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THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

THE RETIREMENT BENEFITS (INCOME DRAWDOWN FUNDS)
REGULATIONS, 2023

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THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

THE RETIREMENT BENEFITS (INCOME DRAWDOWN FUNDS)
REGULATIONS, 2023

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

THE RETIREMENT BENEFITS (INCOME DRAWDOWN FUNDS)
REGULATIONS, 2023

PART I—PRELIMINARY

1. These Regulations may be cited as the Retirement Benefits (Income Drawdown Funds) Regulations, 2023. Citation.

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

“dependent” includes a member’s spouse, son, daughter, grandson, granddaughter, adopted child, parent, grandparent, brother and sister living at the time of the member’s death and such other person who is, in the option of the Trustees, immediately before the member’s death substantially dependent upon the member for the provision of all the necessities of life;

“existing income drawdown fund” means an income drawdown fund established or in operation before the commencement of these Regulations;

“founder” means a person that establishes an income drawdown fund;

“income drawdown” means an arrangement that allows a member of a retirement benefits scheme to access his or her accumulated retirement benefits as a regular income through reinvesting his or her benefits from an income drawdown fund registered by the Authority;

“income drawdown fund” means a fund registered by the Authority established for the purposes of receiving accrued retirement benefits from members of a retirement benefits scheme upon retirement, reinvestment and paying regular income;

“income drawdown rules” means the trust deed and rules of an income drawdown fund; and

“member” means a person entitled to receive benefits from an income drawdown fund.

PART II—REGISTRATION OF INCOME DRAWDOWN FUNDS

3. (1) No person shall establish an income drawdown fund without registration by the Authority in accordance with these Regulations. Registration of income drawdown funds.

(2) Each income drawdown fund shall be established as an irrevocable trust.

4. (1) A person who intends to establish and operate an income drawdown fund shall apply to the Authority in writing. Application for registration.
- (2) The Authority shall, within ninety days after receiving an application under subregulation (1)—
- (a) consider the application and notify the applicant in writing whether the application is acceptable for registration and, if it is not acceptable, the reason for the decision; and
 - (b) if it is acceptable, issue the applicant with a certificate of registration.
- (3) When considering an application under paragraph (1), the Authority may request the applicant to provide additional information including details on ownership, directorship, shareholding and staff establishment of the applicant.
5. An application for the registration of an income drawdown fund shall be accompanied by— Requirements for registration of an income drawdown fund.
- (a) the resolution of the applicant approving the establishment of the income drawdown fund;
 - (b) the trust deed and rules of the income drawdown fund;
 - (c) an agreement between the applicant and the administrator of the income drawdown fund;
 - (d) a custody agreement or deposit administration policy;
 - (e) a manager agreement or deposit administration policy;
 - (f) an investment policy statement;
 - (g) a corporate trustee or corporation trust agreement, where applicable; and
 - (h) an actuarial certificate certifying the design and financial viability of the income drawdown fund where auxiliary benefits are provided.
6. (1) Where a founder of an income drawdown fund is not a registered retirement benefit scheme, the founder shall, at all times, have in its board of directors and top management— Constitution of the founder.
- (a) at least four persons who are academically and professionally qualified in matters relating to the administration of retirement benefits schemes, insurance, law, accounting, actuarial science, economics, banking, finance, and investment of scheme funds; and
 - (b) at least one person possessing at least five years' experience in the administration of retirement benefits schemes.
- (2) The founder shall be—
- (a) a company incorporated under the Companies Act, 2015; No. 17 of 2015.
 - (b) a co-operative society registered under the Co-operative Societies Act, 1997; No. 12 of 1997.

- (c) a society registered under the Societies Act; or Cap. 108.
- (d) any other legal entity as the Authority may, by notice, approve.

(2) Subregulations (1) and (2) shall not apply where the income drawdown fund draws its membership from an occupational retirement benefits scheme established by the same founder.

7. The Authority shall, when determining the suitability of a founder, have regard to the following qualities of the founder so far as they are reasonably determinable— Suitability of a founder.

