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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

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. Establishment of the Fund.

(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.

4. The objects of the Fund are to-

Objects of the Fund.

- (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**

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. Establishment of the Board of Trustees.

(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.

6. The Board shall comprise

Membership of the Board.

- (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.

7. A person shall not be appointed as a Trustee if the person – Disqualification from appointment.

- (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.

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.

Tenure of office of
Members of the
Board.

(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.

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.

Filling of vacancy

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

The powers and responsibilities of the Board

(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.

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. Meetings of the Board.

(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.

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.

Committees of the Board.

(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.

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.

Remuneration of Board Members

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

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.

Conflict of interest affecting a Board member

(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.

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. Appointment of the Managing Trustee .

(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.

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

Appointment of
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).

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

- (a) the Pension Fund, and
- (b) the Provident Fund,

The Old Provident
Fund and other
Funds.

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.

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;

Registration of employer and employee.

(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.

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

Mandatory Contributions to the

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-

- (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.

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.

Restriction on employer in regard with deductions from earnings.

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

Voluntary contributions

- (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

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.

Creation of Individual Accounts for members of the 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.

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-

Termination of a member's account

- (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.

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-

Regulations to provide for voluntary registration.

- (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.

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No. 45

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.

Penalty for default in payment and incorrect contributions.

(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.

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

Payments into and out of the Provident Fund

(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.

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

Exempt persons

(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.

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

Account and benefits of member inalienable and not assignable

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.

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.

Assignment of benefits for housing

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.

Member employed by more than one employer.

(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

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.

Pension Fund and Provident Fund benefits.

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

Description of Pension Fund Benefits.

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.

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.

Nomination of dependants to receive benefits

(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.

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

Retirement Pension.

- (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.

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. ^{Survivors' Pension.}

(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.

38. (1) A member shall be entitled to invalidity ^{Invalidity pension.} 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.

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. Emigration Benefit

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. Funeral grant.

(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.

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

- (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.

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

(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.

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. Survivors' Benefit.

(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.

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

- (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.

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. Withdrawal 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. Emigration benefit

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 Regulations regarding benefits under this Act.

- (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 may 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.

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.

Misrepresentations
when making
benefit claims.

(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

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

Monies of the Fund
and investment
thereof.

- (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.

2013

National Social Security Fund

No. 45

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;

Expenses of
administering 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.

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.

Accounts and Audit.
No 18 of 2012

(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.

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

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. Resolution of Disputes. Cap. 197

PART VII-LEGAL PROCEEDINGS

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

- (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.

55. A person who—

- (a) evades payment of any contribution or any other

Offences relating to contributions.

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.

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.

Institution of
criminal
proceedings

(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.

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

Offences by body of
persons.

(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.

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.

Civil Proceedings.

(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.

59. (1) Where—

Priority for payment of contributions.

(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.

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—

Remission of interest on contributions.

(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

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. Protection from personal liability

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. Liability of the Fund for damages.

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. Annual General Meeting

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

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 Reciprocal Agreements.

No. 45

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 secondly 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.

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
Stamp Duty.
Cap.480

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.

Exemption from
Income Tax. Cap
470

(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.

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. Contributions to be tax-deductible expense

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. Regulations.

(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.

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 Penalty where not expressly provided

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

70. This Act applies to the Government—

Act to apply to 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.

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

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

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

Repeal of Cap. 258 and Savings.

(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, continue 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

<i>Year</i>	<i>Lower Earnings Limit</i>	<i>Upper Earnings Limit</i>
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

2013

No. 45

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.

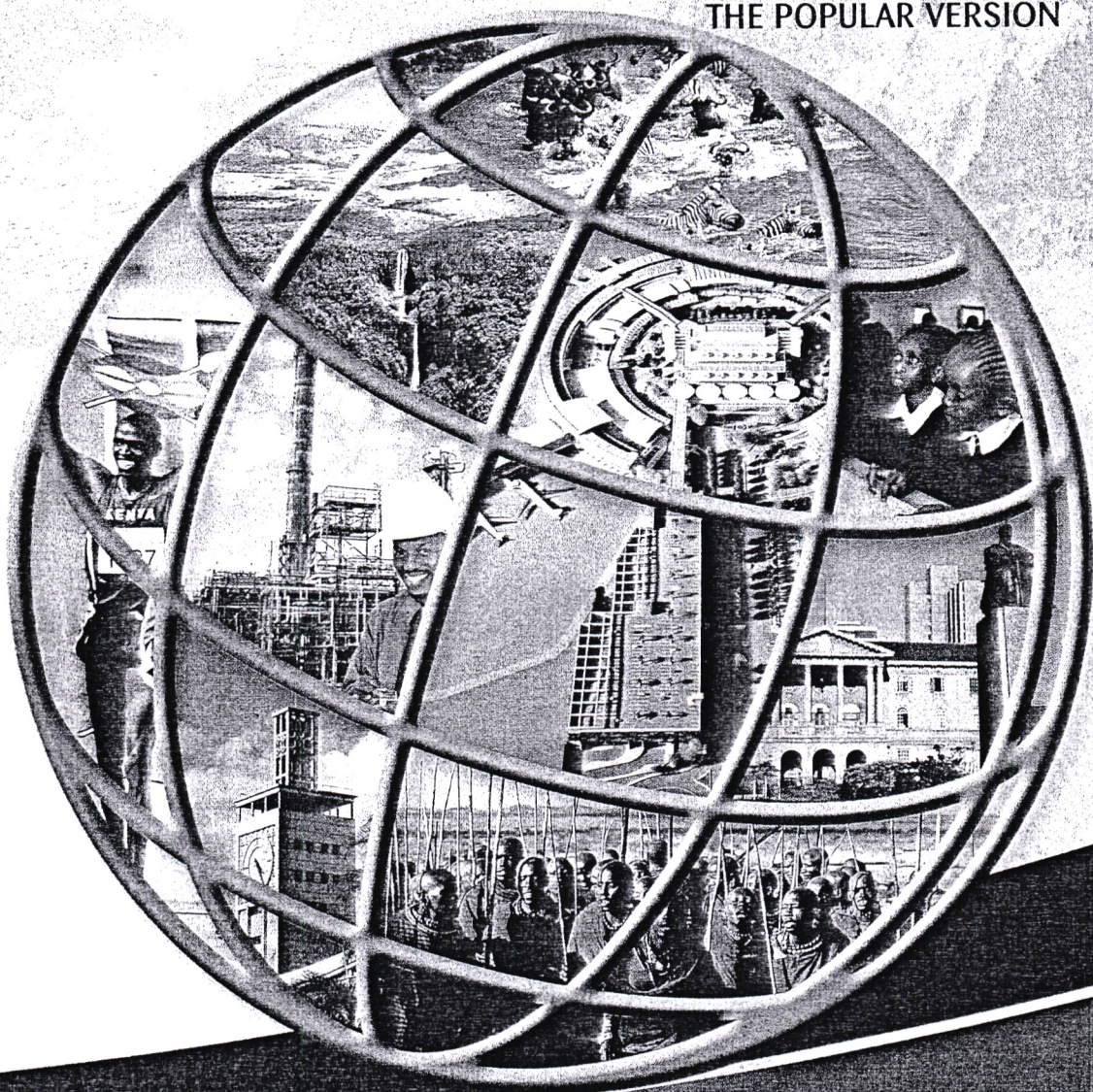
(4) A Contracting-out Certificate issued by the Authority is an employer's authority to remit Tier II Contributions to a contracted-out scheme.

(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.

KENYA

VISION 2030

THE POPULAR VERSION

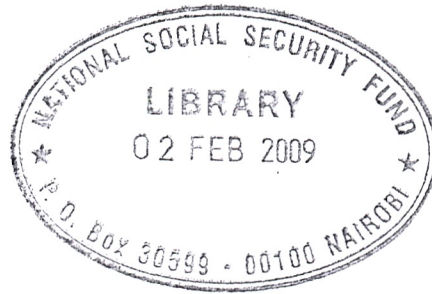


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THE CONTEXT OF KENYA VISION 2030



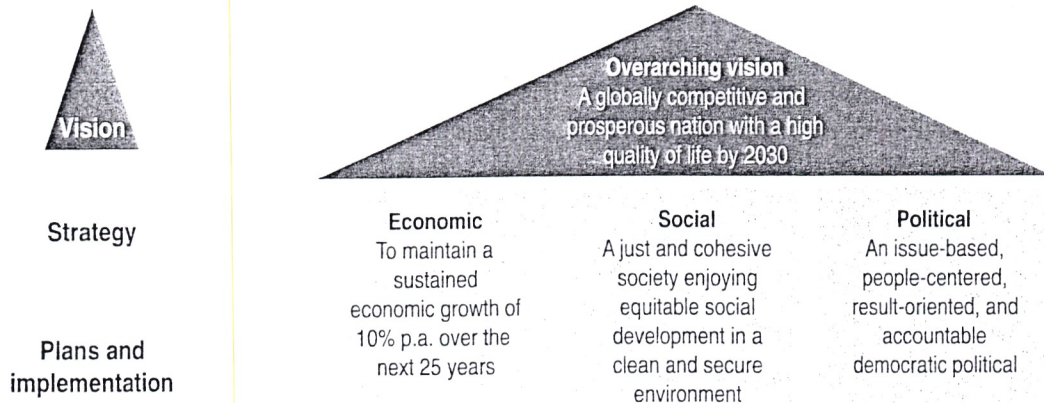
Kenya Vision 2030 is the country's new development blueprint covering the period 2008 to 2030. It aims to transform Kenya into a newly industrialising, "middle-income country providing a high quality life to all its citizens by the year 2030". The Vision has been developed through an all-inclusive and participatory stakeholder consultative process, involving Kenyans from all parts of the country. It has also benefited from suggestions by some of the leading local and international experts on how the newly industrialising countries around the world have made the leap from poverty to widely-shared prosperity and equity. The Vision is based on three "pillars": the economic, the social and the political. The adoption of the Vision by Kenya comes after the successful implementation of the *Economic Recovery Strategy for Wealth and Employment Creation* (ERS) which has seen the country's economy back on the path to rapid growth since 2002, when GDP grew from a low of 0.6% and rising gradually to 6.1% in 2006. The relationships between the pillars can be seen in Table 1, which was recommended to the Government by Kenya's National Economic Council in January, 2006, and subsequently adopted by the Cabinet.

The economic pillar aims to improve the prosperity of all Kenyans through an economic development programme, covering all the regions of Kenya, and aiming to achieve an average Gross Domestic Product (GDP) growth rate of 10% per annum beginning in 2012. The social pillar seeks to build a just and cohesive society with social equity in a clean and secure environment. The political pillar aims to realise a democratic political system founded on issue-based politics that respects the rule of law, and protects the rights and freedoms of every individual in Kenyan society.

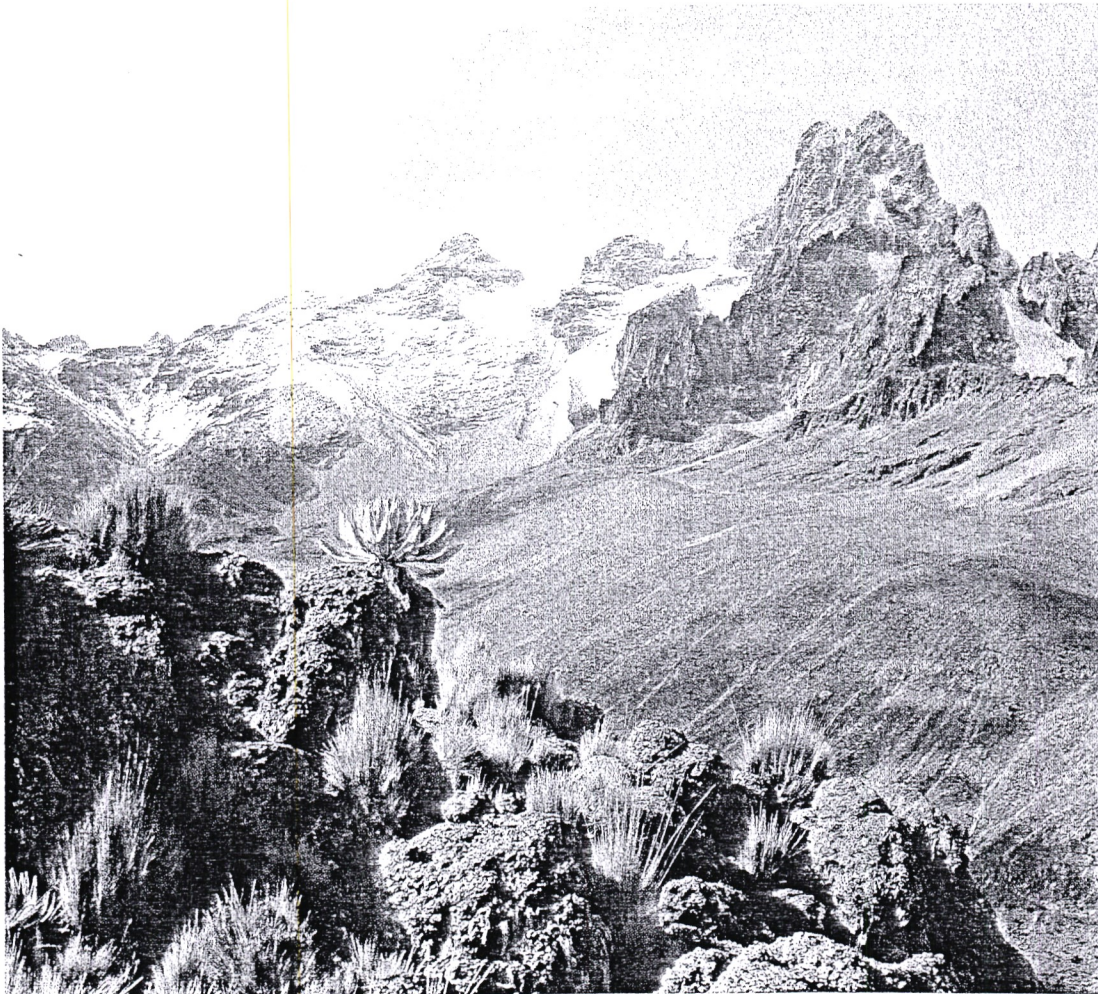
The *Kenya Vision 2030* is to be implemented in successive five-year Medium-Term Plans, with the first such plan covering the period 2008 – 2012. For that reason, the reader will find frequent references to projects and programmes scheduled for implementation between 2008 and 2012. While the "flagship" projects are expected to take the lead in generating rapid and widely-shared growth, they are by no means the only projects the country will be implementing. A flagship project only sets the pace for multiple vessels behind it. By the same token there are many on-going projects and yet others planned for the future by the Government and the private sector. All of these deserve attention and support. The full details will be found in the Kenya Medium-Term Plan for 2008-2012. At an appropriate stage, another five-year plan will be produced covering the period 2012 to 2017, and so on till 2030.

As the country makes progress to middle-income status through these development plans, it is expected to have met its Millennium Development Goals (MDGs) whose deadline is 2015. The MDGs are eight internationally-agreed goals for socio-economic development that emphasise the following: elimination of extreme poverty and hunger; universal primary education; gender equality; reduction in child mortality; improvement in maternal health; lower HIV/AIDS and major disease incidence; environmental sustainability; and better partnerships with international development partners. Some of the goals have already been met. The Vision 2030 spells out action that will be taken to achieve the rest.

Table 1: Thematic Overview of Kenya Vision 2030



Source: Vision 2030 Research teams



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2 HOW THE VISION WAS DEVELOPED

After a disappointing performance in the 1990s, Kenya's economy has now resumed the path to rapid growth, having achieved a GDP annual growth rate of 6.1% in 2006 compared to 0.6% in 2002. It is now necessary to build on that momentum in order to sustain economic growth, to ensure that its benefits are widely distributed to the population and that the resulting development will be sustainable. At the same time, Kenyans must now look forward to a better future for all.

The Vision 2030 development process was launched by H.E. President Mwai Kibaki on 30th October, 2006. At the time, he advised the team preparing the Vision document to also produce a medium-term plan with full details on the development programmes that would be implemented in the first five years after ERS expires on 31st December, 2007. He also advocated a consultative approach in its development involving as many ordinary Kenyans and stakeholders as possible. Consequently, this was done through workshops with stakeholders from all levels of the public service, the private sector, civil society, the media and non-governmental organisations (NGOs). In rural areas, provincial consultative forums were also held throughout the country. The objective of all the consultations was to provide an in-depth understanding of the country's development problems and the necessary strategies to achieve the 2030 goals.

To synthesise the findings, a core team comprising experienced technical officers drawn from the government, Kenyan research institutions, international consultants, and the private sector under the guidance of a National Vision Steering Committee visited various firms, investors, farmers, and formal and informal business people in all the major sectors of our country. Information from the nine

provincial forums, during which *wananchi* made direct contributions to the development of the Vision, were also included. Further, the team held out-of-country consultations with Kenyans overseas who have shown great interest in helping Kenya develop into a rapidly-industrialising nation.

The experts used the input from the above stakeholders and their own economic analysis to identify sectors with the most promising potential in driving Kenya's economic growth up to 2030. The approach involved an assessment of two critical components: (i) the potential of the different sectors to make a wide economic impact; and (ii) the feasibility of unlocking that potential for the benefits of economic growth, employment and poverty – reduction. The team also looked at social and political reforms necessary to ensure that these economic goals could be realised and sustained.

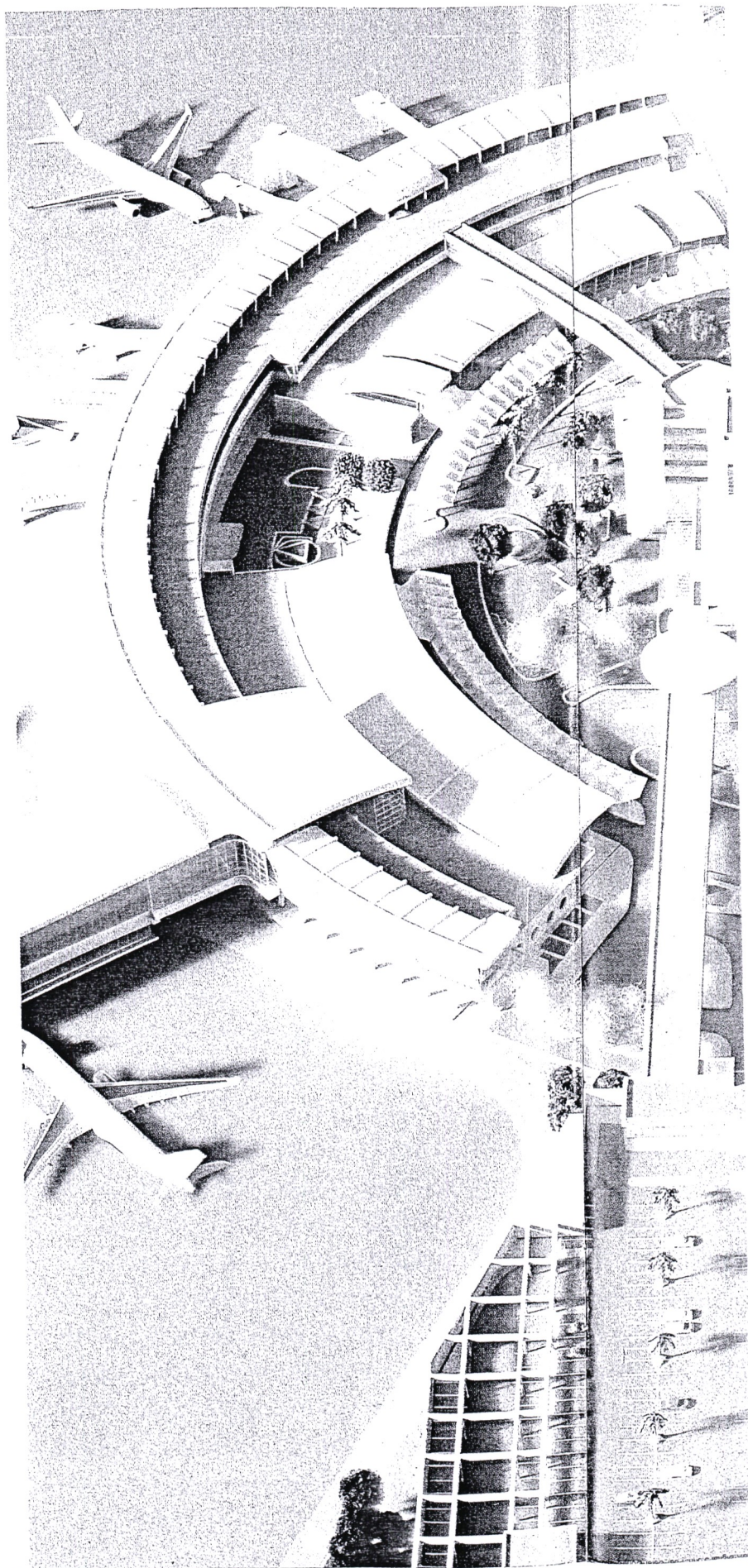
The overall assessment of the potential for economic impact was informed by the sectors' current size and their future growth prospects. Other factors were also considered, particularly the potential to increase Kenya's global competitiveness, to promote growth based on efficiency, and to attract more investment locally and internationally. This analysis was based on a sound understanding of the impact each sector would make on the economy and other additional factors necessary to increase the level of resources available nationally.

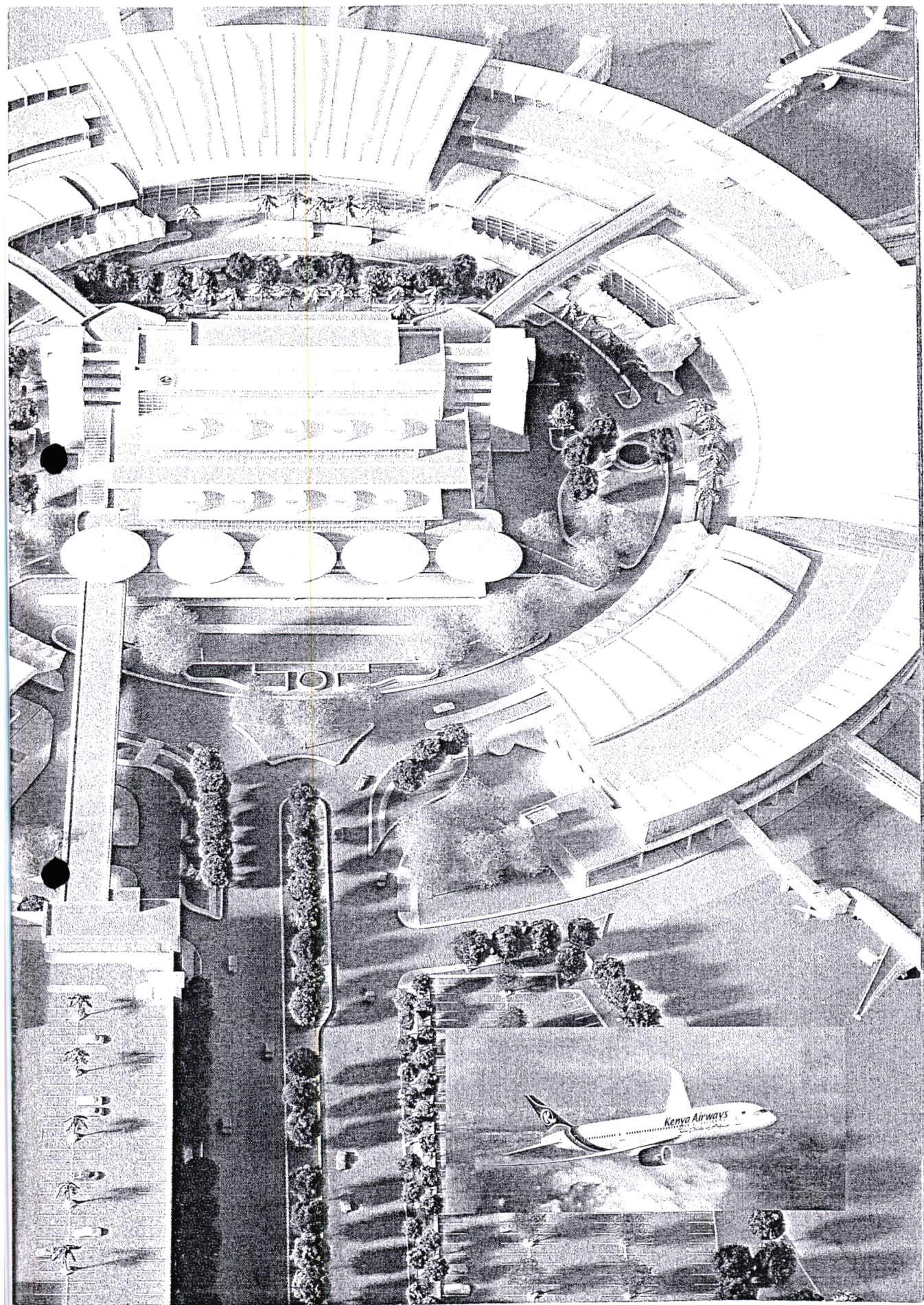
A similar process and methodology was followed in identifying projects and priorities in the social and political pillars. Detailed analysis was carried out under a consultative process in order to come up with strategies capable of resolving the social and political problems that Kenyans face today. To arrive at workable solutions, the team of experts learnt as much as they could from countries that have

achieved rapid growth and also improved the lives of their people greatly in a span of 20-30 years, with particular reference to the South East Asian "newly industrialising countries". The standards achieved by those countries are ones Kenya should aim for, bearing in mind her own history and culture. The team made extensive use of information available from the Government, Kenya's private sector, civil society and universities.

This document provides a summary of the foundations on which Vision 2030 is erected, before going into other sections on which it is based, i.e., the economic, social and political pillars. Some of the foundations will require the strengthening of on-going institutional and governance reforms that will help raise efficiency in our productive and social sectors. Others relate to the provision and expansion of physical infrastructure.

An architectural model of the Jomo Kenyatta International Airport: an improved and expanded airport infrastructure is critical to the realisation of Vision 2030. *Inset:* One of Kenya Airways' modern aircraft.





3 FOUNDATIONS FOR KENYA VISION 2030

The economic, social and political pillars of Kenya Vision 2030 are anchored on macroeconomic stability; continuity in governance reforms; enhanced equity and wealth creation opportunities for the poor; infrastructure; energy; science, technology and innovation (STI); land reform; human resources development; security as well as public sector reforms.

3.1 Macroeconomic Stability for Long-Term Development

Kenyans appreciate the pivotal role macroeconomic stability has played in the country's economic recovery and resumption of rapid growth by the Kenya economy since 2003. This is evident in the low levels of underlying inflation, limited public sector deficits, a stable exchange rate, and low interest rates over that period. For this reason, *Kenya Vision 2030* places the highest premium on the stable macroeconomic environment the country now enjoys, and expects it to continue in the future as a matter of policy. This is the only way in which confidence among investors and ordinary Kenyans can be maintained. A stable economic environment also works in favour of the poor who stand to lose the most in periods of high inflation. All the projects proposed under Vision 2030 will, therefore, be subjected to the parameters set under the macroeconomic stability framework, as reviewed on a continuous basis by the Ministry of Finance and the Central Bank of Kenya.

3.2 Continuity in Governance Reforms

Kenya remains fully committed to continuing governance reforms. These will be deepened and accelerated in order to create a better environment for doing business, and for the full enjoyment of individual rights that Kenyans are entitled to under the constitution. Towards that end, the Government will continue to intensify the anti-corruption programme already in place through:

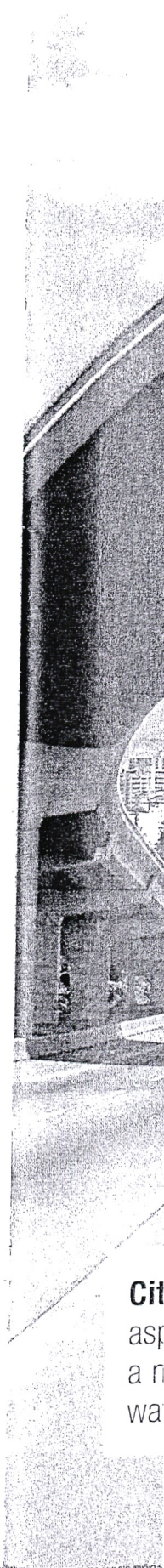
better investigation and prosecution; eliminating discretionary decision-making in a public service that is prone to bribery; public education and judicial and legal reform. The Government also recognises that in an open, democratic society like Kenya, the people themselves, Parliament, civil society, and a vigilant press are the ultimate defence against abuse of office. These institutions will continue to receive full support from the Government and from the people of Kenya.

3.3 Enhanced Equity and Wealth Creation Opportunities for the Poor

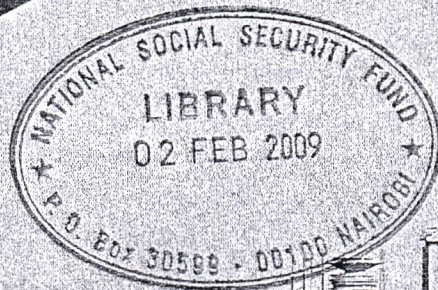
No society can gain the social cohesion predicted by Vision 2030 if significant sections of the population live in abject poverty. To that extent, Kenya Vision 2030 includes equity as a recurrent principle in economic, social and political programmes. Special attention has been given to investment in arid and semi-arid (ASAL) districts, communities with high incidence of poverty, unemployed youth, women, and all vulnerable groups. Under Vision 2030 "devolved funds", deployed in a more efficient and transparent manner, is expected to play a key and enhanced role in correcting existing economic and social inequalities.

3.4 Infrastructure

The 2030 Vision aspires for a country firmly interconnected through a network of roads, railways, ports, airports, water and sanitation facilities, and telecommunications. By 2030, it will become impossible to refer to any region of our country as "remote".



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City of Nairobi in the future: the 2030 Vision aspires to a capital city firmly interconnected through a network of roads, railways, ports, airports, waterways and telecommunications.

the world. The Government will create and implement an STI policy framework to support Vision 2030. More resources will be devoted to scientific research, technical capabilities of the workforce, and in raising the quality of teaching mathematics, science and technology in schools, polytechnics and universities.

3.7 Land Reform

Land is a critical resource for the socio-economic and political developments spelt out in Vision 2030. Respect for property rights to land, whether owned by communities, individuals or companies, is an important driver of rapid economic transformation. This transformation is dependent on a national land use policy, which, therefore, needs to be completed as a matter of urgency. The policy will facilitate the process of land administration, the computerisation of land registries, the establishment of national spatial data infrastructure in order to track land use patterns, and the introduction of an enhanced legal framework for faster resolution of land disputes.

3.8 Human Resources Development

Kenya intends to create a globally competitive and adaptive human resource base to meet the requirements of a rapidly industrialising economy. This will be done through life-long training and education. As a priority, a human resource database will be established to facilitate better planning of human resources requirements in the country. Furthermore, steps will be taken to raise labour productivity to international levels. Other steps will include the establishment of new technical training institutions, as well as the enhancement of closer collaboration between industry and training institutions.

3.9 Security

The vision for security is "a society free from danger and fear". The Government is determined to improve security in order to lower the cost of doing business and to provide Kenyans with a more secure living and working environment. Specific strategies will involve:

improving the practice of community policing; reducing the police to population ratio; adopting information and communication technology (ICT) in crime detection and prevention; enhancing police training; among others. All these measures will be supported by accelerated reforms in the Judiciary. The country will also institute reforms in the prison service.

3.10 Public Service

An efficient, motivated and well-trained public service is expected to be one of the major foundations of the Vision. Kenya intends to build a public service that is more citizen-focused and results-oriented, a process whose achievements so far have received international recognition and awards. The Government will intensify efforts to bring about an attitudinal change in public service that values transparency and accountability to the citizens of Kenya. Results-Based Management will be pegged to the implementation of the Vision's goals, making it easier to reward public servants on merit. Reforms in the public service will further enhance strategic planning in government, continuous improvement, performance contracting and stakeholder engagement. A Kenya School of Government will be established to provide research and training for transformative leadership to the highest international standards.



Under *Vision 2030*, Kenya aims to increase annual GDP growth rates to an average of 10% over the vision horizon. This is an ambitious goal and the Government is aware of that. But it has the confidence that Kenyans will rise to the challenge as they have often done before. If this goal is achieved, Kenya will be the 5th country in the world to achieve such a high level of sustained economic growth. Considering that the current economic growth of 6.1% has come primarily through rapid utilisation of existing capacity, rather than efficiency gains or new investments, achieving the 10% growth will require a dedicated campaign to alleviate existing constraints to future growth, and in particular to use our resources more efficiently. To achieve that ambition, Kenya must continue with the tradition of macro-economic stability that has been established since 2002. It must also address other key constraints, notably, a low savings to GDP ratio, which could be alleviated by drawing in more remittances from Kenyans abroad, as well as increased foreign investment and overseas development assistance (ODA), as spelt out under the Kenya *Joint-Assistance Strategy* between the country and her international development partners.

Delivering the country's ambitious growth aspirations will require a rise of national savings from the current 17% in 2006 to about 30% in 2012. It will also be necessary to deal with a significant informal economy employing 75% of the country's workers. The informal sector must be supported in ways that will raise productivity and distribution and increase jobs, owner's incomes and public revenues. The country will continue with the governance and institutional reforms necessary to accelerate economic growth. Others critical problems that will be addressed include poor infrastructure and high energy costs.

The six key sectors described below have been given priority in acting as key growth drivers in the journey to 2030.

Tourism will be a leading sector in achieving the goals of the Vision. Kenya aims to be among the top 10 long-haul tourist destinations in the world offering a high-end, diverse, and distinctive visitor experience that few of her competitors can offer.

There are three specific goals for 2012:

- Quadruple tourism's GDP contribution to more than KShs. 200 billion;
- Raise international visitors from 1.6 million in 2006 to 3 million in 2012, while raising average spent per visitor from the present KShs.40,000 to at least KShs.70,000; and
- Increase hotel beds from 40,000 to at least 65,000, combined with an emphasis on a high quality service.

The specific strategies for realising the goals will involve: an aggressive strategy to develop Kenya's coast (north and south) by developing resort cities in two key locations in addition to the Isiolo resort cities; achieving higher tourism revenue yield by increasing the country's premium safari parks and improving facilities in all under-utilised parks; creating new high value niche products (e.g. cultural, eco-sports and water-based tourism); revamping business-visitor offering by attracting high-end international hotel chains; and by investing in new conference facilities.

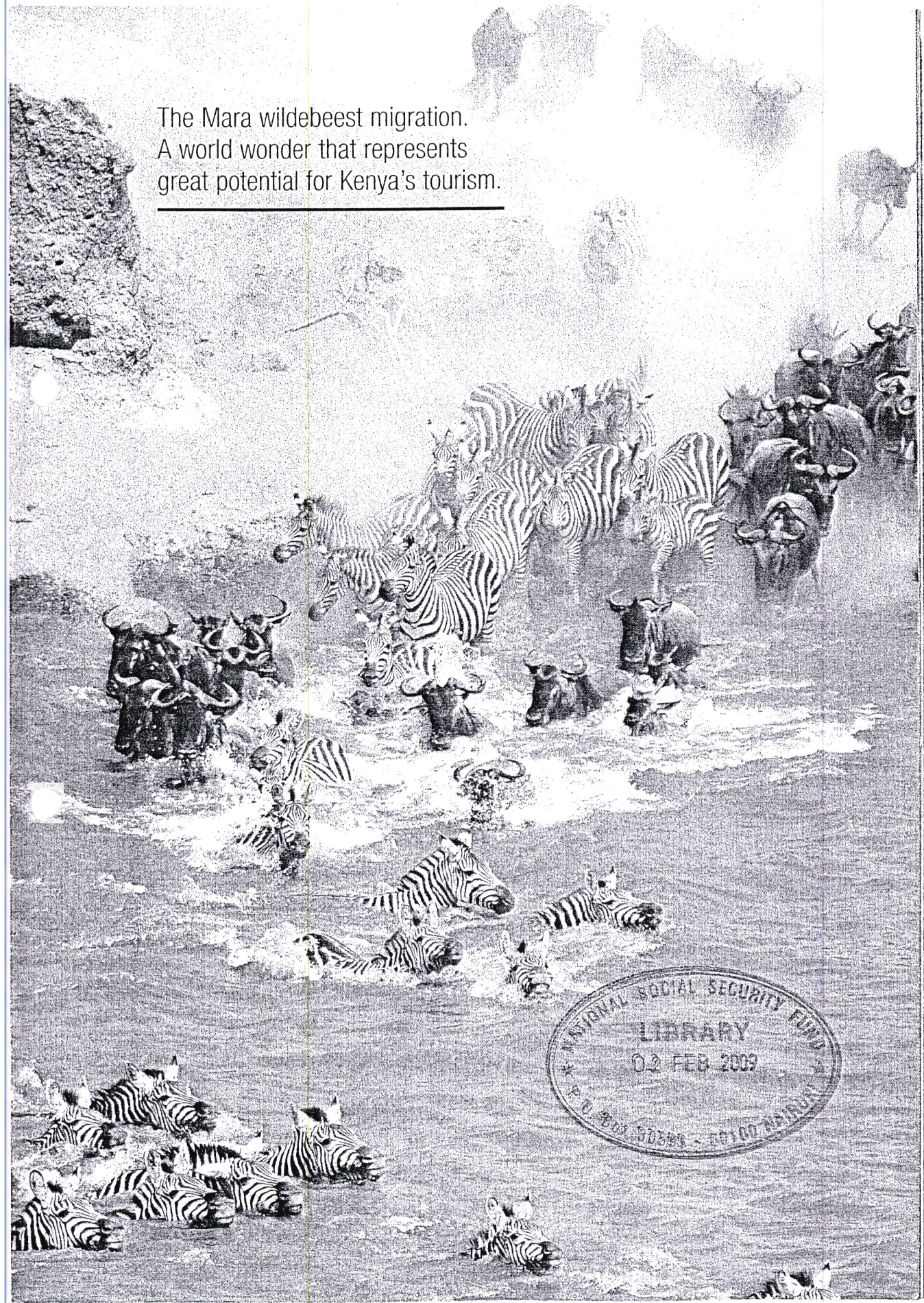
Flagship Projects for Tourism

The flagship projects for 2012 will involve the following:

- Three (3) resort cities – two new resorts cities at the coast (one in north and the other at south coast). The third one will be located in Isiolo.
- Better marketing of little-visited parks so as to bring more tourists to game parks that have not been receiving many visitors, and which are located in all parts of the country.



