by the law and the scheme rules.

(b) by deleting paragraph (k) and replacing it with the following new paragraph—

(k) notifying the sponsor and employer of the particulars of the manager and custodian of the scheme as may be sought by any or both which particulars shall include—

(i) the full name of the manager and custodian;

(ii) the physical and postal address of the registered office of the manager and custodian;

(iii) the dates of the first and subsequent financial years of the manager and custodian;

(iv) the contents of the agreement limited to duties owed by the trustees to the service provider, duties of the service provider to the scheme and any other fixed timelines; and

(v) any other particulars as the sponsor or the participating employer may request from the trustees.

(c) by deleting paragraph (l) and replacing it with the following new paragraph—

(l) submitting to the sponsor and participating employers at least once in every three months from the date of commencement of the financial year of the scheme—

(i) the valuation of the scheme fund representing all the assets of the scheme, and separately valuation together with the investment return thereof of contributions made by or on behalf of members of the scheme who are employees of each participating employer;

(ii) reports reviewing the investment activity and performance of the investment portfolios comprising the scheme fund since the last report date and containing the manager's proposals for the investment of the scheme fund; and

(iii) a record of all investment transactions of the scheme during the previous period.

(d) by deleting paragraph (n) and replacing it with the following new paragraph—

(n) furnishing the sponsor and participating employers with a copy of the most recent audited financial statements of the manager and custodian and with such other information as may be sought by the sponsor or participating employers.

40. Regulation 14 is amended in paragraph (b) by deleting paragraph (i) of the proviso and replacing it with the following new paragraph—

(i) the trustees shall meet at least two times in every calendar year.

41. The principal Regulations are amended by deleting regulation 17 and replacing it with the following new regulation—

Engagement in professional services.

17. A trustee who is an advocate, accountant or person engaged in any other profession or business shall not be engaged to provide professional services done by the trustee or trustee's firm in connection to the scheme.

42. The principal Regulations are amended by deleting regulation 18 and replacing it with the following new regulation—

Management committees.

18. (1) Each participating employer together with its employees who are members of the scheme shall nominate not more than three representatives to form a management committee.

(2) The management committee shall keep its corresponding participating employer and members informed regarding matters and activities of the scheme.

(3) The scheme rules shall provide for—

(a) the procedure of and grounds for the removal from office of management committee members; and

(b) the procedure for convening meetings.

43. The principal Regulations are amended by deleting regulation 21 and replacing it with the following new regulation—

Suitability of scheme.

21. (1) In determining whether to participate in an umbrella scheme, an employer shall consider, among other things, whether the scheme—

(a) is registered under the Act;

(b) has appointed an administrator, custodian, manager, as the case may be, who has the professional and technical capacity and adequate operational systems to manage the scheme;

(c) has developed a prudent investment policy for the investment of the scheme fund;

(d) is fully funded;

(e) has the professional and technical capacity and adequate operational systems to manage a multi-employer scheme;

(f) consists only of scheme funds maintained separately at all times from any other funds under the control of the trustees; and

(g) keeps or has caused to be kept a designated account for the employees of each employer in the scheme.

44. Regulation 23 is amended in paragraph (1) by deleting paragraph (10) and replacing it with the following new paragraph—

(10) An employer shall, in the deed of adherence, state the rate of contributions by the employer and the employees who are members of the scheme:

Provided that the rate of the contributions shall not be less than what is specified in the scheme rules.

45. Regulation 26 is amended by deleting paragraph (a) and replacing it with the following new paragraph—

(a) restrict eligibility to membership of a scheme on the basis of gender, race, grade, cadre, age, differences in the employees' salary, wages, rank, seniority at the work place, association, religion or in any manner which is discriminatory.

46. Regulation 28 is amended by deleting paragraph (2) and replacing it with the following new paragraph—

(2) Where a member elects in writing to have the retirement benefits referred to in paragraph (1) (c) transferred to another scheme for the purpose of securing a retirement benefit, the basis of paying transfer value where the scheme has a reserve fund shall be reviewed and certified by the actuary as required by the law and the member shall get a proportionate share of the reserve fund at the end of the financial year.

