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KENYA TRADE NETWORK AGENCY (KENTRADE)

MEMO NO. HRC/BOD/056/2016

**TO: THE HUMAN RESOURCE AND COMPLIANCE COMMITTEE OF THE BOARD
OF DIRECTORS**

**RE: CONVERSION OF GRATUITY ARRANGEMENT AND TRANSFER OF
GRATUITY FUNDS TO A RETIREMENT BENEFITS SCHEME**

1. INTRODUCTION

- 1.1 The Current Kentrade Chief Executive Officer (CEO) – Mr. Amos Wangora was substantively appointed on 1st October 2016 on a three year (renewable once) contract.
- 1.2 Previously Mr. Wangora served the Agency as the General Manager – Operations on Permanent and Pensionable terms of service. He was therefore a member of the Kentrade Staff Pension Scheme where he contributed 7.5% of his basic salary and Kentrade contributed 15% of the same towards his pension.
- 1.3 With his appointment as CEO on contract terms, Mr. Wangora is now eligible for payment of gratuity as outlined in Section 14 of his appointment letter (copy attached) which largely states that “upon successful completion of each contract term, you will qualify for a **one-off** Gratuity calculated at a rate of 31% of your annual basic salary. The gratuity is taxable.”

- 1.4 Mr. Wangora has requested (see attached email) for his gratuity funds to be transferred to a Retirement Benefits scheme of his choice on a monthly basis.

2.0 FINDINGS

- 2.1 Changes contained in the 2010/2011 Budget, (changes to the Income Tax Act) Section 19 of the Finance Bill (effective 1st January 2011) on Conversion of Gratuity Arrangement and Transfer of Gratuity funds to a Retirement Benefits Scheme provides that "an employer who sets up a registered retirements benefits scheme and pay gratuity into the scheme, will be allowed a deduction for tax on the same subject to a maximum limit of Ksh 240,000 per year per member."
- 2.2 The implication of 2.1 above is that organizations paying gratuity to their employees will enjoy tax exempt treatment upon conversion and payment of gratuity equivalent to the years of the gratuity to a registered retirement benefits scheme.
- 2.3 The conversion will also allow the benefit to grow and accrue investment interest which will not be the case in a gratuity scenario. The gratuity payable can be availed to the employee periodically without waiting for the contract to end so that the same is invested and the interest arising therefrom is vested in the employee. In addition the staff members affected get to enjoy the tax benefit associated with converting the gratuity to pension contributions.
- 2.4 Currently the Agency usually provides for staff Gratuity payment on a monthly basis through the payroll and an equivalent of the same amount (for all eligible staff) is remitted to the Kentrade Staff Bank Account specifically opened by the Agency for that purpose.
- 2.5 In the interest of financial prudence, this ensures that should the need to pay gratuity arise, the Agency will readily have funds available to cater for the same. However, any interest earned on the above account accrues to the Agency and not the concerned staff. At the same time, gratuity does not enjoy the tax exemption benefit as outlined in sections 2.1 and 2.2 above.

- 2.6 The conversion of gratuity and transfer of funds to a retirement benefits scheme is an emerging trend that has been adopted by a few institutions including the Cooperative College University and Mwalimu Sacco among others.
- 2.7 To facilitate the above conversion, the Agency's Policy on gratuity will need to be amended to include a provision for conversion of gratuity and transfer of funds to a retirement benefits scheme.
- 2.8 Upon approval to convert gratuity and transfer gratuity funds to a pension scheme, the staff concerned will have the choice of having the same funds remitted to an individual pension scheme (by registered insurance firm) or to the Kentrade Staff Pension Scheme.

3.0 RECOMMENDATIONS

Management hereby proposes that:

1. Mr. Wangora's request is in order as per the Income Tax Act and should be positively considered by the Board of Directors.
2. The Agency adopts the provision on conversion of gratuity and transfer of funds to a retirement benefits scheme. This is because there is a legal provision for the same and the Agency will not have a challenge availing gratuity funds on a monthly basis since it is already setting them aside and remitting them to a separate Bank Account.
3. The terms and conditions of service of affected staff members are amended to include the above option so that they can exercise the option when they need to.

4.0 REQUIRED ACTION FROM THE HUMAN RESOURCE AND COMPLIANCE COMMITTEE OF THE BOARD

The Human Resource & Compliance Committee of the Board is requested to note, deliberate and consider the recommendations above and

recommend the same to the Board of Directors for approval as outlined in Section 3.0 above.

Amos Wangora
CHIEF EXECUTIVE OFFICER

November 2, 2016