The Mara wildebeest migration.
A world wonder that represents
great potential for Kenya's tourism.



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Horticulture: Horticultural exports have relied heavily on a few key markets. There is a need for proactive efforts to maintain existing markets while creating new ones and increasing Kenya's bargaining power in global agricultural markets.

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- *The premium parks initiative* – this will provide more high-end tourists with a unique experience in popular destinations, such as Maasai Mara and Nakuru.
- *The under-utilised parks initiative* – this aims to upgrade the standards of attractive but seldom visited parks e.g. Ruma and Marsabit.
- *The niche products initiative* – this will provide 3,000 beds in high-cost accommodation for tourists interested in cultural and eco-tourism, as well as in water-based sports and related activities. It will initially target four key sites in Western Kenya.
- The certification of 1,000 home-stay sites to promote cultural tourism in Kenyan homes.
- *The business visitors' initiative* – this will attract five additional international hotels to Nairobi, Mombasa and Kisumu, and also leverage Isiolo as a new high-end tourist destination.

4.2 Increasing Value in Agriculture

Kenya will raise incomes in agriculture, livestock and fisheries even as industrial production and the service sector expand. This will be done by processing and thereby adding value to her products before they reach the market. She will do so in a manner that enables her producers to compete with the best in other parts of the world. This will be accomplished through an innovative, commercially oriented and modern agriculture, livestock and fisheries sector. These interventions are expected to generate an additional KSh.80-90 billion increase in GDP, mainly through better yields in key crops, increased small-holder specialisation in the cash crop sector (2-3 crops per plot), utilisation of a million hectares of currently uncultivated land, and new cultivation of up to 1.2 million hectares of newly-opened lands. Specific strategies will involve the following: (i) transforming key institutions in agriculture and livestock to promote household and private sector agricultural growth; and (ii) increasing productivity of crops and livestock. Kenya will also introduce new land use policies through: better utilisation of high and medium

potential lands by her farmers; preparation of new land for cultivation by strategically developing more irrigable areas in arid and semi-arid lands for both crops and livestock; and by improving market access for small holders through better marketing.

Flagship Projects for the Agricultural and Livestock Sector

The flagship projects for 2012 will involve:

- Preparation and passage of consolidated agricultural policy reform legislation.
- Development and the implementation of a 3-tiered fertilizer cost reduction programme.
- Improving the value gained in the production and supply chain through branding Kenyan farm products.
- The planning and implementation of 4-5 Disease Free Zones and livestock processing facilities to enable Kenyan meat, hides and skins to meet international marketing standards. There will be more domestic processing of these products for regional and international markets.
- The creation of publicly accessible land registries, under an improved governance framework.
- Development of an Agriculture Land Use Master Plan.
- Tana River Basin Agricultural Development Scheme.

4.3 A Better and More Inclusive Wholesale and Retail Trade Sector

The 2030 vision for wholesale and retail trade is to move towards greater efficiency in the country's marketing system by lowering transaction costs through institutional reforms. This involves strengthening informal trade (through investment in infrastructure, training and linking it to wider local and global markets). This will raise the market share of products sold through formal channels (e.g. supermarkets) from the current 5% to 30% by 2012. This will also contribute an additional KShs.50billion to the GDP. The plan is to attract at least three new retailers

with more than 10 stores each into the Kenyan market. The vision also plans to enumerate informal sector operators, to provide them with permanent and serviced facilities, training and access to credit and markets. The simplification of business registration and trade licensing will continue in order to create a more enabling business environment for all trading activity. At producer level, the plan aims to establish "Producer Business Groups" (PBGs), which will in turn feed large wholesale hubs principally in rural areas. These hubs will be "Tier 1" retail markets that will provide the primary producer with better value than at present where markets are heavily fragmented. The Government will continue to strengthen the producer co-operative movement and assist in branding and marketing Kenyan products in regional and international markets.

Flagship Projects for Wholesale and Retail

The flagship projects for 2012 are:

- Creation of at least 10 wholesale hubs and 1,000–1,500 Producer Business Groups (starting with a pilot project in Maragua, Central Province, that is to be extended to other regions).
- Building of at least 10 'Tier 1' retail markets (starting with a pilot project in Athi River).
- The building of one free trade port at the coast in order to "bring Dubai to Kenya". This port will serve eastern and central Africa.

4.4 Manufacturing for the Regional Market

Kenya aims to become the provider of choice for basic manufactured goods in eastern and central Africa, before breaking into other markets by targeting "niche" products e.g. organic foods and beverages). This will be done through improved efficiency and competitiveness at firm level. The state will invest in training, research and development. The goal for 2012 is to: generate an additional KShs.30 billion to GDP by producing consumer goods that compete with imports (without resorting to restrictions) in key local industries; and raising market share in the regional market

from 7% to 15%. Kenya also intends to attract at least 10 large strategic investors in key agro-processing industries, targeting local and international markets.

Specific strategies will involve restructuring key local industries that use local raw materials but lack a competitive edge (for instance in sugar and paper manufacturing) and exploiting opportunities in adding value to imports that could then be re-exported in order to capture the "last step" of value addition (e.g. in metals and plastics). Kenya also aims to strategically increase the level of value addition in niche exports by additional processing of local agriculture products.

Flagship Projects for Manufacturing

The flagship projects for 2008 - 2012 are:

- The development of a strategy for the establishment of at least 2 special "economic clusters", that is, related industries located together to gain from economies.
- The development and creation of at least 5 Small and Medium Enterprise (SME) Industrial Parks.

4.5 Business Process Offshoring (BPO)

This is a new but promising sector for Kenya and especially for its young people. It involves providing business services via the Internet to companies and organisations in the developed world e.g. Britain, USA, Canada, etc. The 2030 vision for business process outsourcing is for Kenya to "quickly become the top BPO destination in Africa". The goal for 2012 is to create at least 7,500 direct BPO jobs with an additional GDP contribution of KShs.10 billion. This will be done by attracting at least 5 major leading IT suppliers, at least 10 large multinational corporation companies and global BPO players to Kenya. This will create an estimated additional 5,000 jobs. At least 5 large local players will be identified to become local champions through stand-alone operations or joint ventures. Kenya will therefore attract top international IT suppliers to

create confidence in more investments, thereby attracting leading multinational corporations and foreign companies with top BPO brands.

The Flagship BPO Project

The flagship BPO project for 2012 is to design and establish one major BPO park in Nairobi (possibly in Athi River) that will have world class infrastructure developed by top international IT suppliers. Kenya will offer competitive incentive packages for companies to locate in the park, provide a one-stop shop for administration and talent and serve as a "show-case" park to attract more top foreign IT companies.

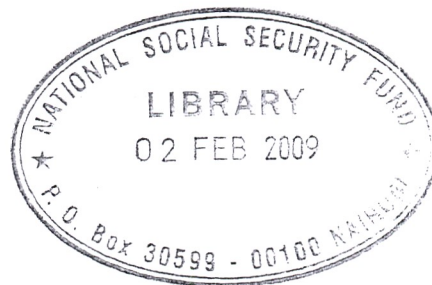
4.6 Financial Services

The 2030 vision for financial services to create a vibrant and globally competitive financial sector in Kenya that will create jobs and also promote high-levels of savings to finance Kenya's overall investment needs. As part of Kenya's macro-economic goals, savings rates will rise from 17% to 30% of GDP in about a decade. This will be achieved through measures that include increasing of bank deposits from 44% to 80% of GDP and by a declining cost of borrowed capital i.e. interest rates. The country will also decrease the share of population without access to finance from 85% to below 70% at present, and increase stock market capitalisation from 50% to 90% of GDP. Savings of up to 10% of GDP for investment are expected to be realised from remittances, foreign direct investments (FDI), overseas development assistance (ODA) and sovereign bonds. Reforms in the banking sector will be undertaken to facilitate the transformation of the large number of small banks in Kenya to few larger and stronger ones. Credit referencing will be introduced. Kenya will also streamline informal finance and Savings and Credit Co-operative Organisations (SACCOs), as well as micro-finance institutions. Financial markets will be deepened by raising institutional capital through pension fund reforms and expanding bond and equity markets, as well as tapping international sources of capital.

One of the most urgent steps towards creating a competitive financial environment in Kenya is introducing legal and institutional reforms that will enhance transparency in all transactions, build trust and make enforcement of justice more efficient. The other step is the creation of a critical mass of skills in financial management. The Government is already in the process of implementing these measures.

The flagship projects for 2012 are:

- Facilitate the transformation of the banking sector to bring in fewer stronger, larger scale banks.
- Develop and execute a comprehensive model for pension reform.
- Pursue a comprehensive remittances strategy.
- Formulate a policy for the issuing of benchmark sovereign bonds.
- Implement legal and institutional reforms required for a regional financial centre.



5 THE SOCIAL STRATEGY: INVESTING IN THE PEOPLE OF KENYA

5.1 Education and Training

Under education and training, Kenya will provide globally competitive quality education, training and research to her citizens for development and enhanced individual well-being. The overall goal for 2012 is to reduce illiteracy by increasing access to education, improving the transition rate from primary to secondary schools, and raising the quality and relevance of education. Other goals include the integration of all special needs education into learning and training institutions, achieving an 80% adult literacy rate, increasing the school enrolment rate to 95% and increasing the transition rates to technical institutions and universities from 3% to 8% by 2012. Public and private universities will be encouraged to expand enrolment, with an emphasis on science and technology courses. Kenya intends to have international ranking for her children's achievement in maths, science and technology.

The specific strategies will involve; (i) integrating early childhood into primary education; (ii) reforming secondary curricula; (iii) modernising teacher training; and (iv) strengthening partnerships with the private sector. Kenya will also develop key programmes for learners with special needs, rejuvenate ongoing adult training programmes, and revise the curricula of university and technical institutes by including more science and technology subjects. In partnership with the private sector, the Government will also increase funding to enable all these institutions to support activities envisaged under the economic pillar. Kenya

aims to be a regional centre of research and development in new technologies.

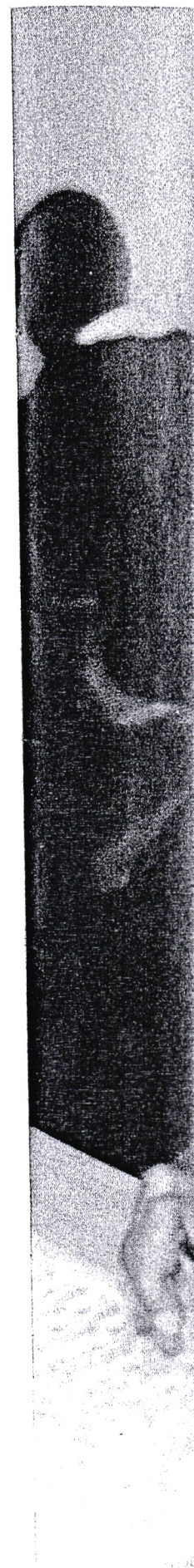
Flagship Projects for Education and Training

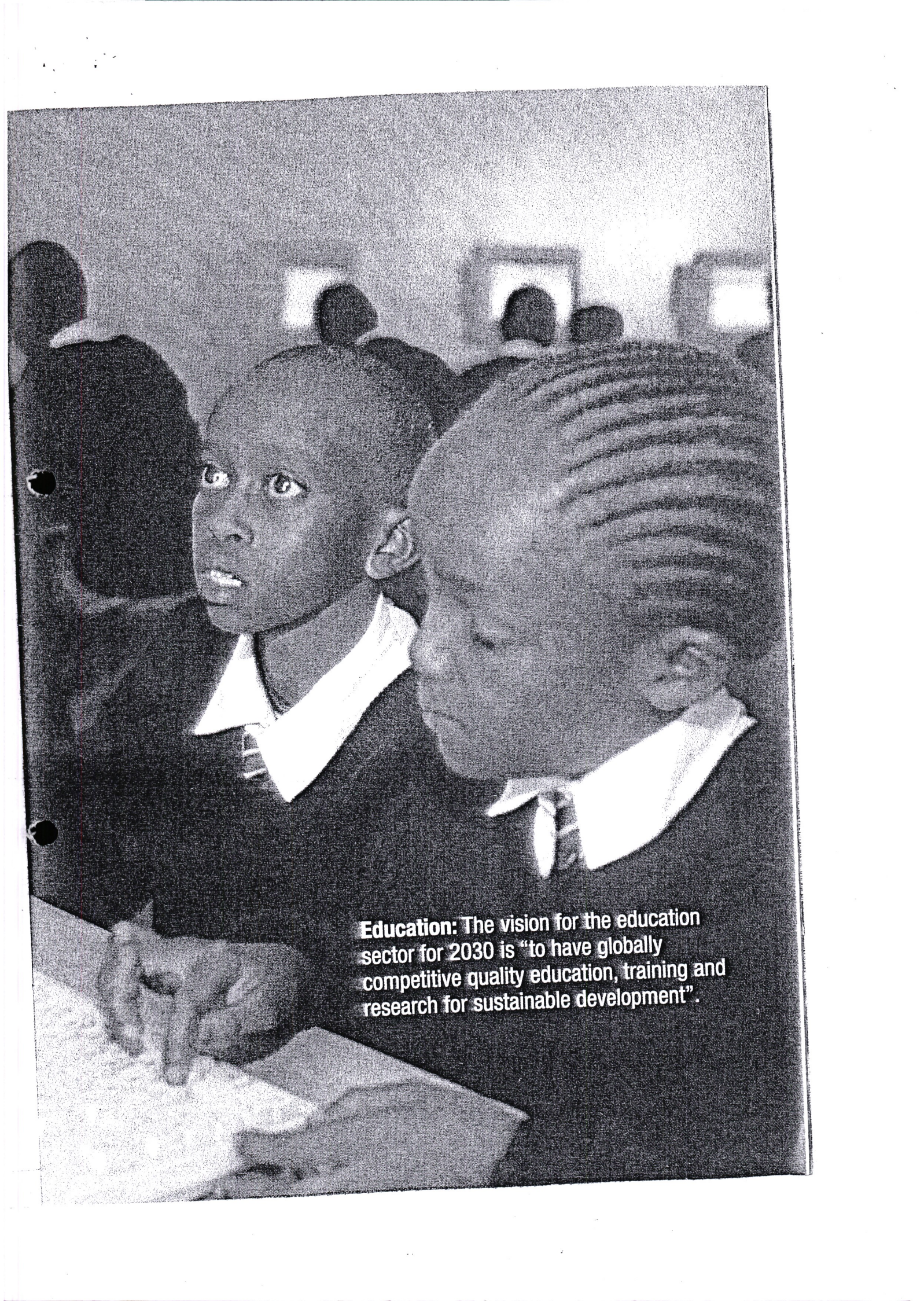
The flagship education and training projects for 2012 are to:

- Build and fully equip 560 new secondary schools to accommodate the increasing number of students graduating from primary schools;
- Establish a teachers' recruitment programme to employ 28,000 more teachers to improve the quality of education and to ensure that all schools have adequate teachers;
- Establish a computer supply programme that will equip students with modern IT skills;
- Build at least one boarding primary school in each constituency in the pastoral districts to ensure that learning is not disrupted as people move from one place to the other;
- Roll out the voucher system programme in 5 poor districts; and
- Create "Centres of Specialisation" for each of Vision 2030's economic growth sectors.

5.2 The Health Sector

To improve the overall livelihoods of Kenyans, the country aims to provide an efficient and high quality health care system with the best standards. This will be done through a two-pronged approach: (i) devolution of funds and management of health care to the communities and district medical officers; leaving the





Education: The vision for the education sector for 2030 is “to have globally competitive quality education, training and research for sustainable development”.

Ministry to deal with policy and research issues; and (ii) shifting the bias of the national health bill from curative to preventive care. Special attention will be paid to lowering the incidence of HIV/AIDS, malaria and TB, and lowering infant and mortality ratios. All this will reduce inequalities in access to health care and improve key areas where Kenya is lagging, especially in lowering infant and maternal mortality. Specific strategies will involve: provision of a robust health infrastructure network; and improving the quality of health service delivery to the highest standards and promotion of partnerships with the private sector. In addition, the Government will provide access to those excluded from health care due to financial reasons. Through encouragement to the private sector, Kenya intends to become the regional provider of choice for highly-specialised health care, thus opening Kenya to "health tourism" as an income-generating activity.

The health sector's flagship projects for 2012 are to:

- Revitalise Community Health Centres to promote preventive health care (as opposed to curative intervention) and by promoting healthy of individual lifestyles;
- De-link the Ministry of Health from service delivery in order to improve management of the country's health institutions primarily by devolution of health management to communities and health-care experts at district, provincial and national hospitals;
- Create a National Health Insurance Scheme in order to promote equity in Kenya's health care financing;
- Scale up the output-based approach system to enable disadvantaged groups (e.g. the poor, orphans) to access health care from preferred institutions.

5.3 Water and Sanitation

Kenya is a water scarce country. The economic and social developments anticipated by Vision 2030 will require more high quality water supplies than at pres-

ent. The country, therefore, aims to conserve water sources and start new ways of harvesting and using rain and underground water. The 2030 vision for water and sanitation is to ensure that improved water and sanitation are available and accessible to all. The goal for 2012 is to increase both access to safe water and sanitation in both rural and urban areas beyond present levels. To promote agricultural productivity, the area under irrigation and drainage will increase from 140,000 to 300,000 hectares. Specific strategies will be introduced to raise the standards of the country's overall water, resource management, storage and harvesting capability. Kenya will rehabilitate her hydro-meteorological data gathering network, construct multipurpose dams (on Nzoia and Nyando Rivers and other smaller dams), and also construct water and sanitation facilities to support industries and a growing urban population.

Flagship Projects for Water and Sanitation

The flagship projects for 2012 are to:

- Rehabilitate the hydro-metrological network and rehabilitate 600 stations;
- Construct 2 multi-purpose dams with storage capacity of 2.4 billion m³ along rivers Nzoia and Nyando;
- Construct 22 medium-sized multi-purpose dams with a total capacity of 2 billion m³ to supply water for domestic, livestock and irrigation use in the arid and semi-arid areas;
- Construct a 54 km canal from Tana River to Garissa (The Rahole Canal);
- Rehabilitate and expand the Mzima pipeline which will supply water in all the coastal towns in support of tourism;
- Rehabilitate and expand urban water supply and sanitation in the key satellite towns identified under the economic pillar.
- Construct the Tana Delta Project and;
- Rehabilitate and expand the major irrigation schemes (Bura, Hola, Kano Plains, Nzoia, Perkera, Kerio Valley, Mwea, Taita Taveta, Ewaso Nyiro North and Ngurumani).

5.4 The Environment

Kenya aims to be a nation that has a clean, secure and sustainable environment by 2030. The goals for 2012 are: (i) to increase forest cover from less than 3% at present to 4%; and (ii) to lessen by half all environment-related diseases. Specific strategies will involve promoting environmental conservation in order to provide better support to the economic pillar flagship projects and for the purposes of achieving the Millennium Development Goals (MDGs); improving pollution and waste management through the design and application of economic incentives; and the commissioning of public-private partnerships (PPPs) for improved efficiency in water and sanitation delivery. Kenya will also enhance disaster preparedness in all disaster-prone areas and improve the capacity for adaptation to global climatic change. In addition, the country will harmonise environment-related laws for better environmental planning and governance.

Flagship Projects for the Environment

The flagship environment projects for 2012 are:

- *The Water Catchment Management Initiative:* – This calls for rehabilitating of the 5 water towers (i.e. Mau Escarpment, Mt. Kenya, Aberdares Range, Cherangani Hills and Mt. Elgon);
- *Securing the Wildlife Corridors and Migratory Routes Initiative:* – Kenya will conserve wildlife corridors and migratory routes;
- *The Solid Waste Management System Initiative:* – This calls for relocation of the Dandora dump site, and development of solid waste management systems in 5 leading municipalities and in the economic zones planned under Vision 2030;
- *The Plastic Bags Initiative:* – will require tightening regulations in order to limit production and usage of environmentally-detrimental plastic bags; and
- *The Land Cover and Land Use Mapping Initiative:* – comprehensively mapping land use patterns in Kenya.

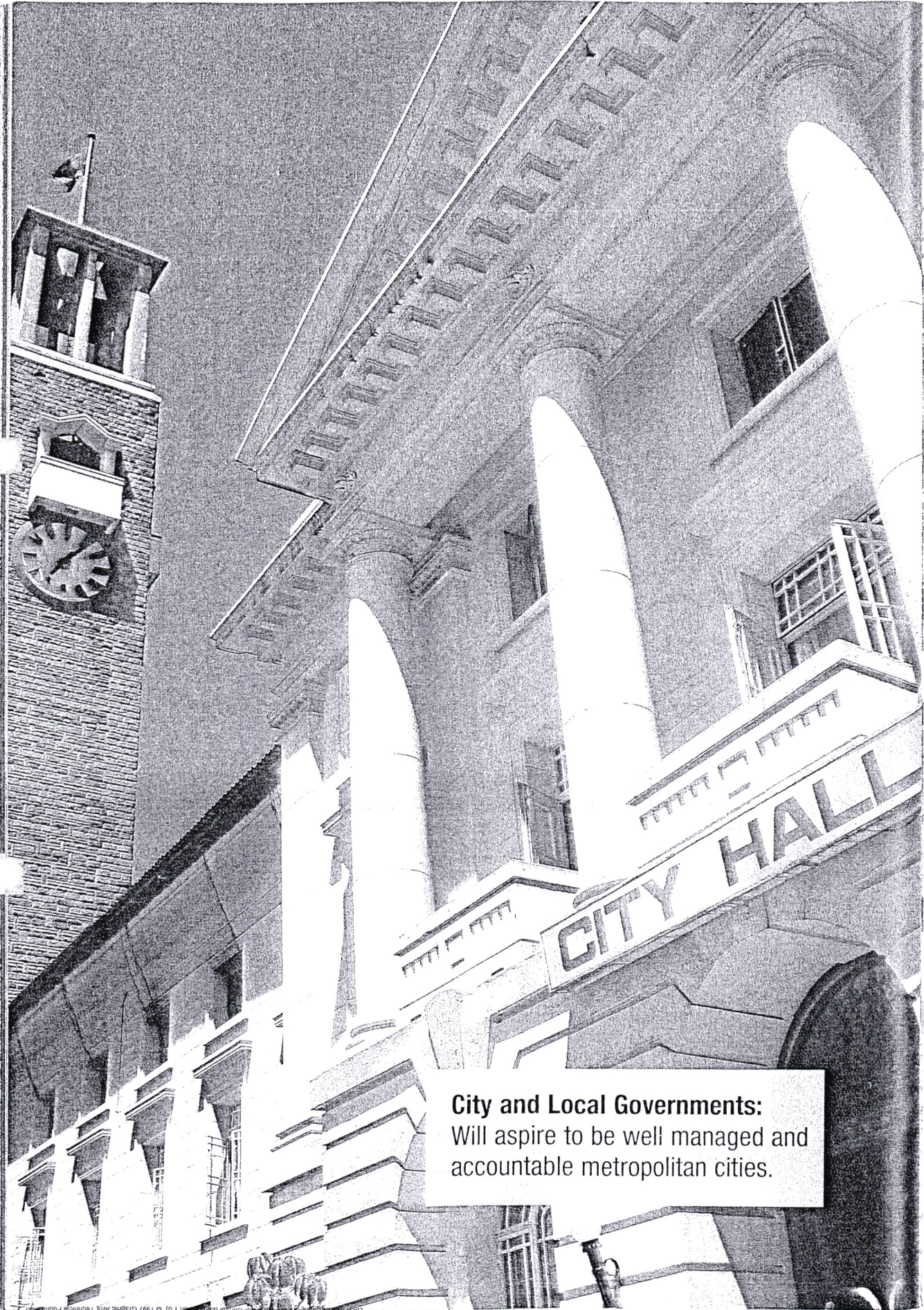
5.5 Housing and Urbanisation

Given the current demographic trends, Kenya will be a predominantly urban country by 2030. Following the current population trends, more than half of our nation's population is likely to be residing in urban areas at that time. This need not imply that agriculture will matter less or that the quality of life will be lower. But Kenya will need to plan for decent and high quality urban livelihoods for her population. The 2020 vision for housing and urbanisation is "an adequately and decently housed nation in a sustainable environment". The medium-term goal for 2012 is to increase the annual production of housing units from the current 35,000 annually to over 200,000. In addition, an initiative for high quality urban planning will be undertaken. Kenya's cities and towns are now poorly planned and that must change. There is an acute need, therefore, for an effective capacity for regional and urban development planning starting with adequate housing for those now living in slums. In addition, there will be better development of and access to affordable and adequate housing for the rest of the population, enhanced access to adequate finance for developers and buyers, and targeted key reforms to unlock the potential of the housing sector through private-public partnerships. Kenya's new nationwide urban planning and development campaign will start with her major cities and towns. But rural settlements will be catered for as well. This calls for a rapid build-up of her urban planning an implementation capacity, and this is part of the commitments under Vision 2030.

Flagship Projects for Housing and Urbanisation

The flagship projects for 2012 include the following:

- *The Metropolitan and Investment Plans Initiative:* This will require preparation of metropolitan investment plans for eleven (11) regions (Nairobi and its environs), Mombasa, Kisumu-Kakamega; Nakuru, Eldoret, Wajir, Garissa,



City and Local Governments:
Will aspire to be well managed and
accountable metropolitan cities.

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Mandera, Kitui, Mwingi and Meru). Strategic development and investment plans for special and border towns and for all other municipal councils will also be undertaken.

- *The Housing Development Initiative:* This calls for an increase in annual productivity of adequate housing with an emphasis on equity in access, beginning with low-income housing.
- *The Mortgage Financing Initiative* – establishing a secondary mortgage finance corporation as well as a national housing fund while also introducing housing and infrastructure bonds; and
- *Enactment of the Housing Bill, 2006*

5.6 Gender, Youth and Vulnerable Groups

The 2030 vision for gender, youth and vulnerable groups is equity in power and resource distribution between the sexes, improved livelihoods for all vulnerable groups, and responsible, globally competitive and prosperous youth. In addition, Kenya aims to capitalise on her international reputation as an “athletic superpower” by opening up the country for top global sports events, encouraged by corporate sponsorship. The Government will provide stricter enforcement of copyright laws in music and the performance arts, and provide facilities for our most talented musicians and actors. Kenya aims to be among the top developing country destinations of global film producers. The goals for 2012 are, therefore, to increase opportunities all-round among women, youth and all disadvantaged groups. Specific strategies will involve increasing the participation of women in all economic, social and political decision-making processes (e.g. starting with higher representation of women in Parliament); improving access to all disadvantaged groups (e.g. business opportunities, health and education services, housing and justice); and minimising vulnerabilities through prohibition of retrogressive practices (e.g. female genital mutilation and child labour), and by up-scaling the training for people with disabilities and special needs.

Flagship projects for Gender, Youth and Vulnerable groups

The flagship projects for 2012 are to:

- Institutionalize the Women Enterprise Fund and increase its overall amounts and efficiency in projects launched by its beneficiaries;
- Establish a consolidated social protection fund;
- Rehabilitate or build one youth empowerment centre in each constituency;
- Establish a sports’ lottery fund and an international academy of sports;
- Build a national cultural centre to the highest standards in order to support the performing arts; and
- Increase the youth enterprise fund and ensure efficient and productive use of funds allocated to youth groups.

5.7 Equity and Poverty Elimination

The 2030 goal for equity and poverty elimination is to reduce the number of people living in absolute poverty to the tiniest proportion of the total population. Kenya will aim at a society that guarantees equality of opportunity in accessing public services and providing income-generating activities as widely as possible. That will be achieved by placing the citizens at a level of income sufficient to cater for basic requirements of a healthy, productive life. Some correctional measures will be introduced in order to extend such opportunities to regions and communities where they do not exist currently. Foremost amongst such measures will be an increase in the volumes of specific “devolved funds” allocated to local communities. Another initiative aims to expand access across different social and political dimensions, including: increasing school enrolment for girls and children from nomadic communities and poor rural and slum communities; widening coverage of “essential health care”; equitable distribution of water, sewerage and sanitation services; improvements in public transport; and attaining gender parity and fairness in the delivery of justice. Reducing social inequalities, in short, cuts across all the economic and social initiatives proposed by Vision 2030.

6

THE POLITICAL PILLAR: MOVING TO THE FUTURE AS ONE NATION

The political pillar envisions a country with a democratic system reflecting the aspirations and expectations of its people. Kenya will be a state in which equality is entrenched, irrespective of one's race, ethnicity, religion, gender or socio-economic status; a nation that not only respects but also harnesses the diversity of its peoples' values, traditions and aspirations for the benefit of all.

The political pillar vision for 2030 is "a democratic political system that is issue-based, people-centered, result-oriented and accountable to the public". An issue-based system is one in which political differences are about means to meet the widest public interest. "People-centered" goals refer to the system's responsiveness to the needs and rights of citizens, whose participation in all public policies and resource allocation processes is both fully appreciated and facilitated. A result-oriented system is stable, predictable and whose performance is based on measurable outcomes. An accountable system is one that is open and transparent and one that permits free flow of information. It should be a system in which the leaders are accountable to citizens. Such a vision will guarantee Kenya's attainment of the specific goals outlined under Vision 2030's economic and social pillars.

To meet objectives outlined in the economic and social pillars, Kenya's national governance system will be transformed and reformed to acquire high-level executive capability consistent with a rapidly industrialising country. The most important of the reforms is prioritisation for enactment of all legislation and administrative reforms suggested in Vision 2030. Kenya will adopt a democratic decentralisation process with substantial devolution in policy-making, public resource management and revenue sharing through devolved funds.

Guiding principles

Vision 2030 has received support across party lines and regions of the country. In order to ensure that economic, social and political governance gains made under the Vision are neither reversed nor lost as a result of change in ruling parties, the following eight governance principles shall be adhered to:

1. *Constitutional supremacy*: Supremacy of the constitution shall be respected at all times. This will guarantee individual rights as stated in the Bill of Rights and the property rights of local and international investors.
2. *Sovereignty of the people*: This calls for the acknowledgement of the fact that in a constitutional democracy like Kenya, the government derives all its just powers from the people it governs.
3. *Equality of citizens*: Kenya shall be a nation that treats its women and men equally. It will not discriminate any citizen on the basis of gender, race, tribe, religion or ancestral origin.
4. *National values, goals and ideology*: In the pursuit of economic, social and political aspirations, Kenyans shall formulate and adopt a core set of national values, goals and a political ideology supportive of Vision 2030. These will include acknowledgement of the significance of God to the Kenyan people and an affirmation of the religious, cultural and ethnic diversity of Kenyans. It will also affirm the indivisibility of Kenya as a nation and her commitment to democracy and the rule of law.

5. *A viable political party system:* Kenya aims at a strong and viable political party system that will be guided by policy and ideological differences rather than region of ethnicity. Under Vision 2030, founding of political parties on religious, linguistic, racial, ethnic, gender, corporate or regional basis will be prohibited. This is in line with the just enacted Political Parties Bill. All political parties will be obliged to subscribe to a legally-binding Code of Conduct. There will be a clear definition of circumstances under which a party may be de-registered or reinstated. The delegation of state functions to (or the use of state resources by) political parties will not be permitted. Political parties will be required to publish their manifestos before participating in elections.

6. *Public participation in governance:* The Kenyan political system is now more open than it has been in the past. In order to ensure fuller public participation in the governance process, that support democratic governance. The citizens of Kenya will be made to appreciate the values of tolerance and respect for differences in opinion, in a competitive society of the kind Vision 2030 has in mind.

7. *Separation of powers:* The implementation of Vision 2030 will depend on the enhancement of the capacity of the three arms of government (Legislature, the Executive and the Judiciary). Already considerable progress has been made through reforms in the Executive and the Judiciary. Parliament's independence has been enhanced. These institutions will independently function in a manner that will enhance the implementation of Vision 2030.

8. *Decentralisation:* Vision 2030 will continue to use devolved funds to strengthen decentralisation of development projects at the community level. Improved planning, prioritisation, and coordination of such projects at the local level will be accorded priority in realising that goal.

Political pillar strategies

Transformation within Kenya's political governance system under Vision 2030 will take place across six strategic initiatives, whose overarching visions, goals and specific strategies for 2012 are outlined below:

6.1 Rule of Law

The 2030 vision aims at "*adherence to the rule of law applicable to a modern, market-based economy in a human rights-respecting state*". The intermediate goal for 2012 is to enact and implement the policy, legal and institutional framework vital for promoting and sustaining fair, affordable and equitable access to justice. Specific strategies will involve:

- Aligning the national policy and legal framework with the needs of a market-based economy and national human rights and gender equity commitments;
- Increasing service availability and access to justice;
- Streamlining the functional capacity of the legal and judicial institutions to enhance inter-agency cooperation;
- Change legislation that is clearly not conducive to the creation of a good business environment in Kenya; and
- Inculcating a culture of compliance with laws and decent human behaviour.



Parliament of Kenya: The 2030 Vision aims at institutionalising genuinely competitive and issue-based politics as well as a people-centered and politically-engaged open society



6.2 Electoral and Political Processes

The 2030 vision aims at institutionalising “*genuinely competitive and issue-based politics*”. The goal for 2012 is to enact and operationalise the necessary policy, legal and institutional framework to support issue-based political processes. Specific strategies will involve:

- Introducing laws and regulations covering political parties;
- Enhancing the legal and regulatory framework covering the electoral process;
- Conducting civic education programmes to widen knowledge and participation among citizens, leading to an informed and active citizenry;

- Strengthening laws on non-discrimination to promote inclusion of women and disadvantaged groups in electoral and political processes; and
- Enriching the quality of Parliamentary debate by increasing access by MPs to policy-relevant information, including documents.

6.3 Democracy And Public Service Delivery

The 2030 vision aims at “a people-centered and politically-engaged open society”. The goal for 2012 is to enact and operationalise necessary reforms in the policy, legal and institutional framework in order to enhance public service delivery in an open and accountable manner, as is expected of a democracy.

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Specific strategies will involve:

- Pursuing constitutional and legal reforms necessary to strengthen public service delivery in a manner that responds to public needs, especially at the community level.
- Encouraging formal and informal civic education and action programmes; and
- Promoting open engagement between government and civil society, as well as the free flow of information, particularly through better and continuous engagement with the media.

6.4 Transparency and Accountability

More transparency and accountability were identified by Kenyans as priorities in the political initiatives of Vision 2030. The 2030 vision, therefore, aims to create “transparent, accountable, ethical and results-oriented government institutions”. The goal for 2012 is to enact and put into operation all the necessary policy, legal and institutional reforms needed to strengthen public transparency and accountability. Specific strategies will involve:

- Strengthening the legal framework for anti-corruption ethics and integrity;
- Promoting results-based management within the public service;
- Encouraging public access to information and data;
- Introducing civilian oversight around the key legal, justice and security institutions; and
- Strengthening Parliament’s legislative oversight capacity.

