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NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION


THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE CONSIDERATION OF THE COUNTY PENSION SCHEME BILL, 2017

  
THE NATIONAL ASSEMBLY  
PAPERS LAID

13 NOV 2018

CLERKS CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

TABLED BY:	CHAIR, FINANCE COMMITTEE HON. JOSEPH LIMO
CLERK-AT THE-TABLE:	

NOVEMBER, 2018

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## ABBREVIATIONS

CPS	-	County Pension Scheme Bill, 2017
LAPFUND	-	Local Authorities Provident Fund
SOCAT	-	Society of Clerks at the Table in Kenyan Legislatures
CAF	-	County Assemblies Forum
RBA	-	Retirement Benefits Act
NSSF	-	National Social Security Fund
KPA	-	Kenya Ports Authority
DC	-	Defined Contribution
SCAC	-	State Corporations Advisory Committee
CS	-	Cabinet Secretary
HR	-	Human Resource
IPPD	-	Integrated Personnel Payroll Data
DPM	-	Directorate of Personnel Management
CGA	-	County Governments Act, 2012
CPF	-	County Pension Fund
PRS	-	Personnel Retirement Scheme
LAPTRUST	-	Local Authorities Pensions Trust
RBA	-	Retirement Benefits Authority
IBEC	-	Intergovernmental Budget and Economic Council
CoG	-	Council of Governors
CGRS	-	County Governments Retirement Scheme Bill, 2015

## **CHAIRPERSON'S FOREWORD**

This report contains the Committee's proceedings of the consideration of the County Pension Scheme Bill, 2017, which was read a first time on 14<sup>th</sup> February, 2018 and subsequently committed to the Departmental Committee on Finance and National Planning for consideration and facilitation of public participation pursuant to Standing Order 127. In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard Newspapers on 19<sup>th</sup> February, 2018 pursuant to Article 118 of the Constitution. A total of eleven (11) institutions submitted memoranda for consideration by the Committee. The institutions were invited for stakeholders' conferences held at Boma Hotel between 15<sup>th</sup> and 18<sup>th</sup> March, 2018 and at Flamingo Beach Hotel and Spa in Mombasa between 22<sup>nd</sup> and 25<sup>th</sup> March, 2018 in which the Committee considered and made observations on sections of the Bill. The Committee has since adopted the stakeholders' amendments for introduction into the Bill during the Committee Stage of the Bill.

In considering the Bill, the Committee noted that the Bill seeks to establish a County Pension Scheme as an umbrella pension scheme for all county government officers and associate organizations. The Bill provides for establishment of the scheme's Board of Trustees and provides for the Scheme's management and administration. The Bill proposes to have the scheme offer lump sum payments as provident, periodic payments as pension and income drawdowns. The proposed scheme will provide one umbrella pension scheme for all the forty seven county governments besides being open to other persons approved by the Board.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the County Pension Scheme Bill, 2017.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the National Treasury and all the other stakeholders for their participation in scrutinizing the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

SIGNED.......... DATE.....13/11/2018.....

**THE HON. JOSEPH LIMO, MP**

**CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING**

## 1.0 EXECUTIVE SUMMARY

The County Pension Scheme Bill, 2017 was published on 29<sup>th</sup> December, 2017 and read a first time on 14<sup>th</sup> February, 2018 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127. The County Pension Scheme Bill, 2017 seeks to establish the County Pension Scheme as an umbrella pension scheme for all county government officers and associated organizations. The Bill provides for establishment of the scheme's Board of Trustees and provides for the Scheme's management and administration. The Bill proposes to have the scheme offer lump sum payments as provident, periodic payments as pension and income drawdowns. The proposed scheme will provide one umbrella pension scheme for all the forty-seven county governments besides being open to other persons approved by the Board.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on Monday, 19<sup>th</sup> February, 2018 pursuant to Article 118 of the Constitution. By the time the Committee was conducting stakeholders' conferences at the Boma Hotel between 15<sup>th</sup> and 18<sup>th</sup> March 2018 and at the Flamingo Beach Hotel and Spa between 22<sup>nd</sup> and 25<sup>th</sup> March, 2018, eleven (11) organizations had submitted their memoranda for consideration by the Committee. All their proposals were first discussed with the stakeholders and then had them commented on by the Cabinet Secretary for the National Treasury. The following entities appeared during the stakeholders' conference:

1. Local Authorities Provident fund
2. Ministry of Public Service, Youth and Gender Affairs
3. Society of Clerks at the Table in Kenyan Legislations (SOCAT)
4. County Assemblies Forum
5. Kenya Union of Clinical Officers
6. County Public Service Boards National Consultative Forum
7. Association of Pension Administrators of Kenya
8. County Pension Fund Financial Services Limited
9. Kenya County Government Workers Union
10. Kenya National Union of Nurses
11. Hon. Joe Donde
12. Mr. John Biiy
13. Nairobi County Assembly

14. Council of Governors

15. The National Treasury

## **2.0 ESTABLISHMENT OF THE COMMITTEE**

The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:

1. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
2. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- 3. To study and review all the legislation referred to it;**
4. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
5. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
6. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
7. To examine treaties, agreements and conventions;
8. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
9. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
10. To examine any questions raised by Members on a matter within its mandate.

## **2.1 MANDATE OF THE COMMITTEE**

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, Public finance, Monetary policies, Public debt, Financial institutions (excluding those in securities exchange), Investment and divestiture policies, Pricing policies, Banking, Insurance, Population revenue policies including taxation and National planning and development.

In executing its mandate, the Committee oversees the following government Ministries;

1. The National Treasury
2. Ministry of Devolution and Planning

## **2.2 COMMITTEE MEMBERSHIP**

The Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members:-

1. The Hon. Joseph K. Limo, MP – **Chairperson**
2. The Hon. Isaac W. Ndirangu – **Vice-Chairperson**
3. The Hon. Jimmy O. Angwenyi, MP
4. Hon. Christopher Omulele, M.P
5. The Hon. Dr. Enoch Kibunguchy, MP
6. The Hon. Shakeel Shabbir Ahmed, MP
7. The Hon. Abdul Rahim Dawood, MP
8. The Hon. Daniel E. Nanok, MP
9. The Hon. Andrew A. Okuome, MP
10. The Hon. David M. Mboni, MP
11. The Hon. Francis K. Kimani, MP
12. The Hon. Joseph M. Oyula, MP
13. The Hon. Joshua C. Kandie, MP
14. The Hon. Lydia H. Mizighi, MP
15. The Hon. Mohamed A. Mohamed, MP
16. The Hon. Purity W. Ngirici, MP
17. The Hon. Samuel Atandi, MP
18. The Hon. Stanley M. Muthama, MP
19. Hon. Edith Nyenze, M.P

## **2.3 COMMITTEE SECRETARIAT**

1. Ms. Leah W. Mwaura - **First Clerk Assistant/Lead Clerk**
2. Ms. Jenifer Ndeto - **Principal Legal Counsel I**
3. Ms. Lauren Wesonga - **Third Clerk Assistant**
4. Mr. Josephat Motonu - **Fiscal Analyst I**
5. Mr. Chelang'a Maiyo - **Research & Policy Analyst III**

### **3.0 CONSIDERATION OF THE BILL**

#### **3.1 BACKGROUND INFORMATION**

The County Pension Scheme Bill, 2017, was published on 29<sup>th</sup> December, 2017 and read a First Time on 14<sup>th</sup> February, 2018 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127.

In processing the Bill, the Committee invited comments from the stakeholders pursuant to Article 118 of the Constitution. Eleven institutions responded by sending their memoranda to the Committee for consideration. The Committee held stakeholders' conferences at Boma Hotel between 15<sup>th</sup> and 18<sup>th</sup> March, 2018 and at Flamingo Beach Hotel and Spa to consider stakeholders' memoranda pursuant to Article 118 of the Constitution.

#### **3.2 CLAUSE BY CLAUSE ANALYSIS**

##### **Part I (Clauses 1-4) Preliminary Matters.**

1. This part contains the short title, interpretation of terms, the application clause, objects of the Act, the application of the Bill to which includes all County Government employees as well as any public institution, organization or officer who may wish to join and the scope of the Bill which is to extend the range of those who may access the Scheme's services.
2. The Act shall apply to -
  - (a) a County Government or a person employed by a County Government;
  - (b) a County Agency, County Corporation or Associated Organizations or a person employed by a County Agency, County Corporation or Associated Organization;
  - (c) a person seconded or transferred from the National Government to a County Government; or
  - (d) an officer approved by the Board to become a member of the scheme under the auspices of a Sponsor who has signed a Deed of Adherence.
3. The objects of the Bill more specifically as contained in Clause 4 is to among other things-
  - i. provide for the adoption of an existing umbrella pension scheme for all staff and officers of County Governments, County Agencies, County Corporations, Associated Organizations and other related entities;

- ii. establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the Scheme and former employees of local and central government who transfer their service to a County Government, County Agency, or County Corporation;
- iii. maximize employer compliance with employer duties and the employment safeguards in accordance with the Retirement Benefits Act
- iv. provide for the transition from the existing system of retirement benefits schemes for staff of County Governments and former local and central governments to a uniform, inclusive and comprehensive pension scheme for County Governments, County Agencies, County Corporations and other Associated Organizations;
- v. provide for a unified corporate administrative framework for the umbrella pension scheme established under this Act and the Closed Schemes; and
- vi. provide for the establishment or adoption of an existing Corporate Administrator to provide scheme administration services to all retirement benefits schemes within the county governments sector.

## **Part II (Clauses 5-18) Establishment, Administration and Management of the Scheme**

This Part provides for the establishment of the **County Pension Scheme** that shall be managed by a Board. The Scheme is the successor to the **Laptrust (Umbrella) Retirement Fund** previously established and registered under Trust Deed and Rules under Retirement Benefits Authority and all rights, obligations, assets and liabilities of the Laptrust (Umbrella) Retirement Fund existing on the date of the coming into force of this Act shall be deemed to be transferred to the Fund and any reference to the Laptrust (Umbrella) Retirement Fund in any contract or document shall for all intents and purposes be deemed to be a reference to the County Pension Fund.

A Board of Trustees is established with a tenure of four years renewable once based on performance. Clause 6 of the Bill provides that the Board shall comprise of-

- (a) a representative of the Council of Governors;
- (b) a representative of the Public Service Commission;
- (c) a representative of the County Public Service Boards;
- (d) a representative of the County Assembly Service Boards; and

- (e) five other nominees from the county governments nominated from the three most representative employee unions, two of whom shall be of the opposite gender on one part and one representative from persons with disability.

Part II provides for the procedure for the appointment of the Trustees and necessary qualifications and finally the functions and powers of the Board. The functions of Board include to-

1. formulate the policies relating to the Scheme in accordance with the provisions of the Retirement Benefits Act;
2. collect contributions and income payable to the Fund under this Act;
3. pay out the various benefits to persons entitled to the benefits as provided under the Bill;
4. protect the Fund's assets and ensure long term viability of the Scheme;
5. ensure efficient administration of the Scheme;
6. ensure prudent investment of the monies forming part of the Fund and where necessary establish companies to perform such functions as the Board may consider necessary and relevant to the Scheme including offer administration services, fund management, and consultancy services;
7. negotiate competitive annuity rates on behalf of retiring and withdrawing members;
8. ensure that the Scheme observes high standards of corporate governance and business ethics; and
9. perform any other functions assigned to it under the Bill or under any other law.

Clause 11 of the Bill provides for a Shariah Supervisory Committee whose function shall be to advise the Board on the requirements of Shariah Law in respect to Sharia compliant pension schemes to ensure that at all times, the Board is managed and invested in a Sharia compliant manner and monitor and supervise the management and investment of Salih to ensure that the same is Shariah Compliant.

### **Part III (Clauses 19-24) Administration and Management of the County Pension Fund**

Part III contains provisions on the administration of the scheme and provides for the appointment of the Fund Manager and the Custodian.

The functions of the fund managers as set out in Clause 19 include to implement the investment policy of the Scheme as approved by the Board, invest the scheme funds and assets in accordance with the provisions of the Retirement Benefits Act and the investment policy of the Board, maintain books of

account on all investment transactions relating to the Scheme and provide regular information on investment strategy, market returns and other performance indicators to the Board.

The Part also provides for administration of the Scheme by a Corporate Administrator jointly established or owned by the Scheme established under the Bill and the Closed Schemes. Provided that the Board of the Scheme established under this Bill and the Boards of the Closed Schemes may adopt any existing Corporate Administrator owned by any of the Closed Schemes and modify its structure to suit the joint needs of the three partner schemes.

Further the part provides for membership of the scheme, vesting of benefits, and withdrawal from the retirement savings account and retirement from service among other things. Finally, it sets out the prohibited payments from the scheme. Every Member, so long as he remains in the employment of a Sponsor is required to contribute to the scheme an amount equal to twelve percent of his Pensionable Emoluments, or higher or lower rate as may be prescribed by the Board on the advice of the Actuary.

Clause 24 provides for phasing out of contributions of members of the Scheme who were previously employed by the national government. Their contributions shall be phased-out in the first three years after the commencement of this Act, at the rates of five per cent, eight per cent and twelve per cent of a Member's Pensionable Emoluments in the first, second and third years respectively.

#### **Part IV (Clauses 25-32) Financial Provisions**

This Part contains the financial provisions and establishes the County Pension Fund. It also makes provision as to how surplus funds may be invested as well as set out a requirement for the Board to have a reserve account.

#### **Part V (Clauses 33-39) General Provisions**

Part V sets out the general provisions including the duty of care of the Board, protection of trustees and employees of the Scheme from personal liability, offences, and proceedings for recovery of deductions from employers and general penalty clause.

Clause 36 provides that where a sponsor, having made deductions from a member's emoluments for remittance to the Scheme or under an obligation to do so, fails to remit the contribution within fifteen days of the deadline for the deduction, the Scheme may, after giving such sponsor not less than seven

days' notice, institute proceedings for the recovery of the deduction made or which ought to have been made and remitted.

Clause 38 exempts sponsors and members of the Scheme from making contributions to the National Social Security Fund or any other statutory scheme.

It also contains a provision on the making of regulations and gives this power on the recommendation of the Board and in consultation with the Cabinet Secretary.

#### **Part VI (Clauses 40-45) Amendments to Existing Laws, Savings and Transitional Provisions**

This Part provides for the amendments to existing laws as well as the savings and transitional provisions. The repeal of certain provisions of local Authorities Provident Fund Act and section 132 of the County Governments Act is also provided for in this part.

Finally Part VI contains a provision exempting members of the scheme from Tier II contributions to the National Social Security Fund. The part also contains detailed provisions on the transitional, closure of the existing scheme and transition of staff and membership of the previous schemes to the new scheme

#### **4.0 SUBMISSION BY THE STAKEHOLDERS**

Following the call for memoranda from the public on 19<sup>th</sup> February 2018, the Committee received memoranda from eleven organizations. All their proposals were deliberated on and considered by the Committee. Below is a summary of the views from the stakeholders:

#### **4.1 LOCAL AUTHORITIES PROVIDENT FUND**

LAPFUND is a Defined Contribution Scheme registered and regulated by the Retirement Benefits Act of 1997 and Subsequent Regulations. It is a State Corporation established in 1960 by an Act of Parliament Cap. 272 Laws of Kenya. LAPFUND caters for all employees of County Governments and Water Companies, where Members contribute 12% while the Sponsors contribute 15% of the Member's gross salary (basic salary plus house allowance).

In their written and oral submission LAPFUND made the proposed the following amendments:-

##### **Clause 2: Interpretation**

- (1) objected to the definition of Cabinet Secretary and proposed that “**Cabinet Secretary**” should be amended to be defined as the CS responsible for Finance.
- (2) objected to the proposed definition of “public funds” that removes the fund from the oversight and accountability systems requisite for public funds.
- (3) propose that public funds should include contributions to a scheme to ensure safeguards.
- (4) objected to the definition “Trust Secretary” and propose the Secretary should be the Chief Executive Officer of the internal administrator who doubles as an ex-officio member of the Board and further staff should be provided for as envisaged under section 5 and 6 of the State Corporations Act.

##### **Justification**

LAPFUND avers that:-

1. Institutions dealing with pensions offer financial services and as such are placed under the supervision of the National Treasury.
2. All similar institutions fall under National Treasury.
3. Pensions funds contributed on behalf of public/civil servants are public funds therefore the exclusion of pension funds from this definition is not tenable. Article 206 of the Constitution sufficiently defines “public funds.”

4. They object to the definition of Trust Secretary as matters of the Board will be handled by a person who is not their appointee and who is not answerable to them.
5. The scheme is body corporate established under section 24 and 26(1) of Retirement Benefits Act and not a Trust.
6. The Secretary to the Board of Trustees should be the Chief Executive Officer of the internal administrator who doubles as an ex-officio member of the board

#### **Clause 4: Objects of the Act**

LAPFUND object to Clause 4(1)(a) as the implication of the clause is that members are likely to be duped into joining an existing scheme that has not been defined or disclosed in this Bill which might be against their best interest.

#### **Justification**

1. The clause is in conflict with clause 5(1). Clause 4(1)(a) refers to ‘adoption of an existing umbrella pension scheme’ whereas clause 5(1). refers to “establishment of a county pension scheme’
2. The clause is also in conflict with the memorandum of objects and reasons for enactment of the Bill which is indicated as establishment of a County Pension Scheme.

