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By Dean Hon. Dan
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REPUBLIC OF KENYA
KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - FIRST SESSION

12/11/2013

REPORT

OF THE
DEPARTMENTAL COMMITTEE ON LABOUR
AND SOCIAL WELFARE

ON

THE NATIONAL SOCIAL SECURITY FUND BILL, 2013

NOVEMBER, 2013





THE NATIONAL ASSEMBLY

MEMBERS ATTENDANCE LIST

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

Date: 31/Oct/13 Venue: New Member Lounge Agenda: Adoption of Report

	Name	Signature
1.	<u>CHAIRPERSON</u>	
2.	<u>VICE-CHAIR Hon. Tiyah</u>	<u>Minyal</u>
3.	<u>Hon Abiodun Mofio</u>	<u>[Signature]</u>
4.	<u>Hon KINME Njuguna</u>	<u>[Signature]</u>
5.	<u>HON. JOHN KOBADO</u>	<u>[Signature]</u>
6.	<u>HON. JAMES O. KOYUO</u>	<u>[Signature]</u>
7.	<u>HON JOHN B. SERU</u>	<u>[Signature]</u>
8.	<u>HON JOHN NDIRANKE</u>	<u>[Signature]</u>
9.	<u>HON GEORGE MUYHA</u>	<u>[Signature]</u>
10.	<u>Hon. Elijah Lagat</u>	<u>[Signature]</u>
11.	<u>HON. PERES TOBUO</u>	<u>[Signature]</u>

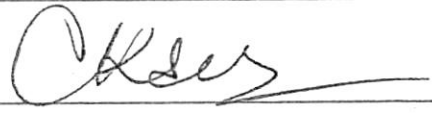
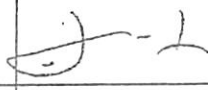
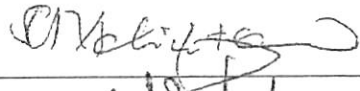
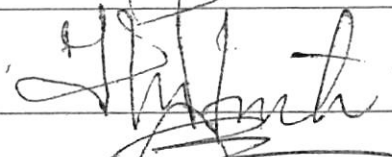


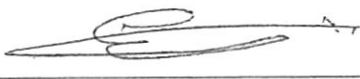
12.	Hon. CORNELIUS SERRIN	
13.	Hon. MWANYOHA	
14.	Hon. MUSTAFA IDD	
15.	Hon. NANGAMATI	
16.	Hon. JONES MLODWA	
17.	Hon. SAMUEL LUCHWA	
18.	Hon. ELIJAH M. MOINY	
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1.0 PREFACE

Mr. Speaker, Sir,

The Departmental Committee on Labour and Social Welfare was constituted pursuant to the provisions of Standing Order No. 216 of the Standing Orders and has executed its mandate in accordance with the provisions of the said Standing Order which mandates the Committee to:-

- (a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- (b) *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
- (c) *study and review all legislation referred to it;*
- (d) *study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- (e) *investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- (f) *to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and*
- (g) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

Committee Membership

1. The Hon. David Were, M.P. – **Chairperson**
2. The Hon. Tiyah Galgalo, M.P.– **Vice Chairperson**
3. The Hon. Janet Teiya, M.P.
4. The Hon. George Muchai, M.P.
5. The Hon. Peris Tobiko, M.P.

6. The Hon. John Ndirangu Kariuki, M.P.
7. The Hon. Winnie Karimi Njuguna, M.P.
8. The Hon. Janet Nangabo, M.P.
9. The Hon. John Serut, M.P.
10. The Hon. Samuel Gichigi, M.P.
11. The Hon. Elijah Lagat, M.P.
12. The Hon. Cornelly Serem, M.P.
13. The Hon. Abdi Noor Ali, M.P.
14. The Hon. Dan Wanyama, M.P.
15. The Hon. Regina Nyeris, M.P.
16. The Hon. Wesley Korir, M.P.
17. The Hon. Kinoti Gatobu, M.P.
18. The Hon. Elijah Moindi Mosomi, M.P.
19. The Hon. James Onyango K'oyoo, M.P.
20. The Hon. Omondi John Ogutu, M.P.
21. The Hon. Aisha Jumwa Katana, M.P.
22. The Hon. Patrick Wangamati, M.P.
23. The Hon. Rose Museu Mumo, M.P.
24. The Hon. Silvance Onyango Osele, M.P.
25. The Hon. Mustafa Idd, M.P.
26. The Hon. Nyasuna, Gladys Wanga, M.P.
27. The Hon. John Owuor Onyango Kobado, M.P.
28. The Hon. Mwanyoha Hassan Mohammed, M.P.
29. The Hon. Jones Mlolwa Mwangogo, M.P.

Mr. Speaker, Sir,

The Committee deals with the following subjects matters as per the Second Schedule of the Standing:-

- Labour, trade union relations
- manpower or human resource planning,
- gender, culture and social welfare,

- youth, National Youth Service,
- children's welfare, national heritage,
- betting, lotteries, Sports.

Mr. Speaker,

The Committee has oversight over the Ministry of Labour, Social Security & Services and the Ministry of Sports, Culture and the Arts. Further, its mandate covers the National Social Security Fund.

Mr. Speaker,

Pursuant to Standing Order 127 (1), the National Social Security Fund Bill, 2013 was committed to the Departmental Committee on Labour and Social Welfare, after First Reading on 29th September 2013. The Committee deliberated on the Bill together with the stakeholders and their views have been factored in the Committee's Report.

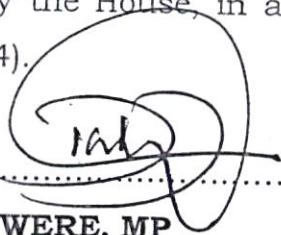
Mr. Speaker, Sir

I would like to thank the Offices of the Speaker and the Clerk of the National Assembly for facilitating this exercise as well as all those who presented their views to the Committee.

Mr. Speaker,

It is now my humble duty to present the Committee's Report on the Consideration of the National Social Security Fund Bill, 2013 for debate and adoption by the House, in accordance with the provisions of the Standing Order 127(4).

SIGNED



HON. DAVID WERE, MP

CHAIRPERSON - DEPARTMENTAL COMMITTEE ON LABOUR & SOCIAL WELFARE

DATE.....

07-11-2013

2.0 THE NATIONAL SOCIAL SECURITY FUND BILL, 2013

2.1 BACKGROUND

Since its establishment, the National Social Security Fund (NSSF) has operated as a mandatory provident fund providing benefits in the form of lump sum payments. The provident fund as currently structured is characterised by limited membership coverage and is inadequate both in form and level of benefits arising from the monetary capping of contributions. Therefore, the present structure is insufficient in serving the social security needs of the country. To address this, a National Social Security Pension Bill has been developed with the aim of transforming the Fund to a social insurance pension scheme.

In particular, the transformation seeks to increase coverage of the NSSF, improve adequacy of benefits provided by the NSSF, provide benefits in the form of pensions, retain a link between benefits and contributions with the benefits largely being determined on a defined contribution basis, and ensure sustainability and affordability of social security. The bill if passed would see the transformation of the National Social Security Fund to a Pension Scheme.

2.2 DELIBERATION ON THE NSSF, 2013 BILL

Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. Further, Standing Order No. 127(3) provides that the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House.

The Bill having been referred to the Committee after the First Reading, the Committee held consultative forums with stakeholders as well as inviting memoranda from the public in the local dailies on 4th October,

2013. In making its recommendations, the Committee examined the Bill and proposed amendments by consensus based on the available information. Further it considered different sources of submissions made on the provisions of the Clauses to be amended.

The proposed Fund will be known as the National Social Security Fund to be managed by a Board and the Fund will receive payments from contributors. The objects of the Fund are to provide basic social security for members and their dependants, increase membership coverage, improve adequacy benefits and ensure a value adding system to its member's contributions.

3.0 COMMITTEE OBSERVATIONS

- i. Members proposed change of the corporate name of the National Social Security Fund (NSSF) to break away from the past to ensure public confidence in the entity.
- ii. The need to include definition of Actuary in the NSSF Bill and not make reference to the definition ascribed to an Actuary in the Retirement Benefits Act, 1997.
- iii. On the matter of regulation the Committee was of the opinion that another statutory authority could not oversee or subject the National Social Security Fund to its rules. Members noted that NSSF is a National Mandatory Scheme and should be left to regulate its own affairs. The Retirement Benefits Authority should therefore regulate schemes established by Trust Deed and Rules and not those established by law such as NSSF.
- iv. On membership of the Board, the Committee agreed that the most representative employers and workers organisations will each nominate two persons for appointment to the Board. Members agreed that there is need to stagger the Board Members terms in line with other legislation.

- v. In term of academic qualification, the Managing Trustee should hold a degree in a relevant field of study as may be specified by the Board from a recognized university in Kenya.
- vi. Members took cognizance of the fact that the Managing Trustee will be expected to work with the Board, the Ministry and the Government. Therefore, the Board should carry out competitive recruitment of the Managing Trustee but the appointment should be done by Cabinet Secretary. The Board of Trustees will therefore forward three (3) names to the Cabinet Secretary to select one (1) for appointment.
- vii. Members noted that the Fund Investment is bound by Section 71 of the Bill which provides that:-“the requirements of this Act are in addition to requirements imposed by the Retirement Benefits Act”.
- viii. Members further noted that Section 59 of the Retirement Benefits Act gives the Cabinet Secretary for Finance discretionary powers to exempt persons from complying with the provisions of the said Act as and when necessary.
- ix. The Fines Fine for Employers who fail to register their Employees should be enhanced.