6.5 Security, Peace-Building and Conflict Management

Vision 2030 has as its ideal “security of all persons and property throughout the Republic”. By 2012 it commits the country to the adoption of policy, legal and institutional framework in security, peace building and conflict management,

which will advance that ideal. Specific strategies will involve:

- Promoting public-private cooperation and community involvement in ensuring improved safety and security;
- Deepening the policy, legal and institutional reform for improved enforcement of law and order;
- Institutionalising national and inter-community dialogue in order to build harmony among ethnic, racial and other interest groups;
- Promoting peace building and reconciliation in order to improve conflict management and ensure sustained peace within the country; and
- Inculcating a culture of respect for the sanctity of human life that restrains people from the use of violence as an instrument of resolving personal and community disputes. This should start with the family, schools, the church and all public institutions.

Political pillar flagship projects

The flagship projects for 2012 for the political pillar are:

- *The Constitutional initiative* – completion of the national Constitution together with its enabling legislation;
- *The Judicial and legal reforms initiative* – this will involve reforms pertaining to the rule of law, as well as reforms in government institutions in the three branches of the Government.
- *The Security and policing reform initiative*;
- Building a non-partisan professional research centre to enrich Parliamentary law-making; and
- Initiate a national programme on attitudinal and value change to inculcate a culture of voluntary compliance with the efficiency norms required by Vision 2030.

7

IMPLEMENTING VISION 2030

The strategies to deliver the 10% annual growth by 2012 will be executed through concrete flagship projects across the priority sectors in all the three pillars of the Vision. The projects are original large-scale initiatives that look beyond their immediate locality and are capable of having an impact on the entire nation. Flagship projects, however, will form only part of national development. Complementary projects will also be undertaken in line with the Medium-Term Plans, the Budget Outlook Paper, and the Medium-Term Expenditure Framework.

Kenya Vision 2030 is a long-term process that requires dedication and focus beyond the initial five-year period. During the life of the Vision, strategies and action plans will be systematically reviewed and adjusted every 5 years in order to effectively respond to the changing global, regional and local environment. Thus, Vision 2030 will be delivered over many different horizons, each with defined goals and flagship projects. Following the expiry of the ERS in December 2007, the first part of Vision 2030 will be implemented under the 2008-2012 plan. This is already under preparation.

Delivering this ambitious process of national transformation will require: a fundamental shift from business-as-usual to "business unusual" (from multiple and often uncoordinated levels of decision making to a centralised implementation process); a new management philosophy (from a limited sense of urgency to relentless follow up); legislation (from slow, reactive to fast, proactive legislating); special

budgeting (from low and dispersed to high and "ring-fenced" investments), as well as management of top talent (from shortage of skills to a war for talent). To this end, a Semi Autonomous Government Agency (SAGA) with the requisite capacity is being established to oversee the implementation of all Vision 2030 projects. In doing so, the agency will work in close collaboration with government ministries and departments as well as the private sector, civil society and other relevant stakeholder groups.

The Vision Delivery Secretariat

In order to successfully realise Vision 2030 and to particularly ensure the timely implementation of the flagship projects, the Government of Kenya intends to create a Vision Delivery Secretariat (VDS). The Secretariat will be managed by a Director-General of the Vision 2030 Office, under the overall guidance of the Vision 2030 Delivery Board, which shall play a policy-making and advisory role. The VDS shall be organised into eight departments. The Departments will correspond to the main project clusters or sectors of the Vision covering the three pillars.

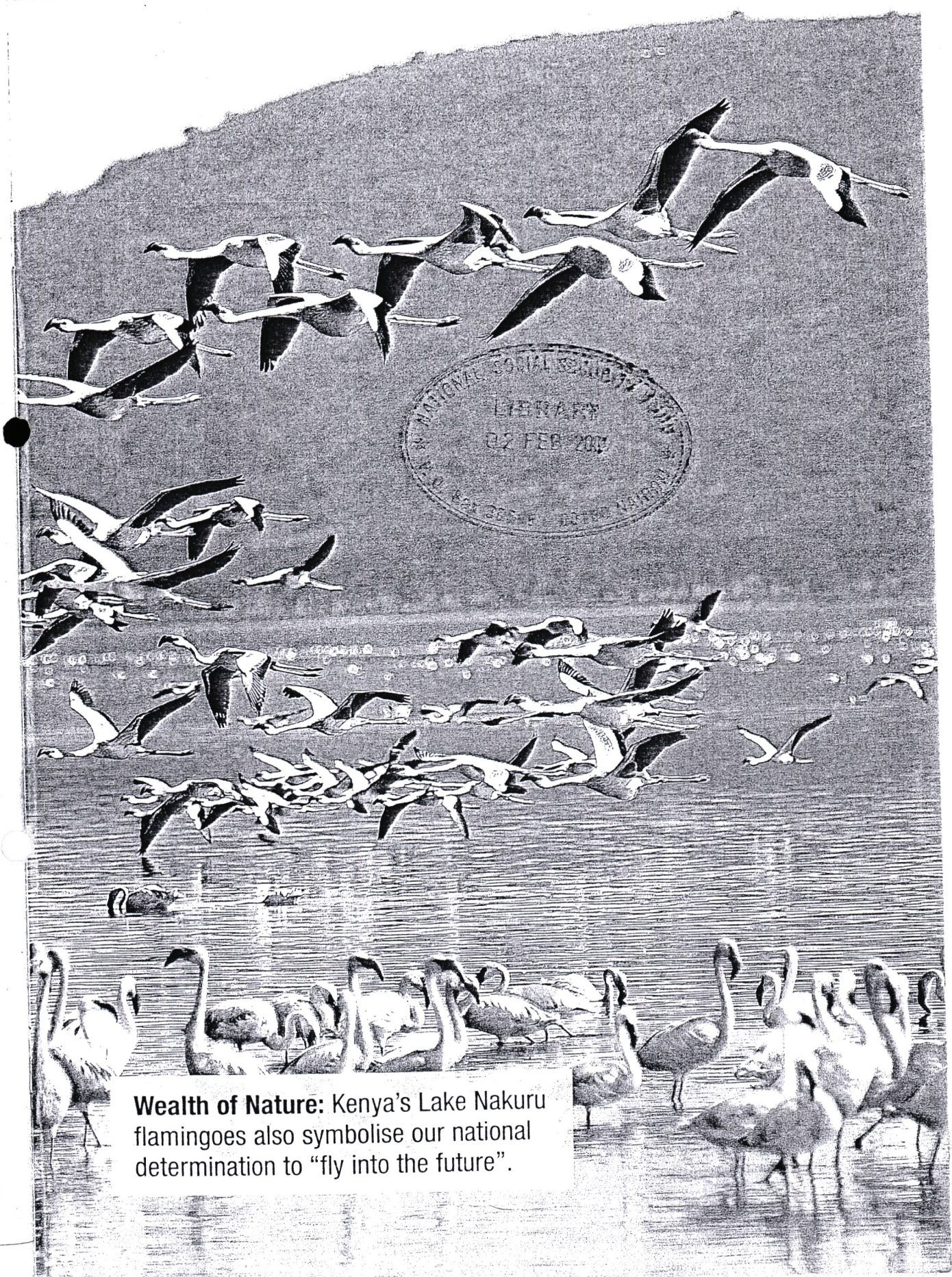
Among other things, the VDS shall provide strategic leadership and direction in the realisation of Vision 2030 goals, and closely collaborate with line ministries in developing the Five-Year Medium-Term Plans for the realisation of the Vision. The VDS will also have clear institutional linkages with other existing institutions, structures and organisations, both in the public as well as the private sector.



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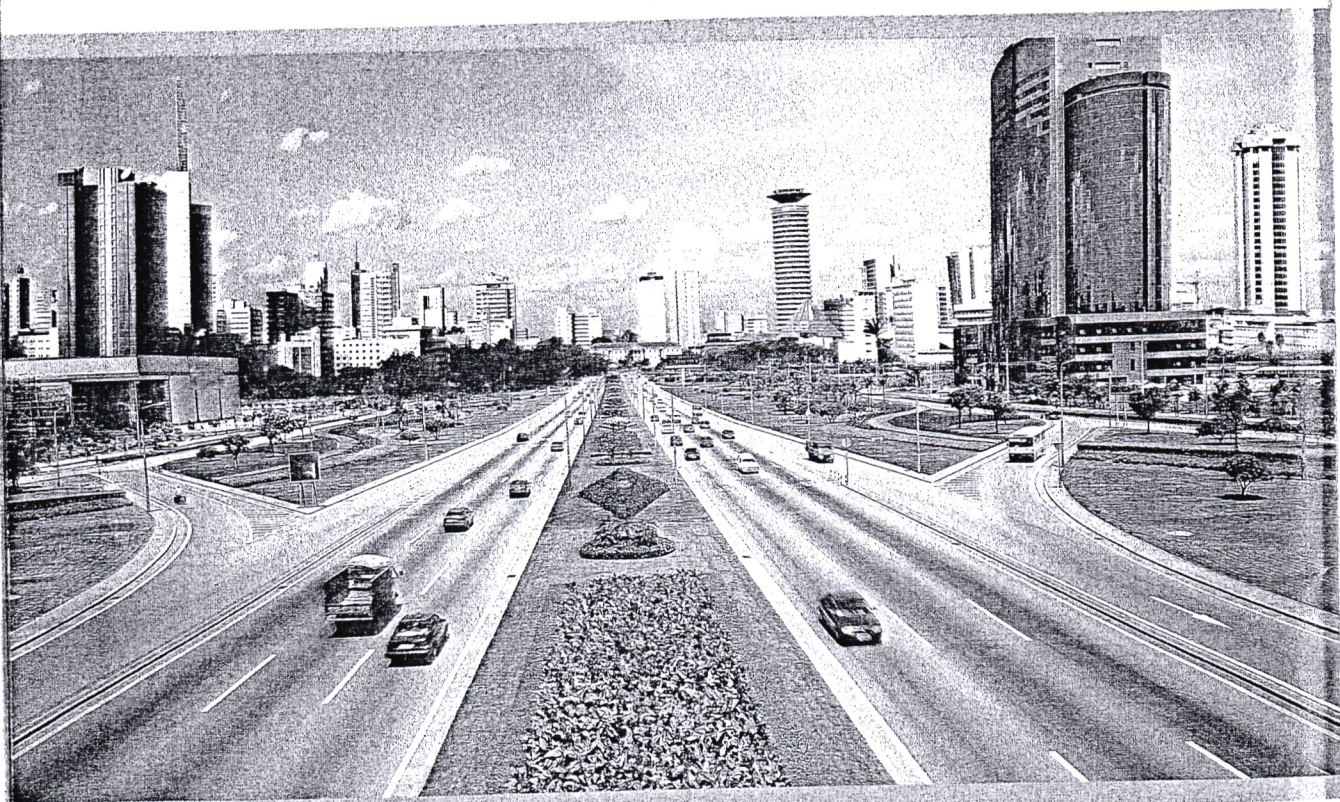
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P.O. BOX 30000 NAIROBI

Wealth of Nature: Kenya's Lake Nakuru flamingoes also symbolise our national determination to "fly into the future".





VISION 2030



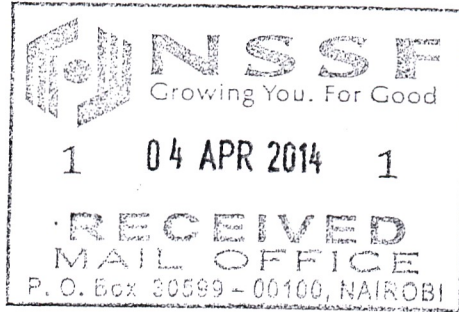
Contact Information

All enquiries relating to *Kenya Vision 2030* should be directed to:

The National Economic and Social Council of Kenya (NESC)
Office of the President, P. O. Box, 62345, 00200, Nairobi, Kenya
Telephone: +254 020-310431 Ext: 22037
Email: vision2030@kenya.go.ke
Website: www.nesc.go.ke
Physical Location: 4th Floor, Kenyatta International
Conference Centre (KICC), Harambee Avenue, Nairobi

OR

The Permanent Secretary
Ministry of Planning and National Development
Treasury Building, P. O. Box 30005, 00200, Nairobi, Kenya
Tel: +254-020-252299 Ext. 101/192
e-mail: psplanning@treasury.go.ke
website: www.planning.go.ke



SF/NDI/COMP/500/152

3rd April, 2014

The Managing Trustee,
N.S.S.Fund,
P.O. Box 30599,
NAIROBI
(ATT: MANAGER, R & C)

RE: SENSITIZATION AT TEA PLANTERS HOTEL
NANDI HILLS

Employers in Nandi Hills were sensitized in the **NSSF ACT No.45 of 2013** on **2/4/2014** at Tea Planters Hotel.

In attendance were **59** employers and **16** staff totaling to **75**.

The workshop was very successful and those in attendance appreciated the good gesture.

Attached, find list of attendance and questionnaires for your records.


JOHN OUMGA
BRANCH MANAGER
NANDI HILLS

cc.Regional Manager

National Social Security Fund, Nandi Hills Branch P. O. Box 207 – 30301 Nandi Hills. Tel. 053 – 643186;
E – mail: returns.ndi@nssfkenya.co.ke



SENSITIZATION ON NSSF ACT NO. 45 OF 2013 AND STAKEHOLDER ENGAGEMENT ON THE REGULATIONS

VENUE: TEA PLANTERS HOTEL

DATE: 2ND APRIL, 2014

	NAME	ORGANIZATION	DESIGNATION	CONTACT INFORMATION	SIGNATURE
1	Moses K. Kosgey	EPK-LTD-SAVANI	DIVISIONAL MANAGER	0726491702	<i>[Signature]</i>
2	Daniel Bone	Street DEP co. LTD	Asst. Accountant	0705870551	<i>[Signature]</i>
3	Murice Ngetich	EPK LTD	Asst. general manager	072186631	<i>[Signature]</i>
4	Gatun Nwathaka	TINDERET TEA	Accounts Asst.	0724 009568	<i>[Signature]</i>
5	Henry Kipkurai	Tinderet Tea	Accounts Clerk	0715824469	<i>[Signature]</i>
6	CHARLOTTE BORE	OLLESOS MODEL HIGHWAY N.O III		0727410190	<i>[Signature]</i>
7	ABRAHAM KIPPOTILAM	KOLBENCAFE SACCO	Manager	0710 422334	<i>[Signature]</i>
8	James Maina	EPK LTD.	Senior staff manager	0721786544	<i>[Signature]</i>
9	Carolin Buyer	A/C Digiuna Tinda	Finance officer	0788808795	<i>[Signature]</i>



SENSITIZATION ON NSSF ACT NO. 45 OF 2013 AND STAKEHOLDER ENGAGEMENT ON THE REGULATIONS

VENUE: TEA PLANTERS HOTEL








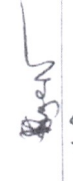

DATE: 2ND APRIL, 2014

NAME	ORGANIZATION	DESIGNATION	CONTACT INFORMATION	SIGNATURE
10 PAUL KEINO	KOLENGE TEA SAID	DIREKTOR	0724525622	
11 SIMON SAKO ROP	KOLENGE TEA SAID	Vice Chair	0703445779	
12 JAMES OUKO	AIC-DIGUNA TINDERET	SECTION MANGER	0733-992870	
13 ROSE CHEPKETER	J. JAMAL ENTERPRISES	SHOP ASSISTANT	0713 847150	
14 DONMAS FELIX	KOBUJOI INSTITUTE	ACCOUNTANT	0725492211	
15 JULIUS MARITIM	LINRO AGRIHUBS	SHOP ASSISTANT	0729788771	
16 HALEP N. MUNYILI	KAPPAHUBS EL TIAI MAMBAR		0700-023949 0700-023949	
17 LYDIA JEPKEMET	KOBUJOI MISSION HUBS	ACCOUNTANT	0710504198	
18 Chebarau Timothy Kibet	Tea planters Inn Ltd	Accountant	0726443611	

SENSITIZATION ON NSSF ACT NO. 45 OF 2013 AND STAKEHOLDER ENGAGEMENT ON THE REGULATIONS

VENUE: TEA PLANTERS HOTEL

 DATE: 2ND APRIL, 2014

	NAME	ORGANIZATION	DESIGNATION	CONTACT INFORMATION	SIGNATURE
37	JOSEPH K. MARITIM	LIBWARI	MANAGER	0712531796 0721554015	
38	KIMUTAI DAVID	NANDA HILLS PRIMARY	HEADTEACHER	0723711679	
39	PATRICK L. LUVAI	ILIBWARI	SHOPSTEWARD	0707794258	
40	ROBERT KIPKANTAT	KARABIT ACADEMY	H/TEACHER	0721309798	
41	KEPHA MECHA	KAPCHORUM TEA	ASSISTANT ACCOUNT	0724356053	
42	Solumun Juyoi	Kemelvi Girls	Teacher	0705202377	
43	Samuel Marisin	Sumbi Chemist	Director	0725307649	
44	Simon Birigen	NYANAS WASSO	Accountant	0712699605	
45	JASON MUKI	EMROK TEA FACTORY	Auditor	0725297640	



SENSITIZATION ON NSSF ACT NO. 45 of 2013 AND STAKEHOLDER ENGAGEMENT ON THE REGULATIONS

VENUE: TEA PLANTERS HOTEL










DATE: 2ND APRIL, 2014

	NAME	ORGANIZATION	DESIGNATION	CONTACT INFORMATION	SIGNATURE
55	DAVID K. TERESA	METERIA S.D. HOSP.	AG HAO	0729027895	
56	CHRISTINE JEBANA	KEMELOT BOARDING	ACCOUNTS CLERK	0715 503292	
57	EMILY CHEROHO MOODIH	DL KOISAGAT TEA	ACCOUNTANT	0726 110 892	
58	NELLY JEPKEMBOI TUWETI	DL KOISAGAT ESTAI	PAYROLL CLERK	0711553385	
59	GERESIM WIEBE	K.P.A.V.I.U	BRANCH SEC	0727848954	
60	ELIJAH KOBECH	UNIC	FINANCE	0722601305	
61	STANLEY WAGAI	KEMELOT GIRLS	BOARD	0704694435	
62	FRANCIS KOCUK	EPK	Dm	0911224895	
63	SAMUELA BOYS SENSIBALL	SAMUEL GIRLZ	FARM MANAGER	0707254974	

SENSITIZATION ON NSSF ACT NO. 45 OF 2013 AND STAKEHOLDER ENGAGEMENT ON THE REGULATIONS

VENUE: TEA PLANTERS HOTEL

DATE: 2ND APRIL, 2014

	NAME	ORGANIZATION	DESIGNATION	CONTACT INFORMATION	SIGNATURE
64	Wilson C. Koeck	Emrok	Gen Mgr	0727017836	
65	Tom Omwenga	K.7Aru Educ	manager	0724422020	
66	Hellen J. Barasa	Merehe Sec	Bursar	0728639149	
67	Miracy Chumba	Chepkumuk Disp	Subordinate	0701380489	
68	FRANCE OTIENO	KAPSIMOTHA SEC	PRINCIPAL	0721-255248	
69	Ambrose Tirop	Ksonald Paep.	Director	0720791222	
70	Otieno Junice	Delta Supermarket	Accountant	0703829925	
71	Henry Chesumbani	George Mutai Educ	Director	0723702444	
72	DAVID C. CHEJANI	KAPSAS SEC.	Principal	0722690498	

SENSITIZATION ON NSSF ACT NO. 45 OF 2013 AND STAKEHOLDER ENGAGEMENT ON THE REGULATIONS

VENUE: TEA PLANTERS HOTEL

DATE: 2ND APRIL, 2014

	NAME	ORGANIZATION	DESIGNATION	CONTACT INFORMATION	SIGNATURE
73	SARWABA KURUR	KANIMOTWA MEEB	ACCOUNTANT	0720867440	<i>[Signature]</i>
74	Ronyo. K. Tharu	MOSOBICH TEA COMPANY	MANAGER	0702176098	<i>[Signature]</i>
75	DONO J. K.	Kaplelmat Sec.	Principal	0723679902	<i>[Signature]</i>
76	KUFA AMIN	HENRY KESGOTSE	PRINCIPAL	0765064444	<i>[Signature]</i>
77	CHRISTOPHER RONICK	NANDI F. SACCO BAN	MANAGER	0720426872	<i>[Signature]</i>
78	ALFRED LUVANA	W.S.K. FARM	MANAGER	0721926797	<i>[Signature]</i>
79	DANIEL CHIRCHIR	NANDI TEA PLANTERS	ACCOUNTANT	0726459413	<i>[Signature]</i>
80	JUTHUK ALBERT	KAPKABOI SHERKUSUSU	PRINCIPAL	0721861404	<i>[Signature]</i>
81	KIPSAKY DUMCANI KOGO	ATC TARGET SEC	REPRESENTING PRINCIPAL	0723299994	<i>[Signature]</i>

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SENSITIZATION ON NSSF ACT NO. 45 OF 2013 AND STAKEHOLDER ENGAGEMENT ON THE REGULATIONS

VENUE: TEA PLANTERS HOTEL

DATE: 2ND APRIL, 2014

	NAME	ORGANIZATION	DESIGNATION	CONTACT INFORMATION	SIGNATURE
82	Hanyline Chebet	Front Tea	Admin Asst.	info@emirokter.com	<i>[Signature]</i>
83	Nancy Njorosey	Koivet health Centre	Accountant	Njorosey ag@gmail	<i>[Signature]</i>
84	UUmeng Chrispo	Mwanditsis District Hqs	Accountant	UUmengChrispo@gmail.com	<i>[Signature]</i>
85	Felix Tami	Mogochi Tea Co.	H-Supervisor	Felix Mwachira@gmail.com	<i>[Signature]</i>
86	Aggrey K. Tanyi	Kemelsi Boys High	Lab Tech	16, 5025M	<i>[Signature]</i>
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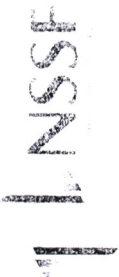


SENSITIZATION ON NSSF ACT NO. 45 OF 2013 AND STAKEHOLDER ENGAGEMENT ON THE REGULATIONS

VENUE: SUNSHINE HOTEL

DATE: 18TH MARCH 2014

	NAME	ORGANIZATION	DESIGNATION	CONTACT INFORMATION	SIGNATURE
1	LINDA CHERUYOT	PURECIRCLE (K) LTD	ASST MGR HR & AD	0730400032	<i>[Signature]</i>
2	SOPHIA KORIR	JFK	ASSISTANT MANAGER	0721159825	<i>[Signature]</i>
3	CECILIA GESARE	Jingxi Zhongmei	ASSISTANT A	0710591876	<i>[Signature]</i>
4	BENJAMIN (CORIR)	Insurance Firm	Branch	071322442	<i>[Signature]</i>
5	FRANCIS N. NAWAIT	TRDA	CIT	0722-860486	<i>[Signature]</i>
6	SAMMY MUTAI	JFK	MANAGER	07 22 755885	<i>[Signature]</i>
7	Robert Ngeno	Kaburanga Uni	ACCOUNTANT	0722-761753	<i>[Signature]</i>
8	John Uteborator	JFK	MANAGER	0722 333554	<i>[Signature]</i>
9	NICTHAI TONEU	JFK	Manager	0722751684	<i>[Signature]</i>



SENSITIZATION ON NSSF ACT NO. 45 OF 2013 AND STAKEHOLDER ENGAGEMENT ON THE REGULATIONS

VENUE: SUNSHINE HOTEL

DATE: 18TH MARCH 2014

NAME	ORGANIZATION	DESIGNATION	CONTACT INFORMATION	SIGNATURE
10 PETER KIGETI Peter Riwaro	JAMES FINLAY (K) LTD	S. MANGYI	Box 223-2020 KCO	<i>[Signature]</i>
11 JAMES B. OTHOBI	"	HRM	"	<i>[Signature]</i>
12 PAUL W. MURTON	JAMES FINLAY LTD	S. MANGYI	"	<i>[Signature]</i>
13 A. C. MBE	JAMES FINLAY LTD	ACCOUNT	"	<i>[Signature]</i>
14 Isaac Burken	Mbaraka Schools	Account	1998 KCO	<i>[Signature]</i>
15 Lucy Towett	Sunshine Hotel	Accountant	1910 KCO	<i>[Signature]</i>
16 B.S.C. Kume'o	ChapKalon Academy	Asst Manager	674, KCO	<i>[Signature]</i>
17 N.K. TAO	OLBO Town Academy	MS	072127053	<i>[Signature]</i>
	James Finlay Ltd	S. Mangy	072518923	<i>[Signature]</i>



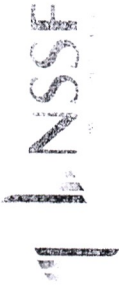
SENSITIZATION ON NSSF ACT NO. 45 OF 2013 AND STAKEHOLDER ENGAGEMENT ON THE REGULATIONS

VENUE: SUNSHINE HOTEL

DATE: 18TH MARCH 2014

NAME	ORGANIZATION	DESIGNATION	CONTACT INFORMATION	SIGNATURE
19	KIPKEMOI RENO			
20	Sammy Kiriri	EHAND ACADEMY	Accountant 077185756	
21	GARDSON IGUTA	Unilever Tea Ltd	Accountant 0721542044	
22	Amos Patrice	THE STAR NEWSPAPER	Journalist 0722664023	
23	Bulima Padrick	Kabionga Tea Processing Manager	0725935744	
24	JONATHAN LANGAT	St Leonards Hosp	Accountant 0721233502	
25	ALVIN KIRVI	KARITUNGUSE	PRINCIPAL 0710869084	
26	KIPKOECH KUMMET	KEKICHO ANGA	Accountant 0722689355	
27	Beatrice Bii	UNIVERSITY OF KENYA	REGISTRATION 0922681314	
		Kapchebed Tra	HR Office 0727029488	

NATIONAL SOCIAL SECURITY FUND - EMPLOYER SENSITIZATION AND STAKEHOLDER ENGAGEMENT ON THE REGULATIONS

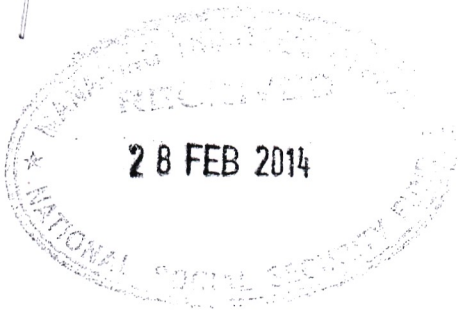


SENSITIZATION ON NSSF ACT NO. 45 OF 2013 AND STAKEHOLDER ENGAGEMENT ON THE REGULATIONS

VENUE: SUNSHINE HOTEL

DATE: 18TH MARCH 2014

NAME	ORGANIZATION	DESIGNATION	CONTACT INFORMATION	SIGNATURE
28	Richard Chemjot	Manager	0720 718 848	<i>[Signature]</i>
29	SIMON CHEWITT	Manager	0720 718 848	<i>[Signature]</i>
30	AGNES CHANGED	Accountant	0720 718 848	<i>[Signature]</i>
31	RONALD NYABWENGI	OFFICE ASST	0726 990 320	<i>[Signature]</i>
32	JOHN TOWERT	MANAGER	0733 477 351	<i>[Signature]</i>
33	CULSON (KUMBO)	MANAGER	0723 766 016	<i>[Signature]</i>
34	Cesary Kylliget	ACCOUNTANT	0720 664 627	<i>[Signature]</i>
35	Stanley K. Mutai	ACCOUNTANT	0726 775 291	<i>[Signature]</i>
36	Andrew Mudegeri	Manager	0722 594 002	<i>[Signature]</i>
		ACCOUNTANT	0714 350 674	<i>[Signature]</i>



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REPUBLIC OF KENYA

**MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES
OFFICE OF THE PRINCIPAL SECRETARY**

Tel: +254 (0) 02729800/2727980-4
FAX: + 254 (0) 2726222/2734417
Email: pslabour@labour.go.ke

Social Security House,
Block 'A' Eastern Wing
Bishops Road, Milimani
P.O. Box 40326-00100
NAIROBI

When replying please quote

Ref: MLSSS 45/1/VOL.II/34

25th February, 2014

Mr. Richard K. Langat
Ag. Chief Executive Officer/Managing Trustee
National Social Security Fund
NSSF Building, Block 'A'
NAIROBI

*Ag. Gen. Secy
Ag. Gen. Secy*

Dear *Richard,*

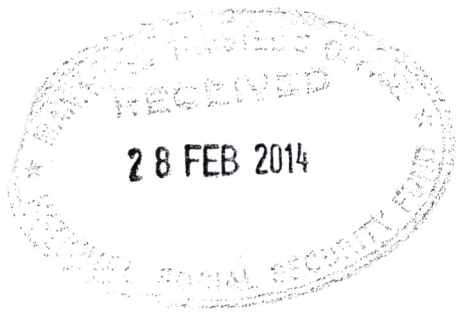
**RE: EXEMPTION OF NSSF FROM THE STAMP DUTY ACT CAP 480 AND
THE INCOME TAX ACT CAP 470 LAWS OF KENYA**

Reference is made to your letter Ref. No. SF/A/15/49 VOL. I (10) dated 14th February, 2014 on the above subject matter.

This is to inform you that action is being taken to facilitate the process of including NSSF in the Schedule of Exempting Institutions pursuant to the Stamp Duty Act and the Income Tax Act through the relevant office.

Yours *Sincerely,*
Ali N. Ismail
**ALI N. ISMAIL, OGW
PRINCIPAL SECRETARY**

c.c.
The Cabinet Secretary
Ministry of Labour, Social
Security and Services
NAIROBI



REPUBLIC OF KENYA

**MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES
OFFICE OF THE PRINCIPAL SECRETARY**

Tel: +254 (0) 02729800/2727980-4
FAX: + 254 (0) 2726222/2734417
Email: pslabour@labour.go.ke

Social Security House,
Block 'A' Eastern Wing
Bishops Road, Milimani
P.O. Box 40326-00100
NAIROBI

When replying please quote

Ref: MLSSS 45/1/VOL.II/35

25th February, 2014

Mr. J.K. Njiraini
The Commissioner General
Kenya Revenue Authority
Times Tower, Haile Selassie Avenue
P.O. Box 48240-00100 GPO
NAIROBI

*Ag. Gen. Secy
Ag. Gen. Secy*

Dear

**RE: EXEMPTION OF NSSF FROM THE STAMP DUTY ACT CAP 480 AND
THE INCOME TAX ACT CAP 470 LAWS OF KENYA**

As you are aware, the National Social Security Fund (NSSF) was exempted by the repealed NSSF Act Cap 258 from the Stamp Duty Act Cap 480 and Income Tax Act, Cap 470 Laws of Kenya.

Sections 65 and 66 of the current National Social Security Fund Act No. 45 of 2013 also provide for exemption of NSSF from the Stamp Duty Act Cap 480 and the Income Tax Act, Cap 48 Laws of Kenya.

It is my request that you include the National Security Fund in the relevant Exemption Schedules of the Stamp Duty Act and the Income Tax Act that exempt institutions from application of the Stamp Duty and Income Tax.

Your positive response will highly be appreciated.

Enclosed, please find the exemption provisions under the repealed and current National Social Security Fund Act for your ease of reference and further action.

Yours

ALI N. ISMAIL, OGW
PRINCIPAL SECRETARY

C.C.

Mr. Richard K. Langat
Ag. Chief Executive Officer/Managing Trustee
National Social Security Fund
NSSF Building, Block 'A'

NAIROBI



The Cabinet Secretary
Ministry of Labour, Social
Security and Services

NAIROBI

and protection thereof under this section to such employees.

(8) Where an—

- (a) employer transfers or second 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's 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.

* 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
Stamp Duty.
Cap.480

* 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.

Exemption from
Income Tax. Cap
470

(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

34. Enforcement officers

(1) An enforcement officer appointed under this Act shall, for the purpose of ascertaining whether this Act is being or has been complied with in any premises or place liable to inspection under this section, have power to enter any such premises or place at all reasonable times, and to examine every person whom he finds therein.

(2) The occupier of any premises or place liable to inspection under this section, and any person who is or has been employing any person, and the servants and agents of any such occupier or other person, and any employee, shall furnish to an enforcement officer all such information and produce for inspection all such documents as the enforcement officer may reasonably require for the purpose of ascertaining whether contributions are or have been payable, or have been duly paid, by or in respect of any person, or whether any benefit is or was payable to or in respect of any person.

(3) The premises and places liable to inspection under this section are any premises or places where an enforcement officer has reasonable grounds for supposing that any persons are employed, except that they do not include any private dwelling not used for the purposes of a trade or business.

(4) Any person who—

- (a) wilfully delays or obstructs an enforcement 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,

shall be guilty of an offence and liable to a fine not exceeding fifteen thousand shillings and where the offence is a continuing one, such person shall be liable to a further fine of one thousand shillings for every day during which the offence continues:

Provided that no one shall be required under this section to answer any questions or to give any evidence tending to incriminate himself.

(5) Every enforcement 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 or under the authority of the Minister.

(6) 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 Minister may make arrangements for any of the powers and duties of enforcement officers under this section to be carried out by that public officer and, where such an arrangement is made, that public officer shall have all the powers of an enforcement officer under this section.

[Act No. 5 of 1997, s. 13.]

 **35. Exemption from stamp duty**

No duty shall be chargeable under the Stamp Duty Act (Cap. 480) 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 refunding of any contribution

A7



FEDERATION OF KENYA EMPLOYERS

The Voice of Employers

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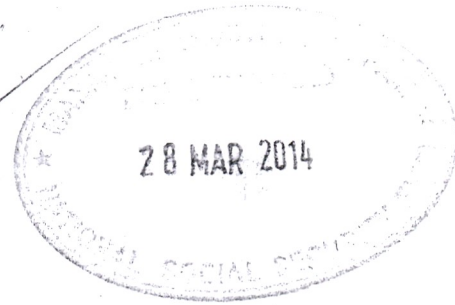
Ref: FKEHQ/ED2014/L026



28th March, 2014

Mr. Richard Langat
Ag. CEO/Managing Trustee,
National Social Security Fund,
Social Security House
P.O Box 30599,
NAIROBI

Ag. CEO/Managing Trustee



Dear Richard,

RE: COMMENTS ON THE DRAFT RULES AND REGULATIONS OF THE NSSF ACT

Kindly find attached comments on the Draft Rules and Regulations of the NSSF Act No. 45, 2013 from the members of the Federation of Kenya Employers (FKE) for consideration and adoption before the document finalized.

Yours sincerely,

Jacqueline Mugo

**JACQUELINE MUGO, OGW, MBS
EXECUTIVE DIRECTOR**

Headquarters:

Waajiri House, Argwings Kodhek Road- Milimani, Nairobi,
P. O Box 48311-00100 Nairobi, Kenya
Tel: 020-2721929/48/49/52, 2720242/62, 0733-333291, 0722-203487
Fax: 020-2721990, 2712299, 2720295 Email: fkehq@fke-kenya.org

Coast Branch Office:

P.O Box 841:5-80100 Mombasa,
Tel: 041-2311112 Fax: 041-2226596
Email: fkeksa@fke-kenya.org

Western Kenya Branch Office:

P. O Box 1449-40100 Kisumu,
Tel: 057-2020620/0202333477 Fax: 057-2021458
Email: fkeksm@fke-kenya.org

Rift Valley Branch Office:

P.O Box 3216-20100, Nakuru,
Tel: 051-2216690, Fax: 051-2216746
Email: fkenkr@fke-kenya.org

FKE COMMENTS ON THE NSSF REGULATIONS.

1) Page 5 Regulation 12 – There needs to be flexibility on the notice period in terms of days. It will not always be possible to give 30 days' notice if the employer is an individual. (eg if the cause is incapacitation or death).

2) Page 5 Regulation 13 – the cross reference should be to regulation 12 & not regulation 9.

3) Page 11 Regulation 3 – if contributions are payable from 1 June 2014. There should be a clarification that first contributions therefore should be remitted from the end of June 2014. this implies the new rates are effective May 2014.

4) Page 11 Regulation 4 – Can the increments be based on the anniversary of the implementation of the Act ie in June of every year instead of January 2015 as indicated at Regulation 4.

6) Page 12 Regulation 15 – Penalties should not form part of the arrears for remission in the event that an employer has to pay arrears based on a CBA agreement's implementation date/s.

