

ASSOCIATION OF RETIREMENT BENEFITS SCHEMES

CONSTITUTION (2007)

This Constitution is adopted by the Members of the Association of Retirement Benefits on 23 May 2007 and takes effect immediately following that Meeting replacing all previous Constitutions.

1. NAME

The name of the Association shall be the ASSOCIATION OF RETIREMENT BENEFITS SCHEMES (hereinafter referred to as “the Association”).

2. OBJECTS

The Objects of the Association are:

- 2.1 To encourage, contribute to and promote closer links between trustees and sponsors of Retirement Benefits Schemes, and accountants, actuaries, administrators, custodians, investment managers, lawyers and other professionals involved in providing advice or services to Retirement Benefits Schemes.
- 2.2 To encourage, extend, increase, disseminate and promote knowledge of, and to promote, conduct and support research into the law and practice relating to all things connected with or incidental to Retirement Benefits Schemes and the exchange of information, ideas and advice about Retirement Benefits Schemes.
- 2.3 To take steps which the Association may consider appropriate to protect the interests of Retirement Benefits Schemes operated by or associated with Members of the Association.
- 2.4 To make representations to the Governments of the East Africa Region, and the statutory authorities responsible for retirement benefits and other statutory authorities on the national or regional policies to be followed with regard to Retirement Benefits Schemes.
- 2.5 To encourage and to provide appropriate support and advice to members of the Association and its affiliates, through appropriate programmes, publications and other forms of communication.
- 2.6 To engage in any activity that would promote the development and awareness of the retirement benefits sector.
- 2.7 To establish branches in any other location within the East Africa Region that is thought by the Association to be appropriate.
- 2.8 To establish links with groups or associations in any part of the world with similar objects to those of the Association.
- 2.9 The Association has no political affiliation with any political party and has non-political objectives.

3. DEFINITIONS

The following are defined terms that may be used herein, as appropriate, in the singular or plural form and words importing the masculine shall refer also to the feminine:

- 3.1 “Retirement Benefits Schemes” shall mean schemes and plans constituted, established or maintained by employers, individuals or any other party, the main purpose or object whereof is the provision of pensions or lump sums and/or other retirement or related benefits for employees and/or their dependants, relatives and connections on retirement, leaving or death whilst in service or upon the happening of some other relevant event.
- 3.2 “Council” shall mean the governing body of the Association including the Members elected thereto at Annual General Meetings of the Association or otherwise as provided for herein.
- 3.3 “East Africa Region” means Kenya, Uganda and Tanzania with power for the Association to expand the countries from time to time.
- 3.4 “Member” shall mean a company, firm or other person or incorporated body which or who has been admitted to Membership of the Association under the provisions of Clause 4 hereof and whose current Membership subscriptions are fully paid and the term Membership shall be construed accordingly.
- 3.5 “Nominated Person” shall mean the person nominated by a Member to represent the Member in the Association.

4. MEMBERSHIP

4.1 Eligibility for Membership is open to the following:

4.1.1 All those companies, firms or other incorporated bodies or persons (not falling within 4.1.2 below) which or who participate or are contemplating participating as employers in Retirement Benefits Schemes for the benefit of their respective employees as well as those companies, firms or other incorporated bodies or persons which or who are trustees of Retirement Benefits Schemes; and

4.1.2 All those companies, firms or other persons or incorporated bodies which or who are wholly or mainly engaged in the business of:

4.1.2.1 providing services to Retirement Benefits Schemes or acting as advisers or consultants to Retirement Benefits Schemes, or

4.1.2.2 acting as professional advisers in respect of the provision of retirement or related benefits for employees, or

4.1.2.3 any other activity associated with Retirement Benefits Schemes as approved by the Council.

4.2 Any company, firm, or other incorporated body or persons eligible for Membership of the Association under the aforementioned provisions shall be entitled to become a Member on completion of the Membership Application Form and upon payment of the joining fee and the annual Membership subscription at the rates determined from time to time by the Council.

4.3 Annual Membership subscriptions shall become due and payable on the first day of January in each year from all Members on the register.

4.4 Where a new Member is registered after the last day of June in any year, he shall upon joining pay the full joining fee and one half of the annual Membership subscription applicable in that year.