47. Regulation 30 is amended by deleting paragraph (4) and replacing it with the following new paragraph—

(5) Where the scheme rules provide for the purchase of an annuity and income drawdown for members at retirement age, the members shall have the option of selecting the annuity and/or income draw down provider from whom to purchase the annuity and/or income draw down.

48. The principal Regulations is amended deleting regulation 32 and replacing it with the following new regulation—

Cessation of participation by an employer

32. (1) A scheme shall be partially liquidated where a participating employer ceases to remit members' contributions, contravenes the provisions of the Act or contravenes the provisions of the scheme's trust deed and rules.

(2) For the avoidance of doubt, the partial liquidation of a scheme shall not affect the members' benefits which shall be treated in accordance with the rules of the scheme.

49. Regulation 36 is amended—

(a) in paragraph (3) by deleting subparagraph (b) and replacing it with the following new subparagraph—

(b) send to the sponsor and employer a copy of the audited accounts and to each member a summary of the audited accounts of the scheme together with the member's benefit statement by appropriate means.

(b) by deleting paragraph (5) and replacing it with the following new paragraph—

(5) The auditor shall further be required to examine the systems and controls to monitor the receipt of contributions and the reporting of late payments to the fund and render an opinion thereof as to their adequacy for purposes of determining un-remitted contributions.

50. The principal Regulations are amended by deleting regulation 38 and replacing it with the following new regulation—

Distribution of surplus of scheme fund.

38. The surplus of a scheme fund shall not be directly or indirectly refunded to the sponsor of the scheme:

Provided that—

(a) a contribution holiday for both the employer and the member as shall be determined by an actuary shall not be construed to mean a refund of the surplus of a scheme fund, and shall be limited to the surplus above 10% of the scheme's accrued liability;

(b) if the total accrued liabilities are being transferred to a different scheme, any surplus shall be allocated equally between the members and the employer;

(c) the portion of the surplus due to the employer may be used as a contribution holiday by the sponsor in the new scheme; and

(d) subject to the surplus being sufficient for the purpose, where partial liability is being transferred to a scheme, a portion of surplus proportionate to the value of the liability may be transferred.

51. The principal Regulations are amended by deleting regulation 48 and replacing it with the following new regulation—

Amalgamation of schemes.

48. (1) An amalgamation of schemes shall not take place unless the following conditions have been satisfied and approved by the Authority in writing—

(a) the arrangements and particulars for the proposed amalgamation, including copies of current actuarial reports, in respect of the schemes and other statements taken into account for the purposes of the amalgamation, have been submitted to and approved by the Authority;

(b) the Authority has been furnished with such additional particulars, or such specific reports by an actuary or auditor, as it may deem necessary for the purposes of this regulation;

(c) the Authority is satisfied that the arrangements referred to in subparagraph (a) accords full recognition to the reasonable expectations of the members of the schemes concerned, and that the proposed transaction would not render any scheme which is a party thereto and which will continue to exist if the proposed transaction when completed is unable to—

(i) meet the requirements of the Act and these regulations;

(ii) remain in a sound financial condition; or

(iii) in the case of a scheme which is not in a sound financial condition, to attain a sound condition within the period of time deemed by the Authority to be satisfactory;

(d) the Authority has been furnished with such evidence as it may require to show that the provisions of the scheme rules of the concerned schemes in so far as they are applicable, have been carried out or that adequate arrangements have been made to carry out such provisions at such intervals as may be required by the concerned schemes; and

(e) the approval referred to herein shall be given within thirty days of receipt of all the information required under paragraph (d).

(2) An amalgamation of a scheme fund shall not be approved if its intent, purpose or effect will—

(a) diminish the retirement benefits of the members of such scheme; and

(b) reduce the accrued benefits of its members.

(3) Whenever any transaction comes into force in accordance with the provisions of this regulation, the relevant assets and liabilities of the schemes so amalgamated shall respectively vest in and become binding upon the resultant scheme.

