

(Legislative Supplement No. 44)

LEGAL NOTICE No. 103

THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

**THE RETIREMENT BENEFITS (CORPORATE TRUSTEES)
REGULATIONS, 2023**

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THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

IN EXERCISE of the powers conferred by section 55(1) of the Retirement Benefits Act, 1997, the Cabinet Secretary for National Treasury and Economic Planning, makes the following Regulations—

THE RETIREMENT BENEFITS (CORPORATE TRUSTEES) REGULATIONS, 2023

PART I—PRELIMINARY

1. These Regulations may be cited as the Retirement Benefits (Corporate Trustees) Regulations, 2023.

Citation.

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

Interpretation.

“authorised officer” means suitably qualified and experienced person appointed by the board of directors of the corporate trustee to perform a delegated function;

“contract for services” means a contract entered into between a sponsor and a corporate trustee for the provision of corporate trustee services to a retirement benefits scheme;

“related party” means a person or entity that is related to the corporate trustee or sponsor of a scheme in any of the following ways—

- (a) the person has control over the sponsor or corporate trustee, or is a member of the key management personnel of the sponsor or corporate trustee or the parent, subsidiary or fellow subsidiary of the sponsor or corporate trustee;
- (b) the entity and sponsor or corporate trustee are members of the same group, through which each parent, subsidiary and fellow subsidiary of the sponsor or corporate trustee is related to the others; or
- (c) the person or entity is an associate or joint venture of the sponsor or corporate trustee, or an associate or joint venture of a member of a group of which the sponsor or corporate trustee is a member.

3. These Regulations shall apply to corporate trustees under the Act.

Application.

PART II—REGISTRATION OF CORPORATE TRUSTEES

4. (1) A person proposing to act as a corporate trustee shall apply to the Authority for, and obtain, a certificate of registration before commencing the performance of any of the functions of a corporate trustee in Form 1 as set out in the Schedule.

Application for registration.

(2) An application for registration shall be in accordance with section 23 of the Act.

(3) The applicant shall furnish the Authority with certified copies of the following documents—

- (a) a resolution by the board of directors to apply for registration;
- (b) the certificate of incorporation;
- (c) a certificate issued by the Registrar of Companies under the Companies Act, 2015, indicating the details of shareholding and directorship of the applicant;
- (d) the memorandum and articles of association;
- (e) the academic certificates and *curricula vitae* of the directors and top management of the applicant;
- (f) the latest audited financial statements; and
- (g) any other information as may be required by the Authority.

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(4) An application for registration shall be accompanied by the prescribed fee.

(5) The Authority shall consider an application for registration within ninety days after receiving the application.

(6) Where the Authority is satisfied that the applicant meets the requirement for registration, it shall register the applicant and issue the applicant with a certificate of registration in Form II as set out in the Schedule.

5. A person shall be registered by the Authority as a corporate trustee if that person—

Criteria for suitability.

- (a) is a limited liability company, incorporated under the Companies Act, 2015, whose main object is to provide corporate trustee services;
- (b) has a paid-up share capital, including unimpaired reserves, of at least ten million shillings;
- (c) has a registered office in Kenya;
- (d) has in its top management, including in the board of directors, persons who are academically and professionally qualified in matters relating to banking, insurance, law, accounting, actuarial studies finance, economic or investment of scheme funds;
- (e) has in its board of directors at least four persons who are Kenyan nationals, one of whom has expertise in finance;
- (f) has adequate professional, technical and operational capacity to meet the obligations to members and sponsors specified in the scheme rules;
- (g) has never been a corporate trustee of any scheme fund which has been deregistered, wound up or placed under interim administration due to any fault, either fully or partially, of the corporate trustee;
- (h) has never been involved in the management or administration of a scheme which was deregistered for any

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failure on the part of the management or the administration thereof;

- (i) has submitted an application in the prescribed form and paid the prescribed application fees;

6. (1) The Authority may refuse to register a corporate trustee if— Refusal of registration.

- (a) the information contained in the application for registration is false or untrue in any material particular; or
- (b) the applicant does not meet the requirements for registration set out in regulation 4.

(2) Where the Authority refuses to register a corporate trustee, it shall promptly notify the applicant in writing, specifying the reasons for such refusal.

7. (1) A corporate trustee may apply to the Authority for deregistration, and the Authority shall deregister the corporate trustee if satisfied that such deregistration shall not prejudice the interest of the members or sponsor of the scheme. Deregistration and suspension of corporate trustees.