4.0 PROPOSED AMENDMENTS TO THE NSSF BILL 2013

The Committee proposes the following amendments.

Part 11 – ESTABLISHMENT & OBJECTS OF THE NATIONAL SOCIAL SECURITY FUND

CLAUSE 4 (f) (11)

That Clause 4 be amended by inserting a **Sunset Clause** to cater for liabilities of the old Fund to be settled within five (5) years of coming into force of the New Fund and the Old Fund closed. The Transitional

Provisions provided under the Second Schedule should be considered when drafting the proposed Sunset Clause.

PART 111- NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES

CLAUSE 6

THAT, Clause 6 (d (i) & (ii) be amended to include the following proviso:-

- (i) *two persons, one of either gender nominated by the most representative Employers Organization with knowledge and experience in matters relating to Employers to represent employers in Kenya;*
- (ii) *two persons, one of either gender nominated by the most representative Workers Organization with knowledge and experience in matters relating to Employees to represent employees in Kenya;*

CLAUSE 8 – Staggering of the Term of Board Members

- (i) THAT, Clause 8(2) be amended to provide that the Board shall be appointed for a period of three (3) years and there shall be a difference of two (2) months between the appointments and the Cabinet Secretary shall make such appointments within a period of six (6) months.
- (ii) THAT, Clause 8 (3)(b) (i) be amended to provide for the Chairperson to seek approval of the Cabinet Secretary when he is away and unable to conduct meetings.

CLAUSE 15 – Appointment of the Managing Trustee

- (i) THAT, Clause 15(1) be amended to provide that:-
The Cabinet Secretary shall, on the recommendation of the Board of Trustees, appoint a Managing Trustee from amongst three (3) names, who shall hold office on such terms and conditions of service as may be specified in the instrument of his appointment.

- (ii) THAT, Clause 15 (3) be amended by deleting delete the words “and secretary” appearing after “member” to read “The Managing Trustee shall be an ex-officio member to the Board”.

The proposed amendment is aimed at delinking the Managing Trustee from the Role of Secretary to the Board.

- (iii) THAT, Clause 15 (4) be amended to provide that the Managing Trustee shall be selected from amongst three (3) names recommended by the Board through a competitive process.

- (iv) Clause 15 (5) – Term of Managing Trustee

THAT, Clause 15(5) be amended by deleting the word “six years” and substituting with words “three year”.

The Committee proposed a review of the Managing Trustee’s term from six (6) years to three (3) years and subject to renewal for one further term of three (3) years. This will ensure optimal performance of the Managing Trustee.

- (v) THAT, Clause 15(7(a) be amended by deleting the word “Masters”

The Committee agreed that the Managing Trustee should hold a degree in a relevant field of study as may be specified by the Board from a university recognised in Kenya.

- (vi) THAT, Clause 15(7)(b) be amended by deleting the words “pension funds, accounting or auditing, insurance, investment, law banking, economics, labour or social security” and inserting in place thereof the following:-

“in a field as may be specified by the board and must be registered with a recognised professional body”.

- (vii) THAT, Clause 15(10) be amended by deleting the word "Board" and substituting with the words "Cabinet Secretary" and inserting the following after the word "office"

"on recommendation of the Board"

PART IV – FUNDS, REGISTRATION, MEMBERSHIP AND CONTRIBUTIONS

CLAUSE 26 – Regulations to provide for Voluntary Registration

THAT, Clause 26 be deleted

CLAUSE 27

THAT, Clause 27(3) be amended by inserting the word "and" after the word employee appearing in the 3rd line.

PART V- BENEFITS

CLAUSE 40 - Funeral Grant

THAT Clause 40(1) be amended by deleting the word "ten" and substituting with the word forty".

CLAUSE 47 – Regulations regarding benefits under this Act

THAT, Clause 47 be deleted.

CLAUSE 48

THAT, Clause 48(2) be amended by deleting the word "fifty" and substituting with the word "three hundred".

PART VI – FINANCE, ADMINISTRATION AND MANAGEMENT OF THE FUND

SECOND SCHEDULE -Transitional Provisions

THAT, the Second Schedule be amended by inserting a new subsection (8)

8. A reference scheme (as defined in the fourth schedule) shall have 365 days from the commencement date of the Trust Deed and Rules to comply with the provisions of the Fourth Schedule.

THIRD SCHEDULE

THAT, the Third Schedule be amended by deleting the **“words Tier 1”** appearing on the heading of the Third Schedule

FOURTH SCHEDULE

THAT, the Fourth Schedule be amended as follows:-

- (i) in Part 1(c) by deleting sub-sections (3) and (4) and substituting with (2) and (3).

- (ii) in Part 1(f) by inserting the words **“by the Authority”** after the words **“Prescribed requirements”**.

5.0 ANNEXES

5.1 MINUTES

MINUTES OF THE 30TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY, 31ST OCTOBER, 2013 IN THE NEW MEMBERS LOUNGE, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

The Hon. Tiyah Galgalo, M.P. – Vice – Chairperson

The Hon. John Serut, M.P.

The Hon. Patrick Wangamati, M.P.

The Hon. Elijah Moindi Mosomi, M.P.

The Hon. Mustafa Idd, M.P.

The Hon. James Onyango K'Oyoo, M.P.

The Hon. Mwanyoha Hassan, M.P.

The Hon. Abdi Noor Ali, M.P.

The Hon. Cornelly Serem, M.P.

The Hon. Winnie Karimi Njuguna, M.P.

The Hon. Peris Tobiko, M.P.

The Hon. Samuel Gichigi, M.P.

The Hon. John Ndirangu Kariuki, M.P.

The Hon. Jones Mlolwa Mwagogo, M.P.

The Hon. George Muchai, M.P.

The Hon. Elijah Lagat, M.P.

The Hon. John Owuor Onyango Kobado, M.P.

ABSENT WITH APOLOGY

The Hon. David Were, M.P. – Chairperson

The Hon. Suleiman Murunga Kasuti, M.P.

The Hon. Wesley Korir, M.P.

The Hon. Nyasuna Gladys Wanga, M.P.

The Hon. Regina Nyeris, M.P.

The Hon. Aisha Jumwa Karisa, M.P.

The Hon. Omondi John Ogutu, M.P.

The Hon. Kinoti Gatobu, M.P.

The Hon. Janet Nangabo, M.P.

The Hon. Janet Teiya, M.P.

The Hon. Dan Wanyama, M.P.

The Hon. Rose Museu Mumo, M.P.

The Hon. Silvanice Onyango Osele, M.P.

IN ATTENDANCE - NATIONAL ASSEMBLY

Mr. Ahmad Kadhi - First Clerk Assistant

MIN.NO. 107/2013: PRELIMINARIES

The Meeting was called to order; proceedings began with a word of prayer.

MIN.NO. 108/2013: CONFIRMATION OF MINUTES

The Minutes of the 28th sitting were proposed by the Hon. Ali Noor Ali, M.P and seconded by the Hon. John Serut M.P.

The Minutes of the 29th sitting were proposed by the Hon. John Ndirangu Kariuki, M.P and seconded by the Hon. Elijah Lagat, M.P.

MIN.NO. 109/2013: ADOPTION OF THE NSSF BILL, 2013 REPORT

Members deliberated the report and noted as follows:


- The Definition of the term "Social security" should be retained in its present form as defined in clause 2 of the Bill.
- That clause 6 d (i) and (ii) be amended to read

- (i) two persons, one of either gender nominated by the most representative Employers Organization with knowledge and experience in matters relating to Employers to represent employers in Kenya;
 - (ii) two persons, one of either gender nominated by the most representative Workers Organization with knowledge and experience in matters relating to Employees to represent employees in Kenya;
- Membership to the Board of Trustees should reflect regional balance, youth, disabled and marginalised persons.
 - There was a proposal to change the name of the new institution to break away from the National Social Security Fund into a new body to ensure public confidence.
 - The Managing Trustee should hold a degree in a relevant field of study as may be specified by the Board from a university recognised in Kenya as may be specified by the Board.
 - Clause 19(6) – Fine for Employers who fail to register their Employees should be enhanced.

The Members present noted that subject to the above, the Committee shall table its report to the House at the earliest opportunity.

MIN.NO. 110/2013: ADJOURNMENT

The sitting was adjourned at thirty minutes past one o'clock to Tuesday 5th November 2013 at 9.30 A.M.


Signed.....
(Chairperson)

Date.....

5.2 NEWSPAPER ADVERT - INVITATION OF MEMORANDA



REPUBLIC OF KENYA
KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT

In the Matter of consideration of the National Social Security Fund Bill, 2013;

Article 118(1) (b) of the Constitution provides that "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees." Standing Order 127(3) states that "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House."

SUBMISSION OF MEMORANDA

The National Social Security Fund Bill, 2013, has undergone First Reading as stipulated in the Standing Orders of the House and stands committed to the Departmental Committee on Labour and Social Welfare for consideration and thereafter to make a report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the National Social Security Fund Bill, 2013, forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to the clerk@parliament.go.ke; to be received on or before **10th October, 2013 at 5.00 pm.**

MICHAEL R. SIALAI
FOR: CLERK OF THE NATIONAL ASSEMBLY

5.3 SUBMITTED MEMORANDA

~~226~~ 226 ~~178~~

THE KENYA TEA GROWERS' ASSOCIATION

P.O. Box 320,
KERICHO.

