

Legal Notice No. _____

THE INCOME TAX ACT

(CAP. 470)

IN EXERCISE of the powers conferred by Section 130 of the Income Tax Act, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Rules –

THE INCOME TAX (RETIREMENT BENEFIT) RULES,
2024

1. Citation	These Rules may be cited as the Income Tax (Retirement Benefit) Rules, 2024.
2. Interpretation	(1) In these Rules, unless the context otherwise requires— "employee" means an employee participating in a registered scheme; "employer" means a person carrying on a business wholly or partly in Kenya in connection with which a scheme is established; "pension" includes a pension from employment and a retirement annuity; "scheme rules" means the rules specifically governing the constitution and administration of a particular scheme; "scheme" for the purposes of these rules, means a retirement benefit scheme as defined in the Retirement Benefits Act (Cap 197). "trustee" includes a person having the management or control of a fund or scheme.
3. Registration of pension funds	A pension fund upon application being made under rule 7, be registered by the Commissioner for the purposes of the Act if the Commissioner is satisfied that it— (a) is registered with the Retirement Benefits Authority;

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| | <p>(b) provides that all moneys payable thereunder shall be paid in Kenya;</p> <p>(c) provides that no payment thereunder shall be made to the employer without the written consent of the Commissioner;</p> <p>(d) provides that in the case of a defined contribution pension fund where a surplus is identified by the audit required under subparagraph (i)(i), such surplus shall be allocated to the respective accounts of the members of the fund in lieu of new contributions by the employer in the year and subsequent years until the surplus is exhausted and such allocation of surplus shall be deemed to be contributions by the employer; and</p> <p>(e) provides that the payment of pension shall not commence--</p> <ul style="list-style-type: none">(i) until the retirement of the employee from service with the employer on or after the employee attains the age of fifty years; or(ii) except upon earlier retirement on account of infirmity of mind or body. <p>(f) does not provide for the payment of sums on the death of an employee except a lump sum payable to the estate, or a lump sum or an annuity or both whether directly or indirectly payable to the widow or widower or dependants, of that employee;</p> <p>(g) does not provide for the payment of an annuity, to the widow or widower of an employee, other than annuity for a term certain or during the life of that widow or widower or during the minority of a dependant of that employee;</p> |
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(h) provides that all benefits derived from contributions made by an employee shall vest immediately in the employee; and

(i) provides that -

(i) in the case of a defined contribution pension fund, an audit shall be carried out once every year during which all assets shall be valued at their current market prices and all surplus funds not allocated to the account of a member of the fund identified;

Provided that, where the fund makes provision for a reserve fund, the amount of this reserve fund that does not exceed ten per cent of the market value of the assets may be excluded from the surplus funds not allocated to the account of a member of the fund;

(ii) in the case of a defined benefit pension fund, an actuarial investigation shall be carried out by an actuary at least once every three years during which any actuarial deficiency or surplus in the fund shall be determined;

(iii) the audited accounts or the actuarial report as the case may be, shall be availed to the Commissioner upon request;

(iv) any surplus funds identified shall appropriately be allocated to the respective accounts of the members, and upon the fund being wound up, the surplus funds shall be deemed to be the funds of the employer, unless the trust deed of such scheme specifies otherwise, and shall be required to be withdrawn and charged to tax in the hands of the employer.

	<p>(i) provides that, in the case of a defined contribution pension fund that maintains a reserve fund, a beneficiary shall receive a share of the reserve fund upon being awarded benefits in respect of retirement, on grounds of ill health or infirmity of body or mind death, as the case may be in proportion to the value that the funds allocated to the account of the beneficiary bears to the value of the funds allocated to the accounts of all beneficiaries of the fund at that time.</p>
<p>4. Registration of provident funds</p>	<p>A provident fund upon application being made under rule 7, shall be registered by the Commissioner for the purposes of the Act if the Commissioner is satisfied that it—</p> <p>(a) is registered with the Retirement Benefits Authority;</p> <p>(b) provides that all sums payable thereunder shall be paid in Kenya;</p> <p>(c) provides that no benefit or contribution accruing or payable thereunder shall be capable of assignment;</p> <p>(d) provides that no payment thereunder shall be made to the employer without the written consent of the Commissioner;</p> <p>(e) provides that in the case of a provident fund where a surplus is identified by the audit required under subparagraph (g)(i) such surplus shall be allocated to the account of members of the fund in lieu of contributions by the employer in the year and each subsequent year until the surplus is exhausted and such allocation of surplus shall be deemed to be contributions of the employer.</p> <p>(f) provides that all benefits derived from contributions made by an employee shall vest immediately in the employee;</p>

