

(2) A post-retirement medical fund with the guarantees specified in subparagraph (1) shall be required to conduct actuarial valuations of the fund at least once in every three years.

(3) The scheme rules shall specify how deficits or surpluses in the post-retirement medical fund shall be offset or utilised.

Dated the 11th October, 2018.

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Chief Executive Officer,
Retirement Benefits Authority.

Paper Laid on the
Table of the House
by the Leader of
the Majority Party
on Tuesday
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LEGAL NOTICE No. 193

THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

IN EXERCISE of the powers conferred by section 55 (3) of the Retirement Benefits Act, 1997, the Retirement Benefits Authority issues the following guidelines—

THE RETIREMENT BENEFITS (GOOD GOVERNANCE PRACTICES) GUIDELINES, 2018

PART I—PRELIMINARY

1. These guidelines may be cited as the Retirement Benefits (Good Governance Practices in the Management of Retirement Benefits Schemes) Guidelines, 2018.

2. In these guidelines, unless the context otherwise requires—

“actuary” has the meaning assigned to it in section 2 of the Act;

“administrator” means a person appointed by trustees of a scheme under such terms and conditions as may be specified by the trustees;

“beneficiary” means a person, other than the member of the scheme, who is entitled to receive or is receiving a benefit under a retirement benefits scheme;

“corporate trustee” means a trust corporation;

“custodian” has the meaning assigned to it in section 2 of the Act;

“independent trustee” means a trustee who has been nominated by the sponsor and who does not have a material or pecuniary relationship with the scheme;

“insider information” means information that comes into the trustees’ or service providers’ possession because of their role in the management of the management of the scheme which may be used to the detriment of the scheme;

“key person” means a person who has authority to plan and control the business operations of a scheme and whose absence would materially affect the performance of the scheme;

Citation.

Interpretation.



“manager” has the meaning assigned to it in section 2 of the Act;

“member” means a member of a scheme including a person entitled to receive or is receiving benefits under a scheme;

“public” includes persons who are not sponsors or members of schemes, service providers or any person whose interests are not represented in the scheme;

“related company” has the meaning assigned to it in section 3 of the Act;

“retirement benefits scheme” has the meaning assigned to it in section 2 of the Act;

“scheme” has the meaning assigned to it in section 2 of the Act;

“scheme rules” means the rules specifically governing the constitution and administration of a particular scheme;

“service provider” means a person who has entered into an agreement with the trustees of a scheme to provide services required under the Act to the scheme and includes a company registered under the Companies Act, 2015, custodians, managers and administrators;

“sponsor” means a person who establishes a scheme;

“trustee” means a trustee of a scheme fund and includes a trust corporation;

“trust corporation” has the meaning assigned to it in section 2 of the Act; and

“unusual occurrence” means any act or outcome that is considered to be in contravention of any written law and which may jeopardise the rights of members or sponsors of a scheme.

3. (1) The purpose of these guidelines shall be—

- (a) to enable sponsors, members, trustees and service providers to implement and promote proper standards of conduct and sound governance practices; and
- (b) to ensure that sponsors, members, trustees and service providers exercise their fiduciary duties effectively and diligently.

Purpose of the guidelines.

(2) These guidelines shall not restrict or supersede the proper judgment of sponsors, members, trustees or service providers in conducting the day to day affairs of the scheme.

4. (1) These guidelines shall apply to all schemes regulated by the Authority in respect of the duties, responsibilities and expected behaviour of sponsors, members, trustees and service providers in the conduct of the affairs of the scheme.

Application and scope of guidelines.

(2) Unless otherwise provided in these guidelines, these guidelines shall apply in respect of individual trustees and individual directors of corporate trustees.

5. (1) The trustees of a scheme shall be responsible for formulating and documenting the policies and procedures of the scheme. Responsibility.
- (2) The objectives of these guidelines are to—
- (a) provide a framework to facilitate schemes to establish and maintain minimum standards of best practices in the governance of schemes;
 - (b) enable and equip sponsors, trustees and service providers to better perform their functions; and
 - (c) provide governance criteria for evaluating the performance of trustees and service providers.
6. (1) Trustees, administrators and trust secretaries shall be responsible for ensuring compliance with these guidelines and shall report to members in the scheme's audited financial statements on the scheme governance disclosure as provided in these guidelines. Compliance with guidelines.
- (2) The Authority shall regularly comprehensively evaluate schemes' governance and assess the implementation of these guidelines by schemes.
- (3) Where a scheme fails to comply with any provision of these guidelines, the trustees of the scheme shall submit a remedial action plan if the Authority so directs which shall state the measures the trustees shall take to comply with these guidelines.
7. (1) These guidelines shall not be prescriptive about specific methods that trustees shall be required to employ in order to comply with these guidelines. Proportionality.
- (2) The Authority shall use a "Disclose, Apply or Explain" approach to ensure compliance with these guidelines.
8. These guidelines shall not contravene the provisions of the Act or any other written law and in the case of any conflict between these guidelines and the Act or any other written law, the Act or that other written law shall prevail. Limitations.
9. These guidelines are based on, and shall be applied in accordance with, the following principles— Principles of these guidelines.
- (a) the general principles of corporate governance;
 - (b) the voluntary commencement of schemes by sponsors;
 - (c) the fiduciary responsibility of trustees;
 - (d) equity in the treatment of members;
 - (e) non-discrimination of members on any ground including age, race, nationality, ethnicity, gender, staff rank, disability, religion or political affiliation in the management of the scheme;
 - (f) participation in the governance of a scheme by sponsors and members in accordance with the Act or any other written law; and

- (g) the prudent management of scheme expenses.

PART II—CODE OF CONDUCT FOR SCHEMES

10. Trustees of a scheme shall establish a code of conduct of the scheme that shall set the values and ethical standards, corporate governance values and standards of integrity to be applied in the management of the scheme.

Trustees to establish code of conduct.

11. Trustees shall—

Scheme values and code of conduct.

- (a) implement the scheme's ethics policies and code of conduct, and oversee the recruitment, remuneration and discipline of the staff of the scheme;
- (b) oversee the whistleblowing and independent assessment policies of the scheme;
- (c) collectively and individually, at all times place the interests of members and their beneficiaries before the trustees' interests by—
 - (i) acting honestly;
 - (ii) not using insider information;
 - (iii) exercising the highest standard of care and diligence in the discharge of their functions that a reasonable person in a similar position would exercise in the circumstances; and
 - (iv) performing their duties with the required degree of skill;
- (d) recognise, avoid and report conflicts of interest, and deal at arm's length in any transaction that relates to the scheme;
- (e) protect scheme property including information, products, services and assets;
- (f) properly manage personal finances and avoid pecuniary embarrassment;
- (g) treat fairly and respectfully members, staff, service providers and other stakeholders;
- (h) ensure that the scheme does not engage in improper or unlawful activity including money laundering and corruption; and
- (i) communicate with all relevant stakeholders in respect of the scheme values, policies and procedures.

(2) Each trustee of a scheme shall sign a copy of the scheme's code of conduct as a commitment to principles established by this guideline.

12. (1) Trustees of a scheme shall have an understanding of, and ensure that the scheme complies with, the Constitution, the Act and any other written laws governing retirement benefits schemes.

Compliance with written laws.

(2) Trustees shall obtain professional advice and in respect of the affairs of the scheme.

PART II—MEMBER REPRESENTATION AND PARTICIPATION

13. (1) Trustees of a scheme shall ensure effective member representation and participation in the governance of the scheme in accordance with the Act and any other relevant written law.

Members' rights of representation and participation.

(2) Members shall participate in the governance of the scheme on the basis of "one member, one vote" rule notwithstanding the size of the members' contributions in the scheme.

