

**THE NATIONAL SOCIAL SECURITY PENSION
TRUST BILL, 2012
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THE NATIONAL SOCIAL SECURITY PENSION TRUST BILL, 2011

A Bill for

AN ACT of Parliament to establish the National Social Security Pension Trust, the National Social Security Pension Trust Board, and to provide for matters incidental thereto and connected therewith

ENACTED by the Parliament of Kenya, as follows

PART I - PRELIMINARY

1. This Act may be cited as the National Social Security Pension Trust Act, 2011, and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint, and different dates may be appointed for the commencement of different provisions.
2. In this, Act, unless the context otherwise requires –
 - "annual general meeting" means an annual general meeting convened in accordance with section 54;
 - auditor means an external auditor appointed and confirmed at the Annual General Meeting;
 - "benefit" means a benefit payable under this Act;
 - "Board" means the National Social Security Pension Trust Board of Trustees established under section 5;
 - "brother" includes a half-brother;
 - "contract of service" means any contract whether entered into orally or in writing, whether expressed or implied, to employ or to serve as an employee for any period of time, and includes a contract of apprenticeship or leadership;
 - "contribution" means the contribution payable under section 19;
 - "daughter" includes a daughter by whatever system of law obtaining in Kenya;
 - "dependent relative" means, in relation to a deceased member of the Trust, any relative of the deceased who survives the deceased and who, on the date of the deceased's death
 - (a) was a wife or husband of the deceased;
 - (b) was a son or daughter of the deceased who had not attained the age of eighteen years;or

(c) was a parent, grandparent, grandchild, brother, sister or such other relative who was wholly or substantially dependent on the deceased for the provision of the ordinary necessities of life suitable for a person of his station.

"emigration grant" means the benefit granted under section 37;

"employee" means any person who –

- a) is employed in Kenya under any contract of service or apprenticeship with an employer whether the contract is express, implied, oral or in writing;
- b) is ordinarily resident in Kenya and is employed outside Kenya under any such contract of service with an employer in Kenya by whom he is paid;

"employer" means a person, association or firm who employs another person under a contract of service and includes the Government;

"employee's share" in relation to a contribution, means such part of that contribution, if any, as the employer may lawfully deduct from the wages of the employee in respect of whom that contribution is payable;

"exempt person" means any person of a class or description specified in the First Schedule;

"financial year" means a period of twelve months ending on 30th June in every year;

"funeral grant" means the benefit granted under section 38;

"grandchild" means a son or daughter of a son or daughter;

"grandparent" means a parent of a parent;

"guardian" means a person who is not the child, parent, or spouse of a deceased member of the Trust, but who upon the death of a member has the care of a child or the children of the deceased member;

"invalidity pension" means the benefit granted under section 34;

"managing trustee" means the managing trustee of the Trust appointed under section 16 and includes any person acting in the office of the Managing Trustee whenever the office is vacant or the holder of the office is absent or for any reason incapable of acting;

"maternity pension" means the benefit granted under section 35;

"member" and "member of the Trust" means a person who is registered as a member of the Trust pursuant to this Act;

"Minister" means the Minister or Cabinet Secretary for the time being responsible for matters relating to social security;

"parent" means a father or mother, and includes a step parent and a parent by adoption of a child adopted in any manner recognized as such under any law obtaining in Kenya;

"pensionable age" means the age of sixty years;

"provident fund" means the fund established under section 21;

"regulations" means regulations made by the minister;

"retirement pension" means the benefit granted under section 32;

"Secretary" means the Secretary to the Board appointed under section 17;

"self employed person" means a person who has no other employer but himself and works on his own account;

"sister" includes half-sister;

"spouse" means a female or male spouse;

"social security" means the protection which society provides for its members through a series of public measures against the economic and social distress that otherwise would be caused by the stoppage, or substantial reduction, of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age and death, the provision of medical care and the provision of subsidies for families with children;

"son" includes a son by whatever system of law obtaining in Kenya;

"survivor's pension" means the benefit granted under section 33;

"Trust" means the National Social Security Pensions Trust established under section 3(1);

"Trustee" means a trustee as defined under the Trustee Act;

"wages" include all emoluments which would be payable in cash to an employee under a contract of service if no deductions were made, whether in pursuance of any law requiring or permitting the making of any deduction or otherwise.

Words denoting the singular shall include the plural and vice versa.

PART II - ESTABLISHMENT AND OBJECTS OF THE NATIONAL SOCIAL SECURITY PENSION TRUST

3. (1) There is established a Trust to be known as the National Social Security Pension Trust which shall be vested in, operated and managed by the Board.
- (2). There shall be paid

- (a) into the Trust, all contributions and other payments required by this Act to be paid into the Trust; and
 - (b) out of the Trust, all the benefits and other payments required by this Act to be paid out of the Trust.
- (3). The Trust shall be the successor to the National Social Security Fund and subject to this Act all rights, obligations, assets and liabilities of that Fund shall, on the commencement of this Act be automatically and fully transferred to the Trust, and any reference to the National Social Security Fund in any contract or document shall for all purposes be deemed to be a reference to the Trust established under this section.
4. The main object of the Trust is to provide social security for the members and their dependants for various contingencies and to do all other things connected therewith as, permitted by this Act.