- (a) the general probity of the founder including by undertaking background checks and risk assessments;
- (b) qualifications and experience of the founder's top management or directors in respect of the administration and management of trusts;
- (c) the previous conduct and activities of the sponsor concerned in business or financial matters, and particularly any evidence that any director or top management personnel of the founder—
- (i) has been convicted of the offence of fraud, or any other offence of which dishonesty is an element; or
- (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by a person engaged in the provision of banking, insurance, investment or other financial services; and
- (d) any additional information as may be necessary to determine the professional suitability of a founder.

8. Each income drawdown fund shall have a registered office in Kenya. Registered office.

PART III—ADMINISTRATION AND MEMBERSHIP

9. (1) The income drawdown fund rules shall include the following— Content of the income drawdown fund rules.

- (a) the full name of the income drawdown fund, including reference to any prior change of name;
- (b) the postal and physical address of the registered office of the income drawdown fund;
- (c) the date of commencement of the income drawdown fund;
- (d) a list of definitions, in alphabetical order, defining the terms which are frequently used in the rules, and which bear a special connotation;
- (e) requirements for admission to membership and circumstances under which membership is to cease;

- (f) conditions under which a member may become entitled to any benefit including payment of death benefits to beneficiaries;
- (g) the appointment, term, removal from office, powers and remuneration of trustees and officers or administrators of the income drawdown fund;
- (h) the investment of the funds held in the income drawdown fund;
- (i) the procedure for the execution of contracts and other documents binding the income drawdown fund;
- (j) the procedure of amending the income drawdown fund rules;
- (k) appointment and term of the auditor of the income drawdown fund and any other provider of professional services;
- (l) custody of the funds held in the income drawdown fund, documents of title and other securities belonging to the income drawdown fund;
- (m) subject to the provisions of the Act and the Regulations made thereunder, the procedure for the dissolution of the income drawdown fund;
- (n) the appointment of the liquidator of the income drawdown fund in the case of a voluntary dissolution;
- (o) the procedure of members transferring their funds from one income drawdown fund to another:

Provided that the members shall only be allowed to make transfers from one income drawdown fund to another only once in every five years; and
- (p) dispute resolution processes and mechanisms between members and by members in respect of the income drawdown fund.

10. (1) An income drawdown fund may amend its rules.

Amendment of
income drawdown
fund rules.

(2) The amendment of income drawdown fund rules shall not be valid—

- (a) if it purports to invalidate or reduce the rights or interest of a member;
- (b) if it purports to affect any right of a creditor of the Income Drawdown Fund, other than as a member thereof;
- (c) if it varies the main purpose of the fund;
- (d) if in the opinion of the Authority the amendment is not in the best interest of the members or in the public interest.

(3) Within thirty days from the date of the passing of a resolution for the amendment of the income drawdown fund rules, the trustees shall submit to the Authority a copy of the resolution and amendment for registration.

(4) Where an amendment to the income drawdown fund rules affects the benefits structure of the income drawdown fund, the trustees shall, in addition to the resolution of the trustees and proposed amendment, submit to the Authority an actuarial certificate confirming the continued viability of the income drawdown fund.

(5) Where the Authority approves the proposed amendment of the income drawdown fund rules, it shall register the amendment and return the copy to the trustees with the date of registration endorsed thereon, and such amendment shall be deemed to take effect as from the date determined by the income drawdown fund or, if no date has been so determined, from the date of registration by the Authority.

11. (1) The income drawdown fund rules shall make provision for—

Duties,
appointment and
removal of
trustees.

- (a) the procedure for the appointment of trustees and their tenure;
- (b) the functions, powers and duties of the trustees;
- (c) the procedure of, and grounds for, the removal from office of trustees; and
- (d) the procedure for convening meetings of trustees:

Provided that—

- (i) the trustees shall meet at least two times in each calendar year; and
- (ii) not more than six months shall elapse between the date of one meeting and the date of the next meeting.

(2) The income drawdown fund rules shall prescribe the duties of the trustees, and, notwithstanding the generality of the foregoing, the rules shall prescribe the following duties—

- (a) administering the income drawdown fund;
- (b) keeping all proper books and records of account with respect to income, expenditure, liabilities and assets of the income drawdown fund;
- (c) processing of periodic withdrawals;
- (d) liaising with the Authority, founder, members, administrator, custodian, manager and any other professional engaged by the income drawdown fund;
- (e) maintenance of membership records including those of nominated beneficiaries;

- (f) communicating regularly with the members of with respect to the performance and affairs of the income drawdown fund;
- (g) providing members with annual membership benefits statements;
- (h) convening the annual meeting of members; and
- (i) ensuring that documents intended to bind the income drawdown fund are professionally prepared and duly executed.

