Kenya

Exchange rate: USD 1.00 equals 81.15 shillings (KES).

Regulatory Framework

2000: The Retirement Benefits (occupational retirement benefits schemes) Regulations; contain rules concerning administration, membership and benefits under occupational pension plans and define guidelines for the investment of plan assets.

2000: The Retirement Benefits (minimum funding level and winding up of schemes) Regulations; define a minimum funding level and govern the winding up of occupational pension plans.

2000: The Retirement Benefits (managers and custodians) Regulations; contain rules on the conditions and process for registration of custodians and managers.

1997: Retirement Benefits Act; establishes the Retirement Benefits Authority for the regulation, supervision and promotion of privately managed retirement plans, regulates the registration and operation of occupational pension plans.

Plan Profile

Plan sponsors

Employers, singly or as a group, may establish on a voluntary basis a complementary occupational pension plan for their employees.

Most plans are single employer plans and collective bargaining is usually not part of the process of establishing a plan.

Types of plans

Pension plans: Employers may establish occupational pension plans that can be defined benefit or defined contribution and that provide a regular old-age pension to the retiree. Only a limited part of the pension may be commuted to a lump sum at retirement.

Provident plans: Employers may establish occupational provident plans that can be defined benefit or defined contribution and provide a lump sum at retirement.

All plans: All occupational pension and provident plans must be:

- Established under an irrevocable trust;
- Have a registered office in Kenya;
- Apply for a certificate of registration with the Retirement Benefits Authority.

Membership of an occupational pension or provident plan is not compulsory for covered employees. Once an employee decides to become a member, however, withdrawal from membership while being employed by the same employer is not allowed.

Employees must be allowed to pay additional voluntary contributions to the plan without any limit (although contributions are only tax-deductible up to the lower of KES 17,500 or 30% of salary).

Institutional Framework

All plans: Pension and provident plans must be established under an irrevocable trust and plan assets must be held in a pension or provident fund respectively completely separate from all other assets under the control of the trustees. The trustees may appoint a pooled fund (funds bringing together the assets of several plans with the aim of collective investment - see section, Asset management) to manage the plan assets in which case the establishment of a separate pension or provident fund is not required.

Plans must have at least three trustees unless a corporate trustee is appointed. At least one-third of the trustees must be nominated by plan members. Trustees must:

- Not have been imprisoned for six months or longer;
- Not be adjudged bankrupts;

- Not have been involved in the management of a plan that was deregistered due to failures of the management;
- Not be disqualified under any law;
- Not be deemed by the Retirement Benefits Authority to have a negative impact on the plan.

The trustees may appoint an administrator to undertake the day-to-day management of a plan. The trustees must inform the Retirement Benefits Authority of the qualifications and other details of the administrator. There is, however, no requirement for administrators to be licensed by, or registered with, the Retirement Benefits Authority.

The plan rules must adequately protect the rights of plan members and sponsors and must regulate, among other things, the following issues:

- Plan membership;
- Benefit qualifying conditions including normal retirement age and benefit structure and formula;
- Survivor benefits;
- Appointment and powers of trustees and administrator;
- Contribution rates;
- Vesting rules;
- Pensionable salary;
- Investment of plan assets;
- Custody of plan assets and appointment of an auditor;
- Dispute settlement procedures.

Coverage

All plans: Private and public-sector employees.

Plans rules must not discriminate with regard to admission to membership on the basis of gender, race, religion or any other discriminatory manner and there must not be any discretionary power concerning admission. Employees who are within five years of the plan retirement age when they commence work with the employer or when a new plan is established must not be eligible for membership.

Plan rules may provide for different benefit formulas for different categories of workers if:

- The difference is justified by actuarial considerations;
- The difference is intended to favour members working in hazardous occupations;
- The difference has been approved by the Retirement Benefits Authority.

The Authority must not approve different benefit formulas for different categories of workers if the difference is based on salaries, wages, gender, rank or seniority.

The self-employed may become members of personal retirement benefit plans. These plans are not covered further in the following sections.

Financing / Investment

Sources of funds

Employee contributions

All plans: No legal rules.

Employee contribution rates must be regulated in the plan rules and plans can be contributory or noncontributory.

A typical plan requires employees to contribute at a rate of 5% of salary.

Employer contributions

All plans: No legal rules.

Employer contribution rates must be regulated in the plan rules in the case of defined contribution plans and are fixed by the plan actuary in the case of defined benefit plans. Employers may take contribution holidays under certain circumstances.

Employers usually contribute double the employee contribution rate and a typical plan therefore requires employers to pay 10% of salary.

Other sources of funds

All plans: None.

Methods of financing

All plans: Funded.

Asset management

All plans: The trustees may manage plan assets themselves or contract the asset management to an asset manager.

Asset managers must be registered with the Retirement Benefits Authority. In order to be registered, an asset manager must:

- Be a limited liability company with the major business aim of managing assets of pension and provident plans;
- Have a minimum paid-up capital of KES 10 million;
- Have the professional capabilities to pursue its functions properly;
- Not have been manager of the plan assets of a plan that has been deregistered due to the actions of the asset manager.

The asset manager registration must be renewed annually.

Trustees may also appoint a pooled fund (funds bringing together the assets of several plans with the aim of collective investment) to manage plan assets. In choosing whether a certain pooled fund should be appointed, trustees must ensure that it has been established by a limited liability company that:

- Has a minimum paid up share capital of KES 10 million;
- Has the professional and technical means and systems to carry out its function;
- Has developed a prudent investment policy for the investment of the pooled funds.

Trustees are jointly liable if they appoint a pooled fund that does not fulfil these requirements.

Pooled fund assets may be managed by the limited liability company setting up the fund or an asset manager approved under the procedure described above.

Trustees must prepare a written statement of investment policy under the advice of a professional investment advisor that contains the principles determining investment decisions. The statement must include information on the categories of investments to be held, the risk and the realization of investments. It must be submitted to the Retirement Benefits Authority and be revised every three years.

Of total assets invested:

- A maximum of 5% may be in cash and deposits payable on demand in institutions licensed under the Banking Act of the Republic of Kenya;
- A maximum of 30% may be in fixed deposits, time deposits and certificates of deposits in institutions licensed under the Banking Act of the Republic of Kenya;
- A maximum of 30% may be in commercial paper, corporate bonds, mortgage bonds and loan stocks approved by the Capital Markets Authority, and in collective investment schemes that invest in these assets and that are incorporated in Kenya and approved by the Capital Markets Authority;
- A maximum of 70% may be in Kenya Government Securities, and in collective investment schemes that invest in these assets and that are incorporated in Kenya and approved by the Capital Markets Authority;
- A maximum of 70% may be in preference shares and ordinary shares of companies quoted on a stock exchange in Kenya, Uganda or Tanzania, and in collective investment schemes that invest in these assets and that are incorporated in Kenya and approved by the Capital Markets Authority;
- A maximum of 30% may be in the quoted equity of any one company;
- A maximum of 5% may be in unquoted shares of companies incorporated in Kenya, and in collective investment schemes that invest in these assets and that are incorporated in Kenya and approved by the Capital Markets Authority;
- A maximum of 15% may be in offshore investments in bank deposits, government securities, quoted equities and rated Corporate Bonds, and in offshore collective investment schemes that invest in these assets;
- A maximum of 30% may be in immovable property in Kenya and units in property Unit Trust Schemes incorporated in Kenya, and in collective investment schemes that invest in these assets and that are incorporated in Kenya and approved by the Capital Markets Authority;

- A maximum of 5% may be in any other assets subject to the prior approval of the Authority.

These maximum limits may be violated in cases of asset revaluation or appreciation for a period of no more than 90 days.

Plan assets must not be used to make direct or indirect loans to any person and must not be invested with a bank, nonbanking financial institution, insurance company, or similar institution with a view to securing loans, including mortgages, at a preferential rate of interest or for any other consideration to the sponsor, trustees, members or manager of a plan.

Plan assets must be kept by a custodian. If a pooled fund is appointed, the pooled fund manager chooses the custodian. Separate accounts must be maintained by the custodian of a pooled fund for the assets of each plan.

Benefit provisions

Acquisition and maintenance of rights

Waiting period

All plans: The legal maximum waiting period is one year, although the Retirement Benefits Authority may approve exceptions to this rule.

A waiting period must not be applied if a new employee transfers accrued rights from a plan sponsored by the previous employer to the new employer.

Employees within five years of the plan retirement age when they commence work with the employer or when a new plan is established must not become members of a plan.

Vesting rules

All plans: Employee contributions vest immediately. Employer contributions must be fully vested after a maximum of five years.

Plans often provide for a vesting scale under which a part of the employer contributions are vested after less than five years of plan membership.

Upon terminating employment before full vesting of employer contributions, employees are entitled to a refund of their own contributions and the vested part of the employer contributions plus interest.

Preservation, portability, transferability

All plans: Plan rules must provide for the treatment of accrued rights in the case of termination of employment before retirement. Such provisions must include one of, or a choice between, the following:

- Cash payout of the value of accrued benefits to the leaving member;
- Preservation of benefits until the member attains the plan retirement age;
- Transfer of the value of accrued benefits to another plan.

If a member of a defined benefit plan opts for a transfer of benefits to another plan, the transfer value must be reviewed and certified by an actuary.

Retirement benefits

Benefit qualifying conditions

All plans: No legal rules.

Retirement age must be regulated in the plan rules and there is no legal lower or upper limit.

Benefit structure / formula

All plans: Plans are not integrated with the social security scheme.

Pension plans: Pension plans may be defined benefit or defined contribution and must provide a monthly pension for life.

Pensionable salary and accrual rates must be defined in the plan rules.

Part of the pension may be commuted to a lump sum in which case the following rules apply:

- Up to 25% of the pension may be commuted if the plan is noncontributory;
- Up to one-third of the pension may be commuted if the plan is contributory;
- The benefits accrued by means of additional voluntary contributions may be commuted in full.

The formula for commutation must be determined by an actuary and included in the plan rules.

Provident plans: Provident plans may be defined contribution or defined benefit and provide a lump sum at retirement.

Benefit adjustment

All plans: No legal rules.

Trustees may decide on benefit increases, but every increase must be recommended and certified by an actuary.

Survivors

All plans: In the case of death of a plan member or retiree, benefits must be paid to a person nominated by the deceased. If the deceased had not nominated any beneficiary, the trustees must exercise discretion in the distribution of benefits to the dependants of the deceased.

The plan rules may provide for trustees' discretion with regard to:

- The retirement benefits payable to a nominated beneficiary;
- The retirement benefits payable to the deceased member's children;
- The apportionment of benefit among all eligible dependents.

Plan rules may provide for all survivor benefits to be paid as lump sums if the survivors request so in writing.

Disability

All plans: If members prove by means of medical evidence submitted to the trustees that they are permanently disabled and cannot perform their normal gainful employment or any other reasonably suitable occupation, they may receive their accrued benefits before the plan retirement age.

Protection of Rights

Protection of Assets

All plans: Plan assets must be kept in a pension, provident or pooled fund completely separate from the assets of the sponsoring employer. Plan assets are not assets of the employer in the event of employer bankruptcy.

Plan assets must be held by a custodian.

Financial and Technical Requirements / Reporting

All plans: Within a period of three months of the end of each financial year, the trustees must prepare a balance sheet, a statement of income and expenditure and a statement of assets and liabilities with regard to the plan.

The trustees must appoint an auditor within three months of the plan's registration to audit the accounts once a year.

Trustees must submit the following documents to the Retirement Benefits Authority once a year:

- Audited annual accounts within four months of the end of each financial year;
- Trustees' report;
- Investment report.

Financial statements must regularly be submitted providing information on the following issues:

- Unpaid contributions (contribution reports must be submitted every three months);
- Expenditures for, or on behalf of, trustees;
- Investment returns (investment reports must be submitted every three months);
- Transactions with related companies;
- Ownership of more than 10% of the equity of any company.

The Authority may require the trustees to inform it of the annual expenditures for the plan administration.

Trustees must have an actuarial valuation prepared by an actuary every three years in the case of defined benefit plans and every five years in the case of

defined contribution plans and must submit the actuarial report to the Authority.

In addition, trustees must have an actuarial report prepared in the case of:

- Major benefit improvements;
- Significant changes in the size of plan membership;
- Mergers and winding up;
- Any other special situation with financial impact;
- A corresponding request by the Authority.

A minimum funding requirement applies and a plan is considered to be underfunded if:

- Assets cover less than 80% of liabilities;
- It cannot meet liabilities when they become due.

If the Retirement Benefits Authority finds that a plan is underfunded, the trustees must submit a remedial plan within 30 days that proposes measures to improve the funding level. This plan is subject to the approval of the Authority and it must be implemented within 3 years. The Authority may require the trustees to amend the remedial plan.

If the Authority is of the opinion that the efforts of the trustees to improve the funding level are ineffective, impracticable or unsatisfactory, it may apply to a court to wind up the plan (see section Protection of Rights, Winding up / merger and acquisition).

Whistleblowing

All plans: Trustees, asset managers or custodians must immediately inform the Retirement Benefits Authority if they become aware of any event that may endanger the rights of the members or the sponsor of the plan.

Standards for service providers

All plans: Custodians must be registered with the Retirement Benefits Authority. In order to be registered, a custodian must:

- Be a limited liability company with the major business aim of carrying out custodial functions;
- Have a minimum paid-up share capital of KES 250 million;
- Have the professional and technical means and systems to carry out its function;
- Not have been custodian of the plan assets of a plan that has been deregistered due to the actions of the custodian.

The custodian registration must be renewed annually.

Auditors must be members of the Institute of Certified Public Accountants of Kenya and their appointment must be approved by the Retirement Benefits Authority.

Actuaries authorized to prepare a valuation must be recognized as actuaries by the Institute of Actuaries in England, the Faculty of Actuaries in Scotland, the Canadian Institute of Actuaries, Society of Actuaries of the United States or the Institute of Actuaries of Australia or must be a person holding equivalent qualifications.

Fees

All plans: The Retirement Benefits Authority may require the trustees to inform it of the annual expenditure for the plan administration.

Winding up / Merger and acquisition

All plans: Plans may be wound up following a voluntary decision by the sponsor subject to approval by the Authority or if the Authority applies to the court for the winding up of a plan in cases where it is underfunded or its trustees continuously violate legal requirements.

If a plan is wound up, a liquidator must be appointed and the accrued benefits of all members must be transferred to another occupational or personal plan chosen by the members. In this case, plan members are considered to be deferred creditors and their claims must not be settled until the claims of ordinary creditors have been settled. Plans that have been wound up are deregistered by the Authority.

Mergers of plans are allowed if the Authority is convinced that the rights of members are sufficiently protected.

Bankruptcy: Insolvency Insurance / Compensation Fund

All plans: There is no requirement for plans to insure against financial loss, and no compensation fund exists.

Disclosure of information / Individual action

All plans: Certain information must be disclosed to plan members on a regular basis. Plan members must annually be provided with benefit statements. In addition, the trustees must send a summary of the audited accounts to the plan members within six months of the end of the financial year and inform them that the full audited accounts as well as the trustees' and the investment report are available for inspection. The actuarial valuation report must be made available for inspection within 3 months of its receipt by the trustees.

Plan members who are aggrieved by a decision of the trustees may complain to the Retirement Benefits Authority in writing and request that such decision be reviewed with regard to its compliance with plan rules and legal requirements.

An Appeals Tribunal has been established to which a plan member can appeal against the decisions of the Authority.

Other measures

All plans: Amendments to plan rules must be approved by, and registered with, the Retirement Benefits Authority. Approval is only granted if the amendment:

- Does not reduce accrued rights of members;
- Does not harm the interests of the sponsor;
- Does not negatively affect the rights of any creditor other than a member;
- Is certified by an actuary if it affects the financial position of the plan.

Tax Treatment

Taxation of employee contributions

All plans: The total of employee and employer contributions is tax-deductible up to the limit of the lower of KES 17,500 or 30% of salary.

Taxation of employer contributions

All plans: The total of employee and employer contributions is tax-deductible up to the limit of the lower of KES 17,500 or 30% of salary.

Taxation of investment income

All plans: Tax-exempt.

Taxation of benefits

All plans: The part of a lump-sum benefit under KES 360,000 is tax-exempt. The part of the lump sum between KES 360,000 and KES 471,616 is taxed at a rate of 10%, between KES 471,616 and KES 581,056 at 15%, between KES 581,056 and KES 690,496 at 20%, between KES 690,496 and KES 799,936 at 25%, and the part of the lump sum exceeding the latter amount is taxed at a rate of 30%.

The first KES 150,000 of yearly pension income is tax-exempt, the next KES 111,616 are taxed at a rate of 10%, the next KES 109,440 at 15%, the next KES 109,440 at 20%, the next KES 109,440 at 25% and the pension income exceeding these amounts is taxed at a rate of 30%.

Regulatory and Supervisory Authorities

Retirement Benefits Authority: supervises privately managed retirement plans and protects the interests of plan members and sponsors.

The Authority may inspect any plan, asset manager or custodian. The trustees, asset manager or custodian of an inspected plan must provide the inspector with all requested information.

If the trustees do not submit the annual accounts to

the Authority, if the submitted documents are false or misleading or if the Authority becomes aware of facts that make it necessary, the Authority may:

- Appoint an interim administrator to the plan to take over the functions of the trustees, asset manager or custodian;
- Remove any employee of the trustees, asset manager or custodian whose actions do not comply with legal requirements.

The period of office of the interim administrator must not exceed 12 months. The interim administrator must prepare a report to the Authority and recommend whether a sound position of the plan may be restored or whether the plan should be wound up and deregistered.

The Retirement Benefits Authority is governed by a Board of Directors consisting of:

- A Chairman appointed by the Minister of Finance (one of the five experts noted below);
- A Chief Executive Officer responsible for its day-to-day administration;
- The Permanent Secretary in the Ministry of Finance;
- The Commissioner of Insurance;
- The Chief Executive of the Financial Markets Authority;
- Five members who must not be public officers and who are appointed by the Minister of Finance (on the bases of their knowledge or experience in the areas of asset management, banking, insurance, law or actuarial studies).

The Authority is financed through a Retirement Benefits Levy paid by the supervised entities. The annual levy on occupational pension and provident plans consists of a percentage of the net asset value of a plan and its minimum is KES 6,000 a year.

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Contents

Introduction

Guide to Reading the Country or Territory Profiles. 9
- Sources of information 10
- Complementary and private pensions and social security 10
- Classification of complementary and private pensions 11
- Occupational or personal. 11
- Mandatory or voluntary. 11
- Format of country or territory profiles 12

Guidance Notes for Completion of Country or Territory Profiles 14

Tables 25
- Table 1. Types of systems for retirement income 25
- Table 2. Methods of implementing voluntary complementary and private pension plans 29
- Table 3. Legal rules for voluntary complementary and private pension plans 31
- Table 4. Legal rules for mandatory complementary and private pension schemes. 33
- Table 5. Demographic statistics related to complementary and private pensions, 2005. 35
- Table 6. Financial statistics related to complementary and private pensions, 2005 38

Country or Territory Profiles

AFRICA - Voluntary (Information valid at 01-01-2005). 41

Botswana 42

Kenya 47

South Africa 55

Tunisia 63

Zambia 68

Zimbabwe 74

AMERICAS - Voluntary (Information valid at 01-07-2005). 81

Brazil 82

Canada 88

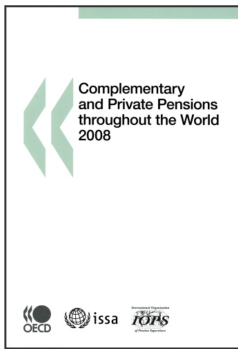
United States of America 96

AMERICAS - Mandatory (Information valid at 01-07-2005). 105
Argentina 106
Bermuda. 115
Bolivia 122
Chile. 132
Colombia 142
Costa Rica 153
Dominican Republic 160
El Salvador. 169
Mexico 177
Peru 186
Uruguay 194
EUROPE - Voluntary (Information valid at 01-01-2006) 201
Austria 202
Belgium 212
Denmark. 219
Germany. 225
Ireland 234
Italy 245
Luxembourg. 251
Republic of Moldova 261
Netherlands 266
Portugal 274
Slovak Republic. 282
Slovenia 288
Spain 297
Sweden. 304
United Kingdom. 313
EUROPE - Mandatory (Information valid at 01-01-2006) 327
Bulgaria 328
Croatia 337
Estonia 345
Finland 354
France. 364
Hungary 371

Iceland . . . 381
Liechtenstein . . . 390
Macedonia . . . 397
Norway . . . 405
Poland . . . 413
Romania . . . 422
Switzerland . . . 430
ASIA & PACIFIC - Voluntary (Information valid at 01-07-2006) . . . 437
Bangladesh . . . 438
Hong Kong, China . . . 443
Indonesia . . . 452
Israel . . . 461
Japan . . . 469
Malaysia . . . 479
New Zealand . . . 486
Thailand . . . 494
ASIA & PACIFIC - Mandatory (Information valid at 01-07-2006) . . . 501
Australia . . . 502
Hong Kong, China . . . 512
Kazakhstan . . . 525

Glossary

Glossary . . . 531



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