(3) The following shall apply in respect of representation—

- (a) members shall be entitled to representation in the board, but not in a trust corporation, in the proportions stipulated in the Act or regulations thereunder, any other relevant written law and the scheme rules;
- (b) members' representation shall be by election of qualified persons in accordance with the scheme rules;
- (c) members offering themselves as candidates for election under paragraph (b) shall be required to meet the conditions set out in these regulations;
- (d) the scheme rules shall provide for the qualification of members' representatives to be elected, the procedure of electing members' representatives, the procedure for removing trustees from office and the grounds for the removal of trustees from office;
- (e) the scheme rules shall ensure that the board of trustees possesses a mix of skills and competencies among the trustees, and the succession process in the board of trustees.

14. (1) Trustees shall convene an annual general meeting by issuing a reasonable notice of the meeting to all members at which the members shall be given reasonable opportunity to interrogate the scheme's affairs.

Annual general meeting.

(2) The notice of the annual general meeting shall be accompanied by a written agenda for the meeting and relevant documentation including a summary of the audited financial statements of the scheme.

(3) The agenda of an annual general meeting of a scheme shall comply with the Act and the regulations thereunder and shall be provided to members at least fourteen days before the date of the annual general meeting.

(4) Where voting is required at an annual general meeting, it shall be conducted in accordance with the scheme rules.

(5) The trustees shall ensure that the minutes of the annual general meeting are available at the scheme office for members' review as soon as possible after the meeting but in any case not more than three months after the date of the meeting.

15. (1) Trustees may organise members' days in such frequency as may be required as part of the good governance practices of the schemes.

Members' days.

(2) Trustees may use members' days to educate members on their rights, obligations, benefits calculation and financial management.

(3) Trustees shall determine the most appropriate and cost-effective means of conducting member education.

16. (1) Trustees and administrators shall ensure that members are prepared adequately to cope with the changes associated with retirement.

Retirement
planning
seminars.

(2) Trustees and administrators may arrange retirement planning seminars for members to address the financial, psychological and health issues encountered in retirement.

17. Other members' rights include—

Other members'
rights.

- (a) the right to share in the net returns of the scheme including the right to share in the surplus of a defined benefits scheme in accordance with the Act or any other relevant written law;
- (b) the right to enjoy all the services offered by the scheme including collateral for mortgage facilities and participation in a post-retirement medical scheme where approved;
- (c) the right to nominate beneficiaries; and
- (d) the right to report any unusual occurrences in respect of the scheme to the trustees or the Authority.

PART III—STRUCTURE, ROLES AND PROCESSES OF BOARDS OF TRUSTEES

18. This part shall not apply to corporate trustees or trust corporations.

19. (1) The sponsor and the trustees of a scheme shall ensure that the board of trustees is properly constituted in accordance with the Act and the regulations thereunder.

Structure of the
board of trustees.

(2) Notwithstanding the provisions of paragraph (1), the composition of the board of trustees shall consider the following things—

- (a) the size of the board of trustees shall be as provided in the Act, any other relevant written laws and the scheme rules based on the design and size of the scheme;
- (b) the scheme sponsor may appoint a corporate trustee as the sole trustee of a scheme;
- (c) the board of trustees shall have a broad mix of skills and competencies and shall include at least one trustee who shall be professional qualified in any matter related with finance as may be recognised by a relevant industry body;
- (d) the composition of the board of trustees shall take into account gender balance, and the age and experience of trustees;
- (e) the tenures of trustees shall be staggered so that not more than one-third of the trustees shall simultaneously retire;

- (f) any scheme that was registered under the Act at the time of the coming into force of these guidelines shall take steps to ensure that the tenures of trustees are staggered as set out in subparagraph (e);
- (g) scheme rules shall set out the election or nomination rules of trustees; and
- (h) a person seeking to be elected or nominated as a trustee shall possess the following qualifications—
 - (i) leadership and integrity;
 - (ii) commitment and devotion to duty including the ability to explain clearly why he or she wants to be a trustee and what he or she believes that he or she can contribute to the governance of the scheme;
 - (iii) prudence; and
 - (iv) good character as determined through a generally accepted certification process.

20. (1) Trustees shall exercise all the powers of the scheme save for the powers reserved to the members and subject to the limitations set out in the Act or any other written law.

Powers and functions of trustees.

(2) Notwithstanding the generality of paragraph (1), the board of trustees shall ensure that—

- (a) it exercises leadership, enterprise, integrity and sound judgment in directing the affairs of the scheme to achieve continuity and sustainability;
- (b) it promotes good governance in the scheme;
- (c) it approves and reviews overall strategies and significant policies relating to the scheme;
- (d) the scheme has sufficient and appropriate resources to achieve its strategic goals;
- (e) it is responsible for the appointment of service providers and experts advising the trustees for the purposes of the scheme;
- (f) it is prudent in the oversight of the negotiation of the fees charged to the scheme by services providers having considered the value received and the long term sustainability of the scheme;
- (g) it takes responsibility for the performance of the scheme in achieving the scheme's objectives and meeting the scheme's obligations;
- (h) effective financial and other internal controls are established and maintained to achieve the scheme's financial reporting and risk-management objectives;
- (i) it monitors the effectiveness of the internal control and risk-management systems of the scheme;
- (j) it deals fairly with stakeholders' interests, demands and expectations; and

- (k) the scheme complies with all statutory requirements including these guidelines.

21. (1) The scheme rules shall specify—

Appointment of trustees.

- (a) the manner for the nomination of a trustee by a sponsor; or
(b) the manner of the election of a trustee by members.

(2) A trustee shall be deemed to be duly appointed upon his or her nomination or election and shall be issued with a letter of appointment by—

- (a) the sponsor of the scheme in the case of a new scheme; or
(b) the trust secretary in the case of an existing scheme.

(3) The letter of appointment shall state the terms of appointment, the expectations of the sponsors and members, and also include—

- (a) the tenure of the trustee;
(b) the role and responsibilities of the trustee;
(c) the requirement that the trustee shall adhere to the code of conduct of trustees of the scheme; and
(d) the trustee's expected remuneration in accordance with the scheme's trustees remuneration policy.

(3) The recruitment process of a trustee shall include a fit and proper assessment as may be prescribed in the scheme rules and shall require the submission of a certificate of good conduct by the prospective trustee.

(4) Any vacancy in the board of trustees shall be filled within a reasonable time but in any case within twelve months from the date of the vacancy.

(5) A trustee may be reappointed after the end of his or her first term:

Provided that the reappointment shall be based on the most recent evaluation of the trustee's performance.

(6) A person shall not simultaneously serve on more than three boards of trustees of schemes.

(7) A chairperson of a board of trustees shall not simultaneously serve on more than two boards of trustees of schemes.

22. (1) A trustee shall not be entitled to receive a salary or honorarium for the services he or she offers to a scheme.

Trustees' remuneration policy.

(2) A trustee may be paid a sitting allowance and be reimbursed for reasonable expenses he or she incurs in the course of rendering his or her services to the scheme.

(3) The board of trustees shall ensure that—

- (a) there is an approved trustees remuneration policy in place that sets out the approved sitting allowances and rates of reimbursement for expenses;

- (b) the trustees remuneration policy is not discriminatory towards the different categories of trustees;
- (c) the sponsor has been consulted during the development of the trustees remuneration policy;
- (d) the trustee remuneration policy requires that any remuneration paid to the trustees by the sponsor is disclosed and that trustees do not draw separate remunerations for the same meeting;
- (e) the trustees remuneration policy is approved by members at an annual general meeting of the scheme at least once in every three years and where approval shall not have been granted, the policy prevailing at the time shall continue to apply until the Authority makes a determination regarding the proposed new policy;
- (f) the implementation of the trustees remuneration policy shall be in compliance with the provisions of the Act and any other relevant written law; and
- (g) the details of the remuneration and benefits of trustees are included in the scheme's annual audited financial statements:
Provided that where the board of trustees has resolved not to pay any remuneration or allowances to the trustees, a statement to this effect shall also be included in the scheme's annual audited financial statements.

23. (1) The sponsor of a new scheme or the chairperson of the board of trustees an existing scheme shall ensure that each trustee undergoes a well-structured induction process in respect of the trustees role and responsibilities in the scheme.