PART III - NATIONAL SOCIAL SECURITY PENSION TRUST BOARD OF TRUSTEES

5. (1) There is established, for the management of the Trust, a body to be known as the National Social Security Pension Trust Board of Trustees which shall, subject to this Act, have control and management of the Trust.
- (2) The Board shall be a body corporate with perpetual succession and a common seal which shall in its corporate name be capable of -
- (a) suing and being sued; and
 - (b) holding, purchasing, acquiring, managing and disposing of any property, movable or immovable, and entering into all such contracts as it may deem necessary or desirable for the purpose of carrying out its functions under this Act.
6. (1) Subject to sub section (2), the Board shall comprise –
- (a) a Chairperson to be appointed by the Minister, upon the recommendation of the Board, from amongst the trustees appointed under paragraph (g) or (h);
 - (b) two representatives of employers, nominated by the Federation of Kenya Employers one of whom shall be a woman;
 - (c) two representatives of employees, nominated by the Central Organization of Trade

- Unions one of whom shall be a woman;
- (d) the Managing Trustee appointed under section 16, who shall be an *ex-officio* member and shall not vote on any matter before the Board;
 - (e) the Permanent Secretary to the Treasury or his alternate;
 - (f) the Permanent Secretary in the Ministry for the time being responsible for matters relating to social security;
 - (g) three other trustees appointed by the Minister comprising -
 - (i) Two, one of whom shall be a woman, appointed to represent the members of the Trust from among persons who have been such members for at least fifteen years;
 - (ii) One person appointed by virtue of his knowledge and experience in matters relating to banking, investment, pension trusts, insurance, accounting, auditing, law, and corporate or business management.
 - (h) two representatives nominated by Small-Micro Enterprise Umbrella Body, one of whom shall be a woman.
- (2) The Chairperson and Trustees appointed under paragraphs (b), (c), (g) and (h) shall be appointed from amongst persons who hold a degree from a recognised University and have knowledge or experience in accounting, insurance, investment, law, banking, economics, social security, labour and industrial relations.
 - (3) The Board may co-opt not more than two persons to assist it for such periods and purposes as the Board may determine, but persons so co-opted may not vote on any matter before the Board.
 - (4) The Board shall elect from among themselves a person who shall be Vice Chairperson and who shall act as Chairperson whenever the office of Chairperson is vacant or the holder thereof is absent or is for any reason incapable of acting.
7. No person shall be appointed as a Trustee under section 6 of this Act if such person -
- (1) has been convicted of a criminal offence, which questions his capacity to serve as a Trustee.
 - (2) is adjudged bankrupt or enters into a composition or arrangement with his creditors; or
 - (3) is disqualified under the provisions of the Constitution or any other written law

- from appointment as such.
8. (1) The Chairperson and other Trustees appointed under paragraph (b), (c) (g) (h) of section 6(1), shall hold office for a term of three years but may be re-appointed for one further and final term.
- (2) One third of the trustees shall be appointed in a staggered manner separated by a year.
- (3) Notwithstanding subsection (1) of this section, the Chairperson or a Trustee appointed under section 6(1) (b), (c) (g) (h) may –
- (a) at any time resign from office by notice in writing to the Minister; or
 - (b) be removed from office by the Minister, if the Trustee –
 - (i) has been absent from three consecutive meetings of the Board without the permission of the Chairperson;
 - (ii) is adjudged bankrupt or enters into a composition or arrangement with his creditors; or
 - (iii) is disqualified under the provisions of the Constitution or any other written law from remaining as such trustee;
 - (iv) is convicted of a criminal offence, which brings to question his capacity to serve as a Trustee, and sentenced to imprisonment for a term of six months or more;
 - (v) is incapacitated by prolonged physical or mental illness; or
 - (vi) is otherwise unable or unfit to discharge his functions;
 - (c) be removed from office by the Board, if the Board is satisfied that the continuance of that person in the office of member will be prejudicial to the interest of the Trust.
9. Whenever the office of an appointed Trustee under section 6 (1) (g) (h) becomes vacant the Board before the expiry of the term of office, the Minister shall on the recommendation of the Board appoint a person similarly qualified to fill the vacant position for the remainder of the term.
10. (1) The Board shall hold its meetings not less than four times in every financial year for the conduct of its business and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

- (2) The quorum for the conduct of the meetings of the Board shall be two thirds of the Trustees.
 - (3) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in the case of an equality of votes the Chairperson or person presiding shall have a casting vote.
 - (4) Subject to this Act, the Board may regulate its own procedure.
 - (5) The Managing Trustee or an officer, present at a meeting of a Board or a Committee thereof, shall have the right to require his opinion to be recorded in the minutes of the Board or the Committee as the case maybe, passes a resolution, which in the Managing Trustee's or officer's opinion, is contrary to his advice or contrary to law.
11. (1) The Board may, for the purpose of performing under this Act, establish Committees and the Board may delegate to any such Committee such of its functions as it deems fit.
- (2) The Board shall regulate its Committee meetings.
 - (3) The Board may appoint persons who are not members of the Board to Committees established under subsection (1), and such persons shall hold office for such period as the Board may determine.
 - (3) Subject to any specific or general direction of the Board, any Committee established under subsection (1) may regulate its own procedure.
12. (1) There shall be paid to the members of the Board or any Committee of the Board such remuneration and allowances as the Board may determine.
- (2) Remuneration and allowances referred to in subsection (1) shall be subject to ratification by the Annual General Meeting.
13. (1) If a member of the Board is present at a meeting of the Board or any Committee of
- the Board at which any matter is the subject of consideration and in which matter the member, the member's spouse or the member's immediate relative is directly or indirectly interested in a private capacity the member shall as soon as practicable after the commencement of the meeting, disclose such interest and

shall not, unless the Board otherwise directs, take part in any consideration or discussion, or vote on any question touching on such matter.