#### **Clause 5: Establishment of the County Pension Scheme**

LAPFUND object to the provision of Clause 5(4) as dissolution of LAPFUND should be by operation of the law without providing for transition of staff, assets, liabilities and responsibilities will leave the institution in a position of uncertainty. They propose transition of LAPFUND in accordance with the advice of the Committee on Implementation of the Constitution and the Presidential Taskforce on Parastatal Reforms.

#### **Justification**

1. The proposed Clause is biased in favour of LAPTRUST while at the same time clause 42 is proposing closure of LAPFUND.
2. LAPFUND being a state corporation can only be dissolved upon the advice of the State Corporations Advisory Committee and to date such advise has not been given.

### **Clause 9 (4) : Powers of the Board**

1. They propose an amendment to clause 9(4) to delete provisions relating to a corporate administrator in their entirety and provide for internal administration of the scheme.
2. Lapfund oppose clause 9(4) proposing delegation of powers of the Board of Trustees to any one or more of the trustees or to the trust secretary or employees of the schemes' corporate administrator. They note that Board will not control over these persons and yet they will be ultimately responsible to the sponsors and members.
3. If the Corporate administrator is entrenched in the law, the Trustees will not have a recourse in the event of mismanagement or if the registration certificate is suspended or revoked by the RBA.

#### **Justification**

1. Schemes of this nature are administered internally with a Chief Executive officer and employees managing the scheme, examples of these kinds of schemes are Central Bank of Kenya, NSSF, KPA and Kenya Power.
2. It is not prudent to establish an institution of this magnitude and then incorporate a company to run its affairs.

### **Clause 21: Corporate Administrator**

LAPFUND objects to Clause 21(1) and propose that the Scheme should be administered by an internal Administrator.

#### **Justification**

The Clause is creating an unnecessary bureaucracy and cost of administration of the scheme. The provision is against best practice for schemes of this nature.

### **Clause 22: Liability to contribute**

They oppose clause 22(1) and (2) and propose that an actuary should not play any role in determination of the rate of contribution.

#### **Justification**

An Actuary cannot advise on contribution rates of a Defined Contribution scheme because they do not have funding challenges.

### **Clause 25: County Pension Fund**

They object to Clause 25(1) because: -

1. The provision is against the objects and purposes of the Bill and clause 5(1).
2. There is already existing a Fund proposed to be adopted is not disclosed.
3. The Fund to be adopted seems to be different from the LAPTRUST (Umbrella) Retirement Fund which according to the Bill will be the predecessor of the scheme established under the Bill.

### **Part VI: Section 40-49 Amendments to existing Laws, Savings and Transitional Provisions**

They object to the provisions. The Presidential Taskforce on Parastatal Reforms of October 2013 recommended that the LAPFUND be transformed into a pension scheme for County Government employees and not closure as proposed in the Bill.

#### **Justification**

The provisions violate the law in the following manner;

As an intended substantive law, it seeks to perform the functions of a miscellaneous amendment Bill by purporting to amend several sections of different Statutes, namely-

- (a) The Pensions Act, Cap. 189
- (b) The Public Service Superannuation Scheme no. 8 of 2012
- (c) The Local Authorities Provident Fund Act Cap.272
- (d) The Intergovernmental Relations Act, no. 2 of 2012
- (e) The County Governments Act, No. 17 of 2012
- (f) The Urban areas and Cities Act, 2011

#### **First Schedule**

LAPFUND propose the removal of schedules and development of regulations to deal with other matters facilitating implementation of the law.

#### **Justification**

A scheme operated under an Act of Parliament does not require trust deed and rules, deed of adherence and all the other rules made as part of the Bill.

## **General Comments**

- They object the processing of the Bill on the basis that-
  - (a) It seeks to close LAPFUND in contravention of section 28 of the State Corporations Act that gives power to advise on the dissolution of a State Corporation like LAPFUND solely to SCAC. Further the dissolution would be against the advice of the Committee on Implementation of Constitution and the Presidential Taskforce on Parastatal Reforms to transition LAPFUND as a pension scheme for county employees.
  - (b) The Bill will create confusion and may create chaos within the membership, as some clauses provide for establishment of a new scheme while others propose adoption of an existing one.
  - (c) The Bill is advancing interest of LAPTRUST without due regard to the best interests of members.

## **Justification**

The LAPFUND based on the advice of the Committee on Implementation of Constitution and the Presidential Taskforce on Parastatal Reforms was to be transitioned into the County Pension Fund.

## **4.2 MINISTRY OF PUBLIC SERVICE, YOUTH AND GENDER AFFAIRS**

The Ministry of Public Service, Youth and Gender Affairs proposed the following amendments;

### **Clause 2: Interpretation**

- (a) They proposed that the definition of “Pensionable emoluments” be amended to be consistent with the Public Service Superannuation Act read that-  
“**Pensionable Emoluments**” means the basic salary payable to an employee by an employer and does not include allowances or any special remuneration, honorarium emoluments received by the member.
- (b) They propose that the definition of “**Cabinet Secretary**” be amended to mean the CS responsible for Finance.

## **Justification**

1. The Public Service Superannuation Act, Cap 190 does not include allowances as part of pensionable emoluments.

2. The Bill being one dealing with finances, the CS for finance should be responsible.

#### **Clause 6: Board of Trustees of the Scheme**

The Ministry proposes that the provision be amended to provide that the CS for finance be responsible for that appointment of the County Pension Scheme Board Members.

#### **Justification**

The Bill being one dealing with finances, the appointing authority should be the CS for finance.

#### **Clause 22: Liability to contribute**

The Ministry proposes that Clause 22(1) be amended by replacing the words “equal to twelve percent” with the words “equal to seven and half percent” the mandatory contributions to the scheme be harmonized with that of the Public Service Superannuation Scheme.

#### **Justification**

Section 6 of the Public Service Superannuation Scheme provides that every member of the Scheme shall contribute to the Scheme at the rate of seven and a half percent (7.5%) which shall be deducted from his monthly pensionable emoluments while the government shall contribute for each member of the Scheme at the rate of at least fifteen percent (15%) of the members monthly emoluments.

#### **Clause 26**

The Ministry proposes that the administrative expenses be capped at a maximum of 1.5% of the Fund Value and the Clause be amended by replacing the words “subject to a maximum of five percent of the Fund Value” with the words “one and half percent of the Fund Value.”

#### **Justification**

Five per cent (5%) is too high for administrative purposes.

### **4.3 COUNTY ASSEMBLIES FORUM (CAF)**

The County Assemblies Forum proposed the following amendments;

## **Clause 2: Interpretation**

Clause 2 of the Bill limits the definition of the word “dependent” to a spouse, a child and a parent of the deceased Member.

County Assemblies Forum propose that the definition of “dependent” in section 2 be amended as follows:

(d) a brother or sister of the deceased who is yet to attain the age of majority and who was dependent on the deceased for the provision of the ordinary necessities of life.

Clause 2 of the Bill defines among other terms “County Assemblies Forum” to mean the forum established to bring together all County Assemblies from all the County Governments in the Republic of Kenya; therefore it is necessary to provide for the role and representation of CAF in the administration of the pension scheme.

### **Justification**

Despite identifying and defining the County Assemblies Forum in section 2, the Bill does not provide for the role or representation of CAF in the County Pensions Scheme.

## **Clause 3: Application**

The County Assemblies Forum proposes to provide for the categories of entities and people the Act applies to.

The provision should be amended to add voluntary individual membership especially for MCA’s who may desire to become members and contribute to the scheme.

### **Justification**

While the Bill provides that the Bill will apply to a County Government and while a County Government comprises of both the County Executive and county assemblies, the provision doesn’t specify nor provide for membership by individual members of county assemblies who might opt to become a member of the scheme.

#### **Clause 4: Objects of the Act**

(i) As the term scheme is already defined under clause 2, they propose an amendment to clause 4(a) to read as follows:-

“(a) to provide for the adoption of the Scheme.

(ii) “Employees of local and central government who transfer their service to a County Government, County Agency or County Corporation” are already defined as members under Clause 2 they propose Clause 4(b) to read as follows –

“(b) Establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the Scheme.”

(iii) They propose an amendment to Clause 4(h) to read as follows –

“(h) provide for the transition to a uniform, umbrella pension scheme. ”

(iv) They propose deletion of 4(i) as it already provided for in 4(j)

#### **Clause 6**

Section 3 establishes and sets out the composition of the “Board”. The County Assemblies Forum is not one of the bodies represented in the Board.

The section should be amended to read as follows:-

- i) A new subsection (b) be added as follows, a representative of the County Assemblies Forum.
- ii) Subsection 7 be amended by adding the following words immediately after the word “shall” but before the word “formally”....., within (14) days from the date of receipt of the names of the nominees,.....

#### **Justification**

1. Given the role of the County Assemblies Forum as the umbrella body of all Members of the 47 County Assemblies Forum should also be represented in the Board. This is important since the

Council of Governors and other County Government entities are each nominating their representatives to the Board. It will be discriminatory for the County Assemblies Forum to be excluded therefrom.

2. The Section does not set out the time limit within which the Cabinet Secretary shall be required to appoint the board members once the names of nominees has been forwarded to the CS. This needs to be specifically provided to curb any mischief in delaying the gazettment thereby jeopardizing the operations of the Board and the Scheme.

#### **Clause 9**

They recommend that Clause 9(3)(b) be divided into two different paragraphs.

9(3)(b) Appoint a custodian and fund manager to carry out their functions as specified in sections 19 and 20.

(c) Establish or adopt an existing corporate administrator as specified in section 21.

#### **Clause 14**

It sets out the grounds and the manner for removal of trustees of the Board

Subsection 1 be amended by adding the following new subsection (f), .....if the trustee is a Governor or a Member of the County Assembly;

- i. at the end of the term of the County Government; or
- ii. if the trustee ceases to be a Governor or Member of the County Assembly.

Subsection 2 be amended by adding the following words immediately after the words “fair hearing”.....in accordance with the Fair Administrative Action Act (Number 4 of 2015).

#### **Clause 21**

They recommend that clause 21(3) on the functions of the Corporate Administrator be isolated as an independent section as opposed to a subsection.

#### **First Schedule**

Rule 7 be amended by deleting the words “on behalf of” and substituting therefor the following words: “in consultation with”

## **Justification**

Any rules must be made in consultation with county governments otherwise there is a danger that such rules may end up not being in the best interest of the county employees.

## **General Comments**

They note that the spirit of the Bill mirrors the recommendations of stakeholders within the counties including –

- i. Adopting Laptrust (Umbrella) Retirement Fund (the County Pension Scheme) in accordance with section 132 of the County Governments Act
- ii. Closure of Laptrust and Lapfund to new entrants albeit the two entities shall continue for their respective continuing members
- iii. Merger of administration services for the County Pension Scheme and the two closed schemes.

## **4.4 SOCIETY OF CLERKS AT THE TABLE IN KENYAN LEGISLATURES (SOCATT)**

SOCATT proposed the following amendments;

### **Clause 5**

The statement “all rights, obligations, assets and liabilities of the Laptrust (Umbrella) Retirement Fund existing on the date of the coming into force of this Act shall be deemed to be transferred to the Fund and any reference to the Laptrust (Umbrella) Retirement Fund in any contract or document shall for all intents and purposes be deemed to be a reference to County Pension Fund” appearing in sub clause (4) is vague and should be amended by inserting the words “shall be transferred within one month to the Trust”

### **Clause 6**

They propose insertion of a new paragraph in clause 3 to provide for a Human Resource professional in the board from both the Assembly, executive or other County parastatal.

## **Justification**

Representation of HR practitioners is completely left out yet they are the ones involved in the computations of the deductions and any queries therefrom.

**Clause 7**

They propose insertion of a new sub-paragraph

(xii) Human Resources Management

**Justification**

The required qualifications here exclude Human Resource Management which is core.

**Clause 38**

They propose that DPM to instruct Ministry of Devolution to configure IPPD to allow voluntary contributions where as staff opts for the same.

**Justification**

Individual voluntary contributions should be allowed to continue.

**Clause 44**

An option should be provided for current members of LAPTRUST/FUND to opt out of individual PRS

**Justification**

Members should not be locked in the closed schemes where sponsors are subsequently detached.

**Fourth Schedule**

They propose in the provision in paragraph (b) should provide for three times the employees annual salary as is the practice.

**Justification**

At the unfortunate event of death, the clause should provide for employees annual income as compensation and not the monthly income as propounded.

#### **4.5 KENYA UNION OF CLINICAL OFFICERS**

The Kenya Union of Clinical Officers proposed the following amendments;

##### **Clause 6**

They propose an amendment to Clause 6(3)(e) by deleting the words “three most representative employee unions” and substituting with the words “five most representative employee unions” and if possible to specify to include a representative of the Kenya Union of Clinical Officers.

##### **Justification**

The proposed amendment will cater for their interest and ensure representation of Kenya Union of Clinical Officers by guaranteeing them a vacancy in the Board of Trustees.

##### **First Schedule**

An amendment of the First Schedule, General Rules, Clause 1, to provide for consultation of employees of County Governments before enrolment or transfers into or out of the Scheme.

Clause 1(a) should be amended by inserting the words “done in consultation with employees’ trade union and with the consent of their respective employees.”

##### **Justification**

The proposed amendment will cater for the interest and ensure representation of Kenya Union of Clinical Officers.

##### **Third Schedule**

An amendment to part 2 to include the Kenya Union of Clinical Officers in the list of recognized Associated organizations.

##### **Justification**

The proposed amendment will cater for the interest and ensure representation of Kenya Union of Clinical Officers.

#### **4.6 COUNTY PENSION FUND FINANCIAL SERVICES LIMITED**

They proposed the following amendments;

## **Clause 6**

Insert the words “a Resident Trustee” immediately after sub-clause (3)(d)

Delete section 5 and substitute therefor with the following:-

(5) The Resident Trustee shall be appointed by the Board under the terms and conditions of service determined by the Board in the instrument of appointment or otherwise in writing.

(6) The Resident Trustee shall be-

(a) The Chief Executive Officer of the Corporate Administrator established under section 21;

(a) answerable to the Board for the administration and management of the Trust.

## **Justification**

1. Through the Resident Trustee, the Board of Trustees shall be represented in the Board of the Corporate Administrator.
2. The position of a Resident Trustee is particularly important as it provides the necessary link between the Board of Trustees and their corporate Administrator.
3. Further, this position shall ensure efficiency in the day to day administration of the Scheme which may require that documents be signed and sealed by the Trustees. Certainly, it may not be feasible to call trustees to the offices of the administrator on each and every day of the year for such a large group of Schemes.

## **Clause 21**

Delete section 1 and substitute therefor with the following paragraph:-

21(1) The Scheme shall be administered by a corporate Administrator which shall be-

(a) an existing corporate administrator established by any of the closed schemes and

(b) adopted and restructured to offer joint administration services to the Scheme and to the closed schemes.

## **Clause 24**

Delete the clause.

## **Justification**

The rationale for clause 24 is to ensure smooth transition for employees seconded or transferred from the national government to the county governments to ensure that they “adjust” their contribution over the period of 3 years. However, Clause 24 contradicts regulation 18(1)(a) of Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000 by importing discriminatory treatment on contribution rates and benefits entitlements between seconded employees and other employees within the County Governments.

Further, the clause violates section 138 of the County Governments Act Section 138 (1)(c) provides as follows:

“.....the officer’s terms and conditions of service may be altered to office’s advantage.”

## **Part IV: existing Laws, Savings and Transitional Provisions**

The part should be split into two parts namely Part IV: Savings and Transitional Provisions which shall be contained in clauses 132A to 132I and Part v which shall contain clauses 40, 41, 42 and 43.

## **Justification**

For logical flow.

## **Clause 44**

In Clause 132D by inserting the following paragraph immediately before sub-clause (8)(1); “one person appointed by the county pension scheme.”

In clause 132D sub-clause 8(1)(f) by deleting the word “three” and therefor substituting with “two.”

## **Justification**

Under the Bill, the LAPTRUST and LAPFUND are represented in the Board of the Corporate Administrator. However, the Bill does not provide for the representation of the County Pension Scheme in the Board of the said administrator. This omission may have been made inadvertently.

## **General Comments**

They support the Bill and note that the Bill is a product of lengthy stakeholder consultations including the recommendations of stakeholders within the counties as follows –

- i. Establishment of a new Umbrella Pension Scheme for staff of Counties.
- ii. Closure of Laptrust and Lapfund to new members with effect from the date of the establishment of the new Umbrella Pension Scheme
- iii. Merger of administration services for the County Pension Scheme and the two closed schemes.

#### **4.7 COUNTY PUBLIC SERVICE BOARDS NATIONAL CONSULTATIVE FORUM**

The County Public Service Boards National Consultative Forum made the following submission; That:

##### **General Comments**

They support the County Pension Scheme Bill, 2017. They note that the Bill proposes to anchor the County Pension Fund in law and in line with the agreement of stakeholders within county governments. Further, the proposed law gives County Public Service Boards an opportunity to be represented in the Board of the Scheme.

#### **4.8 ASSOCIATION OF PENSION ADMINISTRATORS OF KENYA (APAK)**

The Association of Pension Administrators of Kenya submitted as follows; That:

##### **General Comments**

1. They fully support the move to have one umbrella pension scheme for all 47 governments.
2. The technical contents of the Bill fall within international best practices.
3. They support the provision of section 38 for the Scheme's proposed exemption from NSSF. They propose that Parliament Studies the Retirement Benefits ongoing in Tanzania where it has been found that the NSSF needs to remodel itself. The reforms aim at ensuring that the new and fewer public schemes focus on specific segments of the population in order that the country is fully covered in a more strategic manner.
4. They are of the view that pension scheme of this size and nature would receive considerable support and opportunities for capacity building from international Pension Associations.