Tel:- 052 20039

Fax:- 052 32172

E-mail:- info@ktga.or.ke

Dated: 09-10-2013

The Clerk of the National Assembly,
P. O. Box 41842-00100,
Nairobi.



Dear Sir,

RE: SUBMISSION OF MEMORANDA ON NATIONAL SOCIAL SECURITY FUND BILL, 2013

Kenya Tea Growers Association was established in 1931 by large-scale tea producers to promote the common interests of the plantation sub-sector members in the cultivation and manufacture of tea and to promote good industrial relations and sound wage policies for the workers. The Association has its Headquarters in Kericho town and operates branches in Nandi, Sotik and Limuru.

The following are our concerns in NSSF Bill 2013.

1. **Section 6-**
(a,b,c,d)

The cabinet secretary appoints all the Board of trustees, this should not be the case for a fund handling such a big amount of money in view of transparency. Stakeholder participation must be ensured through nomination of representatives by legitimate organizations.

(d i, ii)

The ambiguity about which Employer and Employee representative organization needs to be made very clear in order to avoid splitting already established institutions for selfish interests. Failure to make these subsection clear could create unnecessary friction among various organizations.

2. **Section 20 (b)**

Employers are required to contribute 6% of the employee's pensionable earnings to the fund. It's our submission that moving from the current contribution of Ksh.200 to 6% is a big change that will drastically escalate the cost of labor in the country. It will negatively impact on the agricultural sector which is already confronted by myriads of issues like weather changes, high cost of energy,

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① Mrs. H. S. ...
T. S. ...
W. S. ...

very high cost of labour dwindling international market, market saturation and more. **Honorable members** in their wisdom can cause this escalation to be done gradually, may be by 2% for the next two years, get reviewed and then increased to may be 4%.

Furthermore, this 6% increase is going to lead to freezing of employment with likelihood of redundancies in the tea industry particularly given the depressed market prices.

Gratuity:

This mandatory requirement to pay 6% does not take into account that sectors like Tea industry are already paying gratuity and funeral expenses as per COLLECTIVE BARGAINING AGREEMENT. The act needs to be **VERY** clear that it is either one or the other and NOT BOTH.

This is our Submission.



MWERERIA Mugambi Henry
The Executive Officer



Monday, October 07, 2013

**MEMORANDUM BY THE FEDERATION OF KENYA EMPLOYERS (FKE) TO
PARLIAMENTARY DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL
WELFARE ON THE NATIONAL SOCIAL SECURITY FUND BILL, 2013.**

The Federation of Kenya Employers (FKE) is the umbrella body of the employers organizations in Kenya established in 1959 under the Trade Unions Act Cap 233 to represent the collective interest of the employers in Kenya. The Federation's membership is drawn from employers in the private and public sectors – including State Corporations, the County Governments and sector specific employers' associations; the Kenya Association of Building and Civil Engineering Contractors, the Distributive and Allied Trades Association, the Sisal Growers and Employers' Association, the Engineering and Allied Industries Employers Association, the Agricultural Employers Association. The Coffee Growers and Employers Association, the Kenya Tea Growers Association, the Kenya Association of Hotel Keepers and Caterers, Kenya Bankers Association, the Kenya Association of Air operators, the Kenya Security Industry Association, the Association of Kenya Insurers, the Protective Security Industry, the Kenya Flower Council, the Printing Group, the Churches Group, the Insurance group and Sugar Employers Group among others.

FKE promotes sound industrial relations and observance of fair labour practices in Kenya. FKE plays a key role in advocacy for a conducive business climate to enhance competitiveness and employment creation, supports sound management practices and development of sustainable institutional capacity and competence.

The following are the Federation's concerns on the National Social Security Fund Bill, 2013, submitted in response to the notice published by the Kenya National Assembly in the local dailies on 4th October, 2013.

		<p>Organization (ILO) standards to which Kenya is a signatory. The institutional nomination ensures broad representation by the contributors.</p> <ul style="list-style-type: none"> • The fund Board must have representatives of the principal contributors. • The current bill gives the Government through the Cabinet Secretary power to unilaterally decide on appointments and total control of the Fund. This is not acceptable. • The skills/experience specified for the persons representing employers and workers are too limiting as other relevant skills such as Knowledge and experience in Labour Relations which is a core role, law, Engineering / Accounting or actuarial 	<p>in Kenya".</p> <p>(ii) "Two persons nominated by the most representative Federation of Trade Unions by virtue of their relevant knowledge and experience to represent employees in Kenya.</p> <p>Add 6 (e) to read " the two members representing employers and two others members representing employees shall be appointed after consultation with the most representative Federation of Employers organization dealing with labour matters and the most representative</p>
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	<p>vacant, the vacancy shall be filled in the same manner specified for the office under section 6 and the person thereby appointed shall serve for the remainder of the term.</p>		<p>full terms".</p>
<p>5</p>	<p>Mandatory Contributions to the fund.</p> <p>Section 20</p>	<ul style="list-style-type: none"> • Employers and employees are required to contribute to the Fund at 6% each but there is no clarification on gratuity payment. There are many employers already making gratuity payment from negotiated Collective Bargaining Agreements (CBAs) • An employee should be entitled to either gratuity negotiated under CBA or N.S.S.F but not both benefits. • It is already recognized in Employment Act, 2007 Section 35 (6) that the 	<p>Add Section 20 (4) to read " where an employer is already paying gratuity, the payment shall be paid net of N.S.S.F Contributions".</p>

<p>required under paragraph (a) shall clearly set out such details of the contracted out scheme as the Authority shall require from time to time in order to ascertain the contracted out scheme meets the reference scheme test.</p>	<p>should be in charge of the opting out of NSSF schemes that offer equivalent or superior benefits.</p> <p>Contributions are structured in Tier 1 and Tier 2, with contracting out option available only for Tier 2.</p> <p>The provisions impose vague and undocumented requirements to be met by the scheme prior to approval for contracting out.</p> <p>The conditions are also overly broad and unfair the 4th Schedule, it is not certain who shall issue the "prescribed requirements" This provision seeks to take away the powers of the RBA to determine the procedures and requirements to contract</p>	<p>The Reference Scheme Test under the 4th Schedule should be very narrow, clear and concise as to what the requirement for approval are.</p> <p>The Bill should clearly provide that the prescribed requirements will be set by RBA.</p>
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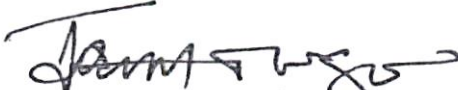
		Section 35 (6) that employer is obligated to pay gratuity/service pay where he is not making contributions to N.S.S.F	
8	<p>Section 37(1) Survivor's Pension</p> <p>A survivors' pension shall be paid to the dependants if the member dies before pensionable age and was contributing to the pension fund at the time of his death and not less than thirty six monthly contributions had been made by the member immediately preceding the date of death.</p>	<p>The qualifying period for this benefit is too long 36 months it should be reduced to a minimum of 12 months contribution.</p>	<p>Replace the words "thirty six months" to read "twelve months".</p>
9	<p>Fourth Schedule Reference Scheme Test</p>	<p>There is a need to ensure "contracting-out" within the independent competence of the RBA. A Transition clause should be included.</p> <p>Remove reference to Cabinet Secretary to ensure</p>	<p>The reference scheme test should be amended to provide for a transition period. Provide clarification that the prescribed requirements will be set out by RBA</p>

Authority, clarity on contracting out the 11 Tier contributions, the offsetting of the gratuity payment from the N.S.S.F contributions and other proposals.

- (3) That the increase on contributions to the scheme be phased out and gradually adjusted as provided in schedule III over a period of time more than the 4 years proposed.

We trust that these proposals are implemented the Government will be able to achieve its objectives of providing basic social security, increase membership coverage and improve adequacy of benefits paid out of the scheme by the fund with support from employers. The Federation of Kenya Employers would appreciate an opportunity to present these views before the Committee of the House.

Signed:-


Jacqueline Mugo (Mrs.)

EXECUTIVE DIRECTOR

For and on behalf of FKE

Central Organisation of Trade Unions (Kenya)

All correspondence should be addressed to the Secretary-General

Chairman - General
Rajab W. Mwondi, MBS

Secretary - General
Francis Atwoli, MBS

Treasurer - General
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CABINET SECRETARY
MINISTRY OF LABOUR, SOCIAL
SECURITY AND SERVICES

493 1971 2013
RECEIVED 5th Oct, 2013
P. O. Box 40326-00100 NAIROBI-KENYA

Our Ref:.....

