

NO. 45 OF 2013

THE NATIONAL SOCIAL SECURITY FUND ACT

SUBSIDIARY LEGISLATION

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**THE NATIONAL SOCIAL SECURITY FUND (CLAIMS AND
PAYMENTS FOR THE PENSIONS FUND BENEFITS) REGULATIONS**

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THE NATIONAL SOCIAL SECURITY FUND (CLAIMS AND PAYMENTS FOR THE PENSIONS FUND BENEFITS) REGULATIONS

[Legal Notice 84 of 2014]

1. Citation

These Regulations may be cited as the National Social Security Fund (Claims and Payments for the Pension Fund Benefits) Regulations, 2014.

2. Application

These Regulations shall apply to the members of the Pension Fund.

3. Interpretation

In these Regulations, unless the context otherwise requires—

"approved form" means such forms as the Managing Trustee may, from time to time, approve for the purposes of making application for the payment of benefits under these Regulations;

"medical board" means medical boards established under the County Government for purposes of examining persons who have claims to any benefit under the Act;

"medical doctor" means any person registered as a medical practitioner under the Medical Practitioners and Dentists Act (Cap. 253) and appointed by the Board for the purposes of examining persons who have claims to any benefits under the Act.

PART II – PENSION CLAIM APPLICATION**4. Form of claims**

A claim for the payment of a benefit shall be made in writing to the Managing Trustee in the approved form, which shall be supplied free of charge by the Board.

5. Eligibility for making pension benefit claims

A claim for a Pension Fund Benefit shall be made

(1) In the case of an invalidity pension within three months of the date the member was declared invalid by the medical board;

(2) In case of a retirement pension upon attaining the pensionable age;

(3) In case of a survivor's benefit upon the death of the member; and

(4) In the event that a member dies without nominating dependants the processing of the survivor benefit claims shall be deferred for sixty days after death of member to allow all potential beneficiaries for time to lodge their claim.

6. Effect of the claims

Where a claim for invalidity pension, is made after the lapse of the application window provided in regulation 5(1), as the case may be, the claimant shall be required to seek fresh re-examination by the medical board and a new certificate of invalidity issued.

7. General information to be furnished by claimant

A person who makes a claim for the payment of a benefit shall, for the purpose of determining the claim furnish certificates, documents, information and evidence as may be required by the Managing Trustee including a statutory declaration as to the truth of any statement of fact made by the claimant in the claim or in any evidence submitted by the claimant.

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8. Information and documents to accompany retirement pension claim

A claim for a retirement pension shall be accompanied by retirement, termination or dismissal letter from the last employer.

9. Information and documents to accompany a survivor's pension claim

(1) A claim for a survivor's pension shall be accompanied by—

- (a) an original death certificate;
- (b) a copy of deceased identity document;
- (c) evidence of the claimant's own identity and relationship to the deceased member;
- (d) information about other relatives of the deceased, and
- (e) confirmation from county administration.

(2) Where a member dies abroad the beneficiary shall be required to—

- (a) provide a death certificate of the member who died abroad;
- (b) provide an authenticated death certificate, where the member was buried abroad.

(3) Where a member is presumed dead, a claim for a survivor's pension shall be accompanied by an original decree of court presuming the member dead not less than seven years from the date the member was reported lost, evidence of the claimant's own identity and relationship to the deceased member, information about other relatives of the deceased and confirmation from county administration.

10. Information and documents to accompany an invalidity pension claim

A claim for invalidity pension shall be supported by, treatment records, comprehensive doctors report, certificate of invalidity by the medical board, evidence of retirement on medical grounds, identity document and where a doctor, an employer or medical institution holds such medical records, in respect of the employee, the holder shall furnish those records to the medical board.

11. Review by medical board

A member who receives invalidity pension shall avail himself before the same medical board for review every six months.

12. Information and documents to accompany an emigration benefit

A claim for an emigration benefit for Pension Fund members shall be accompanied by retirement, termination or dismissal letter from the last employer, identity document and evidence that the claimant is emigrating to a country which does not have a reciprocal agreement with Kenya and that the claimant has no present intention of returning to reside in Kenya.

13. Citizens of East African Community

Regulation 12 will not apply to members who are citizens of East Africa Community partner states.

14. Funeral grant

A claim for funeral grant shall be made in an approved form and shall be accompanied by a death certificate or burial permit of the deceased person and the, claimant's identity documents.

15. Exportability of contributions and benefits

Members who are citizens of East African Community partner states shall apply in a prescribed form for the contributions or benefits to be exported to the social security scheme of the country of migration.

16. Co-ordination with other social security schemes

The Managing Trustee shall co-ordinate with the social security schemes or similar schemes of other states to ensure the exportability of the totalized contributions and benefits of Kenyan citizens in those countries and actual physical transmission of the funds to the Fund for crediting to the appropriate member account.

17. Additional information

The claimant or the employer shall furnish the Board with such other particulars as the Board may, from time to time require.

18. Medical certificate

(1) Where, under these Regulations, a claim is to be supported by a medical certificate issued by a medical board for the purpose of establishing the claimant's or beneficiary's incapacity to work, the certificate shall be in such form as the Board may, from time to time, determine and shall include—

- (a) in the case of invalidity pension, the condition causing such incapacity for work giving an indication of the disease, disability or injury by which the claimant is, in the opinion of the medical board rendered permanently and totally incapable of further employment;
- (b) the date of the medical examination on which the certificate is based;
- (c) the signatures of the members of the medical board with their names and addresses.

(2) A medical certificate shall be issued on the date of the examination on which it is based and no further certificate based on the same examination shall be issued other than a duplicate certificate to replace the original certificate which has been lost, in which case such certificate shall be clearly marked "duplicate"

19. Defective medical certificate

The Board may, in its discretion, reject any medical certificate which does not comply with these Regulations and may suspend the determination of a claim until a proper medical certificate is submitted.

20. Appointment of Medical Boards

For the purpose of the Act, the District or County medical boards composed under the Public Health Act (Cap. 242) shall be deemed to have been appointed under the Act.

21. Medical Board Chairperson

The Medical Boards shall appoint a chairperson for each county.