Trustees' induction and skills development.

(2) An induction process shall include training required under the Act or any other relevant written law to ensure that—

- (a) trustees are trained and certified in a training programme approved by the Authority within six months of the trustees' appointments or such other period as may be provided under the Act;
- (b) trustees have appropriate knowledge and understanding of the law relating to retirement benefits and trusts;
- (c) trustees have appropriate knowledge of the principles of funding and investment relating to retirement benefits schemes;
- (d) trustees have received orientation on the scheme governance structure, strategic plan, financial status, financial policies, risk management, compliance programmes and the code of conduct of the scheme; and
- (e) independent trustees and key persons of corporate trustees meet a higher standard of care and are able to demonstrate appropriate knowledge and understanding from the date of their appointments.

(3) The board of trustees should seek to enhance its knowledge and skills where relevant through appropriate training.

(4) The Authority shall specify the minimum number of training hours trustees are required to meet.

24. (1) Each board of trustees shall, at least once in each year, undertake an evaluation of its performance and the performance of the chairperson, individual trustees, the trust secretary and the person in charge of the internal administrator.

Board of trustees evaluations.

(2) During an evaluation, the board of trustees may conduct a self-assessment.

(3) Each scheme may conduct a third party evaluation of the board of trustees with the assistance of independent external advisors to review the effectiveness of the board and committees of the board.

(4) Where a scheme conducts a third party evaluation, the board of trustees shall determine the scope and frequency of the evaluations.

(5) The results of the evaluations shall be used to improve the overall performance of the board of trustees and the scheme.

25. (1) The board of trustees shall be jointly and severally accountable for the management of the scheme and all trustees shall be equally responsible for the decisions of the board.

Accountability of the board of trustees.

(2) The board of trustees shall ensure clarity and appropriate separation in the leadership roles of the scheme.

26. (1) The chairperson shall be elected by the board of trustees at its first meeting after the appointment of the board or at the expiry of the term of the chairperson.

Role of the chairperson of the board of trustees.

(2) Notwithstanding paragraph (1), statutory schemes shall adhere to the process set out in the Act or other relevant law in the election of the chairperson of the board of trustees.

(3) In addition to the general qualifications to be a member of a board of trustees, trustee shall possess the following qualities to be eligible to be appointed as a chairperson—

- (a) effective leadership and governance skills;
- (b) prudent judgment and effective decision-making;
- (c) the ability to develop a coherent and effective team among the trustees including ensuring that all trustees are treated equally;
- (d) effective communication skills;
- (e) the ability to mentor newly appointed trustees; and
- (f) sociable, reliable, dependable and non-partisan.

(3) The chairperson shall preside at each meeting of the board of trustees and in the absence of the chairperson, the trustees present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, enjoy all the powers of the chairperson.

(4) The chief executive officer of the sponsor, the chairperson of the board of directors of the sponsor and the administrator of the scheme shall not be eligible to be appointed or elected as the chairperson of the board of directors.

(5) The chairperson of the board of trustees shall provide overall leadership to the board, ensure the efficient and timely conduct of the board's business and act as the spokesperson of the scheme in respect of the scheme's policies.

(6) Where the decisions of the board of trustees are made by way of a vote and there is a tie in a vote, the chairperson or the person presiding as chairperson in his or her absence shall have the deciding vote.

(7) The tenure of the chairperson shall be as set out in the Act or any other relevant written law.

27. (1) The board of trustees may appoint a trust secretary from the staff of the administrator of the scheme. Trust secretary.

(2) Where a board of trustees intends to appoint a trust secretary, the scheme rules shall set out the terms and conditions of appointment and the remuneration, if any, of the trust secretary.

(3) The role of the trust secretary shall be to—

- (a) provide guidance to the board of trustees on the trustees' duties and responsibilities and on matters of governance;
- (b) ensure the timely preparation and circulation of papers and minutes of the board of trustees and committees of the board;
- (c) maintain and update the register of conflicts of interest;
- (d) ensure that the trustees are aware of the relevant laws relating to the scheme;
- (e) facilitate effective communication between the board of trustees and other stakeholders;
- (f) co-ordinate the evaluations of the performance of the board of trustees including the evaluations of the performance of the chairperson, individual trustees and committees of the board;
- (g) participate in the meetings of the board of trustees as an *ex officio* member without the right to vote on any of the decision of the board;
- (h) identify any links or duplication in the roles of the committees of the board of trustees; and
- (i) provide feedback on the overall scheme governance and management.

(4) The trust secretary shall attend all the meetings of the board of trustees and in his or her absence, the board shall appoint from among their number a temporary trustee for the purposes of the meeting.

(5) It is preferable for a trust secretary to be lawyer, possess a law qualification or be a certified public secretary.

(6) In appointing a trust secretary, the board of trustees shall take into account a person's prior experience as a trust secretary in lieu of the qualifications contemplated in paragraph (5).

28. (1) Each board of trustees shall devote an appropriate amount of time to its oversight role over the affairs of the scheme based on the size of the scheme, the complexity of the scheme rules and structure, and the complexity of the issues affecting the scheme.

Meetings of the
board of trustees.

(2) Boards of trustees shall convene regular meetings to transact the business of the schemes.

(3) Quorum at a meeting of a board of trustees shall be half the number of trustees which shall include the trustee nominated by the sponsor and at least one elected trustee.

(4) The chairperson, working with the trust secretary or the administrator of the scheme, and in consultation with the trustees, shall convene the meetings of the board and develop the agenda of the meetings.

(5) The notice of the meetings of the board of trustees shall be issued at least fourteen days before the date of the meeting.

(6) The agenda of the meeting of the board and any other relevant document shall be issued to the trustees at least seven days before the date of the meeting.

(7) The administrator of the scheme or the trust secretary, where relevant, shall sit in on the meetings of the board of trustees but shall have no vote unless he or she is also the scheme secretary.

(8) The scheme rules shall specify the requirements for the holding of a special meeting of the board of trustees and the procedure to be followed to convene a special meeting.

(9) The board of trustees shall—

- (a) meet with such frequency as may be provided under the scheme rules but not less than the frequency provided under the Act or any other written law;
- (b) prepare a board charter, annual work plan and calendar of meetings to guide the business of the board;
- (c) ensure that trustees are sensitised on the need for adequate preparation before a meeting of the board in order to make the meeting effective;
- (d) ensure that the minutes of the meeting of the board are recorded accurately and stored safely; and
- (e) ensure that regular reports on the general affairs of the scheme are submitted to the sponsor including a copy of the approved minutes of each meeting of the board.

29. (1) The board of trustees may appoint committees to facilitate the work of the board by conducting detailed analysis of, and holding discussions on, specific areas of scheme operations.

Committees of the board of trustees.

(2) Committees of the board shall make recommendations to the board in respect of scheme operations for approval.

(3) The board may delegate the power to make decisions to committees of the board but in every case, the decisions of the committees shall be ratified by the board before implementation.

(4) The number of committees of the board shall not exceed four at any one time.

(5) The following shall be the recommended committees of the board of trustees—

- (a) investment committee especially for schemes invested in segregated funds;
- (b) audit and risk-management committee, where schemes are encouraged to separate the two oversight roles; and
- (c) administration and communications committee, which should be established for each scheme.

(6) Scheme rules may provide for the board of trustees to engage the services of experts to provide consultancy services or to co-opt experts to sit in committees of the board to provide guidance.

(7) The engagement and co-opting of experts shall be done through a competitive process.

(8) The board of trustee shall determine the terms of reference for all committees of the board which shall include objectives of the committee, any delegation of the power or functions of the board, operations and reporting procedures of the committees.

(9) Template terms of reference for committees of the board are set out in appendices 1, 2 and 3.

30. (1) The scheme rules shall provide the procedure and grounds for the removal of a trustee from office.

Removal of trustees from office.