Hon. Kazungu Kambi
Cabinet Secretary
Ministry of Labour, Social Security and Services
P.O. Box 40326-00100
NAIROBI

Dear Hon. Kazungu,

**RE: PROPOSED AMENDMENTS TO THE NATIONAL SOCIAL
SECURITY FUND BILL, PART III N.S.S.F BOARD OF TRUSTEES
SECTION 6 DI, D2 2013**

D.1 EMPLOYERS' REPRESENTATIVE

*'Two persons, one of whom shall be of either gender with **knowledge and experience in matter relating to employers** shall be appointed after nomination by the most representative employer's organization in Kenya'.*

D.2 EMPLOYEES REPRESENTATIVE:

*'Two persons, one of whom shall be of either gender with **knowledge and experience in matter relating to workers** shall be appointed after nomination by the most representative workers' organization in Kenya'.*

**Francis Atwoli, EBS, MBS
SECRETARY GENERAL**

Deputy Secretary -General:
1st. Vice Chairman :
2nd Vice Chairman :

George M. Muchai, MBS
Rev: Joel K. Chebii, OGW
Francis Murage

1st Assistant Secretary -General:
2nd Assistant Secretary -General:
Deputy Treasurer General:

Benson Okwaro
Carolyn C. Rutto
Rebecca Nyathogora

National Social Security Fund Bill 2013 (NSSF Bill 2013)

This position paper is prepared by Kenya Private Sector Alliance (KEPSA) on behalf of:

Federation of Kenya Employers (FKE)
 Association of Retirement Benefits Schemes (ARBS)
 Association of Kenya Insurers (AKI)
 Association of Pensions Administrators of Kenya (APAK)
 Local Authorities Pensions Trust (LAPTRUST)
 Kenya Association of Manufacturers (KAM)
 Kenya Bankers' Association (KBA)
 (jointly referred to as the Principals)

The Principals affirm their full support for the reform of National Social Security Fund with the aim of creating a retirement benefits scheme capable of delivering value to members and for transformation into a pension fund. We support the restructuring and transformation of NSSF and believe that the spirit of the Bill is good. The main challenge would relate to implementation because the Bill, in its present form, will not achieve and realize its objectives.

The Principals have reviewed the NSSF Bill 2013 and have, with assistance from KEPSA prepared this position paper setting out

- (a) Areas for improvement of the Bill
- (b) Areas for enhancement of the overall proposal to strengthen governance And value delivery

Identification of issue(s)	Provision in NSSF Bill 2013	Analysis of problem with the provision	Proposed remedy/amendment
Fourth Schedule Reference Scheme Test		There is a need to ensure "contracting-out" within the independent competence of the Retirements Benefits Authority.	Partial contracting out is in order. The reference scheme test should be amended to provide for a transition period Provide clarification that the prescribed requirements will be set out by RBA Correct error on section 1(c) to make reference to compliance with sub-section (2), (3) and (4). Under Section 5 remove reference to "cabinet secretary" to ensure regulations on "contracting-out"

	<p>“Reference Scheme Test” means the test of scheme quality which schemes have to meet in order to contract out of the Pension as described in the Fourth Schedule hereto;</p>	<p>“Reference Scheme Test” insert the word Fund after Pension.</p>	<p>to be set by the Authority. Proposed definition of reference scheme test: “Reference Scheme Test” means the test of scheme quality which schemes have to meet in order to contract out of the Pension Fund as described in the Fourth Schedule hereto;”</p>
Third Schedule	<p>Section 2: Definitions “Contract of service” is defined as “an agreement, whether entered into orally or in writing, and whether express or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship or indentured learnership”.</p>	<p>While the inclusion of apprenticeships etc is to some extent modified by exclusions in the definition of employee which excludes a person who “(i) is undergoing full time instruction in a school, or any such place of education or training as may be prescribed for the purposes of this definition, or who is an apprentice; and (ii) is not in receipt of wages which provide him wholly or substantially with a livelihood” it is not clear if it goes far enough. This provision could serve to discourage internships</p> <p>Most employees of Kenya companies who go to work in subsidiaries/associates outside Kenya are on secondment and remain employees of the Kenya company. However they are obliged by the laws of the host country to contribute to that country’s State Scheme.</p>	<p>The title of the table should be amended to refer to tier I and tier II contributions</p> <p>Proposed definition of Contract of service: “Contract of service” means an agreement, whether entered into orally or in writing, and whether express or implied, to employ or to serve as an employee for a period of time, excluding a contract of apprenticeship or indentured learnership which has a term of less than 12 months”.</p>
	<p>“Employee” includes a person who is “ordinarily resident in Kenya and is employed outside Kenya (or partly in and partly outside Kenya) under a contract of service entered into with an employer in who resides in or has a place of business in Kenya”.</p>		<p>The Bill should be enclosed to provide that: (a) Reciprocal Arrangements (section 64) reflect harmonisation between the NSSF and the State Scheme of the “host country”. (b) For transitional arrangements to cover situations where Reciprocal Arrangements are not yet in place to avoid liability for contributing to both Kenya and host country schemes.</p>

<p>"Interest" is defined as "in relation to each Member, the investment income credited to the accounts of individual members at such rates the Board may, in consultation with the Actuary or such other qualified person, determine, in their reasonable discretion from time to time declare, at least annually, having regard to the income on the Fund's assets".</p>	<p>The wording needs re-drafting the word "and" after "determine"</p>	<p>Proposed definition of Interest: "interest means in relation to each Member, the investment income credited to the accounts of individual members at such rates the Board may, in consultation with the Actuary or such other qualified person, determine and, in their reasonable discretion from time to time declare, at least annually, having regard to the income on the Fund's assets".</p>
<p>Invalidity benefits is defined as "the invalidity benefit payable under section 38 and section 44"</p>	<p>"Invalidity Benefit" should include a definition of Invalidity Pension to be consistent with Section 38</p>	<p>Proposed definitions: Invalidity Benefit means the invalidity benefit payable under section 44 Invalidity Pension means the invalidity pension payable under section 38</p>
<p>"Reference Scheme Test" means the test of scheme quality which schemes have to meet in order to contract out of the Pension as described in the Fourth Schedule hereto;</p>	<p>"Reference Scheme Test" insert the word Fund after Pension.</p>	<p>Proposed definition of reference scheme test: "Reference Scheme Test" means the test of scheme quality which schemes have to meet in order to contract out of the Pension Fund as described in the Fourth Schedule hereto;"</p>
<p>"Survivor's pension" means the benefit granted under section 37 and section 43;</p>	<p>"Survivor's pension" should include a definition of Survivors Benefit to be consistent with Section 43</p>	<p>Survivor's Benefit means the survivor's benefit payable under section 43 Survivor's Pension means the survivor's pension payable under section 37 Definition of "National Average Earnings" should be</p>

		<p>On the definition of "Tier 1 Pension Fund Credit", it is important to remove ambiguity on the source of funding of this benefit.</p>	<p>amended to remove the wording 'per employee' New proposed definition reads: "National Average Earnings means for each financial year, the average wage earnings as published by the Kenya National Bureau of Statistics in the Economic Survey for the prior year"</p> <p>Definition of "Tier 1 Pension Fund Credit" to include wording "less deductions up to a maximum of 2 per cent of Tier 1" and to include "funeral grant" benefit. New proposed definition reads: "Tier 1 Pension Fund Credit" means in relation to each pension Fund member, the portion of the Pension Fund credit at any particular date equal to the aggregate of the Tier 1 Contributions by and in respect of the Member less deduction up to a maximum of 2 per cent for covering the estimated annual cost of the minimum benefits on death, disability and funeral grant with interest thereon"</p> <p>Definition for invalidity benefits to be provide that the benefit will be introduced subject to a five year transition period. New proposed definition reads: "Invalidity benefit" means the invalidity benefit subject to a five-year transition period and payable under section 38 and section 44</p> <p>Definition of "Wages" includes fixed basic wage or salary plus non-discretionary housing and other fixed allowances but excludes any fluctuating emoluments</p>
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<p>Transitional arrangements (include clause)</p>			<p>Proposed that specific transitional arrangements should be provided on:</p> <ul style="list-style-type: none"> - amendments to existing occupational schemes rules to allow for protected rights (benefits) - exempt schemes to maintain their status - a transition period for a minimum of 365 days from commencement of NSSF Act, 2013 gazettement for Schemes that apply under Fourth Schedule. - Transitional provisions needed to cover the period until reciprocal agreements are effective (Section 64)
<p>Powers of the Cabinet Secretary</p>	<p>Sections 47, Section 26(d), Section 34(2), Fourth Schedule</p>		<p>Remove discretionary powers to the Cabinet Secretary to</p> <ul style="list-style-type: none"> - create new benefits under Section 47 and instead, make creation of new benefits subject to the RBA and approval by parliament. New benefits but must be within the 2 per cent of Tier I contributions - regulation for opting out under the Fourth Schedule Section 5(5) should be made by the RBA only and not the Cabinet Secretary - Section 26(d) on making regulations for voluntary registration should be under the RBA and not the Cabinet Secretary - Recommendations on additional benefits under Section 34(2), should be made to the RBA and subject to ratification by Parliament - The power to make regulations for purposes of carrying out objects and purposes of the Act under Section 68(1) should vest in the RBA
<p>Memorandum of Objectis</p>	<p>"The enactment of this Bill shall not occasion additional expenditure of the exchequer"</p>	<p>The proposed Act provides for all investment and other income of the Fund to be exempt from all tax and for benefits</p>	<p>"The enactment of this Bill shall occasion additional expenditure of the exchequer which shall be drawn from the Consolidated Fund"</p>

