

**THE RETIREMENT BENEFITS ACT
TRUSTEE REMUNERATION POLICY AND SCHEME EXPENSES
GUIDELINE
(Cap. 197)**

FOREWORD- RATIONALE

This Guideline is developed against a background of increasing scheme expenses amid rising complexities in scheme administration. The ultimate goal in scheme administration is to deliver the highest value to members while protecting them against risks and expenses that may erode the benefits they will receive. To this end, trustees act as fiduciaries to the members and are expected to embrace their responsibility by: -

- a. Acting honestly and do not improperly use the inside information or their position;
- b. Exercising the degree of highest standard of care and diligence in the discharge of their duties that a reasonable person in a like position would exercise in these circumstances; and
- c. Performing their duties with the requisite degree of skill.

Trustees' work is onerous in nature, with increasing legal and regulatory requirement on governance practices as well as skill requirements in order to be effective. Further, there is a worldwide move by sponsors to set up defined contribution (DC) rather than defined benefits schemes, with the DCs calling for more vigilance on investments and more demands from members who carry the investment risk. Trustees are expected to acquire and utilize various skills to ensure they effectively play their role.

The issue of trustee remuneration has increasingly become a subject for discussion within the retirement benefit sector. Justification for trustee remuneration includes the presumption that trustees will take on more responsibility, provide a higher level of care and due diligence and incorporate good governance in management of retirement benefits schemes.

Further in 2017 there was an amendment to the act sub section 5 (b) introducing a clause that members would be responsible for approving trustee remuneration during the annual general meeting after every three years. However, the process of determining the remuneration, through a remuneration policy, and seeking its approval by members is vague.

Trustees' approach to their duties is largely be altruistic, service driven, and intended to deliver the best interest for scheme members. However, it is increasingly clear that remuneration to them are necessary. This Guideline is intended to:

- a. Guide the level of expenditure that may be incurred in managing scheme affairs
- b. Attract professionals in the management of schemes
Take cognizance of the time taken in the management of schemes by both trustees and service providers and remunerate them for the service rendered
- c. Increase transparency and accountability in management of trustee remuneration

As stipulated in the Act and Regulations thereunder, trustees appoint service providers to whom they delegate certain roles in the management of the scheme affairs; fees paid to these service providers are in consideration of services rendered. However, prudence and integrity in the negotiation and setting of these fees is a key driver in preserve scheme value for members.

DRAFT

THE RETIREMENT BENEFITS (TRUSTEE REMUNERATION POLICY AND SCHEME EXPENSES) GUIDELINE, 2018

In exercise of the powers conferred by section 55(3) and in furtherance of its mandate under sections 5 (b) and 5 (ba) of the Retirement Benefits Act, the Retirement Benefits Authority issues the following Guideline;

PART 1 - PRELIMINARY

Citation

1. This Guideline may be cited as the Retirement Benefits (Trustee Remuneration Policy and Scheme Expenses) Guideline, 2019.

Interpretation

2. In this Guideline, unless the context otherwise requires;

“Act” means the Retirement Benefits Act (No. 3 of 1997) and/or any statutory restatement or re-enactment or amendment thereof;

“administrator” means a person appointed under a written instrument by the trustees of a scheme to manage the administrative affairs of the scheme;

“approved Issuer” means an insurer registered under the Insurance Act (Cap.487) or any other issuer approved in writing under the Capital Markets Authority Act (Cap.485A) or under any other written law;

“auditor” means a person, a firm, director or partner of a firm, as shall be appointed from time to time by trustees with approval of the Authority; to hold office as such in accordance with such terms and conditions of service as may be specified in the instrument of appointment. Provided always that the person appointed shall be a member of the Institute of Certified Public Accountants of Kenya;

“Authority” means the Retirement Benefits Authority established under the Act;

“custodian” means a company whose business includes taking responsibility for the safe custody of the funds, securities, financial instruments and documents of title of the assets of scheme funds;