(3) The trustees of the income drawdown fund shall be a trust corporation which shall be appointed under a deed, and which shall have at least one director vetted by the Authority.

(4) Where an income drawdown fund draws its membership from an occupational scheme established by the same founder, the trustees of the occupational scheme may act as the trustees of the income drawdown fund.

(5) Notwithstanding sub-regulation (3), an income drawdown fund shall not appoint a trust corporation to be a trustee of the fund if the trust corporation is related to the founder by way of ownership or directorship.

(6) A trustee shall not be removed from office without due process of the law.

(7) No trustee or director of the trust corporation shall provide professional services, conduct business with the income drawdown fund or be engaged in undertaking professional services provided by the trustee or the trustee's firm in connection to the income drawdown fund.

12. (1) Trustees shall appoint administrators of the income drawdown fund.

Rules relating to administrators.

(2) The functions, powers, duties, remuneration and removal from office of an administrator shall be guided by the instrument of appointment—

(3) In addition to the provisions of subregulation (2), the instrument of appointment shall prescribe—

- (a) the computation of the fee in respect of administrative services; and
- (b) the rights and obligations of the administrator to the trustees.

(4) The administrative costs debited to the fund regarding the administration of the fund shall not exceed the budget approved by the trustees for that purpose.

(5) The Authority may require the income drawdown fund to submit its annual administration budget.

(6) Where the administrator is for any reason unable to discharge the duties imposed upon him or her by these Regulations, the income drawdown fund rules or instrument of appointment, the trustees shall appoint an acting administrator pending the appointment of a new administrator.

13. (1) The funds held in an income drawdown fund and the documents of title, securities and income that shall accrue thereof, shall be held and maintained in custody on behalf of the trustees by a custodian appointed by the trustees.

Rules relating to custody and investment of income.

(2) The trustees of an income drawdown fund shall not appoint a custodian where the funds held in the fund are invested fully in a guaranteed fund.

(3) The monies received by a custodian on behalf of the trustees of an income drawdown fund shall be deposited in an account with a bank registered under the Banking Act and such account shall be maintained by a custodian on behalf of and in the name of the income drawdown fund.

Cap. 488.

(4) A custodian shall open a client account on behalf of the trustees of the income drawdown fund.

(5) The funds held in the client account opened under subregulation (5) shall not form part of the assets or funds of such custodian.

(6) The funds held in an income drawdown fund shall be invested by the manager of the fund on behalf of the trustees.

(7) Each custodian of an income drawdown fund shall, at the end of each period of three months, submit to the Authority a detailed report of the assets of the income drawdown fund and drawdown funds received during that period.

(8) The custodian of an income drawdown fund shall, where its funds have been invested in an approved issuer, provide to the Authority a detailed report of the assets of the invested funds and drawdown funds received for the quarter.

(9) The report from the custodian and approved issuer of an income drawdown fund shall capture the cash inflows from other income drawdown funds or schemes and periodic payments of member's benefits.

14. (1) An income drawdown fund may receive funds from a registered retirement benefits scheme, a scheme established under or by an Act of Parliament, or from any other income drawdown fund.

Remittances into the income drawdown fund.

(2) Each income drawdown fund shall prepare and maintain a record showing the individual member remittances and funds from other income drawdown funds.

(3) Each income drawdown fund shall maintain a record of remittances to the fund for each period of three calendar months and submit the reports thereon to the Authority by the fifteenth day following the end of each such period.

15. (1) The following persons shall be eligible to join an income drawdown fund— Eligibility for admission.

- (a) a member of a retirement benefits scheme who has attained at least the specified early retirement age and in any case, who has attained the age of fifty years; or
- (b) a member transferring funds from another income drawdown fund or;
- (c) a beneficiary entitled to receive benefits from a retirement benefits scheme or income drawdown funds with the approval of the trustees.