22. Determination of claim by Medical Board

The Medical Board shall have the power to determine—

- (a) whether there is medical evidence to support the claims of a claimant; and
- (b) the date of onset of any medical condition claimed by the claimant.

23. Referral of cases to medical Board

The Medical Board shall consider all cases referred to it by the Board.

24. Status of claimant

The members of the Medical Board shall in each case determine the medical status of a claimant.

25. Powers of Medical Board

The Medical Board shall have powers to—

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- (a) hold hearings;
- (b) order medical and non medical examinations;
- (c) request medical records; and
- (d) interview or examine the claimant.

26. Mode of determination of claim by medical Board

The Medical Board shall determine each case by a majority of members.

27. Conflict of interest in a member of the medical Board

The determination of a claim in any case where that member—

- (i) has or may have a material interest therein; or
- (ii) has or had any professional responsibility in respect to the condition out of which the claim has arisen.

28. Evidence of age

In the absence of evidence to the contrary the date of birth of a member of the Fund entered in the records of the Fund shall be conclusive and where no date of birth is recorded for a member or his dependants or is disputed, the Managing Trustee may require such further evidence of age including medical evidence as may be obtainable.

29. Amendment of claim

A claimant may, by notice in writing addressed to the Board, amend the type of claim at any time before a decision is given and any claim so amended shall be treated as if it had been duly made in the first instance.

30. Simultaneous entitlement to benefits

Where a person is at the same time entitled to more than one benefit and receipt of one disqualifies the person from receipt of the other, the person shall be entitled to choose the benefit to claim and the benefit so chosen shall be paid to the person.

31. Alternative benefit

Where it appears that a claimant is entitled to a benefit other than the one claimed, the Board may treat the claim as an alternative to that other benefit if the necessary particulars and documents are attached.

32. Defective claim

If a pension benefit claim form is defective at the date of its receipt, the Board may refer it back to the claimant, and the Board may treat the claim as if it had been duly made in the first instance, if the form is returned to the Board properly completed within twenty one days from the date on which it was so referred.

PART III – PAYMENT OF PENSION BENEFIT CLAIMS

33. Place and manner of payment of benefits

(1) A benefit payable by the Fund may be paid at any designated office of the Fund or at such other place as the Board may decide.

(2) Any sum payable by way of benefit shall, unless the Board otherwise directs, be paid through appropriate modes of payment as may be determined by the Managing Trustee from time to time.

(3) Where payments have been effected through payment modes in paragraph (2), the payments shall unless the contrary is proved, be deemed to have been effected at the time at which the transfer was successfully done:

Provided that where the Managing Trustee is satisfied that transfer of funds has failed or bounced the Managing Trustee may on receipt of a duly executed indemnity issue an approval for resumption of transaction.

(4) Where there is more than one person having an equal claim to survivor's benefit such benefit shall be apportioned equally among such persons, unless in a particular case the Managing Trustee is satisfied that a different apportionment would be appropriate.

34. Payment of lumpsum

(1) Where a person is entitled to a benefit, but the benefit amount claimed is trivial, a lumpsum payment shall be made.

(2) Benefits payable under paragraph (1), having regard to the interests of a beneficiary or any other relevant circumstances, be paid in such manner as the Board may determine.

35. Obligation of person receiving benefit

(1) The Board may require a beneficiary to submit to a medical examination by a medical board.

(2) The Board may through the paying insurer require a beneficiary to furnish, from time to time, documented evidence that the beneficiary is alive and if such evidence is not given to the Board within the time specified, the Board may suspend the payment of the benefit until the date on which the evidence is given.

(3) Before payment of a benefit is made a beneficiary shall, at the request of the Board, produce evidence of entitlement to the benefit and his identity.

36. Revision of benefits

(1) The Board may at any time, after notice to the beneficiary and having given the beneficiary opportunity to be heard review the benefit granted on any of the following grounds—

- (a) that the beneficiary has not submitted to a medical examination when required to do so;
- (b) that the incapacity for employment which gave rise to the award has ceased to operate, or is operational only because of the unreasonable refusal or willful neglect of the beneficiary to submit to a medical examination;
- (c) that the beneficiary deliberately avoided being served notice or that the beneficiaries whereabouts are unknown; or
- (d) that the beneficiary no longer satisfies the conditions for entitlement to the benefit, and may make an order confirming, discontinuing, suspending, reducing or increasing the benefit.

(2) Where a person is required under these Regulations to submit to a medical treatment the person shall not be disqualified to any benefit by refusal to undergo a surgical operation which might, in the opinion of the medical doctor, be dangerous to his life.

37. Re-calculation of survivor's pension

When a beneficiary of a survivor's pension is deceased or otherwise disqualified from receiving the benefit, the Board shall as part of the conditions for securing an annuity or drawdown plan from the insurer re-calculate the survivor's pension and share the pension between the survivor's beneficiaries, equally or in such proportions as the Board in its discretion, may determine.

38. Cessation of benefit

Any unpaid benefit shall be distributed in accordance with these Regulations among the dependants of the deceased beneficiary, if any, in such proportions as the Board, in its discretion, may determine.

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39. Persons unable to act

(1) Where a beneficiary is a child or a person who is otherwise unable to act at the time, and has no representative authorized or duly appointed under the law to act on behalf, the Board may, upon written application, appoint a person to exercise on behalf of that child or other person any right to which that child or person may be entitled under these Regulations:

Provided that—

- (a) any such appointment by the Board shall terminate immediately on the date the Board is notified that a person or an authority has been duly appointed to act for that child or person;
- (b) a person who has not attained the age of eighteen years may not act or be appointed to act under this sub regulation;
- (c) the Board may at any time in its discretion revoke the appointment;
- (d) any person appointed under this paragraph may terminate this appointment on giving one month's notice in writing to the Board;
- (e) any such appointment shall terminate immediately upon that child attaining the age of eighteen years;
- (f) in case a person in paragraph (1) becomes able to act for himself, or has a representative authorized or duly appointed under the law to act for him;
- (g) the person receiving the benefit on behalf of the minor or a person who is otherwise unable under paragraph (1) shall be required to open an account in the name of the beneficiary and shall apply the funds exclusively for the education, medication and upkeep of the beneficiary.