	<p>(g) provides that—</p> <p>(i) an audit shall be carried out once every year during which all assets shall be valued at their market prices and all surplus funds not allocated to the account of a member of the fund identified;</p> <p>(ii) the audited accounts shall be availed to the Commissioner upon request.</p> <p>(h) provides that, in the case of a provident fund that maintains a reserve fund, a beneficiary shall receive a share of the reserve fund upon being awarded benefits in respect of retirement, on the grounds of ill health or infirmity of body or mind or death, as the case may be, in proportion to the value that the funds allocated to the account of the beneficiary bears to the value of the funds allocated to the accounts of all beneficiaries of the fund at that time.</p>
<p>5. Registration of individual retirement funds</p>	<p>An individual retirement fund shall, upon application being made under rule 7, be registered by the Commissioner for the purposes of this Act if the Commissioner is satisfied that it—</p> <p>(a) is registered with the Retirement Benefits Authority;</p> <p>(b) provides that all sums payable thereunder shall be paid in Kenya;</p> <p>(c) provides that the only contributions received shall be—</p> <p>(i) funds transferred from another registered fund or registered individual retirement fund under section 22A(5) of the Act where the Commissioner has been duly informed of the transfer of funds; or</p> <p>(ii) contributions by or on behalf of an individual who qualifies for a deduction under section 22B of the Act;</p>

	<p>(d) provides that the funds shall be invested in qualifying assets;</p> <p>(e) provides that an individual beneficiary can direct that all funds in his individual retirement fund be transferred to another such account with the same or another qualified institution without unreasonable delay and with notification of the Commissioner; and</p> <p>(f) provides that the payment of pension shall not commence until retirement after the attainment of the age of fifty years or upon earlier retirement on the grounds of ill health or infirmity of body or mind or on leaving the country permanently;</p> <p>(g) provides that upon the death of the beneficiary the funds shall be distributed or transferred as legally required; and</p> <p>(h) provides that all benefits derived from contributions by or on behalf of an individual shall vest in that individual immediately.</p>
6. Discretionary registration	<p>The Commissioner may, subject to such conditions as deemed fit, register, for the purposes of the Act, another pension fund or provident fund which does not fully comply with every requirement of rule 3, 4 or 5 but which in his opinion substantially so complies.</p>
7. Registration procedure	<p>(1) An application for registration of a scheme under rule 3, 4, 5 or 6 shall be made to the Commissioner in the prescribed manner.</p> <p>(2) The Commissioner shall notify the scheme in writing, within sixty days, of its registration and the year of income in respect of which the registration takes effect.</p> <p>Provided that the Commissioner shall notify the scheme in writing where it is not registered and the reasons thereof.</p>

8. Alteration of scheme rules to be notified	<p>(1) Where an alteration is made to the scheme rules, the scheme shall in writing notify the Commissioner of such alteration within thirty days of occurrence of the alteration.</p> <p>(2) The alterations made pursuant to sub rule (1) shall take effect upon approval by the Commissioner.</p>
9. Withdrawal of registration	<p>(1) The Commissioner may at any time, by notice in writing to a scheme, withdraw the registration of—</p> <p>(a) a scheme where the Commissioner is satisfied that it no longer fulfills the conditions for registration under these Rules;</p> <p>(b) a scheme, the accounts of which fail or cease to be maintained to the satisfaction of the Commissioner.</p> <p>(2) A withdrawal of registration under this rule shall take effect from the beginning of the year of income in which the grounds for that withdrawal arose or such later date as the Commissioner may determine.</p>
Transitional Provision	Any scheme registered under The Income Tax (Retirement Benefit) Rules, 1994 shall be deemed to have been registered under these rules.
Revocation LN 197 of 1994	The Income Tax (Retirement Benefit) Rules, 1994 are revoked.

Dated the _____, 2024.

**JOHN MBADI NG'ONGO,
Cabinet Secretary for the
National Treasury and Economic Planning**