Provided that where the beneficiary is a minor, he or she shall remain in the income drawdown fund until he or she attains the age of eighteen years after which he or she can exercise the option to transfer the funds to the new income drawdown fund.

(2) Prior to commencement of the income drawdown, the member shall sign a member consent form acknowledging that he or she understands the product design, benefits and associated risks.

- (3) Income drawdown fund rules shall not—
- (a) restrict eligibility to membership in the income drawdown fund on the basis of gender, race, association, religion or any manner which is discriminatory; or
 - (b) contain any provision which would render admission to membership subject to any discretionary power.

16. (1) Each income drawdown fund shall fully disclose to the members the following information at the point at the point of joining the income drawdown fund— Disclosures to members.

- (a) the terms of access including the minimum drawdown period and maximum drawdown rate;
- (b) a simplified benefit illustration projection for at least three scenarios covering best estimate, optimistic case and worst case over the course of the drawdown period;
- (c) the circumstances under which membership in the income drawdown fund shall cease which may include—
 - (i) transfer after the first five years; or
 - (ii) purchase of an annuity; or
 - (iii) access of balance on trivial grounds after the first ten years;
- (d) risks of the fund including investment risk, longevity risk, expense risk and inflation risk;
- (e) taxation of benefits;
- (f) fees and charges applicable;

- (g) payment of benefits to nominated beneficiaries in case of death;
- (h) timing and frequency of payments;
- (i) dispute resolution mechanisms; and
- (j) a summary of the rules of the income drawdown fund.

(2) Each income drawdown fund shall ensure that its members have signed a declaration form confirming receipt of the information prescribed under subregulation (1).

(3) The following ongoing disclosures shall be provided to the members—

- (a) members of an income drawdown fund shall be entitled to receive an annual member statement which containing the following minimum information—
 - (i) opening balance;
 - (ii) investment income;
 - (iii) withdrawals;
 - (iv) expenses;
 - (v) closing balance; and
 - (vi) net rate of return credited to the member's account; and
- (b) a summary of the financial statement of the income drawdown fund and the performance report.

(4) The trustees shall provide each member of an income drawdown fund with information on options available to members upon expiry of the minimum drawdown period.

17. Income drawdown fund rules may provide for the protection of the income drawdown fund and assets against any insurable risk and financial loss arising out of negligence, default or wilful default of the fund's officers, trustees, administrator, manager or custodian by way of insurance of such amount as the trustees may deem appropriate.

Protection against financial loss.

18. (1) Income drawdown fund rules shall specify the manner by which benefits are payable from the fund, the frequency, and the allowable limit.

Benefits from the income drawdown fund.

(2) The members of the income drawdown fund shall have the freedom to choose the frequency of withdrawals and amounts payable not exceeding the limit set out in these regulations:

Provided that—

- (a) the minimum drawdown period allowable shall be ten years from the date of commencement of the drawdown;
- (b) a member may transfer his or her benefits from the income drawdown fund to another income drawdown fund after five years of membership;

- (c) the member may withdraw an income from his or her drawdown fund subject to a maximum of twelve per cent per year of the member's outstanding account balance determined at the beginning of the financial year of the income drawdown fund;
- (d) the structure of each individual income drawdown shall prescribe the frequency of the drawdown which may be monthly, every three months, every six months, or annually and the manner in which to effect such change; and
- (e) after the expiry of the minimum drawdown period, the following options shall be available to the member—
 - (i) the income drawdown arrangement can be continued (with the same provider or with a different provider);
 - (ii) purchase of an annuity; or
 - (iii) access the balance as a lump sum.

(3) If a member of an income drawdown fund chooses to continue with the income drawdown in accordance with subregulation (2)(e)(i), he or she may choose on whether to continue with the income drawdown fund or purchase an annuity after every five years.

(4) Funds relating to beneficiaries who have not attained the age of eighteen years shall not be subject to the restrictions prescribed under regulation 16(2) and the income drawdown fund rules shall provide the manner in which trustees shall manage funds held for beneficiaries' upkeep and maintenance.

(5) The trustees of an income drawdown fund shall submit to the Authority at least once in every three months a record of payments out of the fund to members in the prescribed form by the fifteenth day following the end of every third month.