“manager” means a Company registered by the Authority whose business includes investment and management of funds and other assets of the scheme;

“member” means a member of a retirement benefits scheme and includes a person entitled to or receiving a benefit under a scheme;

“Permissible Expenses” expenses that trustees may allow to be incurred in management of the scheme and as defined/provided for in schedule 1 to this Guideline

“policy” in this Draft Guideline means the Trustee Remuneration Policy required under the Act;

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

“regulations” means the Regulations under the Act as may be amended from time to time;

“scheme” has the same meaning as a retirement benefits scheme

“service providers” as the context requires, means administrator, manager, custodian, , and any other providers contracted or appointed by the scheme;

“service level agreement” means an agreement entered into between the trustees and the service providers which sets out the terms and conditions of appointment and the services to be rendered to the scheme;

“sponsor” means a person who establishes a scheme and also refers to a founder of a scheme;

“trust corporation” means a company incorporated under the Companies Act (No. 17 of 2015) having a subscribed capital of not less than ten million shillings and which is for the time being empowered (by or under any written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers) to undertake trusts;

“trustee” means a legal owner of the scheme who is appointed to manage a retirement scheme on behalf of members and beneficiaries and includes a trust corporation.

Objectives of the Draft Guideline

3. The objectives of this Guideline are to;
 - i. Set out principles on ensuring prudent management of expenses that a scheme can incur in the administration of its affairs
 - ii. Clearly stipulate expenses that are permissible for scheme operations
 - iii. Setting out the procedure for setting and approval of trustees remuneration
 - iv. Guide trustees on the basis of negotiating and determining the fees payable to service providers

Outcomes of the Draft Guideline

4. Implementation of this Guideline will have the following outcomes: -
 - i. Clear procedures for trustees to use to ensure prudent management of scheme expenses
 - ii. Transparency and accountability in the management of scheme expenses
 - iii. , Enhance member confidence in trustees' in the management of schemes.

Application and Scope

5. This Guideline applies to all trustees and service providers of retirement benefits schemes. The trustees shall ensure they prudently set and review remuneration paid to them and fees stipulated in service level agreements they sign with service providers.

Responsibility

6. The trustees of a scheme shall be responsible for the overall implementation of this Guideline.

Compliance with the Guideline

7. (1) The Act, Regulations thereunder and this Guideline provide adequate guidance on the Authority's expectations on the minimum standards for setting trustee remuneration in the prudent management of scheme expenses.

(2) The trustees are responsible for ensuring compliance with this Guideline

(3) Trustees remuneration given to them shall be reported in the scheme's annual audited financial statements. The report shall disclose all remuneration whether paid out of the scheme fund or by the sponsor.

(4) Trustees shall be required to submit a non-compliance report, within three (3) months after the scheme's year-end, stating the areas and reasons for non-compliance, and a plan of action to achieve compliance.

Proportionality

8. (1) The Authority will use a "Disclose, Apply or Explain" approach in ensuring compliance with this Guideline.

(2) The approach ensures compliance by each scheme while taking cognizance of the various differences in scheme set up and characteristics

Limitations

9. This Guideline shall be subject to the provisions of the Act, the Regulations thereunder and any other written law. Where there is a conflict between this Guideline and the provisions of Act, the Regulation or any other written law the provisions of the Act, the Regulations and that other written law shall prevail.

PART II- TRUSTEES' RIGHTS AND OBLIGATIONS IN SETTING REMUNERATION AND FEES

Trustee Rights in setting remuneration, and fees

10. In setting their remuneration trustees shall have the right to: -

(1) Participate in the development and adoption of the trustee remuneration policy

(2) To be paid all allowances, and reimbursement of expenses, set out in the trustee remuneration policy.