8) Page 28 Regulation 39(3) – the last paragraph contains a typing error; presumably sis months is in fact six months.

9) Page 36 Regulation 10(5) – this gives the Authority the right to decline someone who has opted out the right to cancel that right & revert to contributing to the NSSF. There should be qualifications and considerations given by an employer for proceeding in this manner. There should also be safeguards for quick action and no delays in the variation process.

10) Page 37 Regulation 12(1) – this implies that a Contracting out certificate is valid indefinitely whereas various other regulations imply that the Certificate will be issued for a specific period of time. The contradiction needs to be resolved.

11) Page 39 Regulation 14(2) – the requirement for the employer to make payments to the scheme other than the NSSF by the 10th day following the month end is discriminatory given that payments to NSSF are only required to be

made by the following month end. There should be harmonization of the dates for remittance to either a contracted out scheme or to NSSF.

12) Page 39 Regulation 14 – it is unclear whether expenses of a scheme (RBA levy etc.) can be apportioned against Protected Rights or not. I would suggest expenses should be allowed to be apportioned up to a limit the same as administration expenses up to a limit are permitted under NSSF.

13) Page 41 Regulation 16(1)(b) – section xx needs to be specified.

14) Page 41 Regulation 18(1) – this implies that on Contracting Out an employee's total accumulated Tier II contributions from all previous employments as well as current will be transferred to the contracted out scheme.

15) Page 42 Regulation 18(2)(d) – it is unclear what interest rate should be applied up to the date of transfer. If this is during the year is a supplementary transfer made once the final rate has been declared by the scheme at the year end. It should be clear that the rate applicable at the date of transfer is the rate declared by the scheme for the year.

16) Page 44 Regulation 20(b) – this implies that the employer must submit to the scheme monthly the individual earnings of each employee on which the contribution has been calculated. This may increase the volumes of work and data to be shared between the employers and the fund. The mode of submission of this information should be precise.

17) There is no provision in either the Act or the draft Regulations for an ordinary (not voluntary) member to make voluntary contributions in excess of Tier II contributions. Presumably no further such contributions should be made once the Act comes into force.

There is a presumption that once a member opts to take early retirement or attains normal retirement age then no further NSSF contributions should be made for that member even if he is subsequently employed or on attaining normal retirement age remains in employment.

There needs to be further clarification and provision for those who have already attained retirement age but are still in employment or have taken up new assignments.

18. Members employed by one employer.

The Section is not clear whether the employee is supposed to contribute under each employer or not. It only mentions that each employer will remit their contributions.

Clarification is required for contributions that Holding Companies will make.

Registration of Employees

- The definition of a casual employee and the remittances of the casuals need to be expressly provided for.
- What percentage is to be deducted from the casuals.

Membership Card

After filling in the forms for registration how long will it take NSSF to forward the cards to the employer especially in regards to casual workers.

Deductions

MANDATORY REGISTRATION

- Clause 8.2 and everywhere else in the document – we should remove the need for a stamp if this is going to apply to jua kali sector and individuals employing one house help. What value will a stamp add in this case? or
- The fund could simply adopt the PIN number issued by KRA as the number they will use.
- Clause 23.1 - the Fund should prescribe how the information should be kept (or design the form on its website that can be

downloaded). Otherwise members may not be able to know whether the fund is keeping the right records.

REGULATIONS UNDER SECTION 47

- How does invalidity through injury at work relate with respect to the new (Work Injury Compensation Act (WICA))? Is it possible to make a double claim? There is need for clear provisions that will not jeopardize the functions of a particular Act from the other.
- Who has supremacy – County Medical boards or the ones under WICA? In the event of conflict of decisions who arbitrates?
- Clauses 35, 36, 37 etc places a lot of work on the Board to make decisions on individual cases. There should be a provision for the Board to appoint other subsidiary institutions to make recommendations for the board to consider. Typically this is done by administrators who can work to ascertain threshold beyond which the Board then intervenes. It would also be required for the administrator to give returns on decision made on behalf of the Board.

- The appointment to the tribunal that will arbitrate on matters should be consultative and inclusive of all the stakeholders.

- ANALYSIS OF REGULATIONS UNDER SECTION 20 & 32 OF THE NSSF ACT NO. 45 OF 2013

- Regulation 2> The interpretation part is hanging. The part should clearly spell out the terms
- Regulation 7> The employer to bear the burden of full mandatory contributions is untenable. The Act has not given such an indication hence should be reconsidered.
- Regulation 8> The issue of bouncing cheque should be charged at the normal bank rates. The fund has no business regulating the bank charges

- Regulation 11> The earlier payment of contributions should not be determined by the managing trustee. # the employer may opt to make earlier contributions
- Regulation 16> it should be clear what interest is to be earned and when to review the interest and by whom.

- REGULATIONS UNDER SECTION 32

- Regulation 3(b) is not clear what it is meant to mean and achieve. Needs total overhaul.

- ANALYSIS OF REGULATIONS UNDER SECTION 21

- The Regulations seem to have left out matters relating to those employers having gratuity provisions and how this will be addressed, since one cannot have a pension scheme and at the same time continue paying gratuity. This will turn out to be very expensive for employers.
- Regulation 4 (4) Has not set out the qualification and does not indicate whether the consideration is done suo moto or based on what conditions.
- Regulation 6 Has failed to provide for transition period and the exemption of penalties thereof.
- Regulation 7 (f) Does not indicate whether the date of contracting out can be applied retrospectively.
- Regulation 12 should be a fresh application and not a renewal.
- Regulation 13 needs qualification in terms of what are the aspects that will be considered to satisfy the fact that the employer has not shown the Authority that the contracted out scheme should continue or not.

- ANALYSIS OF REGULATIONS UNDER SECTION 47
- Rule 12 as it is, is open to abuse where it is left to the Managing Trustee to determine who is a proper person to receive benefits on behalf of a person of unsound mind.
- There should instead be a requirement for ascertainment of the proper person, say from the local administration. The person so identified should execute a deed binding him/her to administer such funds for the sole benefit of the beneficiary of an unsound mind.
- **Deduction with respect to Seasonal/ temporary/Casual Employees** --- not explicit in the Act as was the case in previous Act. Is it deductible from this category of employees? The agricultural sector has a number of employees falling in this category.
- **Pensionable Earnings** --- the Act excludes fluctuating emoluments. What are these fixed or fluctuating emoluments? How do we treat piece rated employees whose earnings fluctuate from month to month. Is it based on basic or gross? Or do we take what is agreed in the CBA as the basis of this?
- **Gratuity** – Provision of gratuity is not mentioned in the Act as previously proposed by stakeholders. We are likely to be compelled to pay both hence additional cost of employment. Upon commencement, the Act has given workers an increase of 6% which was not negotiated. Since this affect all sectors in the economy (particularly those with negotiated CBA). The Gratuity clause needs to be ring fenced or there should be provisions made as to how it will be applicable together with the pension scheme.

JACQUELINE MUGO
EXECUTIVE DIRECTOR
FEDERATION OF KENYA EMPLOYERS

Our Ref: SF/A/15/40 VOL1(9)

Your Ref: TBA

14 February 2014

Mr. Ali Noor Ismail

Principal Secretary

Ministry of Labour, Social Security & Services

NSSF Building, 7th Floor, Bishop Road

NAIROBI

Dear 

**RE: JOINT MEETING BETWEEN NSSF AND RBA TO
DISCUSS THE NATIONAL SOCIAL SECURITY FUND
ACT NO. 45 OF 2013**

I refer to the above matter and the meeting held yesterday between NSSF and RBA to discuss the New NSSF Act.

It was noted at the meeting, that proviso 5 of the Fourth Schedule of the NSSF Act stipulates that “ ***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.***”

In view of the above, it was agreed that a Joint Committee be formed comprising MOL/NSSF/RBA to begin development of contracting- out regulations to allow

Employers remit Tier 11 Contributions to other registered schemes as envisaged by Section 21 & the Fourth Schedule of the NSSF Act.

The purpose of this letter is to request that you nominate a representative from your Ministry to be a Member of the Joint Committee who commence work immediately.

I shall be grateful to receive the name of your representative at your earliest convenience.

Yours Sincerely



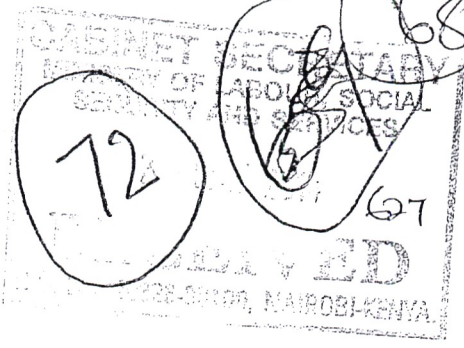
RICHARD K. LANGAT
AG.CEO/MANAGING TRUSTEE

② Sec Admin

45/11
68
67



Retirement Benefits Authority



RBA/EXE/119

③ CEO/MT
Pse draft
reply for CS.
7/23/5

30th April 2014

Hon. Samwel Kazungu Kambi
Cabinet Secretary for Labour, Social Security and Services,
Social Security House,
P.O. Box 40326 - 00100
NAIROBI



Dear Sir

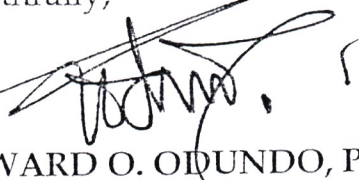
RE: THE NATIONAL SOCIAL SECURITY FUND
(CONTRACTING OUT BY EMPLOYERS) REGULATIONS,
2014

We make reference to the above subject and further to Clause 5 of the Fourth Schedule of the National Social Security Fund Act (Act No 45) Laws of Kenya, we hereby forward to you the draft Contracting Out by Employers Regulations for your further consideration and publication.

The process of drafting the regulations was consultative involving the major stakeholders in the labour movement, federation of employers, retirement benefits and social security sectors.

We look forward to early publication of the regulations to enable commencement of the Act on 31st May 2014.

Yours faithfully,


DR. EDWARD O. ODUNDO, PhD., MBS
CHIEF EXECUTIVE OFFICER



18

REPUBLIC OF KENYA

**MINISTRY OF LABOUR, SOCIAL
SECURITY AND SERVICES**

Tel: +254 (0) 2729800
Fax: +254 (0) 2726222
Email: principalsecretary@labour.go.ke
When replying, please quote

Social Security House,
Block 'A' Eastern Wing,
Bishops Road,
P.O. Box 40326-00100,
NAIROBI.

Ref: MLSSS 45/1

21st February, 2014

Ag. Managing Trustee,
National Social Security Fund,
P.O. Box 30599 – 00100,
NAIROBI.

**RE: JOINT COMMITTEE OF MINISTRY OF LABOUR, SOCIAL SECURITY
AND SERVICES, NATIONAL SOCIAL SECURITY FUND AND
RETIREMENT BENEFITS AUTHORITY TO DEVELOP REGULATIONS
ON REMITTANCE OF CONTRIBUTIONS**

Reference is made to your letter dated 14th February, 2014.

Ms. Rose M. N. Wasike is nominated to represent the Ministry in the above mentioned Committee.

Ali N. Ismail, OGW,
PRINCIPAL SECRETARY.

C. C. Cabinet Secretary
Ministry of Labour, Social Security and Services
P.O. Box 40326 00100,
NAIROBI.



FEDERATION OF
KENYA EMPLOYERS

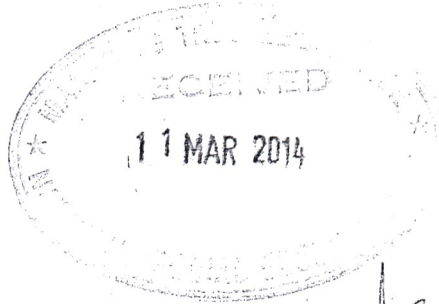
The Voice of Employers

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FKEHQ/ED2014/L021

11th March, 2014

Mr. Richard Langat
Ag. CEO/Managing Trustee
NSSF
P.O. Box 30599 - 00100
NAIROBI



Ag. Gen. Sec

Dear Mr. Langat,

RE: DEVELOPMENT OF REGULATIONS FOR THE NSSF ACT

We acknowledge receipt of your letter referenced SF/A/15/40 VOL (15) dated 15th February, 2014 regarding the above subject.

The Federation of Kenya Employers is pleased to nominate Mr. Dickens Ouma to work together with the Ministry of Labour, Social Security & Services, the Central Organization of Trade Unions (COTU), State Counsel from the Attorney General's Office, the NSSF team and other stakeholders in drafting regulations for registration, contributions, benefits contracting out by employers (among others) for publication by the Cabinet Secretary, Labour, Social Security & Services and approval by the Delegated Legislation Committee of Parliament.

Please find below his contact details:

Mr. Dickens Ouma
Legal Officer
Federation of Kenya Employers
P.O. Box 48311 - 00100
NAIROBI
Email: douma@fke-kenya.org
Cell phone: 0721542741

Yours sincerely,

JACQUELINE MUGO, OGW, MBS
EXECUTIVE DIRECTOR

CC: Mr. Dickens Ouma
Legal Officer

Headquarters:
Wajiri House, Argwings Koohek Road- Milimani, Nairobi,
P. O Box 48311-00100 Nairobi, Kenya
Tel: 020-2721929/48/49/52, 2720242/62, 0733-333291, 0722-203487
Fax: 020-2721990, 2712299, 2720295 Email: fkehq@fke-kenya.org

Coast Branch Office:
P.O Box 84115-80100 Mombasa,
Tel: 041-2311112 Fax: 041-2226596
Email: fkemsa@fke-kenya.org

Western Kenya Branch Office:
P. O Box 1449-40100 Kisumu,
Tel: 057-2020620/0202333477 Fax: 057-2021458
Email: fkeksm@fke-kenya.org

Rift Valley Branch Office:
P.O Box 3216-20100, Nakuru,
Tel: 051-2216690, Fax: 051-2216746
Email: fkenkr@fke-kenya.org

Ag. Gen. Secs



REPUBLIC OF KENYA

**OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE**

25

13th March, 2014

635/2/3

The Ag. Chief Executive Officer/
Managing Trustee,
National Social Security Fund,
P.O. BOX 30599-00100,
NAIROBI.



Dear Sir,

**RE: DEVELOPMENT OF REGULATIONS UNDER THE
NATIONAL SOCIAL SECURITY FUND ACT, 2013 – (NO.45
OF 2013)**

.....
Your letter on the above matter, ref.SF/15/40 VOL.1(16) dated 28th
February, 2014, addressed to the Hon. Attorney-General refers.

As requested, **Mr. Tom Abuga, Parliamentary Counsel**, who was
responsible for the National Social Security Fund Bill, will assist the
Committee. However, please note that our Department is usually not an
active participant in legislative policy formulation exercises. Accordingly,
Mr. Abuga will provide legislative drafting assistance once policy
deliberations on the proposed Regulations are concluded and the
appropriate instructions forwarded for our action.

Yours faithfully,

M. N. Nzioka (Mrs)
Chief Parliamentary Counsel

FOR: ATTORNEY-GENERAL

c.c. Mr. Tom Abuga,
Parliamentary Counsel,
Legislative Drafting Department. (Please note and
deal as appropriate.)

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112 - 00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555 / 0732529995
E-MAIL: info.statelawoffice@kenya.go.ke. WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILESELASSIE AVENUE
P.O. Box 56057-00200, Nairobi- Kenya TEL: Nairobi 2224029 / 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke





**MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES
OFFICE OF THE CABINET SECRETARY**

Telegrams: "LABOUR", Nairobi
Tel: +254(0)2729800
Fax: +254(0)2722202
Email: cabinetsecretary@labour.goke

Social Security House
Block 'A' Eastern Wing
Bishops Road, Milimani
P.O. Box 40326-00100
Nairobi

PUBLIC NOTICE

The National Social Security Fund Act No. 45 of 2013 was assented by the President of the Republic of Kenya on 24 December 2013 and came into force on 10 January 2014.

The Act establishes a National Social Security Fund to provide Social Security for Workers and Self Employed Persons and their dependants.

Pursuant thereto, the Regulations for the said NSSF Act have been posted and can be accessed by visiting www.nssf.or.ke

The Public is hereby invited to make comments on the same and send feedback not later than 9 May 2014. Your feedback can be emailed to nssfact2013@nssfkenya.co.ke.



HON. SAMWEL KAZUNGU KAMBI
CABINET SECRETARY

Dated 30th April 2014

The Managing Trustee
National Social Security Fund
Social Security House
P.O Box 30599
Nairobi

9th May, 2014.

TRADE UNIONS POSITION ON THE PUBLISHED NSSF ACT NO. 45 REGULATIONS 2014

An analysis of the published regulations reveals certain shortcomings that need to be addressed urgently:

1. Mandatory Membership & Contribution

It is our position that employers and employees should not be forced to be members of the fund and compulsorily forced to contribute to the fund. The forced membership and contribution to the fund by employers and employees go against the constitutional provision encapsulated in terms of article 36 therefore deemed unconstitutional.

Our view is that both the Act and the Regulations have not complied with the provision of article 24 of the constitution in that it has failed to provide the ambit of the limitation of the right.

It is further our view that employers and employees be allowed in the enjoyment of their fundamental rights to choose the type of retirement scheme they intend to join without necessarily being members of the fund in the 1st instance.

2. Enhanced Contribution

It is our submission that given the state of the economy wherein employers and employees are struggling to make ends meet, the 6% contribution by both the employers and the employees be staggered for a period of 5 years to enable the employers and the employees adjust their finances once the economy which is on a slump picks up. This has always been the position of the stakeholders and a view that we wish to reiterate herein.

3. Interest on contribution

Regulation 16 provides that all contributions will earn interest per annum but does not state the rate of interest such contributions shall earn.

① Ag Gm SSV
Ag Gm CA/CS

update me in this

12/5/14



② Ag Gm SSV
What's your view on this

29/5/14

It is our submission that such rate of interest be stated.

4. Establishment of Infrastructure

We are opposed to the implementation of the regulations before the fund managers are recruited. Further the fund has not put in place the envisaged reforms that the stakeholders agreed upon to be undertaken before the rules were promulgated. It is our view that the fund being a transformational instrument in the management of pensions of workers should be transparent and accountable to the employers and the employees.

It is our further submission that the most representative federations of workers and employers being COTU and FKE should have a veto power on the Board.

The unions mentioned hereunder Annexure 'A' are further opposed to the implementation of the regulations as presently drafted on the basis that the fund has not carried out civic education on the new NSSF Act 45 of 2013.

Thank you.

Yours faithfully,



Wafua Wa Musamia

For & On Behalf of the 12 Trade Unions.

ANNEXTURE 'A'

COTU AFFILIATES

1. Tailors and Textiles Workers Union
2. Kenya Quarry and Mine Workers Union
3. Kenya Petroleum Oil Workers Union
4. Kenya Shipping, Clearing and Warehouses Workers Union
5. Kenya Union of Commercial Food and Allied Workers
6. Kenya Aviation Workers Union
7. Kenya Shoe and Leather Workers Union
8. Amalgamated Union of Kenya Metal Workers Union
9. Kenya Union of Hair and Beauty and Salon Workers' Union
10. Kenya Electrical, trade and allied Workers union
11. Kenya Plantation and Agricultural Workers Union
12. Kenya Engineering Workers Union

Agricultural Employers' Association

64

Affiliated to the Federation of Kenya Employers (F.K.E)
Safeguarding Employers' interests.

CABINET SECRETARY
MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES
14 MAY 2014
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8th May 2014

*copy to
Director
MF - NSSF
25/5/14
LC*

Cabinet Secretary
Ministry of Labour & Social Security Services
P O Box 40326
Nairobi - 00100

By Gm C.A.L.S

Dear Sir,

RE: MEMORANDUM HIGHLIGHTING KEY CONCERNS ON DRAFT ON THE NEW NSSF ACT

Further to the Public Notice carried in the Local Dairies inviting the Public to make comments on draft regulations, we wish to forward the attached memorandum raising our key concern which we request NSSF to consider for inclusion.

Yours faithfully

MANAGING TRUSTEE'S OFFICE
RECEIVED
27 MAY 2014
NATIONAL SOCIAL SECURITY FUND

[Signature]
Wesley K Siele
EXECUTIVE OFFICER

C.c. *Executive Director Federation of Kenya Employers P O Box 48311 Nairobi - 00100*
Managing Trustee National Social Security Fund P O Box 30599 Nairobi - 00100

WKS/an



MEMORANDUM SUBMITTED BY THE AGRICULTURAL EMPLOYERS' ASSOCIATION HIGHLIGHTING KEY CONCERNS TO THE CABINET SECRETARY, MIN OF LABOUR, SOCIAL SECURITY & SERVICES ON THE DRAFT REGULATIONS ON THE NEW NSSF ACT 2013

We wish to raise the following key concerns to NSSF with a view of getting them included and /or addressed in the regulations for effective implementation of the new NSSF Act 2013.

1. Implementation date of the Act - (1st June 2014).

Whilst appreciating the efforts that have gone into the preparation of the draft regulations, the realisation of the implementation date of the new Act will only be possible if the draft regulations are fully adopted and gazetted to effectively operationalize the Act. Failure to which there will be serious hiccups and chaos in industry with differing and divergent implementation approaches that will only worsen the situation.

2. Regulations under Section 26

Part 1

Interpretation

Define

“pensionable earnings” – as defined vide Treasury Circular No. 18/2010 to mean “basic salary excluding housing, transport and any other allowances and fluctuating emoluments” - *explanation* - This is a clear definition that is applicable in the National Government and in the pension industry and ought to be applicable uniformly

“Fluctuating emoluments”

“fluctuating emoluments” for the purposes of these regulations means employee earnings not paid on a fixed basis, but additional to basic wage or salary and includes benefits in kind, acting allowance, special duty allowance, leave allowance, uniform allowance, equipment allowance ~~delete~~ – (*but does not include*) bonuses, commissions, overtime, shift pay, house allowance and service charge - *explanation* – allowances in employment situations are intended to meet certain specific employment related expenses rather than being reward for services rendered and ought not be included for purposes of calculating retirement savings eg. House allowance is payable to an employee who isn't housed so that he / she can use the same to pay off the house rent and if such is subjected to “retirement savings” then it will be disadvantageous to the employee who is housed free by the employer though he / she earns the same basic slay

as the other employee who resides outside employer premises, similarly, bonuses are payable on attainment of agreed periodic performance targets and if one employee performs better than the other and the bonus is subjected to "retirement savings" then there is no level playing ground. Further, overtime is also paid in compensation of putting extra hours of work and an employee who puts in more hours than his / her colleague and its "saved for retirement" places the other employee in a disadvantageous situation.

All such allowances that fluctuate every month ought not to be subjected to "retirement savings;"

Paragraph 22 – Employer; paying Gratuity.

Where a contract of service provides for gratuity, the employer shall deduct and remit contributions in accordance with provisions of the Act. Provided that an employer (*replace may with shall*) deduct its portion of contribution from the gratuity amount payable to the employee ~~or adopt the paragraph below;~~

"Upon the commencement of The National Social Security Fund Act 2013, the provision for gratuity in employment contracts shall cease to exist. However, employees who will have qualified for gratuity at the effective date of the new Act will be paid in accordance to the employment contracts in force at the time the contributions ceased at the basic rate the employee was earning at the time of cessation of the gratuity provisions. This shall be payable when the employee so entitled either retires or opts to resign from the company' *explanation* - This way it will resolve potential cash flow issues if such gratuity balances are moved to tier 2 contributions in the NSSF pension scheme. The other reality is that, the higher level of contributions to NSSF immediately removes the need for a Gratuity provisions. From the point of view of the employee, unfunded gratuity schemes have associated risk to employees since bankruptcy renders them null and void. Employees would be better off with a migrated gratuity into NSSF.

3. Regulations under Section 47

Part II – Pension claim application

Information and documents to accompany specific claims

Paragraph 9.

A claim for a survivor's pension shall be accompanied by an original death certificate, a copy of deceased identity document. Evidence of the claimant's own identity and relationship to the deceased member and information about other relatives of the deceased, confirmation from county administration (*should this be County Commissioners Administration which is in the National*

Government as opposed to County Administration which falls in the County Governors docket?)

Paragraph 28.

In the absence of evidence to the contrary the date of birth of a member of the Fund entered in the records of the Fund shall be conclusive and where no date of birth is recorded for a member or his dependants or is disputed the Managing Trustee may require such further evidence of age (including medical evidence) *(need clarity as to the kind of medical evidence that will be required)* as may be obtainable.

Others;

Tax Harmonization.

- All tax incentives should apply to the new NSSF act and all payments; in, out and accruing, whether with NSSF or any other scheme to be tax free.
- All Tax implications to be harmonized urgently with the Income Tax Act.
- The current Income Tax Act limits monthly tax allowable contribution to Provident/ Pension Schemes to a total of KES 20,000/=. This should be reviewed and at least harmonized with the UEL as it is phased in.

The association would further appreciate an opportunity to verbally present it's comments at the convenience of the legal committee that is vested with the honours' task of developing the regulations.

Dated 7TH May 2014

21 May 2014

Our Ref: V:\K278\Letters_and_Reports\1403\skrrkl.docx

The Managing Trustee
National Social Security Fund (NSSF)
P o Box 30599 – 00100
NAIROBI

For the Attention of Mr Richard K Langat

Dear Sirs

NSSF Act, 2013 – Draft Regulations

We refer to the draft Regulations prepared under the NSSF Act, 2013 ('the Act') which were published for stakeholder exposure on 2 May 2014. We also refer to the undersigned's subsequent telephone conversations with the NSSF Board Secretary.

We understand that stakeholders' comments have been received and are being considered by the Committee preparing and reviewing the Regulations. We would be pleased to assist with the review.

We have also drawn the attention of the Board Secretary to the following:

Definition of Fluctuating Emoluments

The draft *National Social Security Fund (Member Contributions) Regulations, 2014* Regulations define fluctuating emoluments to include:

- Benefits in kind;
- Acting allowance;
- Special duty allowance;
- Leave allowance;
- Uniform allowance;
- Equipment allowance.

and to **not** include:

- Bonuses;
- Commissions;
- Overtime;
- Shift pay;
- House allowance;
- Service Charge

This definition is somewhat at variance to what we would have expected – indeed our view is that the majority of items in the first set of bullet points above should form part of fixed emoluments whilst the items in the second set of bullet points above should form part of fluctuating emoluments. We would recommend that the following items be included as fluctuating emoluments in place of the items included above:



ALEXANDER FORBES

Fluctuating emoluments should include:

- Bonuses;
- Commissions;
- Overtime;
- Shift pay;
- Service charge

Any other emolument not listed above would be considered to be pensionable earnings.

We note that there may be an argument for excluding commissions and service charge from fluctuating emoluments for certain types of employment. For example sales staff and hospitality staff, where a large component of earnings can be commissions and service charge, respectively.

Transfer of Tier II Credits

With reference to Section 18(1)(d) of *The National Social Security Fund (Contracting Out By Employers) Regulations, 2014* we would recommend that any transfer payment from NSSF to a contracted out scheme should include interest to the date of transfer. This is in the best interest of members. It seems unfairly punitive to allow transfers out of NSSF to not include any interest.

Contracting – Out Regulations

We have previously mentioned to the Committee the concerns in relation to the impact of the delay in finalising the Contracting-out Regulations. To our understanding, the policy intent (to which we had provided input to) was for employers and employees who have existing schemes to be able to opt out immediately so that there is no double/additional cost implication on them. We must recommend that consideration be given to a more flexible transition so that unintended financial implications on employers and workers are avoided / mitigated.

End of Service Gratuity Arrangements

We note that the draft Regulations provide that an employer's statutory contributions may be offset against gratuity arrangements. In practice, this may be difficult to achieve immediately as there is a need to negotiate any amendments to existing gratuity arrangements with employees and unions where applicable. Again we recommend that further consideration to the most effective means of achieving compliance.

Yours faithfully


Sundeep K Raichura
Group Chief Executive

cc: Mr Austin Ouko ✓
Board Secretary ✓



LAWS OF KENYA

THE CONSTITUTION OF KENYA

Revised Edition 2010
Published by the National Council for Law Reporting
with the Authority of the Attorney General

(a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and

(b) to have obligations relating to the environment fulfilled under Article 70.

43. (1) Every person has the right—

Economic and social rights.

(a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;

(b) to accessible and adequate housing, and to reasonable standards of sanitation;

(c) to be free from hunger, and to have adequate food of acceptable quality;

(d) to clean and safe water in adequate quantities;

(e) to social security; and

(f) to education.

(2) A person shall not be denied emergency medical treatment.

(3) The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.

44. (1) Every person has the right to use the language, and to participate in the cultural life, of the person's choice.

Language and culture.

(2) A person belonging to a cultural or linguistic community has the right, with other members of that community—

(a) to enjoy the person's culture and use the person's language;
or

(b) to form, join and maintain cultural and linguistic associations and other organs of civil society.

(3) A person shall not compel another person to perform, observe or undergo any cultural practice or rite.

45. (1) The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition

Family.



SSNIT -GHANA

BASIC NATIONAL SOCIAL SECURITY REGULATIONS, 2011
ARRANGEMENT OF REGULATIONS

Regulation

Registration

1. Registration of employer
2. Employer and self-employed persons registration number
3. Employer to notify Director-General in certain cases
4. Registration of a worker
5. Certificate of membership
6. Workers to complete forms
7. Workers to produce certificate of membership
8. Cessation of employment
9. Liquidation of an establishment
10. Change of name

Contributions

11. Payment of contributions
12. Employer's obligation under the Act and Regulations
13. Manner of payment of contributions
14. Payment of contributions to be accompanied by appropriate form
15. Contribution returns
16. Official receipts required for payment
17. Earlier payment of contribution in certain cases
18. Refund of contributions and other payments not due
19. Priority for payment of contributions
20. Record of salary
21. Preservation of records
22. Employer's record of contributions
23. Member's record of contributions
24. Member's statement of accounts

- 49. Workers to furnish information to employer
- 50. Return of incomplete or inadequate document
- 51. Forms
- 52. Payments to be made on due date

General

- 53. Social security clearance certificate
- 54. Competency to nominate
- 55. Date of birth may be estimated where necessary
- 56. Resolution of disputes
- 57. Interpretation
- 58. Transitional provisions
- 59. Revocation

IN exercise of the powers conferred on the Minister responsible for Pensions by section 93 of the National Pensions Act, 2008 (Act 766), on the advice of the Authority and on the recommendation of the Board of Trustees, these Regulations are made this..... day of.....2011.

Registration

Registration of Employer

1. (1) An employer shall in accordance with the Act register the employer's establishment with the Trust within thirty days of commencement of operations.

(2) An establishment which consists of several branches, departments, sections, sub-offices, depots, stores, whether situated in the same place or in different places shall for purposes of the Act be considered as one and the same establishment and the Act shall apply to all the workers the establishment.

Employers and self-employed persons registration number

2. (1) An employer or self-employed person shall complete the appropriate registration form and submit it to the Director-General.

(2) The Director-General shall on receipt of the forms issue a social security employer registration number to the employer or self-employed person and notify that employer or self-employed person of the number.

Employer to notify Director- General

3. An employer or self-employed person who changes a business name, address and location shall furnish the Director-General with the new business name, address and location within ten days after the occurrence of the change.

Registration of a worker

4. (1) An employer shall within one month after employing a new worker complete and forward the appropriate worker registration form in respect of the worker to the Director-General unless the worker produces evidence of previous registration under the scheme.

(2) A self-employed person may register by completing the appropriate registration form that the Director-General may require.

(3) A worker who completes a worker registration form to join the scheme shall attach to the registration form evidence of date of birth in the form of a birth certificate, baptismal certificate or any other recognised official document.

(4) The Director-General may issue a reference number to a person who has applied to be registered as a member of the scheme.

(5) A reference number shall serve as an interim Social Security Number until an actual Social Security Number is issued to the applicant.

Certificate of membership

5. (1) The Director-General shall direct that the relevant information on the Registration form be reproduced on to a prescribed form which shall be forwarded to the employer or self-employed person for endorsement.

(2) The original and duplicate certificate of membership shall be completed, signed and thumb-printed by the worker.

(3) The original certificate shall be detached and delivered by the Trust to the worker.

(4) The duplicate certificate shall not be detached and shall be kept by the Trust

Worker to complete forms

6. (1) An employer shall require a worker to complete any other appropriate forms determined by the Director-General.

(2) A worker who is unable to complete the forms shall authorise the employer or agent to complete the forms on behalf of the worker.

Worker to produce certificate of membership

7. (1) A worker who is already a member of the Scheme shall produce a certificate of membership to a new employer.

(2) Where the certificate is lost the worker shall produce any other evidence of membership and the registration number.

Cessation of employment or temporary suspension of operations

8. (1) An employer shall notify the Director-General that a worker has ceased to be employed by the employer within thirty days of the cessation of employment.

(2) An establishment which temporarily suspends operations shall notify the Director-General within thirty days after the establishment has ceased to operate.

Liquidation of an establishment

9. (1) Following liquidation of an establishment, an employer shall submit the following information to the Registrar-General:

- (a) the names of the workers in establishment,
- (b) the social security numbers of workers,
- (c) the salary of workers, and
- (d) deductions of contributions.

(2) The employer shall notify the Director-General within ten days after submitting the information specified under sub-regulation (1) to the Registrar-General.

(3) For the purposes of this regulation an establishment is considered to be in liquidation where a resolution for the winding-up of the company has been passed or where a Court has made an order for the winding up of the company.

Change of name

10. (1) A member or contributor to the scheme who desires a change of name with the scheme shall provide the following:

- (a) evidence of proof of the old name on the Trust's records;
- (b) one or more documents of national identification with a photograph as proof of the old name;
- (c) official documents in the form of *Gazette* publication, publication in the national dailies, marriage or divorce certificate or any other official document showing the new name or identity.

(2) The Trust shall verify the genuineness of the documents or information and conduct necessary investigations before effecting the change of name.

Contributions

Payment of contributions

11. (1) An employer or self employed person shall pay into the Fund of the Scheme the contributions specified under section 63 of the Act within fourteen days after the end of the month to which the contribution relates.

(2) A self-employed person or a voluntary contributor who opts to join the Scheme or continue to contribute after ceasing to be employed shall pay the contribution specified under section 58 (2) of the Act within fourteen days after the period that the self-employed person or voluntary contributor agreed with the Trust to pay the contribution.

(3) The penalty provided under section 64 of the Act shall apply to a self-employed person or a voluntary contributor who fails to pay a contribution within a specified period.

(4) The Trust shall not accept arrears of contribution which is over twelve months from a self employed person or a voluntary contributor.

(5) The minimum contribution is thirteen and half per centum of the approved national minimum wage and an employer is responsible for payment of the difference between a contribution remitted to the Trust which is below the monthly equivalent of the approved national minimum wage.

(6) The Trust, shall in consultation with the Authority periodically determine and publish the maximum salary figure as a ceiling beyond which a contribution shall not be based, paid or accepted.

(7) A contributor who

(a) is above the maximum age of joining the basic national social security scheme, and

(b) makes mandatory contributions under section 63(8) and (9) of the Act

shall on retirement utilise seventy five percent of accrued benefits to purchase an annuity for life guaranteed for fifteen years and payable monthly from a Life Insurance Company licenced by the National Insurance Commission.

(8) The Authority shall in consultation with the National Insurance Commission ensure that a Life Insurance Company which provides annuity is capable of meeting its liabilities.

Employer's obligation under the Act and Regulations

12. (1) An employer or self-employed person shall abide by obligations under the Act and these Regulations in respect of payment of contributions and submission of contribution reports.

(2) Despite sub-regulation (1) or a provision in any other law a person who assumes responsibility as an employer of an establishment is responsible for

- (a) the payment of contributions;
- (b) the payment of moneys due to the Scheme; or
- (c) the submission of document to the Director-General, in respect of which the previous employer was in default.

(3) For the purpose of this regulation employer includes a company in liquidation under the Companies Act, 1963 (Act 179) or the Bodies Corporate (Official Liquidation) Act, 1963 (Act 180).

Manner of payment of contributions

13. A person shall pay contributions and other moneys due to the Trust

- (a) at the nearest Regional, District, Branch or Agency office of the Trust;
- (b) by money order, postal order or crossed cheque bearing the words "A/C Payee Only";
- (c) by a draft drawn on any Bank in Ghana made payable to the Trust and delivered, or mailed to the Head Office of the Trust or the nearest office of the Trust or at an approved point; or
- (d) in any other manner that the Director-General may from time to time determine.

Payment of contributions to be accompanied by appropriate form

14. (1) Payment of contributions to the Scheme shall be accompanied with a contribution report in accordance with section 63 (6) of the Act.