(2) Notwithstanding the generality of paragraph (1), a person shall cease to be a trustee if that person—

- (a) is forbidden from acting as a trustee in accordance with the provisions of the Act or any other relevant written law;
- (b) fails to undergo statutory training within the period stipulated under the Act or regulations thereunder;
- (c) without reasonable cause, fails to attend two consecutive meetings of the board of trustees or such number of meetings as may be provided for under the Act;
- (d) resigns by notice in written to the chairperson or in such other manner as may be provided for in the scheme rules;

- (e) is removed from office by the sponsor of the scheme in accordance with the instrument that established the scheme; or
- (f) in the case of a trustee who was elected by members, is removed by the members in accordance with the scheme rules.

(3) The removal of a trustee from office shall be finalised through a resolution of the board of trustees.

(4) Where a trustee has ceased to hold office, the board of trustees shall notify the sponsor and members in writing promptly.

PART IV—RELATIONSHIP BETWEEN TRUSTEES AND SPONSORS AND SERVICE PROVIDERS

31. The board of trustees shall strive to maintain a positive relation with the sponsor and service providers for the purpose of creating an enabling environment for good governance and the efficient management of the scheme.

Relationship to be positive.

32. The role of sponsors in the running of a scheme shall include—

Roles of sponsors.

- (a) providing key member data to trustees and scheme administrators;
- (b) paying contributions into the scheme within the specified periods;
- (c) in the case of defined contributions schemes, ensuring the funding objectives of the scheme are met; and
- (d) ensuring that the cost of the benefits provided under the scheme rules are met.

33. In order to work effectively with a sponsor the board of trustees shall—

Working effectively with sponsors.

- (a) have a full understanding of the sponsor's responsibilities;
- (b) work with the sponsor to ensure that the sponsor understands the trustees' responsibilities;
- (c) inform the sponsor of the potential impact on trustees and additional cost of operations of the scheme if the trustees or sponsor fail to meet their obligations;
- (d) regularly review the processes and mechanisms that the sponsor shall use to provide information with the aim of constantly improving the processes or mechanisms; and
- (e) at least once in every three months, submit to the sponsor a report on the scheme in accordance with the Act and regulations thereunder.

34. The board of trustees shall establish an effective relationship with the scheme's internal administrator by—

Board of trustees relationship with internal

- (a) appointing key persons of the internal administrator; administrator.
- (b) establishing clear and transparent lines of responsibility and accountability between the trustees and the administrator;
- (c) establishing and maintaining effective communications channels at all levels;
- (d) establishing and enforcing appropriate codes of conduct;
- (e) at least once in each year, documenting and reviewing the functions of the key persons of the internal administrator;
- (f) monitoring the internal administrator's compliance with the approved strategies and policies of the scheme; and
- (g) establishing performance standards to be met by the internal administrator which shall be consistent with the long term objectives, strategy and financial health of the scheme.

35. (1) The board shall appoint an internal or external scheme administrator to manage the administrative affairs of the scheme on behalf of the board. Appointment and role of scheme administrator.

(2) Where the sponsor seconds a person to act as an internal scheme administrator of the scheme, the board of trustees shall ratify the secondment in writing.

(3) The board of trustees shall—

- (a) appoint a scheme administrator through a competitive process and in accordance with the objectives and policies of the scheme; and
- (b) prepare detailed job descriptions for key persons of the internal scheme administrator including key result areas and key performance indicators to be achieved by the scheme administrator.

(4) The terms and conditions of service of an external scheme administrator shall be set out in the instrument of appointment or service level agreement between the board of trustees and the scheme administrator and shall comply with the provisions of the Act and regulations made thereunder.

(5) The duties of the scheme administrator shall be as set out in the Act, the regulations made thereunder or as agreed between the scheme administrator and the board of trustees.

(6) The board of trustees shall communicate regularly with the representatives of service providers carrying on key day to day functions of the scheme and, where appropriate, invite them to attend meetings of the board.

(7) The board of trustees may remove a scheme administrator from office only in accordance with the Act and the regulations made thereunder.

(8) Where the board of trustees removes a scheme administrator from office, it shall appoint a replacement soon thereafter.

(9) Where the board of trustees issues instructions to the scheme administrator, the instructions shall be in writing or in any other form as may be agreed between the board and the scheme administrator.

36. (1) A board of trustees may be required to appoint service providers and advisors to the scheme to perform specific tasks on behalf of the board and provide advice to the board.

Appointing and managing service providers.

(2) Where a board of trustees appoints service providers or advisors, the trustees shall retain ultimate accountability for the management and supervision of the affairs of the scheme.

(3) Before the board of trustees delegates any of its functions to service providers or advisors, the board shall ensure that it is familiar with—

- (a) the scope of services to be provided by the service providers or advisors;
- (b) the cost of the services to be provided by the service providers or advisors;
- (c) the arrangements and procedures for passing on relevant information to trustees or new advisors, including notification periods, and fees or penalties due, where the board appoints new service providers; and
- (d) any limitations on the liability of the service providers or advisors.

(4) The board of trustees shall appoint service providers or advisors through a competitive selection process and by considering the following matters during the process—

- (a) the different types and levels of services available in the market including the benefits to members and related costs;
- (b) the ability to provide relevant data including quality management information;
- (c) the type and capacity of technology used by the service providers or advisors;
- (d) work procedures and personnel capacities;
- (e) the processes for the protection of members' data;
- (f) experience in working with similar schemes with similar profiles; and
- (g) the level of the service provider's or advisor's professional indemnity and whether it is adequate for the purposes.

(5) The board of trustees shall determine the terms and conditions of service between the board and the service provider or advisor in accordance with the Act or any other written law and set them out in the service level agreement or instrument of appointment.

PART V—AUDIT, ASSURANCE AND RISK MANAGEMENT

37. Schemes shall establish, document and maintain effective audit, assurance and risk management policies, procedures and guidelines.

Schemes to have effective policies and guidelines.

38. (1) The internal audit function shall be an independent and objective assurance and consulting activity intended to add value and improve the organisational operations of the scheme.

Audit and assurance.

(2) The board of trustees shall ensure that—

- (a) there is established for the scheme a comprehensive internal audit function that shall cover all the scheme's activities, provide independent and objective assurance, and improve the effectiveness of the scheme's risk management, control and governance processes;
- (b) there are established suitable oversight mechanisms for the scheme where the board intends to outsource the internal audit function to a third party or appoints an external advisor to perform the function:

Provided that smaller schemes may employ the internal audit services of the sponsor;

- (c) it acts expeditiously on the reports of its audit and risk management committee on any internal control issues that require the board's attention.

(3) The board shall appoint an external auditor who shall examine the accounting records of the scheme and provide the board with an opinion on the financial statements of the scheme.

(4) The board shall—

- (a) on receiving the annual audit management report, discuss the content of the report and implement the recommendations therein; and
- (b) conduct a review of the services of the external auditor at least once every five years.

(5) Where an external auditor is replaced by the board of trustees, the external auditor may not be reappointed to offer services to the scheme for at least two years from the date of the lapsing of the previous appointment.

39. (1) The Authority may require a board of trustees to conduct a governance audit of the scheme to ensure that the scheme conforms to the highest standards of governance.

Compliance and enforcement of Guidelines.

(2) A governance audit shall cover the governance practice of the scheme including—

- (a) leadership and strategic management;
- (b) transparency and disclosure;
- (c) statutory and regulatory compliance;
- (d) communication with stakeholders;
- (e) independence and governance structures of the board of trustees; and

(f) scheme systems and procedures.

(3) A governance audit shall only be conducted by a person who is certified to do so by the relevant professional body.

40. The board of trustees shall ensure that the scheme has a written risk management policy and procedures that guide the scheme in risk identification, assessment, mitigation monitoring and reporting.

Risk management.

41. (1) The board of trustees shall determine the nature and extent of the risks it may take in achieving the strategic objectives of the scheme.

Risk management and internal control systems.