#### **4.9 KENYA COUNTY GOVERNMENT WORKERS' UNION**

The Kenya County Government Workers' Union proposed the following amendments;

##### **Clause 5**

The Union proposed to have clause 5(5) specifying that the County Pension Scheme shall be an occupational scheme established for the 47 County Governments, county parastatals and county agencies and employees.

##### **Justification**

This will ensure that the schemes do not deviate from the original mandate and objects.

##### **Clause 32**

Delete clause 32 and replace it as follows, "*the scheme shall be reviewed by an actuary appointed by the board and in accordance with the Retirement Benefits Act.*"

##### **General Comments**

1. they support the merger of the existing schemes as it will reduce maintenance costs of separate boards of trustees, administrative and operational costs and therefore ensure the benefits of members is not depleted by unnecessary costs.
2. the representation of members in the scheme and in the proposed Umbrella board to be retained as per the retirement benefits Act and in the proposed inter Scheme Consultative Forum to be 30% of the total number of trustees. This is to ensure that members are involved in the running of the schemes and will have an opportunity to participate in decisions made by the boards.
3. the competition between LAPTRUST, CPF and LAPFUND is very unhealthy and unnecessary. The Bill should ensure that NO scheme is disadvantaged and there will be no loss of benefit of the members if it is enacted in to law.
4. the benefit structure of the schemes to be explicitly provided in the proposed Bill to anchor it in the law and any process to review it must be highly consultative.
5. the purpose of the Retirement Benefits Act was to give autonomy to pensions schemes and to regulate their activities. It was also meant to detach its operations and funds from employers including the government. This autonomy was to also shield the schemes against political interferences and wrongful utilization of workers' funds. The Union proposes the spirit of the

RBA is not lost in the development of the County Pensions Scheme Bill to allow complete independence and separation of funds from employers funds as provided for in the RBA.

#### **4.10 MR. JOHN BIIY**

Mr. Biyy made the following submission; That:-

He was in full support of the Bill and hoped that it would be enacted to law soon.

#### **General Comments**

1. the Technical Committee on Pensions for county governments' employees recommended the closure of LAPTRUST and LAPFUND to new entrants. The Bill implements this recommendation in clause 36 by amending clause 132 of the CGA.
2. the Technical Committee recommended the merger of administrative services of LAPFUND and LAPTRUST. The Bill addresses the same in clause 21 by providing for the establishment of a Corporate Administrator to be jointly established or owned by the CPF, LAPFUND and LAPTRUST.
3. the Bill is in consonance with Section 132 of the CGA which states that "subject to the transitional provisions herein, all members, officers and staff of a county government shall subscribe to an existing pension scheme for officers and staff of local government."
4. LAPTRUST (Umbrella) Retirement Fund, a defined contribution pension scheme is therefore compliant with the government policy requiring a shift from defined benefits and provident funds to defined contribution pension schemes.
5. there are only three schemes within the county governments, LAPTRUST, LAPFUND and LAPTRUST (Umbrella) Retirement Fund (the County Pension Scheme). LAPTRUST and LAPFUND do not qualify to offer pension for the Union's members due to public policy against provident funds and defined benefits pension schemes. LAPTRUST (Umbrella) which is a defined Contribution Scheme is therefore the only legally correct scheme and the Bill is consistent in compliance with the law and existing policy on pension.
6. will be happy and willing to serve as employee representatives to the Board if given the opportunity.

#### **4.11 THE COUNCIL OF GOVERNORS**

The CoG submitted that they support the Bill for the following reasons;

1. The Bill nuances the requirements of Section 132 of the CGA, Section 49 of the Urban Areas and Cities Act, the resolutions of Intergovernmental Budget and Economic Council and the Technical Committee Report on the establishment of the County Public Service Staff Pension Scheme, the Maanzoni Joint Communique and other similar resolutions of meetings of stakeholders in the County Governments.
2. Anchor the County Pension Fund under an Act of Parliament and to provide for the establishment and/or adoption of the County Pension Fund by County Governments to provide pension services to all employees of county governments.
3. Closure of Local Authorities Pensions Trust and Local Authorities Pensions Fund to new entrants and provides that the aforesaid two schemes shall run their course until the last member is paid off. This is in compliance with the recommendations of the Technical Committee and is intended to ensure that there is a harmonized pension arrangement for county employees.
4. Provides for a merger of administration services of the County Pension Fund, Local Authorities Pension Trust and Local Authorities Provident Fund under a corporate administrator and provides for mechanisms to prevent commingling of assets of the three schemes.
5. Provides for the transfer of staff from LAPFUND and LAPTRUST's corporate administrator to a joint corporate administrator which shall provide administration services to all the three schemes.

They proposed the following amendments:-

## **Clause 2**

The definition of Cabinet Secretary is deleted and the following definition inserted in clause 2 in the proper alphabetical sequence: "Chairperson, Council of Governors."

## **Justification**

1. setting up of pension schemes for County Governments is a function of the County Governments under the Constitution.
2. The Counties should be given the necessary independence to run the County Pension Scheme.
3. As provided under the Constitution, the National Government under the auspices of the National Treasury and the Retirement Benefits Authority should prescribe broad pensions standards and policy directions and exercise regulatory and oversight roles.

In defining the word corporate administrator, the words “and shall include a Corporate Administrator previously incorporated by a closed scheme” should be deleted.

**Justification**

1. the corporate administrator be retained since the design of the administrator is intended to merge administration of the three schemes without commingling assets also the use of corporate administrator is a transitional arrangement which shall distinguish when all liabilities of Laptrust and Lapfund are settled by government.
2. Its noted that the same can be construed as being superfluous and therefore it is in order to delete the words.

The following definition is inserted in Clause 2 in the proper alphabetical sequence, “Fund Credit” means for each employee at a particular date, the sum of:

- i. His portion;
- ii. His employer’s portion and
- iii. Interests accrued

**Justification**

This definition is missing whilst the term “Fund Credit” has been used in the general rules of the scheme.

**Clause 6**

1. Amend by deleting the words “and the Chief Executive Officer of the Scheme”
2. The term of the Chief Executive Officer will be a 3 year period renewable once based on performance.

**Justification**

1. The trust secretary shall not serve as the Chief Executive Officer of the Scheme as this will present a conflict.
2. There is a need to have a limit for the tenure of the CEO for evaluation purposes. It is not imperative to leave it open ended.

**Clause 6(2)(d)**

They propose that the close should be deleted.

**Justification**

The scheme is not in the business of borrowing and lending money and thus the clause should not be in the Act.

**Clause 6(3)**

Delete Cabinet Secretary and replace with as appointed by the Chairperson of the Council of Governors.

**Justification**

1. Setting up of pension schemes for County Governments is a function of the County Governments under the Constitution.
2. The counties should be given the necessary independence to run the County Pension Scheme.

Include a clause setting out the grounds of removal of a corporate administrator

**Justification**

It is imperative to have a clause that entails the grounds of removal of the corporate administrator. The trustees should be given powers to appoint and remove a corporate in case of gross misconduct and other grounds provided for in the law.

**Clause 21**

They propose that this clause is amended by deleting the following words, “owned by any of the closed schemes and modify its structure to suit the joint needs of the three partner schemes.”

The Clause should be further amended by inserting the words “other” immediately after the words “adopt any.”

**Justification**

The provision predetermines who the corporate administrator will be and thus takes away the powers of trustees to appoint the administrator.

**Clause 22**

The Council recommends that the employee remits an amount equal to 7.5% of the pensionable emoluments.

**Justification**

The increase of 7.5% to 12% is too high for the employees and is more likely to overburden employees.

**Clause 24**

They propose that the clause should be deleted

**Justification**

It imposes discriminatory treatment on contribution rates and benefits entitlements between seconded employees and other employees within the County Governments.

**Clause 26(2)**

They propose an amendment by reducing the administrative costs from a maximum of 5% to a maximum of 1.5%.

**Justification**

The administrative expense as capped at 5% is too high.

**Clause 29 (2)(b)**

They suggest that the clause should be deleted.

**Justification**

The scheme is not allowed by law.

**Clause 38**

The sponsors and the members of the scheme shall be exempt from Tier 2 of National Social Security Fund or any other statutory scheme.

**Justification**

The employer is under a statutory obligation to contribute to tier 1 of NSSF.

### **Clause 43 and 44**

They propose that the clauses should be deleted.

#### **Justification**

Any amendments of other legislations should be done through the Statute Miscellaneous Amendment Bill and not through the Bill.

### **Clause 132A(3)**

Clause should be addressed in the transition provisions.

#### **Justification**

It is of utmost importance for the scheme to set up the gratuity for all staff working in counties.

### **Clause 132H**

All liabilities of the closed schemes be resolved and settled by the National Government.

#### **Justification**

All the employees of the defunct local authorities were appointees of the Public Service Commission, thus employees of the National Government hence the National Government was responsible for remuneration (including pension) of the employees of the defunct local authorities.

### **Part IV**

They propose that Part IV should be divided into two parts as follows;

Part IV: Savings and Transitional Provisions

This part shall consist of clauses "132A" to 132 1 be renumbered appropriately.

#### **Justification**

The clauses proposed to be moved to Part IV are substantially savings and transitional in nature and relates specifically to the County Pension Scheme as opposed to the County Governments Act.

### **Second Schedule**

They also propose that the words “Second Schedule” be inserted immediately before the words “The General Rules of the County Pension Scheme”.

### **Justification**

The omission of the words “Second Schedule” be a typographical error.

#### **4.12 COUNTY ASSEMBLY OF NAIROBI**

Members of the County Assembly of Nairobi objected the Bill in its entirety for the following reasons:-

1. MCA’s are major stakeholders on pension matters relating to counties. They are members of LAPFUND which the Bill seeks to dissolve and there was no consultation on the Bill in utter disregard of Article 10 of the Constitution. They felt that the Bill was hidden from stakeholders owing to the fact that it was published on 29<sup>th</sup> December, 2017 while people were in a festive mood.
2. The Bill is intended to sanitize activities of various companies being run by Mr. Hosea Kili who had appointed himself as a group Managing Director of the following companies;
  - i. CPF Financial Services
  - ii. LAPTRUST Administration Services
  - iii. Laser Property Management Company
  - iv. Laser Insurance Brokers
  - v. LAPTRUST Infrastructure & Technology
  - vi. LAPTRUST Umbrella Scheme among others

Section 4(1) proposes adoption of an existing umbrella scheme, Section 5(4) proposes that County Pension Scheme shall be the successor of LAPTRUST Umbrella Retirement Fund, Section 21(1) proposes adoption of an existing corporate administrator and section 25(1) proposes adoption of an existing fund.

All the above were private companies purporting to run public affairs. They weren’t recognized as government agencies/entities. Members raised complaints about the arbitrary change of benefits formula by LAPTRUST and its affiliated companies to disadvantage them. Some beneficiaries were fighting for their rights in court.

3. The Bill was calculated to push debt to the national government and steal pensioner's money. It was known that CPF had an actuarial deficit and debts relating to former Local Authorities and Counties amounting to over 20 billion. If the institution is converted into a government entity it means that the government will absorb the debt through the back door.
4. The Bill under section 26 proposes an administration fee of up to 5% of the fund value or any other rate to be determined by the Board. The prescribed rate is already exorbitant considering that industry average is at below 2%. The discretion proposed for the Board to determine will be open to abuse. Besides, all public schemes of this nature have internal administrators, whose budgets are approved like those of other state organs.
5. The Bill is meant to give way to theft of public money. It proposes establishment of a scheme and adoption of an existing one at the same time and to adopt an existing corporate administrator under section 21(1). This means perpetuating the mis-management at CPF Financial services which had been de-registered at one point by RBA but fought its way back through the courts. It also proposes to create a scheme without staff to execute its mandate and instead delegate its functions to a third party under section 9(1). A careful reading makes it clear that it is intended to create an amorphous body like the current CPF Financial Services for obvious reasons.
6. Stakeholders came up with a bill that balanced all interests. The County Governments Retirement Scheme Bill, 2018 presented by the Chairperson, Senate Committee of Labour and Social Services and was being processed through the Senate. This was after various initiatives by LAPFUND and LAPTRUST failed to yield due to divergent interests. The County Pension Scheme Bill, 2017 which seeks to advance selfish interests must be shelved to give way to the all-inclusive stakeholders Bill.

#### **4.13 HON. JOE DONDE**

He was representing the County Public Service Boards in respect of the County Pensions Scheme Bill. He stated that he was not in support of the Bill.

#### **4.14 KENYA NATIONAL UNION OF NURSES**

The Union was represented by their General Secretary Mr. Seth Panyako. The General Secretary submitted that:-

1. They noted with great astonishment that the same bill that had been presented before the Senate and rejected by all major stakeholders had been reintroduced in Parliament through the back door with the same view of protecting some interests. The content of the bill are substantively similar

to the bill that was rejected by the Senate, County Pension Scheme Bill, 2016 save for clause 11 that has been introduced.

2. The Union's memorandum that was submitted to the Senate on 29<sup>th</sup> March, 2016 to the Committee on Labor and Social Welfare which was handling public participation remains their position.
3. They wrote a letter to the Speaker/Clerk of the Senate raising their objection to the Bill.
4. During public participation, they noted that IBEC, County Public Service Boards, Union of Kenya Civil Servants, LAPFUND and Office of the Director of Pension and the National Treasury rejected the bill that is being re-introduced through a private Member's motion.
5. The Union reiterated its earlier position of rejecting the said Bill and it should therefore be withdrawn to allow the Bill before the Senate to proceed.

#### **4.15 HON. MURIUKI NJAGAGUA, MP,**

The Hon. Member stated that the Bill was important as it would operationalize Section 132 of the County Governments Act thus enabling employees of county governments to be subscribed to a pension scheme.

He also stated that the Bill was seeking to implement the recommendations of the Attorney General as detailed in his Legal Opinion sought by County Stakeholders dated 24<sup>th</sup> January, 2017. The Attorney General Legal Opinion recommended that; *"Laptrust (Umbrella) Retirement Fund scheme should be anchored under an Act of Parliament to protect the interest of the members of the scheme as resolved by the County Governments."*

#### **4.16 THE NATIONAL TREASURY**

The Cabinet Secretary, National Treasury stated that the Ministry was opposed to the Bill because it goes against the recommendations of an Interagency Technical Committee established by the Transition Authority. The Interagency Technical Committee recommended the establishment of a new scheme, close the existing ones, begin afresh without liabilities and have a scheme that will run independently. Nonetheless, the National Treasury submitted the following amendments:-

##### **Clause 2**

##### **Definition of Cabinet Secretary**

1. Currently, the Cabinet Secretary responsible for matters relating to the management and regulation of pension schemes in Kenya is the Cabinet Secretary responsible for matters relating to finance.
2. Policy decisions on retirement benefits and other financial services are anchored within the National Treasury by the Public Finance Management Act.

### **Definition of Pensionable emoluments**

The definition for pensionable emoluments should be:

**“Pensionable Emoluments”** means basic salary excluding housing, transport and any other allowances or fluctuating emoluments.

### **Justification**

The provision increases the costs to sponsors (the County Governments) which are the employers contributing to the Scheme. Further, it violates SRC Guidelines and the Treasury circular No. 18 of 2010 and is not in line with current practice in the Public Service.

### **Section 2- definition of public funds**

The definition of public funds set out in the CPS Bill 2017 is in conflict with the definition of public money under the Public Finance Management Act of 2012 – that is, “public money includes:

- (a) All money that comes into possession of, or is distributed by, a national government entity and money raised by a private body where it is doing so under statutory authority
- (b) Money held by national government entities in trust for third parties and any money that can generate liability for the Government.

CPS Bill 2017 cannot alter the meaning of public money/funds. National Treasury therefore recommend that the definition of public money/funds be dropped since the definition in the PFM Act applies generally.

### **Section 2- definition of Trust Secretary**

The National Treasury is opposed to the definition of the Trust Secretary since from the definition in the Bill it is clear that;

- i. One person serves four positions i.e

- The trust secretary to the Board of the scheme;
  - Chief Executive Officer of the Corporate Administrator;
  - The secretary to the Board of the corporate administrator; and also
  - the Chief Executive Officer of the Scheme;
- ii. The appointing authority is not known; such appointments should be made by the Board of Trustees.
  - iii. The term limit for the CEO, who is also the Trust Secretary, is not defined; the usual term of office for such a CEO is limited to three (3) years renewable once.
  - iv. There is no provision for removal of the CEO of the corporate administrator.
  - v. That a conflict of interest may arise

#### Section 4(1) (a)

The National Treasury is opposed to this Section since:-

1. The idea behind introducing a Bill for the establishment of a scheme for County Governments was to **have a new scheme** rather than what was in existence, free from liabilities that had been accumulated by the previous schemes.
2. The Bill seeks to have the scheme as a successor of the LAPTRUST Umbrella Fund. This means as a successor all the **rights, obligations, assets and liabilities are transferred to the new scheme**. This will burden the new scheme with liabilities from the on-set including high levels of un-remitted contributions from both previous Local Authorities and current County Governments.
3. The provisions also contravene the preamble of the bill, which states;  
***“An act of parliament to establish the county pension Scheme; to provide for the management and administration of the scheme; and for connected purposes.”***
4. Further, the provisions seek to tie the hands of Trustees in determining the administrator and the framework for the scheme that will be established.