- (2) Without prejudice to the provisions of subsection (1), a member may give general notice to the Board of his connection with some organization or person so that he should be deemed to be privately interested in any matter coming before the Board for consideration in which the organization or person are involved:

Provided that where general notice of interest is given under subsection (2) the provisions of subsection (1) shall, apply *mutatis mutandis*:

- (3) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.
- (4) Failure to disclose such interest shall lead to disqualification from holding office as a Trustee.

14. The Board shall be responsible for –

- (a) policy formulation relating to the Trust in accordance with this Act;
- (b) the administration of the Trust and the investment of sums forming part of the Trust;
- (c) the payment of various benefits provided for under this Act to persons entitled thereto;
- (d) protection of the property and assets of the Trust; and
- (e) the administration of this Act.

15. (1) In the exercise of its functions the Board shall be accountable to the members of the Trust.

(2) The Board shall have power to –

- (a) sub-contract any of its functions to a person or firm with proven experience in the particular function being sub-contracted;
- (b) give such directions as it may consider necessary regarding the operations of the Trust; and
- (c) do all such other things as are necessary to give effect to the provisions of this Act.

(3) The Board shall have a seal which shall consist of such device as may be determined by the Board and which shall be kept in safe custody by the Managing Trustee.

(4) The affixing of the seal shall be authenticated by the signatures of the Chairperson

and the Managing Trustee provided that the Board shall in the absence of either the Chairperson or the Managing Trustee, in any particular case, or for any particular matter, nominate the Secretary for the purposes of this subsection (4), and the Secretary shall, in the particular case or matter in respect of which he is nominated, authenticate the seal of the Board on behalf of either the Chairperson or the Managing Trustee.

16. (1) For the purpose of this, Act the Minister shall appoint a Managing Trustee nominated by the Board and approved by the National Assembly who shall hold office for a period of three years renewable for a further and final period of three years on such terms and conditions of service as may be specified in the instrument of his appointment.
- (2) The Managing Trustee shall be the chief executive of the Trust and responsible to the Board for the management of the Trust.
- (3) A person shall be qualified as a Managing Trustee under subsection (1) if such person has at least ten years' experience at managerial level in -
- (a) retirement benefits schemes or accounting;
 - (b) insurance;
 - (c) investment;
 - (d) law;
 - (e) banking; or
 - (f) economics.
- (4) The Board shall have power to appoint, on such terms and conditions, of service as it may determine, such other officers of the Trust as maybe necessary for the efficient management of the Trust and the Board shall exercise disciplinary control over such officers.
- (5) The Board may, subject to such conditions as the Board may think fit, by directions in writing, delegate any of their powers under subsection (4) to one or more of the trustees, the Managing Trustee or any other officer of the Trust.
- (6) For the purposes of this Act the Board shall remove or dismiss the Managing Trustee. Such removal or dismissal shall occur if the Managing Trustee;

- (a) has been convicted of a criminal offence, which questions his capacity to serve as a Trustee.
 - (b) is adjudged bankrupt or enters into a composition or arrangement with his creditors; or
 - (c) is disqualified under the provisions of the Constitution or any other written law from appointment as such.
17. (1) The Board shall appoint a Secretary to the Board on such terms and conditions of service as the Board may determine.
- (2) The Secretary shall perform such duties as the Board may assign from time to time and in the performance of such duties, the Secretary shall be responsible to the Managing Trustee.
18. (1) Pursuant to section 16(4) the Board shall appoint such number of officers to be known as Enforcement officers whose duty shall be to ascertain whether this Act is being or has been complied with in any premises or place liable to inspection under this section.
- (2) An Enforcement officer appointed under sub section (1) shall have power to enter any such premises or places at all reasonable times, and to examine every person whom he finds therein
- (3) The occupier of any premises or place liable to inspection under this section, and any person who is or has been employing any person, and the servants and agents of any such occupier or other person, and any employee, shall furnish to a compliance officer all such information and produce for inspection all such documents as such officer may reasonably require for the purpose of ascertaining whether contributions are or have been payable, or have been duly paid, by or is or was payable to or in respect of any person.
- (4) The premises and places liable to inspection under this section are any premises or places where an Enforcement Officer has reasonable grounds for suspecting that any persons are employed, but do not include any private dwelling not used for the purposes of a trade or business.
- (5) Any person who

- (a) willfully delays or obstructs a enforcement officer in the exercise of any power under this section; or
 - (b) refuses or neglects to answer any question or to furnish any information or to produce any document when required to do so under this Section commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings and where the offence is a continuing one, such person shall be liable to a further fine of one thousand shillings for every day during which the offence continues:
- (6) Every Enforcement Officer shall, if so required on applying for admission to any premises or place for the purposes of this Act, produce a certificate of his appointment signed on behalf of the Board.
- (7). Where any premises or place are or is liable to be inspected by a public officer for the purpose of enforcing any law other than this Act, the Board may make arrangements for any of the powers and duties of Enforcement Officers under this section to be carried out by that public officer under this section, and, where such an arrangement is made, that public officer shall have all the powers of a Enforcement Officer under this section.