(2) An employer shall, at the last working day of the month, submit to the Trust the contribution report in respect of that month, whether the contribution is paid to the Trust or not.

(3) An employer or self-employed person may make one consolidated payment for an establishment, if the employer or self-employed person prepares separate contribution reports in respect of each unit and distinctly indicate amounts in respect of each unit.

Contribution returns

15. (1) An employer or self-employed person shall furnish the Director-General with a list of contributors at the end of the contribution period or at a period determined by the Director-General.

(2) The list of contributors shall include the following

- (a) the name and social security number of each worker;
- (b) the worker's salary;
- (c) the contribution deducted from the salary;
- (d) the employer's contribution in respect of that worker: and
- (e) the total contributions due to the Fund during that period.

(3) A contribution return shall be accompanied with a contribution report in the form and manner prescribed by the Director-General.

Official receipts required for payment

16. A person shall not use any receipt, other than a receipt with an official number, date, stamp and endorsed for the payment of contributions and other payments.

Early payment of contribution in certain cases

17. The Director-General may require an employer to pay the contributions of a worker earlier than the date specified under these Regulations to enable the Trust pay a benefit due or for any other justifiable reason or purpose.

Refund of contributions and other payments not due

18. (1) Where the Director-General is satisfied that an amount which was not due has been paid to the Scheme, the Director-General may, subject to the provisions of these Regulations refund the amount to the person entitled to it.

(2) A refund shall not be made where the member of the Scheme or the person's dependants have already been paid the amount as benefit.

(3) The Director-General may

- (a) withhold the whole or a part of the excess payment and offset it against an amount due to the Scheme from the person who received the excess payment; or
- (b) require a person who made an excess payment to apply in writing for refund of the excess payment and to furnish the Director-General with information necessary to determine the circumstances under which excess payment was made and the amount involved.

Priority for payment of contribution

19. (1) The Trust may exercise a power conferred in accordance with section 87 of the Act by filing an application with a supporting affidavit and accompanying evidence of an employer's indebtedness to the Trust in the same proceeding in which the employer is made a judgment debtor.

(2) The Trust shall proceed with an application as soon as it comes to the notice of the Trust that the employer is declared a judgment debtor.

(3) For the purpose of this regulation, 'employer' includes a company in liquidation under the Companies Act, 1963 (Act 179) or the Bodies Corporate (Official Liquidation) Act, 1963, (Act 180).

(4) Where in criminal proceedings the Court in exercise of its powers under section 84 (2) and (3) orders the recovery of a contribution together with a penalty and contribution report, the Trust may enforce the order by an execution process as if the order was an order of a court in civil proceedings.

Record of salary

20. An employer or self-employed person shall keep records of salaries indicating

- (a) the name of the worker,
- (b) the worker's Social Security number,
- (c) the pay of the worker as defined in the Act,
- (d) the deduction of the contribution to the Fund; and
- (e) any other relevant information.

Preservation of records

21. An employer or self-employed person shall preserve salary records for not less than twelve years after the end of the period to which the salary relates.

Employer's record of contributions

22. The Trust shall maintain for each employer a record showing contributions paid by the employer and contributions due from the employer.

Member's record of contributions

23. The Trust shall maintain in respect of each member a record of contributions made by and on behalf of the member.

Member's statement of accounts

24. (1) The Director-General shall provide every member of the scheme with an annual statement of accounts to a current address provided by the member.

(2) The Trust may supply additional statement of account to a member in respect of the member's accounts upon proof of identity and payment of a fee by the member.

Benefits

Application for benefits

25. An application for a benefit under the Act shall be made on the appropriate form and delivered to the Director-General.

Superannuation pension or old age pension

26. (1) An application for superannuation pension shall be made on the form determined by the Director-General.

(2) A member may be paid full or reduced pension.

(3) A member shall be paid a full pension if the member retires on attaining the compulsory retirement age of sixty years and has contributed to the basic national social security scheme for a period of not less than fifteen years in the aggregate or one hundred and eighty months in aggregate.

(4) A member shall be paid a reduced pension if the member voluntarily retires at the age of fifty-five years or more but below sixty years and has contributed to the Social Security Fund for an aggregate period of not less than one hundred and eighty months.

(5) An application for pension shall be made three months prior to the date of retirement.

(6) An applicant's claim for retirement benefit shall be supported by a certificate issued by the employer except that the Director-General may dispense with the certificate and accept any other evidence in support of the application.

(7) Where a pensioner who receives superannuation benefit dies prior to attaining the age of seventy-five, a lump sum payment of the present value of the member's un-expired pension up till the age of seventy-five years shall be paid to the member's nominated dependants.

Assessment of date of birth

27. (1) The date of birth, or any information on a member entered in the records of the Trust shall be considered to be accurate unless the Director-General reasonably believes that the information is not accurate.

(2) Where the Director-General reasonably believes that the date of birth of a member has not been correctly stated the Director-General may

- (a) ask to be furnished with further evidence of date of birth;
- (b) assess the information given; and
- (c) substitute what the Director-General considers to be the correct age.

Invalidity pension

28. (1) A person shall apply for invalidity pension by completing the appropriate form.

(2) The form shall be endorsed by a recognised medical officer and forwarded to the Director-General.

(3) The applicant shall supply a passport photograph and the appropriate thumb prints shall be taken on the appropriate form.

(4) The Director-General shall forward the application to a Medical Board for certification.

(5) A Medical Board shall include a representative of the Trust.

(6) Upon certification by the Medical Board the member shall be paid an invalidity pension.

(7) An invalid who rejoins the Scheme as a contributor after the invalid has been certified by a Medical Board to have fully recovered shall not lose the previous contributions.

(8) A person shall not apply for invalidity pension if the injury that caused the invalidity occurred after the person had attained the age of sixty.

(9) Where an invalid dies before attaining the age of seventy-five years, a lump sum payment of the present value of the person's unexpired pension up to the age of seventy-five years shall be paid to the person's nominated dependants.

Survivor's lump sum benefit

29. (1) An application for survivors lump sum benefit shall be made on an appropriate form determined by the Director-General.

(2) The applicant shall attach to the application,

(a) a certificate or other evidence of death of the member, and

(b) letters of administration except where the applicant has been nominated as a dependant for payment of a benefit.

(3) The Director-General may require an affidavit or statutory declaration or any other evidence establishing the applicant's identity and relationship to the deceased where the need arises.

Survivor's lump sum payable to a child

30. (1) Where a child is nominated with a higher portion of the survivors benefit, the Trust shall distribute the survivor's lump sum based on the higher and more beneficial portion in favour of the child.

(2) In other cases the Trust shall ensure that a child's portion of survivor's lump sum payment is distributed or paid to ensure the protection of the best interest of the child.

(3) Where a member has satisfied the minimum contribution period of one hundred and eighty months or more prior to the death of the member the survivors lump sum shall be computed on the present value of the members pension for a period of fifteen years using the ninety-one days treasury bill rate or other rates that maybe determined by the Trust in consultation with the Authority.

(4) The treasury bill rate referred to in sections 72 and 78 (1) and (2) of the Act shall be the prevailing ninety-one days rate or any other rate determined by the Trust in consultation with the Authority.

Director-General to authorise payment

31. (1) Despite anything in these Regulations, the Director-General may pay a benefit to a person or persons that the Director-General considers entitled to the benefit after making an enquiry that the Director-General considers necessary.

(2) A claim from any other person shall not be made against the Trust in respect of a payment made under sub-regulation (1).

Statutory declaration or affidavit in support of an application for payment of survivors benefit

32. An application for payment of survivors' benefit, shall be accompanied with

- (a) a statutory declaration or an affidavit and a passport size photograph of the applicant duly endorsed by the official before whom the statutory declaration or affidavit was made; or
- (b) a valid national identification with a photograph in the form of a passport, driving licence, national identification card or a national health insurance card.

Applicant to submit statutory declaration

33. The Director-General may require a person who has made an application for pension to submit a statutory declaration or affidavit to the effect that the statement made by that person in the application or in support of any evidence adduced by that person is true.

Director- General may authorise certain officers to make enquiry

34. The Director-General may request

- (a) an officer of the Ministry responsible for Social Welfare; or
- (b) an officer of the Trust

to make an enquiry in relation to an application for benefit, or to make use of Government records, local authority records or other records as evidence for purposes of these Regulations.

Payment of benefit or refund of contributions

35. The Director-General shall pay benefits or refund contributions duly authorised in cash, cheque, money order or any other means that the Director-General may determine.

Acknowledgement of receipt of benefit

36. A person who receives a lump sum benefit payment from the Fund shall acknowledge receipt of the benefit by giving to the Director-General a receipt in a form approved by the Trust.

Payment through the post or bank

37. (1) The liability of the Trust in respect of payments made to a pensioner or beneficiary through a bank account designated by the pensioner or beneficiary, or posting of a registered letter containing an instrument of payment to an address stated on an application form is equivalent to the delivery of the instrument to the person to whom the letter was addressed.

(2) Where a person does not acknowledge receipt of payment the Director-General may on receipt of a duly executed indemnity to the Trust issue a duplicate acknowledgement of payment.

Minors and persons of unsound mind or other disability

38. (1) Where a member or the members survivors, entitled to pension or refund under the Act or these Regulations is

- (a) a minor;
- (b) of unsound mind; or
- (c) suffering from a disability that renders the person unfit to manage the person's own affairs,

anything required to be done by that person may be done on the person's behalf by a person appointed by an order of a High Court or any other court of competent jurisdiction.

(2) An amount payable to that person may be paid to the other person appointed to administer that person's affairs in accordance with the order of the court.

(3) Where a person is not appointed under sub-regulation (1) the Director-General may pay a benefit to a person determined by the Director-General as entitled to the payment and who will use the money for the maintenance and benefit of the minor or disabled person.

Inflation of salary

39. (1) Where the Director-General suspects that a member of the scheme has inflated the member's salary with intent to defraud the scheme, the Director General shall cause an investigation to be conducted in respect of

- (a) the ability of the member to influence the level of the members salary;
- (b) the age of the member;
- (c) the oral examination of persons;
- (d) relevant documents, books of accounts, financial and bank statements;
- (e) information or documents from a public or private institution for the purpose of the investigation; and
- (f) any other information necessary to carry-out the investigation.

(2) Where the investigation reveals that the salary was genuinely earned, the Director-General shall proceed to compute and pay the appropriate benefit to the member.

(3) Where the investigation confirms inflation of the salary figures or other irregularity in the salary figures the Director-General shall reject the salary figures and determine the acceptable or true salary figures and pay to the member the right pension or benefit.

(4) In determining the right pension the Director-General shall first determine the appropriate best three years average salary.

(5) The basic salary for a current year shall be obtained by increasing the previous year's annual salary by indexation rate plus five percent or any other rate that may be determined by the Trust in consultation with the Authority.

(6) The best three years average salary shall then be determined to obtain the level of pension or the twenty-five per centum lump sum where applicable.

(7) Any excess contribution shall be refunded to the contributor at the ninety-one days treasury bill rate or any other rate determined by the Trust in consultation with the Authority.

(8) In this regulation "defraud" includes a willful act, omission or concealment, surprise, trick, cunning, dissembling and an unfair means on the part of an employer or member of the scheme to take undue advantage of, deprive or cheat the scheme.

Investment, finance and accounts

Investment of funds

40. The funds of the scheme shall be invested in accordance with sections 67, 68 and 69 of the Act.

Investment Policy

41. The Trust shall, subject to Guidelines issued by the Authority have an investment policy document which shall be reviewed at least once every two years.

Actuarial valuation report

42. The Board of Trustees shall obtain external actuarial valuation report of the Fund in accordance with section 53 of the Act.

Administrative expenses

43. Subject to the provisions of Sections 55 (1) and 56 of the Act the maximum limits for administrative expenses of the Trust shall be prescribed in Guidelines that may be issued from time to time by the Authority

Administrative charges for complementary schemes and National Health Insurance Authority

44. (1) The Trust shall charge administrative fees for support services to any other complementary scheme.

(2) The fee shall be based on the following

- (a) where the service is non monetary the actual cost and any incidental cost involved shall be determined by the Trust and recovered from the beneficiary of the service;
- (b) where the service is a monetary one the Trust shall charge appropriate fees determined and published in Notices and Guidelines issued by the Authority.

(3) The administrative expenses involved in the provision of the service of collection and transfer of the two and a half percentum of the total contributions to National Health Insurance Scheme shall be charged to that Scheme on a rate not below one per centum and not exceeding five per centum of the amount transferred.

(4) The rates shall be reviewed as and when necessary by the Trust in consultation with the Authority.

(5) Monetary computations under these Regulations or the Act, for the purposes of

- (a) contributions to be paid or recovered;
- (b) a fee, interest or penalty; or
- (c) for any other purpose,

shall be converted to the nearest fifty pesewas where the fraction of pesewa is less than fifty pesewas but shall be converted to the nearest cedi where the fraction of the pesewa is more than fifty pesewas.

Electronic recording, filing and transfer of documents

Electronic information

45. (1) The Trust may
- (a) record,
 - (b) file,
 - (c) maintain,
 - (d) transfer, or
 - (e) receive

in electronic form records of members or any information required under the Act or these Regulations in respect of the Scheme.

(2) For the purposes of the Act, where a person has notified the Director-General in writing of an electronic address for service of documents including a facsimile number or electronic-mail address, a document to be served on the person by the Director-General is considered served if sent to that address.

(3) For the purposes of sub-regulation (1) a document is considered sent to an electronic address if the sender receives

- (a) in the case of a message sent to a facsimile number, confirmation from the sending facsimile machine that the transmission is sent or okay; and
- (b) in case of a message sent through an electronic mail address confirmation from the sender that the message has been sent.

(4) The Director-General shall ensure that a system of electronic recording, filing or transfer of documents includes a criterion for authorizing persons to file the documents in an electronic form and ensure security and authentication of documents filed, recorded or transferred.

Signature and thumb-print on document

46. (1) A document used in connection with the Scheme which requires the signature of a member of the Scheme may be signed with the member's written signature but shall be authenticated by a clear impression of the members right thumb or any other thumbprint as the Director- General may direct.

(2) The thumb impression and the signature shall be witnessed and counter-signed by the employer or an authorised representative of the employer or by a self-employed person or by an authorized representative of that person.

(3) Where it is not possible for a member to provide the right thumb impression that member may provide a clear impression of the member's left thumb print.

(4) Where for any reason it is not possible for a member to provide a thumb print the Director General may accept any other mark or identification that the Director-General considers appropriate.

Change of nomination

47. (1) A member who wishes to make a change in respect of persons previously nominated to receive a survivors benefit in the event of the members' death or any change in the extent or survivors shares shall complete the appropriate form obtained from the Trust.

(2) Despite sub-regulation (1) a member shall update the nomination at least once every five years.

(3) An employer shall make available nomination forms specified under sub-regulation (1) to an employee to enable the employee to make a change in respect of nominations.

(4) The employer shall forward the completed form to the Director General and obtain and hand over to the member the Director-General's acknowledgement of the form.

Duplicate certificate of membership

48. (1) The Director General may after conducting investigations that the Director-General considers necessary and on payment of a fee issue a duplicate certificate of membership to a member who has lost the original certificate of membership

(2) The Duplicate certificate shall be endorsed with the word "DUPLICATE"

Workers to furnish information to employer

49. A worker shall furnish an employer information and documents necessary for the completion of returns prescribed by these Regulations and required to be made by the employer.

Return of incomplete or inadequate document

50. (1) Where the Director General or a representative of the Director-General has cause to believe that a document required under these Regulations is incomplete, inaccurate or is not clear enough to identify the person concerned, the Director-General or the representative of the Director-General may return the document to the sender.

(2) The sender shall within ten days after receipt of the document complete and forward to the Director-General a fresh document in place of the original or return the original document corrected and authenticated as required by the Director-General.

Forms

51. (1) The Director-General shall specify the forms required under these Regulations and make the forms available to the public at the offices of the Trust or at any other locations or by any other means determined by the Director-General.

(2) A form or document used in connection with the Scheme shall not be considered as invalid because of the inclusion of additional matter or of variation in the wording by the Director-General.

(3) A form specified in the Schedule may be altered or amended by the Director-General to suit a particular case and is valid for purposes of the Act or these Regulations.

Payments to be made on due date

52. (1) An employer or self-employed person shall make payments to the Scheme on the due dates even if the employer or self-employed person does not receive forms on time.

(2) An employer or self-employed person who contravenes sub-regulation (2) is liable to the penalty specified under the Act.

General

Social Security Clearance Certificate

53. (1) A person shall not

- (a) grant or permit an authorisation in respect of the procurement of goods, works and services in which public funds are involved to an employer unless the employer applying for the permit or authorization produces to the authority or person a valid and relevant Social Security Clearance Certificate; or
- (b) effect the registration of a document conferring title to land to an employer unless the employer produces to that person a valid and relevant Social Security Clearance Certificate.

(2) A statutory body or organization in which Government has interest shall not sell or grant a lease in respect of a building to an employer unless the employer produces to the statutory body or organization a valid and relevant Social Security Clearance Certificate.

(3) A person responsible for the award of a contract for the execution of works or for the performance of a service in which public funds are vested shall not award or pay for the contract to an employer or self employed person unless the employer or self-employed person to whom the contract is awarded or payment is to be made produces to the authority or person a Social Security Clearance Certificate

(4) For purposes of this regulation

“A Social Security Clearance Certificate” means a certificate issued by the Director-General, certifying that all Social Security contributions and penalty levied for delayed payment due from an employer or self- employed person have been paid and that all relevant information has been supplied or that an employer or self employed person has made arrangements satisfactory to the Director-General for the payment of contributions and for the supply of relevant information.

(5) The certificate is valid for a period of three months or a further period as the Director General may determine but may be revoked by the Director-General if the employer or self employed person fails to fulfill obligations under the Act or Regulations made under the Act.

(6) The Director-General shall issue a certificate to an employer or person who is exempted under the Social Security Scheme.

Competency to nominate

54. A member who is fifteen years is competent to nominate beneficiaries who shall be paid the members' benefit in the event of the death of that member.

Date of birth may be estimated where necessary

55. (1) Where a member is unable to specify the members date of birth. the employer and the Director-General shall assess the age of the member from the appearance or any other known facts and shall record a date of birth on the appropriate form.

(2) A date of birth determined under sub-regulation (1) shall, for purposes of these Regulations, be treated as the actual date of birth of the member unless the Director-General, amends the records where the need arises.

Resolution of disputes

56. A member of the Scheme who is dissatisfied with a decision of the Director-General under these Regulation may after exhausting available internal processes appeal to the Authority in writing for a review of the decision.

Interpretation

57. In these Regulations unless the context otherwise requires

“Act” means the National Pensions Act, 2008 (Act 766);

“Authority” means the National Pensions Regulatory Authority established under the Act;

“Board of Trustees” means the Board of Trustees of the Trust established under the Act;

“establishment” includes branches, sub-offices, depots;

“Fund” means the Social Security Fund;

“invalid” means a member of the Scheme who is declared by a Medical Board to be incapable of doing any gainful work;

“Minister” means the Minister responsible for pensions;

“National Insurance Commission” means the National Insurance Commission established under the Insurance Act, 2006 (Act 724);

“Scheme” means the basic national social security scheme;

"Trust" means the Social Security and National Insurance Trust established under the Act; and

"unit" means branches, sub offices, or depots.

Transitional provisions

58. An employer, worker or self-employed person who immediately before the commencement of these Regulations was registered as an employer, worker or self employed person under the Social Security Act, 1991 (PNDCL 247) or the Social Security Regulations 1973 (L.I.818) shall be considered as registered under the basic national social security scheme established under the Act.

Revocation

59. (1) The Social Security Regulations 1973 (L.I. 818) are hereby revoked.

(2) Despite the revocation any notices, orders, directions, appointments or any other act lawfully made or done under the revoked enactment and in force immediately before the commencement of these Regulations shall be considered to have been made or done under these Regulations and shall continue to have effect until reviewed, cancelled or terminated.

MINISTER RESPONSIBLE FOR PENSION

Date:

SCHEDULE

SEYCHELLES PENSION FUND ACT

(Act No 8 of 2005)

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S.I. OF 2005

SEYCHELLES PENSION FUND ACT, 2005

(Act No 9 of 2005)

Seychelles Pension Fund (Benefits) Regulations, 2005

In exercise of the powers conferred by section 68 of the Seychelles Pension Fund Act, 2005 the President, acting as the Minister responsible for Finance hereby makes the following Regulations –

PART 1 – PRELIMINARY

1. These Regulations may be cited as Seychelles Pension Fund (Benefits) Regulations, 2005 and shall come into operation on 1st January 2006.

Citation
and
commencement

2. In these Regulations –

Interpretation

(1) “approved form” means a form provided by the Chief Executive Officer, or such other form which the Chief Executive Officer may in any particular case approve, for the purpose of claiming a gratuity, allowance or pension under these Regulations;

“business” means a business in terms of the Business Tax Act;

“child” means –

- (a) a legitimate child;
- (b) a natural but recognised child;
- (c) an adopted child;
- (d) a child pursuant to an affiliation order of a court or the Family Tribunal; or
- (e) a child whose paternal descent has been proved under Article 340 of the Civil Code

of a member, who is under 18 years old or who is under 25 years old and still in full time education;

“children’s pension” means a monthly pension payable to a child of a deceased member or the guardian of the child for the maintenance of the child;

“guardian” means a person appointed—

- (a) as guardian of a child by a parent under Article 397 of the Civil Code; or
- (b) as guardian of a child by the Court under Article 402, or
- (c) as a sub-guardian of a child by the Court under Article 420 or 422 of the Civil Code,

and includes –

- (i) any person to whose care a child is committed under or by virtue of a court or the family tribunal order; and
- (ii) any person who, in the opinion of a court or the family tribunal for the time being has daily charge of or control over a child;

“invalid” means a person who in the opinion of the Medical Board is incapable of work as a result of a disease or bodily injury which is likely to remain permanent;

“maintenance or maintaining” means contributing to the household expenses and/or daily needs of an applicant, financially or otherwise, as one of the main contributors to the aforesaid expenses and needs and contribution in this definition includes being the main person, doing the laundering, cooking or cleaning for a member or caring for his child, without being paid any salary for the aforesaid services ;

“prescribed retirement age” means the prescribed age for retirement under the Social Security Act (Cap 225)

“salary” means remuneration in money payable in respect of employment including any supplementation and commuted allowances attached to the post.

(2) Where a reference to “average salary” in relation to a period of 5 years is made in any regulation, but due to the absence of the relevant records for the whole period such average salary cannot be determined in a particular case, the Chief Executive Officer may treat the average salary based on the records that are available as the proper “average salary” in such case for the purposed of that regulation. (S1 19 of 2007)

PART II - GENERAL

Application
for pension
gratuity or
allowance

3. (1) A application for a pension, gratuity or allowance shall be made in an approved form and within the time limits specified in these Regulations.

(2) Where it appears to the Chief Executive Officer that a person who has made an application for a pension, gratuity or allowance is entitled to a pension, gratuity or allowance other than the one specified in the application, the Chief Executive Officer may with the approval of the applicant treat the application as an application for the pension, gratuity or allowance to which the person is entitled.

(3) An applicant for a pension, gratuity or allowance, who due to an incapacity is unable to act, may authorised in writing any other person to act on his behalf in respect of his application and for his pension, gratuity or allowance to be made out to or collected by the authorised person or to be paid into the account of the authorized person, which authorisation shall be attested by 2 adults not being the authorised person,.

(4) The Chief Executive Officer shall upon receipt of an authorisation under subregulation make all the necessary enquiries, including contacting the witnesses to the authorisation and shall keep a written record of his enquiries and findings, in order to satisfy himself that the authorisation is a genuine one and the applicant has not given it under duress.

4. A person applying for a pension, gratuity or allowance shall, in addition to any certificate, document or evidence he is required to furnish under any other provision of these Regulations, furnish such other certificate, information and evidence as the Chief Executive Officer may require in any particular case, and shall, if reasonably required, attend at such place and time as the Chief Executive Officer may require, for the purpose of the determination of the claim.

Supporting evidence etc.

5. (1) A member making any nomination under these Regulations may nominate one or more persons to be paid his benefits in accordance with these Regulations in the event of the member's death prior to his retirement.

Nomination of beneficiary

(2) The nomination shall be made in the approved form attested by 2 adults other than the other than a nominee

(3) A nomination may be changed at any time but the last nomination shall always supersede the earlier one whether formally revoked or not.

(4) A member who makes any voluntary contributions to the Fund, may at any time prior to his death subject to Regulation 7, nominate in the approved form any person to be entitled to his voluntary contribution if any, standing to his credit in the Fund at the time of his death prior to his retirement and such nominated person shall be entitled to the aforesaid contribution upon the member's death prior to his retirement.

(5) Where a member fails to make any nomination under subregulation (4), his heirs shall subject to regulation 7, be entitled to any voluntary contribution, standing to his credit in the Fund.

Time limits for claim

6. (1) Where an application for a pension, gratuity or allowance is referred back to the applicant because it is defective, incomplete or without the supporting documents, the applicant shall provide the required information and re-submit the application for consideration before it can be processed.

(2) Where upon an application, the Chief Executive Officer wishes to be fully satisfied that a application, allegation or statement made is genuine, he may carry out an investigation to obtain proof of the said allegation or statement

Use of voluntary Contribution as a guarantee

7. Where a member has notified the Chief Executive Officer in writing of his or her decision to use his voluntary contribution as a security for a housing loan or a loan for medical treatment and provided the Chief Executive Officer with details of the loan transaction, if the loan has not been repaid in full at the time of his death or retirement, the voluntary

contribution shall not be refunded or taken into account for calculation of the member's retirement pension under regulation 13 until proof is provided to the Chief Executive Officer of the discharge of the loan.

PART III - RETIREMENT PENSION

Entitlement
to
Retirement
Pension

8. (1) A member who qualifies for a retirement pension under section 33 of the Act shall, if he has resided in Seychelles for continuous period of at least 5 years immediately prior to his retirement unless such requirement is waived by the Board, be entitled to a retirement pension for life upon retirement at the age of 60 or above, calculated on the member's average salary for last 5 years preceeding his retirement and payable in accordance with Schedule 1. Provided that the requirement of residence in Seychelles for a continuous period of at least 5 years immediately prior to retirement shall not apply to a member who pays contributions under section 18 (4A of the Act (S1 19 of 2007)).

(1A) Where a member satisfied the Chief Executive Officer that:-

- (a) the member has ceased to be employed on attaining the age of 55 or later, or after paying contribution to the Social Security Fund or the Seychelles Pension Fund for a minimum of 20 years in the aggregate, and
- (b) the member's salary on being reemployed is less than the member's average salary for the five years immediately prior to attaining such age, or completing the payment of contribution for such minimum period, as is referred to in paragraph (a),

the salary based on which the member's pension on retirement is calculated is the highest annual salary earned by the member during the last 5 years of employment.

(2) A member referred to in subregulation (1) shall, upon his application for his retirement pension under these Regulations being granted, be simultaneously entitled to the retirement pension provided for under the Social Security Act notwithstanding that he may not have attained the prescribed retirement age.

(3) Where a person, being a member or otherwise,

- (a) who is above the age of 51 years and is a registered or licensed self employed person,
or
- (c) who is employed under the Home Carer Scheme, the Unemployment Relief Scheme or the Beautification Scheme administered by the Social Security Fund,

at the time of coming into operation of the Act and remains so employed until retirement, but at the time of retirement does not qualify for a retirement pension by reason of not having contributed to the Fund or Social Security Fund for the minimum period referred to in section 33 of the Act, the person shall however be paid a retirement pension in accordance with Schedule 1, subsidized with funds provided from the Consolidated Fund:

(4) Where a member has received more than one salary per month prior to retirement the member's retirement pension shall be based on the average of the total salaries earned over the period of 5 years preceeding retirement, provided that the member has paid Pension Fund contributions on each of those salaries. If the member had paid such contributions on one salary, then the pension shall be based on the average of that salary for the 5 years preceding the member's retirement (S.I. 19 of 2007).

(5) Notwithstanding anything in these Regulations, a member or a person who does not qualify for a retirement pension under these Regulations shall upon attaining the prescribed retirement age be entitled to the retirement pension payable for the time being under the Social Security Act and to any contributions standing to the credit of the member in the Fund at the date of the member attaining the prescribed retirement age together with any interest thereon, as a lump sum payment.

8 (A) – Early Retirement

A member of the Fund –

- (a) serving in the Seychelles People's Defence Force may with the approval of the Chief of Defence Force, retire from service on or after attaining the age of 55 years;
- (b) who is an employee of the government or a parastatal organization may with the approval of the Principal Secretary responsible for Public Administration, retire from service on or after attaining the age of 55.

(2) Where a member under subsection (1) qualifies for a pension under section 33 of the Seychelles Pension Fund

- (a) the Chief of Defence Force or a person authorized by him; or
- (b) the Principal Secretary, responsible for Public Administration

As the case may be, shall forward to the Chief Executive Officer for payment of the member's monthly retirement pension, the following documents, namely-

- (i) a letter of approval of the member's retirement;
- (ii) a duly completed application form for retirement pension;
- (iii) a birth certificate;
- (iv) a detailed member's salary for the past five years; and
- (v) a national identity card.

8 (B) – Funding of early retirement

The funds for payment of pension on early retirement purposes:-

- (a) from the age of 55 to 59 years in respect of members of the Seychelles People's Defence force; and
- (b) from the age of 55 to 59 years in respect of government and parastatal employees shall be provided to the Fund by the Government

8 (C) Application of early retirement of government and parastatal employees

- (1) The provisions of section 8A shall apply to members who are either government or parastatal employees from 1st January 2008 up to 31st December 2009.

(2) Any application made by a member for purposes of early retirement which is not approved or which was made after the 31st December 2009 shall be considered on the applicant attaining the age of 60 years.

(3) The provision of regulation 8A in the case of defence service personnel shall be applicable from 1st November 2007.

8 (D) – Re-employment of early retired members

(1) Where a member of the Seychelles People Defence Force or an employee of government parastatal organisation :-

(a) Who retire early under regulation 8A and is subsequently re-employed, the member or employer shall be liable to pay the pension fund contribution by monthly deduction from the member or employee's salary as the case may be;

(b) Leaves such re-employment, the pension shall be recomputed based on the member or employee's

(i) yearly average highest salary on re-employment; or

(ii) highest yearly average salary

That person was drawing from the Seychelles People Defence Force or from the government service or parastatal organization whichever is the greater (S.I 45 OF 2007)

9. (1) Where a member has left employment and thereafter within a period of 90 days commenced his or her own business as a registered or licensed self employed person, within less than 5 years prior to retirement, his retirement pension shall be based on the average of his declared salary he was earning for the last five years as a self-employed person and an employee.

Salary that is to be used for self-employed member's pension

(2) Where a self employed member does not declare a salary, the monthly average salary for determining his retirement pension shall be the average yearly profit declared with the Taxation Division for business tax calculation during the period of 5 years preceding retirement divided by 12.

(3) Where no such profit has been made or no such record is available, the average monthly salary for the purpose of calculating the retirement pension shall be the minimum wage per month based on a 45 hours' working week prevailing at the time of retirement. (S.I 89 of 2010)

10. Where a member who already qualifies for a pension under section 33 of the Act, leaves employment and thereafter does not take up any employment no further contributions are made to the Fund, until his retirement, the member shall on retirement be entitled to a retirement pension based on his average salary he was earning for the last five years as an employee or as a self-employed person prior to leaving employment.

Salary that is to be use for member who is not working at retirement.

11.(1) An application for retirement pension shall be made in the approved form to the Chief Executive Officer within 10 years from the date of the member's retirement accompanied by the following documents –

Application for retirement pension

(a) Birth certificate;

- (b) Member's salary details for the past five years;
- (c) National Identity Card;
- (d) Retirement letter from employer or Certificate of employment.

(2) In the case of a self employed member, the following additional documents are required

Certified copy to registration or licence as a self employed person for the period of self employment; and

Certificate of business tax payable, if available, over a period of five years period preceding retirement.

(3) A retirement pension shall become payable within 21 days from the date that it is applied for and no retirement pension shall be backdated notwithstanding that the member became entitled to it prior to making the application for it.

Rates of pension for members who retired or turned 63 years old during the year 2005

12.(1) Pursuant to section 41 of the Act a member of the Seychelles Pension Scheme who retired during the year 2005 shall be deemed to have retired on the 1st of January 2006 and shall with effect from January 2006 be entitled to a retirement pension –

- (a) at the rate of R.400 if the member has already been refunded his mandatory contributions by the Seychelles Pension Scheme; or
- (b) in accordance with Schedule 1 based on his average salary for the last 5 years prior to retirement if the member has not already been refunded his mandatory contributions by the Scheme or having already been refunded his mandatory contributions, the member pays back to the Fund his mandatory contributions that he had been refunded.

(2) Where a member of the Seychelles Pension Scheme who attained the prescribed retirement age, prior to the coming into operation of the Act but continued in employment he shall upon retirement be entitled to a retirement pension in accordance with subregulation (1)(a) or (1)(b) as the case may be .

12 (A). A member of the Seychelles Pension Fund who –

- (a) retires on attaining the age of 60 and is subsequently re-employed:
- (b) continues in employment on attaining the age of 63;
- (c) retires on attaining the age of 63 and is subsequently re-employed

and opts to continue paying the employee's prescribed monthly contribution during the period of employment after retirement shall, on ceasing to be employed, have his/her pension recomputed based on his/her yearly average salary during the time he/she continued in employment or was re-employed after retirement. (S1 67 of 2009)

13.(1) Subject to Regulation 7, a member shall be entitled to receive his voluntary contributions standing to his credit in the Fund with any interest thereon in a lump sum upon –

(a) retirement; or

(b) attaining the prescribed retirement age

Provided that a member may opt in the approved form to the Chief Executive Officer for his voluntary contributions to be included in his retirement pension and that member's retirement pension shall, subject to regulation 7, in addition to his retirement pension under regulation 8 also include an amount based on his voluntary contributions calculated and paid in accordance with Schedule 2

(2) A application for the lump sum payment of voluntary contributions shall be made on the approved form to the Chief Executive Officer.

PART IV - PRE AND POST RETIREMENT DEATH GRATUITIES

14. (1) Where a member dies prior to retirement and does not qualify for a retirement pension under section 33 of the Act and at the time of his death he has a surviving spouse, his spouse and in the absence of a surviving spouse, his children if any shall subject to regulation 7 be entitled to a pre-retirement death gratuity equivalent to the sum of the member's mandatory and voluntary contributions standing to the member's credit in the Fund at the time of his death together with any interest thereon.

Pre retirement
death gratuity

(2) Where a member dies prior to retirement whether or not he qualifies for a retirement pension under section 33 of the Act and at the time of his death he has no spouse, or children, his nominated beneficiary, or if he has not made any nomination, his dependant if any who he has been maintaining for at least 3 years prior to his death and in the absence of any of the aforementioned, his heirs shall subject to regulation 7 be entitled to a pre-retirement death gratuity equivalent to the sum of the member's mandatory and voluntary contributions standing to the member's credit in the Fund at the time of his death together with any interest thereon.

15. Where a member who was receiving a retirement pension dies his surviving spouse shall subject to regulation 7 be entitled to a post-retirement death gratuity equivalent to one month of the deceased member's retirement pension?

Post
retirement
death gratuity

Provided that if immediately prior to his death the deceased member was maintaining his legally married spouse and at the same time maintaining another spouse, the legally married spouse shall be the one entitled to the post-retirement death gratuity

16.(1) An application for a pre or post retirement death gratuity shall be made in the approved form to the Chief Executive Officer within 10 years of the members death accompanied by the following documents –

Application
for pre or
post- retirement
death gratuity

- (a) Death certificate of member or a certified copy thereof;
- (b) National Identity Card of the applicant;
- (c) Copies of any will or power of attorney of the deceased member if any; and
- (d) An affidavit in support of the application if the applicant is not the nominated beneficiary.

(2) The supporting affidavit shall state the relationship of the applicant to the deceased member, and in the case of the applicant being a dependant, how and for how long has the

deceased member been maintaining the applicant.

(3) A pre or post-retirement death gratuity shall become payable within 21 days from the date that it is applied for.

PART V - MIGRATION ALLOWANCE

Entitlement
to migration
allowance

17. A member may apply for a migration allowance if the member has migrated or is about to migrate from Seychelles to another country as a permanent resident of that country before retirement

Rate of
allowance

18. The migration allowance shall subject to regulation 7 be the sum standing to the member's credit in the Fund on the date of migration inclusive of both mandatory and voluntary contributions and interest thereon.