(2) Anything required by the provisions of paragraph (1) to be done by any person who is a child or person who is otherwise unable to act may be done by any person appointed under the regulation and the receipt of any sum paid in respect of any benefit shall be a proper discharge by the Board of its obligations.

(3) Where any sum has been authorized to be paid to a beneficiary out of the Fund by way of benefit and the person has not obtained such payment within six months after the date of authorization, such sum shall be credited back to the original account of the member.

(4) Where such sums are credited back to the members account, such sums shall not qualify for interest for the six months when the payments had been authorised and beneficiary shall be required to make an application, for resumption of the funds.

40. Payment of benefit to legal representative

The receipt of a member of the Fund or his legal representative or of a person authorized to receive the benefit on his behalf shall be a full and sufficient discharge to the Fund for the sum specified.

41. Payment of benefit due to incapacitated person

Where the Managing Trustee is satisfied that the beneficiary is of unsound mind or for any reason is unfit to manage his own affairs he may pay the benefit, or any part thereof, due to that beneficiary to any other person who, in the opinion of the Managing Trustee is the rightful person to receive the sum on the beneficiary's behalf and will apply the sum for the maintenance and benefit of the beneficiary; and any receipt given to such person shall be a good and sufficient discharge to the Fund for the sum paid.

42. Transfer and receipts of Pension Funds Credit

A member shall apply in a prescribed manner for transfer of their Pension Fund Credit and protected rights from a contracted out scheme to the Fund and vice-versa.

43. Mis-representation of facts

A person who receives a benefit through misrepresentation of any material fact, non disclosure or fraudulently shall be required to repay such benefits within twenty one days failure to which the Fund shall take appropriate legal action.

44. Biometrics

Beneficiaries or claimants shall be required to append their fingerprints or be available for any other means of identification as prescribed.

45. Insurers list

The Managing Trustee shall regularly update the list of registered and approved insurers for the members of the Fund.

46. Transmission of notices and documents

Except as otherwise prescribed, any notice or document required or authorized to be given to any person by the Board under these regulations, shall be deemed to have been given or sent if it was sent by post or electronic mail to that person at the last known address of that person.

**THE NATIONAL SOCIAL SECURITY FUND (CLAIMS AND
PAYMENTS FOR THE PROVIDENT FUND SCHEME) REGULATIONS**

ARRANGEMENT OF REGULATIONS

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THE NATIONAL SOCIAL SECURITY FUND (CLAIMS AND PAYMENTS FOR THE PROVIDENT FUND SCHEME) REGULATIONS

[Legal Notice 83 of 2014]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the National Social Security Fund (Claims and Payments for the Provident Fund Benefits) Regulations, 2014.

2. Application

These Regulations shall apply to voluntary members and contributions to the Provident Fund.

3. interpretation

In these Regulations unless the context otherwise requires—

"approved form" means such forms as the Managing Trustee may, from time to time, approve for the purposes of making application for the payment of benefits under these Regulations, 2014;

"certificate of membership" means a certificate of membership issued under the National Social Security Fund (Registration) Regulations, 2014;

"qualified medical practitioner" means any person registered as a medical practitioner under the Medical Practitioners and Dentists Act (Cap. 253) and any other person who if the person was in Kenya would be eligible for registration as a medical practitioner under that Act.

PART II – APPLICATION FOR CLAIM

4. Application for Claim

A claim for the payment of any benefit shall be made in writing in the approved form to the Managing Trustee or any person authorized in that behalf, and it shall be accompanied by the certificate of membership of the member to whom the claim relates:

Provided that the Managing Trustee may dispense with the production of the certificate of membership where the Managing Trustee is satisfied that it is reasonable so to do.

5. Claim appropriateness

The Managing Trustee may, when considering any claim for the payment of a benefit, consider the claim as a claim appropriate to a description of benefit other than that claimed.

6. Making a benefit claim

Every person who makes a claim for the payment of a benefit shall, for the purpose of determining the claim—

- (a) furnish such certificates, documents, information and evidence as may be required by the Managing Trustee including where appropriate—
 - (i) a statutory declaration as to the truth of any statement of fact made by the claimant in relation to the claim or in any evidence submitted by the claimant;
 - (ii) an examination of the member by a properly constituted medical board or certified medical doctor;
 - (iii) in claims for age benefits, production of evidence in support of the claimant's statement that the claimant retired, or is about to retire, from employment;

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- (iv) in claims for withdrawal benefit evidence that the person is no longer in self employment;
 - (v) in claims for survivor's benefit, a certificate or other evidence of the death of the member concerned, evidence of the claimant's own identity and relationship to the deceased member and information about other relatives of the deceased; and
 - (vi) in claims for emigration benefit, a claim shall be accompanied by retirement, termination or dismissal letter from the last employer, identity document and evidence that the claimant, who is emigrating to a country which does not have a reciprocal agreement with Kenya and has no present intention of returning to reside in Kenya
- (b) attend at such office or place as the Managing Trustee may direct if reasonably required to do so.

7. Referring of claims

If, in the opinion of the Managing Trustee, any claim form is incomplete or defective at the date of its receipt, the Managing Trustee may refer the form to the claimant and the Managing Trustee may treat the claim as if it has been duly made in the first instance if the form is returned duly completed or rectified within twenty-one days from the date on which it was so referred.

8. Determination of age

(1) In the absence of evidence to the contrary the date of birth of a member of the Fund as recorded by the Fund shall be conclusive.

(2) Where no date of birth is recorded for a member or his dependants or the age of a member is disputed the Managing Trustee may require such further evidence of age including medical evidence as may be obtainable.

(3) Where there is a dispute regarding the date of birth of a member, a doctor shall determine the age of the member.

PART III – CLAIM PAYMENT

9. Mode of paying benefits

(1) Any sum payable by way of benefit shall be paid to the claimant in a manner prescribed by the Managing Trustee from time to time.

(2) Where by a cheque or any other document of payment has been sent by ordinary or registered post, delivery thereof shall, unless the contrary is proved, be deemed to have been effected at the time at which a letter would be delivered in the ordinary course of the post.

Provided that where the Managing Trustee is satisfied that a cheque or other document of payment has been lost or destroyed, he may on receipt of a duly executed indemnity, issue a duplicate of such cheque or other document of payment.