(2) The board shall establish and maintain sound risk management and internal control systems which shall encompass—

- (a) the identification of key risks;
- (b) the assessment of risks and determining the level of exposure of the scheme to those risks;
- (c) continually monitoring the identified risks and determining the scheme's needs in respect of the risks;
- (d) assessing the board's decisions in accepting particular risks, implementing risk mitigation measures and whether or not the decisions are in line with approved risk tolerance or risk appetite of the scheme and the risk policy; and
- (e) reviewing and reporting by the audit and risk committee on the matters set out in paragraphs (a), (b), (c) and (d).

(3) The board shall establish and maintain a risk register in which it shall record the identified risks, the board's assessment of the risks and the measures implemented to manage the risks.

PART VI—USE OF INFORMATION TECHNOLOGY IN GOVERNANCE

42. The board of trustees shall be responsible for the scheme's management of information and shall—

Use of information and communication technology in governance.

- (a) ensure that the scheme takes advantage of the use of information technology in the management of the scheme's records including by ensuring that there is adequate information security;
- (b) ensure that the administrator of the scheme has established and is implementing a comprehensive information technology policy and has adequate information technology systems for the administration of the scheme;
- (c) ensure that the scheme administrator has competent and qualified officer for the management of information technology;
- (d) monitor and evaluate significant information technology investments and expenditures incurred by an internal administrator;

- (e) ensure that members' personal information is identified and managed appropriately;
- (f) retain the information held in the information technology system and, with the input of the scheme, protect the intellectual property in the information;
- (g) ensure that the scheme complies with the law relating to information technology including codes and standards; and
- (h) ensure that the scheme's administrator and service providers have adequate business continuity plans which shall be reviewed at least once in each year and tested as appropriate and which shall cover—
 - (i) loss of key personnel;
 - (ii) business disaster recovery;
 - (iii) the safeguarding of data; and
 - (iv) how to continue operations in the case of a disaster or emergency.

PART VII—TRANSPARENCY, ACCOUNTABILITY AND DISCLOSURE

43. The scheme should establish and maintain a member communication system that is accessible and timely to allow members to engage with the scheme and make decisions for members' benefit. Communication.
44. The trustees shall ensure that— Trustees' communication obligations.
- (a) the information shared with members is accurate, clear, relevant and provided in a language that members can understand; and
 - (b) members who are challenged or are otherwise unable to use or comprehend written communication because of a disability are suitable accommodated.
45. Electronic communication may be used to communicate with members as a substitute for written communication if— Electronic communication.
- (a) a member wishes to receive information in electronic form and notifies the scheme of this desire in writing;
 - (b) electronic signatures are recognised under any written law and the scheme has strict procedures for recognising electronic signatures; and
 - (c) any other requirements under the Kenya Information and Communication Act, 1998 have been met by the scheme.
46. The scheme shall retain and store information in accordance with the provisions of any relevant written law. Retention and storage of information.
47. The board of trustees of a scheme shall establish and maintain a formal and transparent strategy for engaging with key stakeholders in the decisions and management of the scheme. Trustees to maintain formal and transparent strategy.

48. The board of trustees shall—

- (a) conduct regular reviews of who the scheme's key stakeholders are and how their needs should be met;
- (b) public in each year the audited financial statements of the scheme indicating the business and financial performance and position of the scheme and share the report with its key stakeholders;
- (c) disclose the details of the scheme to new members through a scheme booklet including the disclosure of options to members at the point of exit from the scheme;
- (d) shall maintain the confidentiality of the minutes of its meetings but comply with reasonable requests for information from members and other stakeholders as provided under the Access to Information Act, 2015;
- (e) not publish or otherwise disclose any information that may negatively affect the scheme including—
 - (i) planned investment decisions;
 - (ii) personal identification information; and
 - (iii) identities of dependents and beneficiaries;
- (f) establish a fair system to address accusations by whistle-blowers including members against trustees of negligence, or unwillingness or refusal to properly administer the affairs of the scheme; and
- (g) report any unusual occurrence to the Authority as soon as reasonably practicable.

Transparency, accountability and disclosure to stakeholders.

49. (1) A conflict of interest may arise between a trustee and the scheme or between a service provider or advisor and the scheme.

Conflicts of interest reporting.

(2) The board of trustees shall—

- (a) establish a written policy dealing with conflict of interest and it shall include—
 - (i) the escalation path of individual or other trustees' conflicted interests;
 - (ii) guidelines on allowable gifts to trustees, including the maximum value of individual gifts; and
 - (iii) the period within which a breach of the policy should be reported;
- (b) specify a period within which the conflict of interest policy should be reviewed to address new potential conflicts or incorporate relevant amendments to the policy;
- (c) establish and maintain a register of conflicts which shall be reviewed and updated at each meeting of the board of trustees;

- (d) ensure that trustees and advisors shall declare their conflicts of interest at the moment of their appointment; and
- (e) ensure that service providers and advisors of the scheme shall maintain conflicts of interest policies and declare their conflicts of interest to the board of trustees.

50. (1) The board of trustees of a scheme shall, in the scheme's audited financial statements, report the extent to which the board has adhered to the principles of good governance set out in these guidelines.

Scheme
governance
reporting.

- (2) The report under paragraph (1) shall be prepared through—
 - (a) a declaration in the form set out in Appendix 5 to these guidelines;
 - (b) a report to the members of the scheme at the annual general meeting of the scheme on the board's adherence to the principles of good governance; and
 - (c) submitting to the Authority the declaration made under subparagraph (2) (a).

51. (1) The board of trustees shall be responsible for ensuring the scheme is a good corporate citizen by setting the direction for good corporate citizenship including compliance with laws, rules, regulations, scheme policies and procedures, and by adhering to the scheme's purpose, strategy and conduct.

Responsible
corporate
citizenship.

(2) The board of trustees shall oversee and monitor the scheme's workplace and economic behaviour, and environmental, social and governance matters related to the activities of the scheme.

(3) The board of trustees is encouraged to adopt socially responsible investing including by considering the financial returns of investment and social or environmental benefits of investment for the members and the community in which the scheme invests.

(4) Where the board of trustees adopts socially responsible investing the board shall disclose how the investing shall be managed, the monitoring measures it has established and how corporate citizenship outcomes shall be managed.

PART VIII—ENFORCEMENT AND COMPLIANCE

52. The Act, regulations thereof and these guidelines shall provide adequate guidance on the Authority's expectations on a scheme's governance strategies, policies and procedures.

Act, etc. to
provide adequate
guidance on
governance.

53. (1) The Authority shall regularly perform a comprehensive evaluation of a scheme's governance policies or strategies and assess the implementation of these guidelines.

Evaluation and
oversight.

(2) The Authority may require a scheme to undertake effective and timely remedial action to address the scheme's material deficiencies in its governance policies or strategies.

APPENDICES

APPENDIX 1—TERMS OF REFERENCE FOR AUDIT AND RISK MANAGEMENT COMMITTEES OF THE BOARD OF TRUSTEES

1. General terms of reference
 - (a) The board of trustees shall constitute the audit and risk management committee to review the financial conditions of the scheme, the scheme's internal controls and performance, and recommend remedial actions.
 - (b) The committee shall consist of not less than three and not more than five members appointed from the board, at least one of whom shall be knowledgeable in financial and accounting matters. However, where the scheme has three trustees, two shall suffice as committee members.
 - (c) The committee shall meet regularly but in any case not less than four times in a financial year with the period between one meeting and a subsequent one being not longer than three months.
 - (d) The mandate of an audit and risk committee shall include oversight of the scheme's risk management.
 - (e) The chairperson of the board of trustees shall not be a member of the audit and risk committee of the scheme.
2. Audit tasks
 - (a) The committee shall ensure that the scheme's administrator establishes and effectively maintains internal controls in order to achieve the scheme's financial reporting objectives.
 - (b) The committee shall review the scheme's internal controls including the scope of the internal audit programme and the internal audit findings, and recommend to the scheme administrator the action to be taken to mitigate any identified audit risks.
 - (c) The committee shall review the scheme's internal audit reports, the overall effectiveness, scope and depth of audit coverage, the reports on internal controls and recommendations thereof, and confirm whether or not appropriate action has been taken by the scheme's administrator.
 - (d) The committee shall ensure that the scheme's accounting records and financial reports are prepared within statutory and scheme timelines and accurately reflect the scheme's operations.
 - (e) The committee shall recommend the appointment or replacement of the scheme's internal or external auditor, and review the audit fee from time to time.
 - (f) The committee shall review the scheme's reports concerning any deviations or weaknesses in accounting and operational controls in the scheme's administrator's operations.
 - (g) The committee shall monitor the ethical conduct within the scheme and develop the scheme's ethical standards and requirements including procedures for reporting and handling complaints.