19. (1) Each member of an income drawdown fund has the right to transfer his or her funds from one income drawdown fund to any other registered income drawdown fund in Kenya of his or her choice subject to the minimum drawdown period:

Portability of benefits.

Provided that the transfer shall only be allowed after a membership of five years and that the member shall have given a notice of not less than three months.

(2) Each transfer shall be done in lump sum and the income drawdown fund rules shall provide that there shall be no partial transfers of funds.

(3) No penalty or charges shall be applied to member's benefits upon transfer.

(4) Upon the expiry of the notice period of the transfer, the trustees shall effect the transfer within thirty days.

(5) The funds held in the income drawdown fund shall continue to accrue interest until the transfer is complete.

(6) Every income drawdown fund shall provide procedures for the transfer of members funds from one income drawdown fund to another.

(7) Each income drawdown fund shall submit to the Authority at least once in every three months a record of transfers out to any other income drawdown fund in the prescribed form by the fifteenth day following the end of every third calendar month.

20. A member may opt for the payment of the total amount of his or her benefits—

Payment of benefits on the grounds of ill-health and emigration.

- (a) on grounds of incapacitation due to ill-health, upon approval by the trustees or
- (b) where the member is emigrating from Kenya to another country without any present intention of returning to reside in Kenya and has obtained the approval of the trustees, which shall be approved to the Authority, before payment is made.

21. (1) On the death of an individual member of an income drawdown fund, his or her beneficiaries may opt to—

Payment of benefits upon death.

- (a) continue with the income drawdown arrangement or;
- (b) purchase an annuity or;
- (c) access the benefits as a lump sum.

(2) The income drawdown rules shall provide that upon the death of a member of the income drawdown fund, the benefits payable from the fund shall be paid to the nominated beneficiaries and if the deceased member had not nominated any beneficiaries, the trustees shall exercise their discretion in the distribution of the benefits to the dependents of the deceased member:

Provided that the trustees may refuse to pay nominated beneficiaries and the reason for such refusal shall be recorded.

(3) The trustees shall exercise their discretion in determining the amount payable to the dependants' of the deceased member.

PART IV—FINANCIAL PROVISIONS AND STATEMENTS

22. (1) Each income drawdown fund shall keep and maintain such books of accounts and other records as may be necessary for the purpose of accounting for the fund's income and expenditure, and assets and liabilities.

Books of accounts.

(2) Each income drawdown fund shall maintain records of all transactions in respect of each member of the fund.

23. (1) Each income drawdown fund shall, within three months after the date of registration by the Authority, appoint an auditor who shall be a member of the Institute of Certified Public Accountants of Kenya and the appointment shall be notified to the Authority within thirty days after the date of appointment for approval.

Appointment of auditors.

(2) The Authority may refuse or revoke the appointment of an auditor and the trustees shall appoint another auditor subject to approval by the Authority.

24. (1) The trustees of an income drawdown fund shall submit audited annual accounts which shall include the trustees' and investments reports to the Authority, with a certificate signed by the chairman of the board of trustees or any authorized trustee certifying that, to the best of his or her knowledge and belief, the information furnished to the auditor for the purpose of audit was correct and complete in every respect.

Annual accounts.

(2) The income and expenditure account and the statement of assets and liabilities and notes thereto of the income drawdown fund shall be accompanied by a report signed by the auditor of the income drawdown fund and where the auditor is unable to sign the report without qualification, the report shall disclose reasons for such qualification.

(3) The income and expenditure account and the statement of assets and liabilities of each income drawdown fund shall be prepared on accrual basis in the prescribed form.

(4) Each income drawdown fund shall, within six months after the end of each financial year—

- (a) conspicuously display in the office of the income drawdown fund a notice notifying the members that the audited accounts together with the trustees' and investment reports are available for inspection; and
- (b) send to its members a summary of its audited accounts together with benefit statements.

25. (1) The statement of income and expenditure of each income drawdown fund shall be treated in accordance with international financial reporting standards.

Accounting procedure for investments.

(2) The income of an income drawdown fund accruing from investment and gains on sale of investment and incurred expenses shall be reported on by the trustees.

26. The value of the assets of the income drawdown fund shall be the value realisable upon disposal at an arm's length transaction less expenses payable to effect the disposal.

Valuation of assets.