#### Section 4(j)

The National Treasury is opposed to this Section since:-

1. The Section proposes to adopt an existing corporate administrator; imposing on the Trustees the current arrangement;
2. The related Section 21 (1) again interferes with Trustees' powers, particularly through the inclusion of the phrase: -

*“Provided that the Board of the Scheme established under this Act and the Boards of the Closed Schemes may adopt any existing Corporate Administrator owned by any of the Closed Schemes and modify its structure to suit the joint needs of the three partner schemes.”*

**Section 6 (2)** - The National Treasury is opposed to this Section since:-

The Board has been given powers to lend monies of the scheme; these powers may be subject to abuse. Further, this is contrary to the provisions of Section 38 (1) of the Retirement Benefits Act, which provides that;

*‘No scheme funds shall be used to make direct or indirect loans to any person;*

#### **Section 22(1)**

The National Treasury is opposed the proposal of 12 % contribution to the scheme since:-

The higher contribution rates proposed may not be sustainable by members and goes against the negotiations with the employees unions which arrived at rates of 7.5% by employees and 15% by the employer – rates that are in line with SRC Guidelines and Treasury Circular No. 18 of 2010;

#### **Section 24**

The National Treasury is opposed to the proposal to phase contribution for the employees previously with the National Government because:-

The phasing considered discriminatory to the employees who are already contributing at the maximum rate, by having different rates of contributions and consequently, lower benefits entitlement. As such all the employees of the County Governments and associated organizations should be given equal treatment.

#### **Section 26(2)**

The National Treasury is opposed to the amount proposed for purposes of administrative expenses. The 5% rate is extremely high. The average for retirement benefits schemes in Kenya is below 1.0%. However, large public sector schemes have been allowed a maximum of 1.5%, which may be adopted.

**Section 29 (2) (b)** The National Treasury is opposed to the proposal to fund CSR since:-

1. Providing for funding of corporate social responsibility is an unnecessary expense and a mischievous way of accessing the scheme funds.
2. Allowing such an expense will be a major drain of member's benefits and go contrary to the purposes of the scheme.
3. In the related Section 13, conducting a remuneration survey through a consultant to every time the board needs determine their remuneration is another unnecessary expense.
4. Furthermore, the Section 5(ab) of the RB Act provides that members of the scheme shall approve the trustees' remuneration at an AGM once every three (3) years and the same shall be approved by the Authority.

**Section 32 (1)** The National Treasury is opposed to the proposal to have an actuary review the scheme. They stated that this was contrary to the provisions of the Retirement Benefits Act which does not require regular actuarial review of a defined contribution scheme.

### **Section 38 Exemption from other Statutory Schemes**

The National Treasury is opposed to the proposal to exempt the members from contribution to National Social Security Fund since Tier I contributions under the NSSF Act are mandatory for everyone in employment, including those in the Public Service. This principal should be upheld and if any exemption is to be granted, it should relate only to Tier II contributions.

### **Sections 40 to 46 (Part IV) Amendments to existing Laws, Savings and Transitional Provisions**

The National Treasury is opposed to clauses since the proposed amendments to the stated Acts of Parliament are not miscellaneous amendments; they introduce substantial clauses and ought to be amended in the respective Acts, or carried in the Statute Law Miscellaneous (amendment) Bill.

### **Transition Clauses**

The Bill should carry comprehensive Transition Clauses to cater for the staff currently employed by administrators of the soon to be closed schemes.

Further provisions should be made for treatment of staff and officers of the County Government currently on contract (gratuity members).

#### **Section 44: Amendment to Section 132D (1) of the County Government Act.**

If the corporate administrator will be established for purposes of administering county schemes, it should not provide services to any other scheme; as it is considered an “internal administrator” under the Retirement Benefits Act and Regulations. This is contrary to provision in the phrase:

*“....and any other scheme in accordance with the Retirement benefits Act.”*

The National Treasury finds fault with the **Memorandum of objects and reasons** of the Bill which states that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

The National Treasury is of the view that this is a Money Bill within the meaning of Article 114 of the Constitution, as it obligates both the National Government and County Governments to offsetting the liabilities accrued by the schemes to be closed which would result in the appropriation of public funds.

#### **Section 4(1) (a)**

The idea behind introducing a bill for the establishment of a scheme for County Governments was to have a new scheme rather than what was in existence, free from liabilities that had been accumulated by the previous schemes.

The Bill seeks to have the scheme as a successor of the LAPTRUST Umbrella Fund. This means as a successor all the rights, obligations, assets and liabilities are transferred to the new scheme. This will burden the new scheme with liabilities from the on-set including high levels of un-remitted contributions from both previous Local Authorities and current County Governments.

The provisions also contravene the preamble of the bill, which states;

*“An act of parliament to establish the county pension*

*Scheme; to provide for the management and administration of the scheme; and for connected purposes.”*

Further, the provision seeks to tie the hands of Trustees in determining the administrator and the framework for the scheme that will be established.

The National Treasury proposes as follows:-

- (i) The Bill largely alters the main objective of the County Government Retirement Scheme Bill, 2015 and goes against the recommendations of an Interagency Technical Committee established by the Transition Authority to advise on the way forward in management of county pension. The main objective of the CGRS Bill, 2015, which was informed by the recommendations of the Interagency Task Force, was to establish a new scheme, close the existing ones, begin afresh without liabilities and have a scheme that will run independently.
- (ii) The Bill seeks to vary this direction by proposing the adoption of an existing and still nascent scheme – Lap trust Umbrella Scheme, with a value of only Kshs. 2 billion as at December 2016, together with its liabilities. It further incorporates the current corporate administrator of the same scheme whose role is written into the Bill, contrary to the provisions of the Retirement Benefits Act 1997; inter twining it with the scheme making it impossible for the scheme to run independently.
- (iii) While the CGRS Bill, 2015 was developed through a consultative that involved all major stakeholders, the development of the CPS Bill, 2017 did not involve all stakeholders. The CPS Bill, 2017 will therefore require substantive amendments to realign it to the CGRS Bill, 2015.
- (iv) The CPS Bill, 2017 should therefore be withdrawn and the CGRS Bill, 2015 should form the basis of discussion. The good provisions in the CPS Bill, 2017 can be incorporated in the CGRS Bill 2015 if agreeable to all stakeholders.

## 5.0 COMMITTEE STAGE AMENDMENTS

Having considered the memoranda on each of the Clauses, the Committee wishes to propose the following amendments;

### CLAUSE 2

THAT, clause 2 of the Bill be amended by —

- (a) deleting the definition of “Cabinet Secretary” and substituting therefor the following new definition—

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to finance;

- (b) deleting the definition of “commencement date”

- (c) deleting the definition of “corporate administrator” and substituting therefor the following new definition—

“corporate administrator” means a person appointed under section 21;

- (d) deleting the definition of “gender”;

- (e) deleting the definition of “pensionable emolument” and substituting therefor the following new definition—

“Pensionable Emoluments” means basic salary excluding housing, transport and any other allowances or fluctuating emoluments;

- (f) deleting the definition of “trust secretary”;

- (g) deleting the definition of “public funds”;

- (h) deleting the definition of “public service”;and

- (i) deleting the definition of “Regulations.”

**CLAUSE 3**

**THAT**, clause 3 of the Bill be amended by deleting paragraph (f).

**CLAUSE 4**

**THAT**, clause 4 of the Bill be amended by—

(a) renumbering clause 4(1) as clause 4;

(b) deleting paragraph (a) and substituting therefor the following new paragraph—

(a) establish a county pension scheme for all staff and officers of County Governments, County Agencies, County Corporations, Associated Organizations and other related entities;

(c) deleting paragraph (i) and substituting therefor the following new paragraph—

(i) provide an administrative framework for the umbrella pension scheme established under this Act and the Closed Schemes; and

(d) deleting paragraph (j) and substituting therefor the following new paragraph—

(j) provide for the establishment of an administrator to provide scheme administration services to all retirement benefits schemes within the county governments sector.

**CLAUSE 5**

**THAT**, clause 5 of the Bill be amended—

(a) by deleting subclause (2);

(b) in subclause (3) by deleting the word “umbrella”;and

(c) by deleting subclause (4).

## **CLAUSE 6**

**THAT**, clause 6 of the Bill be amended—

- (a) in subclause (3) by deleting the words “three most representative” and substituting therefor the words “five most representative”;
- (b) by deleting subclause (5) and substituting therefor the following new subclause—
  - (5)The chief executive officer shall serve as the secretary to the Board and accounting officer of the Scheme; and
- (c) in subclause (9) by deleting the words “Trust Secretary” and substituting therefor the words “chief executive officer”

## **CLAUSE 7**

**THAT**, clause 7(c) of the Bill be amended by inserting the following new sub-paragraph immediately after paragraph (x)—

- (xa) human resource management.

## **CLAUSE 9**

**THAT**, clause 9 of the Bill be amended—

- (a) in subclause (1) deleting paragraph (b) and substituting therefor the following new paragraph—
  - (b) appoint a custodian, fund manager, administrator and other service providers to carry out their functions as specified in the Retirement Benefits Act;
- (b) by deleting subclause(4) and substituting therefor the following new subclause—
  - (4) The Board may subject to such conditions as it may consider appropriate, by directions in writing, delegate any of its powers to any one or more of the Trustees or to the chief executive officer or employees of the Schemes.

**CLAUSE 21**

**THAT**, clause 21 of the Bill be amended by—

(a) deleting subclause(1) and substituting therefor the following new subclause—

(1)The Scheme shall be administered by an administrator appointed by the Board in accordance with the Retirement Benefits Act; and

(b) deleting subclause (2)—

**CLAUSE 26**

**THAT**, clause 26 of the Bill be amended in subclause(2) by deleting the words “five percent” and substituting therefor the words “one and half percent”.

**CLAUSE 29**

**THAT**, clause 29(2)(b) of the Bill be amended by deleting subparagraph (iii).

**CLAUSE 32**

**THAT**, the Bill be amended by deleting clause 32.

**CLAUSE 38**

**THAT**, clause 38 of the Bill be amended by—

(a)renumbering clause 38 as clause 38(1); and

(b)inserting the following new subclause immediately after subclause (1)—

(2)Despite the provisions of subsection (1), sponsors and members of the Scheme shall be liable to make Tier I contributions to the National Social Security Fund.

**CLAUSE 39**

**THAT**, the Bill be amended by deleting clause 39.

**CLAUSE 42**

**THAT**, the Bill be amended by deleting clause 42 and substituting therefor the following—

Amendment to the Local authorities Provident Fund Act, Cap. 272. **42.** The Local Authorities Provident Fund Act is amended—

- (a) in section 5 by-
- (i) deleting subsection (1) and substituting therefor the following new subsection—

(1) There is hereby established a Board of Trustees to be known as the Local Authorities Provident Fund Board which shall consist of the following members—

- (a) two persons nominated by the County Public Service Boards National Coordinating Forum;
- (b) a person nominated by the County Assembly Service Boards National Coordinating Forum;
- (c) a Governor nominated by the Council of Governors;
- (d) five persons nominated by three most representative workers unions to represent employees of county governments and associated organisation.

- (ii) deleting subsection (1A) and substituting therefor the following new subsection (1A) —

(1A) The members of the Board shall elect one person from among their number to be the chairperson.

- (iii) inserting the following new subsections immediately after subsection (1A) —

(1B) In the absence of the chairperson from any of the meetings of the Board, the members of the Board shall elect a chairperson for their meetings.

(1C) The chief executive officer shall be the Secretary to the Board and the accounting officer of the Fund.

(1D) In the composition of the Board, no more than two-thirds of the members shall be of one gender and the Board shall also reflect the regional and ethnic diversity of Kenya.

(1E) The Regulations shall prescribe the procedure for nomination and appointment of the trustees under subsection (1).

(1F) Any person who immediately before the commencement of this section was a chairperson, or Member of the Board of Directors shall continue to serve for the remainder of his term after which new board members shall be constituted in accordance with section 5 (1) above.

(b) by inserting the following new section immediately after section 6—

**6A.** In addition to the powers provided for under section 6, the Board shall have the following powers and duties to participate in the affairs of the Inter-scheme Consultative Committee in accordance with the County Governments Act, 2012.

(c) in section 8 by inserting the following new subsection immediately after subsection (4)—

(4) This section shall on the commencement of the County Governments Act cease to apply to any person who on or before the said commencement date was not a member or a Contributor of the Fund established under this Act.

(5) A person to whom subsection (5) refers is not eligible to contribute to the Fund established under this Act but shall be liable to contribute to the umbrella retirement benefits scheme established under the County Pension Fund Act, 2016.

(6) Without prejudice to sub-section (5), this section shall at the commencement of the County Governments Act, continue to apply to any person who prior to the commencement of the County Governments Act was a Contributor or Member and such a contributor or member shall remain liable to contribute to the Fund.

(d) by deleting sections 16 and 18.

(e) The Local Authorities Provident Fund Act is amended in section 20 by inserting the following new sections immediately after section 20—

**20A.** The Fund shall on the commencement of the County Governments Act be closed to new entrants but shall function as a normal scheme for its continuing members subject to section 8 (5) and (6) of this Act.

**20B.** All moneys, assets and liabilities of the Fund as at the commencement of the County Governments Act shall remain vested in the Fund until such time the contributors or their beneficiaries are paid off in full.

**CLAUSE 44**

**THAT**, clause 44 of the Bill be amended by deleting paragraph (b) and inserting the following new paragraph—

(b) by inserting the following new sections immediately after section 132—

Pension for  
county  
Employees.

**132A.** (1) All officers and staff employed by a county government, county agency, county corporation or associated organization shall after the commencement of the County Government Act, subscribe to the County Pension Fund established under the County Pension Scheme Act.

No. 17 of 2012.

(2) All county governments, county agency, county corporation or

associated organization shall, upon the commencement of this Act subscribe their employees to whom subsection (1) applies and remit the contributions to the County Pension Fund.

(3) Gratuity for all staff and officers of a county government shall be managed by an Individual Pension Scheme administered by the Corporate Administrator established in accordance with this Act to manage the three county government schemes.

(4) Notwithstanding subsection (1), any person who, at the commencement of this section—

- (a) is employed by a county government or transferred thereto under Part VII of this Act; and
- (b) has attained the age of fifty years, may, within a period of five (5) years after such commencement, elect to remain in the Local Authorities Pensions Trust or the Local Authorities Provident Fund, as the case may be or transfer his Membership and accrued benefits to the County Pension Fund.

The closed schemes

**132B.** (1) Notwithstanding any other provision of this Act or any other written law, Local Authorities Pensions Trust and Local Authorities Provident Fund shall upon the commencement of this Act become Closed Schemes for the benefit of their existing members only.

(2) The Closed Schemes shall exist alongside the County Pension Fund established under the County Pension Scheme Act, until such time that the last member, contributor or beneficiary of the Closed Schemes is paid off or transfers to the County Pension Fund.

(3) Upon payment of the last member, contributor or beneficiary of the Closed Scheme, all funds of the Closed Schemes shall vest in the County Pension Scheme.

Tenure of Board Members during the transition.

**132C.** Any person who immediately before the commencement of this Act was a chairperson or member of the Board of the Closed Schemes shall continue to serve for the remainder of their unexpired term.

Transition to the Administrator.

**132D.** (1) The Closed Schemes and the County Pension Scheme shall establish or own a Corporate Administrator jointly to manage the three Schemes and any other scheme in accordance with the Retirement benefits Act.

(2) The Corporate Administrator shall render administration services

to the County Pension Scheme and such other retirement benefits schemes who may require its services.

(3) The Administrator shall be appointed by the Board in accordance with the Retirement Benefits Act.

(4) The Closed Schemes or their administrators whichever is applicable shall at the commencement date transfer their staff together with such assets to be used by the staff to the County Pension Scheme and the transferred staff shall be the first staff of the Scheme retaining their accrued benefits, terms and conditions of service subject to a suitability assessment and evaluation, and placement in the corporate structure of the Scheme.

(5) At the Commencement of this Act, the Chief Executive Officers of the County Pension Scheme shall be recruited in a competitively, open and transparent process.

(6) The assets previously used by the in-house administrators of the Closed Schemes shall after valuation count as part of their previous owner's shareholding in the Corporate Administrator.

(7) The Board of the Corporate Administrator shall be constituted as follows—

- (a) one person appointed by Local Authorities Provident Fund Board—
- (b) one persons appointed by Local Authorities Pensions Trust Board;
- (c) one member appointed by the County Public Service Boards Forum;
- (d) one Member appointed by the County Assembly Public Service Boards Forum;
- (e) one member appointed by the Associated Organizations and the water service providers association;
- (f) three independent Members possessing technical expertise in the pensions industry or any other profession appointed by the Cabinet Secretary from the relevant professional bodies representing Members in the three schemes; and
- (g) the Chief Executive Officer of the Corporate Administrator.

(8) The Board of the Corporate Administrator shall elect a

chairperson from among their number.

(9) Without prejudice to the foregoing, the Memorandum and Articles of Association of the Corporate Administrator shall provide for the institutional framework of the Corporate Administrator.

Trust Secretary  
and Employees  
of the Corporate  
Administrator.

No. 3 of 1997.

**132E.** (1) There shall be a chief executive officer who shall also serve as the Secretary to the Board of Trustees of the Schemes under its Administration.

(2) In addition to the staff and officers transferred from the Closed Schemes or any of their administrators to the County Pension Scheme, the County Pension Scheme may engage such other employees as it may consider expedient for the performance of its functions under the Retirement Benefits Act and the Companies Act.