PART IV MEMBERSHIP AND CONTRIBUTIONS

19. (1) Every employer shall for the purposes of this Act register as an employer in the manner prescribed.
- (2) An employer shall pay to the Trust a contribution in respect of each employee in his employment consisting of the employer's contribution and the employee's contribution at the percentage prescribed by the Minister on the recommendation of the Board.
- (3) An employer shall be entitled to recover from his employee who is a member of the Trust, the amount of the employee's contribution under sub-section (2) by deductions from the employee's earnings in respect of which the contribution relates.
20. The Board may make regulations to provide, subject to such terms and conditions as may be prescribed therein, for

- (a) the voluntary registration of any class or description of employees as members of the Trust.
 - (b) the voluntary registration of persons who have retired from employment; and
 - (c) the voluntary registration of persons who are self-employed.
21. (1) There is established a fund of the Trust to be known as the Provident Fund.
- (2) There shall be paid into the Provident Fund monies received from self-employed contributors and from other persons who do not qualify for the benefits payable from the Trust under Part V.
- (3) The Board shall pay out of the Provident Fund, such monies as it shall determine to persons referred to in subsection (2) who do not qualify to be paid benefits from the Trust under Part V.
- (4) The Minister shall make Regulations for the proper management of the Provident Fund.
22. (1) For the purposes of this Act, every person of a class or description specified in the First Schedule shall be an exempt person.
- (2) Notwithstanding any other provision of this Part, no person shall be registered as a member of the Trust at any time when he is an exempt person:
Provided that an exempt person may register as a Voluntary contributor under Section 21.
- (3) The Minister may from time to time on the recommendation of the Board by Order in the Gazette amend the First Schedule.
23. (1) Regulations may provide for the cancellation of the registration of any person as an employer upon his making application in the prescribed manner, and upon his satisfying such conditions as may be prescribed as to his having ceased, for such period as may be prescribed, to be an employer of persons who are required to be registered as members of the Trust.
- (2) An employer to whom subsection (1) applies shall give three months' notice of his intention to make the application for cancellation of registration unless he can show to the satisfaction of the Board that it is not possible in the circumstances to give such notice.

24. (1) There shall be established and maintained for each member of the Trust an account to which shall be credited all contributions made to the Trust by or in respect of such member.
- (2) A member's individual account under subsection (1) shall for the purposes of this Act.
- (a) in the case of members who qualify for benefits provided for under Part V, be an account only for the purposes of internal management and administration; and
- (b) in the case of members who do not qualify for the benefits provided for under Part V, be an account for all the purposes of this Act.
- (3) Subject to subsection (4), the account member under the Provident Fund, shall be deemed closed when, and shall not be closed until –
- (a) all the moneys due from that account have been paid out of that account in accordance with this Act;
- (b) the member has ceased to be a member of the Trust; and
- (c) no claim by or on behalf or in respect of that member to any benefit is pending determination.
- (4) The membership of a member of the Trust shall cease, and his registration shall be cancelled, upon the payment to him of an emigration grant:
Provided that a person who has ceased to be a member by reason of the payment of an emigration grant shall, notwithstanding such payment, be liable to compulsory registration or eligible for voluntary registration as a member of the Trust if at any time he becomes so liable or eligible in accordance with this Act.
25. Except as provided in section 19 in respect of the employee's share of, a contribution, an employer shall not be entitled to deduct from the wages of his employee, or otherwise to recover from him, any part of any contribution payable by the employer under this Act in respect of that employee.
26. If any, contribution for which a contributing employer is liable under this Act is not paid

within one month after the end of the month in which the last day of the contribution period to which it relates falls, a sum equal to two and half per cent of the amount of that contribution shall be added to the contribution for each month or part of a month thereafter that the amount due remains unpaid, and any such additional amount shall be recoverable at the same time and in the same manner as the contribution to which it is added.

27. Subject to this Act, the account of a member of the Trust or of the Provident Fund and a benefit payable out of his account shall not be assigned or transferred and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever.
28. (1) Where a member is concurrently employed by more than one employer, each such employer shall be responsible only for his obligations under this Act.
- (2) Regulations may -
- (a) provide for the determination of liability for the payment of contributions in the case of a person who works under the general control or management of a person who is not his immediate employer; and
 - (b) determine the circumstances in which a person is to be regarded for the purposes of subsection (1), as being concurrently employed by more than one employer.
- (3) For the purposes of this section any amount in excess of the amount due from a member under this Act arising from the operation of this section shall be credited to an account to be created in the Provident Fund for the member's benefit.
29. For the purposes of self-employment contributions payable under section 21(2), regulations may provide for
- (a) the proper management of the Provident Fund;
 - (b) the representation of an organization representing self-employed persons in the Board;
 - (c) the modification of any of the provisions of this Act relating, to self-employed contributors;

- (d) the time and manner of payment of self employment contributions;
- (e) the collection and the recovery of furnishing of details in relation to self-employment contributions;
- (f) the waiving of interest due on arrears of self employment contributions;
- (g) the estimation of amounts due in respect of self employment contributions;
- (h) the deduction by an employer from the reckonable emoluments of a self-employed contributor of any self-employment contribution reasonably believed by the employer to be due by the contributor, and adjustment in any case of over deduction; and
- (i) any matter relating to contributions or ancillary or incidental to any of the matters referred to in any of the preceding paragraphs of this subsection.

PART V - BENEFITS

30. (1) Benefits under this Part shall be of the following description
- (a) retirement pension;
 - (b) survivors' pension;
 - (c) invalidity pension;
 - (d) maternity pension ;
 - (e) emigration grant; and
 - (f) funeral grant;
- (2) The Board may from time to time prescribe such additional benefits under this Part as may appropriate in the circumstances.
- (3) The benefits referred to under this Part shall be paid or provided for out of the funds of the Trust.
31. (1) Every person who is required or entitled to become a member of the Trust shall furnish to the Trust in the manner prescribed, particulars concerning himself and his dependant relatives for the receipt of benefits under this part upon his death.
- (2) A member of the Trust shall update his nomination under subsection (1) at any time and in any event annually and such revised nomination shall be forwarded to the Trust.
- (3) Where payment of benefits has been made to a person validly nominated under this section, no other person shall have any other claim to the benefits against the

Trust.