		<p>payable to be tax-exempt.</p> <p>The veracity of this provision is open to question.</p>	
<p>Establishment of the Fund and supervision by RBA</p>	<p>Section 3. (1) "There is established a fund to be known as the National Social Security Fund which shall be vested in, operated and managed by the Board."</p> <p>Section 71 "The requirements of this act are in addition to the requirements imposed by the Retirement Benefits Act."</p>	<p>Section 3(4) of NSSF Bill 2012 contained clear statement that "The Fund is subject to the provisions of the Retirement Benefits Act [Cap. 197] as amended from time to time and shall be operated and managed by the Board in accordance with the Trustee Act [Cap. 167]." It is worrying that this fairly clear provision for supervision by RBA has been removed from Clause 3 of the NSSF Bill 2013.</p>	<p>Amended Section 3 (1): "There is established a fund to be known as the National Social Security Fund which shall be vested in, operated and managed by the Board and subject to the Provisions of the Retirement Benefits Act and. Regulations as amended from time to time and shall be subject to supervision by the Authority"</p>
<p>Appointment & Qualification of Trustees</p>	<p>(i) Section 6(d)</p>	<p>The bill has removed the institutional representation and the tripartite nature of the NSSF board.</p> <p>The fact that the Board of Trustees will be appointed by the Cabinet Secretary raises governance issues since board members should ideally (and to comply with RBA Regulations) draw representation from entities representing contributors.</p> <p>There is concern over the lack of clarity on the nomination process and the blanket powers given to the minister to pick and choose. The Bill should specifically provide for two nominees by the most representative Federation of Employers to represent the private sector. This will ensure institutional</p>	<p>Section 6(d) needs to include the following:</p> <ul style="list-style-type: none"> • The RBA shall certify and vet nominees to the board. • nominees shall comply with the provisions on integrity under Chapter 6 of the Constitution of Kenya • change designation of Managing Trustee to Chief Executive Officer. The CEO will have no voting rights and shall not be a trustee. • Sub-clause 6 (d) (ii) should be amended to read "two persons nominated by the most representative Federation of Employers by virtue of their knowledge and experience to represent employers in Kenya."

<p>Disqualification from appointment</p>	<p>Section 7: A person shall not be appointed a Trustee if the person</p>	<p>representation.</p> <p>The maximum number of Trustees is 9. 6(d) provides for 2 (PSs) + 2(ER reps) + 2(EE reps) + 3=9 so the Managing Trustee cannot be a BoT member. It is preferable that the MT should only be in attendance in his designation as CEO. While the skills/experience of the 7 members referred to in (d)(i),(ii),(iii) are outlined it is preferable that minimum educational/professional qualifications and experience should be legislated as for the minimum qualification of the Managing Trustee under Section 15(7). The criteria for appointment are open hence giving the Cabinet Secretary powers to unilaterally decide on appointments and qualifications. This is not desirable.</p> <p>Compliance with provisions of Chapter 6 of the Constitution also should be a requirement and vetting by RBA or approval by the National Assembly is necessary. The appointment criteria fall short on accountability and transparency expectations.</p>	<p>Include provision: "falls to satisfy any of the professional and or academic qualifications as may be required by the Authority or prescribed under the Retirement Benefits Act "</p> <p>It is recommended that the word "may" should be replaced with "shall", the words "and the Retirement</p>
<p>Powers of Board relating to</p>	<p>Section 10(2)(g): Without prejudice to the generality of</p>	<p>Previous versions included "falls to satisfy any of the professional and or academic qualifications as may be required under the Retirement Benefits Act "</p> <p>This is not sufficiently specific – the word "may" implies an option rather than a</p>	

investment	subsection 1, the Board may - (g) invest any funds of the Fund not immediately required for its purposes in the manner allowed by this Act;	requirement	Benefits Act" should be added after "by this Act" and that "purposes" be more clearly defined to read: Section 10(2)(g): <i>Without prejudice to the generality of subsection 1, the Board shall - (g) subject to the Provisions of the Act (RBA Act) invest any funds of the Fund not immediately required for the purpose of meeting benefits payments, operating expenses and other similar outgoings in the manner allowed by this Act and the Retirement Benefits Act;</i>
Remuneration of Board of Trustees	Section 13. reads: "(1) There shall be paid to the members of the Board or of any Committee of the Board such remuneration, fees or allowances as the Board may determine (2) Remuneration and allowances payable under subsection (1) shall be subject to the approval of the Cabinet Secretary"	There is need for clear and accountable process of establishing board remuneration	Section 13 (2) (2) <i>Remuneration and allowances payable under subsection (1) shall be subject to the approval of the Cabinet Secretary and disclosure at the Annual General Meeting and annual financial statements".</i>
Managing Trustee	Section 15(3) reads: <i>The Managing Trustee shall be an ex-officio member and Secretary to the Board.</i> Section 15(5) reads: <i>"The Managing Trustee shall, unless prematurely terminated, serve for a term of six years and shall</i>	If the holder of this office is to be a trustee this provision is inconsistent with RBA Regulations. As indicated under Appointment of Trustees above, the Managing Trustee should not be a member of the BoT. This raises the question of job title -- it is preferable to revert to the designation.	Redraft Section 15 accordingly changing designation of Managing Trustee to Chief Executive Officer. The CEO should be appointed by the Board and while s/he sits in Board meetings, has no voting rights

<p>The Old Provident Fund and other Funds</p>	<p>not be eligible for re-appointment".</p> <p>Section 18(2) reads: <i>The Board shall retain and continue to operate the old Provident Fund previously operated under the now repealed National Social Security Fund exclusively for purposes specified under the Second Schedule</i></p>	<p>Chief Executive Officer.</p> <p>Important to understand the implications of retaining and continuing to operate the old Provident Fund operated under the repealed NSSF Act (Second Schedule) e.g. returns to members given the history on investment decisions; high ratio of operational costs etc. The main purpose here was to protect the assets of the New NSSF against claimants against the Old NSSF. It is not clear if the wording achieves this without raising complications relating to use of assets, allocation of investment income and operating costs etc.</p>	<p>Transitional arrangements need to be ascertained and in particular, on liabilities. The Second Schedule Section (2) (a) does not transfer liabilities of the Old Provident Fund to the new Fund. It is necessary, though, to create specific timelines for transition and ring-fencing of liabilities. There is need to include provision for separate custody, investment, statement of accounts and financial audit which should be separate for the three funds.</p>
<p>Mandatory Membership including employees of the National & County Governments.</p>	<p>Section 18(4) reads: <i>All persons who are subject to the provisions of the Employment Act and are eighteen years old or above and have not attained the pensionable age shall be members of the Pension Fund.</i></p> <p>Section 70(1) reads: <i>This Act applies to the Government— (a) as an employer and, consequent thereupon, for purposes of co-ordination and accommodation of public servants joining the Fund as members thereof and for dealing with any matter arising therefrom;</i></p>	<p>Section 18(4) makes it mandatory for all those in employment, other than self employment, to become members of the scheme. Section 70(1) inconsistent with Section 60 of the Public Service Superannuation Scheme Act, 2012 which removes the application of the NSSF Act from the employees of the Public Service or the employees of the Government</p>	<p>There is need for redrafting to ensure consistency with other related legislation. Transitional arrangements necessary to cover employees of the Public Service or the employees of the Government</p>

Mandatory Contributions to the fund.	Section 20	<ul style="list-style-type: none"> Employers and employees are required to contribute to the Fund at 6% each but there is no clarification on gratuity payment. There are many employers already making gratuity payment from negotiated Collective Bargaining Agreements (CBAs) An employee should be entitled to either gratuity negotiated under CBA or N.S.S.F but not both benefits. <p>It is already recognized in Employment Act, 2007 Section 35 (6) that the employer is obligated to pay gratuity/service pay where he is not making contributions to N.S.S.F</p>	Add Section 20 (4) to read " where an employer is already paying gratuity, the payment shall be paid net of N.S.S.F Contributions".
Exempt Persons	<p>Section 29 of the Bill provides for only 2 classes of exempt persons.</p> <ul style="list-style-type: none"> ➤ Persons exempt under Int'l conventions ➤ Non residents not employed for more than 3 years. <p>Previously exempt persons no longer exempt</p>	The Bill has effectively scrapped the exempt status of certain persons who were hitherto classified as exempt persons.	- exempt schemes to maintain their status in addition to those proposed under Section 29
Retirement Pension	The statement in Section 36(2) that " <i>a member may elect</i> " implies that the provision of a pension is optional. It is recommended to delete " <i>may elect</i> " and substituting with		Amend 36(2) and 36 (4) to replace word " may " with " shall "

	<p>"shall be entitled to receive".</p> <p>36(4) states that "a pension which becomes payable in terms of sub-section (2) may be purchased". The use of the word "may" suggests an option. It is recommended that the word "may" be replaced with "shall"</p> <p>Section 36 (6): Creates a requirement that a pension purchased from a Registered Insurer, " shall be subject to a minimum ten year guarantee period"</p>		<p>Amend Section 36(6) to provide for a minimum guarantee period of 5 years</p>
<p>Survivor's and Invalidity benefits</p>	<p>Sections 37(2) & 38(3): Augmentation of Survivor's and Invalidity benefits</p>	<p>To conform to the "money purchase" principle of defined contribution retirement benefits provision, it is necessary to ensure that funding of benefits falls within the 2 per cent Tier 1 contribution. There is already provision for commutation of Trivial Pensions in 36(7)(c) and it is logical for the same provision to apply to Survivor and Invalidity Pensions</p>	<p>Include wording that the funding of augmentation benefits subject to the cap of 2 per cent under tier 1.</p>
<p>Medical Boards</p>	<p>Section 38(5) reads: <i>The Board shall appoint medical boards for the purposes of examining persons who have claims to benefits under this section and may-</i> (a) require any person who has</p>	<p>This is an unnecessary piece of bureaucracy which may be cumbersome and costly. It should be left to the trustees to accept or reject medical certificates from registered medical practitioners.</p>	<p>Amend Section 38(5), (6) to provide that the Fund should meet the cost of a second medical, where required, from its administration expenses</p>