(3) Without prejudice to the provisions of the 132D (4) the terms and conditions of service of employees of the Corporate Administrator shall be determined by the Board of the Corporate Administrator.

(4) The terms of employment of the staff transferred from the Closed Schemes into the Corporate Administrator shall neither be varied to their disadvantage nor their accrued benefits interfered with in any way.

The Inter-scheme  
Consultative  
Forum.

**132F.** (1) There is established a Forum to be known as the Inter-scheme Consultative Forum.

(2) The Forum shall be constituted by all the members of the Boards of the Closed Schemes and the County Pension Fund.

(3) The Chairmanship of the Forum shall be rotational among the Chairmen of the three Schemes. Each Chairman shall serve for a term of two years at each rotation circle.

(4) The Forum may meet on a quarterly basis and on such other times as the presiding chairman, the Corporate Administrator, the County Pension Fund and the Closed Schemes may request considering the urgency of any matters to be addressed.

(5) The quorum for the conduct of the business of the Forum shall be fifteen members present or by resolution circulated and approved by the number forming a quorum.

(6) Any costs incurred or expenses expended by the Forum in the discharge of their duties and responsibilities under this Act shall be apportioned to each of the three Schemes equally.

(7) A member of the Forum who absents himself from three

consecutive meetings of the Forum without written permission from the chairperson of the Forum and is unable or has neglected to provide any reasonable excuse for his absence shall lose his membership in the Board of the Scheme in which he represents.

(8)The meetings of the Forum shall be convened and records kept by Corporate Administrator at the request of the chairperson of the Forum in accordance with the Regulations made by the Forum.

(9)The Forum shall stand dissolved ten years after the commencement date or upon the complete discharge of their responsibilities under this Act, whichever is earlier.

Responsibilities  
of the Inter-  
scheme  
Consultative  
Forum.

**132G.** (1) The responsibilities of the Inter-scheme Consultative Forum shall be to provide a forum for—

(a) consultations between the Schemes and the Corporate Administrator on matters of common interests between the Schemes;

(b) dealing with any differences and disagreements among the schemes that may arise regarding transfer of data, assets, liabilities and members to the County Pension Fund and of employees and administrative assets to the Corporate Administrator and bringing consensus among the Schemes on areas of common interests or divergence;

(c) considering any policies and plans formulated, developed and implemented by the County Pension Scheme, in conjunction with the Corporate Administrator and Closed Schemes to ensure smooth transition to a Umbrella pension scheme in accordance with this Act, the County Pension Fund Act and the Retirement Benefits Act;

(d) receiving reports from the Corporate Administrator on the progress of implementation of the County Pension Scheme, any agreement between the closed schemes and the County Pension Fund, and particularly deliberating on the implementation of the following—

(i) the transfer of human resources and their accrued benefits and rights to the Corporate

Administrator in accordance with this Act;

(ii) the transfer of such assets as may be required for the efficient functioning of the resources transferred under paragraph (i); and

(iii) the audit, valuation and verification of assets and liabilities of the Closed Schemes, and settlement of the liabilities to the Closed Schemes by their Sponsors.

(e) Consultation for the proper implementation of the process described in sub-section (2) (d) above is done in a harmonious manner and to amicably address any divergence that may arise therefrom; and

(f) carrying out such other connected and or incidental functions.

Liabilities of  
the Closed  
Schemes.

**132H.** The liabilities of the Closed Schemes shall be resolved and settled by the respective county governments through own source resource being the successor of the responsible local authorities opting to settle the same through property debt-swap agreements among other ways as may be considered appropriate;

Provided however that all the liabilities shall be cleared within a maximum period of three years as provided for under the Retirement Benefits Act.

Remittance of  
contributions of  
retiring  
employees.

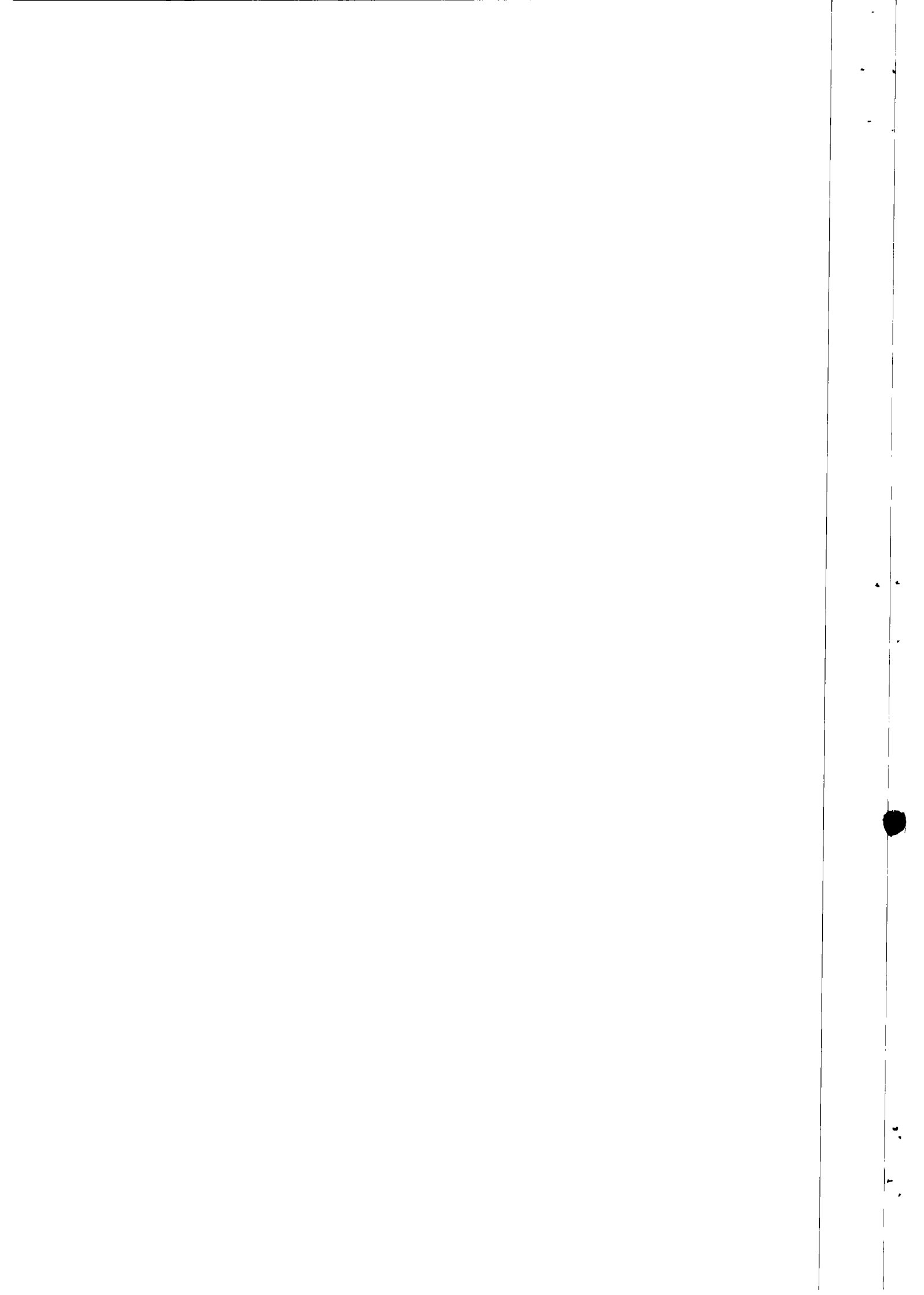
**132I.** Notwithstanding the provisions on retirement ages in the three Schemes, no member of a county scheme shall be released to retire from service by the relevant employer until all his retirement benefits have been remitted to the relevant Scheme by the relevant employer. Any employer's representative who contravenes this Section commits an offence punishable on conviction by a fine of one million shillings or a jail term of five years or both

#### **FIRST SCHEDULE**

**THAT,** the First Schedule to the Bill be amended by deleting "THE GENERAL RULES OF COUNTY PENSION SCHEME" appearing immediately after paragraph 7.

#### **FOURTH SCHEDULE**

**THAT,** the Bill be amended by deleting the Fourth Schedule.



## **Annextures**

- 1. Minutes of the proceedings**
- 2. Adoption schedule**

11

12



13

**MINUTES OF THE 74<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON TUESDAY, 13<sup>TH</sup> NOVEMBER, 2018 IN BOARD ROOM , 9<sup>TH</sup> FLOOR, HARAMBEE SACCO PLAZA AT 10.00 AM**

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**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Christopher Omulele, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. David M. Mboni, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Joseph M. Oyula, MP
11. Hon. Edith Nyenze, MP
12. Hon. Francis K. Kimani, MP

**APOLOGY**

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Shakeel Shabbir Ahmed, MP
3. Hon. Lydia H. Mizighi, MP
4. Hon. Mohamed A. Mohamed, MP
5. Hon. Purity Ngirici, MP
6. Hon. Samuel Atandi, MP
7. Hon. Stanley M. Muthama, MP

**INATTENDANCE**

**SECRETARIAT**

- |                        |   |                                   |
|------------------------|---|-----------------------------------|
| 1. Ms. Leah Mwaura     | - | Senior Clerk Assistant/Lead Clerk |
| 2. Ms. Jennifer Ndeto  | - | Principal Legal Counsel 1         |
| 3. Mr. Collins Mahamba | - | Audio Officer                     |
| 4. Mr. John Njoro      | - | Serjeant-At-Arms                  |
| 5. Mr. Vitalis Augo    | - | Office Assistant                  |

## Agenda

### AGENDA

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Confirmation of Minutes of the proceedings of 69<sup>th</sup> – 73<sup>rd</sup> sittings
5. Matters Arising
6. **Bills**

**i) Recommittal of Item 1 and 2 of the Committee's Recommendations on the County Pensions Scheme Bill, 2017**

1. The County Pension Scheme Bill, 2017 should be withdrawn pursuant to Standing Order 140 to allow for the consideration of the County Governments Retirement Scheme Bill, 2018 which is has incorporated the views of all affected stakeholders.
2. The Second Reading of County Pensions Scheme Bill, 2017 should not be approved by the House.

**ii) Consideration of the Capital Markets Authority ( Amendment) Bill, 2018**

**7. Pending Business before the Committee – refer to pages 2,37 of the Notice**  
Adjournment/ Date of the next meeting

**MIN.NO.NA/F&NP/2018/414: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 10.25 am with prayer from the Chairperson.

**MIN.NO.NA/F&NP/2018/415: CONFIRMATION OF MINUTES**

Agenda deferred

**MIN.NO.NA/F&NP/2018/416: RECOMMITTAL OF THE COUNTY PENSIONS SCHEME BILL**

The Chairperson informed the Committee that the County Pensions Scheme Bill was scheduled for Second Reading the following day hence the need for the Committee's report to have been tabled before then. The Chairperson requested the Committee to reconsider its position on the observations and recommendations contained in the report of the Committee on the Bill. The Members unanimously agreed to the deletion of the observations and recommendations and in their place support the Committee's proposed Committee Stage Amendment. The matter was proposed and seconded by Hon. Rahim Dawood, M.P and Hon. Jimmy Angwenyi, M.P respectively.

**MIN.NO.NA/F&NP/2018/416: CONSIDERATION OF THE CAPITAL MARKETS AUTHORITY ( AMENDMENT) BILL, 2018**

The Committee was taken through the Committee Stage Amendments on the above mentioned Bill. The following Amendments were therefore proposed for consideration by the House during Committee Stage:-

**CLAUSE 2**

**THAT**, the Bill be amended in clause 2 by deleting the word “of” appearing immediately before the words “licenced person” and substituting therefor the word “or”.

Justification: The amendment is intended to clean up typo errors.

**CLAUSE 3**

**THAT**, clause 3 of the Bill be amended by deleting paragraph (b).

Justification: The amendment proposed is being deleted since it’s already covered in the Bill.

**CLAUSE 5**

**THAT**, clause 5 of the Bill be amended in paragraph (a) by inserting the following new subsections immediately after subsection (2A)—

(2B) The Cabinet Secretary shall make regulations to give effect to the provisions of subsection (2A).

(2C) A person who—

- (a) colludes with an officer of the Authority for the purpose of collecting the reward under subsection (2A);
- (b) while working at the Authority aides another person to get and provide information under subsection (2A);
- (c) provides false information under subsection (2A);

commits an offence shall on conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years.

Justification:

- i) The first amendment in 2B is meant to give the Cabinet Secretary to make regulations to give effect to the subsection. 2A
- ii) The second amendment in 2C is meant to create an offence for persons working for the Authority who may collude in order to benefit from the reward system being introduced for persons who provide new and timely information leading to the recovery of investors’ money. The penalty is also meant to also penalize persons who may want to give misleading information for purposes of benefiting from reward thereof.

**CLAUSE 7**

**THAT**, clause 7 of the Bill be amended by deleting subparagraph (vii).

Justification: The amendment proposing for the deletion of subparagraph (vii) is because subparagraph (iii) is similar to subparagraph (vii).

**MIN.NO.NA/F&NP/2018/417: ANY OTHER BUSINESS**


1. The Chairperson requested Members to avail themselves for the meeting with the Central Bank of Kenya and the Kenya Bankers Association scheduled for Thursday 15<sup>th</sup> November, 2018 so as to engage them on the implementation of the Finance Act (Section relating to guidelines for withdrawal and depositing).
2. The Secretariat was directed to follow up with the Directorate of Finance and Accounting on the payments made to Members for meetings held away from Nairobi.

**MIN.NO.NA/F&NP/2018/418: ADJOURNMENT**

There being no other business to deliberate on, the meeting was adjourned at 11.50 a.m. The date of the next meeting is Thursday, 15<sup>th</sup> November, 2018 at 10.00am.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED .....  ..... DATE... 13/11/18 .....

**MINUTES OF THE 21<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 11<sup>TH</sup> APRIL, 2018 IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 10.00AM**

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**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. (Dr.) Enoch Kibunguchy, MP
4. Hon. Abdul Rahim Dawood, MP
5. Hon. Daniel E. Nanok, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. David M. Mboni, MP
8. Hon. Joseph M. Oyula, MP
9. Hon. Mohamed A. Mohamed, MP
10. Hon. Purity W. Ngirici, MP
11. Hon. Lydia H. Mizighi, MP
12. Hon. Samuel Atandi, MP

**APOLOGY**

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Alfred Sambu, MP
3. Hon. Shakeel Shabbir Ahmed, MP
4. Hon. Joshua C. Kandie, MP
5. Hon. Francis K. Kimani, MP
6. Hon. Stanley M. Muthama, MP

**INATTENDANCE**

**SECRETARIAT**

- |                        |   |                                   |
|------------------------|---|-----------------------------------|
| 1. Ms. Leah Mwaura     | – | First Clerk Assistant/ Lead Clerk |
| 2. Ms. Laureen Wesonga | – | Third Clerk Assistant             |
| 3. Mr. Josephat Motonu | – | Fiscal Analyst                    |
| 4. Ms. Lynette Otieno  | – | Legal Counsel II                  |
| 5. Mr. Collins Mahamba | – | Audio Officer                     |
| 6. Mr. John Njoro      | – | Serjeant-At-Arms                  |

**Agenda**

1. Prayers
2. Preliminaries/Introductions

3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Meeting to consider the Committee's amendments to the County Pension Scheme Bill, 2017**
11. Adjournment

**MIN.NO.106/DC-F/2018: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 10:27 a.m with prayer from the Chairperson. The Chairperson then welcomed the meeting to deliberate on the day's agenda.

**MIN.NO.107/DC-F/2018: CONFIRMATION OF MINUTES**

Agenda deferred.

**MIN.NO.108/DC-F/2018: CONSIDERATION OF THE COMMITTEE'S AMENDMENTS TO THE COUNTY PENSION SCHEME BILL, 2017**

The Committee considered the County Pensions Scheme Bill, 2017 and agreed on the following amendments: -

**CLAUSE 2**

**THAT**, clause 2 of the Bill be amended by —

- (a) deleting the definition of "Cabinet Secretary" and substituting therefor the following new definition—  
"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to finance;
- (b) deleting the definition of "commencement date"
- (c) deleting the definition of "corporate administrator" and substituting therefor the following new definition—  
"corporate administrator" means a person appointed under section 21;
- (d) deleting the definition of "gender";
- (e) deleting the definition of "pensionable emolument" and substituting therefor the following new definition—  
"Pensionable Emoluments" means basic salary excluding housing, transport and any other allowances or fluctuating emoluments;

- (f) deleting the definition of “trust secretary”;
- (g) deleting the definition of “public funds”;
- (h) deleting the definition of “public service”; and
- (i) deleting the definition of “Regulations.

### **CLAUSE 3**

**THAT**, clause 3 of the Bill be amended by deleting paragraph (f).

### **CLAUSE 4**

**THAT**, clause 4 of the Bill be amended by—

- (a) renumbering clause 4(1) as clause 4;
- (b) deleting paragraph (a) and substituting therefor the following new paragraph—
  - (a) establish a county pension scheme for all staff and officers of County Governments, County Agencies, County Corporations, Associated Organizations and other related entities;
- (c) deleting paragraph (i) and substituting therefor the following new paragraph—
  - (i) provide an administrative framework for the umbrella pension scheme established under this Act and the Closed Schemes; and
- (d) deleting paragraph (j) and substituting therefor the following new paragraph—
  - (j) provide for the establishment of an administrator to provide scheme administration services to all retirement benefits schemes within the county governments sector.