32. (1) Subject to this Act, a retirement pension shall be the Retirement paid to a retired member who has-
- (a) attained pensionable age; or
 - (b) opted for early retirement having attained the age of fifty-five years but not having attained the age of sixty years; and
 - (c) made not less than one hundred and eighty monthly contributions.
- (2) The Board shall by notice in the Gazette prescribe the monthly retirement pension based on actuarial valuation calculated to ascertain that the Trust is financially viable.
- (3) The payment of the retirement pension shall commence from the month following the month in which the retired employee satisfies the conditions in this section and shall cease in the month in which the retired member dies.
- (4) A member who has attained pensionable age and has retired from employment but does not meet the qualifications for receipt of a pension under this section, shall be entitled to the payment of a lump sum in the manner prescribed by the Board.
33. (1) Subject to this Act, a survivor's pension shall be paid to the dependent relatives of a deceased member if the member –
- (a) was in receipt of or had qualified for a monthly pension under section 32; or
 - (b) would have been entitled to an invalidity pension for permanent invalidity at the time of his death.
- (2) For the purposes of subsection (1), the following shall be regarded as dependent relatives of a deceased member –
- (a) a nominee under section 31; or
 - (b) any other person entitled to benefit under the Law of Succession Act.
- (3) The pension payable to a dependant shall be –
- (a) where the dependant is a spouse who, at the date of the death of the deceased

- member, is forty five years old or above, or is under the age of forty five and has the care of dependent children, at the rate of forty per cent (40%) of the deceased member's monthly pension for life or until remarriage;
- (b) where the dependant is a spouse who at the date of the death of the deceased member is under the age of forty five years and does not have the care of dependent children, at the rate of forty per cent (40%) of the deceased member's monthly pension for a period of two years from the date of the death of the member;
- (c) where the dependant is a child, the deceased member's full monthly pension until the age of eighteen years or until the child completes full time education, but not later than the age of twenty-five or, if the child is an invalid, for life; or
- (d) where the dependant is a parent or a guardian, the full monthly pension payable to the deceased member for life unless the deceased had a spouse or children
- (4) In subsection (3), "guardian" means a person who is not the, child, parent, or spouse of deceased member of the Trust, but who, upon the death of a member had the care of a child or the children of the deceased member.
- (5) The Board shall prescribe the pension payable under subsection (3) to a dependent relative not covered under that subsection.
34. (1) Subject to this Act, a person shall be entitled to invalidity pension as shall be determined by the Board if –
- (a) he is certified by a medical board to be permanently and totally incapable of further employment; and
- (b) he is under pensionable age and either
- (i) has made not less than one hundred and eighty monthly contributions; or
- (ii) has made at least sixty monthly contributions of which twelve were made in the period immediately preceding the date the invalidity began.
- (2) The invalidity status determined under subsection (1) shall be subject to review at

such intervals as the Board may determine.

- (3) A member who would have qualified for an invalidity pension but for the requirements of paragraph (b) of subsection (1) of this section shall be entitled only to the payment of lump sum benefits equal to the amount standing to the credit of the member's individual account as described in section 24 with interest as determined by the Board.

35. (1) Subject to this Act, a female member shall be entitled to maternity pension as determined by the Board if -

- (a) it is certified by a registered medical practitioner to the satisfaction of the Board that she will be confined in the week specified in the certificate, not being more than the twenty-six weeks after the date on which the certificate is given; and
- (b) she has made at least twenty-four monthly contributions, twelve of which were made in the period immediately preceding the date of issue of the certificate referred in paragraph (a).

(2) No member may be paid a maternity pension more than four times.

36. Regulations may provide for disqualifying a female member from receiving maternity pension if she fails, without good cause, to attend or to submit herself to the relevant medical examination that may be required in accordance with the regulations.

37. Subject to this Act, a member shall be entitled to an emigration grant if he emigrates from Kenya to a country other than a country with which a reciprocal agreement has been made pursuant to section 55 without any present intention of returning to reside in Kenya.

38. On the death of a member who has paid at least one monthly contribution immediately preceding his death, a grant for purposes of defraying funeral expenses shall be paid to his next of kin in one lump sum as determined by the Board.

39. (1) The Board may require any person who has a claim to any benefit under this Act to submit to an examination to a medical panel appointed by the Board upon the advise of the Doctors and Dentists Board to serve for a period specified under the Regulations.

- (2) The procedure for medical boards, guidelines to be followed and reports to be prepared shall be prescribed by the Minister.
40. (1) Any person who fails to disclose or who misrepresents any material fact, whether or not such nondisclosure or misrepresentation is fraudulent, and receives any benefits he is not entitled to receive, is liable to repay the benefits so received within such period as the Board may direct.
- (2) A person who contravenes this section commits an offence punishable under the Penal Code.
41. (1) Except as may be expressly provided to the contrary in this Act, regulations may-
- (a) provide for the manner of the making and determination of any claim to a benefit as a member or as a dependent relative;
 - (b) require attendance for and submission to such medical or other examination as may be prescribed for members or dependent relatives claiming benefits;
 - (c) provide for the postponement of any payment of benefits pending the determination of any relevant inquiry;
 - (d) specify which benefit shall be paid in any case where a member of the Trust is entitled to claim more than one description of benefit at anyone time;
 - (e) provide for any benefit (other than an emigration grant) to be converted into and paid as an annuity or other recurrent payment, or to be paid by installments in such circumstances and subject to such conditions and is in such manner as may be prescribed;
 - (f) make provision for enabling or requiring a person to be appointed to receive a benefit on behalf of any other person, or to exercise any right or power under this Act on behalf of a person .entitled to a benefit who is unable for the time being to act; and
 - (g) make provision for the imposition of any conditions on the application of any benefit paid to a person for the benefit of any other person.
- (2) Subject to this Act, regulations may provide for the determination by an officer

appointed by the Minister, or by a person or tribunal appointed or constituted in accordance with the regulations, of any question arising under or in connection with this Act, including any claim for benefit, and subject to the regulations the decision in accordance therewith of any such question shall be final.