- (h) The committee shall ensure that the scheme establishes and properly administers plans, policies and control procedures to safeguard against error, carelessness, conflicts of interest, self-dealing or fraud.
 - (i) The committee shall investigate all complaints by members.
 - (j) The committee shall keep minutes of its meetings and document all its work in writing.
 - (k) The committee shall consider any other matter of significance that may be raised at the annual general meeting of the scheme.
3. Risk management tasks
- (a) The committee shall review and assess the integrity of the scheme's risk control systems established by the scheme's administrator and ensure that risk policies and strategies are effectively managed.
 - (b) The committee shall monitor external developments connected to accountability of the scheme and the reporting of associated risks including emerging and prospective impacts of those risks.
 - (c) In the performance of its functions, the committee may obtain outside or independent professional advice as may be necessary.
 - (d) The committee shall report in writing to the board of trustees on the measures taken by the scheme to implement its recommendations in respect of the audit and risk function.
 - (e) The committee shall be responsible for reviewing the placement of the scheme's insurance portfolio and any available options to cover all known insurable risks of the scheme.

APPENDIX 2—TERMS OF REFERENCE FOR THE FINANCE AND INVESTMENT COMMITTEE

1. General terms of reference
- (a) The board of trustees shall constitute the finance and investment committee to review the scheme's budget and investments and, at least once in every three months, recommend to the board the necessary actions in respect of the budgets or investments. In respect of large scheme, the committee shall review all large projects and monitor the projects' implementation.
 - (b) The committee shall consist of not fewer than three and not more than five members chosen from among the members of the board of trustees one of whom shall be conversant with financial and accounting matters. Where the scheme only has three trustees, it shall be sufficient for two to be chosen to be members of the committee.
 - (c) The chairperson of the board of trustees shall not be a member of the finance and investment committee.
2. Investment matters
- (a) The committee shall manage the selection procedure for the scheme's fund manager and custodian, and shall oversee the performance evaluation in accordance with the terms of service agreed upon with the service providers.

- (b) The committee shall review and recommend to the board of trustees guidance on the fund manager regarding any significant investment action by the fund manager.
- (c) The committee's members shall have a firm grasp of the scheme guidelines and policies on the management of the scheme's assets including the scheme investment strategy.
- (d) The committee shall ensure that the scheme complies with its investment policy statement which shall include an investment philosophy and strategy.
- (e) The committee shall assess the scheme's investment performance by comparing the scheme's performance to the benchmarks set out in the investment policy statement.
- (f) The committee shall oversee the fund manager's compliance with the investment policy statement.
- (g) The committee shall ensure the scheme complies with its investment guidelines.
- (h) The committee shall review the scheme's financial reports as prepared by the auditor at least once in each year.
- (i) The committee shall review the placing of the scheme's insurance portfolio and options for covering the scheme's known insurable risks.
- (j) The committee shall report in writing to the board of trustees on its findings and recommendations on the execution of its mandate.
- (k) The committee may perform any other functions or projects as may be directed by the board of trustees.
3. Finance matters
- (a) The committee shall receive and consider the scheme's annual budget including its revisions before submitting the budget to the board of trustees for approval.
- (b) The committee shall receive and consider the financial analyses of all the scheme's proposed capital developments.
- (c) The committee shall, from time to time, review and propose any relevant or necessary amendments to the scheme's procurement and asset disposal procedures and ascertain whether or not all procurement by the scheme administrator comply with the scheme's procurement and asset disposal procedure and the relevant written law.
- (d) The committee shall receive and consider the financial implications of any act proposed by the scheme which involves expenditure or write-off of revenue or assets exceeding five percent of the value of the scheme's assets.
- (e) The committee shall review, recommend, do or cause to be done, in consultation with relevant committees of the board, all measures necessary to reduce the scheme's expenditure.
- (f) The committee shall review the scheme's options for raising capital for any proposed projects.
- (g) The committee shall monitor the implementation of any project undertaken by the scheme.

APPENDIX 3—TERMS OF REFERENCE FOR THE ADMINISTRATION AND COMMUNICATIONS COMMITTEE

1. General terms
 - (a) The board shall constitute the administration and communication committee to handle the scheme's administration, communication and reporting obligations.
 - (b) The committee shall consist of not fewer than three and not more than five members chosen from among the members of the board of trustees.
 - (c) Where the scheme has three trustees, the committee shall constitute of two trustees.
 - (d) The chairperson of the board of trustees shall not be a member of the committee.
 - (e) The committee shall be responsible for—
 - (i) ensuring that the scheme complies with statutory and regulatory requirements and the scheme rules including all reporting and disclosure requirements to members and the Authority;
 - (ii) ensuring that the scheme shares accurate, clear, relevant and timely information with members to enable them to understand the operations of the scheme and make informed decisions; and
 - (iii) recommending to the board of trustees the necessary actions in respect of administration and communication at least once in every three months.
2. Administration and communication matters
 - (a) The committee shall monitor, review and make recommendations to the board regarding the appointment of the administrator.
 - (b) The committee shall review and make recommendations to the board regarding the trustees' remuneration policy and the fees payable to the scheme's administrator.
 - (c) The committee shall review and make recommendations to the board regarding the human resource development policy, the scheme's organizational structure, and the scheme's compensation principles as they relate to the scheme's internal administrator.
 - (d) The committee shall ensure the accurate determination of exiting members' benefits and respond to members' concerns over benefits.
 - (e) The committee shall provide guidance regarding any changes in members' benefits.
 - (f) The committee shall review any proposal for significant organizational changes in the scheme's administration and report in writing to the board on the proposals.
 - (g) The committee shall be responsible for the education of members, trustees and the staff of the internal administrator.
 - (h) The committee shall ensure that members have access to relevant scheme information in a clear and comprehensive format.
 - (i) The committee shall ensure that members' requests for information are met in a timely manner.

- (j) The committee shall ensure the proper management of the scheme information and a smooth transition when there is change of scheme administrators.
- (k) The committee shall establish and maintain good relations between the board of trustees and the scheme administrator.
- (l) The committee shall advise the board of trustees and members on relevant matters including any changes to the policies or legislation affecting the scheme.
- (m) The committee shall be responsible for organizing the annual general meeting and members' days.
- (n) The committee shall determine the performance measures to be used in assessing the scheme's performance regarding all administration-related issues and oversee the annual performance review of the scheme, the board of trustees and the administrator.
- (o) The committee shall supervise and monitor complaints made through the scheme's whistle blower mechanisms.
- (p) The committee shall investigate all allegations of violations of the scheme's code of conduct by trustees and make recommendations to the board on how to deal with the allegations.

APPENDIX 4—BOARD OF TRUSTEES CODE OF CONDUCT

1. Trustees to sign

The code of conduct shall be signed by every member of the board of trustees.

2. Impartiality

Each member of the board of trustees shall interact with members or make decisions affecting members in an impartial manner.

3. Effective trusteeship

Trustees shall have relevant knowledge and understanding to achieve effective trusteeship including knowledge on—

- (a) pension scheme funding and liabilities;
- (b) the scheme investment policy statement; and
- (c) other policies of the scheme.