### **CLAUSE 5**

**THAT**, clause 5 of the Bill be amended—

- (a) by deleting sub-clause (2);
- (b) in sub-clause (3) by deleting the word “umbrella”; and
- (c) by deleting sub-clause (4).

### **CLAUSE 6**

**THAT**, clause 6 of the Bill be amended—

- (a) in sub-clause (3) by deleting the words “three most representative” and substituting therefor the words “five most representative”;
- (b) by deleting sub-clause (5) and substituting therefor the following new sub-clause—
  - (5)The chief executive officer shall serve as the secretary to the Board and accounting officer of the Scheme; and
- (c) in sub-clause (9) by deleting the words “Trust Secretary” and substituting therefor the words “chief executive officer”

### **CLAUSE 7**

**THAT**, clause 7(c) of the Bill be amended by inserting the following new sub-paragraph immediately after paragraph (x)—

(xa) human resource management.

**CLAUSE 9**

**THAT**, clause 9 of the Bill be amended—

(a) in sub-clause (1) deleting paragraph (b) and substituting therefor the following new paragraph—

(b) appoint a custodian, fund manager, administrator and other service providers to carry out their functions as specified in the Retirement Benefits Act;

(b) by deleting sub-clause(4) and substituting therefor the following new sub-clause—

(4) The Board may subject to such conditions as it may consider appropriate, by directions in writing, delegate any of its powers to any one or more of the Trustees or to the chief executive officer or employees of the Schemes.

**CLAUSE 21**

**THAT**, clause 21 of the Bill be amended by—

(a) deleting sub-clause(1) and substituting therefor the following new sub-clause—

(1)The Scheme shall be administered by an administrator appointed by the Board in accordance with the Retirement Benefits Act; and

(b) deleting sub-clause (2)—

**CLAUSE 26**

**THAT**, clause 26 of the Bill be amended in sub-clause(2) by deleting the words “five percent” and substituting therefor the words “one and half percent”.

**CLAUSE 29**

**THAT**, clause 29(2)(b) of the Bill be amended by deleting subparagraph (iii).

**CLAUSE 32**

**THAT**, the Bill be amended by deleting clause 32.

**CLAUSE 38**

**THAT**, clause 38 of the Bill be amended by—

(a) renumbering clause 38 as clause 38(1); and

(b) inserting the following new sub-clause immediately after sub-clause (1)—

(2) Despite the provisions of subsection (1), sponsors and members of the Scheme shall be liable to make Tier I contributions to the National Social Security Fund.

#### **CLAUSE 39**

**THAT**, the Bill be amended by deleting clause 39.

#### **CLAUSE 42**

**THAT**, the Bill be amended by deleting clause 42 and substituting therefor the following—

**42.**The Local Authorities Provident Fund Act is amended—

(a) in section 5 by-

(i) deleting subsection (1) and substituting therefor the following new subsection—

(1) There is hereby established a Board of Trustees to be known as the Local Authorities Provident Fund Board which shall consist of the following members—

(a) two persons nominated by the County Public Service Boards National Coordinating Forum;

(b) a person nominated by the County Assembly Service Boards National Coordinating Forum;

(c) a Governor nominated by the Council of Governors;

(d) five persons nominated by three most representative workers unions to represent employees of county governments and associated organisation.

(ii) deleting subsection (1A) and substituting therefor the following new subsection (1A) —

(1A) The members of the Board shall elect one person from among their number to be the chairperson.

(iii) inserting the following new subsections immediately after subsection (1A) —

(1B) In the absence of the chairperson from any of the meetings of the Board, the members of the Board shall elect a chairperson for their meetings.

(1C) The chief executive officer shall be the Secretary to the Board and the accounting officer of the Fund.

(1D) In the composition of the Board, no more than two-thirds of the members

shall be of one gender and the Board shall also reflect the regional and ethnic diversity of Kenya.

(1E) The Regulations shall prescribe the procedure for nomination and appointment of the trustees under subsection (1).

(1F) Any person who immediately before the commencement of this section was a chairperson, or Member of the Board of Directors shall continue to serve for the remainder of his term after which new board members shall be constituted in accordance with section 5 (1) above.

(b) by inserting the following new section immediately after section 6—

**6A.** In addition to the powers provided for under section 6, the Board shall have the following powers and duties to participate in the affairs of the Inter-scheme Consultative Committee in accordance with the County Governments Act, 2012.

(c) in section 8 by inserting the following new subsection immediately after subsection (4)—

(4) This section shall on the commencement of the County Governments Act cease to apply to any person who on or before the said commencement date was not a member or a Contributor of the Fund established under this Act.

(5) A person to whom subsection (5) refers is not eligible to contribute to the Fund established under this Act but shall be liable to contribute to the umbrella retirement benefits scheme established under the County Pension Fund Act, 2016.

(6) Without prejudice to sub-section (5), this section shall at the commencement of the County Governments Act, continue to apply to any person who prior to the commencement of the County Governments Act was a Contributor or Member and such a contributor or member shall remain liable to contribute to the Fund.

(d) by deleting sections 16 and 18.

(e) The Local Authorities Provident Fund Act is amended in section 20 by inserting the following new sections immediately after section 20—

**20A.** The Fund shall on the commencement of the County Governments Act be closed to new entrants but shall function as a normal scheme for its continuing members subject to section 8 (5) and (6) of this Act.

**20B.** All moneys, assets and liabilities of the Fund as at the commencement of the County Governments Act shall remain vested in the Fund until such time the contributors or their beneficiaries are paid off in full.

## **CLAUSE 44**

**THAT**, clause 44 of the Bill be amended by deleting paragraph (b) and inserting the following new paragraph—

(b) by inserting the following new sections immediately after section 132—

**132A.** (1) All officers and staff employed by a county government, county agency, county corporation or associated organization shall after the commencement of the County Government Act, subscribe to the County Pension Fund established under the County Pension Scheme Act.

(2) All county governments, county agency, county corporation or associated organization shall, upon the commencement of this Act subscribe their employees to whom subsection (1) applies and remit the contributions to the County Pension Fund.

(3) Gratuity for all staff and officers of a county government shall be managed by an Individual Pension Scheme administered by the Corporate Administrator established in accordance with this Act to manage the three county government schemes.

(4) Notwithstanding subsection (1), any person who, at the commencement of this section—

(a) is employed by a county government or transferred thereto under Part VII of this Act; and has attained the age of fifty years, may, within a period of five (5) years after such commencement, elect to remain in the Local Authorities Pensions Trust or the Local Authorities Provident Fund, as the case may be or transfer his Membership and accrued benefits to the County Pension Fund.

**132B.** (1) Notwithstanding any other provision of this Act or any other written law, Local Authorities Pensions Trust and Local Authorities Provident Fund shall upon the commencement of this Act become Closed Schemes for the benefit of their existing members only.

(2) The Closed Schemes shall exist alongside the County Pension Fund established under the County Pension Scheme Act, until such time that the last member, contributor or beneficiary of the Closed Schemes is paid off or transfers to the County Pension Fund.

(3) Upon payment of the last member, contributor or beneficiary of the Closed Scheme, all funds of the Closed Schemes shall vest in the County Pension Scheme.

**132C.** Any person who immediately before the commencement of this Act was a chairperson or member of the Board of the Closed Schemes shall

continue to serve for the remainder of their unexpired term.

**132D.** (1) The Closed Schemes and the County Pension Scheme shall establish or own a Corporate Administrator jointly to manage the three Schemes and any other scheme in accordance with the Retirement benefits Act.

(2) The Corporate Administrator shall render administration services to the County Pension Scheme and such other retirement benefits schemes who may require its services.

(3) The Administrator shall be appointed by the Board in accordance with the Retirement Benefits Act.

(4) The Closed Schemes or their administrators whichever is applicable shall at the commencement date transfer their staff together with such assets to be used by the staff to the County Pension Scheme and the transferred staff shall be the first staff of the Scheme retaining their accrued benefits, terms and conditions of service subject to a suitability assessment and evaluation, and placement in the corporate structure of the Scheme.

(5) At the Commencement of this Act, the Chief Executive Officers of the County Pension Scheme shall be recruited in a competitively, open and transparent process.

(6) The assets previously used by the in-house administrators of the Closed Schemes shall after valuation count as part of their previous owner's shareholding in the Corporate Administrator.

(7) The Board of the Corporate Administrator shall be constituted as follows—

- (a) one person appointed by Local Authorities Provident Fund Board—
- (b) one persons appointed by Local Authorities Pensions Trust Board;
- (c) one member appointed by the County Public Service Boards Forum;
- (d) one Member appointed by the County Assembly Public Service Boards Forum;
- (e) one member appointed by the Associated Organizations and the water service providers association;
- (f) three independent Members possessing technical

expertise in the pensions industry or any other profession appointed by the Cabinet Secretary from the relevant professional bodies representing Members in the three schemes; and

(g) the Chief Executive Officer of the Corporate Administrator.

(8) The Board of the Corporate Administrator shall elect a chairperson from among their number.

(9) Without prejudice to the foregoing, the Memorandum and Articles of Association of the Corporate Administrator shall provide for the institutional framework of the Corporate Administrator.

**132E.** (1) There shall be a chief executive officer who shall also serve as the Secretary to the Board of Trustees of the Schemes under its Administration.

(2) In addition to the staff and officers transferred from the Closed Schemes or any of their administrators to the County Pension Scheme, the County Pension Scheme may engage such other employees as it may consider expedient for the performance of its functions under the Retirement Benefits Act and the Companies Act.

(3) Without prejudice to the provisions of the 132D (4) the terms and conditions of service of employees of the Corporate Administrator shall be determined by the Board of the Corporate Administrator.

(4) The terms of employment of the staff transferred from the Closed Schemes into the Corporate Administrator shall neither be varied to their disadvantage nor their accrued benefits interfered with in any way.

**132F.** (1) There is established a Forum to be known as the Inter-scheme Consultative Forum.

(2) The Forum shall be constituted by all the members of the Boards of the Closed Schemes and the County Pension Fund.

(3) The Chairmanship of the Forum shall be rotational among the Chairmen of the three Schemes. Each Chairman shall serve for a term of two years at each rotation circle.

(4) The Forum may meet on a quarterly basis and on such other times as the presiding chairman, the Corporate Administrator, the County Pension Fund and the Closed Schemes may request considering the urgency of any matters to be addressed.

(5) The quorum for the conduct of the business of the Forum shall be fifteen members present or by resolution circulated and approved by the number forming a quorum.

(6) Any costs incurred or expenses expended by the Forum in the discharge of their duties and responsibilities under this Act shall be apportioned to each of the three Schemes equally.

(7) A member of the Forum who absents himself from three consecutive meetings of the Forum without written permission from the chairperson of the Forum and is unable or has neglected to provide any reasonable excuse for his absence shall lose his membership in the Board of the Scheme in which he represents.

(8) The meetings of the Forum shall be convened and records kept by Corporate Administrator at the request of the chairperson of the Forum in accordance with the Regulations made by the Forum.

(9) The Forum shall stand dissolved ten years after the commencement date or upon the complete discharge of their responsibilities under this Act, whichever is earlier.

**132G.** (1) The responsibilities of the Inter-scheme Consultative Forum shall be to provide a forum for—

- (a) consultations between the Schemes and the Corporate Administrator on matters of common interests between the Schemes;
- (b) dealing with any differences and disagreements among the schemes that may arise regarding transfer of data, assets, liabilities and members to the County Pension Fund and of employees and administrative assets to the Corporate Administrator and bringing consensus among the Schemes on areas of common interests or divergence;
- (c) considering any policies and plans formulated, developed and implemented by the County Pension Scheme, in conjunction with the Corporate Administrator and Closed Schemes to ensure smooth transition to a Umbrella pension scheme in accordance with this Act, the County Pension Fund Act and the Retirement Benefits Act;
- (d) receiving reports from the Corporate Administrator on the progress of implementation of the County Pension Scheme, any agreement between the closed schemes and the County Pension Fund, and particularly deliberating on the implementation of the following—
  - (i) the transfer of human resources and their accrued benefits and rights to the Corporate Administrator in accordance with this Act;
  - (ii) the transfer of such assets as may be required for the efficient functioning of the resources transferred under paragraph (i); and
  - (iii) the audit, valuation and verification of assets and liabilities of the Closed Schemes, and settlement of the liabilities to the Closed Schemes by their Sponsors.
- (e) Consultation for the proper implementation of the process described in sub-section (2) (d) above is done in a harmonious manner and to amicably address any divergence that may arise therefrom; and
- (f) carrying out such other connected and or incidental functions.

**132H.** The liabilities of the Closed Schemes shall be resolved and settled by the respective county governments through own source resource being the successor of the responsible local authorities opting to settle the same through property debt-swap agreements among other ways as may be considered appropriate;

Provided however that all the liabilities shall be cleared within a maximum period of three years as provided for under the Retirement Benefits Act.

**132I.** Notwithstanding the provisions on retirement ages in the three Schemes, no member of a county scheme shall be released to retire from service by the relevant employer until all his retirement benefits have been remitted to the relevant Scheme by the relevant employer. Any employer's representative who contravenes this Section commits an offence punishable on conviction by a fine of one million shillings or a jail term of five years or both.

**FIRST SCHEDULE**

**THAT,** the First Schedule to the Bill be amended by deleting “**THE GENERAL RULES OF COUNTY PENSION SCHEME**” appearing immediately after paragraph 7.

**FOURTH SCHEDULE**

**THAT,** the Bill be amended by deleting the Fourth Schedule.

**MIN.NO.109/DC-F/2018: ADJOURNMENT**

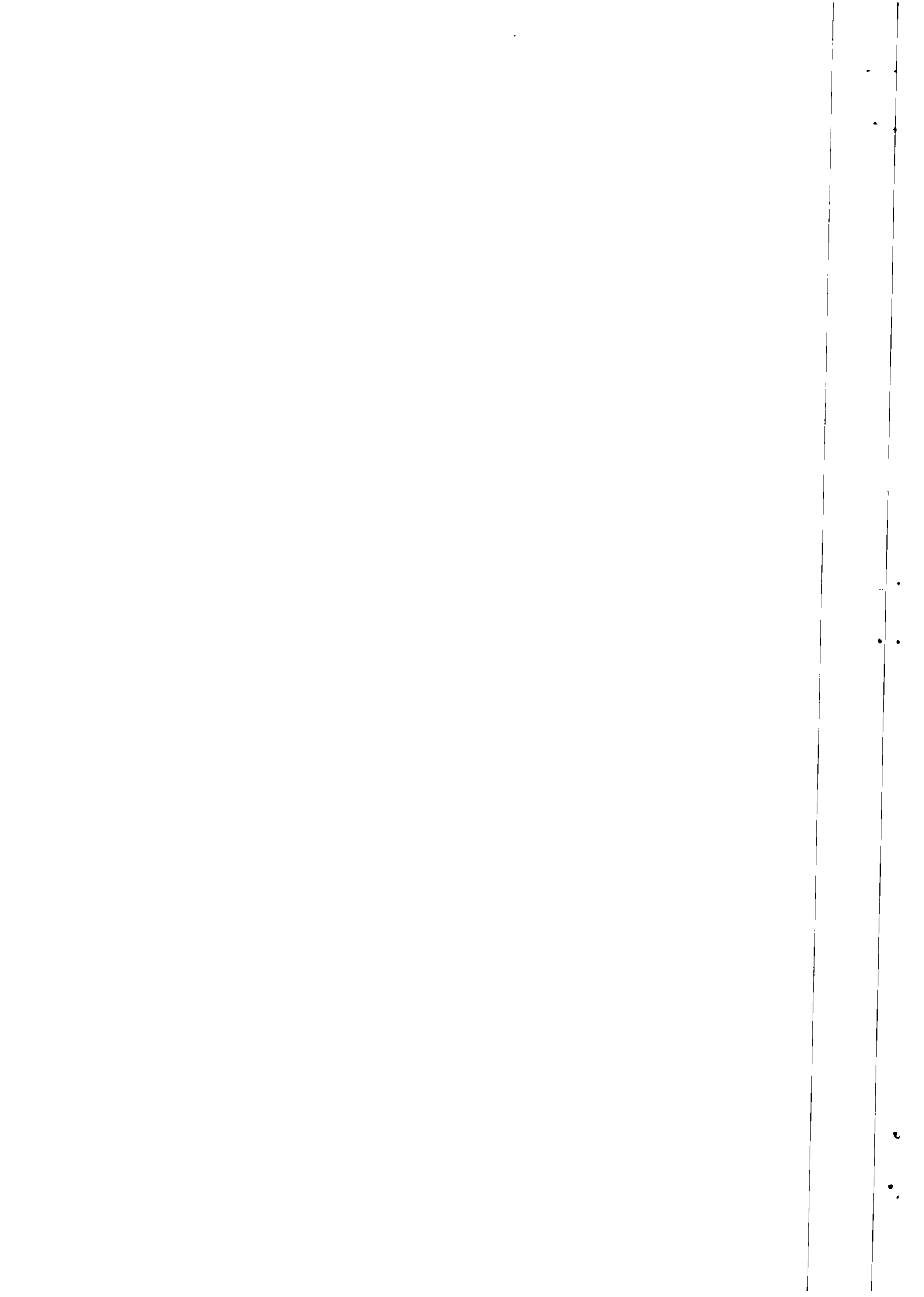
There being no other business to deliberate on, the meeting was adjourned at 13.55pm. The next meeting will be held on Wednesday 11<sup>th</sup> April, 2018 at 10.00 am.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED -----

DATE 13/11/18-----



**MINUTES OF THE 17<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 29<sup>TH</sup> MARCH, 2018  
IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS AT 4.00PM**

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**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. Joshua C. Kandie, MP
7. Hon. David M. Mboni, MP

**APOLOGY**

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. ShakeelShabbir Ahmed, MP
4. Hon. Abdul Rahim Dawood, MP
5. Hon. Joseph M. Oyula, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Mohamed A. Mohamed, MP
8. Hon. Samuel Atandi, MP
9. Hon. Lydia H. Mizighi, MP
10. Hon. Purity W. Ngirici, MP
11. Hon. Stanley M. Muthama, MP

**INATTENDANCE**

**SECRETARIAT**

- |                        |   |                                   |
|------------------------|---|-----------------------------------|
| 1. Mr. Robert Nyaga    | – | Deputy Director, PBO              |
| 2. Ms. Leah Mwaura     | – | First Clerk Assistant/ Lead Clerk |
| 3. Ms. Laureen Wesonga | – | Third Clerk Assistant             |
| 4. Ms. Lynette Otieno  | – | Legal Counsel II                  |
| 5. Mr. Collins Mahamba | – | Audio Officer                     |

**Agenda**

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair

4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Consideration of Committee stage amendments to the County Pension Scheme Bill, 2017**
11. Adjournment

**MIN.NO.087/DC-F/2018:PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The Chairperson called the meeting to order at 4:05 p.m and thereafter prayer was said.