- (3) Regulations under subsection (2) may provide –
- (a) for the enabling of appeals to be brought from the decisions of any officer, person or tribunal to any other person or tribunal appointed or constituted in accordance with the regulations to hear such appeals; and
 - (b) for the reference to the High Court for decision of any question of law arising in connection with the determination of any question by any officer, person or tribunal, and for appeals to the High Court from the decision of any such officer, person or tribunal on any such question of law.
- (4) The Chief Justice shall have power to make rules of Court for regulating references and appeals, for empowering the court to make orders as to the costs of references and appeals, under subsection (3)(b), and for limiting the time within which such appeals may be brought.

PART VI - FINANCE, ADMINISTRATION AND MANAGEMENT OF THE TRUST

42. (1) All moneys in the Trust which are not for the time being required to be applied for the purposes of the funds, Trust shall be invested in such investments, being investments in which any trust funds (or part thereof) are permitted by the Trustee Act to be invested, as may be advised by an actuary.
- (2) All investments made under this section shall be held for and on behalf of the Trust in the name of the Board.
- (3) Subject to subsection (1), the Board shall formulate policies and guidelines for the investment of funds of the Trust.
43. For purposes of Section 42 the Board may establish a subsidiary institution or company to carry out or manage the investments.
44. (1) There shall be paid out of the Trust, at such times and in such manner as the Board may determine, such sums as the Board may estimate to be its expenses in

the administration of the Trust or cost of implementation of the Act.

- (2) In estimating expenses for the purposes of this section there may be included
 - (a) an amount representing the accruing liability in respect of any pensions benefits to which any officers or servants employed for the purposes of this Act may become entitled in respect of that employment; and
 - (b) an amount representing the rental value of any premises used for the purposes of this Act.
- (3) Notwithstanding the foregoing provisions of this section, the costs of administering the Trust under subsection (I), shall be such percentage as recommended by the actuary and approved by the Board.

45. (1) The Board shall cause to be kept all proper books of accounts and records in relation to the Trust and to all the undertakings, funds, investments, activities and property of the Trust as the Board may deem necessary, and shall, within a period of three months after the end of the financial year, prepare, sign and transmit to the Auditor.

- (a) a balance sheet showing in detail the assets and liabilities of the Trust;
- (b) a statement of income and expenditure of the Trust; and
- (c) such other statements of account as the Board may deem necessary.

(2) The Board shall cause the audited accounts of the Trust to be published at least two daily newspapers widely circulated throughout Kenya.

46. (1) The Trust shall be valued at intervals not exceeding three years by an actuary appointed by the Board.

- (2) The actuary appointed under subsection (1) shall –
 - (a) prepare a report on the state of the Trust; and recommend any necessary action to be taken.
- (3) The actuary shall submit the report prepared under subsection (2) to the Board.

47. (1) The Board shall pay due regard to any recommendations made by the actuary appointed under section 46, and in so doing, may, notwithstanding anything contained in this Act;
- (a) increase or decrease the rates of contribution payable by or in respect of members; or
 - (b) require any member to pay such sums as the actuary may determine to cover any deficiency directly attributable to an action of such member.
- (2) The Board shall report to the Annual General Meeting the Actuarial findings and implementation or otherwise of any recommendations made by the actuary.
- (3) If within six months of the receipt by the Board of a report of the actuary, the Board fails to carry out any recommendation contained in such a report, the Minister may take such action on the report, as he may deem necessary.

PART VII-LEGAL PROCEEDINGS

48. (1) Any person who
- (a) with intent to evade payment of any contribution or any other amount due from him,
 - (c) knowingly makes any false statement or representation, or produces or furnishes or causes to be produced or furnished any document or information which he knows to be false in a material particular; or
 - (d) in order to benefit himself or some other person knowingly makes any false statement or representation or produces or furnishes, or causes to be produced or furnished, any document or information which he knows to be false in a material particular; or
 - (e) willfully misrepresents or fails to disclose any material fact, or fails to pay to the Trust within such period as may be prescribed, any amount which he is liable to pay under this Act or regulations made there under; or
 - (f) initially fails to disclose or who misrepresents any material fact, whether such non-disclosure or misrepresentation is or is not fraudulent and receives any benefit he was not entitled to receive, shall be liable-
- (i) in respect of an offence under paragraphs (a), (b), (c) or (e) of this subsection, to a

fine of a sum equivalent to any amount owed to the Trust, or to imprisonment for a term not exceeding three years or to both;

- (ii) in respect of an offence under paragraph (d) of this subsection, to a fine not exceeding two hundred thousand or to imprisonment for a term not exceeding three years, or to both.
- (2) Where an employee of the Trust conspires or aids and abets any other person in the commission of any offence specified in subsection (1) of this section, such employee shall, on conviction be liable to the same punishment as prescribed under that subsection:

Provided that the penalty imposed on an employee of the Trust under this subsection shall be without prejudice to any other disciplinary action the Board may decide to take against that officer for that offence.