4. Procedures for managing conflicts of interest

- (a) The interests of a trustee conflict with those of the scheme if the trustee or a person directly associated with the trustee obtains or accepts a fee, gift or other benefit, whether of a material nature or otherwise, that is connected, directly or indirectly, with the performance of the trustee's office.
- (b) Trustees shall conduct their personal affairs in such a manner as to avoid any conflict of interest with their duties or responsibilities as trustees. A trustee shall not derive any personal profit or gain, directly or indirectly, by reason of the trustee's service with the scheme.
- (c) Conflicts of interest may arise in respect of—
 - (i) the trustee;

- (ii) the trustee's spouse or child;
 - (iii) the trustee's business associate or agent; or
 - (iv) a corporation, private company, partnership or other body in which the trustee has a substantial or controlling interest.
- (d) Conflicts of interest may arise from time to time. Where the board of trustees requires to make a decision or approve an action which shall give rise to a conflict of interest between the best interests of the scheme and a trustee's personal interests, the trustee shall immediately disclose to the board of the conflict which shall be recorded in the minutes of the meeting at which the disclosure is made so that the board's decision or approval shall be informed by the conflict.
- (e) A trustee shall ensure that the decisions of the board reflect independent thinking. If a trustee receives compensation from the scheme, the compensation shall be determined and approved by all members of the board of trustees before the compensation is paid.
- (f) Any conflict of interest including financial interests of a trustee shall be disclosed to the board when a matter that affects the trustee's interests becomes a matter for the board to decide. The board shall establish and review, at least once in each year, the procedure for trustees to disclose their interests.
- (g) A trustee with a conflict of interest on any matter shall not vote when the matter is determined by the board and shall not use his or her influence to determine the matter. Trustee with a conflict of interest shall not be counted when determining the quorum for the meeting at which the matter shall be determined by the board.
- (h) All conflicts of interest shall be recorded in the minutes of the meetings at which the conflicts have been disclosed. The minutes shall also state that the trustee with the conflict of interest did not vote on the matter during that meeting and was not included in the quorum for the purposes of that meeting.
- (i) The board of trustees shall establish and maintain a conflicts of interest register which shall be available for scrutiny by members of the scheme.
- (j) Each new trustee shall be informed of the conflict of interest policy during his or her induction. Each trustee shall be reminded of the conflict of interest policy at least once in each year.
- (k) The conflict of interest policy shall apply to each trustee's immediate family and any other person acting on the trustee's behalf.

5. Prohibition against sexual harassment

The scheme, in the management of its affairs, shall ensure a workplace that is free of discrimination or harassment. All forms of harassment are prohibited but sexual harassment is especially singled out for prohibition. Any trustee who engages in discriminatory or harassing conduct shall be removed from the board of trustees. Any complaint of discrimination or harassment against a trustee shall be promptly and confidentially investigated by a task force of other trustees.

6. Confidentiality

Trustees shall maintain the confidentiality of financial, personnel and other matters affecting the scheme, members, service providers or staff of the administrator. Trustees shall not disclose any confidential information except as may be provided for in any written law or in accordance with an order of a court of competent jurisdiction.

7. Active participation

Trustees shall perform their duties and responsibilities with integrity, collegiality and care by —

- (a) attending all meetings of the board;
- (b) being prepared when discussing the issues or business on the agenda of the meetings of the board by reading all relevant background material;
- (c) co-operating with, and respecting the views of, other trustees and avoiding personal prejudices during board meetings and by supporting the decisions or actions of the board regardless of the personal feelings of individual trustees;
- (d) putting the scheme's interests above personal interests;
- (e) representing the scheme in a positive and supportive manner;
- (f) being respectful and courteous at all board and committee meetings;
- (g) not interfering with administrative matters that are the responsibility of the scheme administrator except when monitoring the results of scheme activities or when ensuring that the administrator is complying with the scheme's policies; and
- (h) observing the established lines of communication and directing requests for information or assistance to the trust secretary or scheme administrator as the case may be.

Declaration

I,, recognizing the important responsibility that I am undertaking as a member of the board of trustees of this scheme, hereby pledge to carry out in a trustworthy and diligent manner the duties and obligations associated with my office as a trustee and shall abide by this code of conduct. I understand that any failure to abide by this code of conduct may result in my removal as a trustee in accordance with the requirements and processes of the scheme's governing documents.

Signed..... Dated

APPENDIX 5—SCHEME GOVERNANCE DISCLOSURE STATEMENT IN ANNUAL REPORT AND ANNUAL AUDITED ACCOUNTS

1. Trustees in office. (*Full list of members of the board of trustees in office*)

Name of trustee	Age	Category (Member-elected/Sponsor-nominated/Professional)	No. of meetings attended	Certified (Yes/No)	Highest qualification	Membership of other boards (Provide organisation's name)

2. The board of trustees held meetings during the year ending the The meetings were held on the dates set out hereunder:

- (a)
- (b)
- (c)

3. The composition of the board of trustees is as hereunder:

- (a) Gender balance: Female% Male%
- (b) Skills mix: No of trustees with financial skills
- (c) Age mix: Number of trustees who are younger than 35 years
- Number of trustees who are older than 35 years

4. Committees of the board

Committee name	No. of meetings held	Any external advisors, invitees to meetings (Yes/No) (if yes, mention the purpose)	Allowances paid (Ksh.)

5. Fiduciary responsibility statement

The board of trustees is the governing body of the (*Name of scheme*) and is responsible for the corporate governance of the scheme. The trustees are responsible for ensuring that the administration of the scheme is conducted in the best interests of the scheme's members and the sponsor. To achieve this, the trustees embraced their fiduciary responsibility by:

- (a) Acting honestly and did not improperly use inside information or abuse their position;

- (b) Exercising the highest degree of care and diligence in the performance of their duties that a reasonable person in a like position would exercise in the circumstances; and
- (c) Performing their duties with the requisite degree of skill.

The scheme has complied with the laws, regulations and guidelines that govern retirement benefits schemes and the scheme's business operations.

The trustees have ensured that the fund manager has carried out all scheme investments and that all scheme assets and funds are held by the custodian.

The board charter for the scheme has been developed.

6. Responsible corporate citizenship

The scheme has participated in socially responsible investments and operations and has not been involved in any activity that may undermine the well-being of the sponsor, members or the community in which it operates.

7. Key outcomes

The board of trustees seeks to achieve the following:

- (a) Building trust with the members and sponsor of the scheme so that they are satisfied with the administration of the scheme;
- (b) Supporting innovation and developing solutions that meet the members' and sponsor's needs; and
- (c) Ensuring that the scheme's administrative processes remain transparent and accessible to members and the sponsor.

The board of trustees will measure the progress towards these outcomes through:

- (a) Triennial members' survey score. The latest score was%
- (b) Regular reports and feedback from the sponsor. No. of reports

8. Annual general meeting

The board of trustees held the annual general meeting on theat which members, making up% of scheme members attended. The board adequately addressed the members' concerns.

9. Members' sensitization

The board conducted the following sensitization activities (Name of sensitization forum)	Date held	No. of members who attended	Remarks
Retirement planning seminar			
Members' day			

During the sensitization activity, members were reminded of the Retirement Benefits Authority Whistle Blower portal to report any unusual occurrences in the management of scheme affairs.

10. Trustees remuneration policy

During the year under review, the trustees were paid a gross sum of Ksh.

The payments complied with the trustees remuneration policy of the scheme which was approved by members at the annual general meeting held on the and by the Authority on the

11. Board of trustees evaluation

The board and individual trustees undertook board evaluation in the year under review. The board review process was facilitated (*externally or internally*) and the process took the form of (*questionnaire, interviews, etc.*). The board was rated (*use the evaluation's rating*).

Signed Dated

(*Chairperson*)

Dated the 11th October, 2018.

NZOMO MUTUKU,
Chief Executive Officer,
Retirement Benefits Authority.