10. Apportioning of survivor's benefit

Where more than one person is having under the Act, an equal claim to survivor's benefit, the benefit shall unless in a particular case the Managing Trustee is satisfied that a different apportionment would be appropriate, be apportioned equally among the persons.

11. Receipt of benefit

The receipt of a benefit by a member of the Fund or a legal representative or by a person authorized to receive the benefit on behalf of a member shall be a full and sufficient discharge to the Fund for the sum specified.

12. Payment of benefit to beneficiaries of unsound mind

(1) Where the Managing Trustee is satisfied that a beneficiary is of unsound mind or for any reason is unfit to manage his own affairs he may pay the benefit, or any part thereof, due to that beneficiary to any other person who, in the opinion of the Managing Trustee, is a proper person to receive the sum on the beneficiary's behalf and will apply the sum for the maintenance and benefit of the said beneficiary; and any receipt given by such person shall be a good and sufficient discharge to the Fund for the sum paid.

(2) A person paid under Regulation 12, shall execute a deed binding the person to use the benefits for the sole benefit of the beneficiary.

**THE NATIONAL SOCIAL SECURITY FUND
(CONTRACTING OUT BY EMPLOYERS) REGULATIONS**

ARRANGEMENT OF REGULATIONS

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**THE NATIONAL SOCIAL SECURITY FUND
(CONTRACTING OUT BY EMPLOYERS) REGULATIONS**

[Legal Notice 85 of 2014]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the National Social Security Fund (Contracting Out by Employers) Regulations, 2014.

2. Application

These Regulations shall apply to—

- (a) an employer who wishes to opt to pay Tier II contributions to a contracted out scheme; and
- (b) a contracted-out scheme.

3. Interpretation

In these Regulations unless the context otherwise requires—

"Authority" means the Retirement Benefits Authority established under section 3 of the Retirement Benefits Authority Act (Cap. 197);

"Contracting-out Certificate" means the certificate issued by the Authority to an employer authorising the employer to remit Tier II contributions to a contracted-out scheme;

"Contracted-out employment" means in relation to an employee any period in which—

- (a) the employee is under pensionable age;
- (b) the employer makes minimum payments in respect of his employment to a contracted-out scheme; and
- (c) there is in force a contracting-out certificate issued by the Authority in accordance with these Regulations stating that the employment is contracted-out employment by reference to the scheme.

"Minimum payments" mean an amount equal to the employer's and employee's Tier II Contributions which an employer must pay into a contracted-out scheme for the benefit of each employee who is contracted-out by reference to that scheme;

"Reference Scheme Test Certificate" means a certificate signed by an actuary for a defined benefit scheme or an actuary or an administrator for a defined contribution scheme confirming compliance with the scheme-based Reference Scheme Test;

"Reference Scheme Certificate" means the certificate issued by the Authority to a scheme which meets the Reference Scheme Test to qualify it to receive Tier II Contributions.

PART II – APPLICATION FOR CONTRACTING-OUT BY THE EMPLOYER

4. Application for Contracting-Out by employer

(1) An application for contracting-Out by an employer shall be made in writing to the Authority and shall include the particulars specified in regulation 7.

(2) Subject to paragraph (3) and (4), an employer may elect that the application for contracting-out by reference to a scheme shall apply in relation to all employees in its employment or in relation only to a particular description of employees.

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(3) An employer shall not, in making or abstaining from making any election under this section, discriminate between different employees on any grounds other than the nature of their employment.

(4) If the Authority considers that an employer is contravening paragraph (3) in relation to any scheme, it may—

- (a) refuse to give effect to any election made by the employer in relation to that scheme; or
- (b) cancel any contracting-out certificate held by the employer in respect to it.

5. Notification by employer of intended application to contract out

(1) The employer who opts to contract out shall notify—

- (a) the employees in respect of whose employment the election is proposed to be made and those whom the employer is not electing;
- (b) the trustees and administrator of the scheme to which the election is to relate; and
- (c) all independent trade unions recognised in relation to the employees concerned of its intention to apply to contract out in the manner prescribed in paragraph (3).

(2) Notification given under this Regulation shall be in writing and shall—

- (a) specify the scheme and the categories or descriptions of the employees affected;
- (b) specify effective date of the intended contracting out;
- (c) describe the contributions by and benefits payable to the employees by the scheme and the changes which would be made to those benefits and contributions as a result of contracting-out;
- (d) explain where further information about the scheme and the benefits and contributions provisions mentioned in paragraph (c) can be obtained.

(3) A notification delete under this regulation shall be given—

- (a) to any employee concerned by—
 - (i) sending or delivering it to him, or
 - (ii) exhibiting it conspicuously at the place of work or employment where it may be read conveniently by him and by drawing the employee's attention to it in writing;
- (b) to any other person, by sending or delivering it to that person.

6. Time for making an application

The application for the issue of a contracting-out certificate shall be submitted to the Authority at least sixty days prior to the intended date of contracting-out.

7. Information and documents to accompany application

An application shall include the following—

- (a) a duly completed application in the prescribed form;
- (b) the name and address of the employer;
- (c) the name of the scheme to which the application relates;
- (d) the categories or descriptions of the employees intended to be included in the certificate and those intended to be excluded and the reasons thereof;
- (e) confirmation that a notification was given under regulation 5;
- (f) a list of employees together with their National Social Security Fund registration numbers;
- (g) the effective date of the intended contracting out;

- (h) the names and addresses of the trustees and administrator of the scheme to which the application relates;
- (i) a resolution by the employer's board or governing body of the application for contracting-out and the desired date of contracting-out;
- (j) an undertaking by the employer that it will comply with the obligations concerning minimum payments;
- (k) a resolution by the trustees of the scheme accepting to receive Tier II Contributions into the scheme as assets of the scheme and to exercise fiduciary responsibility over the discharge of the obligations in respect of Tier II Contributions as provided for in the Act;
- (l) an undertaking by the administrator that it will comply with the provisions of the Act and these Regulations in relation to the administration of Protected Rights in the scheme;
- (m) for a scheme existing prior to the date of making the application, a deed of amendment to the trust deed and rules amending the rules to conform with the requirements of the Act and these Regulations in relation to contracting-out;
- (n) for a new scheme which the employer wishes to establish for the purposes of contracting-out, a trust deed and rules with the rules conforming with the requirements of the Act and these Regulations in relation to contracting-out;
- (o) a reference Scheme Test Certificate in respect of the scheme to which the application relates; and
- (p) the employer's National Social Security Fund registration number.