<p>Monies of the Fund and investment thereof.</p>	<p>a claim to any benefit under this section to submit to an examination by a medical board. (b) prescribe the procedure for medical boards, guidelines to be followed and reports to be prepared ..</p> <p>Section 49(2) reads: "The Fund shall invest any of its funds which are not for the time being required to be applied for the purposes of the Fund in accordance with the provisions of the Retirement Benefits Act".</p>	<p>The Act does not categorically make the NSSF subject to RBA. Previous sections in earlier drafts that made such reference were amended (e.g. section 21). This appears to be a drafting oversight? How will this be enforced? We are aware that the scheme currently is not complying with the investment provisions of the Retirement Benefits Authority. This is not sufficiently specific in relation to the appointment of professional fund managers and custodians. It is also not clear if this applies to the old NSSF as well as the new Fund.</p>	<p>This section should be amended to replace "any" with "all" "The Fund shall, subject to the provisions of the RBA Act invest all of its funds which are not for the time being required to be applied for the purposes of the Fund in accordance with the provisions of the Retirement Benefits Act".</p>
<p>Administration Costs</p>	<p>Section 50: (1) There shall be paid out of the Fund expenses not exceeding 2 % of the total Fund assets for the administration of the Fund; (2) The percentage provided in subsection(1) shall apply in the first year from the commencement date and the Board shall thereafter take necessary measures to ensure</p>	<p>This clause caps administration expenses at 2 % of the total Fund assets for year 1 reducing to 1.5% in the sixth year following the commencement date. Even allowing for the fact that NSSF has higher overheads than occupational schemes, relating to its countrywide coverage etc, 2% of Fund Value is too high for costs of administration and the targeted reduction to 1.5% after 6 years is not sufficiently ambitious, particularly bearing in mind that asset values should</p>	<p>It is suggested that administration costs be capped at 1.5% by year 3 and 1% by year 6</p>

	<p>that the percentage reduces and is capped at 1.5% in the sixth year following the commencement date.</p>	<p>grow strongly with contributions at the levels envisaged, hopefully good investment income and increased coverage.</p>	
<p>Accounts and Audit.</p>	<p>Section 51(4)</p>	<p>The time period within which Audited reports should be published is not very clear. What is the time frame for the Auditor General or Private Audit firm to complete the work? The period for audits to be completed should comply with RBA Regulations. It is appreciated that it may well not be possible to complete the audit exercise within 6 months.</p>	<p>The Bill should be clear that the Audited accounts should be published in the media within six months of the end of each financial year. This should include a report from the actuary, disclosure on board remuneration and investment report.</p>



APAK
Association of Pension Administrators of Kenya

**ASSOCIATION OF PENSION ADMINISTRATORS OF
KENYA
(APAK)**

MEMORANDUM ON THE NSSF BILL 2013

**SUBMITTED TO:-
THE CHAIRPERSON, PARLIAMENTARY COMMITTEE ON
LABOUR**

THRU'

THE CLERK OF THE NATIONAL ASSEMBLY

OCTOBER 10, 2013

We, the undermentioned members of the Association of Pension Administrators of Kenya (**APAK**) hereby submit this memorandum to the Clerk of the National Assembly, on the National Social Security Pension Trust.Bill, 2012 for consideration by the Parliamentary Committee on Labour & Social Welfare.

1. CENTRAL BANK OF KENYA PENSION SCHEME
2. KENYA PIPELINE PENSION SCHEMES
3. KENYA PIPELINE PENSION SCHEMES
4. KPLC STAFF RETIREMENT BENEFITS SCHEME
5. KPA PENSION SCHEME
6. KPA PENSION SCHEME
7. KRA PENSION SCHEME
8. KRA PENSION SCHEME
9. TELEPOSTA PENSION SCHEME
10. MASENO UNIVERSITY RBS
11. NSIS STAFF SUPERANNUATION SCHEME
12. NSIS STAFF SUPERANNUATION SCHEME
13. LOCAL AUTHORITIES PENSIONS TRUST

EXECUTIVE SUMMARY

The Association of Pension Administrators of Kenya (APAK) is the premier association representing pension administrators in Kenya. It is mandated to promote and advocate for the welfare and promote better standards within the pensions administration sector. National Social Security Fund ("the Nssf") is a statutory provident fund established under the NSSF Act Cap 258 which was enacted on the 23rd November 1965. It was established and intended to be merely a 1st Pillar scheme offering **basic social security to complement other occupational based social welfare programmes.**

Whereas we as individual and collective members of APAK **support** the noble initiative of converting the NSSF into a Pension scheme, and welcome the good provisions contained in the Bill, **we remain apprehensive that certain ill drafted provisions in the Bill are certain to erode any anticipated gains and ultimately hurt the industry.**

It is imperative that any Bill approved by the legislature as a matter of principle and national interest, incorporate a complete overhaul to the existing NSSF framework to strengthen its structures, improve efficiency and capacity as well as allow complete opting out for all persons who are members of a scheme registered and under the oversight of the Retirement Benefits Authority under the Retirement Benefits Act No. 3 of 1997. **NSSF should co-exist alongside and not at the cost of all other 1,216 occupational retirement schemes**

Sadly, **the Bill in its current form does not address these concerns and it only serves to increase the wage bill, overtax the employers/workers compounding the effects of the VAT Act 2013 and may likely lead to a political backlash from the electorate.**

It is therefore imperative that the legislature subjects the Bill to scrutiny so as to address these concerns as it is evident that the Bill has numerous issues that need to be addressed key amongst them include:-

- a) **Inconsistencies with various other laws** as well as the constitution; (e.g the Public Service Superannuation Scheme Act No. 8 of 2012, The RBA Act No. 3 of 1997, the County Governments Act No. 17 of 2012 amongst others)
- b) Mandatory enrolment into NSSF of **ALL** persons (including the Government) in Kenya **without regard to employees already enrolled in registered retirement benefits schemes;**
- c) Unaffordable and duplicated contribution rates (at 12%) which shall be **an additional wage burden and a huge strain on already over taxed employers/workers** especially those already contributing to occupational retirement schemes;
- d) Unclear, vague and overly broad contracting out procedures;
- e) Weaknesses in the Board structure and inadequate minimum qualifications of members of the Board.

These concerns should be viewed as against the industry statistics. According to the Retirement Benefits Authority's 2012 Annual Report, the value of the retirement benefits sector was estimated at Kshs. 522.6 billion as at June 2012. Out of this **only Kshs.110.9 billion is held by National Social Security Fund (NSSF) while the remainder of Kshs. 412 Billion is in the possession of occupational schemes and held by registered fund managers.** If the Bill is enacted with its current flaws, it shall automatically lead to a collapse of all other schemes and be likened to the proverbial killing of the goose that lays the golden egg!

Attached, please find a tabular representation of the associations' concerns as well a copy of the legal opinion from our advocates in support of our memoranda.

1.0 CASE FOR REFORM

The Association is alive to the urgent need to clean up the legacy mismanagement and corporate governance weaknesses within the NSSF as an institution and therefore welcomes most of the proposed reforms.

However, APAK notes that the Bill as drafted does not address some of the systemic challenges facing the fund and it is therefore necessary that the Bill be amended accordingly to address these issues.

It is therefore important that the NSSF Board first addresses the key administrative and governance issues within the organization prior to implementing any radical changes. Further, the restructured scheme ought to embrace a competitive market driven economy and not adopt monopolistic tendencies contrary to the law.

2.0 WEAKNESSES OF THE PROPOSED BILL

The Association is concerned that Bill has several weaknesses which if passed without being amended, risk creating greater confusion in the retirement benefits sector.

Of great importance to APAK is **the Bill's conflict or inconsistency with certain provisions of the Constitution of Kenya 2010 as well as various other Acts of Parliament such as the Retirement Benefits Act No.3 of 1997, the Public Service Superannuation Act No.8 of 2012 and the Competitions Act, Cap 12.**

Further, the Bill derogates from the fundamental concept of Devolution which is the hallmark of the 2010 Constitution. It is imperative that the proposed Bill undergoes a major overhaul and is aligned to the Constitution, the Retirement Benefits Authority and other host of relevant statutes as well as receives proper stakeholder input from the Public, RBA, AKI, APAK, Kenya Law Reform Commission, CIC, Public Service Commission and others before presentation to the National Assembly.

a) **Mandatory Enrolment into the New Pension Scheme**

The Bill as drafted, advocates for a **mandatory registration of ALL employees in NSSF**. This shall lead to a violation of the constitutionally enshrined freedom of choice as well as contravene pre-existing labour agreements protected under **Art. 41 of the constitution as well as in the Labour Relations Act No. 14 of 2007**. Consequently, if unattended, this shall expose the government to numerous complaints, labour disputes/strikes and possible litigation as was witnessed during the attempts to legislate on new NHIF rates.