(2) The Authority may, by notice in writing, suspend the registration of a corporate trustee if—

- (a) after registration, the Authority discovers that the corporate trustee made a statement in, or in connection with, the application which was false or untrue in any material particular;
- (b) the Authority becomes aware, after registration, of any fact or circumstance that would make the corporate trustee, or one or more of the directors or top managers of the corporate trustee, ineligible under section 22A and 26 of the Act;
- (c) the corporate trustee becomes insolvent or goes into liquidation;
- (d) the corporate trustee breaches any condition attached to the certificate of registration;
- (e) the corporate trustee fails to comply with any of the provisions of the Act, or with any Regulations made or directions issued thereunder;
- (f) the corporate trustee gives false or misleading information in the course of conduct of its business;
- (g) the corporate trustee's directors fail to perform their fiduciary duties; or
- (h) the directors and top management of the corporate trustee fail to undergo training and certification as required under regulation 13.

(3) A notice under subregulation (2) shall specify the reasons for suspension, and where the default is, in the reasonable opinion of the

Authority, capable of remedy, the notice shall specify the period within which the corporate trustee shall undertake remedial action.

(4) Where the default is, in the reasonable opinion of the Authority, not capable of remedy, or where the corporate trustee fails to undertake remedial action within a specified period, the Authority shall give the corporate trustee at least twenty-eight days to make representations why it should not be deregistered.

(5) Upon considering any representations made under subregulation (4), the Authority may deregister the corporate trustee.

PART III— APPOINTMENT OF CORPORATE TRUSTEES

8. (1) A corporate trustee shall be appointed by the sponsor by an instrument in writing on such terms as shall be agreed upon:

Appointment.

Provided that the terms of the appointment shall be in accordance with the Act and these Regulations, the scheme rules, and any other relevant written law.

(2) A sponsor shall not appoint a related party of the sponsor as a corporate trustee.

(3) A copy of the instrument of appointed contemplated in subregulation (1) shall be submitted to the Authority within thirty days after has been executed by the sponsor and corporate trustee.

9. (1) The corporate trustee's instrument of appointment shall specify the terms of the contract of service:

Content of a contract of service.

Provided that the term of appointment shall not exceed three years, but it may be renewed by the agreement of the parties upon satisfactory performance.

(2) The instrument shall specify the duties of the corporate trustee, the fees to be paid, the procedure of, and grounds for termination of the contract of service and a dispute resolution mechanism.

(3) The instrument shall not include a clause whose purpose and intent is to penalise a scheme financially or otherwise where such scheme terminates the appointment.

PART IV— DUTIES OF CORPORATE TRUSTEES

10. The duties of a corporate trustee include—

Duties of a corporate trustee.

- (a) holding the assets of the scheme in a fiduciary capacity;
- (b) developing and implementing a prudent investment policy for the scheme;
- (c) supervising and administering the scheme in accordance with the applicable law and scheme rules;
- (d) keeping all proper books and records of account of the income, expenditure, liabilities and assets of the scheme;
- (e) paying out benefits to members and making lawful payment for any professional services rendered to the scheme;

- (f) liaising with the Authority, sponsors, members, administrators, manager, custodian and any other service provider engaged by the scheme;
- (g) collecting, keeping and updating retirement benefits data and information of each member including the maintenance of individual membership records;
- (h) taking all reasonable steps to ensure that the agreed contributions have been remitted to the custodian or approved issuer as required by the Act, these Regulations and the scheme rules:

Provided that the corporate trustee shall report to the Authority if any contributions into the scheme fund remain outstanding for more than thirty days;

- (i) communicating regularly with the members of the scheme on the affairs of the scheme;
- (j) preparing and issuing annual benefits statements to members;
- (k) convening the annual meeting of members and granting members a reasonable opportunity to raise any relevant matter at that meeting;
- (l) ensuring that the scheme's service providers are qualified professionals who are duly registered or licensed as may be required;
- (m) ensuring that minutes, resolutions, contracts and all documentation in respect of the scheme are properly maintained;
- (n) ensuring that all documents intended to bind the scheme are professionally prepared;
- (o) submitting the annual scheme budget to the Authority upon request; and
- (p) updating the sponsor at least once in every three months on matters regarding the scheme.

11. In addition to the duties outlined in regulation 10, a corporate trustee shall also be responsible for discharging all other duties of a trustee set out in the Act, these Regulations and any other written law, the scheme rules, and the instrument of appointment.

General duties of a trustee.