4.5 Where any annual Membership subscriptions due from a Member remain unpaid after Ninety (90) days from the date on which they were due for payment the Member shall forthwith be excluded from the Membership of the Association and the name struck off the register. The Council may, however, at its sole discretion, reinstate such Member on payment of the total amount of subscription outstanding, and any penalty fee as determined by the Council and on such other terms that the Council may determine.

4.6 Each Member shall indicate on the Membership Application Form or otherwise in writing to the Council one Nominated Person who will represent the Member in the Association. A Member may appoint an alternate to the Nominated Person but neither the Council nor any officer of the Association shall be under any obligation to ascertain if the alternate's assumption of the role of the Nominated Person on any occasion is valid. The Council shall have power to request a Member to appoint a different Nominated Person at any time.

4.7 Any Member desiring to resign from the Association shall submit his resignation in writing to the Secretary, and the resignation shall be deemed to take effect from the date of receipt by the Secretary of such notice.

4.8 A Member may be expelled from Membership of the Association on the recommendation of the Disciplinary Committee or if appeal was made, by the Appeals Committee.

4.9 Any Member who resigns or is removed from Membership shall not be entitled to a refund of his annual Membership subscription or any part thereof or any moneys contributed by him at any time.

4.10 Every Member shall:

4.10.1 adhere to all rules and regulations, including the Association's Constitution, and such other rules as are from time to time determined by the Association; and

4.10.2 pay such Membership dues as are payable.

4.11 The Secretary shall maintain a register of Members containing the names and addresses of all current and past Members of the Association and such other records and information relating thereto as the Council shall from time to time determine. The Council shall preserve its records and the records of its committees, with respect to each applicant and Member, for such period as the Council may from time to time determine.

5 THE COUNCIL

- 5.1 The Council shall consist of twelve Council Members elected as provided for herein. The Council Members shall hold office for a term of three years and may be eligible for re-election subject to any conditions set out herein.
- 5.2 The office bearers shall be elected annually by the Council Members from among their number to serve for the ensuing year. There shall be no restriction on the number of consecutive terms of office for an office bearer other than the Chairman provided that the office bearer continues to be a Council Member.
- 5.3 The procedure for electing the office bearers and the Chairman is set out in Clause 13 hereof. The Chairman shall serve a maximum of 3 consecutive terms of one year each but after a rest of at least one year shall be eligible for re-election for a further 3 consecutive terms.
- 5.4 On each occasion when a new Chairman is elected the outgoing Chairman shall be invited to assume the position of Immediate Past Chairman for a period of one year. The Immediate Past Chairman shall be a non-voting Council Member.
- 5.5 Each year one third of the Council Members shall resign from the Council and shall be eligible for re-election by the Members. The resignations of the Members of the first Council of the Association shall be determined either by mutual agreement or by lots. Thereafter the Council Members shall retire by rotation. Every Council Member resigning under this provision who is an office bearer shall be deemed also to resign from such office and may stand for re-election as a Council Member and as an office bearer.
- 5.6 The Council shall meet at such times and places as it shall resolve but shall meet not less than once in any three month period.
- 5.7 A Council Member shall automatically cease to be a Council Member if he fails, without good cause, of which the Council shall be the sole judge by majority vote, to attend three consecutive meetings of the Council.
- 5.8 Any casual vacancies of Members of the Council caused by death, suspension, expulsion or resignation shall be filled by co-option by the Council until the next Annual General Meeting of the Association.