The Bill under **S. 2 adopts a wide definition of the terms employee/employer**. Consequently, this compels **every person in any** form of employment (including the government and its permanent & pensionable staff) to join the scheme. Shall this proposed plan be affected, then, all employers, including the government shall be forced to **make double contributions** in respect of their pension savings and consequently lead to an inflated wage bill and additional expenditure by the exchequer.

Further, as the government has been listed as an employer, it shall face an increased wage burden on unbudgeted expenditure as it shall be forced to contribute **TWICE**. (i.e., to its Public Service Superannuation scheme as well as to NSSF). An increased wage bill shall result in less development expenditure and thereby renege on the Government's development projects.

In order to remedy this problem, it is proposed that the Bill at S. 18 be amended to provide that all persons who are employed within the country shall join a retirement benefits scheme registered and approved by the Retirement Benefits Authority. This shall either be the NSSF or any other occupational retirement scheme and shall help achieve the intended goal enshrined under Art. 43 of the Constitution without unduly creating a constitutional, fiscal and political crisis.

This approach will also be in line with the models adopted by other East African States within the **East African Common Market Protocol** who have liberalized their pension sector with the 1st Pillar Schemes offering just but a safety net for the vulnerable in the society. Tanzania has adopted a similar approach where the NSSF Tanzania is under the supervision and regulation of the Tanzania Regulatory Law and operates as just but one of the many occupational

retirement benefit schemes and competes with other statutory and non-statutory funds.

Whereas a contracting out provision if relevant, the Association is concerned that this provision imposes **vague and undocumented requirements** to be met by the scheme/employers prior to approval for contracting out. The conditions are also **overly broad** and under the 4th Schedule, it not certain who shall issue the "*prescribed requirements*" and that "*the scheme should comply with any prescribed requirements*"

b) Unreasonable 'Contracting out procedures'

S. 21 (2) (a) of the Bill attempts to provide for an option for employers contributing to a registered scheme to contract out of Tier II NSSF contributions. Whereas an option to opt out is welcome and necessary, the procedure as laid down in the reference scheme test is cumbersome, vague and too broad.

The Bill does not take into account employers who are already sponsors of an occupational retirement scheme. The Bill is silent as to whether they shall now hold all contributions in the interim period prior to RBA/KRA/Cabinet Secretary's approval or otherwise. Further, the total 90 day period awaiting approval to contract is too punitive to employers especially in DB schemes as it denies them investment income during this period.

S. 21(2)(b) & 4th Schedule 1(f), (5) the Bill provides that the opt-out may be exercised subject to a written request setting out details of the contracted out scheme "*as the Authority shall from time to time require from time to time*"... and that "*the scheme should comply with any prescribed requirements*". *The Cabinet Secretary shall, in consultation with the Authority, make regulations for the proper management of contracting-out, including the manner of making applications to the Authority by Reference Schemes and for contracting-out by employers and the communication of approval or otherwise to such scheme or employer.*

Moreover, this provision seeks to usurp the statutory powers of the RBA to determine the procedures and requirements to contract out and vest them with

the Cabinet Secretary, Social Services. It therefore complicates the entire process by having multiplicity of requirements, procedures and authorities.

This would amount to a violation of **Art. 47 of the 2010 Constitution** as it contravenes the right to **"Every person to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair"**

It is proposed by the Association that Schemes (preferably through their scheme administrators) and not employers should make the application to R.B.A for the approval to ensure efficiency, reduce bottlenecks and safeguard accrued benefits of members since most employers have never engaged directly with the RBA but all administrators have a working relationship with the RBA. Further, the Reference Scheme Test under the 4th Schedule should be very narrow, clear and concise as to what the requirements for approval are.

The association recommends that the RBA Act No. 3 of 1997 be amended to provide that all applications ought to be heard and determined by the RBA as the independent oversight authority. This will avoid bias, self interests by NSSF and procedural unfairness.

Indeed, the **Centre for Governance and Development (CGD)** in its digest strongly recommends that employers with registered occupational retirement benefit schemes should be permitted to fully opt out of the Trust (NSSF) (*see attached digest*)

c) Increased Contribution Rates

The draft Bill at S.20 seeks to increase the contribution rates from the current Kshs.400 to 12% of the Member's salary (*at 6% payable by the employer and 6% by the employee.*) Whereas this may eventually translate to enhanced benefits, (assuming transparent appointment of investment managers of scheme funds) the association is concerned that with the current high administrative costs, the increase may not be justifiable.

Further, a high rate such as the proposed **12% is too costly and unaffordable** and will eventually edge out all other occupational retirement schemes. In addition to increasing cost of labour in the country which will seriously discourage any meaningful investment in the country!

The Government of Kenya, through **Treasury Circular No.18/2010** dated **24th November 2010** (*copy annexed*) directed all public service retirement benefits schemes that **employer's contributions shall not exceed two (2) times the employee's contribution rates or 20% whichever is lower.**

Further, the circular provides that Pensionable Emoluments (*salary used to calculate pension*) must be defined as basic salary (*excluding all allowances*). The Bill uses gross salary as opposed to a basic salary meaning that the 6% will eventually be higher than had it been pegged on the basic pay alone. The Bill ought to be amended and harmonized with the policy circular to avoid inconsistencies.

The Association is greatly worried that employers (*such as county governments*) who currently remit **15%** of their employees' pensionable emoluments if forced to join the new NSSF and contribute **a further 6%** shall not only have an unbearable financial burden of contributing at the rate of **21%** but shall be contravening the express government's direction if they do! **This may not be sustainable and something has to give. Either the NSSF has to reduce to a basic contribution or the Occupational (Employer Schemes) just wind-up.**

The import of such arbitrary increase in contribution rates is that:-

- i. It will lead to violation of the government directive vide Treasury Circular No.18/2010
- ii. Employers will not be motivated to provide additional contributions to their occupational retirement benefit schemes due to the high costs and mandatory nature of the proposed NSSF;
- iii. Imminent collapse of occupational retirement benefits schemes due to the high costs of contributions.

d) Risk of Creating a Monopoly/Collapse of all Other 1,216 Schemes

As indicated above, approximately registered 1,217 retirement benefits schemes currently exist in the country.

According to the Retirement Benefits Authority's 2012 Annual Report, the value of the retirement benefits sector was estimated at Kshs. 522.6 billion as at June

2012. Out of this only Kshs.110.9 billion is held by National Social Security Fund (NSSF) while the remainder of Kshs. 412 Billion is in the possession of occupational schemes and held by registered fund managers. If the Bill is enacted with its current flaws, it shall automatically lead to a collapse of all other schemes and be likened to the proverbial killing of the goose that lays the golden egg!

The future of such voluntary schemes would be in doubt as the burden of double contributions would be too high for employers and employees. Most other schemes would therefore collapse and or be wound up leading to massive job losses and risk a collapse of the financial sector as pension funds have been an important source of funds to the national economy.

The proposed Bill would therefore create a monopoly and lead to unfair market practices against the provisions of the Competitions Act, Cap 12 of the Laws of Kenya. Eventually, this would jeopardize the right to Social Security as guaranteed by the Constitution.

It is therefore imperative that in order to foster productive competition in the social security market place, the Bill ought to be amended to avoid creating a monopoly in the market

e) Conflict with Public Service Superannuation Scheme Act No.8 of 2012

Section 60 of the Public Service Superannuation Scheme Act No.8 of 2012 which amends S.45 of the NSSF Act Cap 258 by inserting S.43 (1A) **expressly prohibits the application of the NSSF Act on persons in the employment of the "Public Service"**. However, the NSSF Bill by revoking the Act but retaining the scheme to which it enlists the employees in the public service as members, attempts to exercise an illegality and contravene the law by disregarding the intention of the legislature in the express provisions of S.45 (1A) of the NSSF Act which clearly in no uncertain terms ousts the jurisdiction of the NSSF Act and Fund from applying on officers in the employment of the Public Service Commission.

f) Good Governance and the Application of The Retirement Benefits Authority (RBA)

The Retirement Benefits Authority (RBA) was established by the RBA Act No.3 of 1997 and is mandated to:

- Regulate and supervise the establishment and management of retirement benefits schemes.
- Protect the interest of members and sponsors of retirement benefits schemes.
- Promote the development of the retirement benefits industry.

The RBA is therefore the oversight authority established by Government to oversee the operations of all retirement benefits schemes in the country in order to ensure proper and effective corporate governance.

However, the Bill at S. 71 provides that "*the requirements of the Act are in addition to the requirement of the RBA Act*". This is an attempt to oust the application of the Retirement Benefits Act as well as establish the NSSF as a body not subject to the scrutiny of the Industry regulator. This is an illegality as funds held in the scheme are member's funds and by not being subject to oversight and supervision of the RBA the Bill opens a portal for mismanagement of scheme funds contrary to the fiduciary responsibility on Trustees.

The association welcomes the media reports on proposals by the Task Force, State Corporations recommending that the NSSF be immediately brought within the ambit of the RBA . **The bill should be amended to provide that the new scheme shall be fully compliant with the provisions of RBA Act.**

Further, to ensure that the scheme funds are prudently invested and managed, the Bill should be amended to provide for competitive recruitment of its top management and Trustees as well as set a threshold required for persons to be appointed Trustees as they are public officers. The requirements of Chapter on Leadership and Integrity ought to apply to such persons.

g) Deregistration of Exempt Persons

The Bill in its proposed 1st Schedule (Exempt Persons) seeks to illegally alter the 2nd Schedule (Exempt Persons) of the NSSF Act Cap 258 and under S.2 of the Second Schedule, compel persons who were exempt from membership by law to register with the new scheme. This de-registration of exempt persons is illegal since the NSSF Act Cap 258 in 1965 was cognizant of already existing pension schemes under the diverse legal frameworks.