Application
for
migration
allowance

19. (1) An application for a migration allowance shall be made in the approved form within 3 months prior to migration or at any time after migration but in any event within 10 years of the member attaining the prescribed age accompanied by the following documents –

- (a) National Identity Card of the member;
- (b) Resident certificate or permit of the member in respect of the country to which he is migrating;
- (c) Certified copy of the member's passport.
- (e) An affidavit in support of the application

(2) The supporting affidavit shall state the decision of the member to migrate, or the fact that the member has already migrated to a specified country, the address of the member in the country of migration, any offer of employment the member has there, or such other proof of residence in the country of migration.

(3) A migration allowance shall become payable within one month from the date that it is applied for.

20. A member who has been paid a migration allowance under this Part shall not be entitled to a retirement or incapacity pension nor shall his spouse or children be entitled to a surviving spouse pension or children's pension as the case may be unless the member has rejoined the fund after his migration and thereafter contributed a minimum of ten years continuous contribution to the Fund afresh immediately prior to retirement or an aggregated of 20 years of contribution to the Social Security Fund prior to retirement notwithstanding that the member may have qualified for the aforesaid pension prior to his migration.

Member who Returns from migration to start contribution afresh

PART VI - PERMANENT INCAPACITY PENSION

21. A member who prior to attaining 60 years old is certified by a Medical Board appointed under the Act to be an invalid, and who at the time of certification notwithstanding his age qualifies for a retirement pension under section 33 of the Act, shall be entitled to an incapacity pension for life or for such period as the Medical Board may recommend.

Entitlement to incapacity Pension

22.(1) The incapacity pension shall be based on a percentage of the member's average salary for the period of five years prior to being certified an invalid under regulation 21 as stipulated in Schedule 3 to these Regulations

Rates of Incapacity Pension payable

(2) In the case of a self employed member, the salary to be used for calculation of his incapacity pension shall be calculated in accordance with regulation 9.

(3) In the case of a member who at the time of invalidity is unemployed but who nevertheless notwithstanding his age qualifies for a retirement pension under section 33 of the Act, the salary to be used for calculation of his incapacity pension shall be based on the salary he was earning for the last five years as an employee or as a self-employed person prior to stopping work.

(4) A member who at the time he attains retirement age is already receiving an incapacity pension shall continue to receive such a pension and shall not be entitled to a pension under the Social Security Act nor to a retirement pension under this Act.

(5) (1) Where the Minister responsible for Finance approves an increase in social security retirement pension under the Social Security (Benefits) Regulations, the Chief Executive Officer shall grant an increase of an equal amount to every person drawing a permanent incapacity pension from the Seychelles Pension Fund (S1 4 of 2007).

(2) Where the Minister responsible for Finance approves an increase in social security benefits under the Social Security (Benefits) Regulations, the Chief Executive Officer shall grant an increase of an equal amount to every surviving spouse, post surviving pension and children's pension from the Seychelles Pension Fund (S1 46 of 2007)

23. (1) Where a member who has been certified an invalid under regulation 21 does not qualify for a retirement pension under these Regulations, he may be referred for an invalidity pension under the Social Security Act and he shall upon attaining the age of 60 subject to regulation 7 be entitled to his mandatory and voluntary pension contributions standing to his credit in the Fund at the time of his invalidity together with any interest thereon, as a lump sum payment.

Member who Does not qualify for incapacity pension

subregulation (1) a member may, upon being certified an invalid, elect in writing in the approved form to the Chief Executive Officer to have the payment stipulated in subregulation (1) paid to him at any time prior to attaining 60 years old.

Application
for Incapacity
Pension

24. (1) An application for an incapacity pension shall be made in the approved form to the Chief Executive Officer at any time during the period that a member has been certified an invalid accompanied by the following documents –

- (a) National Identity Card of the member;
- (b) Medical Board's certificate of invalidity;
- (c) Certificate of employment and in the case of a self employed member, a certified copy of registration or licence and certificate of business tax payable over the 5 year period prior to being an invalid;

(2) An incapacity pension shall become payable within 21 days from the date that it is applied for and no incapacity pension shall be backdated notwithstanding that the applicant became entitled to it prior to making the application.

Review of
refused
application

25. (1) Any member whose application for an incapacity pension has not been approved may subject to subregulation (2) request a review or re-apply, after a period of two years from the date the application was refused .

(2) A request for a review or a re-application may be allowed earlier if in the opinion of the Chief Executive Officer, the medical condition of the member is such that it is likely to seriously affect the ability of the member to work.

(3) If, after a member has been declared an invalid it becomes apparent that the member's health has improved, the member shall be referred back to the Medical Board for review and if the Board finds that the member is no longer an invalid, the person shall cease to draw the incapacity pension.

(4) Notwithstanding subregulation (3) the Fund shall not refer any case for a review under subregulation (3) if the member is 50 years old or more.

PART VII - SURVIVING SPOUSE'S PENSION

Entitlement
to
Surviving
Spouse's
Pension

26. (1) Subject to regulation 31, a surviving spouse, of a deceased member who dies prior to retirement and at the time of death notwithstanding his age qualifies for a retirement pension under section 33 of the Act, shall be entitled to a surviving spouse's monthly pension for life:

Provided that the surviving spouse has resided in Seychelles for continuous period of at least 5 years immediately prior to the death of the deceased member unless such requirement is waived by the Board .

(2) Sub regulation (1) shall apply notwithstanding the fact that the surviving spouse may, under these Regulations, be drawing or become entitled to a retirement or incapacity pension or drawing another surviving spouse's pension from a previous relationship.

(3) Where immediately prior to his death the deceased member was maintaining his legally married spouse and at the same time maintaining another spouse, the legally married spouse shall be the one entitled to the surviving spouse's pension.

27. (1) Subject to subregulation (2) the surviving spouse pension shall be of an amount equal to 80% of the full retirement pension that the deceased member would have been entitled to on retirement as per Schedule 4 based on the member's average salary for the 5 year period prior to his death calculated in accordance with regulations 8, 9 or 10 as the case may be :

Rates of
Surviving
Spouse's
Pension
payable

Provided that if the surviving spouse of a deceased member is over 10 years younger than the deceased member, the surviving spouse shall be entitled to only 70% of the retirement pension as aforesaid.

(2) Where the deceased member has any children, the surviving spouse shall be entitled to a pension of only half of the amount stipulated in subregulation (1) or such smaller amount as per the deceased members' election in accordance with regulation 28.

28. (1) A member who has children, may at any time prior to his death, elect in the approved form to have the surviving spouse's pension payable upon his death reduced to any amount between 25% to 49 % of the amount stipulated in regulation 27(1) and to have the amount by which the surviving spouse's pension has been reduced added onto his children's pension under regulation 31

Election by
member

(2) Where at the time of death of a member, who has made an election under subregulation (1), he has no children, the surviving spouse if any shall be entitled to a full surviving spouse's pension as per regulation 27(1).

29.(1) A application for a surviving spouse's pension shall be made, on the approved form to the Chief Executive Officer within 10 years of the death of a member supported by the following documents –

Application
for Surviving
Spouse's
Pension

- (a) National Identity Card of the applicant;
- (b) Death Certificate of deceased member;
- (c) Marriage certificate or proof of cohabitation;
- (d) Birth certificate of any children of the deceased member;
- (e) Police record certificate of the applicant;
- (f) Affidavit in support of the application

(2) The supporting affidavit shall state the relationship of the applicant to the deceased member, period of cohabitation and whether the applicant was being maintained by the deceased member and details of any children of the deceased member and the educational institution they are attending if any .

(3) A surviving spouse's pension shall become payable within 21 days from the date that it is applied for and no surviving spouse's pension shall be backdated notwithstanding that the applicant became entitled to it prior to making the application

Circumstances in which a surviving spouse's pension shall cease, not be granted or varied

30.(1) A surviving spouse's pension shall not be granted or shall cease in the following circumstances –

- (a) If the deceased member's death occurs before three years of cohabitation in the case of the surviving spouse not being married to the deceased member;
- (b) If the surviving spouse was at the time of the death of the deceased member cohabiting with another partner other than the deceased;
- (c) Upon the surviving spouse remarrying for a second time;
- (d) If the surviving spouse has been convicted of for any offence which caused the death of the deceased;

and the children of the deceased if any shall be eligible for a full monthly pension in accordance with Part VIII .

(2) If at any time after a surviving spouse has started drawing a full pension in accordance with regulations 27(1) and 28(2), a child, of the deceased member, who qualifies for a pension under Part VIII makes a claim for a children's pension under the aforesaid Part, the surviving spouse's pension shall be reduced to half or such smaller amount in accordance with regulation 27(2) or 28(1) with effect from the approval by the Fund of the children's pension for the new child.

PART VIII - CHILDREN'S PENSION

Entitlement Children's Pension

31. (1) Subject to regulation 26, a child, of a deceased member who dies prior to retirement and at the time of death notwithstanding his age qualified for a retirement pension under section 33 of the Act, shall be entitled to a children's monthly pension until 18 years old or up to 25 years old if the child is still in full time education or up to 15 years old if the child is in full time employment and earns a salary of not less than R 1,900 a month.

Rates of Children Pension

32. (1) Subject to subregulation 2 the children's pension shall be of an amount equal to 80% of the full retirement pension that the deceased member would have been entitled to on retirement as per Schedule 5 based on the member's average salary at the time of death calculated in accordance with regulations 8, 9 or 10 as the case may be :

(2) Where the deceased member has a surviving spouse, the child shall be entitled to a pension of only 40% of the full retirement pension or such bigger amount as per the deceased members' election in accordance with regulation 28.

(3) Where there is more than one child of the deceased member who qualify for a children's pension, the amount stipulated in subregulation (1) or (2) shall be divided equally amongst all the said children.

(4) If at any time after a child has started drawing a pension, another child of the deceased member who qualify for a pension under regulation 33 makes a claim children's pension, the pension of the child who was already drawing a pension shall be adjusted accordingly to take account of the new child

(5) If at any time after a child has started drawing a reduced pension in accordance with subregulation (2), the surviving spouse ceases to be entitled to a surviving spouse's pension under regulation 30 the pension of the child shall be entitled to a full children pension distributed in accordance with subregulation (3).

Payment of
Children's
Pension to
guardian

33 A children's pension shall be paid to the guardian of the child if the child is below the age of 18 years old and to the child if he is 18 years old or above.

34.(1) An application for children's pension shall be made on the approved form to the Chief Executive Officer within a period of 10 years from the death of the member supported by the following documents –

Application for
Children's
Pension

- (a) National Identity Card of the applicant;
- (b) National Identity Card of the guardian in the case that the application is being made by the guardian on behalf of the child
- (c) Certificate of death of deceased member;
- (d) Proof of guardianship
- (e) Proof that the child is a child of the deceased

(2) A guardian of a child below 18 years old may make the application for a children's pension on behalf of the child.

(3) A children's pension shall become payable within 21 days from the date that it is applied for and no children's pension shall be backdated notwithstanding that the child became entitled to it prior to the application being made.

PART VI11A – POST- RETIREMENT SURVIVING SPOUSE'S PENSION AND CHILDREN'S PENSION

Post retirement
Surviving
Spouse's
pension

34A (1). A post- retirement surviving spouse's pension shall be payable if a retired member dies after retirement.

(2) The pension referred to in sub regulation (1) shall be paid in accordance with regulations 27, 28 and 29 with effect from the 1st July 2006 subject to the following conditions:-

- (a) The surviving spouse shall be entitled to a monthly pension for life;
- (b) Where immediately prior to the member's death, the member was maintaining the married spouse and another spouse, the legally married spouse alone shall be entitled to the aforesaid pension.

(c) If the surviving spouse is already in receipt of a retirement pension under the Act, the spouse shall be entitled to receive a surviving spouse's pension equivalent to 50% of the retirement pension of the deceased member.

Children's Pension 34B. (1) A children's pension shall be payable when a retired member dies while in receipt of a monthly retirement pension or permanent incapacity pension.

(2) Where at the time of a member's death the member has any children, the children's pension shall be paid in accordance with regulation 32 and subject to regulations 31 to 34.

(S1 19 of 2007).

PART IX - PAYMENT OF PENSIONS, GRATUITIES AND ALLOWANCES

35.(1) The Fund shall unless otherwise authorised under regulation 3(3) make payment of a pension, gratuity or allowance to the applicant or to the guardian in the case of a pension being due to a child under 18 years old –

Payment of pensions, gratuities and allowances

(a) by bank cheque; or

(b) by direct transfer to the applicant's bank account; or

(c) by cash.

(2) Payment of a pension, gratuity or an allowance shall be made within 21 days of an application for the same being lodged with the Fund, unless the investigation to determine the eligibility of the applicant is more complex than normal and extra time is needed to process the application in which case the applicant shall be so informed.

(3) Payment of monthly pension shall be made in arrears from the 20th day of the month and payment for any pension made to a pensioner who dies between the 20th day and the end of the month, shall not amount to an overpayment.

(4) Where a member or any other person in receipt of a pension is residing overseas he shall provide proof in the form of a life certificate as specified in Schedule 6 to the Fund every month that he is abroad before his pension can be paid.

(5) Where a member in receipt of a pension has disappeared or there is reason to believe that the member is dead but the death has not been provided or registered, the Chief Executive Officer shall suspend the payment of the pension until the member returns or a declaration of the death of the member is made by court. (S.I. 89 of 2010)

(S1 3 2013)

INDEXATION AND INCREASE OF PENSION

(36). (1) Notwithstanding the average price index exceeding 5% in any one year, the retirement pension, incapacity pension, surviving spouse's pension, post surviving spouse's pension, children pension, post children's pension shall be increased based on average yearly price increase published in the Consumer Price Index (CPI), not exceeding 5%.

(2) where a yearly increase factor is less than –

(i) 5% of the Consumer Price Index

or

(ii) Change in the Consumer Price Index for a year commencing on 31st October, the pension shall be based on the following formula—

$$\text{New Pension} = \text{Current Pension} \times (100\% + \text{Yearly Increase Factor})$$

(3) Where a member or his or her surviving spouse or children have received a pension for a period of less than 12 months, the increase in pension shall be computed pro-Rata based on the following formula—

$$\text{New Pension} = \text{Current Pension} \times (100\% + \text{Yearly Increase Factor}) \times (\text{number of months since commencement})/12$$

SCHEDULE 1

Regulation 8

Monthly rates of payment for Normal Retirement pension

Gross Salary Band	Average/Mid Point Gross Salary	SPF Pension w.e.f 01.01.2011	SPF Pension w.e.f 01.01.2012
(A)	(B)	(C)	(D)
800-1000	900	420	441
1001-1200	1,100	420	441
1201-1400	1,300	420	441
1401-1600	1,500	420	441
1601-1800	1,700	420	441
1801-2000	1,900	420	441
2001-2200	2,100	420	441
2201-2400	2,300	420	441
2401-2600	2,500	420	441
2601-2800	2,700	420	441
2801-3000	2,900	452	474
3001-3200	3,100	599	628
3201-3400	3,300	746	783
3401-3600	3,500	893	937
3601-3900	3,900	982	1031
3901-4100	4,000	1050	1103
4101-4300	4,200	1187	1246
4301-4500	4,400	1323	1389
4501-4700	4,600	1460	1532
4701-4900	4,800	1596	1676
4901-5100	5,000	1733	1819
5101-5300	5,200	1869	1962
5301-5500	5,400	2006	2106
5501-5700	5,600	2142	2249
5701-5900	5,800	2279	2392
5901-6300	6,300	2289	2403
6301-6500	6,400	2352	2470
6501-6700	6,600	2478	2602
6701-6900	6,800	2604	2734
6901-7100	7,000	2730	2867
7101-7300	7,200	2856	2999
7301-7500	7,400	2982	3131
7501-11400	11,400	3108	3263
11401-11600	11,500	3150	3308
11601-11800	11,700	3234	3396
11801-12000	11,900	3318	3484
12001-12200	12,100	3402	3572

Gross Salary Band	Average/Mid Point Gross Salary	SPF Pension w.e.f 01.01.2011	SPF Pension w.e.f 01.01.2012
(A)	(B)	(C)	(D)
12201-12400	12,300	3486	3660
12401-12600	12,500	3570	3749
12601-12800	12,700	3654	3837
12801-13000	12,900	3738	3925
13001-13200	13,100	3822	4013
13201-13400	13,300	3906	4101
13401-13600	13,500	3990	4190
13601-13800	13,700	4074	4278
13801-14000	13,900	4158	4366
14001-14200	14,100	4242	4454
14201-14400	14,300	4326	4542
14401-14600	14,500	4410	4631
14601-14800	14,700	4494	4719
14801-15000	14,900	4578	4807
15001-15200	15,100	4662	4895
15201-15400	15,300	4746	4983
15401-15600	15,500	4830	5072
15601-15800	15,700	4914	5160
15801-16000	15,900	4998	5248
16001-16200	16,100	5082	5336
16201-16400	16,300	5166	5424
16401-16600	16,500	5250	5513
16601-16800	16,700	5334	5601
16801-17000	16,900	5418	5689
17001-17200	17,100	5502	5777
17201-17400	17,300	5586	5865
17401-17600	17,500	5670	5954
17601-17800	17,700	5754	6042
17801-18000	17,900	5838	6130
18001-18200	18,100	5922	6218
18201-18400	18,300	6006	6306
18401-18600	18,500	6090	6395
18601-18800	18,700	6174	6483
18801-19000	18,900	6258	6571
19001-19200	19,100	6342	6659
19201-19400	19,300	6426	6747
19401-19600	19,500	6510	6836
19601-19800	19,700	6594	6924

Gross Salary Band	Average/Mid Point Gross Salary	SPF Pension w.e.f 01.01.2011	SPF Pension w.e.f 01.01.2012
(A)	(B)	(C)	(D)
19801-20000	19,900	6678	7012
20001-20200	20,100	6762	7100
20201-20400	20,300	6846	7188
20401-20600	20,500	6930	7277
20601-20800	20,700	7014	7365
20801-21000	20,900	7098	7453
21001-21200	21,100	7182	7541
21201-21400	21,300	7266	7629
21401-21600	21,500	7350	7718
21601-21800	21,700	7434	7806
21801-22000	21,900	7518	7894
22001-22200	22,100	7602	7982
22201-22400	22,300	7686	8070
22401-22600	22,500	7770	8159
22601-22800	22,700	7854	8247
22801-23000	22,900	7938	8335
23001-23200	23,100	8022	8423
23201-23400	23,300	8106	8511
23401-23600	23,500	8190	8600
23601-23800	23,700	8274	8688
23801-24000	23,900	8358	8776
24001-24200	24,100	8442	8864
24201-24400	24,300	8526	8952
24401-24600	24,500	8610	9041
24601-24800	24,700	8694	9129
24801-25000	24,900	8778	9217
25001-25200	25,100	8862	9305
25201-25400	25,300	8946	9393
25401-25600	25,500	9030	9482
25601-25800	25,700	9114	9570
25801-26000	25,900	9198	9658
26001-26200	26,100	9282	9746
26201-26400	26,300	9366	9834
26401-26600	26,500	9450	9923
26601-26800	26,700	9534	10011
26801-27000	26,900	9618	10099
27001-27200	27,100	9702	10187
27201-27400	27,300	9786	10275

Gross Salary Band	Average/Mid Point Gross Salary	SPF Pension w.e.f 01.01.2011	SPF Pension w.e.f 01.01.2012
(A)	(B)	(C)	(D)
27401-27600	27,500	9870	10364
27601-27800	27,700	9954	10452
27801-28000	27,900	10038	10540
28001-28200	28,100	10122	10628
28201-28400	28,300	10206	10716
28401-28600	28,500	10290	10805
28601-28800	28,700	10374	10893
28801-29000	28,900	10458	10981
29001-29200	29,100	10542	11069
29201-29400	29,300	10626	11157
29401-29600	29,500	10710	11246
29601-29800	29,700	10794	11334
29801-30000	29,900	10878	11422
30001-30200	30,100	10962	11510
30201-30400	30,300	11046	11598
30401-30600	30,500	11130	11687
30601-30800	30,700	11214	11775
30801-31000	30,900	11298	11863
31001-31200	31,100	11382	11951
31201-31400	31,300	11466	12039
31401-31600	31,500	11550	12128
31601-31800	31,700	11634	12216
31801-32000	31,900	11718	12304
32001-32200	32,100	11802	12392
32201-32400	32,300	11886	12480
32401-32600	32,500	11970	12569
32601-32800	32,700	12054	12657
32801-33000	32,900	12138	12745
33001-33200	33,100	12222	12833
33201-33400	33,300	12306	12921
33401-33600	33,500	12390	13010
33601-33800	33,700	12474	13098
33801-34000	33,900	12558	13186
34001-34200	34,100	12642	13274
34201-34400	34,300	12726	13362
34401-34600	34,500	12810	13451
34601-34800	34,700	12894	13539
34801-35000	34,900	12978	13627

Gross Salary Band	Average/Mid Point Gross Salary	SPF Pension w.e.f 01.01.2011	SPF Pension w.e.f 01.01.2012
(A)	(B)	(C)	(D)
35001-35200	35,100	13062	13715
35201-35400	35,300	13146	13803
35401-35600	35,500	13230	13892
35601-35800	35,700	13314	13980
35801-36000	35,900	13398	14068
36001-36200	36,100	13482	14156
36201-36400	36,300	13566	14244
36401-36600	36,500	13650	14333
36601-36800	36,700	13734	14421
36801-37000	36,900	13818	14509
37001-37200	37,100	13902	14597
37201-37400	37,300	13986	14685
37401-37600	37,500	14070	14774
37601-37800	37,700	14154	14862
37801-38000	37,900	14238	14950
38001-38200	38,100	14322	15038
38201-38400	38,300	14406	15126
38401-38600	38,500	14490	15215
38601-38800	38,700	14574	15303
38801-39000	38,900	14658	15391
39001-39200	39,100	14742	15479
39201-39400	39,300	14826	15567
39401-39600	39,500	14910	15656
39601-39800	39,700	15000	15750
39801-40000	39,900	15078	15832
40001-40200	40,100	15162	15920
40201-40400	40,300	15246	16008
40401-40600	40,500	15330	16097
40601-40800	40,700	15414	16185
40801-41000	40,900	15498	16273
41001-41200	41,100	15582	16361
41201-41400	41,300	15666	16449
41401-41600	41,500	15750	16538
41601-41800	41,700	15834	16626
41801-42000	41,900	15918	16714
42001-42200	42,100	16002	16802
42201-42400	42,300	16086	16890
42401 and above	42,500	16170	17000

Notes:

- (i) The monthly pension excludes Social Security Retirement pension.
- (ii) Capping is set at R17,000 with effect from 01.01.2012. Capping for 2011 was set at R15,000.00, therefore figures appearing in column C from salary band

R39801-R40000 and above were not applicable in 2011.

SCHEDULE 2

Regulation 13

Monthly rates of payment based on voluntary contributions

Accumulated Voluntary Contributions	Average/Mid Point	Additional Retirement Pension payable
600-700	6500	54
7001-8000	7500	63
8001-900	8500	71
9001-10000	9500	79
10001-11000	10500	88
11001-12000	11500	96
12001-13000	12500	104
13001-14000	13500	113
14001-15000	14500	121
15001-16000	15500	129
16001-17000	16500	138
17001-18000	17500	146
18001-19000	18500	154
19001-20000	19500	163
20001-21000	20500	171
21001-22000	21500	179
22001-23000	22500	188
23001-24000	23500	196
24001-25000	24500	204
25001-26000	25500	231
26001-27000	26500	221
27001-28000	27500	229
28001-29000	28500	238
29001-30000	29500	246
30001-31000	30500	254
31001-32000	31500	263
32001-33000	32500	271
33001-34000	33500	279
34001-35000	34500	288
35001-36000	35500	296
36001-37000	36500	304
37001-38000	37500	313
38001-39000	38500	321
39001-40000	39500	329
40001-41000	40500	338

41001-42000	41500	346
42001-43000	42500	354
43001-44000	43500	363
44001-45000	44500	371
45001-46000	45500	379
46001-47000	46500	388
47001-48000	47500	396
48001-49000	48500	404
49001-50000	49500	413
50001-51000	50500	421
51001-52000	51500	429
52001-53000	52500	438
53001-54000	53500	446
54001-55000	54500	454
55001-56000	55500	463
56001-57000	56500	471
57001-58000	57500	479
58001-59000	58500	488
59001-60000	59500	496
60001-61000	60500	504
61001-62000	61500	513
62001-63000	62500	521
63001-64000	63500	529
64001-65000	64500	538
67001-68000	67500	563
68001-69000	68500	571
69001-70000	69500	579
70001-71000	70500	588
71001-72000	71500	596
72001-73000	72500	604
73001-74000	73500	613
74001-75000	74500	621
75001-76000	75500	629
76001-77000	76500	638
77001-78000	77500	646
78001-79000	78500	654
79001-80000	79500	663
80001-81000	80500	671
81001-82000	81500	679
82001-83000	82500	688
83001-84000	83500	696
84001-85000	84500	704

85001-86000	85500	713
86001-87000	86500	721
87001-88000	87500	729
88001-89000	88500	738
89001-90000	89500	746
90001-91000	90500	754
91001-92000	91500	763
92001-93000	92500	771
93001-94000	93500	779
94001-95000	94500	788
95001-96000	95500	796
96001-97000	96500	804
97001-98000	97500	813
98001-99000	98500	821
99001-100000	99500	829
100001-101000	100500	838
101001-102000	101500	846
102001-103000	102500	854
103001-104000	103500	863
104001-105000	104500	871
105001-106000	105500	879
106001-107000	106500	888
107001-108000	107500	896
108001-109000	108500	904
109001-110000	109500	913
110001-111000	110500	921
111001-112000	111500	929
112001-113000	112500	938
113001-114000	113500	946
114001-115000	114500	954
115001-116000	115500	963
116001-117000	116500	971
117001-118000	117500	979
118001-119000	118500	988
119001-120000	119500	996
120001-121000	120500	1004
121001-122000	121500	1013
122001-123000	122500	1021
123001-124000	123500	1020
124001-125000	124500	1038
125001-126000	125500	1046
126001-127000	126500	1054

127001-128000	127500	1063
128001-129000	128500	1071
129001-130000	129500	1079
130001-131000	130500	1088
131001-132000	131500	1096
132001-133000	132500	1104
133001-134000	133500	1113
134001-135000	134500	1121
135001-136000	135500	1129
136001-137000	136500	1138
137001-138000	137500	1146
138001-139000	138500	1154
139001-140000	139500	1163
140001-141000	140500	1171
141001-142000	141500	1179
142001-143000	142500	1188
143001-144000	143500	1196
144001-145000	144500	1204
145001-146000	145500	1213
146001-147000	146500	1221
147001-148000	147500	1229
148001-149000	148500	1238
149001-150000	149500	1246
150001-151000	150500	1254
151001-152000	151500	1263
152001-153000	152500	1271
153001-154000	153500	1279
154001-155000	154500	1288
155001-156000	155500	1296
156001-157000	156500	1304
157001-158000	157500	1313
158001-159000	158500	1321
159001-16000	159500	1329
160001-161000	160500	1338
161001-162000	161500	1346
162001-163000	162500	1354
163001-164000	163500	1363
164001-165000	164500	1371
165001-166000	165500	1379
166001-167000	166500	1388
167001-168000	167500	1396
168001-169000	168500	1404

169001-170000	169500	1413
170001-171000	170500	1421
171001-172000	171500	1429
172001-173000	172500	1438
173001-174000	173500	1446
174001-175000	174500	1454
175001-176000	175500	1463
176001-177000	176500	1471
177001-178000	177500	1479
178001-179000	178500	1488
179001-180000	179500	1496
180001-181000	180500	1504
181001-182000	181500	1513
182001-183000	182500	1521
183001-184000	183500	1529
184001-185000	184500	1538
185001-186000	185500	1546
186001-187000	186500	1554
187001-188000	187500	1563
188001-189000	188500	1571
189001-190000	189500	1579
190001-191000	190500	1588
191001-192000	191500	1596
192001-193000	192500	1604
193001-194000	193500	1613
194001-195500	194500	1621
195001-196000	195500	1629
196001-197000	196500	1638
197001-198000	197500	1646
198001-199000	198500	1654
199001-200000	199500	1663
200001-201000	200500	1671
201001-202000	201500	1679
202001-203000	202500	1688
203001-204000	203500	1696
204001-205000	204500	1704
205001-206000	205500	1713
206001-207000	206500	1721
207001-208000	207500	1729
208001-209000	208500	1738
209001-210000	209500	1746
210001-211000	210500	1754

211001-212000	211500	1763
212001-213000	212500	1771
213001-214000	213500	1779
214001-215000	214500	1788
215001-216000	215500	1796
216001-217000	216500	1804
217001-218000	217500	1813
18001-219000	218500	1821
219001-220000	219500	1829
220001-221000	220500	1838
221001-222000	221500	1846

Note:

Calculation of pension based on voluntary contributions is based on an average life expectancy of 73 years old. Accumulated voluntary contributions in excess of Rs. 222,000/- shall be calculated on the same basis..

SCHEDULE 3

Regulation 22

Monthly rates of payment for Incapacity pension

Gross Salary Band	Average/Mid Point Gross Salary	SPF Pension Amount wef 01.01.2012
(A)	(B)	(C)
800-1000	900	2840
1001-1200	1,100	2840
1201-1400	1,300	2840
1401-1600	1,500	2840
1601-1800	1,700	2840
1801-2000	1,900	2840
2001-2200	2,100	2840
2201-2400	2,300	2840
2401-2600	2,500	2840
2601-2800	2,700	2840
2801-3000	2,900	2870
3001-3200	3,100	3010
3201-3400	3,300	3150
3401-3600	3,500	3290
3601-3900	3,900	3375
3901-4100	4,000	3440
4101-4300	4,200	3570
4301-4500	4,400	3700
4501-4700	4,600	3830
4701-4900	4,800	3960
4901-5100	5,000	4090
5101-5300	5,200	4220
5301-5500	5,400	4350
5501-5700	5,600	4480
5701-5900	5,800	4610
5901-6300	6,300	4620
6301-6500	6,400	4680
6501-6700	6,600	4800
6701-6900	6,800	4920
6901-7100	7,000	5040
7101-7300	7,200	5160
7301-7500	7,400	5280
7501-11400	11,400	5400
11401-11600	11,500	5440
11601-11800	11,700	5520
11801-12000	11,900	5600
12001-12200	12,100	5680

Gross Salary Band	Average/Mid Point Gross Salary	SPF Pension Amount wef 01.01.2012
(A)	(B)	(C)
12201-12400	12,300	5760
12401-12600	12,500	5840
12601-12800	12,700	5920
12801-13000	12,900	6000
13001-13200	13,100	6080
13201-13400	13,300	6160
13401-13600	13,500	6240
13601-13800	13,700	6320
13801-14000	13,900	6400
14001-14200	14,100	6480
14201-14400	14,300	6560
14401-14600	14,500	6640
14601-14800	14,700	6720
14801-15000	14,900	6800
15001-15200	15,100	6880
15201-15400	15,300	6960
15401-15600	15,500	7040
15601-15800	15,700	7120
15801-16000	15,900	7200
16001-16200	16,100	7280
16201-16400	16,300	7360
16401-16600	16,500	7440
16601-16800	16,700	7520
16801-17000	16,900	7600
17001-17200	17,100	7680
17201-17400	17,300	7760
17401-17600	17,500	7840
17601-17800	17,700	7920
17801-18000	17,900	8000
18001-18200	18,100	8080
18201-18400	18,300	8160
18401-18600	18,500	8240
18601-18800	18,700	8320
18801-19000	18,900	8400
19001-19200	19,100	8480
19201-19400	19,300	8560
19401-19600	19,500	8640
19601-19800	19,700	8720

Gross Salary Band (A)	Average/Mid Point Gross Salary (B)	SPF Pension Amount wef 01.01.2012 (C)
19801-20000	19,900	8800
20001-20200	20,100	8880
20201-20400	20,300	8960
20401-20600	20,500	9040
20601-20800	20,700	9120
20801-21000	20,900	9200
21001-21200	21,100	9280
21201-21400	21,300	9360
21401-21600	21,500	9440
21601-21800	21,700	9520
21801-22000	21,900	9600
22001-22200	22,100	9680
22201-22400	22,300	9760
22401-22600	22,500	9840
22601-22800	22,700	9920
22801-23000	22,900	10000
23001-23200	23,100	10080
23201-23400	23,300	10160
23401-23600	23,500	10240
23601-23800	23,700	10320
23801-24000	23,900	10400
24001-24200	24,100	10480
24201-24400	24,300	10560
24401-24600	24,500	10640
24601-24800	24,700	10720
24801-25000	24,900	10800
25001-25200	25,100	10880
25201-25400	25,300	10960
25401-25600	25,500	11040
25601-25800	25,700	11120
25801-26000	25,900	11200
26001-26200	26,100	11280
26201-26400	26,300	11360
26401-26600	26,500	11440
26601-26800	26,700	11520
26801-27000	26,900	11600
27001-27200	27,100	11680
27201-27400	27,300	11760

Gross Salary Band (A)	Average/Mid Point Gross Salary (B)	SPF Pension Amount wef 01.01.2012 (C)
27401-27600	27,500	11840
27601-27800	27,700	11920
27801-28000	27,900	12000
28001-28200	28,100	12080
28201-28400	28,300	12160
28401-28600	28,500	12240
28601-28800	28,700	12320
28801-29000	28,900	12400
29001-29200	29,100	12480
29201-29400	29,300	12560
29401-29600	29,500	12640
29601-29800	29,700	12720
29801-30000	29,900	12800
30001-30200	30,100	12880
30201-30400	30,300	12960
30401-30600	30,500	13040
30601-30800	30,700	13120
30801-31000	30,900	13200
31001-31200	31,100	13280
31201-31400	31,300	13360
31401-31600	31,500	13440
31601-31800	31,700	13520
31801-32000	31,900	13600
32001-32200	32,100	13680
32201-32400	32,300	13760
32401-32600	32,500	13840
32601-32800	32,700	13920
32801-33000	32,900	14000
33001-33200	33,100	14080
33201-33400	33,300	14160
33401-33600	33,500	14240
33601-33800	33,700	14320
33801-34000	33,900	14400
34001-34200	34,100	14480
34201-34400	34,300	14560
34401-34600	34,500	14640
34601-34800	34,700	14720
34801-35000	34,900	14800

Gross Salary Band	Average/Mid Point Gross Salary	SPF Pension Amount wef 01.01.2012
(A)	(B)	(C)
35001-35200	35,100	14880
35201-35400	35,300	14960
35401-35600	35,500	15040
35601-35800	35,700	15120
35801-36000	35,900	15200
36001-36200	36,100	15280
36201-36400	36,300	15360
36401-36600	36,500	15440
36601-36800	36,700	15520
36801-37000	36,900	15600
37001-37200	37,100	15680
37201-37400	37,300	15760
37401-37600	37,500	15840
37601-37800	37,700	15920
37801-38000	37,900	16000
38001-38200	38,100	16080
38201-38400	38,300	16160
38401-38600	38,500	16240
38601-38800	38,700	16320
38801-39000	38,900	16400
39001-39200	39,100	16480
39201-39400	39,300	16560
39401-39600	39,500	16640
39601-39800	39,700	16720
39801-40000	39,900	16800
40001-40200	40,100	16880
40201-40400	40,300	16960
40401 and above	40,500	17000

Capping is set at R17,000 with effect from 01.01.2012.