27. No income drawdown fund shall maintain a reserve fund.

Reserve fund.

28. The financial statements of each income drawdown fund shall be in the prescribed form and shall disclose—

Minimum disclosure requirements.

- (a) fees and expenses, appropriately classified, paid directly or indirectly to, or on behalf of, the trustees;
- (b) returns on investments in each category of investment;
- (c) related party transactions;
- (d) ownership of more than ten per cent equity in any one company or related companies;

- (e) the overall rate of return credited to members' balances; and
- (f) any other matter as may be prescribed by the Authority.

PART V—INVESTMENT GUIDELINES

29. (1) Each income drawdown fund shall prepare and maintain a written statement of the principles governing decisions on investments which shall be revised at least once in every three years. Investment policy.

(2) The statement prescribed in subregulation (1) shall cover, among other things—

- (a) the policy of the income drawdown, in compliance with regulation 30;
- (b) the policy of the income drawdown fund on—
 - (i) membership profile;
 - (ii) the categories of investment to be held; and
 - (iii) risk associated with each category of investment;
- (c) the realization of investment;
- (d) asset liability matching;
- (e) specific performance benchmarks; and
- (f) any other issue as may be prescribed from time to time by the Authority.

(3) The income drawdown fund and the statement of principles governing decisions on investments of the fund shall not impose restrictions on any power to make investments by reference to the consent of the founder.

(4) Each income drawdown fund shall, before a statement under this regulation is prepared or revised, obtain and consider the written advice from a financial analyst registered under the Investment and Financial Analysts Act, 2015, an actuary, investment advisor or fund manager registered under the Capital Markets Act, or a manager under this Act:

No. 13 of 2015.
Cap. 485A.

Provided that the financial analyst, actuary, investment advisor or fund manager shall not be the income drawdown fund manager related to the founder or an employee of the income drawdown fund.

30. Notwithstanding the provisions of regulation 29, an income drawdown fund shall invest only in an asset class referred to in column 1 of Form G as prescribed to the extent to which the market value of the investment in the class expressed as a percentage of the total assets of the fund or pooled fund does not exceed the percentage listed in column 2 of Form G:

Investment
guidelines.

Provided that income drawdown fund shall not invest directly in immovable property.

PART VI—LEVY

31. An income drawdown fund shall not be required to pay the Retirement Benefits Levy.

Retirement
Benefits Levy.

PART VII—MERGERS, BULK TRANSFERS AND LIQUIDATION

32. (1) A resolution by trustees to voluntarily wind-up a fund shall not be effected until the Authority has approved the winding up of the fund in writing.

Voluntary
winding up of an
income drawdown
fund.

(2) A fund may be wound up or dissolved if—

- (a) the founder of the fund is dissolved or wound up or is undergoing a dissolution or winding up process;
- (b) the participation of the founder has ceased;
- (c) failure by the founder to observe or perform obligations as set out in the trust deed and income drawdown fund rules, and these Regulations;
- (d) on reorganization or reconstruction, the founder (or the founder's successor-in-title) enters an arrangement with another entity (to be known as the "new organization") which undertakes to assume all the business rights and obligations of the founder except that of an income drawdown fund; and
- (e) on such other grounds, as may be specified for that purpose in the income drawdown fund rules and in the manner provided by such rules.

33. Upon resolution for voluntary winding up of the income drawdown fund, the Trustees shall notify each member in writing on the intention to wind up the fund and the details of the winding up process.

Notification of
winding up.

34. The trustees of an income drawdown fund that is intended to be wound up shall appoint a liquidator to carry out the winding up of the fund.

Appointment of
liquidator.

35. Notwithstanding regulation 34, in the case of a bulk transfer to another income drawdown fund, the trustees of an income drawdown fund intended to be wound up shall not be required to appoint a liquidator but shall submit the following to the Authority for approval—

Bulk transfer.