- 49. (1) Criminal proceedings under this Act may be instituted and conducted by the Director of Public Prosecutions or by an officer of the Trust authorized by the Director of Public Prosecutions under the provisions of the Criminal Procedure Code.
 - (2) The Court before with any person is convicted of an offence under this Act may, without prejudice to any civil remedy, order such person to pay to the Trust the amount of any outstanding contribution together with any interest or penalty thereon, due from such person to the Trust at the date of conviction, and such amount may be recovered in the same manner as a fine and shall be paid to the Trust for the credit, where applicable, of the accounts of members of the Trust.
50. In the case of an offence under this Act committed by a body of persons -
- (a) where the body of persons is a body corporate, every director and officer of that body corporate shall also be deemed to be guilty of that offence; and
 - (b) where the body of persons is a firm, every, partner of that firm shall also be deemed to be guilty of that offence:
51. (1) All sums due to the Trust shall be recoverable debts due to the Board and, without prejudice to any other remedy, shall be a civil debt recoverable

summarily.

- (2) An action for the recovery of contribution or penalty under this section may be instituted and conducted by an authorized officer of the Trust.
- (3) The assets of the Trust shall not be liable to attachment under any process of law.

52. (1) Where-

- (a) on application on behalf of the Trust, any attachment is issued against the property of an employer in execution of a decree against him and any such property is seized or sold or otherwise realized in pursuance of such execution; or
- (b) on the application of a secured creditor, the property of an employer is sold, the proceeds of the sale or other realization of such property shall not be distributed to any person entitled thereto, until the court ordering the sale or other realization has made provision for the payment of any amount due by the employer under this Act, before the date of such order.

(2) In any proceedings under this Act, a copy of any entry in the accounts of the Trust, or any extract from the records of the Trust shall, if stated to be a true copy by a certificate purporting to be signed by the Managing Trustee, be received in evidence as prima facie evidence of the truth of the contents thereof.

53. In any proceedings under this Act, a copy of any entry in the accounts of the Trust, or any extract from the records of the Trust shall, if stated to be a true copy by a certificate purporting to be signed by the Managing Trustee, be received in evidence as *prima facie* evidence of the truth of the contents thereof.

PART VIII - MISCELLANEOUS

54. (1) The Board shall at its expense, within three months of the end of the financial year of the Trust, convene an annual general meeting of the members of the Trust to be attended by delegates representing each of the categories of members.
- (2) For the purposes of this Act, delegates comprise twenty-one delegates from each County each tripartite body appointing seven representatives.
 - (3) The Board shall prescribe rules to provide for the procedure for the conduct of the

annual general meeting and all matters incidental thereto.

- (4) For the purposes of this section "County" means county within the meaning of the Constitution.
55. For the purpose of giving effect to any agreement providing for reciprocal arrangements with the Government of any country in which a Trust or Fund similar to the Trust has been established, the Minister may make Regulations for giving effect in Kenya to any such arrangements and for modifying or adapting this Act in its application to cases affected by such arrangements.
56. No duty shall be payable under the Stamp Duty Act
- (a) on any receipt, contract, instrument or other document given or executed by or on behalf of the Board; or
- (b) in respect of any instrument executed by any person on behalf of or in favour of the Trust' or in respect of the payment of any benefit or the refunding of any contribution under this Act in any case where, but for this exemption, the Trust or any person acting on behalf of the Trust would be liable to pay such duty.
57. (1) The Trust shall not be liable to pay income tax on its income and no tax by whatever name called shall be payable in respect of any property vested in the Trust.
- (2) Benefits payable under this Trust
- (a) shall be exempted from taxation; and
- (b) shall not be liable to attachment for debt under any process of law.
- (3) Contributions to the Trust shall be inalienable and shall not be assets for the benefit of creditors in the event of the bankruptcy or insolvency of the contributor.
58. Notwithstanding anything to the contrary contained in any law in force, contributions by a person under the Trust shall form part of tax-deductible expenses in the computation of taxes payable by the person or as the case may be, by an employee under any relevant law applicable to income tax.

59. No member, officer, servant or agent of the Trust shall incur personal liability for any act done in good faith while engaged on the business of the Board.
60. (1) The Minister may make regulations prescribing anything required to be prescribed under this Act, and generally for the better carrying out of its provisions.
- (2) Without prejudice to the generality of the subsection (1), regulations made under this Act may provide for-
- (a) preventing the receipt of more than one benefit and the adjustments of benefits in special circumstances;
 - (b) the particulars, including the finger prints of members or their nominees, information, proof or evidence to be furnished as to any question or matter arising under this Act, including any question or matter relevant to the registration of any person, the payment of contributions by or in respect of any person, or the making or validity of any claim or application for the payment of any benefit under this Act;
 - (c) arrangements for the smooth and orderly transition from the operations of the Fund established under the National Social Security Fund Act (repealed) into the Trust established under this Act.
 - (d) Prescribing, in respect of any action required or permitted to be taken under this Act, the time and manner of taking that action, the procedure to be followed and the forms to be used.
61. The provisions of the Retirement Benefits Authority Act shall apply to the Trust.
62. This Act binds the Government.
63. (1) The National Social Security Fund Act is repealed.
- (2) Notwithstanding subsection (1), the transitional provisions set out in the Second Schedule shall apply with respect to the Trust.