SCHEDULE 4

Regulation 27

Monthly rates of payment for surviving spouse's pension

Gross Salary Band	Average/Mid Point Gross Salary	Member's Retirement Pension w.e.f 01.01.2012	Surviving spouse's pension payable if spouse is younger than member by 10 years or less 80%	Surviving spouse's pension payable if spouse is younger than member by more than 10 years 70%
(A)	(B)	(C)	(D)	(E)
800-1000	900	2991	2393	2094
1001-1200	1,100	2991	2393	2094
1201-1400	1,300	2991	2393	2094
1401-1600	1,500	2991	2393	2094
1601-1800	1,700	2991	2393	2094
1801-2000	1,900	2991	2393	2094
2001-2200	2,100	2991	2393	2094
2201-2400	2,300	2991	2393	2094
2401-2600	2,500	2991	2393	2094
2601-2800	2,700	2991	2393	2094
2801-3000	2,900	3024	2419	2117
3001-3200	3,100	3178	2543	2225
3201-3400	3,300	3333	2666	2333
3401-3600	3,500	3487	2790	2441
3601-3900	3,900	3581	2865	2507
3901-4100	4,000	3653	2922	2557
4101-4300	4,200	3796	3037	2657
4301-4500	4,400	3939	3151	2757
4501-4700	4,600	4082	3266	2858
4701-4900	4,800	4226	3381	2958
4901-5100	5,000	4369	3495	3058
5101-5300	5,200	4512	3610	3159
5301-5500	5,400	4656	3725	3259
5501-5700	5,600	4799	3839	3359
5701-5900	5,800	4942	3954	3460
5901-6300	6,300	4953	3963	3467
6301-6500	6,400	5020	4016	3514
6501-6700	6,600	5152	4122	3606
6701-6900	6,800	5284	4227	3699
6901-7100	7,000	5417	4333	3792
7101-7300	7,200	5549	4439	3884
7301-7500	7,400	5681	4545	3977
7501-11400	11,400	5813	4651	4069
11401-11600	11,500	5858	4686	4100
11601-11800	11,700	5946	4757	4162
11801-12000	11,900	6034	4827	4224
12001-12200	12,100	6122	4898	4285

Gross Salary Band	Average/Mid Point Gross Salary	Member's Retirement Pension w.e.f 01.01.2012	Surviving spouse's pension payable if spouse is younger than member by 10 years or less 80%	Surviving spouse's pension payable if spouse is younger than member by more than 10 years 70%
(A)	(B)	(C)	(D)	(E)
12401-12600	12,500	6299	5039	4409
12601-12800	12,700	6387	5109	4471
12801-13000	12,900	6475	5180	4532
13001-13200	13,100	6563	5250	4594
13201-13400	13,300	6651	5321	4656
13401-13600	13,500	6740	5392	4718
13601-13800	13,700	6828	5462	4779
13801-14000	13,900	6916	5533	4841
14001-14200	14,100	7004	5603	4903
14201-14400	14,300	7092	5674	4965
14401-14600	14,500	7181	5744	5026
14601-14800	14,700	7269	5815	5088
14801-15000	14,900	7357	5886	5150
15001-15200	15,100	7445	5956	5212
15201-15400	15,300	7533	6027	5273
15401-15600	15,500	7622	6097	5335
15601-15800	15,700	7710	6168	5397
15801-16000	15,900	7798	6238	5459
16001-16200	16,100	7886	6309	5520
16201-16400	16,300	7974	6379	5582
16401-16600	16,500	8063	6450	5644
16601-16800	16,700	8151	6521	5705
16801-17000	16,900	8239	6591	5767
17001-17200	17,100	8327	6662	5829
17201-17400	17,300	8415	6732	5891
17401-17600	17,500	8504	6803	5952
17601-17800	17,700	8592	6873	6014
17801-18000	17,900	8680	6944	6076
18001-18200	18,100	8768	7014	6138
18201-18400	18,300	8856	7085	6199
18401-18600	18,500	8945	7156	6261
18601-18800	18,700	9033	7226	6323
18801-19000	18,900	9121	7297	6385
19001-19200	19,100	9209	7367	6446
19201-19400	19,300	9297	7438	6508
19401-19600	19,500	9386	7508	6570
19601-19800	19,700	9474	7579	6632
19801-20000	19,900	9562	7650	6693
20001-20200	20,100	9650	7720	6755

Gross Salary Band	Average/Mid Point Gross Salary	Member's Retirement Pension w.e.f 01.01.2012	Surviving spouse's pension payable if spouse is younger than member by 10 years or less 80%	Surviving spouse's pension payable if spouse is younger than member by more than 10 years 70%
(A)	(B)	(C)	(D)	(E)
20201-20400	20,300	9738	7791	6817
20401-20600	20,500	9827	7861	6879
20601-20800	20,700	9915	7932	6940
20801-21000	20,900	10003	8002	7002
21001-21200	21,100	10091	8073	7064
21201-21400	21,300	10179	8143	7126
21401-21600	21,500	10268	8214	7187
21601-21800	21,700	10356	8285	7249
21801-22000	21,900	10444	8355	7311
22001-22200	22,100	10532	8426	7372
22201-22400	22,300	10620	8496	7434
22401-22600	22,500	10709	8567	7496
22601-22800	22,700	10797	8637	7558
22801-23000	22,900	10885	8708	7619
23001-23200	23,100	10973	8778	7681
23201-23400	23,300	11061	8849	7743
23401-23600	23,500	11150	8920	7805
23601-23800	23,700	11238	8990	7866
23801-24000	23,900	11326	9061	7928
24001-24200	24,100	11414	9131	7990
24201-24400	24,300	11502	9202	8052
24401-24600	24,500	11591	9272	8113
24601-24800	24,700	11679	9343	8175
24801-25000	24,900	11767	9414	8237
25001-25200	25,100	11855	9484	8299
25201-25400	25,300	11943	9555	8360
25401-25600	25,500	12032	9625	8422
25601-25800	25,700	12120	9696	8484
25801-26000	25,900	12208	9766	8546
26001-26200	26,100	12296	9837	8607
26201-26400	26,300	12384	9907	8669
26401-26600	26,500	12473	9978	8731
26601-26800	26,700	12561	10049	8792
26801-27000	26,900	12649	10119	8854
27001-27200	27,100	12737	10190	8916
27201-27400	27,300	12825	10260	8978
27401-27600	27,500	12914	10331	9039
27601-27800	27,700	13002	10401	9101
27801-28000	27,900	13090	10472	9163
28001-28200	28,100	13178	10542	9225

Gross Salary Band	Average/Mid Point Gross Salary	Member's Retirement Pension w.e.f 01.01.2012	Surviving spouse's pension payable if spouse is younger than member by 10 years or less 80%	Surviving spouse's pension payable if spouse is younger than member by more than 10 years 70%
(A)	(B)	(C)	(D)	(E)
28201-28400	28,300	13266	10613	9286
28401-28600	28,500	13355	10684	9348
28601-28800	28,700	13443	10754	9410
28801-29000	28,900	13531	10825	9472
29001-29200	29,100	13619	10895	9533
29201-29400	29,300	13707	10966	9595
29401-29600	29,500	13796	11036	9657
29601-29800	29,700	13884	11107	9719
29801-30000	29,900	13972	11178	9780
30001-30200	30,100	14060	11248	9842
30201-30400	30,300	14148	11319	9904
30401-30600	30,500	14237	11389	9966
30601-30800	30,700	14325	11460	10027
30801-31000	30,900	14413	11530	10089
31001-31200	31,100	14501	11601	10151
31201-31400	31,300	14589	11671	10213
31401-31600	31,500	14678	11742	10274
31601-31800	31,700	14766	11813	10336
31801-32000	31,900	14854	11883	10398
32001-32200	32,100	14942	11954	10459
32201-32400	32,300	15030	12024	10521
32401-32600	32,500	15119	12095	10583
32601-32800	32,700	15207	12165	10645
32801-33000	32,900	15295	12236	10706
33001-33200	33,100	15383	12306	10768
33201-33400	33,300	15471	12377	10830
33401-33600	33,500	15560	12448	10892
33601-33800	33,700	15648	12518	10953
33801-34000	33,900	15736	12589	11015
34001-34200	34,100	15824	12659	11077
34201-34400	34,300	15912	12730	11139
34401-34600	34,500	16001	12800	11200
34601-34800	34,700	16089	12871	11262
34801-35000	34,900	16177	12942	11324
35001-35200	35,100	16265	13012	11386
35201-35400	35,300	16353	13083	11447
35401-35600	35,500	16442	13153	11509
35601-35800	35,700	16530	13224	11571
35801-36000	35,900	16618	13294	11633
36001-36200	36,100	16706	13365	11694

Gross Salary Band	Average/Mid Point Gross Salary	Member's Retirement Pension w.e.f 01.01.2012	Surviving spouse's pension payable if spouse is younger than member by 10 years or less 80%	Surviving spouse's pension payable if spouse is younger than member by more than 10 years 70%
(A)	(B)	(C)	(D)	(E)
36201-36400	36,300	16794	13435	11756
36401-36600	36,500	16883	13506	11818
36601-36800	36,700	16971	13577	11879
36801-37000	36,900	17059	13647	11941
37001-37200	37,100	17147	13718	12003
37201-37400	37,300	17235	13788	12065
37401-37600	37,500	17324	13859	12126
37601-37800	37,700	17412	13929	12188
37801-38000	37,900	17500	14000	12250
38001-38200	38,100	17588	14070	12312
38201-38400	38,300	17676	14141	12373
38401-38600	38,500	17765	14212	12435
38601-38800	38,700	17853	14282	12497
38801-39000	38,900	17941	14353	12559
39001-39200	39,100	18029	14423	12620
39201-39400	39,300	18117	14494	12682
39401-39600	39,500	18206	14564	12744
39601-39800	39,700	18294	14635	12806
39801-40000	39,900	18382	14706	12867
40001-40200	40,100	18470	14776	12929
40201-40400	40,300	18558	14847	12991
40401-40600	40,500	18647	14917	13053
40601-40800	40,700	18735	14988	13114
40801-41000	40,900	18823	15058	13176
41001-41200	41,100	18911	15129	13238
41201-41400	41,300	18999	15199	13300
41401-41600	41,500	19088	15270	13361
41601-41800	41,700	19176	15341	13423
41801-42000	41,900	19264	15411	13485
42001-42200	42,100	19352	15482	13546
42201-42400	42,300	19440	15552	13608
42401 and above	42,500	19550	15640	13685

NOTE:

- (i) The pension payable to all new beneficiaries with effect from 1st January 2012.
- (ii) Only 1/2 of the amount stipulated in columns (D) and (E) or such smaller amount not less than 1/4 of the amount in column (C) (as per deceased member's election if any) shall be payable if the deceased member has children who qualify for a children's pension.

SCHEDULE 5

Regulation 32

Monthly rates of payment for Children's pension

Gross Salary Band	Average/Mid Point Gross Salary	Member's Retirement Pension w.e.f 01.01.2012	Children's Pension Payable 80%
(A)	(B)	(C)	(D)
800-1000	900	2991	2393
1001-1200	1,100	2991	2393
1201-1400	1,300	2991	2393
1401-1600	1,500	2991	2393
1601-1800	1,700	2991	2393
1801-2000	1,900	2991	2393
2001-2200	2,100	2991	2393
2201-2400	2,300	2991	2393
2401-2600	2,500	2991	2393
2601-2800	2,700	2991	2393
2801-3000	2,900	3024	2419
3001-3200	3,100	3178	2543
3201-3400	3,300	3333	2666
3401-3600	3,500	3487	2790
3601-3900	3,900	3581	2865
3901-4100	4,000	3653	2922
4101-4300	4,200	3796	3037
4301-4500	4,400	3939	3151
4501-4700	4,600	4082	3266
4701-4900	4,800	4226	3381
4901-5100	5,000	4369	3495
5101-5300	5,200	4512	3610
5301-5500	5,400	4656	3725
5501-5700	5,600	4799	3839
5701-5900	5,800	4942	3954
5901-6300	6,300	4953	3963
6301-6500	6,400	5020	4016
6501-6700	6,600	5152	4122
6701-6900	6,800	5284	4227
6901-7100	7,000	5417	4333
7101-7300	7,200	5549	4439
7301-7500	7,400	5681	4545
7501-11400	11,400	5813	4651
11401-11600	11,500	5858	4686
11601-11800	11,700	5946	4757
11801-12000	11,900	6034	4827
12001-12200	12,100	6122	4898

Gross Salary Band	Average/Mid Point Gross Salary	Member's Retirement Pension w.e.f 01.01.2012	Children's Pension Payable 80%
(A)	(B)	(C)	(D)
12201-12400	12,300	6210	4968
12401-12600	12,500	6299	5039
12601-12800	12,700	6387	5109
12801-13000	12,900	6475	5180
13001-13200	13,100	6563	5250
13201-13400	13,300	6651	5321
13401-13600	13,500	6740	5392
13601-13800	13,700	6828	5462
13801-14000	13,900	6916	5533
14001-14200	14,100	7004	5603
14201-14400	14,300	7092	5674
14401-14600	14,500	7181	5744
14601-14800	14,700	7269	5815
14801-15000	14,900	7357	5886
15001-15200	15,100	7445	5956
15201-15400	15,300	7533	6027
15401-15600	15,500	7622	6097
15601-15800	15,700	7710	6168
15801-16000	15,900	7798	6238
16001-16200	16,100	7886	6309
16201-16400	16,300	7974	6379
16401-16600	16,500	8063	6450
16601-16800	16,700	8151	6521
16801-17000	16,900	8239	6591
17001-17200	17,100	8327	6662
17201-17400	17,300	8415	6732
17401-17600	17,500	8504	6803
17601-17800	17,700	8592	6873
17801-18000	17,900	8680	6944
18001-18200	18,100	8768	7014
18201-18400	18,300	8856	7085
18401-18600	18,500	8945	7156
18601-18800	18,700	9033	7226
18801-19000	18,900	9121	7297
19001-19200	19,100	9209	7367
19201-19400	19,300	9297	7438
19401-19600	19,500	9386	7508
19601-19800	19,700	9474	7579

Gross Salary Band	Average/Mid Point Gross Salary	Member's Retirement Pension w.e.f 01.01.2012	Children's Pension Payable 80%
(A)	(B)	(C)	(D)
19801-20000	19,900	9562	7650
20001-20200	20,100	9650	7720
20201-20400	20,300	9738	7791
20401-20600	20,500	9827	7861
20601-20800	20,700	9915	7932
20801-21000	20,900	10003	8002
21001-21200	21,100	10091	8073
21201-21400	21,300	10179	8143
21401-21600	21,500	10268	8214
21601-21800	21,700	10356	8285
21801-22000	21,900	10444	8355
22001-22200	22,100	10532	8426
22201-22400	22,300	10620	8496
22401-22600	22,500	10709	8567
22601-22800	22,700	10797	8637
22801-23000	22,900	10885	8708
23001-23200	23,100	10973	8778
23201-23400	23,300	11061	8849
23401-23600	23,500	11150	8920
23601-23800	23,700	11238	8990
23801-24000	23,900	11326	9061
24001-24200	24,100	11414	9131
24201-24400	24,300	11502	9202
24401-24600	24,500	11591	9272
24601-24800	24,700	11679	9343
24801-25000	24,900	11767	9414
25001-25200	25,100	11855	9484
25201-25400	25,300	11943	9555
25401-25600	25,500	12032	9625
25601-25800	25,700	12120	9696
25801-26000	25,900	12208	9766
26001-26200	26,100	12296	9837
26201-26400	26,300	12384	9907
26401-26600	26,500	12473	9978
26601-26800	26,700	12561	10049
26801-27000	26,900	12649	10119
27001-27200	27,100	12737	10190
27201-27400	27,300	12825	10260

Gross Salary Band	Average/Mid Point Gross Salary	Member's Retirement Pension w.e.f 01.01.2012	Children's Pension Payable 80%
(A)	(B)	(C)	(D)
27401-27600	27,500	12914	10331
27601-27800	27,700	13002	10401
27801-28000	27,900	13090	10472
28001-28200	28,100	13178	10542
28201-28400	28,300	13266	10613
28401-28600	28,500	13355	10684
28601-28800	28,700	13443	10754
28801-29000	28,900	13531	10825
29001-29200	29,100	13619	10895
29201-29400	29,300	13707	10966
29401-29600	29,500	13796	11036
29601-29800	29,700	13884	11107
29801-30000	29,900	13972	11178
30001-30200	30,100	14060	11248
30201-30400	30,300	14148	11319
30401-30600	30,500	14237	11389
30601-30800	30,700	14325	11460
30801-31000	30,900	14413	11530
31001-31200	31,100	14501	11601
31201-31400	31,300	14589	11671
31401-31600	31,500	14678	11742
31601-31800	31,700	14766	11813
31801-32000	31,900	14854	11883
32001-32200	32,100	14942	11954
32201-32400	32,300	15030	12024
32401-32600	32,500	15119	12095
32601-32800	32,700	15207	12165
32801-33000	32,900	15295	12236
33001-33200	33,100	15383	12306
33201-33400	33,300	15471	12377
33401-33600	33,500	15560	12448
33601-33800	33,700	15648	12518
33801-34000	33,900	15736	12589
34001-34200	34,100	15824	12659
34201-34400	34,300	15912	12730
34401-34600	34,500	16001	12800
34601-34800	34,700	16089	12871
34801-35000	34,900	16177	12942

Gross Salary Band	Average/Mid Point Gross Salary	Member's Retirement Pension w.e.f 01.01.2012	Children's Pension Payable 80%
(A)	(B)	(C)	(D)
35001-35200	35,100	16265	13012
35201-35400	35,300	16353	13083
35401-35600	35,500	16442	13153
35601-35800	35,700	16530	13224
35801-36000	35,900	16618	13294
36001-36200	36,100	16706	13365
36201-36400	36,300	16794	13435
36401-36600	36,500	16883	13506
36601-36800	36,700	16971	13577
36801-37000	36,900	17059	13647
37001-37200	37,100	17147	13718
37201-37400	37,300	17235	13788
37401-37600	37,500	17324	13859
37601-37800	37,700	17412	13929
37801-38000	37,900	17500	14000
38001-38200	38,100	17588	14070
38201-38400	38,300	17676	14141
38401-38600	38,500	17765	14212
38601-38800	38,700	17853	14282
38801-39000	38,900	17941	14353
39001-39200	39,100	18029	14423
39201-39400	39,300	18117	14494
39401-39600	39,500	18206	14564
39601-39800	39,700	18294	14635
39801-40000	39,900	18382	14706
40001-40200	40,100	18470	14776
40201-40400	40,300	18558	14847
40401-40600	40,500	18647	14917
40601-40800	40,700	18735	14988
40801-41000	40,900	18823	15058
41001-41200	41,100	18911	15129
41201-41400	41,300	18999	15199
41401-41600	41,500	19088	15270
41601-41800	41,700	19176	15341
41801-42000	41,900	19264	15411
42001-42200	42,100	19352	15482
42201-42400	42,300	19440	15552
42401 and above	42,500	19550	15640

Note:

- (i) The pension payable to all new beneficiaries with effect from 1st January 2012.
- (ii) Only 1/2 of the amount stipulated in Columns (D) or such bigger amount not more than 3/4 of the amount in column (C) (as per deceased member's election if any) shall be payable if the deceased member has a surviving spouse who qualifies for a surviving spouse's pension.

SCHEDULE 6

Regulation 35

Life Certificate

I certify that Mr/Mrs/Ms holder of passport
No..... Issued by the Government was
present before me on and countersigned/placed his/her mark on
this certificate in my presence

Dated this..... day of 2005

Signature of person certifying.....

Name:.....

Designation:.....

Address:.....

Seal:.....

.....
Signature or mark of pensioner

To be certified by one of the following persons:

1. ***Branch Bank Manager***
2. ***Attorney at law or Notary Public***
3. ***Judicial Officer***
4. ***Medical Practitioner***
5. ***Priest or equivalent***

MADE this day of2005.

**J.A. MICHEL
PRESIDENT**



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$5,64

WINDHOEK - 6 December 1994

No. 992

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GOVERNMENT NOTICE

No. 235 Promulgation of Social Security Act, 1994 (Act 34 of 1994), of the

Parliament 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 235

1994

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 34 of 1994: Social Security Act, 1994.

ACT

To provide for the establishment, constitution and powers duties and functions of the Social Security Commission; to provide for the payment of maternity leave benefits, sick leave benefits and death benefits to employees and to establish for that purpose the Maternity Leave, Sick Leave and Death Benefit Fund; to provide for the payment of medical benefits to employees and to establish for that purpose the National Medical Benefit Fund; to provide for the payment of pension benefits to retired employees and to establish for that purpose the National Pension Fund; to provide for the funding of training schemes for disadvantaged, unemployed persons and to establish for that purpose the Development Fund; and to provide for incidental matters.

(Signed by the President on 30 November 1994)

ARRANGEMENT OF SECTIONS

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Introductory provisions

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2. Application of Act.

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6. Vacation of office by members of Commission.
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32. Establishment of National Medical Benefit Fund.
33. Medical benefits payable.

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36. Transfer of membership and contributions.

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37. Establishment of Development Fund.

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41. Certain documents exempt from stamp duty.
42. Exemption from income tax.
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45. Appeals against decisions of Commission.
46. Notices.
47. Regulations.
48. Delegation.
49. Penalties.
50. Short title and commencement.

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

PART I

Introductory provisions

Definitions.

1. In this Act, unless the context otherwise indicates -

"actuary" means any Fellow of an institute, faculty or society of actuaries approved by the Minister;

"authorized person" means any person authorized under section 38 to exercise or perform the powers, duties and functions contemplated in that section;

"benefit" means any benefit, grant, aid or advantage of any kind derived from any fund in terms of the provisions of this Act;

"Commission" means the Social Security Commission established by section 3;

"committee" means any committee of the Commission established under section 11 (1);

"contribution" means an amount paid or payable by an employer or employee to any fund concerned in terms of this Act;

"death benefits" means death benefits payable in terms of section 31;

"dependant", in relation to a member of any fund, means-

- (a) a person in respect of whom the member is legally liable for maintenance, including the spouse, natural children or adopted children of the member;
- (b) a person in respect of whom the member is not legally liable for maintenance, if such person was, in the opinion of the Commission, upon the death of the member in fact dependent on the member for maintenance; or

- (c) a person in respect of whom the member would have become legally liable for maintenance, had the member not died;

"Development Fund" means the Development Fund established by section 37;

"employee" means any person younger than 65 years, who -

(a) is employed by or working for any employer; or

(b) in any manner assists in the carrying on or the conducting of the business of an employer,

for more than two days in any week, and who is receiving or is entitled to receive any remuneration in respect thereof, and includes, in the case of an employer who carries on or conducts business mainly within Namibia, any such natural person so employed by, or working for, such employer outside Namibia or assisting such employer in the carrying on or conducting of such business outside Namibia, if such person is a Namibian citizen or lawfully admitted to Namibia for permanent residence therein, and "employed" and "employment" shall have corresponding meanings;

"Employees' Compensation Act" means the Employees' Compensation Act, 1941 (Act 30 of 1941);

"employer" means any person, including the State -

(a) who employs, or provides work for, any person and who remunerates or expressly or tacitly undertakes to remunerate that person;

(b) who permits any person to assist him or her in any manner in the carrying on, or conducting of, his or her business,

and "employ" and "employment" shall have corresponding meanings;

"employers' organization" means an employers' organization registered under section 54 of the Labour Act;

"executive officer" means the executive officer of the Commission appointed under section 12, or any other employee of the Commission designated to act as executive officer under that section;

"financial institution" means -

- (a) any banking institution registered under section 4 of the Banks Act, 1965 (Act 23 of 1965);
- (b) any building society registered under section 4 of the Building Societies Act, 1986 (Act 2 of 1986);
- (c) any insurer registered under section 4 of the Insurance Act, 1943 (Act 27 of 1943);

"fund" means the Development Fund, Maternity Leave, Sick Leave and Death Benefit Fund, National Medical Benefit Fund or National Pension Fund, as the case may be;

"Labour Act" means the Labour Act, 1992 (Act 6 of 1992);

"maternity leave benefits" means maternity leave benefits payable in terms of section 29;

"Maternity Leave, Sick Leave and Death Benefit Fund" means the Maternity Leave, Sick Leave and Death Benefit Fund established by section 28;

"member" in relation to any fund concerned, means an employee who is a member of such fund by virtue of section 21(1);

"Minister" means the Minister of Labour and Human Resources Development;

"National Medical Benefit Fund" means the National Medical Benefit Fund established by section 32;

"National Pension Fund" means the National Pension Fund established by section 34;

"Permanent Secretary" means the Permanent Secretary: Labour and Human Resources Development;

"prescribe" or "prescribed" means prescribe or prescribed by regulation;

"regulation" means any regulation made under this Act;

"retirement age" means the age prescribed as such;

"sick leave benefits" means sick leave benefits payable in terms of section 30;

"State" includes -

(a) any body established by or under any law and -

(i) controlling or being entitled to control by virtue of any such law funds accruing or being entitled to accrue to it as a whole or in part from moneys -

(aa) appropriated for the purposes of those funds or of a loan to the credit of those funds or, in the case of a body with a share capital in which the State or Government of Namibia may, under the law in question take up shares, the taking up of such shares;

(bb) loaned by virtue of a guarantee or approval granted in terms of any law by the President or any Minister;

(ii) which may levy fees for services rendered at a rate, tariff or scale approved or determined in terms of any law by the President or any Minister;

(b) any regional council established under section 2 of the Regional Councils Act, 1992 (Act 22 of 1992);

(c) the council of any area declared or deemed to be declared to be a municipality, town or village under section 3 of the Local Authorities Act, 1992 (Act 23 of 1992);

"this Act" includes the regulations;

"trade union" means a trade union registered under section 54 of the Labour Act.

Application of Act

2. This Act shall apply in relation to every employer, including the State, and every employee.

PART II

Social Security Commission

Establishment of Social Security Commission

3. (1) There is hereby established a commission to be known as the Social Security Commission.

(2) The Commission shall be a juristic person.

Constitution of Commission.

4. (1) The Commission shall consist of -

(a) a person designated by the Minister, who shall be the chairperson;

(b) three representatives of the Government, of whom one shall be nominated by the Minister of Finance, one by the Minister of Health and Social Services and one by the Minister and of whom at least one member shall be a female person;

(c) three persons nominated by the trade unions, and of whom at least one member shall be a female person;

(d) three persons nominated by the employers' organisations, and of whom at least one member shall be a female person.

(2) The Minister shall by notice in the *Gazette* invite employers' organizations and trade unions to nominate persons as members of the Commission under paragraphs (c) and (d) of subsection (1), and to submit such nominations to the Minister within the period stipulated in such notice.

(3) If the employers' organizations or trade unions fail to submit the nominations within the period contemplated in subsection (2), the Minister may, subject to the provisions of paragraphs (c) and (d) of subsection (1), appoint any person as a member of the Commission and any person so appointed shall be deemed to have been appointed in terms of the relevant paragraph.

(4) A person who -

(a) is not a Namibian citizen or lawfully admitted to Namibia for permanent residence therein, and resident in Namibia; or

(b) is an unrehabilitated insolvent,

shall not be appointed as a member of the Commission.

(5) The Minister shall notify the names of the members of the Commission and the dates of commencement of their terms of office in the *Gazette* as soon as possible after the constitution of the Commission or any change in the constitution of the Commission, as the case may be.

(6) The members of the Commission shall from their number elect a deputy chairperson who shall hold office as such during his or her term of office.

(7) The deputy chairperson shall exercise the powers and perform the duties and functions of the chairperson to the extent determined in writing by the Minister and shall, in addition to such powers, duties and functions, exercise such other powers and perform such other duties and functions as may be determined by the Commission from time to time.

Terms of office and conditions of service of members of Commission

5. (1) Subject to section 6, a member of the Commission shall hold office for a period of three years and shall at the expiration of that period be eligible for re-appointment.

(2) A member of the Commission who is not employed in the public service on a full-time basis shall be paid out of moneys appropriated by law such remuneration and allowances, if any, and in respect of a journey undertaken for purposes of the business of the Commission, such subsistence and traveling allowances, as may be determined by the Minister after consultation with the Commission.

(3) The remuneration and allowances determined under subsection (2) may differ according to the office held by the member of the Commission concerned or the functions performed by him or her.

(4) Upon the appointment of the Commission the Minister may, in addition to the remuneration and allowances payable in terms of subsection (2), determine further conditions of service in respect of such member after consultation with the Commission.

Vacation of office by
members of Commission.

6. (1) A member of the Commission shall vacate his or her office if such member -

- (a) by writing under his or her hand addressed and delivered to the Permanent Secretary, resigns from his or her office as a member of the Commission;
- (b) is in any country convicted of an offence and sentenced to imprisonment without the option of a fine;
- (c) without the leave of the chairperson, absents himself or herself from three consecutive meetings of the Commission;
- (d) becomes subject to any disqualification contemplated in section 4(4);
- (e) is removed from office under subsection (2).

(2) The Minister may remove any member of the Commission from office if the Minister is satisfied that such member-

- (a) is by reason of his or her physical or mental condition or for any other reason incapable of acting as a member of the Commission;
- (b) is guilty of conduct which renders him or her unsuitable to continue to hold office as a member; or
- (c) has failed to comply with any provision of this Act or any condition of service determined under section 5(4).

Filling of vacancies

7. Any casual vacancy on the Commission caused by the vacation of office by or death of any member of the Commission shall, with due regard to the provisions of section 4, be filled for the unexpired portion of the period of office of such former member.

Meetings and decisions of
Commission.

8. (1) Subject to subsection (2), a meeting of the Commission shall be held not less than once every three months at such time and place as the chairperson may determine.

(2) The Minister may at any time, and the chairperson shall, if instructed by the Minister or requested in writing by the executive officer or by not less than three members of the Commission, convene a special meeting of the Commission.

(3) The majority of the members of the Commission shall form a quorum.

(4) The chairperson shall preside at all meetings of the Commission and in his or her absence, the deputy chairperson shall preside.

(5) If both the chairperson and deputy chairperson are absent from any meeting, the members of the Commission present shall elect one from their number to preside at that meeting and the member so presiding shall have the powers and perform the duties and functions of the chairperson.

(6) The decision of a majority of the members of the Commission present at a meeting of the Commission shall be a decision of the Commission and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(7) No decision taken by, or act performed under the authority of, the Commission shall be invalid by reason only of a vacancy on the Commission, or by reason only of the fact that any person who is not entitled to sit as a member of the Commission sat as a member of the Commission when the decision was taken or the act was authorized, if the decision was taken or the act authorized by the required majority of the members of the Commission who were present at the meeting and entitled to sit as members.

(8) The Commission shall cause a record to be kept of the proceedings of its meetings.

(9) The Minister may make rules in relation to the holding of and procedure at meetings of the Commission.

Powers, duties and functions
of Commission.

9. (1) Subject to the provisions of this Act, the powers, duties and functions of the Commission shall be -

- (a) to administer the funds established by this Act or by or under any other law, the administration of which are assigned to the Commission;
- (b) to make recommendations to the Minister regarding the application of this Act, amendments thereto and the making of regulations;
- (c) to advise the Minister on any power, duty or function which may be required to be exercised or performed in terms of this Act;
- (d) to inquire into and advise the Minister on matters relating to social security in Namibia including the administration of any fund or scheme, whether established by this Act or any other law, and the determination of contributions and benefits;
- (e) to acquire, hire and improve property required for the exercise and performance of such powers, duties and functions and, with the approval of the Minister and the Minister of Finance, dispose of such property;
- (f) with the approval of the Minister, to borrow money on the security of the assets of the Commission, or accept and administer any trust or donation;
- (g) to exercise such other powers and perform such other duties and functions as may be provided for in this Act or any other law,

and generally, to do all such things as the Commission considers necessary or expedient in order to achieve the objects of this Act.

- (2) (a) The Minister may, until such time as the Commission has been properly constituted under section 4, exercise any power and perform any duty or function conferred or imposed in terms of this Act or any other law upon the Commission.

- (b) Any power exercised and any duty or function performed by the Minister by virtue of the provisions of this subsection shall be deemed to have been so exercised or performed by the Commission.

Agreements

10. (1) Subject to subsection (2), the Commission may, subject to such conditions as may be determined by the Commission with the concurrence of the Minister, enter into an agreement with any financial institution or other institution approved by the Minister for the purpose of administering any fund or scheme contemplated in paragraph (a) of subsection (1) of section 9.

(2) The Commission may enter into an agreement with the State, any financial institution, regional council or other council referred to in paragraphs (b) and (c) respectively, of the definition of "state" in section 1 or the employer of the person concerned, providing for, on such terms and conditions as may be agreed upon -

- (a) the disbursement of benefits payable out of any fund referred to in subsection (1) to any person entitled thereto; and
- (b) the collection of contributions payable to any such fund by any person.

(3) The Minister may, with the concurrence of the competent authority, and subject to and on such terms and conditions as may be agreed upon, make State land or land controlled by the State or any facilities thereon or any other movable property available for -

- (a) the performance of the functions of the Commission;
- (b) the conducting of any schemes referred to in paragraph (a) of section 37(4); and
- (c) any such other purposes as may be approved by the Minister.

Committees of
Commission

11. (1) The Commission may establish such committees as it considers necessary, which shall, subject to the instructions of the Commission, investigate and report to the Commission on any matter falling within the scope of the functions of the Commission.

(2) A committee shall consist of -

(a) any number of members of the Commission of whom one shall be designated as chairperson of the committee; and

(b) such number of other persons as the Commission considers necessary,

and the Commission may at any time dissolve or reestablish a committee.

(3) The provisions of section 5(2), (3) and (4) shall apply *mutatis mutandis* to a member of a committee appointed under this section.

Executive officer and other employees.

12. (1) The Commission shall, after consultation with the Minister, appoint an executive officer for the performance of the functions of the Commission who shall hold office for a period of five years and be eligible for re-appointment at the expiration of that period.

(2) The Commission shall determine the remuneration and other conditions of service of the executive officer and his or her service benefits, including the provision or supply of medical aid benefits, housing facilities or benefits and the provision for and payment of gratuities and pensions.

(3) Section 6 shall apply *mutatis mutandis* to the executive officer.

(4) If the executive officer is unable to perform his or her functions, the chairperson of the Commission may designate any other employee in the employment of the Commission to act as executive officer until the executive officer can resume his or her functions.

(5) The Commission may appoint such other employees as it considers necessary to assist the executive officer in the performance of the functions of the Commission.

(6) The Commission may in consultation with the Minister determine the remuneration and other conditions of service of the employees, and their service benefits, including provision or supply of medical aid benefits, housing facilities or benefits and the provision for and payment of gratuities and pensions.

(7) The Commission may, in addition to the employees referred to in subsection (5) and on such conditions as may be agreed upon, obtain the services of any competent person, including, subject to section 17, an actuary, to advise the Commission in connection with or assist it in the performance of its functions.

(8) Any person outside the employment of the Commission may, on such conditions as may be determined by it, be employed for any particular service or for any period of time.

(9) The power to make appointments under this section shall be subject to section 58 of the Employees' Compensation Amendment Act, 1994.

Duty of member to disclose interest

13. (1) A member or employee of the Commission who or whose spouse in any way has a material interest in an agreement entered into or to be entered into by the Commission, or who or whose spouse acquires such interest after such agreement has been entered into, shall disclose to the Commission full particulars of such interest.

(2) The disclosure of an interest shall be in writing and shall be submitted to the executive officer at or before the meeting of the Commission at which the issue of entering into the particular agreement is considered for the first time, or if the interest is acquired after that agreement has been entered into, at or before the first meeting of the Commission to be held after the acquiring of such interest.

(3) The disclosure of an interest under this section shall be entered in the minutes of the meeting of the Commission at which such disclosure is submitted.

(4) Any member or employee of the Commission who fails to comply with the provisions of this section shall be guilty of an offence.

Limitation of liability

14. Neither the Commission, nor any person engaged in carrying out any provision of this Act, shall be liable in respect of anything done or omitted in good faith and not attributable to intent or negligence in the exercise of a power or the performance of a duty or function under or by virtue of this Act or in respect of anything that may result therefrom.

Preservation of
secrecy.

15. (1) Every person engaged in carrying out any provision of this Act shall preserve and aid in preserving secrecy in relation to all matters that may come to his or her knowledge in the exercise of the powers or the performance of the duties and functions conferred or imposed upon him or her in terms of any provision of this Act, and shall not communicate any such matter to any other person or permit any other person to have access to any documents in his or her possession or custody, except in so far as any such communication -

- (a) is made in the ordinary course of the exercise of his or her powers or the performance of his or her duties under this Act or any other law, or is required by an order of a competent court;
- (b) is effected with the prior permission in writing of the person concerned.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence.

PART III

Administration of funds

Administration of funds.

16. (1) The Commission shall, in accordance with sound business principles, administer every fund referred to in paragraph (a) of subsection (1) of section 9.

- (2) (a) The Commission shall in respect of every such fund, open a current account with a banking institution registered under section 4 of the Banks Act, 1965 (Act 23 of 1965), into which shall be deposited all moneys accruing to the fund concerned.
- (b) No moneys shall be withdrawn from any such account except by means of cheques signed by the executive officer and one other employee of the Commission specifically authorised thereto by the Commission, or by two such employees so authorized.

(3) The Commission may, after consultation with the Minister, invest such moneys of any fund administered by it which are not required to meet administrative expenses or the payment of benefits under this Act -

- (a) with any financial institution;
- (b) with the Post Office -Savings Bank controlled and managed by Namibia Post Limited established by section 2 of the Posts and Telecommunications Companies Establishment Act, 1992 (Act 17 of 1992);
- (c) with such other institution approved by the Minister;
- (d) in any shares, securities, stocks, property or commercial enterprise approved by the Minister.