8. Determination of contracting-out by the Authority

(1) The Authority shall within thirty days from the date of receipt of an application for contracting-out from an employer, determine whether the employer has fulfilled the requirements for contracting-out, and in such case, it shall issue and send to the employer concerned a contracting-out certificate with a copy to the National Social Security Fund.

(2) The contracting-out certificate shall specify—

- (a) the name and address of the employer;
- (b) the name of the scheme;
- (c) the categories or descriptions of the employees to whom it relates; and
- (d) the effective date.

9. Rejection of a contracting-out application

Where an employer fails to fulfill the requirements for contracting-out, the Authority shall within thirty days of receipt of the application, decline to issue the Contracting Out and give the applicant the reasons in writing.

10. Variation or surrender of contracting-out certificate

(1) An election by an employer to vary or surrender a contracting-out certificate shall be made in writing to the Authority, after giving thirty days notice.

(2) The provisions of paragraph 4 shall not apply where a proposed variation is a change in—

- (a) the name of the employer;
- (b) the address of the employer; or
- (c) the name of the scheme.

(3) The provisions of paragraph 4 shall apply where a proposed variation is a change in—

- (a) the categories or descriptions of the employees affected by the certificate;
- (b) the Protected Rights or the benefits provided by the scheme; or

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(c) the contributions payable by those employees to the scheme.

(4) Notices given under this regulation shall be given in writing and shall—

- (a) specify the scheme and the employments concerned and, if the election is not intended to be in relation to all employees in those employments, the categories or descriptions of the employees to be so affected;
- (b) specify the date from which it is intended that the variation or surrender is to have effect;
- (c) specify the name and business address of the person to whom enquiries may be made with respect to the matters included in the notice; and
- (d) explain whether or not by reference to another document how, if the proposed variation or surrender took place, the benefits and rates at which contributions payable by those employees would be affected.

(5) The Authority shall within thirty days from the date of receipt of the election for variation or surrender of contracting-out certificate grant approval in writing to the employer or decline and advise in writing of its reasons.

11. Application of Regulations

(1) These Regulations shall also apply where employees are employed by—

- (a) one of a group of companies consisting of a holding company and one or more subsidiaries, or
- (b) one of a group of employers who are associated employers.

(2) A notice by a holding company shall be deemed to have been issued on behalf of its subsidiaries unless stated otherwise.

12. Duration of certificates

A Contracting out Certificate issued in respect of a scheme shall be valid from the date of issue and shall remain in force until the scheme is deregistered, wound up or the contracting out certificate is cancelled in accordance with regulations, the scheme rules or the provisions of the written law under which the scheme is established.

13. Circumstances in which the Authority may cancel a contracting-out certificate

(1) Where the Authority has reason to believe that any employment to which a contracting-out certificate applies should not continue to be contracted-out employment and the employer has not shown to the satisfaction of the Authority that it should continue, the Authority shall, subject to paragraph (2), cancel the certificate with effect from such date as it may specify, subject to paragraph (2) and shall notify the employer in writing of its determination and reasons.

(2) The cancellation date shall be the effective date, save where—

- (a) in a case where the Authority discovers that the scheme did not satisfy the contracting out requirements the effective date of the contracting out certificate shall be the date of cancellation; or
- (b) in a case where the Authority considers that the scheme has ceased to satisfy the requirements for being a contracted-out scheme, the cancellation date shall be the date the scheme ceased to satisfy the requirements.

(3) In any case where the Authority has cancelled a certificate under the provisions of paragraph (1) it may require the employer to give notice of the cancellation, in the manner specified in regulation 5 to—

- (a) the employees in relation to whom the employment was contracted-out by virtue of the certificate immediately before its cancellation;
- (b) the trustees and administrator of the scheme by reference to which the employment was contracted-out immediately before the cancellation of the certificate.

(4) The Authority may require any such notice to include such particulars as it may consider appropriate.

PART III – REFERENCE SCHEMES PRESCRIBED REQUIREMENTS

14. Further prescribed requirements for Reference Schemes

A scheme shall be a Reference Scheme for the purposes of contracting-out if it satisfies the conditions stipulated in the Fourth Schedule of the Act and regulations 16, 17, 18, 19 and 20.

15. Requirements as to Reference Scheme rules

The rules of the Reference Scheme shall provide for—

- (a) the trustees of the scheme to accept minimum payments in respect of tier II Contributions as forming part of the assets of the scheme and to exercise fiduciary responsibility over the discharge of the obligations in respect of tier II Contributions as provided for in the Act;
- (b) an undertaking from the employer to the trustees to make minimum payments to the scheme within thirty days after the end of the month in which the minimum payments relate;
- (c) payment of penalties for default in payment and incorrect contributions as provided under section 27 of the Act;
- (d) an employer is not entitled to recover any minimum payments paid by it on behalf of an employee otherwise than by deduction in accordance with the Act;
- (e) separate identification of Protected Rights in respect of each member in each individual member's account in the scheme;
- (f) full and immediate vesting of minimum payments in the members account in the scheme;
- (g) the value of Protected Rights to be calculated in a manner no less favourable than that in which the value of any other rights of the member to benefits under the scheme are calculated;
- (h) interest to be allocated on Protected Rights at least annually having regard to the income on the scheme's assets;
- (i) that the discharge of members rights only in accordance with the Act and these Regulations;
- (j) any liabilities in respect of Protected Rights and accrued rights to Protected Rights to be accorded priority on a winding up over other liabilities under the scheme in respect of benefits attributable to any period of service after the rules have taken effect.

16. Requirement as to resources of the scheme

For a defined benefit scheme, the amount of the resources of the scheme must be sufficient either to enable the scheme to meet the minimum funding requirement provided for in the Retirement Benefits Act (Cap. 197), or the actuary to the scheme must have certified that in his opinion the rates of contributions are adequate for the purpose of securing that the minimum funding requirement will be met by the end of the period prescribed in the Retirement Benefits Act.