**MIN.NO.088/DC-F/2018: CONFIRMATION OF MINUTES**

Agenda deferred.

**MIN.NO.089/DC-F/2018: CONSIDERATION OF COMMITTEE STAGE AMENDMENTS TO THE COUNTY PENSION SCHEME BILL, 2017**

The Committee was taken through clause by clause consideration of the County Pensions Scheme Bill, 2017 as follows. The Committee further proposed amendments which will be presented during the Committee Stage reading of the Bill.

**Clause 1**

Agreed to

**Clause 2**

Amend as follows;

“*Cabinet Secretary*” means the Cabinet Secretary responsible for Finance.

“*Pensionable Emoluments*” means basic salary.

“*Public Funds*” adopt the definition in the Public Finance Management Act, 2012.

“*Trust Secretary*” means secretary to the Board of Trustees.

**Clause 3**

Delete clause 3(f)

**Clause 4**

Agreed to

**MIN.NO.090/DC-F/2018: ANY OTHER BUSINESS**

The Chairperson requested Members to avail themselves for a meeting before the end of short recess so as to complete the Committee’s amendments to the County Pension Scheme Bill, 2017 as it would be considered for the third reading soon after recess.

**MIN.NO.091/DC-F/2018: ADJOURNMENT**

There being no other business to deliberate on, the meeting was adjourned at 06.50pm. The next meeting will be held on notice.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

**SIGNED**

**DATE .....**



**MINUTES OF THE 2<sup>ND</sup> SITTING OF THE STAKEHOLDER FORUM TO CONSIDER MEMORANDUM ON THE COUNTY PENSION SCHEME BILL, 2017 AND THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2017 BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON 16<sup>TH</sup> MARCH, 2018 AT THE BOMA HOTEL, NAIROBI AT 2.00 PM**

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**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W.Ndirangu, MP- **Vice Chairperson**
3. Hon. Daniel E. Nanok, MP
4. Hon. Andrew A. Okuome, MP
5. Hon. David M. Mboni, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Samuel Atandi, MP

**ABSENT WITH APOLOGY**

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Alfred Sambu, MP
3. Hon. Enoch Kibunguchy, MP
4. Hon. ShakeelShabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Joshua C. Kandie, MP
8. Hon. Lydia H. Mizighi, MP
9. Hon. Mohamed A. Mohamed, MP
10. Hon. Purity W. Ngirici, MP
11. Hon. Stanley M. Muthama, MP

**INATTENDANCE**

**SECRETARIAT**

- |                        |   |                                   |
|------------------------|---|-----------------------------------|
| 1. Mr. Robert Nyaga    | – | Deputy Director, PBO              |
| 2. Ms. Leah Mwaura     | – | First Clerk Assistant/ Lead Clerk |
| 3. Ms. Laureen Wesonga | – | Third Clerk Assistant             |
| 4. Ms. Lynette Otieno  | – | Legal Counsel II                  |
| 5. Mr. Chelang'aMaiyo  | – | Research and Policy Analyst III   |
| 6. Ms. Beatrice Auma   | – | DCS Office                        |
| 7. Mr. Collins Mahamba | – | Audio Officer                     |
| 8. Mr. John Njoro      | – | Sergeant-At-Arms                  |

9. Mr. Stephen Omunzi – Office Assistant

**COUNTY ASSEMBLY FORUM (CAF)**

1. Mr. Johnson Osoi – Chairperson  
2. Mr. Eric Mwangi – Secretary General  
3. Mr. Joseph Kaberia – Chair, Communication  
4. Ms. Regina Mutheu – Legislative Officer

**MINISTRY OF PUBLIC SERVICE, YOUTH AND GENDER**

1. Mr. Allan N. Mwaura – Deputy Director, Human Resource  
2. Ms. Wangari M. Ndia – Secretary, Management Consultancy Services  
3. Mr. Peter Kinyita – Parliamentary Liaison Officer  
4. Ms. Scholastica Ndambuki

**COUNTY PENSION FUND FINANCIAL SERVICES LIMITED**

1. Mr. Hosea Kili – CEO  
2. Ms. Irene Mbonge – Public Affairs Manager  
3. Mr. Josephat Kemboi – Guest Relations Officer  
4. Mr. Isaac Mitei

**LOCAL AUTHORITIES PROVIDENT FUND**

1. Mr. David Koros – CEO  
2. Ms. Veronicah S. Leseya - Manager , Admissions & Benefits Administration  
3. Mr. Flevian Kubasu

**MIN.NO.010/DC-F/2018:PRELIMINARY/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 02:15p.m with prayer from Hon. Daniel E. Nanok, MP. The Chairperson informed the Members of whom they will be meeting before calling for introduction of those present. He then welcomed the County Assemblies Forum to make their submission.

**MIN.NO.011/DC-F/2018: CONFIRMATION OF MINUTES**

Agenda deferred

**MIN.NO.012/DC-F/2018: COUNTY ASSEMBLIES FORUM**

CAF made the following submission; That:-

**Clause 2**

Section 2 of the Bill limits the definition of the word “dependent” to a spouse, a child and a parent of the deceased Member.

They propose that the definition of “dependent” in section 2 be amended as follows:

(d) a brother or sister of the deceased who is yet to attain the age of majority and who was dependent on the deceased for the provision of the ordinary necessities of life.

Section 2 of the Bill defines among other terms “County Assemblies Forum” to mean the forum established to bring together all County Assemblies from all the County Governments in the Republic of Kenya;

Provide for the role and representation of CAF in the administration of the pension scheme.

### **Justification**

Despite identifying and defining the County Assemblies Forum in section 2, the Bill does not provide for the role or representation of CAF in the County Pensions Scheme.

### **Clause 3**

Proposes to provide for the categories of entities and people the Act applies to.

The provision should be amended to add voluntary individual membership especially for MCA’s who may desire to become members and contribute to the scheme.

### **Justification**

While the Bill provides that the Bill will apply to a County Government and while a County Government comprises of both the County Executive and county assemblies, the provision doesn’t specify nor provide for membership by individual members of county assemblies who might opt to become a member of the scheme.

### **Clause 4**

(i) As the term scheme is already defined under clause 2, they propose an amendment 4(a) as  
“(a) to provide for the adoption of the Scheme.

(ii) “Employees of local and central government who transfer their service to a County Government, County Agency or County Corporation” are already defined as members under Clause 2 they propose Clause 4(b) to read as follows –

“(b) Establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the Scheme.”

(iii) They propose an amendment to Clause 4(h) to read as follows –

“(h) provide for the transition to a uniform, umbrella pension scheme. ”

(iv) They propose deletion of 4(i) as it already provided for in 4(j)

#### Clause 6

Section 3 establishes and sets out the composition of the “Board”. The County Assemblies Forum is not one of the bodies represented in the Board.

The section should be amended to read as follows:-

- i) A new subsection (b) be added as follows, a representative of the County Assemblies Forum.
- ii) Subsection 7 be amended by adding the following words immediately after the word “shall” but before the word “formally”....., within (14) days from the date of receipt of the names of the nominees,.....

#### Justification

1. Given the role of the County Assemblies Forum as the umbrella body of all Members of the 47 County Assemblies Forum should also be represented in the Board. This is important since the Council of Governors and other County Government entities are each nominating their representatives to the Board. It will be discriminatory for the County Assemblies Forum to be excluded therefrom.
2. The Section does not set out the time limit within which the Cabinet Secretary shall be required to appoint the board members once the names of nominees has been forwarded to the CS. This needs to be specifically provided to curb any mischief in delaying the gazettment thereby jeopardizing the operations of the Board and the Scheme.

#### Clause 9

They recommend that Clause 9(3)(b) be divided into two different paragraphs.

9(3)(b) Appoint a custodian and fund manager to carry out their functions as specified in sections 19 and 20.

Establish or adopt an existing corporate administrator as specified in section 21.

#### Clause 14

It sets out the grounds and the manner for removal of trustees of the Board

Subsection 1 be amended by adding the following new subsection (f), .....if the trustee is a Governor or a Member of the County Assembly;

- i. at the end of the term of the County Government; or
- ii. if the trustee ceases to be a Governor or Member of the County Assembly.

Subsection 2 be amended by adding the following words immediately after the words “fair hearing”.....in accordance with the Fair Administrative Action Act (Number 4 of 2015).

### **Clause 21**

They recommend that clause 21(3) on the functions of the Corporate Administrator be isolated as an independent section as opposed to a subsection.

### **First Schedule**

Rule 7 be amended by deleting the words “on behalf of” and substituting therefor the following words: “in consultation with”

### **Justification**

Any rules must be made in consultation with county governments otherwise there is a danger that such rules may end up not being in the best interest of the county employees.

### **General Comments**

They note that the spirit of the Bill mirrors the recommendations of stakeholders within the counties including –

- i. Adopting Laptrust (Umbrella) Retirement Fund (the County Pension Scheme) in accordance with section 132 of the County Governments Act
- ii. Closure of Laptrust and Lapfund to new entrants albeit the two entities shall continue for their respective continuing members

Merger of administration services for the County Pension Scheme and the two closed schemes.

### **MIN.NO.013/DC-F/2018:MINISTRY OF PUBLIC SERVICE, GENDER AND YOUTH**

The Ministry submitted as follows;

### **Clause 2**

- (a) They proposed that the definition of “Pensionable emoluments” be amended to be consistent with the Public Service Superannuation Act read that-  
“**Pensionable Emoluments**” means the basic salary payable to an employee by an employer and does not include allowances or any special remuneration, honorarium emoluments received by the member.
- (b) They propose that the definition of “**Cabinet Secretary**” be amended to mean the CS responsible for Finance.

### **Justification**

1. The Public Service Superannuation Act, Cap 190 does not include allowances as part of pensionable emoluments.
2. The Bill being one dealing with finances, the CS for finance should be responsible.

#### **Clause 6**

The provision to be amended to provide that the CS for finance be responsible for that appointment of the County Pension scheme Board Members.

#### **Justification**

The Bill being one dealing with finances, the appointing authority should be the CS for finance.

#### **Clause 22**

They propose that Clause 22(1) be amended by replacing the words “equal to twelve percent” with the words “equal to seven and half percent” the mandatory contributions to the scheme be harmonized with that of the Public Service Superannuation Scheme.

#### **Justification**

Section 6 of the Public Service Superannuation Scheme provides that every member of the Scheme shall contribute to the Scheme at the rate of seven and a half percent (7.5%) which shall be deducted from his monthly pensionable emoluments while the government shall contribute for each member of the Scheme at the rate of at least fifteen percent (15%) of the members monthly emoluments.

#### **Clause 26**

They propose that the administrative expenses be capped at a maximum of 1.5% of the Fund Value and the Clause be amended by replacing the words “subject to a maximum of five percent of the Fund Value” with the words “one and half percent of the Fund Value.”

#### **Justification**

Five per cent (5%) appears to be a high percentage for administrative purposes

#### **MIN.NO.014/DC-F/2018: LOCAL AUTHORITIES PROVIDENT FUND (LAPFUND)**

LAPFUND submitted that:-

#### **Clause 2**

- (1) objected to the definition of Cabinet Secretary and propose “**Cabinet Secretary**” should be amended to mean the CS responsible for Finance.
- (2) object the proposed definition of “public funds” that removes the fund from the oversight and accountability systems requisite for public funds.

- (3) propose that public funds should include contributions to a scheme to ensure safeguards.
- (4) object to definition “Trust Secretary” and propose the Secretary should be the Chief Executive Officer and staff should be provided for as envisaged under section 5 and 6 of the State Corporations Act.

### **Justification**

1. Institutions dealing with pensions offer financial services and as such are placed under the supervision of the National Treasury.
2. All similar institutions fall under National Treasury.
3. Pensions funds contributed on behalf of public/civil servants are public funds therefore the exclusion of pension funds from this definition is not tenable. Article 206 of the Constitution sufficiently defines “public funds.”
4. They object to definition of Trust Secretary as matters of the Board will be handled by a person who is not their appointee and who is not answerable to them.
5. The scheme is body corporate established under section 24 and 26(1) of RBA and not a Trust.
6. The Secretary to the Board of Trustees should be the Chief Executive Officer of the internal administrator who doubles as an ex-officio member of the board

### **Clause 4**

They Object to Clause 4(1)(a) as the implication of the clause is that members are likely to be duped into joining an existing scheme that has not been defined or disclosed in this Bill which might be against their best interest.

### **Justification**

1. The section is in conflict with section 5(1). The former refers to ‘adoption of an existing umbrella pension scheme’ whereas the latter refers to “establishment of a county pension scheme’
2. The section is also in conflict with memorandum of objects and reasons for enactment of the Bill which is indicated as establishment of a County Pension Scheme.

### **Clause 5**

1. They object to the provision of Clause 5(4) as dissolution of LAPFUND should be by operation of the law without providing for transition of staff, assets, liabilities and responsibilities. The institution will be left in limbo.
2. The propose transition of LAPFUND in accordance with the advice of the Committee on Implementation of the Constitution and the Presidential Taskforce on Parastatal Reforms

### **Justification**

1. It is biased in favour of LAPTRUST while at the same time under Section 42 proposing closure of LAPFUND.
2. LAPFUND being a state corporation can only be dissolved upon the advice of the State Corporations Advisory Committee. So far such advise has not been given.

### **Clause 9**

1. They propose an amendment to section 9(4) to delete provisions relating to a corporate administrator in their entirety and provide for internal administration of the scheme.
2. The Board of Trustees will delegate their functions to strangers whom they will have no control over yet the Board will be ultimately responsible to the sponsors and members.
3. If the Corporate administrator is entrenched in the law, the Trustees will not have a recourse in the event of mismanagement or the registration certificate is suspended or revoked by the RBA.

### **Justification**

1. Schemes of this nature are administered internally with a Chief Executive officer and employees managing the scheme, Central Bank of Kenya, NSSF, KPA and Kenya Power.
2. It is not prudent to establish an institution of this magnitude, then incorporate a company to run its affairs.

### **Clause 21**

They object to Clause 21(1) and propose that the Scheme should be administered by an internal Administrator.

### **Justification**

The Clause is creating an unnecessary bureaucracy and cost of administration of the scheme. The provision is against best practice for schemes of this nature.

### **Clause 22**

They oppose clause 22(1) and (2) and propose that an actuary should not play any role in determination of the rate of contribution.

### **Justification**

An Actuary cannot advise on contribution rates of a DC scheme because they do not have funding challenges.

### **Clause 25**

They object to Clause 25(1).

Justification

1. The provision is against the objects and purposes of the Bill and section 5(1).
2. There is already existing a Fund proposed to be adopted is not disclosed.
3. The Fund to be adopted seems to be different from the LAPTRUST (Umbrella) Retirement Fund which according to the Bill will be the predecessor of the scheme established under the Bill.

#### **Part VI: Section 40-49**

They object to the provisions. The Presidential Taskforce on Parastatal Reforms of October 2013 recommended that the LAPFUND be transformed into a pension scheme for County Government employees and not closure as proposed in the Bill.

#### **Justification**

The provisions violate the law in the following manner;

As an intended substantive law, it seeks to perform the functions of a miscellaneous amendment Bill by purporting to amend several sections of different statutes, namely-

- (a) The Pensions Act, Cap. 189
- (b) The Public Service Superannuation Scheme no. 8 of 2012
- (c) The Local Authorities Provident Fund Act Cap.272
- (d) The Intergovernmental Relations Act, no. 2 of 2012
- (e) The County Governments Act, No. 17 of 2012
- (f) The Urban areas and Cities Act, 2011

#### **First Schedule**

Propose removal of schedules and development of regulations to deal with other matters facilitating implementation of the law.

#### **Justification**

A scheme operated under an Act of Parliament does not require trust deed and rules, deed of adherence and all the other rules made as part of the Bill.

#### **General Comments**

Objects the processing of the Bill on the basis that-

- (a) it seeks to close LAPFUND in contravention of section 28 of the State Corporations Act that gives power to advice on the dissolution of a state Corporation like LAPFUND solely to SCAC. Further the dissolution would be against the advice of the Committee on Implementation of Constitution and the Presidential Taskforce on Parastatal Reforms to transition LAPFUND as a pension scheme for county employees.