FIRST SCHEDULE
EXEMPT PERSONS

(S.22)

1. Persons entitled to exemption from contribution to social security Trusts under any International Convention.
2. Persons not ordinarily resident in Kenya who are employed in Kenya for periods not exceeding three years at any one time (or such longer periods as the Minister may allow in any particular case or class of case), being persons who are liable to contribute to or are or shall be entitled to benefit from the social security Trust or similar body of any country other than Kenya approved by the Minister in writing for the purposes of this Schedule.

SECOND SCHEDULE (S. 63(2))

TRANSITIONAL PROVISIONS

1. Every person who immediately before the commencement date is a member of the former Fund shall on the appointed date become a member of the Trust.
2. Every person who, on the commencement date, is not a member of the former Fund under sub-section (1), and is not less than eighteen years of age, but who is under the pensionable age, and is employed by an employer, shall within the prescribed period be registered by such employer as a member of the Trust.
3. Every person who on the commencement date is a member of the former Fund shall within one month of the commencement date, elect either
 - (a) to become a member of the Trust; or
 - (b) to become a member of the Provident Fund established under section 21;
4. A member of the Provident Fund established under the former Fund shall on making an election under subsection (3) retain all his rights and shall have his contributions to that Fund credited to his account in the Trust or in the Provident Fund established under section 21, as the case may be;

5. The statutory functions, rights, interests, obligations and liabilities of the former Fund and its Board of Trustees, existing before the commencement date under any contract or instrument, or in law or in equity apart from any contract or instrument shall, be deemed to have been assigned to and vested in the Board of Trustees established by this Act.
6. Any such contract or instrument as is mentioned in paragraph 5, shall be of the same force and effect against or in favour of the Board of Trustees established by this Act and shall be enforceable as fully and effectively as if instead of the Board of Trustees of the former Fund, the Board of Trustees established by this Act had been named therein or had been a party thereto.
7. The Board of Trustees established by this Act shall be subject to all the obligations and liabilities to which the Trust or the Board of Trustees of the former Fund was subject immediately before the commencement of this Act and all other persons shall have the same rights, powers and remedies against the Board established by this Act as they had against the former Fund or the Board of Trustees existing before the commencement date.
8. Any proceedings or cause of action pending or existing immediately before the commencement date, by or against the former Fund or the Board of Trustees existing before the commencement date in respect of any right, interest, obligation or liability of the former Fund or its Board of Trustees, may be continued or as the case may be, commenced and any determination of a court of law, tribunal or other authority or person may be enforced by or against the Board to the same extent that such proceedings or cause of action or determination might have been continued, commenced or enforced by or against the former Fund or its Board of Trustees.
9. All assets, funds, resources and other movable or immovable property which immediately before the commencement of this Act were vested in the former Fund or the Board of Trustees, shall without further assurance, be vested in the Board of Trustees established by this Act.

10. Any person who immediately before the commencement date is an employee of any office of the former Fund, or is a member of its Board of Trustees, on the commencement date, continue in office and be deemed to have been appointed to his office by the Board established by this Act.
11. In this Schedule "commencement date" means the date appointed by the Minister for the commencement of this Act;
"former Fund" means the Provident Fund established under the National Social Security Fund Act (now repealed);
"former board of Trustees" means the Board of trustees appointed under the National Social Security Fund Act (now repealed).

MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to repeal and replace the National Social Security Fund Act (Cap. 258 of the Laws of Kenya).

The Bill seeks to provide for a comprehensive social security for the members and their dependants for various contingencies. It further aims to convert the NSSF from a National Provident Fund into a Social Security (Pension) or (social insurance) Scheme.

Part I sets out the preliminary matters including definition of terms and expressions used in the proposed Act.

Part II establishes a Trust which shall be operated and managed by a Board of Trustees. This Part also sets out the main object of the Trust which is to provide social security for the members and their dependants for various contingencies.

Part III establishes the Board of Trustees to control and manage the trust, outlines the powers and functions of the Board and provides for the appointment of the Managing Trustee and other

staff of the proposed Trust.

Part IV deals with membership and contributions from employers and employees and penalties for delayed payments. It also provides that accounts and benefits are inalienable. More importantly, it provides for the inclusion of the self employed persons into the pension scheme.

Part V describes the various types of benefits and provides for the nomination of dependants to receive benefits and regulations regarding benefits. It also provides for the establishment of Medical Boards and appointment of medical officers., emigration and funeral grants and retirement and maternity pensions are also provided for.

Part VI requires the Board to formulate policies and guidelines to govern the investment activities of the Board. It also provides that an actuarial valuation of the Trust be done at intervals not exceeding three years and that action be taken within six months of the receipt of the report by the Board.

Part VII provides penalties for evasion of payment of contributions and willful misrepresentation. Sums due to the Trust shall be considered as a civil debt and shall be recoverable summarily. The Part also provides that the assets of the Trust shall not be liable to attachment under any process of law.

Part VIII provides, for the first time in the history of social security in this country, for the annual general meeting of the Trust to ensure that the Trust is annually accountable to its stakeholders. Further, it provides for reciprocal arrangements with the Government of any Country in which a Trust or Fund similar to the Trust has been established. The Part also provides that all contributions shall be tax deductible. It also provides for application of the provisions of the Retirement Benefits Act to the Trust. The Part repeals the National Social Security Fund Act, Cap 258 of the Laws of Kenya and provides for transition from the previous Fund to the new Trust.

The First Schedule sets out the exempt persons and the Second Schedule sets out the transitional provisions applicable upon the repeal of the former Act.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the, 2012.

JOHN K. MUNYES,
Minister for Labour.