17. Alteration of rules of contracted-out schemes

- (1) The rules of a defined benefit contracted-out scheme shall not be altered unless—
 - (a) The trustees of the scheme have informed the actuary in writing of the proposed alteration to the scheme rules;
 - (b) The actuary has considered the proposed alteration and has confirmed to the trustees of the scheme in writing that he is satisfied that the scheme

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will continue to satisfy the statutory standard in accordance with rule 16 of the Retirement Benefit Authority (Occupational Retirement Benefits Scheme) Rules, (L.N. 119 of 2000), and these Regulations after the alteration is made, and

- (c) The alteration is not one which would otherwise prevent the scheme from satisfying the conditions of the Fourth Schedule of the Act.

(2) The rules of a defined contribution contracted-out scheme cannot be altered in relation to any protected rights to contravene the provisions of the Fourth Schedule of the Act or any Regulations made there under.

18. Transfers of Tier II Fund Credits and Protected Rights

(1) An employer who has been issued with a Contracting-out Certificate will make an application in writing to the National Social Security Fund for transfer of Tier II Fund Credits from the National Social Security Fund to the contracted-out scheme and on receipt of the application the Fund shall transfer the Tier II Fund Credits in respect of each of the employees in the contracted-out scheme; and—

- (a) the transfer shall be accompanied with a schedule showing each individual employee's breakdown of Tier II contributions and Tier II Fund credit;
- (b) the transfer will be made within sixty days of the application for transfer; and
- (c) the transfer payment shall not include interest.

(2) An employee in a contracted-out employment may on termination of employment with an employer apply to have his Protected Rights in the contracted-out scheme transferred to another contracted-out scheme as a Protected Rights credit in that scheme or to the National Social Security Fund Pension Fund as a Tier II Credit and on receipt of the application the trustees of the contracted-out scheme shall after confirmation of the contracted-out status of the alternative contracted-out scheme from the Authority transfer the Protected Rights in respect of the employee to that contracted-out scheme; and—

- (a) the transfer shall be accompanied with a schedule showing a breakdown of the Protected Rights;
- (b) the transfer shall be made within ninety days of the application for transfer; and
- (c) the transfer payment shall include interest to the date of transfer.

(3) The provisions of paragraph 2 shall apply to bulk transfer of Protected Rights from a contracted-out scheme which may be made to another contracted-out scheme or to the Pension Fund;

(4) The provisions of paragraph 2 shall apply to transfer of Protected Rights to an alternative contracted-out scheme or to the Pension Fund upon winding up of a contracted-out scheme or the cancellation of a contracting-out certificate.

19. Information and submissions to Authority

(1) A Contracted out scheme or an employer to whom a contracting-out certificate has been issued including any certificate which has been surrendered or cancelled provide written confirmation and such other evidence as the Authority may require pursuant to the provisions of the Retirement Benefits Act (Cap. 197), the Act and these Regulations shall include—

- (a) a quarterly record of contributions showing the aggregate Tier II contributions received by the scheme; and
- (b) a quarterly confirmation either that the Tier II contributions were received by the scheme by the due date or that interest at the applicable rates was received on delayed Tier II contributions to the scheme.

(2) The Authority shall provide a quarterly report to the Fund advising it of the status of Tier II contributions and arrears if any.

(3) A contracted out employer to whom a contracting-out certificate has been issued shall allow the National Social Security Fund compliance officers to inspect records relating to Tier II contributions and the provisions of section 17 of the Act shall, apply.

(4) The National Social Security Fund shall provide a list of all contracted out employers to the Cabinet Secretary.

20. Requirements in relation to administration of protected rights

The administrator of a contracted-out scheme shall—

- (a) ensure it has systems capable of maintaining an accurate record of Protected Rights in respect of each member of the scheme including a record of Tier II Contributions received, Tier II Fund Credits and Protected Rights transfer credits if any;
 - (b) ensure it is able based on earnings records furnished by the employer to verify that Tier II Contributions received are based on the correct earnings;
 - (c) show the Tier II amounts separately on the annual benefit statement issued to members of the scheme;
 - (d) provide a benefit statement to a member on request and upon being given sufficient notice in writing;
 - (e) ensure obligations in respect of Protected Rights are discharged in the manner provided in the Act and these Regulations; and
 - (f) advise and provide details to the Authority and the National Social Security Fund of any arrears in remittance of Tier II contributions to a contracted-out scheme on a monthly basis.
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**THE NATIONAL SOCIAL SECURITY FUND
(MANDATORY REGISTRATION) REGULATIONS**

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**THE NATIONAL SOCIAL SECURITY FUND
(MANDATORY REGISTRATION) REGULATIONS**

[Legal Notice 81 of 2014]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the National Social Security Fund (Mandatory Registration) Regulations, 2014.

2. Application

These Regulations shall apply to any person, including—

- (a) all employers; and
- (b) all employees.

3. Interpretation

In these Regulations, unless the context otherwise requires—

"approved form" means such forms as the Managing Trustee may, from time to time, approve for the purposes of making application for registration.

4. Deemed registration

A member of the Previous Fund other than a member making voluntary contributions shall at the commencement of these Regulations be deemed to be a registered member of the Pension Fund.

5. Persons eligible to register

(1) Subject to the provisions of the Act, an employee who, on or after the commencement of these Regulations, is employed by an employer who operates business in Kenya and;

- (a) is working in Kenya;
- (b) is a citizen of or ordinarily resident in Kenya;
- (c) ordinarily resident in Kenya and is employed outside Kenya
- (d) has attained the age of eighteen years; and
- (e) has not attained the age of sixty years on the appointed date,

shall register with the Fund and contribute as an employee in accordance with the provisions of the Act and these Regulations.

(2) Subject to the provisions of the Act, an employer who operates business in Kenya, on or after the commencement of these Regulations, shall register with the Fund and contribute as an employer in accordance with the provisions of these Regulations.

PART II – REGISTRATION OF EMPLOYERS AND EMPLOYEES

6. Registration of employers

(1) An employer eligible to be registered under regulation 5(2) shall apply for registration not later than thirty days of becoming an employer by completing and forwarding to the Managing Trustee an application in the prescribed and approved form.