- (b) The Bill would create confusion and may create chaos within the membership, as some sections provide for establishment of a new scheme while others propose adoption of an existing one.
- (c) The Bill is advancing interest of LAPTRUST without due regard to the best interests of members.

**Justification**

The LAPFUND is transitioned into the County Pension Fund.

**MIN.NO.015/DC-F/2018: COUNTY PENSION FUND FINANCIAL SERVICES LIMITED**

The CEO submitted as follows; That:-

**Clause 6**

Insert the words “a Resident Trustee” immediately after sub-clause (3)(d)

Delete section 5 and substitute therefor with the following:-

(5) The Resident Trustee shall be appointed by the Board under the terms and conditions of service determined by the Board in the instrument of appointment or otherwise in writing.

(6) The Resident Trustee shall be-

- (a) The Chief Executive Officer of the Corporate Administrator established under section 21;
- (a) answerable to the Board for the administration and management of the Trust.

**Justification**

1. Through the Resident Trustee, the Board of Trustees shall be represented in the Board of the Corporate Administrator.
2. The position of a Resident Trustee is particularly important as it provides the necessary link between the Board of Trustees and their corporate Administrator.
3. Further, this position shall ensure efficiency in the day to day administration of the Scheme which may require that documents be signed and sealed by the Trustees. Certainly, it may not be feasible to call trustees to the offices of the administrator on each and every day of the year for such a large group of Schemes.

**Clause 21**

Delete section 1 and substitute therefor with the following paragraph:-

21(1) The Scheme shall be administered by a corporate Administrator which shall be-

- (a) an existing corporate administrator established by any of the closed schemes and

(b) adopted and restructured to offer joint administration services to the Scheme and to the closed schemes.

#### **Clause 24**

Delete the clause.

#### **Justification**

The rationale for clause 24 is to ensure smooth transition for employees seconded or transferred from the national government to the county governments to ensure that they “adjust” their contribution over the period of 3 years. However, Clause 24 contradicts regulation 18(1)(a) of Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000 by importing discriminatory treatment on contribution rates and benefits entitlements between seconded employees and other employees within the County Governments.

Further, the clause violates section 138 of the County Governments Act Section 138 (1)(c) provides as follows:

“.....the officer’s terms and conditions of service may be altered to office’s advantage.”

#### **Part IV: existing Laws, Savings and Transitional Provisions**

The part should be split into two parts namely Part IV: Savings and Transitional Provisions which shall be contained in clauses 132A to 132I and Part v which shall contain clauses 40, 41, 42 and 43.

#### **Justification**

For logical flow.

#### **Clause 44**

In Clause 132D by inserting the following paragraph immediately before sub-clause (8)(1); “one person appointed by the county pension scheme.”

In clause 132D sub-clause 8(1)(f) by deleting the word “three” and therefor substituting with “two.”

#### **Justification**

Under the Bill, the LAPTRUST and LAPFUND are represented in the Board of the Corporate Administrator. However, the Bill does not provide for the representation of the County Pension Scheme in the Board of the said administrator. This omission may have been made inadvertently.

#### **General Comments**

They support the Bill and note that the Bill is a product of lengthy stakeholder consultations including the recommendations of stakeholders within the counties as follows –

- i. Establishment of a new Umbrella Pension Scheme for staff of Counties.
- ii. Closure of Laptrust and Lapfund to new members with effect from the date of the establishment of the new Umbrella Pension Scheme

Merger of administration services for the County Pension Scheme and the two closed schemes.

### **Members' Deliberation**

1. All the organisations that made their submissions supported the Bill except Local Authorities Provident Fund who were of the view that that they should have been the ones to run the pension scheme.
2. The Local Authorities Provident Fund informed the meeting that there was a Bill that had been agreed to by all stakeholders which they were of the view that it was better than the current bill that the Committee was considering. The Chairperson tasked LAPFUND to avail the said bill to the Committee by Wednesday, 21<sup>st</sup> March, 2018.
3. The County Pension Fund Financial Services Limited was tasked to avail all their certificates of incorporation to the Committee.
4. The Chairperson tasked the Committee Clerk to inform the Council of Governors to join the Committee in Mombasa to present their memoranda on the County Pension Scheme Bill, 2017 and the Public Finance Management (Amendment) Bill, 2017 since they were not able to attend the forum.

### **MIN.NO.016/DC-F/2018: ADJOURNMENT**

There being no other business to deliberate on, the meeting was adjourned at 19.45 pm. The next meeting will be held on 17<sup>th</sup> March, 2018 at 09.00 am.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED..........DATE.....13/11/18.....

**MINUTES OF THE 1<sup>ST</sup> SITTING OF THE STAKEHOLDER FORUM TO CONSIDER MEMORANDUM ON THE COUNTY PENSION SCHEME BILL, 2017 AND THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2017 BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON 16<sup>TH</sup> MARCH, 2018 AT THE BOMA HOTEL, NAIROBI AT 9.00PM**

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**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Daniel E. Nanok, MP
4. Hon. Andrew A. Okuome, MP
5. Hon. David M. Mboni, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Samuel Atandi, MP

**ABSENT WITH APOLOGY**

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Alfred Sambu, MP
3. Hon. Enoch Kibunguchy, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Joshua C. Kandie, MP
8. Hon. Lydia H. Mizighi, MP
9. Hon. Mohamed A. Mohamed, MP
10. Hon. Purity W. Ngirici, MP
11. Hon. Stanley M. Muthama, MP

**IN ATTENDANCE**

**SECRETARIAT**

- |                        |   |                                   |
|------------------------|---|-----------------------------------|
| 1. Mr. Robert Nyaga    | – | Deputy Director, PBO              |
| 2. Ms. Leah Mwaura     | – | First Clerk Assistant/ Lead Clerk |
| 3. Ms. Laureen Wesonga | – | Third Clerk Assistant             |
| 4. Ms. Lynette Otieno  | – | Legal Counsel II                  |
| 5. Mr. Chelang'a Maiyo | – | Research and Policy Analyst III   |
| 6. Ms. Beatrice Auma   | – | DCS Office                        |
| 7. Mr. Collins Mahamba | – | Audio Officer                     |
| 8. Mr. John Njoro      | – | Sergeant-At-Arms                  |

9. Mr. Stephen Omunzi – Office Assistant

**SOCIETY OF CLERKS AT THE TABLE IN KENYAN LEGISLATURES (SOCATT)**

1. Mr. Jenard N. Muiggeh – Clerk, Nyeri Assembly
2. Mr. J.K. Arithi – Clerk, Meru Assembly
3. Mr. Isaac Kitur – Clerk, Bomet Assembly
4. Mr. Joseph C. Koech – Clerk, Baringo Assembly
5. Mr. Martin K. Kariuki – Clerk
6. Ms. Lucy Akoritsa – Program Officer

**COUNTY PUBLIC SERVICE BOARDS – NATIONAL CONSULTATIVE FORUM**

Arch. Philip Kungu – Chairperson

**KENYA COUNTY GOVERNMENT WORKERS' UNION**

Ms. Matilda Kimeto – National Organizing Secretary

**KENYA UNION OF CLINICAL OFFICERS**

1. Mr. Peterson Wachira, HSC – National Chairman
2. Mr. George M. Gibore – General Secretary and CEO
3. Ms. Mary Boniface

**KENYA NATIONAL UNION OF NURSES**

4. Mr. John K. Biiy – National Chairman
5. Mr. Amos C. Ng'etich – Branch Secretary, Nandi County
6. Mr. Kibii K. Simon – Branch Secretary, UasinGishu County

**ASSOCIATION OF PENSION ADMINISTRATORS OF KENYA (APAK)**

Ms. Margaret Osure

**MIN.NO.001/DC-F/2018:PRELIMINARY/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 09:26a.m with prayer from Hon. Isaac Ndirangu, MP. The Chairperson took Members through the day's program before calling for introduction of those present. He then welcomed the Society of Clerks at the Table in Kenyan Legislatures to make their submission.

**MIN.NO.002/DC-F/2018: CONFIRMATION OF MINUTES**

Agenda deferred

**MIN.NO.003/DC-F/2018: SOCIETY OF CLERKS AT THE TABLE IN KENYAN LEGISLATURES (SOCAT)**

SOCAT made the following submission; That:-

**Clause 5**

The statement “all rights, obligations, assets and liabilities of the Laptrust (Umbrella) Retirement Fund existing on the date of the coming into force of this Act shall be deemed to be transferred to the Fund and any reference to the Laptrust (Umbrella) Retirement Fund in any contract or document shall for all intents and purposes be deemed to be a reference to County Pension Fund” appearing in sub clause (4) is vague and should be amended by inserting the words “shall be transferred within one month to the Trust”

**Clause 6**

They propose insertion of a new paragraph in clause 3 to provide for a Human Resource professional in the board from both the Assembly, executive or other County parastatal.

**Justification**

Representation of HR practitioners is completely left out yet they are the ones involved in the computations of the deductions and any queries therefrom.

**Clause 7**

They propose insertion of new sub-paragraph

(xii) Human Resources Management

**Justification**

The required qualifications here exclude Management Human Resource which is core.

**Clause 38**

They propose that DPM to instruct Ministry of Devolution to configure IPPD to allow voluntary contributions where as staff opts for the same.

**Justification**

Individual voluntary contributions should be allowed to continue.

**Clause 44**

An option should be provided for current members of LAPTRUST/FUND to opt out of individual PRS

**Justification**

Members should not be locked in the closed schemes where sponsors are subsequently detached.

## **Fourth Schedule**

They propose in the provision in paragraph (b) should provide for three times the employees annual salary as is the practice.

### **Justification**

At the unfortunate event of death, the clause should provide for employees annual income as compensation and not the monthly income as propounded.

## **MIN.NO.004/DC-F/2018:COUNTY PUBLIC SERVICE BOARDS – NATIONAL CONSULTATIVE FORUM**

The Chairperson of the forum, Arch. Philip Kungu submitted as follows;

That the Forum supports the County Pension Scheme Bill, 2017. They note that the Bill proposes to anchor the County Pension Fund in law and in line with the agreement of stakeholders within county governments. Further, he noted that the proposed law gives County Public Service Boards an opportunity to be represented in the Board of the Scheme.

## **MIN.NO.005/DC-F/2018: KENYA COUNTY GOVERNMENT WORKERS' UNION**

A representative of the union, Ms. Matilda Kimeto submitted that:-

### **Clause 5**

The Union proposes to have clause 5(5) specifying that the County Pension Scheme shall be an occupational scheme established for the 47 County Governments, county parastatals and county agencies and employees.

### **Justification**

This will ensure that the schemes do not deviate from the original mandate and objects.

### **Clause 32**

Delete clause 32 and replace it as follows, “the scheme shall be reviewed by an actuary appointed by the board and in accordance with the Retirement Benefits Act.”

### **General Comments**

1. they support the merger of the existing schemes as it will reduce maintenance costs of separate boards of trustees, administrative and operational costs and therefore ensure the benefits of members is not depleted by unnecessary costs.
2. the representation of members in the scheme and in the proposed Umbrella board to be retained as per the retirement benefits Act and in the proposed inter Scheme Consultative

Forum to be 30% of the total number of trustees. This is to ensure that members are involved in the running of the schemes and will have an opportunity to participate in decisions made by the boards.

3. the competition between LAPTRUST, CPF and LAPFUND is very unhealthy and unnecessary. The Bill should ensure that NO scheme is disadvantaged and there will be no loss of benefit of the members if it is enacted in to law.
4. the benefit structure of the schemes to be explicitly provided in the proposed Bill to anchor it in the law and any process to review it must be highly consultative.
5. the purpose of the Retirement Benefits Act was to give autonomy to pensions schemes and to regulate their activities. It was also meant to detach its operations and funds from employers including the government. This autonomy was to also shield the schemes against political interferences and wrongful utilization of workers' funds. The Union proposes the spirit of the RBA is not lost in the development of the County Pensions Scheme Bill to allow complete independence and separation of funds from employers funds as provided for in the RBA.

### **MIN.NO.006/DC-F/2018: KENYA UNION OF CLINICAL OFFICERS**

The national chairman of the union, Mr. Peterson Wachira, HSC submitted as follows; That:-

#### **Clause 6**

They propose an amendment to Clause 6(3)(e) by deleting the words “three most representative employee unions” and substituting with the words “five most representative employee unions” and if possible to specify to include a representative of the Kenya Union of Clinical Officers.

#### **Justification**

The proposed amendment will cater for the interest and ensure representation of Kenya Union of Clinical Officers by guaranteeing them a vacancy in the Board of Trustees.

#### **First Schedule**

An amendment of the First Schedule, General Rules, Clause 1, to provide for consultation of employees of County Governments before enrolment or transfers into or out of the Scheme.

Clause 1(a) should be amended by inserting the words “done in consultation with employees’ trade union and with the consent of their respective employees.”

#### **Justification**

The proposed amendment will cater for the interest and ensure representation of Kenya Union of Clinical Officers.

#### **Third Schedule**

An amendment to part 2 to include the Kenya Union of Clinical Officers in the list of recognized Associated organizations.

### **Justification**

The proposed amendment will cater for the interest and ensure representation of Kenya Union of Clinical Officers.

### **MIN.NO.007/DC-F/2018: KENYA NATIONAL UNION OF NURSES**

The national chairman of the Union, Mr. John K. Biiy submitted as follows; That:-

The union is in full support of the Bill and hope that it will be enacted to law soon.

### **General Comments**

1. the Technical Committee on Pensions for county governments' employees recommended the closure of LAPTRUST and LAPFUND to new entrants. The Bill implements this recommendation in clause 36 by amending clause 132 of the CGA.
2. the Technical Committee recommended the merger of administrative services of LAPFUND and LAPTRUST. The Bill addresses the same in clause 21 by providing for the establishment of a Corporate Administrator to be jointly established or owned by the CPF, LAPFUND and LAPTRUST.
3. the Bill is in consonance with Section 132 of the CGA which states that "subject to the transitional provisions herein, all members, officers and staff of a county government shall subscribe to an existing pension scheme for officers and staff of local government."
4. LAPTRUST (Umbrella) Retirement Fund, a defined contribution pension scheme is therefore compliant with the government policy requiring a shift from defined benefits and provident funds to defined contribution pension schemes.
5. there are only three schemes within the county governments, LAPTRUST, LAPFUND and LAPTRUST (Umbrella) Retirement Fund (the County Pension Scheme). LAPTRUST and LAPFUND do not qualify to offer pension for the Union's members due to public policy against provident funds and defined benefits pension schemes. LAPTRUST (Umbrella) which is a defined Contribution Scheme is therefore the only legally correct scheme and the Bill is consistent in compliance with the law and existing policy on pension.
6. will be happy and willing to serve as employee representatives to the Board if given the opportunity.

### **MIN.NO.008/DC-F/2018: ASSOCIATION OF PENSION ADMINISTRATORS OF KENYA (APAK)**

Ms. Margaret Osure, a representative of the Association presented as follows; That:-

**General Comments**

1. They fully support the move to have one umbrella pension scheme for all 47 governments.
2. The technical contents of the Bill fall within international best practices.
3. They support the provision of section 38 for the Scheme’s proposed exemption from NSSF. They propose that Parliament Studies the Retirement Benefits ongoing in Tanzania where it has been found that the NSSF needs to remodel itself. The reforms aim at ensuring that the new and fewer public schemes focus on specific segments of the population in order that the country is fully covered in a more strategic manner.
4. They are of the view that pension scheme of this size and nature would receive considerable support and opportunities for capacity building from international Pension Associations.

**Members’ Deliberation**

1. The County Public Service Board was of the opinion that there should only be one pension scheme to cover all county government employees.
2. During the deliberations it was noted that most county governments had defaulted in remitting their employees’ contributions. It was suggested that a mechanism should be sought to ensure compliance to the pensions policy and if possible sanctions made on those who do not abide. Monies budgeted for pension should not be used for any other thing.
3. All the organisations that appeared before the Committee were in support of the Bill and requested the Committee to fast track its enactment to law.

**MIN.NO.009/DC-F/2018: ADJOURNMENT**

There being no other business to deliberate on, the meeting was adjourned at 12.45 pm. The next meeting will be held at 02.00 pm.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED..........DATE...13/11/18.....

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**REPUBLIC OF KENYA**



**NATIONAL ASSEMBLY**  
**DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING**  
**ATTENDANCE SCHEDULE/PAYMENT SCHEDULE**

**Clerk's Chambers**  
**National Assembly**  
**NAIROBI**

**National Assembly**

AGENDA: *ADOPTION OF THE RECOMMENDED COUNTY PENSION SCHEME BILL, 2017*

DATE: 13<sup>TH</sup> NOVEMBER, 2018

TIME: 11.50AM

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN	
3. HON. JIMMY O. ANGWENYI, MP	
4. HON. CHRISTOPHER OMULELE, MP	
5. HON. DR. ENOCH KIBUNGUCHY, MP	
6. HON. SHAKEEL SHABBIR AHMED, MP	
7. HON. ABDUL RAHIM DAWOOD, MP	
8. HON. DANIEL E. NANOK, MP	
9. HON. ANDREW A. OKUOME, MP	
10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
14. HON. LYDIA H. MIZIGHI, MP	
15. HON. MOHAMED ALI, MP	
16. HON. PURITY NGIRICI, MP	
17. HON. SAMUEL ATANDI, MP	
18. HON. STANLEY M. MUTHAMA, MP	
19. HON. EDITH NYENZE, MP	