12. A corporate trustee shall hold in confidence all information, documentation and data that it shall obtain from the scheme and shall not make unauthorised use of, or divulge, the confidential information to any third party unless required by law or a lawful direction from a Government authority.

Duty of confidentiality.

13. The directors of a corporate trustee shall ensure that they and the top management of the corporate trustee comply with the directions of the Authority on the training and certification of trustees.

Professional development.

14. (1) Subject to requirements of any other written law, a corporate trustee shall have the power to appoint in writing such service providers as may be necessary for the discharge of its duties:

Power to appoint service providers.

Provided that such service providers shall meet the required professional qualifications necessary to offer services to the scheme.

(2) Despite subregulation (1), a corporate trustee shall not appoint a related party as a service provider of the scheme.

15. Subject to the scheme rules and the instrument of appointment, a corporate trustee shall be entitled to apply scheme funds to pay the expenses of administering the scheme, and any debt lawfully incurred by the scheme:

Power to pay debts.

Provided that a corporate trustee's fees shall only be applied with the concurrence of the sponsor.

16. The corporate trustee may delegate any of its functions or duties relating to the Scheme:

Power to delegate.

Provided that the corporate trustee shall not have the power to so delegate any of its discretionary powers.

17. The corporate trustee may at the expense of the scheme and in the name of the scheme insure any of the scheme's assets and member benefits.

Power to insure.

PART V—MEETINGS AND RESOLUTIONS

18. (1) A corporate trustee may, by a written resolution of its board of directors, appoint one or more of its directors or an authorised officer to carry out the day-to-day management of the affairs of the scheme:

Resolutions.

Provided that the decision of the authorised officer shall be sanctioned by the board and the Authority shall be notified within thirty days of such appointment.

(2) The business and affairs of the corporate trustee shall be managed by its board of directors:

(3) The board of directors may determine its own procedure for meetings and may make standing orders in respect thereof:

Provided that—

- (a) the board of directors shall meet at least two times in each financial year;
- (b) not more than six months shall elapse between the date of one meeting and the date of the next meeting;
- (c) in convening a meeting, a corporate trustee shall give at least twenty-one days' notice, unless the corporate trustee's articles of association require a longer period of notice, or the directors agree that a meeting be convened by a shorter notice;
- (d) the quorum for the conduct of a duly constituted meeting shall be any three directors;

- (e) if a director's personal interest conflicts in any way with the interest of the scheme in a matter under consideration in a meeting of the board, the director shall declare the nature, and extent of that interest to the other directors and the director shall not take part in the meeting;
- (f) the chairperson shall preside at every meeting of the board at which he or she is present but, in his or her absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson;
- (g) minutes of all proceedings at meetings shall be recorded and preserved for at least seven years from the date of the meeting; and
- (h) minutes of a meeting of the directors recorded in accordance with this part, and resolutions extracted from the minutes, if authenticated by one director and the chairperson presiding at the meeting or by the chairperson presiding at the next directors' meeting, is evidence of the proceedings of the meeting.

PART VI—GENERAL PROVISIONS

19. (1) The contract for services between a scheme and a service provider may be terminated before the expiration of the term of the contract if—

Termination.

- (a) one or more of the events outlined in regulation 7 which would warrant the deregistration of the corporate trustee occurs;
- (b) the corporate trustee or any of its directors no longer meet the criteria for suitability set out in section 26A of the Act; or
- (c) one or more of the directors would be unfit to be a trustee for the reasons outlined in section 26(2) of the Act.

(2) The contract for services shall be terminated upon the issue of a notice from the Authority withdrawing its approval granted under section 26(3) of the Act.

20. (1) Upon the expiry of the corporate trustee's term or determination of the contract for services, whichever is the earlier, the sponsor shall appoint a successor trustee or trustees.

Appointment of a successor.

(2) The Authority may appoint an interim administrator under section 45 of the Act to exercise all the powers of the corporate trustee before the appointment of a successor trustee or trustees under subregulation (1).

21. (1) Upon removal from office, the corporate trustee shall facilitate the transfer of all the scheme assets to the successor trustee or an interim administrator appointed under section 45 of the Act.

Handover.

(2) The corporate trustee shall within ninety days after receiving the notice of termination deliver to the successor trustee all relevant data and information obtained in the course of administering a scheme.

(3) Upon the lapse of the period specified in subregulation (2), the corporate trustee shall furnish a report to the Authority within thirty days, confirming—

- (a) that all documents of title in the possession of the corporate trustee, the assets register, minute books, members' records and all other records of the scheme have been delivered to the new trustee; and
- (b) the date and address of such delivery, and the name of the trustee or person to whom the documents specified in paragraph (a) have been delivered.