These *inter alia* include:

- a) Persons in a scheme subject to the Pensions Act
- b) Persons in the Service of any University or College superannuation scheme
- c) Exempted persons under any international convention
- d) Non- Civilian members of the armed forces, Kenya Police Force, Prison Services, National Youth Service

The attempt by the management of NSSF to arbitrarily take away the exempt status of these groups and compel such persons to register as members is inconsistent with **Articles 47(1) of the Constitution**. It is important to note that majority of these groups were either exempted by a preceding Act of Parliament or have superior occupational retirement benefit schemes. Compelling them to join the fund jeopardizes their membership and vested benefits enjoyed in the superior scheme and ultimately violates **Article 43(1) (e) of the Constitution** which provides that every person has the right to social security.

Pursuant to the foregoing, it is our humble submission that NSSF at the earliest possible time considers the concerns of the Association of Pension Administrators of Kenya on behalf of the key players and stakeholders in the industry noting to promote the spirit of the Constitution of Kenya 2010. It is therefore our humble submission that the proposed Bill be amended accordingly taking into consideration the concerns raised herein.

CONCLUSION

To this end, APAK humbly submits as follows:-

1. The Bill ought to embrace the existence of the RBA Act No 3 of 1997 hence any mandatory pension scheme should be entrenched in and regulated by the RBA Act and not the Bill as proposed;
2. Additionally, the proposed contribution rates of 12% under the Bill would in effect result in the provision of inferior benefits to members of occupational retirement benefits schemes and this would result in a violation of Art 43 of the Constitution.
3. Whilst APAK supports the envisaged NSSF, it should however, in the interest of other existing retirement benefits schemes **NOT** be allowed to exercise monopolistic tendencies. NSSF should therefore exist in competition alongside other retirement benefit schemes; consequently, the Bill should be amended to allow an automatic exemption of all persons who are already registered in a registered retirement benefits scheme approved by the RBA.
4. There is need to engage ALL the stakeholders in the pensions industry/sector so as to allow them air their views on the Bill and have their contributions incorporated in the Bill. This is in line with good Corporate Governance and industry best practice.
5. It is further opined that consequent to the Bill, the RBA Act No.3 of 1997 ought to be amended to provide that all employers must enlist their employees in a retirement benefit scheme of their choice or the NSSF. This is in line with international best practice industry standards. Consequently, the Retirement Benefits Authority (RBA) should be mandated to **FULLY** oversee the activities of NSSF in accordance with the provisions of the RBA Act;

ASSOCIATION OF PENSIONS ADMINISTRATORS OF KENYA (APAK)



H. K. KILI, OGW
CHAIRMAN, APAK

No.	Issues	Provision in NSSF BILL, 2013	Problem	Remedy
1	<p>"Contracting –out by employer"</p> <ul style="list-style-type: none"> ✓ 60+ Days waiting period. ✓ Broad Requirements ✓ Unclear regulator ✓ Employers and not Schemes to apply. ✓ KRA Approval for Income Tax Exemption ✓ Cabinet secretary (Social Security) making regulations for contracting out! 	<p>S. 21(2) (a) The Bill provides that <i>"the employer shall make written request of its intention to opt out to the Authority at least 60 days before opting to contract-out"...</i></p>	<ul style="list-style-type: none"> ✓The Bill does not take into account employers who are already sponsors of an occupational retirement scheme. The Bill is silent as to whether they shall now hold all contributions in the interim period prior to RBA approval or otherwise. ✓The total 90 day period awaiting approval to contract is too punitive to employers especially in DB schemes as it denies them investment income during this period. 	<ul style="list-style-type: none"> ✓ The provision should be amended to allow employers who are already sponsors to continue making remittances pending approval to contract out. ✓ The waiting period should be reduced to a maximum of 30 days so as to safeguard the members' benefits by minimizing the loss of investment income period.
		<p>S. 21(2)(b) & 4th Schedule 1(f), (5) The Bill provides that the opt-out may be exercised subject to a written request setting out details of the contracted out scheme <i>"as the Authority shall from time to time require from time to time"...</i> and that <i>"the scheme should</i></p>	<ul style="list-style-type: none"> ✓This provision imposes vague and undocumented requirements to be met by the scheme prior to approval for contracting out. ✓The conditions are also overly broad and under the 4th Schedule, it not certain who shall issue the <i>"prescribed requirements"</i> ✓This provision seeks to take 	<ul style="list-style-type: none"> ✓ Schemes and not employers should make the application to R.B.A for the approval to ensure efficiency, reduce bottlenecks and safeguard accrued benefits of members. ✓ The Reference Scheme Test under the 4th Schedule should be very narrow, clear and concise as to what the

		<p><i>comply with any prescribed requirements"</i></p> <p>✓ <i>"The Cabinet Secretary shall, in consultation with the Authority, make regulations for the proper management of contracting-out, including the manner of making applications to the Authority by Reference Schemes and for contracting-out by employers and the communication of approval or otherwise to such scheme or employer."</i></p>	<p>away the powers of the RBA to determine the procedures and requirements to contract out and vest them with the Cabinet Secretary, Social Services. It therefore complicates the entire process by having multiplicity of requirements, procedures and authorities.</p>	<p>requirements for approval are.</p> <p>✓ This test should be anchored under the RBA Act and NOT the NSSF Bill to ensure partiality and Part 5 of the 4th Schedule should be deleted and instead these powers granted to the RBA under Cap 197.</p>
2	Tax Exemption.	<p>S.66(1) The Fund 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 Fund.</p>	<p>✓ The proposal seeks to grant NSSF undue advantage by making them exempt from paying any land associated tax such as rates, land rent e.t.c. All other occupational retirement schemes investing in property do not have similar benefits.</p>	<p>✓ The provision should be deleted or made to apply across the board to all other schemes.</p>

3	<p>Mandatory Membership including employees of the National & County Governments.</p> <ul style="list-style-type: none"> ✓ Inconsistency with other laws 	<p>S. 18(4), 70(1) + S. 2 The Bill provides that <i>All persons who are subject to the provisions of the Employment Act and are eighteen-years old or above and have not attained the pensionable age shall be members of the Pension Fund.</i> And Also includes the Government as an employer</p>	<p>✓The Provision is inconsistent with S. 60 of the Public Service Superannuation Scheme Act, 2012 which removes the application of the NSSF Act from the employees of the Public Service or the employees of the Government.</p>	<p>The provision should be amended to comply with other existing legislations.</p>
4	<p>Contribution Rates</p> <ul style="list-style-type: none"> ✓ Based on Pensionable earnings (Gross?/ Basic?/ Basic + Any Allowances?) 	<p>S. 20 provides that an employer and employee shall contribute 6% of the employee's pensionable earnings each...</p>	<p>✓However, the Bill at S. 2 does not indicate whether the Pensionable earnings are pegged at the Basic pay, Gross Pay or includes any allowances</p>	<p>✓The Bill ought to be amended to clarify whether pensionable earnings includes allowances or not. ✓A high rate such as the proposed 12% is too costly and unaffordable and will eventually edge out 2nd and 3rd pillar schemes.</p>
5	<p>Exempt Persons</p> <ul style="list-style-type: none"> ✓ Previously exempt persons no-longer exempt. 	<p>S. 29 of the Bill provides for 2 classes of exempt persons.</p> <ul style="list-style-type: none"> ➤ Persons exempt under Int'l conventions 	<p>The Bill has effectively scrapped the exempt status of certain persons who were hitherto classified as exempt persons.</p>	<p>✓There's need to retain the exempt status of certain classes of persons in recognition of already existing arrangements.</p>

		<p>➤ Non residents not employed for more than 3 years.</p>		
6	Application of the RBA Act Cap 197	S. 71 of the Bill provides that " <i>the requirements of the Act are in addition to the requirement of the RBA Act</i> "	✓The marginal note to the provision indicates that the intention of the Bill is to subject it to the scrutiny and mandatory requirements of the RBA Act. However, the wording of S. 71 indicates that there is an intention to avert that where the two provisions conflict and make them supplemental provisions.	
7	<p>Powers to Amend Act</p> <p>✓ Cabinet Secretary empowered to "review and Adapt the Act"</p>	S. 26 (d) of the Seeks to grant the Cabinet Secretary powers " <i>to review and adapt certain provisions of the Act</i> "	✓ A member of the executive (Cabinet Secretary) cannot be granted powers bestowed to the Legislature to make laws or to amend substantial provisions of the Act or to make regulations that are inconsistent with the Act.	S. 26 (d) of the Act should be deleted
8	Appointment & Qualification of Trustees	S. 6 of the Bill proposes that the Cabinet Secretary shall appoint 6 persons to the Board under S. 6(d).	✓However, their minimum qualifications and experience has not been legislated unlike the minimum qualification of the Managing Trustee under S. 15(7). The criteria of their appointment is open ended thereby giving the Cabinet	✓The qualification and experience as members of the Board be also subject to S. 15(7) of the Bill

			Secretary powers to unilateral decide on their appointments and qualifications.	
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