- (a) a resolution by the founder to transfer the funds held in the income drawdown fund to another fund;
- (b) a resolution by the trustees indicating the reason for winding up and transfer;
- (c) current audited accounts or fund statement of the fund;
- (d) signed member consent forms acknowledging the benefits to be transferred to the other fund;
- (e) proof of transfer to the other fund;

- (f) proof of receipt of funds by the other fund;
- (g) nil accounts to close the fund;
- (h) original certificate of registration of the other fund; and
- (i) any other information as required by the Authority.
36. (1) The transfer of an income drawdown fund to another fund shall not be approved by the Authority unless—
- Approval by the Authority.
- (a) the Authority is satisfied that the arrangements by the Trustees accord full recognition on the drawdown obligations to the members of the funds concerned; and
- (b) the proposed transfer meets the requirements of the Act and these Regulations.
- (2) The Authority shall consider an application to transfer an income drawdown fund to another fund for approval within thirty days after receipt of all the information required under regulation 36.
- (3) Where the Authority is satisfied that all the required documentation has been received, it shall approve the bulk transfer of the funds.
37. The member of a transferring fund shall retain the right to transfer within rules of the merging funds.
- Rights of members.
38. The merger of one income drawdown fund with another or the bulk transfer of funds from one income drawdown fund to another shall not diminish or reduce the benefits of the members of the fund.
- Benefits of members on transfer.
39. The trustees of an income drawdown fund being merged with another or which transfers its funds to another income drawdown fund shall make provision for the distribution of any net investment income to members' accounts before the transfer or merger;
- Provision for net investment income of members.
40. Upon completion of the liquidation of an income drawdown fund, and the Authority being satisfied that the final accounts are correct, and that all the funds have been transferred, it shall deregister the fund and the fund shall be deemed to be dissolved.
- Deregistration of liquidated income drawdown fund.
41. Subject to the provisions of the Limitation of Actions Act, on the dissolution of an income drawdown fund no further claim shall lie against the trustees of the liquidated income drawdown fund or the Authority with respect to the members' benefits.
- Claims.
Cap. 22.
42. (1) Where the Authority is of the opinion that—
- Winding up by the Authority.
- (a) after registration of an income drawdown fund, a statement was made in connection with the application which the applicant knew to be false or untrue;
- (b) the continued existence of the fund is detrimental to the rights and interests of the members;
- (c) the founder's business is wound up or otherwise dissolved;
- (d) the founder or Trustees of the fund are in breach of any condition attached to the certificate of registration;

- (e) the Fund is not in compliance with any of provisions of the Act, or with any regulations made or directions issued thereunder; and
- (f) any other grounds as the Authority may deem fit,

the Authority shall issue a notice of at least twenty-eight days to the trustees, founders and members of the income drawdown fund of the Authority's intention to wind up the fund.

(2) The Authority shall consider any representations made in writing by the trustees, founder and members of the income drawdown fund within the period prescribed under subregulation (2) before commencing winding up proceedings.

(3) Where the Authority is of the opinion that the representations made under subregulation (2) are not adequate or satisfactory it shall commence the winding up proceedings before a court of competent jurisdiction.

(4) The provisions of the Insolvency Act, 2015, on statutory winding up, shall apply to the winding up of an income drawdown fund under this regulation.

(5) Subject to Limitation of Actions Act, on the completion of the liquidation process under this Regulation, the Authority shall deregister the income drawdown fund and no claim shall lie against the trustees of the wound-up fund or the Authority with respect to the members' benefits.

Cap. 22.

PART VIII—TRANSITIONAL PROVISIONS

43. Any registered income drawdown funds in existence on the date of the commencement of these Regulations shall, within twelve months after the date of commencement of these Regulations, amend its income drawdown fund rules to comply with the provisions of the Act and these Regulations.

Compliance of existing income drawdown funds with these Regulations.

44. Any income drawdown arrangement established as a special fund within a retirement benefit scheme in existence on the date of the commencement of these Regulations shall be required to register within three years after the date of commencement of these Regulations and operate the fund solely as an income drawdown fund.

Compliance of special arrangements in retirement benefits schemes with these Regulations.

45. Any existing contracts of members in an income drawdown fund shall be deemed to continue until expiry of the contract:

Continuation of existing income drawdown contracts.

Provided that the members of the income drawdown fund shall be allowed to transfer their benefits after five years from the date of commencement of these Regulations or expiry of their contracts, whichever is the earlier.

Dated the 31st October, 2023.

NJUNGUNA NDUNG'U,
Cabinet Secretary
for the National Treasury and Economic Planning