6 POWERS AND DUTIES OF THE COUNCIL

- 6.1 The Council shall be responsible for the management of the Association and for that purpose shall give directions to the office bearers as to the manner in which they shall perform their duties.
- 6.2 The Council may appoint on such terms as it sees fit any person, body of persons or corporate body to be an Executive Secretariat to assist the Council in the running of the day to day affairs of the Association. The powers and duties, obligations, terms of appointment and terms of reference of such Executive Secretariat shall be evidenced in writing in an agreement with the Executive Secretariat which shall also specify the remuneration of the Executive Secretariat.
- 6.3 Each year the Council shall approve a budget for the ensuing twelve months and all disbursements within the approved budget may be approved by the Treasurer jointly with either the Chairman or the Secretary. All disbursements of money on behalf of the Association which are not provided for in the approved budget require the approval of the Council.
- 6.4 The quorum for meetings of the Council shall be five Council Members of whom one must be either the Chairman, the Vice-Chairman or the Secretary.
- 6.5 At all meetings of the Council the votes of the majority of those present and voting shall prevail. In the event of an equality of votes the Chairman shall have a casting vote in addition to his deliberative vote.
- 6.6 Any resolution or decision of the Council may be taken provided that it is evidenced in writing and signed by at least two-thirds of the Council Members in Kenya at the time and a decision so taken and evidenced shall be as valid and binding as if it had been passed at a meeting of the Council.
- 6.7 A document binding the Association shall be executed under hand provided that it shall be signed jointly by at least two Council Members who have been authorised to execute such document by resolution of the Council.

7 OFFICE BEARERS

7.1 The office bearers of the Association shall be:

- 7.1.1 The Chairman
- 7.1.2 The Vice-Chairman
- 7.1.3 The Secretary
- 7.1.4 The Treasurer.

7.2 The office bearers shall be Council Members and they shall be subject to the same retirement rules as other Council Members.

7.3 The office bearers shall be elected by the Council at the first meeting of the Council following each Annual General Meeting.

7.4 Each office bearer including the Chairman shall hold office for a period of one year from the date of election and shall be eligible for re-election subject to any conditions as may be contained herein.

7.5 Any office bearer who ceases for any reason to be a Member of the Association or the Nominated Person of a Member of the Association shall automatically cease to be an office bearer.

7.6 Office bearers may be removed from office in the same way as is laid down for the expulsion of Members in Clause 4.8 hereof.

8 DUTIES OF OFFICE BEARERS

8.1 Chairman - the Chairman shall, unless prevented by illness or other sufficient cause, preside over all meetings of the Council and at all General Meetings and shall represent the Association at all public meetings, seminars and other public functions and perform any other duties determined by the Council.

8.2 Vice-Chairman – the Vice-Chairman shall deputise for the Chairman during the latter's absences or when requested so to do by the Chairman.

8.3 Secretary - the Secretary shall, in consultation with the Chairman, deal with all the correspondence of the Association under the general supervision of the Council. In cases of urgent matters where the Council cannot be consulted, he shall consult the Chairman and one other Council Member. The decisions reached shall be subject to ratification or otherwise at the next Council Meeting. He shall issue notices convening all meetings of the Council and all General Meetings of the Association and shall be responsible for keeping minutes of all such meetings and for the preservation of all records of proceedings of the Association and of the Council. The Secretary may, with the agreement of the Council, delegate any part of his day-to-day duties to an Executive Secretariat appointed under the provisions of this Constitution.

8.4 Treasurer — the Treasurer shall receive and shall also disburse, under the directions of the Council, all moneys belonging to the Association and shall issue receipts for all moneys received by him and preserve vouchers for all moneys paid by him. The Treasurer is responsible to the Council and to the Members that proper books of account of all moneys received and paid by the Association are written up, preserved and available for inspection. The Treasurer may, with the agreement of the Council, delegate any part of his day-to-day duties to an Executive Secretariat appointed under the provisions of this Constitution.

9 GENERAL MEETINGS

9.1 There shall be two classes of General Meetings — Annual General Meetings and Special General Meetings.

9.2 The Annual General Meeting shall be held not later than December in each year and the following shall apply.

9.2.1 Notice in writing of such Annual General Meeting, accompanied by the annual statement of accounts and the agenda for the meeting, shall be sent to all Members not less than Twenty-one days before the date of the meeting and, where practicable, by Press advertisement not less than Fourteen days before the date of the meeting.

9.2.2 The agenda for any Annual General Meeting shall consist of the following:

9.2.2.1 Confirmation of the minutes of the previous Annual General Meeting;

9.2.2.2 Receiving and consideration of the accounts;

9.2.2.3 Report by the Chairman which shall have been previously approved by the Council;

9.2.2.4 Appointment of an auditor;

9.2.2.5 Such other matters as the Council may decide or as to which notice shall have been given in writing by a Member or Members to the Secretary at least fourteen days before the date of the meeting.