(4) Where a corporate trustee is unable to comply fully with subregulation (3) for reason other than non-payment of fees for the trustee services, the corporate trustee shall state in the report the full particulars of the documentation which has not been delivered, the reasons therefor, and a plan with the dates on which compliance will take place.

22. (1) Where the board of a corporate trustee resolves that the corporate trustee be wound up, or the board is served with an order of court for the winding up of the corporate trustee, or a liquidator, provisional liquidator, receiver or manager is appointed in respect of the corporate trustee under the provisions of the Insolvency Act, 2015, the corporate trustee shall in accordance with regulation 20 facilitate the transfer of all the scheme assets and hand over all relevant data and information obtained in the course of administering a scheme to the successor trustee or an interim administrator appointed under section 45 of the Act.

Insolvency and winding-up.

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(2) The Authority shall require the directors of a corporate trustee to furnish a report within thirty days after the commencement of winding up proceedings confirming that all documents of title in the corporate trustee's possession, the assets register, minute books, member's records and all relevant data and information obtained in the course of administering a scheme have been delivered to the successor trustee or an interim administrator appointed under section 45 of the Act.

(3) The Authority may additionally require the directors of the corporate trustee to furnish evidence of such delivery and the indemnity of the recipient.

(4) Where the Authority is satisfied that the directors of a corporate trustee have complied with the requirements set out in subregulations (2) and (3), the Authority may deregister the corporate trustee.

23. Where a corporate trustee or any of the directors contravenes any of the provisions of these regulations, the corporate trustee or director, as the case may be, shall be liable to any or all of the remedial actions provided for under the Act.

Penalties.

24. Each corporate trustee in operation on the date of the commencement of these Regulations shall comply with the provisions of these Regulations within twelve months after commencement of these Regulations.

Transition.

SCHEDULE

[r. 4(1), (6)]

FORM I

REGISTRATION OF CORPORATE TRUSTEE
APPLICATION FOR REGISTRATION UNDER SECTION 25C OF THE
RETIREMENT BENEFITS ACT, 1997

PART I - GENERAL

- (i) Registration name.....
- (ii) Physical Address.....
- (iii) Postal address.....
- (iv) Telephone and Electronic mail contacts.....

PART II- REGISTRATON PARTICULARS

- (i) Registration Number.....
- (ii) Date of incorporation (*attach a copy of the certificate of incorporation- Appendix A*)

- (iii) Main objects of the company (*attach copies of the memorandum and articles of association-Appendix B*).....
- (iv) Income Tax Personal Identification Number (*attach copies of the PIN and Tax Compliance Certificates- Appendix C*)

- (v) List the retirement benefits schemes the applicant has served as corporate trustee (if any) (Appendix D).....

PART III – DIRECTORS AND MANAGEMENT

- (i) Attach details of Board of Directors in the following format– Appendix E

Full name	Relevant academic qualifications	Relevant professional experience	Number of shares held

- (ii) Name of Board chair.....
- (iii) Attach organogram of company- Appendix F
- (iv) Attach details of top managers in the following format- Appendix G

Full name	Relevant academic qualifications	Relevant professional experience

PART IV- CAPITAL AND SHAREHOLDING

- (i) Attach a copy of the latest audited financial statements- Appendix H
- (ii) Attach details of authorised capital in the following format- Appendix I

Types of shares	Number of shares	Nominal value (Kshs.)	Total Value (Kshs)

- (iii) Attach details of Paid-up Capital in the following format-Appendix J

Number of shares and holding	Number of shareholders	Number of shares	Nominal Value (Kshs)	Total Value (Kshs)	% of total
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PART V – ACADEMIC AND PROFESSIONAL CERTIFICATES

- (i) Attach academic, professional and any other relevant certificates – Appendix K
- (ii) Attach evidence of trustee training for directors and top management- Appendix L

FORM II

CERTIFICATE OF REGISTRATION OF A CORPORATE TRUSTEE

This is to certify that.....is registered as a corporate trustee subject to the provisions of the Retirements Benefits Act and the conditions endorsed hereon.

CONDITIONS

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

Given under my hand and seal of the Retirement Benefits Authority this.....day of....., 20.....

Dated the 3rd July, 2023.

NJUGUNA NDUNG’U,
*Cabinet Secretary for the
National Treasury and Economic Planning.*