11. In setting service provider fees, trustees shall have the right to participate in meetings to set and approve fees payable to service providers;

12. Receive an annual report of the expenses incurred in paying trustees remuneration and service providers fees

Trustee Obligations in setting remuneration and fees

13. In setting their remuneration and trustees shall: -

- (1) Exercise care and skill expected of a person acting as a fiduciary
- (2) Undertake statutory training on their role in the proper administration of scheme affairs,
- (3) seek expert advice where necessary while developing the policy
- (4) Seek guidance from the Authority on any matters that are not clear or on which a dispute arises in the process of implementation of this Draft Guideline;
- (5) Any other obligations stipulated from time to time in the Act and Regulations thereunder and/or other legislations made thereunder relating to the payment of remuneration.

14. In setting service provider fees, trustees shall have the obligation to exercise prudence in the use of scheme funds to meet scheme expenses. They shall therefore ensure that: -

- (1) Fees are paid to service providers as stipulated in the service level agreement;
- (2) Negotiate fees proposed by a service provider;
- (3) Approve the fees paid to service providers; and
- (4) Regularly review the service providers fees based on trustees' regular evaluation of their performance

PART III- PRINCIPLES AND PROCEDURES FOR SETTING TRUSTEE REMUNERATION

General guidance on setting and obtaining member approval in the remuneration of trustees

15. Where trustees of a scheme would like to be remunerated for their work, they will be required to have an approved remuneration Policy. Hence trustees who are not remunerated will not require one.

16. The trustee remuneration policy shall: -

- a. take cognizance of the responsibility placed on trustees due to the type and size of scheme, complexity, work load and risks arising in scheme management
- b. be clear on the type of meeting that are eligible for remuneration
- c. ensure equity in payments made to all trustees.
- d. clearly stipulate the permissible expenses as highlighted in Schedule1 of the Guideline. However, the following shall not form part of the expenses in the scheme;
 - i. honoraria
 - ii. responsibility allowance
 - iii. bonus(es)
 - iv. foreign training and travel expenses met out of the scheme unless prior approval has been obtained from the Authority

17. Clearly stipulate that where a meeting is adjourned to another time in the same day or to a different date, there shall be no separate payment of a sitting allowance for the continuation of the meeting.

Other Principles of a Trustee Remuneration Policy

18. A trustee remuneration policy shall include;

- (1) The requirement that trustees set an annual budget for the expenditure to be incurred in the running of the affairs of the schemes, including a budget for trustee remuneration;
- (2) A rate for the payment of the remuneration which shall be a fixed amount not exceeding the amounts set out in Schedule 2 herein;

- (3) The expenses properly incurred by a trustee to attend a duly constituted meeting of the Board of Trustees or a committee of the Board and which shall be as stipulated in Schedule 2;
- (4) Trustees must disclose where the payment of these costs may give rise to a conflict of interest; and
- (5) Frequency and cost of training, seminars, conference and retreats of trustees, which shall be prudently managed and within the annual budget approved by trustees. Provided that during such training, seminars, retreats, workshops trustees shall not be paid a sitting allowance but shall be reimbursed for reasonable accommodation and travel expenses.

19. Trust corporation fees: -

- (1) A trust corporation is entitled to receive reasonable fees for any services that it provides to or on behalf of the scheme.
- (2) The details of the fees shall be contained in a contract signed with the sponsor of the scheme.
- (3) The principles set out in this Guideline shall be followed in setting the fees payable to a trust corporation

20. Where a scheme hires experts/professional trustees to sit on the board of trustees, they shall be remunerated according to the drawn contract of agreement.