9.3 A Special General Meeting may be called for any specific purpose by the Council. Notice in writing of such meeting shall be sent to all Members not less than Fourteen days before the date thereof and where practicable by Press advertisement not less than Seven days before the date of such meeting.

9.4 A Special General Meeting may also be requisitioned for a specific purpose by order in writing to the Secretary of not less than one quarter of the Members and such meetings shall be held within Twenty-one days of the date of the requisition. The notice for such meeting shall be sent to all Members not less than Fourteen days before the date of such meeting and no other matter shall be discussed other than that stated in the requisition.

9.5 The quorum for General Meetings shall be not less than one quarter of the fully paid-up registered Members of the Association. If there is no quorum thirty minutes after the time appointed for the commencement of the meeting, the meeting shall stand adjourned to the same time and place one week later and at the adjourned meeting those Members present, however few, shall constitute a quorum.

10 PROCEDURE AT MEETINGS

10.1 At all meetings of the Association the Chairman, or in his absence, the Vice-Chairman or in the absence of both these officers, a Member elected by the meeting shall take the chair.

10.2 The Chairman may at his discretion limit the number of persons permitted to speak in favour of and against any motion.

10.3 A Resolution shall be decided by simple voting through a show of hands. In the case of equality of votes, the Chairman shall have a casting vote in addition to his deliberative vote.

11 COMMITTEES

11.1 There shall be a Disciplinary Committee and an Appeals Committee. The Council shall prescribe the powers, rules and procedures of both committees. At least one Council Member shall be appointed to the Disciplinary Committee and to the Appeals Committee.

11.2 The Council shall have power as it may deem fit to form such other committees with such powers, duties and responsibilities as the Council shall from time to time determine and to appoint members thereto. Such committees shall make reports and recommendations to the Council upon which such action shall be taken as seems to the Council desirable.

11.3 Appointment to or removal from the membership of committees shall be approved by the Council.

11.4 Each committee shall, unless the Council determines otherwise, consist of not less than three Members one of whom shall be a Council Member.

11.5 Committees may with the approval of the Council co-opt additional Members.

11.6 Each committee shall be presided over by an official to be known as the Convenor who will be appointed by the Council.

11.7 Absence from three consecutive meetings without notice shall render a committee Member liable to exclusion from membership of the committee.

11.8 The quorum for a committee meeting shall be one half plus one of the membership of the committee.

- 11.9 Committees shall hold meetings at such minimum intervals as the Council may decide.
- 11.10 The Council shall define the terms of reference of each committee and the committees shall be bound to act within those terms.
- 11.11 The Council shall have power to assign additional duties to committees.
- 11.12 If the Convenor is not present at a committee meeting then the Members present shall elect a person from amongst them to preside over the meeting.
- 11.13 Each committee shall appoint a secretary to keep minutes to be kept of all the proceedings at meetings. Each committee shall forward a copy of its minutes to the Council for information.