(4) The Commission shall, in accordance with such equitable principles and accounting principles relating to the allocation of administrative expenses as it may determine after consultation with the Auditor-General, recover such expenses from every such fund.

(5) The Commission shall not apply any moneys accruing to a particular fund for the payment of benefits, which are payable out of moneys accruing to another fund.

(6) For the purposes of this section, "administrative expenses" means all expenses incurred in the administration of any fund and includes -

- (a) the payment of remuneration, allowances or fees due to members of the Commission and of any committee, the executive officer and other employees of the Commission and persons contemplated in section 12(7);
- (b) the cost of property acquired and all other expenses incurred which are necessary and incidental to the exercise and performance of the powers, duties and functions of the Commission.

17. The assets of every fund shall be valued and its liabilities be determined -

- (a) during the first three financial years after the commencement of this Act, once in every such financial year;
- (b) thereafter at such times as may be considered necessary by the Commission, but not less than once every three years,

by an actuary appointed by the Minister in order to determine the sufficiency of such fund.

Accounting responsibility.

18. (1) The executive officer shall be the accounting officer of the Commission, and as such shall be charged with the responsibility of accounting for all moneys received, the utilization thereof and the use and care of the property of the Commission.

(2) The accounting officer shall cause such records of account to be kept as are necessary to represent fairly the state of affairs and business of the Commission and any fund, and to explain the transactions and financial position of the Commission and such fund.

Auditing, furnishing of information and reports.

19. (1) The Auditor-General shall audit the books of account, accounting statements and annual financial statements of the Commission and every fund and shall submit a copy of his or her report on such audit to the Commission.

(2) The Commission shall furnish the Minister with such information as the Minister may call for from time to time in connection with the activities and financial position of the Commission and any fund and shall as soon as practicable after the end of each financial year contemplated in subsection (4), submit to the Minister in respect of the financial year concerned, copies of -

- (a) the audited balance sheet and profit and loss accounts and the report of the Auditor-General; and
- (b) a report by the Commission on its activities during that financial year.

(3) The financial statements and reports submitted to the Minister in terms of subsection (1), shall be tabled in the National Assembly by the Minister within 30 days after

receipt thereof, if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within **14** days after the commencement of its next ordinary session.

(4) The financial year of the Commission shall end on the last day of February in each year.

PART IV

Registration and membership of funds

Registration

20. (1) Subject to subsection (3), every employer shall, in the prescribed manner and within the prescribed period, register -

- (a) himself or herself with the Commission as an employer; and
- (b) every employee employed by him or her, as an employee,

for the purposes of this Act.

(2) Notwithstanding subsection (1), a self-employed person who does not employ any other person may, in the prescribed manner, voluntarily register himself or herself under that subsection as an employer and employee for the purposes of this Act.

(3) The name and such other prescribed particulars of every employer and employee registered under this section shall be recorded in a prescribed register to be kept by the Commission, and a prescribed certificate of registration, which shall, in the case of an employee, be known as a social security card, shall be issued to every employer and employee so registered.

(4) Any person who fails to comply with subsection (1) shall be guilty of an offence.

Membership of funds and
payment of contributions

21. (1) Every employee registered under section 20 shall be a member of _

- (a) the Maternity Leave, Sick Leave and Death Benefit Fund;

(b) the National Medical Benefit Fund, except if he or she is a member of any other medical fund or scheme approved by the Minister on recommendation of the Commission;

(c) the National Pension Fund, except if he or she is a member of any other pension fund or scheme approved by the Minister on recommendation of the Commission.

(2) Subject to the provisions of this section, every employer and employee contemplated in subsection (1) shall be liable in respect of the prescribed contributions payable by every such employer and employee to every fund of which the employee is a member.

(3) Different contributions contemplated in subsection (2) may be prescribed in respect of different categories of employers or employees.

(4) An employer shall, subject to the regulations contemplated in subsection (2), deduct the contributions payable by his or her employee from such employee's remuneration and pay it, together with the contributions payable by him or her as employer, over to the Commission within the prescribed period.

(5) A self-employed person registered as an employee in terms of section 20 shall pay both the contributions payable by an employer and an employee as contemplated in subsection (2).

(6) Subject to the provisions of this section, no claim for any benefit payable under this Act shall be considered by the Commission unless -

(a) the person to whom such claim relates has been a member of the fund concerned for a continuous period of at least six months before the date on which such claim arose; and

(b) all contributions payable in respect of his or her membership of such fund have been paid in full.

(7) The Commission shall, notwithstanding anything to the contrary in any law contained -

- (a) where paragraph (a) of subsection (6) had been complied with in respect of the employee concerned, not refuse any claim referred to in that subsection if, in the case of -
 - (i) an employee who, subsequent to his or her dismissal from his or her employment or his or her subjection to disciplinary action, was reinstated or re-employed by his or her employer, whether by virtue of an order contemplated in section 46(1) of the Labour Act, or by virtue of a settlement agreed between such employee and his or her employer, the contributions contemplated in paragraph (b) of that subsection were not paid over because of his or her dismissal or of disciplinary action taken against him or her prior to the reinstatement or re-employment by such employer or the issue of such order, as the case may be;
 - (ii) an employer who failed to pay over the full amount of such contributions, the employee concerned submits proof to the satisfaction of the Commission that the contributions deductible from his or her remuneration were in fact so deducted;
- (b) where the said subsection (6) had not been complied with in respect of any female person concerned, not refuse any claim for maternity benefits if the failure to so comply was due to the termination of her employment by her employer within a period of three months before the actual date of confinement;
- (c) not refuse any claim which arose within the period of six months following immediately upon the date of commencement of this Act, if -
 - (i) such claim is submitted within the period of 12 months following immediately upon such date of commencement; and

- (ii) all contributions payable in respect of the membership of the employee concerned have been paid in full in respect of the continuous period of six months preceding the date on which such claim for such benefits is submitted.

(8) Notwithstanding subsection (6) and without prejudice to subsection (7)(b), the Commission shall accept a claim for any benefit under this Act submitted by any person who, by reason of the termination of his or her employment, has ceased to be a member of the fund and to pay the contributions contemplated in paragraph (b) of the said subsection (6): Provided that -

- (a) such person, at the time when he or she ceased to be such a member, complied with the said subsection (6); and
- (b) such claim is submitted within the period prescribed for the purposes of this subsection following the cessation of his or her membership.

(9) Any person who ceases to be a member by reason of the termination of his or her employment and who, at the time that he or she so ceases to be a member, complied with subsection (6), shall, if he or she resumes his or her membership of the fund concerned within the period prescribed for the purposes of this subsection, be deemed, for the purposes of the said subsection (6), not to have ceased to be such a member or to have paid the contributions contemplated in that subsection.

(10) Different periods may be prescribed under subsections (8) and (9) in respect of different periods of employment served before the cessation of membership contemplated in those subsections.

(11) An employer who recovers from an employee any contribution or any portion thereof which is payable by the employer in respect of that employee, shall be guilty of an offence.

(12) An employer who deducts any contribution from the remuneration of an employee and fails to pay over such contribution to the Commission within the prescribed period, shall be guilty of an offence.

Keeping of records and
furnishing of returns by
employer

22. (1) An employer shall, in addition to the records to be kept under section 4 of the Labour Act, keep in respect of every employee employed by him or her, whether or not such employee has been registered in terms of section 20, records in the prescribed form of the contributions deducted from the employee's remuneration and which have been paid over to the Commission in terms of section 21(4) and such other particulars as may be prescribed.
- (2) An employer shall retain the records referred to in subsection (1) and any other prescribed documents relating to the payment of contributions at his or her place of business in Namibia for a period of five years, and shall keep such records or documents available for inspection on demand by an authorized person or the employee concerned.
- (3) An employer shall, when paying over contributions to the Commission, submit to the Commission a return in the prescribed form containing the prescribed particulars in respect of the period for which such payment is being made.
- (4) Any person who fails to comply with any provision of this section shall be guilty of an offence.

23. (1) Any-

- (a) employer who fails to pay the contributions referred to in, and within the period prescribed under section 21;
- (b) person who, with intent to evade the payment of contributions referred to in section 21 or to reduce the amount of such contributions or to assist any other person in avoiding such payment or in reducing such amount -
- (i) makes or causes or allows to be made any false statement or false entry in a return referred to in section 22, or signs any such return without reasonable grounds for believing the contents or any part thereof to be true;

- (ii) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or authorizes the falsification of any books of account or other records;
- (iii) gives any false answer, whether orally or in writing, to any request for information made under this Act by the Commission, any committee thereof or any authorized person; or
- (iv) makes use of any fraud, art or contrivance whatsoever, or authorizes the use of such fraud, art or contrivance,

shall be guilty of an offence.

(2) Any person found guilty of an offence referred to in subsection (1) shall on conviction be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Interest levied on late
payment of contributions.

24. If an employer fails to pay the contributions referred to in, and within the period prescribed under, section 21, interest shall be payable on such arrear contributions at such rate, calculated from such date and at such intervals as may be prescribed.

Failure to pay, and recovery
of, contributions.

25. (1) Any contribution or interest payable in terms of section 21 or 24, respectively, shall, when such contribution or interest becomes due or is payable, be a debt due and payable to the Commission.

- (2) (a) If an employer fails to pay any contribution or interest when it becomes due or is payable, the executive officer may, irrespective of whether any criminal proceedings contemplated in section 21(12) have been instituted against such employer, file with the clerk or registrar, as the case may be, of any competent court a statement in the prescribed form certified by the executive officer as correct and setting forth the amount of the contributions or interest so due or payable by such employer, and the statement shall thereupon have the effect of, and any proceedings may be

taken thereon as if it were, a civil judgement granted by the court concerned in favour of the Commission for a liquid debt in the amount specified in the statement.

(b) The executive officer shall not file any statement referred to in paragraph (a), unless -

(i) he or she has, *mutatis mutandis* in the manner prescribed by section 39(4), (5) and (6), caused to be served upon the employer concerned a notice in the prescribed form claiming payment of such contributions or interest within 21 days from the date of such service; and

(ii) the said period of 21 days has expired.

(3) The executive officer may, by written notice addressed and delivered to the said clerk or registrar, withdraw any statement referred to in subsection (2) whereupon that statement shall, subject to subsection (4), cease to have any effect.

(4) The executive officer may, notwithstanding the withdrawal of a statement by him or her under subsection (3), at any time institute proceedings afresh under subsection (2) in respect of any contribution or interest referred to in the withdrawn statement.

(5) Notwithstanding section 46 of the Magistrate's Courts Act, 1944 (Act 32 of 1944), the amount of any contributions or interest due or payable by an employer may, for the purposes of filing a statement under subsection (2), exceed the amount provided for in that section.

(6) Subject to the Insolvency Act, 1936 (Act 24 of 1936), and the Companies Act, 1973 (Act 61 of 1973), the executive officer may institute proceedings for the sequestration of the estate or the winding-up, as the case may be, of any employer in respect of whom a statement has been filed in terms of subsection (2), and for such purpose the executive officer shall be deemed to be the creditor in respect of any contributions or interest due or payable by that employer.

Discharge from liability

26. (1) No person shall be discharged from liability in respect of any moneys due to any fund without the authorization of the Commission.

(2) The Commission shall in every report referred to in paragraph (b) of subsection (2) of section 19 include particulars of any liability discharged under subsection (1) and its reasons therefore.

Principals and contractors

27. (1) If any person (in this section referred to as the principal) in the course of or for the purposes of his or her business operations enters into an agreement with any other person (in this section referred to as the contractor) for the execution by or under the supervision of the contractor of the whole or any part of any work undertaken by the principal, any employee engaged in such work shall be deemed to be the employee of the principal unless and until the employee has been registered under section 20(1) as the employee of that contractor and all contributions payable in respect of the employee have been paid.

(2) A principal who is held liable to pay any contributions by virtue of subsection (1) for which an employer is liable under this Act, may recover the amount thereof from the contractor concerned.

(3) A principal shall, after the registration of the employee of a contractor contemplated in subsection (1), ensure that any contribution payable by the contractor is duly paid, failing which the principal shall be personally liable in respect of such contribution.

(4) The Commission may upon the request of the principal, issue the principal with a prescribed certificate in which shall be stated whether the contractor -

(a) has been registered as an employer;

(b) has paid all contributions due by him or her,

in respect of the work contemplated in subsection (1) and any employee concerned.

PART V

Maternity Leave, Sick Leave and
Death Benefit Fund

Establishment of Maternity
Leave, Sick Leave and
Death Benefit Fund.

28. (1) There is hereby established a fund to be known as
the Maternity Leave, Sick Leave and Death Benefit Fund.

(2) The Fund shall be a juristic person.

(3) There shall be paid into the Fund -

(a) the prescribed contributions payable to the Fund;

(b) moneys appropriated by Parliament for the purposes
of the Fund;

(c) any interest or dividend earned in terms of section 16;

(d) any fines paid by virtue of penalties imposed under
this Act in respect of an offence involving the Fund;

(e) any other moneys which may accrue to the Fund from
any other source.

(4) The Fund shall, subject to the provisions of this Act,
be applied to provide -

(a) maternity leave benefits to every female employee;

(b) sick leave benefits to every employee; and

(c) death benefits to the dependants of every employee,

who is a member of the Fund by virtue of subsection (1)(a) of
section 21 and who has complied with the other provisions of
that section.

SOCIAL SECURITY ACT, 1994

Conditions relating to
maternity leave benefits

29. (1) Subject to the provisions of this section, maternity leave benefits as prescribed shall be payable to a female member in respect of -

- (a) the period of four weeks before the expected date of her confinement, certified in writing by a medical practitioner to be such expected date; and
- (b) the period of eight weeks after the actual date of her confinement.

(2) Notwithstanding subsection (1), maternity leave benefits shall -

- (a) if the actual date of confinement of any female member precedes the expected date contemplated in subsection (1), be payable in respect of the period of four weeks which precedes such actual date of confinement;
- (b) if such expected date precedes such actual date of confinement, be payable in respect of the period of four weeks contemplated in paragraph (a) of subsection (1) and, in the discretion of the Commission, the number of days equal to the difference between such expected date and such actual date;
- (c) if the child concerned dies within two weeks after the actual date of confinement, be payable in respect of a further period of four weeks only, reckoned from the date of death.

(3) If a female member dies while receiving or being entitled to receive maternity leave benefits, such benefits shall, subject to the provisions of this Act and such conditions as the Commission may determine, be payable to the person in whose care the child concerned of such member is left or placed or any other person who is considered by the Commission to be a fit and proper person to administer such benefits on behalf of such child.

(4) No maternity benefits shall be payable to a female member who resumes her employment or takes up any other employment during any period referred to in this section.

(5) For the purposes of this section, "medical practitioner" means a medical practitioner registered or authorized to practise as a medical practitioner under the Medical and Dental Professions Act, 1993 (Act 21 of 1993), and includes a nurse or midwife registered or authorized to practise as a nurse or midwife under the Nursing Professions Act, 1993 (Act 30 of 1993).

Conditions relating to sick
leave benefits

30. (1) Subject to the provisions of this section, sick leave benefits shall, in respect of a member who was incapable for at least 30 consecutive days, be payable as prescribed in respect of the number of days during which the member concerned was absent from work through incapacity which exceeds the number of days sick leave provided for in section 40 of the Labour Act.

(2) Notwithstanding subsection (1), sick leave benefits shall not be payable in respect of a period of sick leave which exceeds two consecutive years.

(3) The Maternity Leave, Sick Leave and Death Benefit Fund shall, for the purposes of section 40 of the Labour Act, be deemed not to be a fund or organization contemplated in paragraph (a) of subsection (4) of that section.

(4) Notwithstanding the provisions of subsection (1), the Commission may in determining the amount of sick leave benefits payable to a member referred to in that subsection, make allowance for -

- (a) any disability pension referred to in section 2 of the National Pensions Act, 1992 (Act 10 of 1992);
- (b) any compensation referred to in section 38 or 39 of the Employees' Compensation Act, 1941;
- (c) any compensation from a fund or organization contemplated in subsection (3); or
- (d) any compensation or remuneration from his or her employer,

received by such member in respect of the period of sick leave.

(5) For the purposes of paragraph (d) of subsection (4), "remuneration" means the basic wage, salary or commission earned by the member concerned.

Conditions relating to death benefits.

31. (1) Subject to the provisions of this section, the death benefits payable in respect of the death of every member, shall be as prescribed.

(2) Death benefits payable to a dependant by virtue of the death of a member shall, if such dependant is a minor, be paid to his or her guardian or to any other person who is considered by the Commission to be a fit and proper person to administer such benefits on behalf of the dependant.

(3) If a member -

(a) retires or becomes permanently disabled, the full value of the death benefits which would have been payable had the member died on the date of his or her retirement shall be paid to him or her and no further benefits shall be payable;

(b) dies without leaving any dependants, the death benefits shall be paid into his or her deceased estate.

PART VI

National Medical Benefit Fund

32. (1) There is hereby established a fund to be known as the National Medical Benefit Fund.

Establishment of National Medical Benefit Fund.

(2) The Fund shall be a juristic person.

(3) There shall be paid into the Fund -

(a) the prescribed contributions payable to the Fund;

(b) moneys appropriated by Parliament for the purposes of the Fund;

(c) any interest or dividend earned in terms of section 16;

(d) any fines paid by virtue of penalties imposed under this Act in respect of an offence involving the Fund;

(e) any other moneys which may accrue from any other source.

(4) The Fund shall, subject to the provisions of this Act, be applied to provide medical benefits to every employee who is a member of the Fund by virtue of subsection (1)(b) of 21 and who has complied with the other provisions of that section.

(5) The Medical Schemes Act, 1967 (Act 72 of 1967), shall, except in so far as the Minister determines otherwise by notice in the *Gazette*, not apply to the Fund.

Medical benefits payable.

33. The medical benefits payable in respect of medical expenses incurred by any member, shall be as prescribed.

PART VII

National Pension Fund

Establishment of National Pension Fund.

34. (1) There is hereby established a fund to be known as the National Pension Fund.

(2) The Fund shall be a juristic person.

(3) There shall be paid into the Fund -

(a) the prescribed contributions payable to the Fund;

(b) moneys appropriated by Parliament for the purposes of the Fund;

(c) any interest or dividend earned in terms of section 16;

(d) any fines paid by virtue of penalties imposed under this Act in respect of an offence involving the Fund;

(e) any other moneys which may accrue from any other source.

(4) The Fund shall, subject to the provisions of this Act, be applied to provide pension benefits to every employee who is a member of the Fund by virtue of subsection (1)(c) of 21 and who has complied with the other provisions of that section.

(5) Subject to subsection (6), the Pension Funds Act, 1956 (Act 24 of 1956), shall, except in so far as the Minister determines otherwise by notice in the *Gazette*, not apply to the Fund.

(6) The Commission may, *mutatis mutandis* in accordance with section 19 of the said Pension Funds Act, 1956, grant a loan to a member for the purposes contemplated in subsection (5) of that section.

Pension benefits payable

35. The pension benefits payable in respect of the retirement, permanent disability or death of members, shall be as prescribed.

Transfer of membership and contributions.

36. (1) Notwithstanding anything to the contrary in any law contained, any employee who -

(a) is also a member of any pension or provident fund registered under section 4 of the said Pension Funds Act, 1956; and

(b) qualifies for membership of the Fund,

may at any time have his or her membership of, and the contributions made by him or her or on his or her behalf to, such pension or provident fund, transferred to the Fund.

(2) The procedures relating to the transfer of membership and contributions in terms of subsection (1), shall be as prescribed.

PART VIII

Development Fund

37. (1) There is hereby established a fund to be known as the Development Fund.

Establishment of Development Fund.

- (2) The said Fund shall be a juristic person.
- (3) There shall be paid into the Fund -
- (a) such portion of the prescribed contributions payable to any other fund as may be determined by the Commission with the concurrence of the Minister;
 - (b) moneys appropriated by Parliament for the purposes of the Fund;
 - (c) any interest or dividend earned in terms of section 16;
 - (d) any moneys received by way of donation; and
 - (e) any other moneys which may accrue to the Fund from any other source.
- (4) The Fund shall, subject to the provisions of this Act, be applied for -
- (a) the conducting of training schemes and employment schemes approved by the President for the benefit of socio-economically disadvantaged persons who are unemployed;
 - (b) the granting of bursaries, loans and other forms of financial aid to students enrolled at any technical or academic institution of higher education.

PART IX

General and supplementary provisions

38. (1) This section, in so far as it provides for a limitation on the fundamental rights contemplated in Subarticle (1) of Article 13 of the Namibian Constitution by authorizing interference with the privacy of any person's home, correspondence or communication, is enacted upon the authority conferred by that Subarticle.

(2) The Commission may, for the purposes of the effective application of this Act, at any time authorize any one or more of its employees or, on such terms and conditions as may be determined by mutual agreement, any other person, who shall subject to the direction and control of the Commission, exercise and perform the powers, duties and functions conferred or imposed upon an authorized person by or under this Act and perform such other functions as the Minister may determine.

(3) An authorized person shall at the time of his or her authorization be furnished with a certificate of authorization in the prescribed form.

(4) Subject to subsection (5), an authorized person may, for the purposes of the application of this Act -

(a) *mutatis mutandis* in accordance with chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977), at any reasonable time and without prior notice -

(i) enter any premises which he or she has reason to believe is occupied or used by an employer in connection with any matter to which this Act relates or where any employee is employed;

(ii) search for any book, record, statement, other document or thing used by any employer or which concerns any employee;

(iii) seize or make any copy of or extract from such book, record, statement, other document or thing,

as if such authorised person were a police official referred to in that Act and such book, record, statement, document or thing were concerned in the commission of any offence;

(b) question any employer, employee or other person who is present on any such premises in connection with -

(i) the registration with the Commission of, or the payment of any benefit to, any employee;

- (ii) the payment of contributions in respect of any employee; or
 - (iii) any other matter to which this Act relates;
- (c) direct that such premises or any part thereof or anything therein be left undisturbed, whether generally or in any particular respects, for as long as it is reasonably necessary to search such premises for any book, record, statement, other document or thing prepared or used in connection with any matter to which this Act relates;
- (d) by notice in writing addressed and delivered to any person who has control over or custody of any such book, record, statement, other document or thing which has been prepared or used in connection with any matter to which this Act relates, require such person to produce such book, record, statement, other document or thing to him or her forthwith or at such place, date and time as such authorized person may determine;
- (e) examine any book, record, statement, other document or thing and require from any employer, employee or other person who is present on such premises or exercises control or custody as contemplated in paragraph (d), an explanation regarding any entry in such book, record, statement, other document or thing;
- (f) require a member of the Namibian Police Force, or request any other person, to assist him or her as an interpreter or otherwise in the exercise or performance of his or her powers, duties or functions under this Act.
- (5) When an authorized person exercises or performs a power or duty under this Act in the presence of any person affected thereby, the authorized person shall on demand by such person produce to him or her the certificate issued to such authorized person in terms of subsection (2).
- (6) A member of the Namibian Police Force required, or any other person requested, by an authorized person to assist him or her as provided in subsection (4)(f)

may accompany such authorized person in the exercise or performance of his or her powers, duties or functions as if such member or person were an authorized person.

(7) Any employer, employee or other person in charge of any premises on which persons are employed, shall at all times furnish such assistance as are reasonably required by an authorized person in order to enable him or her to exercise or perform his or her powers, duties or functions effectively on or in any premises occupied or used by such employer, employee or other person.

(8) Whenever any work has been given out on contract to any person by a principal or contractor, any authorized person may exercise in relation to that principal or contractor all the powers in relation to an employer conferred upon an authorized person by this section.

(9) No person shall -

- (a) hinder or obstruct an authorized person in the exercise of or performance of his or her powers, duties or functions;
- (b) refuse or fail to comply to the best of his or her ability with any requirements made by an authorized person in the exercise or performance of his or her powers, duties or functions;
- (c) subject to Article 12(1)(f) of the Namibian Constitution, refuse or fail to answer to the best of his or her ability any question which an authorized person has lawfully put to him or her in the exercise or performance of his or her powers, duties or functions;
- (d) willfully furnish information to an authorized person which is false or misleading;
- (e) falsely give himself or herself out as an authorized person.

(10) Any person who contravenes or fails to comply with subsection (5) or (9) shall be guilty of an offence.

(11) A member of the Commission may, subject to the provisions of this section, exercise any powers which are conferred under this section upon an authorized person.

(12) For the purpose of this section, "premises" include any building or structure, or part thereof, whether above or below the surface of the land or water, or any vehicle, vessel or aircraft.

Inquiries by Commission

39. (1) The Commission shall, for the purposes of this Act, have power to inquire into any matter in relation to -

- (a) any member of any fund;
- (b) any person who has applied for or is receiving any benefit in terms of this Act;
- (c) the employer of such member or person.

(2) The proceedings at such inquiry shall, in so far as is practicable, be minuted verbatim and the minutes of such inquiry shall be certified by the members of the Commission present at such meeting as being a true and accurate account of the evidence given at such inquiry, the exhibits presented and the decision of the Commission.

(3) The minutes referred to in subsection (2) shall be kept for a period of at least five years in safe-custody by the executive officer and shall for the purposes of an appeal in terms of section 45 be *prima facie* proof of the proceedings at such inquiry and the decisions taken by the Commission as a result of such inquiry.

(4) Any person in respect of whom an inquiry is to be held shall be notified in writing of such inquiry at least 21 days before the date of commencement of such inquiry by the delivery to such person of a notice in the prescribed form informing such person of the intended inquiry and the subject-matter thereof and obtaining from him or her an acknowledgement of receipt stating the place, date and time of receipt of the notice.

(5) Service of a notice in terms of subsection (4) shall be performed by -

(a) any person designated for such purpose by the executive officer; or

(b) any member of the Namibian Police Force designated for that purpose by the Inspector-General of the Namibian Police Force.

(6) In the event of the person designated in terms of subsection (5) certifying that the person upon whom the notice is to be served -

(a) cannot be traced;

(b) refuses to accept such notice; or

(c) refuses to sign the required acknowledgement of receipt,

the executive officer may send such notice by registered letter to such person at his or her address as it appears in the records of the Commission.

(7) A notice sent by registered post shall be sent not less than 14 days prior to the date of the intended inquiry.

(8) If the person served with a notice in terms of subsection (4) or to whom a notice has been sent in terms of subsection (6) is not present at the commencement of the inquiry, the Commission may conduct the inquiry in the absence of such person.

(9) For the purpose of an inquiry the Commission may summon witnesses to appear at the specified place, date and time to give evidence before and to submit to the Commission any document, book, record or thing relevant to the inquiry.

(10) A summons contemplated in subsection (9) shall be substantially in the prescribed form and signed by the executive officer and shall be served either by registered letter or in the same manner as it would have been served if it were a subpoena issued by a magistrate's court.

(11) Any person who, having been duly summoned-

(a) refuses, or without sufficient cause fails, to attend the inquiry in question at the place, date and time specified in the summons;

- (b) refuses to take the prescribed oath or to make an affirmation when required to do so by the person presiding at the inquiry;
- (c) leaves the inquiry without the permission of the person presiding at such inquiry, whether or not such person has given evidence;
- (d) refuses to give evidence at the enquiry or refuses to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her or refuses to produce any document, book, record or thing which such person has in terms of the summons been required to produce,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(12) Every person summoned in terms of subsection (9) shall be entitled to all the privileges to which a witness subpoenaed to give evidence before the High Court is entitled.

(13) Any member, person or employer referred to in subsection (1) and who has been notified of an inquiry shall, if he or she is present at such inquiry, have the right, by himself or herself or through a representative referred to in section 44, to be heard at such inquiry, and for such purpose -

- (a) to give evidence under oath or affirmation;
- (b) to call witnesses to testify on his or her behalf;
- (c) to submit any document, book, record or any other thing relevant to the inquiry;
- (d) to examine any witness testifying against him or her.

(14) The Commission may appoint a person with adequate experience in the practice of law to be present at any inquiry and to advise the Commission on matters of law, procedure or evidence.

(15) For the purpose of the computation of any period referred to in subsections (4) and (7), no Saturday, Sunday or public holiday referred to in, or declared under, section 1 of the Public Holidays Act, 1991 (Act 26 of 1991), shall be regarded as a day contemplated in those subsections.

(16) Any person notified or summoned to appear before the Commission may, if the Commission is satisfied that he or she has by reason of such appearance suffered pecuniary loss or been put to any expense, be paid out of the fund concerned the prescribed allowances, or the amount of such loss and expense, whichever is the lesser.

(17) The person in respect of whom an inquiry was held shall, within 30 days after the completion of such inquiry, be notified of the Commission's finding in the matter and of the steps (if any) which the Commission intends to take.

(18) Any person who gives false evidence under oath or affirmation at an inquiry in terms of this section knowing such evidence to be false, shall be guilty of an offence and on conviction be liable to the penalties prescribed by law for the crime of perjury.

Restrictions in respect of
benefits payable in terms of
Act.

40. (1) Subject to the Maintenance Act, 1963 (Act 23 of 1963), and the Income Tax Act, 1981 (Act 24 of 1981), but notwithstanding the provisions of any other law, no benefits payable in terms of this Act, or any right to such benefits, shall be capable of being assigned, transferred, ceded, pledged or hypothecated, or be liable to attachment or any form of execution under any judgement or order of any court of law.

(2) If a person who is entitled to benefits in terms of this Act assigns, transfers, cedes, pledges or hypothecates such benefits or any right to such benefits, or attempts to do so, the Commission may withhold, suspend or cancel payment of such benefits.

(3) No benefits payable to any person in terms of this Act shall -

(a) in any civil proceedings against him or her be included in his or her income or means;

- (b) in the event of the sequestration of his or her estate, form part of the assets of his or her insolvent estate.

Certain documents exempt from stamp duty

41. No stamp duty shall be payable in respect of any prescribed document or any power of attorney furnished by any person applying for or receiving a benefit in terms of this Act.

Exemption from income tax

42. No tax on income shall be payable by the Commission or in respect of any fund established by this Act or scheme referred to in section 37(4).

Review of benefits by Commission

43. (1) The Commission may at any time, but only after the person concerned has been notified and granted an opportunity to be heard, review any benefits granted and payable to any person in terms of this Act if -

- (a) upon the request of the Commission, he or she refuses or fails without sufficient cause to submit himself or herself to a medical examination;
- (b) in the case of a person receiving maternity leave, sick leave or medical benefits, such person has become -
- (i) addicted to intoxicating liquor or any dependence-producing substance or uses such liquor or substance excessively;
- (ii) mentally or physically disabled to such extent that he or she is unable to care for himself or herself or the child concerned;
- (c) (i) in the case of a person receiving sick leave or medical benefits, he or she refuses or fails without sufficient cause to submit himself or herself to medical or surgical treatment when considered necessary by the Commission; and
- (ii) in the opinion of the Commission, such refusal or failure is prolonging or aggravating the condition as a result of which the benefits have been granted to such person;

- (d) such benefits, if payable by way of installments, have due to altered circumstances become either insufficient or excessive to meet the circumstances of the case;
- (e) such benefits, due to mistake or misrepresentation, have been incorrectly granted or granted in a wrong amount.

(2) The proceedings relating to the review of a benefit shall be in the form of an inquiry conducted *mutatis mutandis* in accordance with section 39.

(3) The Commission may, at the conclusion of the review proceedings -

- (a) confirm the benefits referred to in subsection (1) or increase, decrease, cancel, recover or substitute such benefits;
- (b) pay the benefits to any other person to administer it on behalf of the person or child concerned, as the case may be;
- (c) take any such other steps as the Commission may deem fit.

Representation.

44. (1) Any person who has applied for a benefit in terms of this Act or who has been summoned to appear before the Commission for the purposes of an inquiry in terms of section 39, shall be entitled to appear before the Commission in person and to represent himself or herself or to be represented by -

- (a) any member of his or her family;
- (b) any person in his or her regular employ;
- (c) a legal practitioner;
- (d) in the case of a person who is an employee, an officer of the trade union of which he or she is a member;
- (e) in the case of a person who is an employer, an officer of the employers' organization of which he or she is a member;

(f) any prescribed person;

(g) with the written approval of the Commission, any other person.

(2) No person other than a legal practitioner may, subject to subsection (3), recover from any person any fees or disbursements for representing such person in terms of subsection (1).

(3) Notwithstanding subsection (2), any person other than a legal practitioner may, when he or she represents any other person before the Commission, with the approval of the Commission, recover from the person on whose behalf he or she so appears, the reasonable expenses incurred by him or her relating to such representation.

(4) The fees and disbursements which may be recovered in terms of subsection (2) or (3) and the taxation of such fees and expenses by the Commission, shall be as may be prescribed.

(5) No person shall recover or attempt to recover any fees or expenses from any other person unless such fees or expenses have been taxed by the Commission.

(6) Any person who contravenes or fails to comply with subsection (5) shall be guilty of an offence.

(7) Subsection (5) shall not be so construed as to prohibit a legal practitioner who is an attorney to receive from or on behalf of any person which he or she, or a legal practitioner who is an advocate instructed by him or her, has to represent, an amount of money being an estimate of the fees and disbursements to be incurred relating to such representation, and to retain such money in trust pending the taxation of the fees and expenses actually incurred.

(8) For the purposes of this section, "legal practitioner" means any person enrolled as an advocate in terms of the Admission of Advocates Act, 1964 (Act 74 of 1964), or admitted to practise as an attorney in terms of the Attorneys Act, 1979 (Act 53 of 1979).

Appeals against decisions of
Commission

45. (1) Any person aggrieved by any decision of the Commission taken in the performance of the Commission's functions in terms of this Act may, within a period of 60 days from the date upon which he or she was notified

of such decision, appeal by notice in the prescribed form against such decision to the Labour Court established by section 15(1)(a) of the Labour Act.

(2) The Labour Court may, on good cause shown, allow an appeal to be noted in terms of subsection (1) notwithstanding the expiry of the said period of 60 days.

(3) An appeal to the Labour Court in terms of this section shall be subject to the provisions of the Labour Act and its regulations and such appeal shall, for the purposes of that Act, be deemed to be an appeal from a district labour court established by section 15(I)(b) of that Act.

Notices

46. For the purposes of the giving or receiving of returns, notices or other documents under this Act, the word "employer" shall include the manager, secretary, accountant, treasurer or duly authorised agent of the employer concerned or any other responsible person designated by him or her.

Regulations

47. (1) The Minister may, on the recommendation of the Commission, make regulations in relation to -

- (a) the entering into agreements, handling of funds and keeping of books by the Commission;
- (b) except as otherwise provided by this Act, any fees, contributions or benefits payable under this Act;
- (c) the form of the registers and certificates to be kept or which may be issued in terms of this Act;
- (d) the procedure to be followed in the submission of claims and the requirements with which claims should comply;
- (e) the manner in which the Commission may execute or perform any power, duty or function in terms of this Act;
- (f) the management and control of any fund established by this Act and any training scheme referred to in section 37(4);

(g) all other matters in general which are by this Act required or permitted to be prescribed or which are necessary or expedient to be prescribed in order to achieve the purposes of this Act.

(2) Any regulation made under this section may, except as otherwise provided in this Act, prescribe a fine not exceeding N\$2 000 or imprisonment for a period not exceeding six months as a penalty for the contravention of such regulation or failure to comply therewith or both such fine and such imprisonment.

Delegation

48. (1) The Minister may, on such conditions as he or she considers appropriate, delegate in writing to the Commission or the Permanent Secretary any power conferred upon him or her, excluding the powers conferred by section 47.

(2) The Permanent Secretary may, on such conditions as he or she considers appropriate and with the approval of the Minister, delegate to any officer in the Ministry of Labour and Human Resources Development any power conferred upon or delegated to him or her.

(3) The Commission may, on such conditions as it considers appropriate, delegate to a committee, the executive officer or any other employee of the Commission or any authorised person, if he or she is not such an employee, any power conferred upon or delegated to it, excluding the power to advise the Minister in terms of section 9(1)(d).

(4) The executive officer may, on such conditions as he or she considers appropriate and with the approval of the Commission, delegate to any employee of the Commission any power conferred upon or delegated to the executive officer.

(5) No delegation shall prevent the exercise of the relevant power by the Minister, Permanent Secretary, Commission or executive officer, as the case may be.

Penalties

49. Any person found guilty of an offence under this Act shall, unless otherwise provided, on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

SOCIAL SECURITY ACT, 1994

Short title and commencement.

50. (1) This Act shall be called the Social Security Act, 1994, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the date determined under subsection (2) in relation to such provision.