Process for Setting and Approval of the Trustee Remuneration Policy

The process for drafting, consideration and approval of the trustee remuneration policy is set out below: -

21. Where a scheme offers remuneration to trustees, they shall ensure that the policy clearly indicates the procedures to be followed
22. The relevant committee of the Board of Trustees shall develop a draft trustee remuneration policy which takes into account the principles set out in this Guideline;

23. Trustees shall deliberate on the draft trustee remuneration policy at a duly constituted meeting;
24. Once recommended, trustees shall forward the draft trustee remuneration policy to the sponsor to seek concurrence; provided that where the sponsor does not give such concurrence, the objections shall be set out in writing and returned with the trustee remuneration policy to the trustees for further deliberation.
25. Once the draft trustee remuneration policy has been reviewed by the sponsor, communication shall be circulated to members, at least twenty one (21) days before the next annual general meeting (AGM), to invite them to view the policy at the scheme office and/or on its website;
26. Trustees shall subsequently recommend the trustee remuneration set out in the policy to members for approval;
27. The AGM Agenda shall include the approval of the trustee remuneration ;
28. Members will be invited to submit written proposals in relation to the draft trustee remuneration policy, which should reach the scheme office at least seven (7) days before the AGM;
29. Written comments and proposed amendments to the draft policy shall be tabled at the AGM;
30. Approval of the trustee remuneration in the policy by members at the AGM shall be by a majority present;
31. Where members do not approve the trustee remuneration in the policy at the AGM, the draft policy shall be forwarded to the Authority for determination, with a written memorandum, extracted from Minutes of the AGM, on the reasons for such denial of approval by members;
32. Trustees shall retain the prevailing trustee remuneration policy, subsequently the remuneration, until the new policy is approved by the Authority.

Review of the trustee remuneration policy

33. The trustee remuneration policy shall be reviewed every three years through the procedures highlighted in Sections 21 to 32 of this Draft Guideline.

PART IV- BASIS FOR SETTING SERVICE PROVIDER FEES

Rates of fees for service providers

The trustees shall ensure that: -

34. An Administrator's fees may be set based on: -

- (1) a percentage based on the scheme value as prescribed in; or,
- (2) the contributions remitted by the scheme, or,
- (3) the number of members in the scheme with a maximum limit to be negotiated by the trustees; or,
- (4) any other prudent basis as agreed with the service provider.

35. A Manager's fees is be charged according to: -

- (1) a percentage of the scheme fund value; or,
- (2) the investment performance of the scheme, and/or,
- (3) investments in alternative assets, where additional charges may be prescribed and agreed by the trustees of the scheme; or,
- (4) any other prudent basis as agreed with the service provider.

36. A Custodian's fees may be set based on: -

- (1) a percentage of the nominal value of the assets held; and/or,
- (2) a rate based on transaction fees undertaken for the scheme; or,
- (3) any other prudent basis as agreed with the service provider.

37. The trustee shall exercise prudence in negotiating fees payable to any other service provider out of the scheme fund.

38. Reimbursement of other reasonable costs incurred by a service provider in the management of the scheme's affairs may be set out in the service level agreement. Trustees must disclose where these costs give rise to a conflict of interest.

39. The trustees shall be responsible for all applicable taxes as required under the tax laws.
40. The Service level agreement signed by a service provider shall clearly stipulate permissible expenses.

PART V - ENFORCEMENT AND COMPLIANCE

41. The Act, the Regulations and this Guideline provide adequate guidance to schemes on the Authority's expectations on the prudent administration of trustee remuneration. The Draft Guideline also gives a guide on prescribed fees to be paid by the administrators, managers and custodians of schemes.

- (1) The Authority may from time to time conduct comprehensive evaluations of schemes' compliance with this Draft Guideline to assess the implementation of the same.
- (2) The Authority may require scheme trustees to undertake effective and timely remedial action to address any material deficiencies in its compliance with this Draft Guideline.
- (3) The Authority shall enforce compliance with this Draft Guideline by exercising its powers to any person who contravenes the provisions of the Draft Guideline or take any other measure as prescribed in the RBA Act

APPENDICES

1. *Schedule 1 - Summary of permissible trustee expenses*
2. *Schedule 2 - Trustee remuneration policy template*

Issued on this day of 2018

NZOMO MUTUKU
Chief Executive Officer
Retirement Benefits Authority