EXPLANATORY MEMORANDUM TO THE RETIREMENT BENEFITS (GOOD GOVERNANCE PRACTICES) GUIDELINES, 2018

LEGAL NOTICE NO. 193 OF 2018

PART I

Name of Statutory Instrument:	The Retirement Benefits (Good Governance Practices) Guidelines, 2018
Name of the Parent Act	: The Retirement Benefits Act (Cap 197, Laws of Kenya)
Enacted Pursuant to	: Section 55 (3) of the Retirement Benefits Act
Name of the Ministry	: The National Treasury and Planning
Gazetted on	: 25 th October, 2018
Tabled on	:

PART II

1. Purpose of the Statutory Instrument

The purpose of the Retirement Benefits (Good Governance Practices) Guidelines, 2018 is to ensure that:

- i. the governance relationship between sponsors, trustees, and service providers in the retirement benefits sector are clear;
- ii. good governance is maintained among sponsors, trustees, and service providers in the retirement benefits sector; and
- iii. service delivery to members, who are the consumers of retirement benefits products and services, is enhanced.

2. Legislative Context

The legal framework for the Governance Guidelines is provided generally under Article 10 and Chapter 4 of the Constitution of Kenya, 2010 and under section 55 (3) of the Retirement Benefits Act, which empowers the Retirement Benefits Authority (“the Authority”), from time to time, to issue guidelines, practice notes or codes of conduct for better administration of the retirement

benefits schemes. Compliance with guidelines issued by the Authority is of added importance to trustees of retirement benefit schemes by virtue of section 26(2) of the Retirement Benefits Act.

3. Policy Background

The Retirement Benefits Authority embarked on Market Conduct Regulation in July 2016, in the backdrop of a changing business environment that has resulted in increasing complex management practices among trustees and service providers of retirement benefits schemes. There have been good practices that the Authority seeks to encourage as well as some negative ones that require deterrence.

To ensure the good practices are inculcated in the trustees and service providers, the Authority has embarked on the development of market conduct guidelines, including these Guidelines, which shall be a tool to enhance governance in the retirement benefits sector.

The retirement benefits sector has grown from less than KShs. 50 billion, when the Authority commenced its operations in 2000, to KShs. 1,166.6 billion in June 2018. This is due to the Authority's enabling regulation and supervision of the sector. To grow these funds and increase confidence in the public to put money aside for their retirement, good governance practices must be encouraged. Like corporate bodies, there is a positive correlation in the performance of a scheme and its governance structures. Schemes that have incorporated these principles of governance are better managed and more likely to outperform schemes with either poor governance structures or no structures in place.

The Guidelines are aligned with the Authority's mandate of developing the sector and protecting both the members as well as sponsors of the scheme. It is expected that the observance of the Guidelines will greatly enhance the level of accountability and transparency, operational efficiency, internal control measures and regulatory compliance by schemes in their operations.

4. Consultation Outcome

In developing the Guidelines, the Authority consulted with its key stakeholders. This ensured that the drafting process addressed all the pertinent issues and the interests of members, trustees, sponsors and service providers were taken into account.

The Guidelines were first published for stakeholders' comments and proposals through the Authority's website on 25th January, 2018 and thereafter on 21st May, 2018, after the redrafting of the Guidelines following the comments received. The Authority conducted two (2) stakeholders' workshops that took in comments and opinions from these interested parties. Some of the critical comments received included -

Stakeholders' Comments	Authority's Consideration
1. Annual General Meeting -There were views that AGMs should have a quorum number to allow the election of trustees to be done by a majority population.	Proposals dropped- AGM quorum and the remuneration of trustees to form minimum agenda.
2. Structure of Board of Trustees - Terms of appointment of trustees to be staggered so that no more than 1/3 of trustees leave at the same time.	Proposal carried and adopted.
3. Trustee Appointment - Need to remove the word competency- based interview and retain need of certificate of good conduct.	Proposal carried and adopted.
4. Trustee Remuneration Policy - Trustees should have a remuneration policy to guide them in the process.	Proposal carried and adopted.
5. Committees of Board of Trustees - Proposal was to remove the mandatory committees proposed and make them optional depending on the scheme.	Proposal carried and adopted.
6. Removal of Trustees from Office There were two proposals, first was that removal of a trustee to be done through a resolution by the board of trustees rather than the Chairman; and second that the notification letter indicating such removal to be issued by the trust secretary.	Both proposals carried and adopted.
7. Corporate Social Responsibility - Reword the principle to make emphasis on socially responsible investments rather than corporate social responsibility.	Proposal carried and adopted to ensure there is no mismanagement of scheme funds.

The Guidelines were reviewed with most of the comments from stakeholders incorporated in the draft. The Authority was also guided by recommendations made by governance experts who reviewed the draft Guidelines and global developments and best practices around the world but specifically in the United Kingdom, South Africa and Australia.

5. Guidance

The draft Guidelines were uploaded on the Authority's website for ease of access by stakeholders and the public. Stakeholder workshops were organized to engage and inform stakeholders on the principles in the Guidelines considering that the concepts were new in the retirement benefits

industry. Further, the Authority has been creating awareness by educating the public on the existence of the Guidelines. The Authority is in the process of holding sensitization sessions where trustees as well as service providers will be educated on the requirements of the Guidelines.

The Authority is planning to hold further stakeholder information forums in Nairobi, Kisumu, and Mombasa. The regions are critical as most schemes are registered and run from these regions. The stakeholder information forums are meant to educate the target stakeholders on the requirements of the Guidelines. The forums will be held in October and November of 2018 and in April and June of 2019.

Documents incorporated into the Guidelines by reference are:

- a. The Constitution of Kenya, 2010
- b. The Retirement Benefits Act, Cap 197
- c. The Kenya Communications and Information Act (No. 2 of 1998)

All available at www.kenyalaw.org

6. Impact

6.1 Impact on Fundamental Rights and Freedoms

The Guidelines seek to strengthen governance structures in schemes by providing a comprehensive guide on minimum standards of conduct and sound governance practices expected of a scheme. The Guidelines have taken into consideration chapter four (4) of the Constitution by incorporating principles like equality and freedom from discrimination, right and access to information, freedom of expression, and privacy of individual information. In general, by implementing and promoting proper standards of conduct and sound governance practices, members' rights are protected.

The Guidelines do not limit or infringe upon any right or fundamental freedom under the Bill of Rights. On the contrary, it ensures mechanisms are in place to promote transparency, efficiency and accountability in the day-to-day running of the schemes.

6.2 Impact on the Private Sector

The Guidelines seek to enhance transparency and integrity in the management of the retirement benefits schemes. Scheme members and sponsors will have increased confidence in the running of their schemes and it is anticipated that more employers and individuals will be encouraged to start saving for retirement. As a result, the private sector will grow through increased opportunities for investment and in real nominal value.

6.3 Impact on the Public Sector

The Guidelines as drafted align with the general principles of corporate governance. There will be increased investor confidence in the market through the promotion of high standards of transparency and integrity. Compliance with the Guidelines will ensure that public sector schemes are run more professionally and mis-management by both trustees and service providers is reduced. With a well-regulated market, the public confidence is expected to grow thus attracting investment opportunities from the national government.

6.4 Summary of Impact Assessment

The Guidelines will greatly promote the development of the Industry and enhance the protection of members' and sponsors' interests. Sound and prudent management of scheme funds as well as avoiding risky practices that are highlighted in the Guidelines will ensure sustainable growth of retirement funds. The Authority will use a "Disclose, Apply or Explain" approach in ensuring compliance with the Guidelines. Hence, the cost implication by schemes can be measured and staggered to ensure the costs incurred by schemes are manageable. The cost benefit analysis will be outweighed by the benefits brought in by an enhanced governance regime.

7. Monitoring and review

The boards of trustees jointly and severally are responsible for ensuring compliance with the Guidelines. Where trust secretaries are appointed, and scheme administrators contracted, they will be required to ensure compliance as appropriate. Governance disclosures will be made to the membership, through inclusion in a scheme's audited financial statements, and preparation of a report on Scheme Governance Disclosure as set out in the Guidelines.

The Authority will regularly perform a comprehensive evaluation of a scheme's governance and assess the implementation of the Guidelines. In the event of any non-compliance, an explanation will be required and a remedial action plan be submitted to the Authority, where so directed, stating the measures to be taken to ensure compliance.

8. Contact

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