(4) A transaction effected in terms of this regulation shall not deprive any creditor of any scheme thereto, except in his capacity as a member, of any right or remedy which he had immediately prior to that date against any scheme to the transaction or against any member of such scheme.

52. The principal Regulations are amended by deleting regulation 49 and replacing it with the following new regulation—

Existing schemes to amend scheme rules.

49. All existing schemes shall within ninety days from the date of commencement of these Regulations amend their scheme rules to comply with the provisions of the Act and these Regulations.

53. The principal Regulations are amended by deleting the Schedule and replacing it with the following new Schedule—

SCHEDULE (r. 3 (1)(a))

Form I

RETIREMENT BENEFIT AUTHORITY

REGISTRATION OF EXISTING SCHEMES

APPLICATION FOR THE PURPOSE OF REGISTRATION UNDER s. 23 (2) OF THE RETIREMENT BENEFITS ACT, 1997

(read attached notes before completing the form)

PART I – DETAILS OF THE SCHEME

A. (i) Name of the scheme ....

(ii) Income Tax PIN Number..

B. Any other names under which the scheme has been known previously:

....

....

C. Any other names under which the scheme has been known together with the names of the schemes which have in whole or part been merged with or replaced by the scheme in the past five years:

....

....

D. Provide the following particulars regarding the scheme:

(i) Is it a provident or pension fund? Yes/No

(ii) Is it employee based? Yes/No

(iii) Is the scheme contributory on non-contributory?

(iv) If other specify..

(v) Current status of the scheme:

1. Is it an open scheme? Yes/No
2. Is it a paid-up scheme? Yes/No
3. Is it a closed scheme? Yes/No
4. If other, specify ....

(vi) State whether the scheme is a defined contribution or a defined benefit scheme

(vii) If other, specify ....

E. Give the following information as at the end of the last financial year from ....20........... to ....20...............

(i) State number of members of the scheme.

(ii) State the number of members of the scheme who were active members in this service

(iii) State the numbers in whom the scheme benefits have been fully vested

(iv) Scheme vesting formula ....

(v) State the number of members who are drawing pension, if any

(vi) State the numbers of members whose retirement benefits are deferred

(vii) State the number of the total permanent workforce of the sponsoring employers

(viii) Is the membership of the scheme compulsory or voluntary?

(ix) Do permanent employees of the sponsoring employers who are not members of the scheme belong to any scheme? Yes/No

If Yes, give details of the scheme

....

....

....

F. Give the following information as at the end of the last financial year from ....20............... to ....20..........

(i) Where applicable, state the contribution formula for the employee and the employer, and in the case of an individual based scheme, the individual contribution formula

Employee..

Employer..

Individual contribution..

(ii) State the amount contributed:

Employee's contribution:

Kshs ....

Employer's contribution

Kshs ....

(iii) State the total benefits as follows:

Lump sum payments:

Kshs..

Commuted payments:

Kshs..

Death benefits payments:

Kshs..

Disability benefits payments:

Kshs..

Deferred benefits:

Kshs..

Others specify:

....

(iv) State the total value of the scheme fund. Kshs..

(v) State the basis of valuation of the scheme fund e.g. Market value, Historical cost, etc. ....

G. (i) Provide the following particulars of the schemes:

Country..

Date of establishment...

Registered office of the scheme:

Building...

Road..

Postal address...

Telephone..

Telex..

Fax/email

(ii) Is the scheme established under an irrevocable trust? Yes /No.

If No, state the basis of the establishment ....

(iii) Is the scheme approved under the Income Tax (Retirement Benefits Scheme) Rules? Yes/ No

If Yes, state the income Tax Reference Number...

H. Provide details for the following:

(i) Members of the Board of Trustees (Appendix A)

(ii) Fund Managers, if any (Appendix B)

(iii) Auditors, Legal Advisors, Actuary, Managers, Custodian and Administrators (Appendix C)

(please complete the tables in the above-mentioned appendices)

I. If the scheme does not engage in the services of trustees, a scheme administrator or fund manager, then the following particulars:

(i) Who administers the scheme?