(2) The Managing Trustee shall issue the employer with a registration number.

(3) All documents prepared by the employer shall bear the employer's registration number.

(4) An employer who before or on the commencement of these Regulations was registered as an employer under the Previous Fund shall be deemed to be registered under these Regulations.

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(5) A business entity or organization which consists of several branches, departments, sections, sub-offices, depots, sites, stores or other units, whether situated in the same place or in different places, under single management, shall for the purpose of the Act and these Regulations be deemed to be one management and control.

(6) A business entity or organization which consists of several branches, departments, sections, sub-offices, depots, sites, stores or other units, whether situated in the same place or in different places, under independent management, shall for the purpose of the Act and these Regulations shall be deemed to be separate employers.

7. Furnishing of employer information

The employer applying for membership shall furnish the Fund, in writing, with the information required in the application form.

8. Registration of employees

(1) An employer shall, immediately after registration and also on taking on any new employee or direct every employee including a daily paid worker to complete an application in the prescribed form.

(2) An employer shall sign or stamp every application form completed by an employee under regulation 8(1) and forward it to the Managing Trustee.

(3) The Managing Trustee may, with the approval of the Board, require the registration of employees in a manner other than that specified in these Regulations and may among other things—

- (a) prescribe forms for recording particulars of employees;
- (b) direct preparation; and
- (c) issue identification documents and require submission of returns by employers.

9. Furnishing of employee information

An employee applying for membership shall furnish the Fund in, writing, with the information required in the application form.

10. Membership identification

(1) The Managing Trustee shall cause membership card in the prescribed form, to be prepared and issued to the member or forwarded to the member through the employer.

(2) The Board may adopt the Universal Government Identification Card number to be the membership number.

(3) The Managing Trustee shall provide a membership number for the applicant which shall be entered on the membership card.

(4) An employer to whom such membership card is sent shall forthwith hand it or cause it to be handed over to the employee concerned, or, if the employee is no longer in his employment, the employer shall return it to the Fund without delay.

(5) All membership cards shall remain the property of the Fund.

11. Evidence of membership

An employee who is already a member of the Fund shall produce the membership card to every new employer, or where the card is lost, the employer shall produce such other evidence of the membership and registration number as he may possess.

12. Employer cessation

An employer to whom the Act applies shall, sixty days before ceasing to be an employer inform the Managing Trustee of the date of cessation.

13. Cancellation of Registration as an employer

The Managing Trustee may, upon receipt of notice under regulation 12 or upon being satisfied that a person has ceased to be an employer, cancel the registration of that person as an employer

14. Prohibition of deliberate defacing or destroying of cards

A person shall not deliberately destroy, deface, amend or erase any membership card.

15. Replacement of membership card

Where a membership card of any member is destroyed, lost or defaced the member shall apply to the Managing Trustee for a new card and the Managing Trustee, on being satisfied as to such destruction, loss or defacement, shall issue a new card upon payment of a fee of two hundred shillings and which may be revised by the Managing Trustee from time to time.

16. Notification of changes

(1) An employer shall without delay notify the Managing Trustee of any change of physical address, postal address and telephone contacts.

(2) An employer shall notify the Fund when a contributing member first enters or ceases to be in his employ and such further information as the Managing Trustee may require for the purpose of tracing such member.

17. Incorrect card

A person who has a membership card containing any particulars which are to his knowledge incorrect shall forthwith inform the Managing Trustee so that a fresh membership card may be issued.

18. Possession of more than one card

A person in possession of more than one membership card relating to the same person shall forthwith surrender both cards to the Managing Trustee provided that the Managing Trustee shall forthwith issue a new card.

19. Membership card upon death of a member

On the death of a member, any membership card in the custody or possession of any person including an employer shall immediately be forwarded to the nearest office of the Fund.

20. Found card

Any person who finds a membership card shall forthwith deliver it to a responsible officer at a police station, post office or the nearest office of the Fund.

PART IV – OBLIGATIONS OF EMPLOYEES AND EMPLOYERS**21. Obligation of an employee**

(1) An employee shall provide his employer, on request, with such personal particulars as may be required for the purpose of these Regulations and the employee shall be responsible for the accuracy of the particulars so provided.

(2) An employee shall be responsible for the safety of his membership card and shall secure replacement from the Managing Trustee if the card is destroyed, lost or defaced.

22. Obligation of an employer

(1) An employer shall ensure that every employee in his employment who is eligible to register is registered not later than thirty days of the date of commencement of the employment.

(2) An employer shall, notify the Managing Trustee of the happening of any event which the Board may, from time to time, specify.

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23. Records of employees

(1) Every contributing employer shall keep a written record of Fund membership number and records of earnings of each of his contributing employees.

(2) The Fund shall keep a record of an employee for a period of ten years after the Fund fully discharges its obligations to the member.

**THE NATIONAL SOCIAL SECURITY FUND
(MEMBER CONTRIBUTIONS) REGULATIONS**

ARRANGEMENT OF REGULATIONS

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**THE NATIONAL SOCIAL SECURITY FUND
(MEMBER CONTRIBUTIONS) REGULATIONS**

[Legal Notice 80 of 2014]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the National Social Security Fund (Member Contributions) Regulations, 2014.

2. Application

These Regulations shall apply to employers, employees and members of the Pension Fund employed by more than one employer.

3. Interpretation

In these Regulations, unless the context otherwise requires—

"fluctuating emoluments" earnings additional to basic wage or salary not paid on a fixed basis including benefits in kind, acting allowance, special duty allowance, leave allowance, uniform allowance, equipment allowance but including bonuses, commissions, overtime, shift pay, house allowance and service charge.

PART II – MANDATORY CONTRIBUTIONS

4. Employer to pay contributions in respect of each employee

An employer shall pay contributions to the Pension Fund in respect of each employee in his or her employment as prescribed in section 20 of the Act.

5. Employer's contribution

(1) An employer may opt to undertake the responsibility of making the mandatory contributions prescribed in section 20 of the Act.

(2) An employer who opts to undertake the responsibility of making the mandatory contributions shall contribute twelve percent of the employee's monthly pensionable earnings excluding fluctuating emoluments.