12 ELECTIONS OF COUNCIL MEMBERS

- 12.1 The Council Members shall be elected by the Members of the Association in the manner described hereunder. Every Member of the Association or Nominated Person of a Member of the Association is eligible for election as a Council Member.
- 12.2 The procedure and timetables for nominations and elections and the forms to be used in the elections process shall be determined from time to time by the Council provided that at least 56 calendar days before the date envisaged for the Annual General Meeting the Secretary shall initiate the process by despatching to all Members a Notice advising how many Council Member positions will be vacated at or prior to the Annual General Meeting and calling for nominations to fill those positions. The Notice will specify which Council Members are retiring by rotation and if they offer themselves for re-election.
- 12.3 Nominations of and voting for new candidates for the position of Council Member must be on the prescribed forms and in the prescribed manner. No nomination is required in the case of a Council Member who is retiring by rotation and, being eligible, offers himself for re-election.
- 12.4 All proposers and seconders must be Members of the Association in good standing.
- 12.5 All nomination and voting forms must be completed in ink and no alterations or erasures are permitted.
- 12.6 In the event that only one candidate is validly nominated for each or any of the positions which are the subject of the elections, the Council shall declare the persons so nominated to be duly elected to the respective positions and shall present the results for adoption at the Annual General Meeting.
- 12.7 Each Member shall be entitled to nominate or vote for not more than the same number of nominees as the available vacancies. Any nomination or voting paper with votes for more nominees than available vacancies shall be declared null and void.
- 12.8 A Member shall cast his vote by placing a tick in the space provided adjacent to the name of the nominee selected.
- 12.9 Voting Papers shall be opened and votes counted under the dual supervision of the Secretary and at least one continuing Council Member and two of the Scrutineers.
- 12.10 In case of any equality of votes for any position, the Chairman shall exercise a casting vote to resolve the tie.
- 12.11 As soon as the voting papers have been examined and the results of the elections ascertained, the decision of the Scrutineers shall be final and the Voting Papers shall be closed under the seals of the Scrutineers, and shall be retained by the Secretary for at least six months after the Annual General Meeting, after which they may be destroyed.
- 12.12 The Scrutineers shall make and sign a report on the voting results stating the total number of Voting Papers received, total number of spoilt Voting Papers, total number of votes in favour of each candidate and the names of those duly elected, and shall forward the report to the Secretary not later than 24 hours before the time fixed for the Annual General Meeting.
- 12.13 The Scrutineers' report on the elections and the results thereof shall be read by the Returning Officer to and be adopted by the Annual General Meeting.
- 12.14 The elected Council Members shall commence their terms of office after the adoption of the report of the Scrutineers by the Annual General Meeting.
- 12.15 The Council shall, every year at a suitable time prior to the Annual General Meeting appoint up to 4 Scrutineers of whom at least 2 shall act as Scrutineers of the elections. The Scrutineers of the elections shall appoint one of their number to be the Returning Officer. Candidates for the any of the Council Member positions shall not be eligible to become Scrutineers. The Secretary shall be an ex-officio member of the panel of Scrutineers. Any subsequent vacancy on the panel of Scrutineers shall be filled by a Member appointed by the Chairman.

13 ELECTION OF CHAIRMAN AND OFFICE BEARERS

- 13.1 The Chairman and other office bearers shall be elected by the Council Members from among their number. The elections shall be conducted at the first Council Meeting following each Annual General Meeting.
- 13.2 The Term of office of the Chairman and each office bearer shall be one year commencing from the date of election and running until the next election of a Chairman or office bearer at the first Council Meeting after the next Annual General Meeting
- 13.3 The Chairman shall be eligible for re-election for up to 3 consecutive terms of 1 year. After a rest of at least 1 year a previous Chairman shall again be eligible for election and re-election for up to 3 consecutive terms as Chairman.
- 13.4 There shall be no limit to the number of 1 year terms for which an office bearer may be elected.
- 13.5 At each Annual General Meeting the Chairman shall present to the Members a report on the office bearers giving for each office the name of the office bearer, the name of the scheme or body for which he/she is the Nominated Person and the period during which the bearer has held the office.

14 INDEMNIFICATION

Every office bearer, Council Member, or Member of the Association and their heirs, executors, personal representatives and administrators, respectively, shall at all times be indemnified and saved harmless out of the funds of the Association, from and against:

- 14.1 all costs, charges, and expenses that such officer bearer, Council Member or Member sustains or incurs in or about any action, suit, or proceeding that is brought, commenced, or prosecuted against him for or in respect of any act, deed, matter, or thing whatsoever made done, or permitted by him in or about the execution of his duties pursuant to the Constitution; and
- 14.2 all other costs, charges, and expenses that he sustains or incurs in or about or in relation to the affairs of the Association except such costs, charges, or expenses as are occasioned by his own willful neglect or default.

15. TRUSTEES

- 15.1 The Association may with the sanction of the Annual General Meeting appoint a trust corporation or a body of persons to act as Trustee(s) on such terms and conditions as are deemed appropriate by the Council.
- 15.2 All land, buildings and other immovable property and all investments and securities which shall be acquired by the Association shall be vested in the name of the Trustee(s) on behalf of the Association.
- 15.3 The Trustee(s) shall pay all income received from property and investments vested in the Trustee(s) to the Treasurer. Any expenditure in respect of such property and investments which in the opinion of the Trustee(s) is necessary or desirable shall be reported by the Trustee(s) to the Council which shall authorise expenditure of such moneys as it thinks fit.

16. AUDITOR

- 16.1 The financial year of the Association shall be the twelve months ending on 31 December each year.
- 16.2 An auditor, who must be a registered member of the Institute of Certified Public Accountants of Kenya, shall be appointed at each Annual General Meeting. To undertake an audit of the Associations books and accounts for the ensuing financial year. The Treasurer shall produce a trial balance and such other records and documents as the auditor shall require. The auditor shall examine such annual accounts and statements and either certify that they are correct, duly vouched and in accordance with the law or report to the Association in what respect they are found to be incorrect, unvouched or not in accordance with the law.
- 16.3 A copy of the auditor's report on the accounts and statements together with such accounts and statements shall be furnished to all Members at the same time as the notice convening the Annual General Meeting is sent out. An auditor may be paid such fees in respect of his duties as may be resolved by the Council.
- 16.4 No Council Member or office bearer shall be the auditor of the Association.
- 16.5 The Council may recommend the removal of an auditor and the reasons shall be given to the Members at the Annual General Meeting and a vote taken on the removal of the auditor.

17. FUNDS

- 17.1 The funds of the Association may only be used for the purposes of meeting the Association's objectives as determined by the Council.
- 17.2 All moneys and funds shall be received by and paid to the Association and shall be deposited by the Treasurer in the name of the Association in such accounts with any bank or banks as are approved by the Council.
- 17.3 No payments in excess of amounts and for purposes duly authorised from time to time by the Council in budgets approved by Council under set down procedures shall be made out of the Association's bank account without a resolution of the Council authorising such payment and all cheques on such bank account shall be signed by the Treasurer or another authorised signatory who shall be appointed by the Council and counter-signed by one of two other office bearers of the Association or Council Members who shall be appointed by the Council.
- 17.4 Members of the Council may be reimbursed for all reasonable charges and disbursements incurred by them in the performance of their duties.
- 17.5 A sum not exceeding an amount from time to time to be determined by the Council may be kept by the Treasurer for petty disbursements of which proper account shall be kept.
- 17.6 The Council shall have power to suspend any office bearer who it has reasonable cause to believe is not properly accounting for any of the funds or property of the Association and shall have power to appoint another person in his place. Such suspension shall be reported to a General Meeting to be convened on a date not later than two months from the date of such suspension and the General Meeting shall have full power to decide what further action should be taken in the matter.
- 17.7 The financial year of the Association shall be from 1st January to 31st December.

18. BRANCHES

Branches of the Association may be formed with the approval of the Council and such branches will adopt and adhere to the Association's Constitution with the following exceptions:

- 18.1 The aims and objects will not include the formation of branches.
- 18.2 Amendments to the constitution may only be made as provided in Clause 19 below.
- 18.3 Branches will not be dissolved without consultation with the Council.

19. AMENDMENTS TO THE CONSTITUTION

Amendments to the constitution of the Association must be approved by at least a two-thirds majority of Members present at a General Meeting of the Association.

20. DISSOLUTION

- 20.1 The Association shall not be dissolved except by a resolution passed at a General Meeting of Members by a vote of two-thirds of the Members present. The quorum at the meeting shall be as shown in rule 9.5. If no quorum is obtained, the proposal to dissolve the Association shall be submitted to a further General Meeting which shall be held one month later. Notice of this meeting shall be given to all Members of the Association at least twenty-one days before the date of the meeting. The quorum for this second meeting shall be the number of Members present.
- 20.2 The Association shall be dissolved if the number of Members at any time falls to three or below for more than a one year period.
- 20.3 When the dissolution of the Association has been approved by the Members, no further action shall be taken by the Council or any office bearer of the Association in connection with the aims of the Association other than to get in and liquidate for cash all the assets of the Association. Subject to the payment of all the debts of the Association, the balance thereof shall be distributed in such manner as the Members may decide.

21. INSPECTION OF ACCOUNTS AND LIST OF MEMBERS

The books of account and all documents relating thereto and the register of Members of the Association shall be available for inspection at the registered office of the Association by any office bearer or Member of the Association on giving not less than seven days notice in writing to the Secretary of the Association.