....

....

(ii) Who makes decisions on the investment of the scheme funds?

....

....

(iii) Are the funds separated from those of the sponsors? Explain

....

....

(iv) Are the scheme funds separated from those of the fund manager? Yes/No

(v) Provide the list of investment portfolio as per the latest audited or management accounts for the period from...........20.... to ....20..... showing the cost, market and book values and the respective percentages in relation to the total fund of the scheme as in appendices D1 and D2 annexed

NOTES:

1. In case the assets of the scheme are managed by an Insurance Company/ Bank/ Asset Manager on a pooled basis, such

2. The said manager in completing appendix D2 to provide the investments of

the pol and submit on a separate list all the schemes which form the pool together with their respective shares of the pooled investment

(vi) Where applicable, state the ratio of fund assets in relation of actuarial liabilities as per the latest actuarial report

....

....

....

J. List all Bankers of scheme funds showing the branches and address for such branches:

....

....

K. Custodian of scheme assets

(i) Is the custodian of the scheme assets registered under the Capital Markets Authority Act? Yes/No

(ii) If the custodian is registered by any other authority provide the following:

Full Name..

Physical Address...

Building..

Road..

Town...

Postal Address..

Telephone.................................... Fax......................................

(iii) State in whose name the title documents for the assets of the scheme are registered?

....

....

....

(iv) Give full details of the person who keeps scheme's assets and documents:

Full Name..

Physical Address...

Building..

Road..

Town...

Postal Address..

Telephone.................................... Fax......................................

PART II – PARTICULARS OF SPONSORS

(In case of more than one sponsor, provide the following particulars for each on a separate attachment)

A. Names of Sponsors

....

....

....

B. Contact information of sponsors:

Full Name...

Physical Address..

Building..

Road..

Town..

Postal Address..

Telephone.. Fax......................................

C. Tax information of sponsor:

Income Tax PIN Number ....

Income Tax Reference Number ....

D. Number of Members in service of the sponsor...

PART III – PARTICULARS OF EMPLOYERS

(Provide the following particulars for each on a separate attachment)

A. Name of sponsor:

....

....

....

B. If a company, certificate of incorporation number: ....

C. If not a company state the number of the certification of registered under the Business Names Act: ....

D. Contact information:

Full Name...

Physical Address..

Building..

Road..

Town..

Postal Address..

Telephone.. Fax......................................

E. Tax information:

Income Tax PIN Number ....

Income Tax Reference Number ....

PART IV – ATTACHMENTS

Please attach copies of the following:

(i) Trust deed and rules

(ii) Latest actuarial report

(iii) Latest audited or management accounts

(iv) An actuarial certificate certifying the design and financial viability of the scheme (if applicable)

(v) For insured schemes, a copy of the insurance policy document and a copy of the latest fund value statement and revenue account

(vi) For schemes with funds invested by an asset's manager firm, a copy of the latest scheme fund investment report and revenue account

(vii) Fund management agreements (*where applicable*)

I hereby declare that the statements contained herein and the documents submitted herewith are true and accurate to the best of my knowledge and belief. Any alterations in particulars states herein or in the said documents will be promptly communicated to the authority within a period not later than three months from the date of alteration.

Signed on this.. day of ....

Full Name: ....

Designation: ....

Chairman/Secretary
Authorized
signature of Applicant

APENDIX A

PARTICULARS OF THE BOARD OF TRUSTEES

Trustees	Citizenship	Residential Address	Occupation	Date of Appointment	Whom do the Trustees represent in the board

State against each Trustee whether they have been convicted of a criminal offence giving the date and particulars of the offence.

1...

2...

3...

APPENDIX B

PARTICULARS OF SENIOR MANAGEMENT OF THE FUND MANAGER*

(Complete this form for each fund manager, where applicable)

Name of the Scheme ....

Full Name	Designation	Nationality	Age	Postal Address	Date of Appointment	Experience (No. of years)	Academic and professional experience

If any of the officers has been convicted of a criminal offence, please give the name of the officer, the date and particulars of the offence.