6. Contributions to Paid into Fund accounts

All contributions shall be paid directly to the Fund or the Fund's bank account in such manner as the Managing Trustee may from time to time authorize or through such other means as the Managing Trustee may with the approval of the Board require.

7. Bank charges to be recovered for bounced cheques

Where a contribution is made by a cheque that bounces, the Fund shall recover from the employer the bank charges for the bounced cheque.

8. Submission of monthly returns

Every contributing employer shall each month submit to the Managing Trustee returns in the prescribed format and manner together with the contributions payable.

9. Deductions on mandatory contributions

There shall be no agency fee or commission or any deductions whatsoever levied on mandatory contributions remittances.

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10. Making an early payment in cases of retirement

The Managing Trustee may in respect of employees due for retirement require an employer to pay the contributions in respect of that employee earlier than the date prescribed to enable the Fund to make an expeditious payment of a benefit due.

11. Updating of member accounts

The Fund shall immediately on receipt of each member's contribution, update the member's account to reflect the contribution.

12. Practices calculated to avoid or reduce liability

The Board may, where it reasonably believes that there is practice, in respect of payment of earnings calculated to avoid or reduce liability for contributions by means of irregular or unequal payments or other irregular pay practice, give directions for ensuring that such contributions are payable as if that practice was not followed.

13. Failure to deduct contributions

An employer who fails to deduct contributions from an employee's wages, shall be required to pay both shares of contributions from the employer's resources.

14. Payment of arrears

Where an employer pays increment of wages or salaries in arrears—

- (a) the employer shall be obligated to deduct and remit the equivalent pension to the Fund for the month that the wages or salaries are earned.
- (b) no deductions or remission on the wages or salaries shall be made on the arrears if the arrears are part of an agreement negotiated with the employee under which pension contributions are not payable on wages or salaries arrears.

15. Interest on contributions

All contributions will earn interest per annum.

16. Summarized annual statements

A summarized annual statement indicating principal amounts, interest earned and total amounts shall be issued to individual members for the Old Provident Fund, New Provident Fund and Pension Fund.

17. Contributions from employees with more than one employer

(1) Where an employee is ordinarily employed by two or more employers in a month the employers of such an employee shall submit to the Managing Trustee an arrangement for the payment of contributions in respect of such employee.

(2) If the Managing Trustee is satisfied that the arrangement is secure, the Managing Trustee may, approve such an arrangement subject to such terms and conditions as he may think necessary.

(3) If no such an arrangement is made and submitted to or approved by the Managing Trustee, each employer shall be liable towards the employee as if he were the sole employer.

18. Remission of penalty on contributions

Any penalties waived on unpaid contributions under this Act shall be net of the interest due to a member's account and expenses incurred.

19. Daily paid workers

In relation to daily paid workers, the employer shall deduct and remit their contributions in accordance with the provisions of the Act.

20. Employers paying gratuity

Where a contract of service provides for gratuity, the employer shall deduct and remit contributions in accordance with the Act,

Provided that an employer may deduct its portion of contribution from the gratuity amount payable to the employee.

21. Transmission of notices and documents

Except as otherwise prescribed, any notice or document required or authorized to be given to any person by the Board under these Regulations, shall be deemed to have been given or sent if it was sent by post or electronic mail to that person at the last known address of that person.

PART III – MANAGEMENT OF VOLUNTARY CONTRIBUTORS

22. Waiving of penalty on voluntary contributions

No penalty may be levied on late payments received from the self-employed and voluntary contributors.

23. Voluntary contribution arrears

No contributions may be credited into a voluntary member's account in arrears.

**THE NATIONAL SOCIAL SECURITY FUND
(VOLUNTARY REGISTRATION) REGULATIONS**

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8. Cessation of membership as voluntary member
 9. Retention of membership
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**THE NATIONAL SOCIAL SECURITY FUND
(VOLUNTARY REGISTRATION) REGULATIONS**

[Legal Notice 82 of 2014]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the National Social Security Fund, (Voluntary Registration) Regulations, 2014.

2. Application

These Regulations shall apply to the self-employed and voluntary contributors.

PART II – REGISTRATION OF VOLUNTARY MEMBERS

3. Eligibility of voluntary membership

A person is eligible to be registered as a voluntary member if the person—

- (a) is self employed;
- (b) retires from employment, or otherwise ceases to be an employee within the meaning of the Act other than by attaining pensionable age;
- (c) is ordinarily resident in Kenya but is employed outside Kenya under a contract of service entered into by an employer who does not reside in or has no place of business in Kenya;
- (d) is employed in Kenya by a person who is not an employer within the meaning of the Act;
- (e) is a member of an organized group of persons invited by the Board to become members of the Fund pursuant to an agreement under regulation 5 below;
- (f) is a citizen of Kenya who lives and works outside Kenya; or
- (g) is an exempt person under the Act.

4. Furnishing of required information

A person applying for membership shall be required to furnish the Fund in writing with the information detailed in the application form.

5. Admission agreement

The Board may enter into an agreement known as an admission agreement that permits members of an organized group of persons whether eligible to become members of the Fund or not, to be subject to such conditions as the Board may prescribe, become members of the Fund.

6. Voluntary member registration

- (1) A person may apply for registration as a voluntary member of the Provident Fund by making an application in the prescribed form.
- (2) Upon registration, the voluntary member shall pay an initial contribution of not less than two hundred shillings.
- (3) The persons registering online shall be required to make the initial contribution of not less than two hundred shillings through an authorized mode of payment.
- (4) On receipt and approval of an application for voluntary contribution, the Managing Trustee shall issue the applicant with a certificate for voluntary contributions.

7. Prohibition of deliberate defacing or destroying of certificate

A member shall not deliberately destroy deface, amend erase a certificate issued under regulation 6.

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PART III – CESSATION OF MEMBERSHIP AS VOLUNTARY MEMBER

8. Cessation of membership as voluntary member

A person shall cease to be a voluntary member if the person—

- (a) becomes an employed contributor; or
- (b) advises the Managing Trustee, in writing, that he or she no longer wishes to be a voluntary contributor.

9. Retention of membership

A person who advises the Managing Trustee, in writing, that he no longer wishes to be a voluntary contributor may retain his membership without making contributions unless he opts to access the benefits.
