The Institute of Certified Public Accountants of Kenya

SUBMISSION

ON

THE FINANCE BILL, 2023

MAY 2023

1. PREAMBLE

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established under by the Accountants Act of 1978, and as repealed under the Accountants Act Number 15 of 2008, mandated to develop and regulate the Accountancy Profession in Kenya. It is a member of the International Federation of Accountants (IFAC), the umbrella body for the global accountancy profession.

The Finance Bill, 2023 proposes amendments to various tax provisions in the various Acts in tune with the proposals by the Treasury to generate tax revenues to fund the 2023/24 budget. The Kenya Finance Bill is a proposed statute introduced every year in the National Assembly immediately after the presentation of the Budget Statement by the Treasury CS, to give effect to the financial proposals of the Government for its upcoming fiscal year.

2. DETAILED COMMENTS

A. INCOME TAX ACT

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	RATIONALE/ LIKELY IMPACT
1.	Clause 4 (a) Amendment of section 4A of Cap. 470.	The Bill proposes to delete Section 4A (1) (ii) on Deferment of Foreign Exchange loss and replace it with a new proviso that seeks to restrict deductibility of deferred foreign exchange losses to a period of 3 years While the move is welcome, members are of the view that 3 years is a very short period for a company to have turned around the level debt and ensure that the interest expense is below the required 30% Earnings Before Interest Tax and Depreciation (EBTDA)	Increase the period from three years to nine years.	The period of 9 years is reasonable and in tandem with the tax losses restriction under the repealed law. Prior to 2021, foreign exchange losses were carried forward indefinitely.

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2.	Clause 5 (a) (ii)	The Bill proposes to introduce a paragraph (fa) after Paragraph (f) of Section 5 (2) (ii) to read as follows: *"club entrance and subscription fees disallowed against the employer's income"* The implication of the above is that any club entrance and subscription fee disallowed against employers' income will be taxed on the hands of the employee.	We propose that the words "**disallowed against the employer's income"** is dropped and the following proviso introduced. *Provided that where the employer elects to disallow the club entrance and subscription fees, the same shall not be taxable on the employee.*	As currently drafted, the club entrance fee and subscription fee will not be taxable on either the employer or the employee. This may lead to revenue leakage.
3.	Clause 10: Digital asset tax	The Bill proposes to introduce a Digital Asset Tax (DAT) to be imposed at the rate of 3%	Given that the income tax on digital market (Digital Service Tax) is at the rate of 1.5%. The proposed rate of 3% may appear steep and discriminatory. We propose to reduce the proposed rate from 3% to 1.5% Also, to ensure compliance and clarity of the new law, we recommend that the Government empowers the Cabinet Secretary (CS) in charge of National Treasury and Economic Planning to develop Regulations to guide implementation of the new law.	Reduction of the rate may encourage compliance and imply equity on taxation of the digital economy. The Regulations will clarify the scope and eliminate any ambiguities that may emanate from the new law

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4.	Clause 12 (a) Amendment of section 16 of Cap. 470	The Bill proposes to disallow expenditure or loss where the invoices of the transactions are not generated from an electronic tax invoice management system	Delete the proposed amendment because of the following reasons: (i) e-TIMS is on the piloting stage, it may require sometime before it is relied on in enhancing compliance on other areas apart from VAT. Where the Government is ready to extend it to Corporate Income Tax (CIT), it is advisable to ensure that there is enough stakeholder engagements to ensure that genuine expenses are not left out e.g. accruals, provisions, interest e.t.c. (ii) Could negatively affect Micro-Small and Medium Enterprises (MSMEs) who could be edged out of business by compliant large firms/multi-nationals. This will negative affect the businesses at the bottom.	• Under the law, expenses are claimable where they have been incurred, wholly and exclusively in the generation of taxable income. Having a non-e-TIMS generated invoice does not disqualify an expense from being incurred for generation of taxable income. Perhaps income generated via such expenses should also not be subjected to CIT. • VAT is claimed on legitimate expenses. "e-TIMS is on the piloting stage to give it a stability." • e-TIMS still at the pilot stage. Taxpayers may struggle to take deductions in relation to accruals. • Could negatively affect MSMEs could be edged out of business by compliant large firms/multi-nationals. Further, the approval process envisaged for invoices generated without e-TIMS will require more manual power being hired by KRA to process the requests in a speedy manner, otherwise there is risk of crippling businesses.

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5.	Clause 12 (b)(iv) Deductions not allowed	The Bill provides that " Any interest in excess of thirty per cent EBITDA shall be an allowable deduction in ascertaining the total income of a person in the subsequent three years of income to the extent that the deduction of interest on loans from non-resident persons does not exceed the thirty percent threshold provided under this Section"	Increase the period from three years to nine years	The period of 9 years is reasonable and in tandem with the tax losses restriction under the repealed law. Prior to 2021, restricted interest was carried forward indefinitely. This proposal is in line (but even tighter) with other comparable jurisdictions e.g. there is no limit for South Africa, Tanzania and Ghana
6.	Clause 17 Amendment of section 21 of Cap. 470.	The Bill proposes to tax all other income (except welfare contributions, joining fees and subscriptions) accrued by a member's club or trade association. Currently, other categories of income are only taxable to the extent that the entrance fee and club subscriptions is less than three quarters of the total income.	Propose deletion of the proposed amendment	The status quo ought to have remained because of the following reasons: i) Encourage nation health improvement as most clubs enable members to recreate and expand business opportunities. ii) Members of clubs and association are not profit making and the extra income is to support their activities as opposed to having to increase membership fees in order to meet its day-today expenses. iii) The provision will discourage membership to clubs
7.	Clause 20 (a) (Digital Content monetization)	The Bill proposes to introduce withholding tax at the rate of 15% on payments made to Digital Content creators	We propose that the rate of 15% is reduced to 5% and that a rate of 20% is introduced for non-resident digital content creators	▪ For uniformity and certainty because this fee is similar to management or professional fee which is currently subject to the proposed rates

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				▪ The high rate may negatively impact on the cashflow of digital content creators.
8.	Clause 24 (b) *(35% tax rate on income above KES 6,000,0000 per annum)*	The Bill introduces a new tax rate of 35% for individuals earning/accruing income in excess of KES 500,000 per month (KES 6,000,000 per year)	We recommend that the proposal is deleted to retain the marginal tax rate at 30%	The proposal to increase the marginal tax rate will reduce the disposable income of the affected employees. This will in turn impact on the savings and consumption. • Consumption taxes such as VAT and Excise duty are likely to reduce. • Economic growth is stimulated by spending. From a social standing, these employees support at least other people with the same salary, reducing the salary will impact society negatively. • Government should work towards increasing the number of employees to increase the tax base From a Foreign Direct Investment (FDI) perspective, • This may lead to movement of talent from Kenya since Kenya may be viewed as a high tax jurisdiction compared to other jurisdiction that are considered employee tax friendly

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				• Kenya may be unattractive to potential investors This proposal is coming at a time when the Government is proposing to increase National Hospital Insurance Fund (NHIF), introduce National Housing Development Level (NHDL), already increased pension contributions and high rate of inflation.
9.	Clause 23 (c)(1) (b) Amendment to the Second Schedule of the Income Tax Act	Amendment by inserting a new paragraph "shall not apply to investments which due to the nature of their business have to located in places outside Nairobi City County and Mombasa County" **Investment deduction should not apply to businesses which are located outside Nairobi City County and Mombasa County due to their nature.** The proposed amendment is likely to introduce unnecessary controversies as it appears, though not expressly, to empower the Commissioner determine which businesses can or cannot be carried out in the specified Counties. Besides, the proposed amendment is introducing additional restrictions to a provision that already has a myriad of restrictions. This is expected to further	We recommend deletion of Clause 23 (c)(1) (b)) of the Bill in its totality.	This proposals is discriminatory, may lock out interested firms. Restricting the investment deduction to the nature of business is retrogressive and may punish investors who have genuinely incurred huge capital outlay. It is also open to controversies as there are no guidelines as to what investment can be or cannot be done outside the Nairobi and Mombasa Counties.

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		claw back the incentives that were available to this category of investors.		
10.	Clause 20 (c) (Section 35 (5) of the Income Tax Act)	The amendment seeks to introduce a requirement for taxpayers to remit withholding tax to the Commissioner within twenty-four hours where the tax has been deducted on qualifying payments	Retain the current legislation of the due date being the 20th of the following month	One of the canon's of taxation provide that taxes ought to be *easy and convenient for the taxpayer.* That means "every tax ought to be levied at the time, or in the manner in which it is most likely convenient for the contributor to pay it. The timeline is not applicable/practicable thus taxpayers are vulnerable to non-compliance, thus increasing time wasted in firefighting unreasonable targets. Additionally, the provision will; 1. Increase in cost of compliance 2. This will negatively impact on the cost of business 3. Force business to rethink on the payment to suppliers which will in turn impact on the suppliers cashflow 4. The administrative burden may encourage non-compliance, since some companies make voluminous payments in a day 5. This will have an impact on the governance and controlled environment within organizations

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11.	PART II Income Tax Section 2 *Interpretation*.	Current Definition "person" includes— (a) in the case of an individual, **a reference to a relative**, as defined in section 26(5), of that person; Concern on New Definition: "individual" means a natural person; The words **reference to a relative** is extremely wide in interpretation and may include the commissioner selecting anybody listed on section and deeming the relatives (5) income to be the income of the a separate "individual;" taxpayer Section 26(5) (5) In this section— "relative" of a person means— (a) his spouse; (b) any ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, niece, step-father, step-mother, step-child, adopted child, and, in the case of an adopted child, his adopter or adopters; (c) the spouse of any such relative referred to in paragraph	Leave interoperation of an individual to remain as a natural person. Not plural	The new proposed interoperation does not meet basic cannon of taxation: **Fairness** – Why should you be responsible for your relative **Simplicity** – How do you determine your relatives income **Administrative ease** – Head ace trying to figure out your relatives tax liabilities

B. VALUE ADDED TAX

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	RATIONALE/ LIKELY IMPACT
1.	VAT Act	VAT on petroleum products	**Retain the status quo of 8%** An increase of the tax will have an effect on all inputs and will increase the cost. The government is keen on mobilizing revenues domestically with minimal borrowing.	The cascading effect of fuel prices across all sectors of the economy is known. Taxes and levies will now constitute over 65% of the fuel pump price. This is akin to paying tax and get fuel as opposed to buying fuel and paying tax. The inflation will increase and affect the economic performance in the country. The dependence on fossil fuel by the key sectors in transport and manufacturing will affect the cost of living significantly and is not in line with the government's agenda of reducing the cost of living. It will lead to increase in cost of goods for companies that use petroleum products in generation of power and distribution of goods
2.	Fertilizer	Exempting Fertilizers (use numbers/statistics to support zero-rating as opposed to exempting)	Remain zero rated	Exempting the item means that the dealers cannot claim any VAT input incurred in the supply of fertilizer. Be it transport, godown rent etc. All these VAT input will have to be passed to the final consumer by way of increased fertilizer prices, further hurting the farmers. Why should we subsidize fertilizer when the government can remove taxes and levies and pass on the benefits to the farmers directly without bringing intermediaries/brokers

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				By exempting fertilizer, it would not be easy to pass on the benefits to the farmer because they will be absorbing the cost of input VAT. The prices will remain the same.
3.	Item 23 that seeks to amend the second schedule of the Value Added Tax Act 2013 by zero rating "The exportation of taxable services in respect of business process outsourcing.	The term business process outsourcing. For the second year the drafters of the law have not included a definition of the term Business Process Outsourcing. Taxpayers exporting services therefore are in the dark as to what service qualifies to be taxed at zero percent and which one doesn't	The bill should be amended by deleting word "Business Process Outsourcing" to avoid ambiguity The export of services should be zero rated Currently it is being exempt meaning the input VAT is not deductible. This might affect the competitiveness. Delete the term business process outsourcing in totality to read export of taxable service without seeking explanation of what business process outsourcing mean.	One of the pillars of taxation is certainty. A tax needs to be certain. A taxpayer needs to be certain as to what falls under the ambit of the law. A taxpayer dealing in exported services will therefore be certain of what services fall under the second schedule of the VAT Act once a definition of the word Business Process Outsourcing is provided in law President had indicated policy direction to remove VAT on exported services
4.	Value added tax No. 35 0f 2013, first Schedule, Part 1- Goods Exempt Supplies.	The "Hustler" Government has deleted Section A, Section 146.This was ksh. 200 million before raising to 2 billion. Is this the way "Hustler" government is encouraging both local and foreign investors. I do not think so. Remember financially massive	Deleting this section	Will lead to monopoly and discourage investors who do not have the capacity to meet the threshold of 2 billion provided in the industry. Revenue mobilization should not discourage investment and overburden the taxpayer.

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		investments creates jobs, brings in foreign exchange etc to our country. This is a tax expenditure not in line with the governments agenda of mobilizing resources locally Will bring distortion in the market by erecting some barriers and creating monopoly effect for some players. Consumers are the ones that will suffer		Deal with the tax expenditures giving advantage to some taxpayers and harming other taxpayers. To attract more investments, taxpayers who are interested yet have minimum capital to enjoy the market benefits without any barriers.
5.	LPG	The Bill has exempted LPG. Currently it attracts 8%.	Zero rate	In line with the government's plan of having clean energy and climate sustainability agenda, there is need to zero rate LPG. The overheads such as transportation, storage costs should not be passed on to the consumer to prompt unfriendly prices for the consumers.
6.	VAT on compensation on the Insurance losses		Exempt from VAT	It would be construed to be a sale and will have an effect on the Insurance company since their services are exempt and cannot claim back the VAT so charged. This will have the effect of increasing the premiums, which will negatively impact the insurance industry in the country.
7.	Section 17 Deletion of the term or and substitution with the word 'and'	KRA is passing its mandate to the taxpayer without giving the legal ground for doing so Taxpayers are being given a mandate they do not have capacity to enforce on vendors who are tax non-compliant.	The provision to be retained as is	The TPA provides KRA with absolute authority an mandate to enforce tax compliance. On the contrary taxpayers do not have such capacity and therefore cannot enforce compliance among vendors.

C. EXCISE DUTY

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	RATIONALE/ LIKELY IMPACT
1.	**First schedule**	The introduction of excise duty on interest income earned by DCP is meant to increase the cost of digital loans and make them expensive for hustlers. This may result to a low uptake which will in turn mean less liquidity in the economy. Moreover, the proposed change is discriminative versus traditional lending arrangements where interest charged and other return on loan are specifically exempted from Excise Duty.	Exempt interest income from excise duty	Majority of Kenyans relay on micro lenders to access credit. Credit is the fuel of the Kenyan economy. Access to credit has been very low for a long time until the advent of micro lenders. The introduction of excise duty on interest income earned by DCPs is meant to increase the cost of digital loans and make them expensive for hustlers. This may result to low uptake which will in turn mean less liquidity in the economy. Moreover, the proposed change is discriminative versus traditional lending arrangements where interest charged and other return on loan are specifically exempted from Excise Duty. This proposal goes against government intention to increase credit access and financial inclusion.
2.		Excise duty on locally produced Pasta	The idea proposed to impose 20% duty is contrary to the government's policy of promoting the locally manufacturing sector.	Additionally, for some Kenyan groups, pasta is regarded as a staple dish. The cost of life for those who will be impacted by the excise duty on pasta will increase.
		Excise Duty on a 24-hour betting economy	This call by the bill for the payment to be made within the 24 hours of	While this will improve the government's cash flow, it will be challenging for

			the day's last transaction has expanded or rather given the commissioner the authority to publish a notice in the gazette requiring any taxpayers who offer excisable service to comply with the stipulated timelines.	taxpayers with a large number of transactions to comply with this idea because it could result in higher administrative costs and demand more work force or more staff to meet the short deadlines.
3.	Section 23 of the Excise Duty Act 2015.	Definition of an excise control	The bill has proposed to introduce section 24 which will specify what the excise control is or rather give a clear definition.	This suggestion aims to harmonize the definition of excise control with the appropriate Section of the Act to be cited and the proposed effective date is 01 July 2023.
4.	**First Schedule Part III**	The Interpretation of the first schedule of Excise Duty Act, 2015. (Gaming Inclusion)	This is a good move, since the bill has since seen to give clarity on what is the total amount staked or wagered.	With the expansion of the amount subject to excise duty that will result from this proposal, the government will be able to collect more money from the individual or taxpayers involved therein.
5.		Redefinition of 'fees' Charged by Digital Lenders	This move of redefining the word fees is aimed at giving the clarity the total amount to be subjected to excise duty as used by digital lenders.	With this kind of move, the amounts that the Digital Lenders charge or rather shall charge that are liable to excise duty will be made clearer and henceforth will increase the cost of borrowing.
6.		Excise Duty on Betting, Gaming, Prize Competition & Lottery Services	The move to increase the excise duty to 20% up from 7.5% on the aforementioned services, will see some of the investors being discouraged hence moving to where the tax is lenient with its tax laws.	The taxman hopes to increase tax revenue collection while discouraging the young generation from engagement in betting, gaming, and prize competition activities. This decision may deter some investors who may consider moving their operations to a nation with more lenient tax laws and incentive programs even though the government wants to make Kenya a regional investment hub.

7.		Excise Duty on Money Transfer Charges by the Cellular phone providers	This bill has proposed to increase this tax to 15% from the current 12% to allow KRA to collect more money.	The move is aimed to deter mass money transactions over mobile phones.

D. TAX APPEALS TRIBUNAL

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	RATIONALE/ LIKELY IMPACT
1.	Amendment to S. 32 of the Tax Appeals Tribunal Act, 2013.	Requiring a party to deposit 20% of the tax in dispute before the appeal to the tribunal can be heard.	This amendment should be dropped altogether.	1. Under the COK, the Judicial authority is derived from the people, guided by principles of, inter alia, justice shall be done to all, irrespective of status (taxpayer or commissioner), and be administered without undue regard to procedural technicalities 2. The Supreme Court has already declared conditions before appeals can be heard unlawful. 3. To require the taxpayer to deposit 20% of the tax is to presume that the taxpayer is guilty. This requirement will make it difficult for taxpayers to seek justice.
2.	Item 36 that seeks to amend Section 32 of the Tax Appeals Tribunal Act by (a) by inserting the following proviso to subsection (1) - Provided	The concern is with "Provided that where a party is not the Commissioner, that party shall deposit with the Commissioner an amount equivalent to twenty percent of the disputed tax. When a party seeks justice it is because they	Item 36 that seeks to amend Section 32 of the Tax Appeals Tribunal Act by inserting proviso (1) should be deleted	He who seeks equity must do equity. Let everyone that seeks justice be on a level playing field. To use an analogy, someone cannot come to your house and claim that the TV you have on your

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	that where a party is not the Commissioner, that party shall deposit with the Commissioner an amount equivalent to twenty percent of the disputed tax or security equivalent to twenty per cent of the disputed tax before filing the appeal.	feel that they have been wronged. But why aggravate the issue further by forcing a taxpayer to 'pay' part of an amount that they feel has been wrongly charged by the commissioner? Justice should be easier to access for every citizen and this clause is a barrier to access to justice for a taxpayer		wall is theirs, then have a law that forces you to give them the TV for their use until the day that you prove that it's not theirs.

E. TAX PROCEDURES ACT

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	RATIONALE/ LIKELY IMPACT
1.	**54.** Section 42A of the Tax Procedures Act, 2015, is Amended *(Section 42A of No. 29 of 2015 which it is proposed to amend)*	(4B) The tax withheld under this section shall be remitted to the Commissioner within three days after the deduction was made.	remitted to the Commissioner by 20th of the next month after the deduction was made.	One of the canon's of taxation provide that taxes ought to be *easy and convenient for the* taxpayer*.* That means "every tax ought to be levied at the time, or in the manner in which it is most likely convenient for the contributor to pay it. Will be difficult to comply with where a company pays very many transactions that attract withholding VAT.

F. MISCELLANEOUS AMENDMENTS & OTHER ACTS

#	Provision	Issues Noted	Proposed amendment
1.	Section 67 Section 7 of the Miscellaneous Fees and Levies Act, 2016, is amended— a) in subsection (2), by deleting the words "three point five" and substituting therefor the words "two point-five"; b) by deleting subsection (2A); c) in subsection (3), by deleting paragraph (b).	- The reduction of the IDF rate from 3.5% to 2.5% is commendable. - The deletion of Subsection 2A in the proposed amendment is against the government agenda for the provision of affordable housing by having industry players incur IDF of 2.5%, - In addition, the goods imported under the EAC duty remission will be subject to IDF at the proposed rate of 2.5% effectively increasing the cost of manufacture	The amendments to Section 7 (2A) and 3(b) should not be deleted as proposed in the Bill.
2.	Section 69 Section 8 of the Miscellaneous Fees and Levies Act, 2016, is amended—. (a) in subsection (2) by deleting the words "two point five" and substituting therefor the words "one point-five";	The current rate is two percent so proposing amendment to reflect correct rate in the Act	(a) in subsection (2) by deleting the words "two percent" and substituting therefore the words "one point-five";
3.	Section 76 The Employment Act, 2007, is amended by inserting the following new section immediately after section 31A— 31B. (1) An employer shall pay to the National Housing Development Fund established under section 7 of the Housing Act, in respect of each employee— (a) the employer's contribution at three per centum of the employee's monthly basic salary; and	The contribution to the National Housing Fund **should be removed**. • Most Kenyans live in the rural areas and have their own housing, which is where they retire to. • Some Kenyans have either purchased/ built their own houses through SACCO Loans, Mortgages or are in the process of repaying these loans. • In addition, the targeted population living in informal settlements in the urban areas are not in formal	Section should be deleted in its entirety.

#	Provision	Issues Noted	Proposed amendment
	(b) the employee's contribution at three per centum of the employee's monthly basic salary: Provided that the sum of the employer and employee contributions shall not exceed five thousand shillings a month. (2) The benefits to an employee shall accrue as follows— (a) for employees who qualify for affordable housing the contributions accrue to the employee and shall be used to finance the purchase of a home under the affordable housing scheme; or (b) for employees who are not eligible for affordable housing, upon the expiry of seven years from the date of the start of making the contributions, or after the attainment of retirement age, whichever is earlier— (i) a transfer of their contributions to a retirement benefits scheme or pension scheme registered with the Retirement Benefits Authority; (ii) a transfer of their contributions to any person registered and eligible for affordable housing under the National Housing Development Fund; or (iii) a transfer of their contributions to their spouse or dependent children; or	employment thus will also not be contributing to this scheme. Therefore, if the targeted population can have the option to contribute or purchase the said development at lower costs and interest rates. • Section 31 of the Employment Act already requires the employers to ensure their employees have adequate housing. This provision may place additional financial strain on employers, potentially leading to the loss of existing jobs or hindering the creation of new employment opportunities. • There is no framework on how the Fund is going to run as well as the qualification criteria to be adopted. • The Bill lacks a clarity eligibility of persons under this scheme.	

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	(iv) to receive their contributions in cash: Provided that contributions paid out in cash shall be included in the contributor's taxable income for the year and be subjected to tax at the prevailing rates. (3) All contributions shall get a return based on the return on the Fund. (4) The employer shall remit both employee and employer contributions to the National Housing Development Fund before the ninth day of the following month after the deduction was made. (5) The Cabinet Secretary responsible for matters relating to housing, in consultation with the Cabinet Secretary responsible for matters relating to finance, shall make Regulations prescribing the qualifications to participate in the affordable housing scheme. (6) This section shall become effective on the date the Regulations made under subsection (5) come into operation		
4.	Request to amend Retirements Benefits (Occupational Regulations) to increase the term length and term limit for retirement Fund trustees. **Relevant section: *Regulation 7g of the Retirement Benefits (occupational regulations)*** Regulation 7g of the Retirement Benefits (Occupational Regulations) states in parts that's provided that the term	The current provision limit the term of office to 3 years and can only be renewed to a further 3 years. Based on the experience, the 3 years period is too short to implement the strategies or polices that would make fund profitable. Based on above, we believe that five years would be reasonable period	We propose amendment to regulations 7g of the retirement Benefits Occupational Regulations to read "provided that the term of office of trustee shall not exceed five years but shall be subject

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	of office shall not exceed three (3) years but shall be subject to renewal for a further term limit of three (3) years		to a renewal for a further term of five(5) years
5.	Request for exemption from compliance with the RBA Investment Guidelines for Sharia Compliant Funds Section 38 (1) (B) of the retirement benefits act states that no scheme funds shall be invested contrary to any guidelines prescribed for that purpose	The current provision requires that all the scheme funds should be invested in accordance with the prescribed guidelines. The proposal seeks to exempt sharia compliant assets investments from the above provision. The object of this proposal is to expand the scope of investment options for the scheme funds and include investments in sharia compliant assets.	We propose inclusion of a new clause under section 38 to provide that sharia compliant funds shall be exempted from the investment guidelines provided that the retirement benefits act certifies that the fund is set up exclusively for the purpose of investing sharia compliant assets.