....

*(The Chief Executive and his/her core team)

APPENDIX C

	Name of firm	*Income Tax P.I.N Number*	*Address, Telephone No. or Email*	*Professional body to which partners are members*	*Date of appointment*
Actuaries					
Administrators					
Auditors					
Custodians					
Legal Advisors					

APPENDIX D1

LIST OF INVESTMENT PORTFOLIO

Income Tax P.I.N Number...

INVESTMENTS	AMOUNT IN KSHS							
	Original cost	%	Original cost	%	Original cost	%	Original cost	%
(a) Real Estate: * (i) Land (underdeveloped) (ii) Residential (iii) Commercial (iv) Agricultural (v) Any other								
(b) Quoted Equity* (i) Agricultural (ii) Commercial and allied (iii) Financial and Investment (iv) Industrial and allied (v) Others								

(c) Unquoted Equity* .... (i) Agricultural .... (ii) Commercial and allied .... (iii) Financial and Allied .... (iv) Industrial and allied								
(d) Government paper (i) Bonds (ii) Stock (iii) Treasury Bills (iv) Any other (specify)								
(e) Cash and Deposits in Banks (state the name(s) of the Bank(s)								
(f) Offshore investments								
(g) Listed REITS								
(h) Others (as applies per investment guidelines)								
TOTAL		100		100		100		100

**Provide on a separate paper a list of land reference title numbers in which scheme funds are invested*

**Provide on a separate paper a list of companies in which investments are held.*

NOTES FOR APPLICATION FOR REGISTRATION

The following words and phrases as used in the application form have the following respective meanings:

(1) Actuarial liabilities: A debt or an obligation of a retirement benefits scheme arrived at using actuarial principles and assumptions

(2) Administrator: A person charged with the responsibility of day to day management of a scheme such as keeping records, paying benefits to and providing members with information relating to their benefits

(3) Banks: Bank of financial institution licensed under the Banking Act and registered as custodian by the Authority in which schemes accounts are operated or held.

(4) Commuted payment: Whole or part of a pension entitlement paid to a member on retirement subject to scheme rules and/ or Income Tax regulations.

(5) Contribution formula: The rate(s) of contribution of the fund by members and/or employers.

(6) Contributory scheme: A retirement benefit scheme in which both the employer and the members contribute to the fund.

(7) Non-contributory scheme: A retirement benefit scheme in which only the employers contributes to the fund.

(8) Custodian: A person who has custody of scheme assets including cash and title documents, as an agent of the scheme.

(9) Defined Benefit Scheme: A scheme in which benefits to be provided or paid are specific based on a specified criterion such as service, earnings e.t.c.

(10) Defined Contribution (money purchase) scheme: A scheme which specified the contributions to be made whether by employer and or employee. The accumulated contributions and interest earned determine the value of the benefit.

(11) Financial year: Financial year of the scheme.

(12) Fund manager: A person charged with the responsibility of investing scheme funds.

(13) Lump sum: Full and final payment of retirement benefit upon cessation of employment on attaining the normal retirement age.

(14) Open scheme: A running scheme which is open to new members to join.

(15) Paid up scheme: A scheme where contributions to the scheme have ceased e.g. due to winding up.

(16) Closed scheme: A scheme which is closed to new members but which otherwise function as a normal scheme for its continuing members.

(17) Scheme: Any scheme or arrangement (other than a contract for life assurance) whether established by a written law for the time being in force or by any other instrument, under which persons are entitled to benefits in the form of payments, determined by age, length of service, amount of earnings or otherwise and payable primarily upon the retirement, or upon death, termination of service, or upon the occurrence of such other event as may be specified in such written law or other instrument.

(18) Vested benefit: Any accrued benefit to which a member would be immediately entitled to on withdrawal from service of the sponsor from the scheme or at retirement.

(19) Vesting formula: The method of determining the benefits to be vested.

**person includes a body corporate or a company.*

Dated the 10th September, 2020.

UKUR YATANI,
Cabinet Secretary for the National Treasury and Planning.

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI