This handbook provides guidance for trustees on how to achieve compliance with the Retirement Benefits Act and other relevant legislation. The handbook also promotes good practice in relation to scheme administration.

It is intended that it will make a major contribution to achieving various objectives. Firstly, the handbook is intended to assist trustees by providing more detailed guidance on trustees’ duties under the Retirement Benefits Act, under the various sections of the Retirement Benefits regulations and other relevant legislation, and under trust law generally.

Secondly, it is hoped that the handbook may be of assistance to trustees in outlining good practice. This should be the aim even when it is not mandatory requirement by law.

It is noted that a handbook of this kind may not be fully comprehensive. No doubt there are some aspects of good practice for trustees, which are not covered at present but may be incorporated in future updates of the handbook.

Disclaimer: Please note that this is the intellectual property of ICEA LION Life Assurance. However, we will not be held liable for any decisions made by the trustee as a result of reading this handbook.

Version 1: January 2016
Foreword

This handbook has been written to meet the practical needs of trustees of retirement benefit schemes, especially following the requirements imposed by Retirement Benefits Act 1997. It is based on the Company’s many years’ experience of managing retirement funds, scheme administration and trusteeship.

The handbook answers the questions most frequently asked by the trustees using simple non-technical language. It has been reviewed and commented on by colleagues in the Company as well as Trustees with a wealth of experience spanning numerous years.

This handbook is also designed to respond to many of the questions relating to the role of trustees who handle huge funds for many people who save for their retirement.

It also provides guidance to trustees on how to achieve compliance with Retirement Benefits Act and other relevant legislation. In general, it also promotes good practice in relation to trusteeship and scheme administration.

The handbook is free of charge and available on our website where you can download a copy.

If you have any suggestions for improvement, please let us know and we will consider them for future editions.

We look forward to being of service to you now and in the future.

Justus M Mutiga
Chief Executive Officer
ICEA LION Life Assurance Company Limited

January 2016
ICEA LION Life Assurance

ICEA LION Life Assurance is the largest guaranteed fund manager in Kenya with current total funds under management in excess of Kshs. 30 Billion. This is for over 800 schemes and thousands of individual members. This constitutes about 22% of the market share. Our asset base and total life fund are in excess of Kshs 50 Billion and Kshs 45 Billion respectively as at December 2015.

ICEA LION Life Assurance is the proud recipient of the Think Business Insurance Awards - Life Assurer of the Year for 2013, 2014 and 2015 and also received the Winner Award for Risk Management Award in 2014 and 2015. Most recently in 2015 we received the coveted Winner Award for Claims Settlement.

ICEA LION Group

ICEA LION Group is a one-stop financial services provider offering innovative products and services in insurance, pensions, investments and trusts. The Group is a member of the First Chartered Securities Group (FCS), a leading regional investment and trading group controlling major business enterprises in diverse sectors of the economy such as banking, insurance, logistics, manufacturing and agriculture.

ICEA LION Group prides itself in having delivered several innovative solutions to the market over the years. Building on our long heritage, innovative spirit and our strong record of serving the East African industry and consumers, our company is now the first and only company outside South Africa to offer the Qualifying Recognized Overseas Pension Scheme (QROPS) that enables you to move your pension funds (tax free) from the United Kingdom to Kenya. This is a true first for the industry.
Property Investment

ICEA Lion Centre, Riverside Park, Chiromo Road - Nairobi

Riverside Park, Chiromo Road - Nairobi

St. Austin’s Gardens, off James Gichuru Road - Nairobi

Arboretum View, Riverside Drive - Nairobi

Lion Place, Waiyaki Way - Nairobi

Clanson Court - Nairobi
Introduction

Who is a Trustee?

An individual or a company which alone or jointly with another becomes the legal owner of property to be administered for the benefit of someone else (the beneficiary), in accordance with the provisions of the document creating the trust (Trust Deed & Rules) and the provisions of trust law generally, the Retirement Benefits Act of 1997 and subsequent Regulations.

A Trustee is responsible for a retirement scheme fund which represents the security and peace of mind of members looking forward to retirement. A Trustee must be knowledgeable and accountable in a number of areas including applicable law, investments, scheme administration and accounting. It is important that a Trustee understands not only the nature of how the trust works, but also the responsibilities that come with the task.

The job of a Trustee is a legal one. This handbook sets out the legal obligations and how to deal with them in a relatively painless manner. Provided Trustees are honest, sensible and take proper advice, they can do a lot of good and be exposed to very little harm.

As a trustee, you have the main responsibility for the administration of funded occupational and individual retirement schemes and compliance with the requirements that apply to these schemes. You are required to have broad knowledge of the issues and solid understanding of the following:

1. The Trust Deed and Rules and certain other scheme documents.
2. The law of pensions and trusts.
3. The principles of funding, investments and design of pension funds.
4. Scheme administration.

The information provided in this handbook is general information and should not be considered in place of the advice of an advocate on your specific Trust Deed and Rules. This Handbook does not tell you how to run a retirement scheme fund. The trustees’ role is to ensure that the appointed service providers that manage the fund (the managers, custodians, administrators, actuaries, auditors and other advisers) are doing their job properly.

While the legal and administrative details are important, in practice you will delegate most of the responsibility to various service providers. A pension or provident fund trustee may not be:

1. An expert.
2. A lawyer.
3. An administrator or benefits consultant.
4. An investment expert.

A Trustee may not have to comply personally with most of the legislation, but should ensure that the service providers or advisers do so on his behalf. However, Retirement Benefits Act Rules & Regulations require that all trustees must be certified. The deadline for certification was by end of December 2012.
1. Brief Background to Retirement Benefits Schemes
age when there are more pressing needs such as housing, school fees, medical expenses, food, clothing, going for holidays etc.

1. Some employers do not want their long serving employees to come back to them in years to come looking for financial support.
2. An employer may not promise to take care of an employee in old age as there may not be certainty that he will still be there to meet his promise when it falls due.
3. Few employees now work for their entire career with one employer. It is more sensible for funds to be set aside each working year to meet the employer’s promise, as a guaranteed fund.
4. Whatever the administration costs of most schemes, they are a major bargain; they offer better value-for-money.
5. People live much longer these days after retirement; employees can afford to maintain or even improve standard of living after retirement.
6. Medical costs will increase after retirement and therefore plan for them while employees are still working.
7. After retirement, the medical facilities provided by the employer ceases, therefore there is need to Plan NOW.
8. If an employee loses his or her job the retirement savings benefits will be an invaluable nest egg. We do not know how long our employer will continue being in need of our services as employees.
9. Small amounts saved every month results in a huge payout later. Monthly savings will may be invested in a pool hence the rule of economies of scale will trickle down to the medium savers.
10. Members can enjoy tax benefit to a maximum of the lesser of Kshs. 20,000 per month or 30% of pensionable emoluments.
11. Employees can contribute to an employer’s scheme up to 30% of their salary.
12. Employee’s benefits cannot be used to settle debts owed to the employer except with the express permission of the member. The benefits are therefore protected against creditors, under The Retirement Benefits Act.
13. Reasonable saving to benefit dependants in the event of loss of life of a member while in service.
14. Significant tax relief on monthly pension prior to attaining age 65, otherwise Pension is tax free from age 65 years.

1.1 What is the purpose of establishing a retirement scheme fund?

A retirement scheme fund is the accumulation of contributions and investment of such contributions to get income. The fundamental objectives include:-

1. Benefits to members on leaving service.
2. Benefits to members on attainment of retirement age.
3. Deferred compensation.
4. Stabilise financial well being of retirees.
5. Provide financial protection to members’ dependants on death in service.
6. Provide disability benefits.
8. Employer provides it for competitiveness.

1.2 Why have retirement benefits schemes?

1. It is difficult for people to make their own provision for their own old
1.3 Scheme Assets
The assets are made up of the contributions in to the fund, contributions owing, investment income, Value of the pooled fund investment less expenses.

1.4 Scheme Liabilities
Cost of providing benefits provided by the sponsor as identified by the actuarial valuation (in the case of DB schemes). It may include pensions in payment, deferred vested pensions, and members’ future benefits.

1.5 Current Service (Normal) Cost
For DC plans it is the contribution rates by sponsor and member. For DB plans it is the contribution rate or amount recommended by the actuary to fund the benefits accruing in the current year (i.e. after the valuation date).

1.6 Past Service Cost
It is the amortization of payments recommended by the actuary to fund, Liability for past service; past service benefits improvements; unfunded liabilities arising from poor experience and investment performance, and solvency deficiencies.

The period of pensionable service accrued by the employee before the valuation date.

1.7 Benefit formula
The provision in the trust deed and rules that sets out the benefits accrual rate. The benefit accrual rate is the pension factor or the annual rate at which scheme entitlement accrues such as: 2% X average pensionable earnings X years of service (participation in the scheme).

1.8 Accrued benefit
The amount of pension earned up to a given date. A member may or may not be vested in his or her accrued benefit upon the occurrence of such events as death, termination or retirement.

1.9 Future service
Service expected to be accrued after the valuation date.

2.0 Accrued Liability
The level of funds required in the scheme to meet the benefits obligations accrued to date but payable at some future date.
2. Trusts and Trusteeship
2.1 What is a Trust?

A Trust is an equitable obligation binding a person (a trustee) to deal with property (assets and contributions) over which he has control, for the benefit of persons (beneficiaries) of whom he himself may be one. An asset is any kind of property (fixed assets, investment accounts, vehicles, businesses, tangible or intangible assets).

It can also be described as an arrangement under which one person (or a group of persons) holds property for the benefit of another or others. The instrument which creates this relationship is referred to as the Trust Deed and Rules that also spells out the specific terms of the Trust including the trust property, the primary parties: the Sponsor or settler, Trustee and Beneficiaries. A pension scheme is a trust.

The person who creates a trust is known as the settler of the trust and in the case of most occupational pension/provident schemes, this will be the employer. As a Trustee, it is important to understand the instrument which grants you authority (the Trust Deed & Rules).

2.2 The Four aspects or components to Trusteeship

1. The Settler is that person that sponsors or creates the trust. He cedes control of assets or trust property to trustees.
2. The Trust Property comprises the contributions and assets of the scheme.
3. The Trustee(s) is that person or group of persons who are given the legal ownership or mandate over the trust property for the benefit of the beneficial owners.
4. The Beneficiary(ies) is a person or group of persons who are the rightful owners of the trust property.

There are four essential features of trusts that are of particular importance in relation to the protection of rights in retirement scheme funds:

1. The trust fund must be separate from the employer’s business and its assets not available to the employer’s creditors should the business have financial difficulties and/or have to be put into liquidation.
2. The trust deed and rules, with which trustees must comply (except in certain areas where legislation such as the RBA Act overrides the trust deed and rules), set down how the scheme is to be administered and how members’ entitlements are calculated.
3. Trustees have a duty to act in the best interests of the beneficiaries, the active members (current employees), the deferred members (early leavers), current pensioners, those categories of dependents for whom provision is made under the trust deed and rules, and, in certain instances, the employer(s) sponsoring the scheme.
4. The beneficiaries can enforce a trust even though they are not parties to the creation of the trust.

A trustee is responsible for administration of the Scheme in conformance with the Trust Deed & Rules, the Retirement Benefits Act & regulations and any relevant law.

2.3 Why the law is involved?

The object of a legal system is to give some form of remedy and protection to persons who would otherwise be adversely affected. This is particularly the case with retirement benefits, where:

1. Obligations can last for many years.
2. Complexity is such that few understand the detail.
3. The amounts involved are substantial, and
4. A few people hold a great deal of money on behalf of many other people.

2.4 Sources of Trust Law

Trust law is only one part of the law that affects retirement benefits. The sources to be checked when determining a problem are widespread. The main laws include the following:

1. The Common Law.
2. The Trustee Act.
4. Trust Deed and Rules.

2.5 Why a Trust?

1. To provide security for the members by keeping the retirement benefits fund separate from the employer’s assets. In that way, if the employer becomes insolvent or is unable to fulfill his pension promise, at least some money is there to meet at least some of the promise.
2. To allow the scheme to enjoy tax advantages.
3. To ensure that third party beneficiaries, such as spouses and dependants (survivors-widows, widowers, dependent children and other dependants, employers), have legal enforceable rights.
4. To place the assets into the care of trustees. A trust is almost tailor-made to cope with the problems of managing money on behalf of other people (employer, employees and other members). Whereas the scheme provides benefits for employees, they may not access it till retirement or subject to prevailing regulations and law. The objective is to set up an irrevocable trust.

2.6 Who is a Trustee?

A trustee is a person who looks after a trust. He can be an individual or a group of individuals, a company or a corporate trustee. Where the trustee is a company or a corporate trustee, there is the advantage of continuity (No need to keep changing the deed every time someone retires or is appointed) and gives some additional protection against liability.

2.7 The Trustee’s job includes:

1. To direct, control and oversee the operations of the scheme.
2. To ensure that the assets of the trust are well looked after.
3. To safeguard the assets supporting the benefits promised.
4. To hold the money on behalf of employees and employer.
5. Not to interfere with the bargaining between employee and employer;
6. To be the guardian of the retirement benefits pot.
7. To provide checks and balances in exceptional circumstances, such as where an employer seeks a refund of a pension/provident fund surplus.
8. To bargain with the employer to ensure that members get a fair deal.
9. If there is insufficient money in the scheme, to explore ways of improving the funding position.
10. To understand duties, discretions, some powers, or liabilities of the trustee.
11. To apply some common sense, intelligence, experience of the world, and integrity to the care of other people’s money.

2.8 Trust Law

Trust law is a special concept because it recognizes that the same property can have many owners at the same time. In the case of retirement benefits schemes, the legal ownership of the fund is held by the Trustees. They can buy and sell the assets, or mortgage them. But there are other parties who have the Beneficial Ownership:

1. The members of the scheme (and their survivors and dependants), and
2. The employer.
3. Retirees.
4. Beneficiaries.

The relationship between the employer, the employee and the pension/provident fund is a useful one to understand. In most pension schemes, the employer promises to provide not only a pay but a pension (often dependent on years of employment and salary levels as in Defined Benefit Schemes) in exchange for which the employee promises to work. Both employee and employer agree to make contributions to the scheme. Even where it is a non-contributory scheme, i.e. the employee makes no actual contribution; the courts consider that for some purposes the employer’s contributions can be seen as the employee’s deferred pay.
3. What Kind of Trustee Are You?
Trustee arrangements can vary from scheme to scheme but generally come under the category of either individual trusteeship (normally there is more than one), corporate trusteeship or a combination of individual and corporate trustees acting together.

3.1 Individual Trusteeship

This includes trustees selected and appointed directly by the employer from the company’s management, outside professionals (such as solicitors, accountants, actuaries) and those appointed by scheme members or after consultation with scheme members (could include current employees, retired employees and/or trade union officials).

3.2 Corporate Trusteeship

This means that a company acts as the trustee and could include the following:

1. Where a corporate body acts as trustee e.g. a specialist firm providing trusteeship services.
2. Where a separate trustee company is set up in lieu of individual trustees, the directors of which could include those selected by the employer and by the scheme members.

3.3 Combination of individual and corporate trustees acting together

One might be a trustee of a self-administered fund, i.e. where the investment management and administration is dealt with in-house, like an insured (guaranteed) fund; where everything is done by an insurance company, or

One might be elected by colleagues in the workforce or appointed by the employer. Whatever the origins, one can only wear one hat around the trustees’ table- that of a trustee. All other obligations and interests must be set aside in favour of the members of the scheme and other beneficiaries (which can include the employer as well).

There are independent trustees. An independent trustee means a trustee who does not have a conflict of interest. Independent trustees are often useful because they bring external experience to the table. They need to be chosen carefully.

3.4 Selection and Appointment of Trustees

3.4.1 Who may be a Trustee?

Other than certain persons listed below who are prohibited by law from acting as trustees, any individual or any corporate body (a trust corporation), may act as a pension scheme trustee.

The following persons are prohibited from acting as trustees:

1. He has been or is sentenced to imprisonment by a court of competent
jurisdiction for a period of six (6) months or more;
2. He has been or is adjudged bankrupt or makes an arrangement or composition with his creditors generally;
3. He fails to attend three (3) consecutive meetings of the Trustees;
4. He was previously involved in management or administration of a scheme which was deregistered for any failure on the part of the management or the administration thereof;
5. He is disqualified under written law, or his holding as such is deemed by the Authority as being in any way, detrimental to the Scheme.

3.4.2 Appointment of Trustees in accordance with RBA regulations.

1. Maximum number of trustees per scheme is nine (9).
2. Defined Benefits: - At least Three (3) Trustees; a third (1/3) whom must be member nominated or elected; two-thirds (2/3) to be nominated by employer;
3. Defined contributions - At least Four (4) Trustees, half (1/2) of whom must be member nominated or elected; the other half to be nominated by employer. member representation must not be less than half the total number, except where a corporate Trustee is appointed.

3.4.3 A Corporate Trustee (Trust Corporation)

This is a company incorporated under the Companies Act having a subscribed capital of not less than ten million shillings and which is for the time being empowered (by or under any written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining its power) to undertake trusts; Provided that such company does not, by any prospectus, circular, advertisements, or other documents issued by it on its behalf, state or hold that any liability attaches to the Public Trustee or to the Consolidated Fund in respect of any act or omission of the company when acting as an executor or administrator.

3.4.4 Term of Office

Term of office is 2 terms of 3 years each (Maximum 6 years). Departure from office is either by voluntary resignation in writing or removal from office as per Trust Deed and Rules. The administrator, CEO of sponsor or chairman of board of directors barred from being chairperson of the Board of trustees.
4. Who makes a Trust and How?

Anyone can make a trust. In a retirement benefits scheme, it is usually the employer who signs a document (called a deed) which declares:

1. The Trust shall exist.
2. Who the Trustees are and who will look after it.
3. How it will get its income (contributions from employer and employees), and
4. How it will be administered.
5. The Trust Deed and Rules
5.1 The Most Important Document is the Trust Deed

It is usually in two parts:

1. The deed, which is the constitution of the trust dealing with appointment and removal, investment powers and winding up of the trust; and

2. The Rules, which set out the benefits, contributions, the Kenya Revenue Authority (KRA) and RBA requirements and the retention and transfer of benefits rules.

The Trust Deed & Rules is often updated and changes from time to time due to legislation. How the changes are to be made are set out in the Deed.

5.2 The Deed is King

The duty of a retirement fund trustee is to read the deed. It is your duty as trustee to administer the trusts and therefore you must know and be familiar with what is in it. In practice, the deed will allow you to appoint delegates, i.e. other people to do much of your work on your behalf. These include accountants, administrators, approved issuers of guaranteed fund (insurer), custodians, lawyers, fund managers and other advisers, but there are some jobs which you cannot delegate such as your supervisory role.

5.3 What to check in the Deed

5.3.1 The Delegation Power

That you as a trustee can give your work to professionals to do while accountable to you.

5.3.2 Power to Resign

That you have a power to resign, perhaps in writing, to avoid having to apply to the court for right to resign.

5.3.3 Indemnity Provisions

That you as a trustee should be excluded from liability for acting as an honest trustee and that the employer will indemnify you against any costs or liabilities - and if necessary insure them. The problem with indemnities is that if the employer goes into liquidation they are worthless. This is why the Trust Deed provided for trustees to have a liability cover that is paid for by the scheme and not employer.

5.3.4 Effect of Winding-up

That the rules are clear on what happens if the scheme has to wind up, and in particular what happens if there are deficits, and who owns any surpluses.

5.3.5 The Trustee’s Powers

Where does the balance of power to make decisions lie between you and the employer? In practice trustees exercise discretions or power as the legal owners of the fund.
5.3.6 The Amendment Clause

How the scheme can be changed, and the part you can play to keep the documents up to date.

The document describes how Trustees are appointed, how the Trust is administered, and invested and sets out the benefits and contributions. The number of trustees? RBA Act sets out the minimum number for DB as 3 Trustees, 1/3 of whom must be member representative while minimum for DC schemes is 4 Trustees with 50:50 representation between member and Sponsor/employer; maximum 9 trustees.

The announcements to members about their benefits are also regarded as legal documents. Trustees need to make sure that the employer is not making benefit promises through contracts of employment that may affect the solvency of the fund.

5.3.7 Need to be Approved

If one has been 'black-listed' by the Authority, become bankrupt, convicted of a criminal offence, or consistently absent from scheduled meetings it should lead to disqualification from becoming or continuing as a trustee.
6. Duties, Discretions and Powers
Trustees of retirement benefits schemes have 3 jobs: they have to exercise duties, discretions and powers:

6.1 Duties

A duty is a specific obligation to ensure something is carried out—though not necessarily by yourself; to ensure that a retirement fund is run as such e.g. to look after the funds. Duties of Trustees include:

1. Checking the documents.
2. Registering the scheme with RBA and KRA.
3. Investing the scheme funds and assets.
4. Ensuring that the contributions are received remitted promptly for investment.
5. Giving information to members, regulators, service providers.
6. Compliance with the law.
7. Paying the benefits (to make arrangements for paying the benefits).
8. Keeping the records.
9. Ensuring that registered administrator, fund manager and custodian are appointed.
10. Appointing other service providers such as Auditors, Consultants, Lawyers, Actuary, and Approved Insurer etc.
11. Training of Trustees and educating members.
12. To hold quarterly meetings and one annual general meeting.
13. Not making profits out of managing the trust, e.g. by doing deals with trust property.

6.2 Discretion

A discretion is a power to make a choice, e.g. to decide whether to pay a death benefit to a wife or mistress. Discretions of trustees involve both questions of principle and matters affecting individuals; they could include deciding on:

1. Whether to break the terms of the trust.
2. Whether and when to take advice.
3. Choosing investments (if not delegated).
4. Who shall get certain benefits on the death of a member?
5. How to protect the interest of minors.
7. Whether there shall be pension increases (subject to employer’s permission).
8. Whether to change the terms of the deed (subject to certain constraints).
9. How and when to receive transfers into and out of the scheme and on what terms.

Discretions allow for more flexible management of the trust. There are many decisions that have to be taken that cannot be fully catered for in any document that need personal knowledge, careful judgment and common sense. Discretions cannot be delegated to anyone else.

6.3 Powers

A power is a right to do something, e.g. power to appoint a fund manager, power to increase benefits (subject to approval by employer), power to delegate, power to make unilateral decisions. These powers must be exercised reasonably and in the best interest of beneficiaries.
6.4 Delegation

In practice, many duties of trustees are delegated: the day-to-day investment management is done by the investment manager. And you would not yourself normally check that pensions claims are valid, or personally collect the contributions - although you would expect to be informed if they were not collected. Nor would you on a daily basis keep the immensely complicated records that now seem to be needed.

But, as mentioned, discretions, for example, cannot be delegated, and in some cases you have to make your own decisions - that is what you are there for. Even where you have delegated, although you can rely on those you have appointed to carry out your wishes (one of your duties is to examine that they are reputable and competent) it is still your job to supervise them, and to disagree with them if you think they are going wrong or giving wrong advice. You cannot delegate blindly.

Standards of behavior:

1. When managing the trust: to act with reasonable care and in good faith.  
2. When investing the assets: to act as a reasonable prudent man of business when investing other people’s money.
7. Types of Retirement Schemes
The objective of a retirement scheme is to provide benefits to employees, beneficiaries or dependants at normal retirement age, leaving employment or upon death. The purpose of a retirement scheme is to ensure that retirees enjoy a certain level of financial security that will ensure a comfortable life in old age and removes total dependence on relatives and the society.

There are five main types of retirement schemes:

7.1 Pension Schemes.

It pays a periodic sum of money at retirement, usually monthly, quarterly, semiannually, or annually. The law governing pension schemes state that at retirement a member may commute 1/3 of his savings in scheme, but the remaining 2/3 must be used to purchase an annuity (pension) for life.

7.1.1 Defined benefit pension scheme (salary related) or final salary.

This promises a pension benefit based on a formula that is related to the accrual rate or pension factor, level of salary and years of service with the employer. For example it may offer 1/60th of final salary for every year of service. If you have worked for the employer for 20 years, you would be entitled to 20/60 of final salary. The employer has the responsibility (bears the risk) to ensure scheme is fully funded.

7.1.2 Defined Contribution pension scheme.

This type of scheme merely arranges for contributions to be made by both employee and employer and then see how much is there in the account at retirement age and then use the money to buy a pension. This is a risk for scheme members: there is no knowing how the contributions which are invested will perform or what pension or annuity rates will be at retirement. Trustees must manage investments properly.

7.2 Provident Funds

A provident fund provides a cash lump sum at the end of the period. On retirement the employees will be entitled to the benefit built up by contributions paid by him or paid on his behalf and the accrued interest.

Usually the provident fund is defined contribution based on money purchase. This means that the employer by himself or in conjunction with the employee will pay into the fund fixed percentage of employee’s salary e.g. 5%, 7.5%, 10% etc.

In the event of a member leaving the employer’s service before retirement age (whether pension or provident fund), he is entitled to that part of the benefit built up by his own contributions and 50% of the employer’s portion. The other half (50%) of the employer’s portion is preserved till retirement age.
7.3 Personal Retirement Schemes

1. Tax sheltered retirement plans designed to allow individual members to build up assets for retirement.
2. Established by private sector financial institutions (e.g. banks, insurance companies or fund managers).
3. Managed by a Corporate Trustee.
4. Contributions can be made by the member, employer or both.
5. Member gets tax relief on contributions and investment earnings.
6. Members can choose their own flexible retirement age (50 – 75 yrs).
7. At retirement member can access funds:
   - Portion in lump sum cash
   - Portion in pension benefits
   Benefits may be left to a named beneficiary.

7.4 Annuities

1. An annuity is a series of periodic payments to an annuitant, purchaser or pensioner, purchased from an insurance company or paid from a scheme fund.
2. The insurer guarantees the income will be paid until the death of the annuitant.
3. The Guarantee periods range from Zero to Twenty years (5, 10,15 or 20 years).
4. Joint and last survivor options available.
5. A pension is a form of annuity.

7.5 National Social Security Fund (NSSF)

1. A social security fund established by statute in 1965.
2. Designed to provide social security benefits to workers in the formal and informal sectors.
3. Operates under a Board of Trustees - 3 partners are employers, government and workers.
4. Fund investments made per the Retirement Benefit Authority's investment guidelines.
5. Mandatory for all employers to remit contributions.
   - Contribution rates are 5% of monthly earnings up to maximum of 200 shillings per month.
8. Taking Office as Trustee
Upon appointment you may inspect the various documents to acquaint yourself. In addition you must check the following:

1. Find out when the trustees meet in order to exercise duties, discretions and powers.
2. Avoid conflict of interest. Use common sense with a little external advice when perplexed:
3. Review the trust deed and rules to check if:
   - It has an indemnity clause?
   - It has an exoneration clause?
   - It allows you to retire at any time?
   - It can be altered or amended easily?
4. What is the balance of power between the employer and trustees?
5. Do you have a full house of advisers or service providers such as:
   - Actuary?
   - Administrator?
   - Lawyer?
   - Auditor?
   - Investment/fund Manager?
   - Custodian?
   - Approved Issuer?

*Note that appointment of Investment manager and Custodian is not required for guaranteed funds managed by Insurance Companies (Approved Issuers).

6. Is the scheme registered by Retirement Benefits Authority, Kenya Revenue Authority?
7. Are there any outstanding potential legal claims?
8. Have you got copies of:
   - Annual trustees report?
   - The last actuarial report (BD schemes)?
   - The audited accounts?
   - The last investment manager’s report?
   - The last custodian’s report?
   - The administrator’s report?
9. Is there a training program for trustees?
10. How often do the trustees meet?
11. Where are the previous minutes? What do they include?
12. What is the reporting structure for the fund manager, custodian and administrator, other service providers?
9. What To Watch Out For
There are one or two traps for the unwary in being a Trustee. The most common include:

1. Conflicts of interest.
2. Inadequate Trustee protection.
3. Obsolete documentation, especially deeds which contain no power to resign or amend the documentation.

9.1 Conflicts of interest

There are particular problems facing Trustees, especially:

1. those of conflict of interest, where they occupy different positions.
2. payment, where Trustees are professional Trustees.

You should be careful to check that the deed gives you power to be paid (if you are paid) and to get benefits from the scheme despite the fact you are a Trustee.

9.2 The Trustees’ Meeting

The Deed itself will lay down how often you need to meet. However the RBA regulations specify a minimum of Four meetings per year and an Annual General Meeting. The objective of most meetings is to:

1. Review the reports of the administrators and service providers; and
2. Exercise discretions, which cannot be delegated.
3. Keep proper minutes, and to make sure the formalities are observed.
4. Check who will be the chairman.
5. To confirm how decisions are taken, e.g. by majority vote - or do you have a veto.
6. Confirm how many trustees are needed to make a quorum.
7. Confirm whether resolutions have to be in writing.
8. Assess the performance of service providers.
9. Check compliance with the regulations.

9.3 Trustees Meeting Agenda

May include, among others to approve:

1. Minutes of the previous meeting.
2. Investment manager’s report.
3. Administrators report.
4. Scheme accounts.
5. Trustees’ report.
6. Member communications.
7. Scheme rule amendments.
9. To appoint solicitors.
10. To review current new developments.
11. To examine impact on scheme of changes in the law and practice.
12. To exercise individual discretions: early retirement; death-in-service payments;
13. To consider augmentations - benefits improvements.
14. To set the date for the Annual General Meeting
15. To review and schedule the meetings planner for the period.
16. Any other business.
17. To set date of next meeting.
9.4 Annual General Meeting

The Trustees will ensure that a General meeting of the Scheme Members is convened annually to enable them raise matters that relate to their Scheme. An appropriate notice will be issued accordingly.

The minimum agenda for the meeting shall comprise, but not be limited to, the following:

1. The Chairman's report;
2. An administrator report;
3. A report on any changes to the benefits and contributions structure;
4. A report on audited accounts;
5. A report on investments;
6. A report on remuneration of Trustees; and
7. Questions from Members.
10. The Paperwork
Retirement funds seem to breed paper. The quantity and length of documentation can be a little overwhelming. Documents can prove difficult to understand; many of them are very long; many of them are written in practice language. It is not sensible to attempt to read them all word-for-word. But there are things you should look for when you first become a trustee. For example, there should be power in the deed to take independent advice on the implications of the deed. If the deed is not satisfactory or exposes you too greatly to risks which you are not prepared to take, either have the document changed, or refuse to act as trustee. Most deeds can be changed, even to reduce benefits, and most documents need continual revision to bring them into line with current law and practice.

10.1 The Deed

The Deed is the constitution of the scheme. Even plain English deeds can be very long, and that is not unreasonable. They have to cope with foreseeing many current or future eventualities, some of which may never happen.

While the law says you have to familiarize yourself with the deed (and other documents) this is in modern terms not a sensible or practical requirement. It was in the days when there were short family trusts.

Nowadays pension deeds are technical documents; but while no-one really expects you to read them, you should know what is in them - and if necessary where to look something up if you have a problem. So while it may prove to be a waste of time to read the document, you should make sure that there is an index or a list of contents, and get a feel of what is in it. It will contain the usual terms:

1. How the trust is formed.
2. How it is changed.
3. How the trustees are appointed and removed - and who they should be
4. Remuneration of trustees.
5. How the trust is wound up.

10.2 The Rules

The rules normally are in a separate section of the deed and contain information about the pension scheme itself, such as

1. Who can join?
2. What contributions there are and who pays them.
3. What the benefits should be.
4. The vesting rules.
5. What happens if the scheme is wound up.

10.3 The Booklet

The booklet (which includes ‘announcements’, notices’ and any other similar communications about the scheme) must be given to members of the scheme. The employer, of course, sometimes sees the scheme as less of a benefit than as an expense. Therefore he will spend at least a little time and money explaining the advantages of an in-house scheme to the employees. The cost of communication is much less than the cost of an unhappy worried or insecure workforce - which is what it may become if the pensions are inadequate or, more importantly, perceived to be inadequate.
10.4 The Actuarial Valuation

The actuarial valuation, required by law usually at least once every three years (for defined benefit schemes) gives a picture of how the scheme is doing. It will tell you if the scheme is in surplus or deficit. It is an analysis by the actuary when a Defined Benefit plan is being established or to review an existing plan with a view of determining the funded position at the valuation date or whether the payment being made into the scheme today are sufficient to fund it.

There is no cause for celebration for a surplus. Equally there will not necessarily be a cause for gloom if there is a deficit. All depends on the assumptions used by the actuary in doing his calculations. Such assumptions may actually differ from actual experience hence what you are looking for is a simple explanation of any problems of the fund as the actuary sees it. Generally, the valuation determines the following:

1. The contributions rate.
2. Compares assets to liabilities (funded ratio).
3. Measures costs.

The valuation process involves:

1. Collect data.
2. Review and reconcile data.
3. Set assumptions.
4. Perform calculations.
5. Reconcile calculations.
6. Present reports.
7. Ensure individual data is accurate.
8. Headcount and movement of population is also accounted for.
10. Resolves discrepancies in data.
11. Certify that the data is reasonable and sufficient.

Some of the assumptions the actuary uses include:

Economics
1. Interest rates.
2. Salary increases.
3. Administrative expenses.
4. Government benefits programs.
5. Inflation.

Demographics
1. Retirement ages.
3. Termination-turnover.
4. Family status.
5. Future new entrants.

Use of the valuation report
1. As a planning tool
2. To understand the population.
3. To help determine the asset mix.
4. To assess the contributions.
5. For problem identification.
6. To match assets and liabilities.

10.5 The Financial Accounts or Report

The accounts are required to be audited annually and the report forwarded to RBA and KRA within six months after end of year. The accounts of a retirement fund look at income and expenditure. The reason for them is to identify unremitted contributions, validate calculation and payment of benefits, reflect the administration costs and state whether there has been any theft from, or mismanagement of, the scheme assets/funds.

The accounts will only give a picture of the fund as at the date of reporting; they do not in themselves ensure that the funds are secure, or that problems do not arise after their completion. Any scheme liabilities of the employer must be reflected in the company accounts, which the trustees should follow up. But if the scheme has not performed well, any shortfall must be shown in the scheme accounts and causes for the shortfall identified.
10.6 The Trustee’s Report

This is a report which you have to prepare each year for the use of the members and others. It sets out the performance of the fund, who the managers and the review of various service providers. It is normally prepared with the assistance of your advisers, especially the administrator.

10.7 Investing of Scheme Funds

It is allocating the pension scheme assets according to an asset mix as outlined in the Prudent Investment Policy. Monitoring and evaluating your investment manager is a key part of fulfilling your fiduciary duties. You need to understand the costs. The mandate of the manager must also be clear. It should set clear expectations, permitted investments, quality standards, prohibited transactions, performance standards, reporting responsibilities, and details of individual holdings. Need to determine whether pooled guaranteed fund or segregated fund as a style.

Investment management is usually delegated to someone who is authorized like a fund manager. This does not mean that trustees cannot make ‘strategic’ investment decisions on matters, e.g. how much of the funds should be in stocks or whether to adopt ethical investment principles. Trustees must consider whether they wish to adopt social or ethical criteria when deciding on the Investment policy. However trustees must beware of becoming involved with non-trust objectives. The fund is set up to provide retirement benefits, not to pursue economic, political or ethical objectives. The fund is meant to make as much money as possible for members.

10.8 Prudent Investment Policy (PIP) Statement

The law requires that every 3 years the trustees approve investment policy statement (IPS). Copy must be submitted to the Authority and be revised and resubmitted every three years. The statement of investment principles (IPS) sets out how the funds are to be invested. Some are very long (over 30 pages); others can be a page or Two. They should reflect the particular needs and philosophy of the scheme, its appetite for risk, the asset liability matching and the maturity of its liabilities for example (how long it has to go before much of its assets have to be used in paying benefits). It must also say whether it is intended to adopt any ethical or social considerations when investing - and how any votes which attach to shares are to be exercised. It may state preference for investment either in Segregated or Guaranteed fund.

It details the trustees objectives and expectations relating to the scheme assets. It addresses issues such as asset mix, appointing investment managers, monitoring investment returns, and preparing prudent investment policy guidelines. It defines how the scheme funds are to be managed, asset portfolio mix, portfolio diversification, categories and sub categories of investments, investment restrictions, rebalancing, rate of return objectives and reporting requirements. It involves understanding of the capital markets, and the concepts of risk and return. It also involves seeking and monitoring professional advice.

Generally the classes of assets traded include:

1. Stocks/Equities
2. Bonds
3. Fixed Income
4. Money Market Instruments
5. Private Equity  
6. Real Estate  
7. Infrastructure Funds  

Investment return is the reward you receive for the risk that you are exposed to. It takes the form of capital appreciation, dividends, currency fluctuations, interest income, capital gains, rental income etc. The primary determinant of the risk or level of investment return is the asset mix. Diversification means choosing investments in different categories/funds such as asset classes, country, currencies, industries, corporations, maturities, etc.

Prudent Investment Policy (PIP) states strategy and objectives. Sets parameters and expectations and practically requires regular review at least annually or when something major changes. A scheme with a fund value of Kshs one hundred million or less may invest up to one hundred per centum of its scheme funds in Government Securities.

10.9 The Investment Manager’s Report

Investment manager’s reports should provide for comparative performance against the market. Assessing if scheme funds have done as well as others in the marketplace. If not find out why not. The other thing to check is whether the investments match the policy statement and rules of the scheme - and whether there is sufficient diversification. It is sensible to check whether they comply with certain legal requirements as per the Insurance Act or the Retirement Benefits Act investment guidelines. The manager should produce quarterly scheme and pooled fund reports including the valuation of assets, investment transaction reports, investment activity and performance reports.
11. Investing the Assets
One of your major obligations is to ensure proper investment of the funds. Good performance can make an astonishing difference either to the contributions that have to be made, or the benefits that can be given. A 1% difference in the return can make a 25% difference in benefits. The investment manager advises on suitable asset classes, development of Investment policies, Investing in accordance with legislation, prudent investment policy, and directing custodian on how to settle trades, transfer, exchange or deliver assets.

The Trustees must ensure to do the following:

1. Prepare prudent investment policy every three years.
2. Appoint investment managers.
3. Determine investment strategy, rather than specific investments.
4. Choose the asset mix appropriate for your needs.
5. Invest the money, rather than speculate with it, or leave it in the bank, or use it for purposes other than the provision of retirement benefits.
6. Diversify the investments.
7. Follow the terms of the deed.
8. Make money for the beneficiaries.
9. Apply the ‘Prudent Man’ rule.

11.1 Choosing and Controlling the Investment Manager

One major mandate of the trustees is choosing, and then controlling, the investment manager. This could be the insurance company (approved issuer of guaranteed fund), or a specialist investment manager, fund manager, or a merchant bank. They all seem to offer: competitive returns; impressive security; and splendid relationships. Considering the security and good return on investment form the basic criteria for choosing. Pension funds may adopt lower risk investments than an individual might personally be prepared to take, and the returns might therefore not be quite so high although the returns should be competitive with the market. It is the Trustee’s job to ensure that the investment manager is doing his job – by complying with the terms of the deed, the investment strategy, investment management agreement, and producing returns competitive with the market.

Retirement fund trustees are not expected to be investment experts. However there are various investment managers to choose from. But the Trustees must do the following:

1. Monitor the investments;
2. See that scheme funds have been properly invested in accordance with the deed and the law;
3. See that the assets have not disappeared or been misappropriated;
4. See that the investment manager has performed at least adequately. In many cases, outstanding performance might cause may raise an eyebrow, since many a times good performance may be as a consequence of taking high risks;
5. Whereas risks might be acceptable in a young pension fund, in the case of a mature fund, i.e. with a lot of pensioners, members closer to retirement and relatively few contributors, the trustees might prefer to seek a lower risk strategy;
6. Ensure that the manager follows the strategy that has been laid down;
7. Ensure that Trustees trust and like the investment advisers.
11.2 Monitoring

The Trustees should also decide to know whether the scheme fund is performing well or poorly. Investment monitoring services must be put in place to help with this. Consistent poor results over the last few years may mean it is time to change investment manager or insurance company (approved issuer).

11.3 The ‘Customer Agreement’

By law your investment manager has to sign an agreement which sets out the terms under which he manages the fund’s assets. The law was designed to protect the trustees of retirement funds. Investment management agreements should always be vetted by your lawyers; the key points to look out for include;

1. Whether the contract is an industry-standard one
2. Whether it is custom built and must be carefully checked;
3. Whether the manager has the power to engage in alternative investments;
4. Whether the manager has read your deed, which may contain special investment rules.

11.4 Self-investment and Loan Backs

Sometimes your employer might suggest it would be a good idea for your fund to either lend the company some money, buy one of its factories, buy a few company shares to ‘show willing’, or engage in, a joint venture. Before you can commit to such ‘self-investment’ ensure it is strictly controlled, and you should take expert legal advice.

11.5 Risk and Reward

You should be very cautious in the nature of investments and the choice of manager. Avoiding risk, however, has a cost. Thirty years ago pension funds restricted their investments to government bonds and mortgages. But while safe, the returns meant that contributions had to be much higher.

So, over the years, pension funds have moved progressively into stocks and shares, property, and overseas assets. Each change of investment policy has involved accepting a higher degree of risk. In some cases the risk has paid off - but there can be a price to pay, as the fall in the stock markets have done more recently.

You could avoid a great deal of risk arising in your fund. But you would have to remove all discretion from your fund managers, invest solely in government securities, and devote (in the case of a larger scheme) very much more time to supervision. There would be no guarantee that all risk had been removed - and you would probably have diminished the return to the fund, for which your members will not thank you. As in all these matters, you are expected to make a balanced judgment between risk and reward - and sometimes, fortunately very rarely, it will go wrong.

11.6 Assets and Liabilities

For many years conventional wisdom had it that there were separate assets classes for the different liabilities that the fund was underwriting; For example, if the fund was mature and many of its members were drawing pensions and other benefits or just about to retire, it was thought that it would be better to have more of the investments in less volatile investments that would be sure to keep their value over the years, even if their return was more modest. Such investments were usually thought to be bonds (i.e. government loans, where the government promised to pay the interest for a number of years, and then repay the capital) and more recently company equivalents (known as ‘corporate bonds’ or credit’). But where benefits may have to be paid for over 30 years, in fact bonds may not be appropriate since it is hard to find an ideal match between the kind of bond that is around to buy, and the liability of the retirement fund to members.

Many retirement funds over the last 50 years have found investing in company shares (‘equities’) very useful; they offer a flow of income (dividends’) and with luck some capital appreciation. In fact for most retirement funds, equities have been a very volatile choice. But they are risky (companies can go bust or perform badly) and their value can fluctuate wildly in the Stock Market - they might be at a low value, for example, just when you need cash to pay benefits.

Other investments have similar pros and cons. Property has been very popular even now, but the depreciation in buildings can be high, and they can be hard to sell (ie have ‘poor liquidity) when you need the cash. Alternative investments’ may offer higher returns, but they may be more risky or difficult to sell when the time comes. Such investments can include:

property; venture capital’ or ‘private equity’, investments in companies which are not quoted on a stock market; where the managers invest the money in
a more speculative way, guessing that the stock market, or particular share, will fall or rise within a period. They can in theory make money equally well in a falling or rising market, and are sometimes known as ‘absolute return’ investments. Each one of these classes has particular pros and cons.

11.7 Tax

One of the major advantages of a Retirement fund registered with KRA is that it does not pay tax on its investment income – unless:

1. You pay benefits over the Exemption limits, or
2. Invest funds in excess of the tax deductible limits.
3. One of your duties is to ensure that nothing is done to prejudice the tax status of the fund.

11.8 Investment Performance Measurement

It is important for trustees to have a feel for how their investment is doing; one of the ways in which this has been done in recent years is by appointing specialist measurement firms who can report on the investment manager’s performance. But much of the performance will depend on the instructions he has been given, and different funds will give different instructions (take more risk, take less risk, have more overseas, have less overseas and so on).

It is therefore difficult to see how you are performing compared with other similar funds - and such ‘benchmarks’ should be individually constructed against your own objectives, rather than against other ‘peer (similar) funds’. Besides if you invest scheme funds in a guaranteed fund with an insurance company (Approved Issuer) then the responsibility for Asset Mix is transferred to the Investment manager/committee of the insurance company.
12. Corporate Governance
Trustees nowadays are encouraged to be involved in the companies they invest in. There is a balance between being an absentee Landlord’ (and letting companies do what they want, your only sanction being to sell their shares if you are unhappy) and interfering on a daily basis (which you have neither the time nor inclination to do - and anyway you are not there to run other people’s companies). There are occasions, such as where there are huge increases in the chief executive’s pay, or there is some allegations in the press, where you should use the votes that shareholders have (usually called ‘proxies’). With the investment manager, you should agree beforehand how you use your votes; in most cases you will not need to bother.

The pressure on business to improve corporate governance is having a “knock on” effect with regard to pension’s governance. Regulations from the Capital Markets Authority requiring listed companies to demonstrate the quality of their internal controls has resulted in retirement schemes governance receiving a higher profile than it has previously. This higher profile has resulted in the Regulator (RBA) issuing Practice Notes; the requirement that trustees have excellent knowledge and understanding not just of their own scheme but a good understanding of retirement funds, funding and investments in general.

To meet the governance standards required, all parties responsible for the retirement scheme (be it Chairman, Chief Executive, Finance Director, Human Resource Director, Pensions Manager or Trustee) should be confident that they can answer such questions as:

1. Can we be sure that the policies we have put in place have been implemented?
2. Are all investment managers following the investment mandates?
3. Is the reporting we receive sufficient for us to be comfortable with the way the retirement scheme is run?
4. Are the Trustees suitably (and demonstrably) skilled and trained to ask appropriate questions of advisors and to make the appropriate decisions concerning investments or other issues?
5. Are our suppliers meeting their service level agreements?
6. How easy is it for us to check on the effectiveness of all parties responsible for?
7. Contributing to the scheme’s performance?

Those responsible for the overall governance of the retirement scheme need to understand what is expected of them on a personal level and what is expected of their advisers and suppliers. They also need a means of monitoring those activities and the ability to take whatever action is required. This is true whether they represent the trustees’ or the employer’s interests. This is also true whether the scheme is administered in-house or outsourced to a third party. The scheme’s advisers also need to have a full understanding of the scheme to properly advise the trustees and/or the scheme sponsor.

12.1 Electronic Governance Tools

Electronic governance tools are expected to benefit those with oversight responsibilities for retirement schemes in three main areas:

1. Knowledge capture and distribution - including greater empowerment of the scheme sponsors and trustees. This can ensure that trustees have access to all the information they need to fulfill their RBA requirements.
2. Facilitation of trustee responsibilities through a scheduling and automated alerting system. Tasks considered important can be scheduled, so that timely email reminders are issued to relevant parties.

3. Better and more efficient management of suppliers and advisors.

If the governance system also permits collaborative working, this will enable the external scheme advisers to gain a better understanding of the scheme and the issues it faces, which in turn should result in more focused and more relevant advice.

In most organizations retirement schemes funds knowledge is widely distributed. While some knowledge rests with key people such as members of the pensions department, much knowledge rests with third parties (e.g., actuaries, auditors, custodians, solicitors, investment advisers, insurance companies). This leaves the scheme sponsor and/or Trustees in a potentially vulnerable position. The “knowledge capture” benefits of electronic systems include:

1. Reduced risks (and implied costs) of “lost” knowledge - by capturing the existing historical knowledge and knowledge of future tasks from current advisers and current staff.
2. Reduced dependence on third parties who typically hold dispersed knowledge.
3. Increased ease and reduced cost of changing third party advisers (or changing team members within an existing third party adviser).
4. Centralized documentation ensuring one consistent up-to-date view.
5. Reduced cost searching for knowledge and documentation (some systems make even historical paper documentation word searchable).
6. Focused information - by creating information “views” dependent on roles
7. Access to the web-based knowledge allows: home-working; non-centralized trustee boards to access all the information they need; new trustees to immediately have knowledge at their fingertips
8. Greater trustee empowerment to identify the “real” issues.
9. Increased “transparency” and maintained audit trails.

12.2 Governance Benefits

Trustee boards usually consist of people who have “day jobs” (i.e., other “non-pension” roles) to perform. A fundamental governance principle is that a trustee should either:

1. be assured that required tasks are being performed, or
2. be alerted to the fact that they are not being performed.

A good electronic governance system will be able to issue automated email alerts to trustees (or other profile groups) whenever a task fails to be performed. Under current legislation, it is the trustees who bear the responsibility for these failures and who will be held to account for any “failures” that occur. The benefits of a collaborative electronic governance system are:

1. Greater ability to demonstrate Trustees are responding to new legislative requirements.
2. Reduced risk of exposure to the “failure” of “delegates”.
3. Clear objective identification of areas where a Trustee is exposed.
4. Reassurance that defined tasks have been performed.
5. Ability to be notified when certain information is produced.

12.3 Management Benefits

A good electronic system will provide a framework for the management of retirement function by:

1. Automatically chasing statutory and management documents that need to be produced according to timescales e.g., Trustee papers and minutes.
3. Automatically alerting management to the failure of third parties to deliver, in accordance with previously agreed delivery targets. Thus:
4. Management time chasing and distributing information is reduced.
5. Supplier responsibilities are clarified.
6. Suppliers who “deliver” (and those who do not) are objectively identified.
7. There is increased “transparency” of management activities and supplier performance.

Overall, this reduces the likelihood of non-compliance and associated management risks.
12.4 Components of an Electronic Governance System

An electronic governance system should be designed to address the issues outlined earlier. The system will do this by providing one secure location where each of the retirement scheme’s stakeholders (and advisers) can access and or provide information in accordance with their position and responsibility. This location can be on the Internet or the Intranet. As pensions governance becomes more complicated with each new piece of legislation and regulation, the system should provide each individual with a personalized view of the documents as well as the communications and analyses necessary for their role.

The system should also highlight any that are missing or overdue - at a glance. The core components of a governance system are:

1. A summary that provides information about the scheme at a glance.
2. A fully searchable document library; Modules for Trustee and committee meetings.
3. A Trustee compliance module that provides all the information that the Pensions Regulator believes are necessary to undertake that role including: a checklist with facility to attach training materials and an Assessment section, which summarizes for each trustee their status with regard to their trustee knowledge and understanding; “Adviser” modules, and An integrated document and task scheduler to confirm compliance by the managers of the scheme.

The System can also be used as a tool to collate and monitor information about: Scheme Investments, Scheme Liabilities, Scheme Stewardship. Within the new retirement benefits environment, all trustees need to be aware of their oversight responsibilities and be given the tools and information to do this. Electronic governance tools can meet those needs.
Trustees and employers usually, though not always, know more about retirement schemes and the assets, than the members and their dependents. Scheme members therefore rely on trustees for a great deal of information and advice.

13.1 What members are entitled to automatically

1. New members, scheme details.
2. Leavers, rights, options and benefits payments as soon as possible.
3. Beneficiaries, any change of address for enquiries.
4. Members, (in money purchase scheme) annual benefit statements.
5. Everyone, changes in scheme details.
6. Everyone, if winding-up begins.
7. Combined pension forecasts (eventually).

Trustees have always had to provide information to beneficiaries - and retirement fund trustees are no exception. The information must be made available to a wide range of people - not only the members - including spouses, dependants and others who are entitled to a range of information. Some of the information must be provided automatically; some of it must be provided on request.

13.2 What members are entitled to on request

1. Refunds available.
2. Transfers and leaving service rights, no more than once a year.
3. A copy of the deed and rules, on payment of a reasonable fee.
4. A copy of the actuarial valuation, on payment of a reasonable fee.
5. Benefit statements, no more than once a year.
6. Scheme details, no more than every three years (DB).
7. Trustees’ annual report.

13.3 Who is entitled to information?

1. Members.
2. Spouses.
3. Dependents.
4. Employers.
5. Regulators.

Whether there is a claim under the regulations or the general law, it is prudent to ensure that members do not receive trustees’ minutes, which may relate to personal matters affecting an individual. In principle, however, members are entitled to a copy of the trustees’ deliberations - so it is as well to make them fairly broad - you do not want members complaining that your decisions were unreasonable or failed to take certain information into account. Drafting minutes, especially trustee minutes, is a skilled task and should be delegated to an experienced person/trust secretary.

13.4 Failure to comply with the regulations

If you fail to comply with the regulations, there are penalties specified. Anyone who is aggrieved can complain to RBA. So far as is known, no trustee has yet been convicted of a failure to supply information under the regulations, and even if you do fail for some reason or another, a good excuse, such as the managers or administrators have let you down, will probably suffice. The main answer is to find a good administrator.
13.5 Providing information

There should be no reason why anyone should not have any information, provided they do not ask too often, or are prepared to pay copying charges where a large volume is in demand. The only time you need to refuse to assist is where personal confidential information is sought, or where a trustee’s discretion is questioned, in which consult your lawyer.

13.6 Communication

There is no law that says that the way in which you inform your members and others should be clear, simple and helpful. But good communication can often be the valve that lets out the steam from people’s ears, and reduces the pressure on you. A little bit of communication goes a long way and there are now many organizations that specialize in retirement schemes communication.

**Trustee Focus:** Understanding the requirement to communicate precisely and correctly with a wide variety of individuals and the consequences of not doing so. Other members that trustees interact with include Sponsor, Beneficiaries and retirees.
14. The Funding Policy
It documents the trustees’ objectives and the methods of achieving them. So that sufficient assets will be available in future so as to provide the promised benefits on an on going basis. It adds discipline to the sponsors funding decisions, improves transparency of the decisions and provides guidance to actuary when making decisions about methods and assumptions. It ensures legislative requirements are being met and works hand in hand with the investment policy.

It is the process of accumulating capital for future distribution to scheme members in order to satisfy benefits obligations. The sources of capital include contributions in to the scheme and the investment returns. The funding decisions by trustees have significant impact on stakeholders and sponsors wants funding to be as predictable as possible. Factors that may be considered include:

1. The scheme overview.
2. The funding objectives.
3. Acceptable range of Funded Ratio.
4. Allocation of surplus.
5. Acceptable level of contributions.
6. Cost sharing mechanisms.
7. Actuarial methods, assumptions and reporting.
8. Frequency of valuations.
9. Risk tolerance.
10. Amortisation of deficits.
11. Monitoring.
12. Communications policy.

The funding policy has relationships with the investment policy and the benefits policy. It should clearly define the roles of the various parties in the development and implementation of the policy. Registered retirement scheme must be funded in advance or prefunded. Assets must be kept separate in a trust fund a part from company assets. Contributions must be remitted before the 10th day of the month following the month in which it is deducted. The concepts and benefits of prefunding include:

1. Promotes benefits security.
2. Pay now for costs accruing now.
3. Stability and predictability of costs.
5. Satisfy legislative requirements.
15. The Benefits Policy

It documents the reasons that the organization has set up a scheme such as: Why sponsor a scheme? The plan design - why sponsor this particular plan? The purpose of having the scheme? Who to cover? Type of cover? Who pays contributions? How competitive are benefits?
16. Pensions Administration - Potential implications for Trustees
If you attended a Trustees meeting in the not too distant past and there was a discussion about risk, then typically that discussion would be investment related and focusing on the issue of risk versus return. But times have changed and risk, in its widest sense, is now a much bigger issue for Trustees. Not surprisingly investment and funding risk issues are still high on the agenda. The requirements for internal controls combined with the increased responsibilities of the Scheme Administrator under the RBA Act have caused Trustees to look at other areas of risk. There is also the risk on benefits.

16.1 Trustees’ relationship with administration providers

Providers of administration services (whether in-house or outsourced) have traditionally been “reactive” rather than “proactive” but that needs to change, and is changing. Trustees should expect to see proactive discussion with providers regarding the controls in place to prove they are not exposed to undue risk. Regular stewardship reports should include a compliance statement confirming there have not been any regulatory breaches. We should involve our clients as we develop these processes and communications. Typically this is done through feedback during Annual General Meetings. Our regular client forums involve gathering representatives of all our clients together and discussing the changes to their service, and how we seek to minimize risk for them. This gives them an opportunity to provide input for themselves, and on behalf of the Trustees, as to how the scheme is run on a day-to-day basis.

16.2 Trustee has fiduciary responsibility

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<td>1. Who has an obligation to act for another’s benefit?</td>
<td>1. Occurs when fiduciary has scope to unilaterally exercise some discretion or power.</td>
</tr>
<tr>
<td>2. Who occupies a position of trust and confidence to manage and protect property or money for someone else?</td>
<td>2. That can affect the beneficiary’s legal or practical interests.</td>
</tr>
<tr>
<td>3. Beneficiary is vulnerable to the fiduciary holding the discretion or power.</td>
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16.3 How can Trustees sleep at night?

The potential risks in scheme administration are too numerous to cover here but should, in the Trustees risk assessment, fall under the areas of scheme supervision, relationships and communication with members. In the first instance Trustees should be asking themselves if they have the best administration provider to mitigate risk and whether they are being properly managed.

Once that has been established Trustees will need to satisfy themselves there are appropriate controls in place so that benefits are correctly calculated, duly authorized and paid only to genuine beneficiaries. Also that payment takes place in appropriate timescales. Control mechanisms here may include contractual agreements with the administrator, regular reporting to Trustees and feedback from the scheme auditor after the annual audit.
In terms of service to members, Trustees need to be sure members are being given the right information and that it is being well communicated and is technically compliant. In the past, however, Trustees would have been content to assume this was the case unless someone told them otherwise or there was a problem. This will need to change and as part of their risk assessment process Trustees will need to show they have considered their operational risks and have controls in place to mitigate these.

16.4 Administration is now more important

So let’s go back to our Trustees meeting a few years ago. Unless there were serious problems, the administration of the scheme may not even have been discussed. At best a regular report might feature on the agenda and might warrant a few minutes consideration and almost certainly in many cases the administrator would not have been asked to attend. This has changed due to administrator regulations. Whilst the administrator may never be quite as important (or exciting) as, say the investment manager or consultant, their importance has increased as is the Trustees accountabilities for the responsibilities they have delegated to them.
17. Paying Benefits
17.1 Eligibility

Who can join the scheme is set down in the deed, and is usually a matter only for the employer to decide. You should not let anyone in who is not eligible; you should not exclude those who can join. There are grey areas, however. Suppose your fund has a surplus, but the employer wants a whole new factory full of employees to join and pay in a miserable transfer value. Do you have to accept them? It will depend on the deed.

You should be aware though that you should not discriminate on the grounds of sex, race, sexual orientation, disability, part-time employment, fixed contract 'employment', belief or religion - although you probably may still be able to discriminate on the grounds of age. For defined contribution, membership is open from age 18 years. The law states that if an employee is in a category for which the sponsor has set up the scheme such member should not be excluded for whatever reasons for more than one year.

17.2 Death benefits

Death benefits are covers provided by an insurance company. Usually the employer pays the premium unless it is incorporated in the trust deed and rules. How you pay and to whom you pay is often at your discretion although beneficiaries are often nominated.

17.3 Appointment of an Interim Administrator

The RBA CEO with approval of the board may appoint an interim administrator for 12 months subject to extension, if Trustees:

1. Fail to submit annual accounts for over 6 months,
2. Have submitted false, misleading accounts or documents, or
3. CEO becomes aware of any facts that needed consideration in the interests of the sponsors, members or public.

The Interim Administrator must discharge his duties with diligence, sound actuarial and financial principles and has power to:

1. Assume management and control of business of Trustee, Manager, Custodian or Administrator.
2. Remove officers who caused and contributed to the problems.
3. Revoke existing powers.

Interim Administrator’s actions must have due regard to the interests of Trustees, Manager, Custodian, Administrator, and Sponsor.

The Interim Administrators’ responsibilities include:

1. Trace, preserve and secure assets and property.
2. Recover debts and monies owed to the scheme.
3. Evaluate solvency and liquidity of the scheme.
4. Ensure scheme’s compliance with act and regulations.
5. Determine adequacy of capital and reserves.
6. Obtain and secure all scheme documents, books, records etc.
7. Prepare a report on financial position and management of the scheme.
8. File the report with the CEO within 12 months from date of appointment and include in the report a recommendation to revive the scheme or deregister the scheme.
The CEO will use report to make recommendations to the board who must make a decision in the matter.

17.4 Winding-up

Winding-up a scheme can be a traumatic event. It can happen if the employer goes bust, or decides for other reasons to close the scheme. If that happens special Rules fall into play which allocate how the benefits are to be split up; if there is not enough money in the fund, benefits may have to be reduced all round. If there is too much you may be able to enhance them.

The Retirement Benefits Act has specific provisions on winding up of schemes. Often the regulator will appoint a liquidator.

Subject to the approval by the RBA and resolution by the trustees a scheme may be voluntarily dissolved, or wound up in accordance with scheme rules, Act, and Regulations. During the liquidation the Act and Regulations apply to the scheme as if the liquidator were the trustee of the scheme. Upon dissolution, no further claim lies against the trustees of the scheme with respect to the benefits.

Subject to the Act (and advance notice to trustees, sponsors, members), The RBA may seek court ordered wind-up where it is of the opinion that:

1. Scheme is unsound financially,
2. Funding below the minimum level,
3. Trustees effort to improve the funding are ineffective, impractical or unsatisfactory,
4. Scheme engages in false or untrue registration application,
5. Scheme is not in compliance with the act, regulations or Authority directions.

17.5 Divorce

Divorce is one of those problems with which retirement funds trustees experience challenge. Once the member is divorced, his former wife or husband can no longer be a survivor and can therefore no longer receive survivor’s benefits - all that he or she may be eligible for is dependant’s benefits in certain circumstances. Retirement funds trustees are required to up hold the nomination of beneficiary, any court orders and in most cases exercise discretion to safeguard the interest of wider range of interested people.

17.6 Members and other beneficiaries

When making decisions, you should take all the beneficiaries into account - not just current employees. Beneficiaries include the spouses and dependents of members, former members (deferred pensioners - which may include people who have left the company) and in some cases the company itself, since if there is a surplus, it might in some cases expect to have an interest in the return of some of the surplus. If there is a deficit, it would be prudent to pay lower transfer values to people who leave the scheme early. In any case, in most instances the company will have an interest in keeping contributions down -and returns on the investments high.

It is the job of a trustee not to discriminate between any of the groups of members and other beneficiaries. This does not mean that you have to split any extra funds equally between them - you can decide in certain cases that one group, or in some cases even one individual, is more deserving of attention than others - but you must consider them all.

17.7 Discretions

Exercising discretions is one of the great joys of being a trustee; some of them hate it and try to obtain clearance from all sorts of other people before doing so. This is not desirable. One of the reasons you are a trustee is because some people think you are a reasonable kind of a person well able to make common sense judgments. You do not have to get the judgments right; by definition many such decisions will be wrong. But provided on balance you get more decisions right than wrong, you will be loved, or at least appreciated, by your members.

Neither can anyone criticize your decisions, provided they are made honestly, reasonably and when in possession of sufficient information - and the court and the Regulator will be very reluctant indeed to interfere with your decisions unless they are clearly crazy - in which case you will have no objection to being overruled. There are few recorded cases in which the RBA or a court has changed a decision of pension fund trustees on the grounds it was improper, although occasionally they may send a matter back for the trustees to reconsider. The kinds of problems in which your discretion is needed are relatively few.
1. Choosing advisers.
2. Deciding who gets the ’death-in-service’ benefit. If one of your members dies whilst working, it is likely that his life is insured for anything up to four times his salary.
3. In order to avoid inheritance tax on that money, you have been given the discretion as to whom that money can go to. Normally the dead member will have left a letter saying who he wants it to go to - but sometimes other people come out of the woodwork, such as an undiscovered mistress, or hidden children - who feel they have a claim.
4. What you do is up to you and your colleagues, although you must ensure that the beneficiary you choose is within the class of people defined in the rules. Take as much information as you can get, if necessary take some advice - but the buck stops with you, and you can either decide to follow the instructions of the dead member, or split it in some other way. The only guardian is your conscience.
5. Deciding how to split the investment portfolio between say a series of investment managers.
6. Deciding to give a benefit to a dependant, and deciding whether someone is truly dependant.
7. Deciding whether someone is ill enough to enjoy an ill-health benefit.

Many of these decisions are hard, and will affect the financial security and well-being of someone you may know quite well. Some of the decisions you make may be uncomfortable and difficult ones. But that is what you are there for.

17.8 The purpose of discretionary benefits

Using discretions in paying benefits needs a brief understanding of why you have been given those discretions. You may already know that you are given discretion as to whom to pay any death-in-service benefit to. Most schemes contain this benefit, which provides a substantial sum in cash if the member dies while working. To avoid it falling into the estate of the dead member (and thereby possibly subject to inheritance tax) the trustees can decide who to pay it to. This makes the payment tax free. But in practice the member will have filled in a ‘nomination letter’ telling you who he would like the money to go to. The big question is - do you follow up the letter? For example, if there is Kshs 100,000 to dispose of, and the letter tells you to pay the money to his girlfriend, but you know that there is a wife and six grieving children to support, what do you do? Follow the dead man’s wishes? Or follow your own conscience? Some trustees take the view that if they have the discretion they should exercise it.
18. Taking Professional Advice
As mentioned, trustees are not supposed to know everything themselves - or even very much. They are, however, supposed to take advice, although they are not required to follow it (indeed they must not) if they are unhappy with it. But they must use their advisers to the full, especially their legal advisers, if they are to avoid suggestions that they acted improperly in coming to their various decisions. With the increasing tendency to litigation, trustees now need protection more than ever - and advice is one of the best protections. There is a wide range of advisers involved in pension’s matters, not all of whom will be appropriate to your scheme, and some of whom will provide more than one element of advice. In principle, most schemes will need one or more of the following:

1. Lawyers; Actuaries; Accountants; Pensions consultants.
2. Pensions Managers; Investment Managers; Investment Consultants.

Most advisers have to sign contracts making it clear that their primary duty is to you. However you should be able to manage conflict of interest. As a trustee you will sometimes need to engage separate advisers for the scheme - either where no such adviser is in place, or where existing advisers find themselves unable to continue to act. Additionally, you will continually need to review your relationship with all the advisers.
19. Approved Issuer
19.1 Approved Issuer

1. An Insurance company
2. Registered under the provisions of the Insurance Act, or
3. Any other insurer approved in writing under the provisions of the Capital Markets Act, or any other written Law.

Generally Insurance companies manage guaranteed funds as an asset class that is recognized under the RBA investment guidelines. It allows Trustees to decide to place one hundred percent (100%) of retirement scheme assets with an Insurance Company. Insurance Company in turn will invest in accordance with the provisions under the Insurance Act. Insurance companies apply the pooling concept in investing scheme funds.

19.1.2 Lawyers

Choosing a good pensions lawyer can put ten years on your lifespan. The relief is immense. How to choose one is not easy.

Ten questions to ask your lawyer

1. Does he specialize in pensions work, or is it a sideline?
2. How many pension schemes of your nature does he act for?
3. Can he cope with both drafting documents - and being involved in merger negotiations?
4. How does he charge, and how much?
5. If there is something to complain about, who is in charge?
6. What is his view on Plain English drafting?
7. How does he keep up to date with legal developments?
8. Does he respond to queries, or play a pro-active role in advising?
9. Who does he think he is acting for: the trustees or the employer?
10. To whom does he think surpluses belong and how should deficits be paid?

The only answer is to meet a few, invite them to present to you, explain what they do and how they do it - and insist on meeting the person who is going to do the work, not just the senior partner. You may not need a high powered expensive partner for much of your work - on the other hand you need to know that there is an experienced partner available to handle the tricky problems if they arise.

19.1.3 Actuaries

An Actuary means a person who is a Fellow of the institute of Actuaries in England; Scotland; Canada; United States Of America; Australia; or a person holding such equivalent qualifications as the Board may, by notice in the Gazette, prescribe. There are two kinds of actuary: Consulting actuaries should be on your side, looking at the problems from your point of view (or that of the employer). Insurance company actuaries are a very different breed entirely - and mostly have the interests of their employers (the insurance companies) at heart.

Remember whose side the actuary is on and half the battle is won. Their role includes analyzing cost impact of different plan designs, preparing actuarial valuations and cost certificates, review amendments to determine cost and compliance, aid in establishing investment objectives when required, Help administrator prepare annual filings for compliance, and assisting in assets/ liability studies.
Ten questions to ask your Actuary

1. What is his view on normal actuarial assumptions?
2. Is he a consulting actuary or not?
3. How does he charge?
4. What experience does he have of your kind of fund?
5. What kind of report does he produce?
6. Will he advise you - or the employer?
7. Is he planning to run a surplus - or a deficit? And how are such actuarial anomalies to be dealt with as they arise?
8. How will he handle the data - himself or through a bureau?
9. Will he prepare the Trustees’ report?
10. How will he deal with the accountants?

19.1.4 Pension fund administrators

Pension fund administrators should be distinguished from investment managers. Pension fund administrators look after the day-to-day administration of the fund. It is a highly skilled and technical job, needing knowledge of computer systems, law, management of human resources, finance and some basic actuarial principles. You should be aware of the special problems that pension scheme administrators are faced with. Most scheme administrators are employed by the employer, and may have a career with the employer. At the same time they have to comply with the trustees’ instructions.

For most of the time this dual role poses no problem. But there are occasions when the pension scheme administrator is placed in an impossible position, with a conflict of loyalty between his employer and his duty to the trustees. You need to be aware of, and sympathetic to, his difficulties, and be prepared to help him - perhaps by taking outside advice.

Ten questions to ask your Pension Fund Administrator

1. Is he computerizing your administration - or buying in a package - or keeping it manual?
2. Will he arrange for the production of annual reports, benefit statements, accounts - and if he will not, who will?
3. Is he responsible for trustee training?
4. Is he authorized to manage investments?
5. Has he in place the insurance protection - and with whom?
6. How many staff will he need?
7. Who does he feel his responsibility is to - the employer or the trustees?
8. How does he keep up to date?
9. What future developments is he anticipating with the fund?
10. How does he coordinate other service providers?

19.1.5 Investment Manager

You need to ensure:
1. That they are properly authorized by the RBA and you can check that by looking on the RBA website;
2. That the customer agreement (i.e. the investment management agreement) that they propose is a fair one;
3. That they have some form of ‘fidelity-bond’ or insurance against fraud or mismanagement.

You should enquire whether the manager is part of an investment monitoring service, so that you can judge how they are doing in comparison with other investment managers.

Ten questions to ask your Investment Manager

1. How much do they manage?
2. How long have they been in business?
3. What is their top docile record over the last ten years?
4. Is the man on the beauty parade actually going to manage your money?
5. Can you see a sample of their quarterly reports - do you understand it?
6. Do they take soft commission?
7. What are their charges?
8. Do they use in-house unit trusts - and is there an additional charge?
9. What do they think will happen to the stock market over the next year - and why are they no more in cash?
10. What is their strategy?
19.1.6 Pensions Consultants

Pensions consultants cover a wide variety of advisers from the specialist pensions consultants with thousands of employees, to the one-man band working from home. The key to a good consultant is not necessarily his size, but his expertise. Checking expertise is extremely difficult; sometimes the only way to judge is either to jump in and try him - or to ask around for experience of his track record from some other trustees.

A major problem is that many of them work on a commission-based system, rather than a fee-based system - in which case you need to check whether the advice is prompted by commission. At the same time some of the largest advisers, which charge by fees rather than commission, can be let down by their administrative systems.

19.1.7 The accountant

Accountants for pension schemes do not need to be especially skilled - pension fund accounts are some of the simplest to prepare. All they really need to record is money out and in, and whether the investments actually exist. The only problem for a trustee is whether the accountant has a conflict of interest with the employer. It is becoming increasingly conventional to appoint separate accountants for the retirement fund.

19.1.8 Conflicts of interest

In many cases the same lawyer, actuary, or accountant can act for both you as trustee and the employer. This can save costs and shorten lines of communication.

But there are cases where there are conflicts of interest - in which case your adviser should immediately suggest separate advisers on both sides. The advice need not thereafter be conflicting or contentious - but it will be independent, and perceived to be independent. The practice of using separate offices of the same adviser, or separate partners in the same firm, is not to be recommended.

19.1.9 Trustee Risk Management

The current trend is for a greater emphasis to be placed on risk in relation to occupational pension funds including strategic, operational, financial and regulatory risks. These are all issues for which trustees have ultimate responsibility.

The trustees will need to review their existing practices and implementing new procedures to ensure compliance. Wide-ranging proactive powers have also been given to the RBA, as regulator.

Trustees and directors of trustee companies are required to be conversant with their own scheme documents and to have “knowledge and understanding” of funding and investment principles. In addition, trustees and trustee directors must also have knowledge and understanding of the law relating to retirement schemes and trusts. Trustees have a duty to monitor the management and administration of their scheme to make sure those providing services to them carry out their responsibilities properly. Trustees should therefore ensure that objectives and procedures that are appropriate to their scheme are identified and implemented. Managing risk also gives trustees the opportunity to embrace best practice and review external standards.

Effective risk management procedures can also play a significant role in minimising liabilities which should be favorably taken into consideration by insurers. Potential candidates for trusteeship should not be deterred from fulfilling such a vital function if the above measures are adopted and they have the safety net of insurance.

19.1.10 Ineligible persons disqualified from being a Trustee

No person shall be a trustee if:

1. Has been sentenced to 6 or more months in prison.
2. Is adjudged bankrupt.
3. Was previously involved in mismanagement or misadministration of a scheme that was deregistered.
4. Is disqualified by law.

Appointment as trustee must be approved by the Authority.
19.1.11 Scheme Fund

Each scheme must maintain fund separate from other assets under the control of trustees or manager in to which contributions, investment earnings, income, or other monies payable are credited.

19.1.12 Trustees and Employers

The employer usually feels that the pension fund is under his control. After all, he has established it, and in most cases he will have paid for it. At the same time, the employees and members (and their unions) have a different approach. It is they who have worked for it, foregone pay increases to ensure contributions are made to it, and have the greater expectations from it. Meanwhile the trustees are watched by both elements: the members are determined that it shall perform satisfactorily well to provide their benefits; and the employer is concerned that it performs well so as to reduce his contributions in the future.
20. The Balance of Power
So it is not surprising that there are sometimes different interests involved in running the scheme. Accordingly, the deed sets down who shall be in charge of certain decisions. For example, the trustee may have the freedom to improve certain benefits, but subject to the approval of the employer since it is he who will have to pay for any such improvement. Since some decisions are made by the employer ‘with the consent of the trustees’ and some decisions are made by the trustees with the consent of the employer’, the deed contains certain balance of powers.

These balance of powers come into play especially where either the application of surpluses or the payment of deficits are concerned, and it is reasonable, for example, for the employer to reserve certain powers for his approval to contain costs. But a series of cases has decided that where an employer uses his power in this way he must do so, not necessarily in the best interests of the members, but at least in a fair and reasonable manner. Proving what is fair and reasonable is of course a very different matter. And changes in the law have also given increased power to trustees. Trustees need to ensure that the scheme is satisfactorily funded to protect the members’ interests. The RBA regulations stipulate a minimum funding level of One Hundred Percent. Below the minimum funding level the law requires the trustees to provide a remedial action plan to the RBA.
21. The Legal Relationship
The usual arrangement is that the employer and employee make a pensions promise between them (a contract of employment) and the trustees hold the scheme funds as independent security. The trustees do not usually promise the members any benefits, for example, they undertake merely to look after the beneficiaries' interests and their assets. There is also no contractual relationship between the trustees and the employer in relation to the management of the fund. This can be a problem, for example, where the employer sells part of the business, promises the purchaser a share of the fund in respect of the employees who are moving across but does not attempt to obtain your consent first. If your actuary considers you would be paying too much to the purchaser's scheme, you may not be able to pay over what the employer wishes.

A similar position arises where the employer fails to pay the contributions he should to the retirement scheme. Are you supposed to sue him for the contributions? Or report him to the Retirement Benefits Regulator? In practice that may not be easy if you are to keep on good terms as an employee. In any event the trustee may himself be the employer. There is no single solution in any of these cases - just find the best outside advice. There are complex rules for employers to complying with when companies are bought and sold, and the adviser's job is to guide you through the complexity.

However the RBA regulations consider unremitted contributions as debt recoverable at interest that would have been earned had it been in the scheme fund. Besides any unremitted contributions should be reported to the RBA in the quarterly record of contributions.
22. Trustee Training and Vetting
There is legal obligation for a trustee to acquire knowledge and understanding of the retirement scheme fundamentals, the law, administration, certain investment and trust principles. The regulations required at least one trustee to be trained and certified by end of December 2012. This process is ongoing and has already become a compliance matter. In practice some schemes have sponsored all the trustees to go through the Trustee Development Program at the College of Insurance. This program has been developed in collaboration with RBA, ARBS and Humber University of Canada. In the not too distant future it may be a requirement that all trustees must be certified. The board of trustees succeeds because they set policy, approve strategy, Evaluate board performance, and manage risk, conduct monitoring and evaluation.
23. Disputes with the employer and employment protection
The trustees should act non-confrontationally with employers. If there is a concern that discussions with an employer may lead to a threat to your job, then maybe being a trustee is not for you. You will always need to have an independent mind while dealing with the employer - but that does not mean that discussions and negotiations about, for example, the reduction of deficits should be argumentative or frictional. Few employers will give you a hard time because of disagreement.

On payment of trustees allowances, there is occasional debate about how trustees should be paid, and if so how much. Of course, professional trustees will need paying but few funds pay trustees who spend most of their working life in the company’s employment. Most of their time is company time, and most trustees are happy to act in a helpful manner without pay, provided they are protected as far as possible from liability.
24. Protecting Yourself
In theory, being a trustee involves a great deal of responsibility - and potential liability.

But in practice, you will normally be well protected against liability - and you should check that some of the protective devices, if not all, cover you. No one wants to be sued for a large sum of money because they tried to be helpful.

1. You will, of course, already have taken and used professional advice.
2. You will have followed the documents; ensured protection is built into the documents.
3. You will have been reasonable.
4. You will have ensured that employers and trustees have no conflict of interest - and, if they have, obtained independent advice.
5. You will have kept your eye on the main principles, and avoided distraction.

With all this, it is unlikely you will have done anything too terrible (i.e. committed a ‘breach of trust’) unless you have really been looking for trouble. Your proposed check list is provided here below.

Protection Checklist

1. Professional advice.
2. Delegate functions.
3. Trustee Act 1925.
4. Indemnity clause.
5. Exoneration clause.
6. Whistle blower on conflicts of interest.
7. Trustee liability Insurance.
8. Corporate trustees.

The trust deed will in most cases contain the following vital clauses:

1. An indemnity clause, which says that if you are sued, either the scheme or the employer will pick up the tab. Such a clause is only useful provided the employer stays in the business, and
2. An exoneration clause which exempts you from liability unless you have actually stolen the money. Most modern deeds will contain these clauses, but some of the older documents may be deficient. In addition you may be sued for negligence.
25. Trustee Liability Insurance

Many schemes now take out insurance against trustees' liability. It can be expensive, but insurance at least against legal costs, and to cover you for the time when you have left your trusteeship and are no longer protected by the retirement fund itself is a very sensible thing to think about. Insurance against losing all the fund would be difficult to find, expensive to pay for, and probably not worth while anyway. There is the risk that anyone in the mood can issue legal proceedings and you could lose your house if you have to pay heavy legal costs, and the fund for one reason or another does not pay for those costs.
If a matter ever came to court the chances are it would excuse the trustees for errors which are reasonable. (Professional trustees, e.g. lawyers and actuaries, have higher standards of responsibility). In practice, the main problem for trustees is paying the legal costs. In most deeds, trustees are indemnified by the trust for legal costs. If not, trustees can ask the court, in a preliminary application, to allow their costs to be paid by the fund. It is highly unusual for the court to refuse. However trustees need not be negligent.
27. Taking Professional Advice
The point of having advisers - investment managers, actuaries, insurance companies, pensions consultants, accountants and administrators - is:

1. First, because you cannot be expected to be an expert on everything - or even anything, and equally importantly,
2. Secondly, to have someone to blame if things go wrong.

Trust law expects retirement scheme trustees to have advisers, and judges will be a little concerned and hard on you if you do not. Passing the buck is one thing that retirement scheme trustees often specialize in. The problem is that you should not blindly take the word of an adviser. If you genuinely feel it is wrong or inappropriate, either decline it (having thought carefully about it first) or find fresh advice. Blindly following advice will not excuse you.

Most advisers (certainly the actuaries, the accountants, the lawyers and the investment managers and advisers) nowadays need by law to have proper contracts with you (letters of appointment). These will usually specialize in excluding their liability for anything short of nuclear war, but in most cases you will not have the bargaining power to insist on extensive liability clauses. Nonetheless you, or at least your lawyers, should have a look at them just to see how liable they are. One well-known investment manager even now puts in the investment management contract that it is not liable for its contractual obligations, which is probably taking it a bit far.
28. Criminal Liability

Of course, if you were a criminal in the real sense you would not be reading this. But recent developments in the law mean that you may be committing criminal offences unwittingly, and in many of these cases, ignorance is no excuse. With the increasing belligerence of the serious fraud oversight role played by RBA it might be very useful and sensible if your retirement scheme provided some form of criminal legal aid to help you defend yourself without you having to sell your house, against something you never even knew about. And you need to bear in mind that any criminal fines (and even civil fines) that you may have to pay will have to come out of your own pocket - the fund cannot pay them, and you cannot even insure against the payment of criminal fines.
29. Corporate Trustees
One of the objects of retirement scheme design is to mitigate (reduce) the exposure of the trustees to legal liabilities. One way of doing this is to have a company as a trustee, rather than individual people. This way any aggrieved member would have to sue the company, not a person. Some legal opinion says that a trust company does not protect the directors of the company (i.e. you), certainly against complaints of fraud. But any protection, however modest, is useful, and while litigation is on the increase it is a course of action you should seriously think of taking.

There are other advantages to having a company as trustee as well:

1. It is easier to resign;
2. There is no need to have repeated trust deeds every time a trustee changes.
3. It can afford to hire professional staffs that have experience.

The drawbacks, however, include:
1. Trustees have to file accounts every year;
2. Trustees acquire the responsibilities of directors under the Companies Acts; and
3. Trustees must comply with the other statutory requirements for companies.

29.1 Appointing an independent professional trustee

Having a professional trustee on board can be a comfort. They do need paying, which is an added expense, and some of them can cause more trouble than they are worth, being more concerned about protecting themselves from liability than the efficient running of the scheme funds. But larger retirement schemes should certainly consider appointing them. You could also consider whether the skills you are light on would benefit from having a specialist trustee who is a lawyer, actuary, investment adviser or pension practitioner.

29.2 The other trustees

You have to keep an eye on the other trustees - they can land you in trouble, and even if you had nothing to do with what they did, the buck will stop with you. If you do not trust your other trustees, or have some other reason for being uncomfortable with their decision making, either they or you should go. It is not a matter in which to be a lukewarm.

29.3 Trusteeship in practice

What few of the books tell you, at least the conventional trustee training books, is what to do when faced with some of the day-to-day problems in running a retirement scheme, or the questions that are asked at a trustees’ meeting that cover areas such as:

1. What to do when the employer calls for a return of surplus or is unable to pay off any deficit;
2. What to do if he goes bust;
3. How to exercise discretions;
4. The problems of take-over’s and amalgamations.

This section does not pretend to have all the answers; every problem is personal to you and your fund. But it does try to mention some of the common difficulties – and suggests one or two ideas on how to approach their solution.
30. Insurance Protection
In the past, most trustees relied upon exoneration and indemnity clauses to shield them from personal liability and some viewed insurance with a degree of skepticism. However, this position has dramatically reversed and many trustees and sponsoring employers now appreciate the financial comfort that an appropriately structured insurance policy can provide. Insurance should be considered by all schemes and will play an increasingly important role in protecting retirement funds.

Furthermore, trustees’ exposure does not cease when they retire and their post retirement situation may make them particularly vulnerable. Accordingly, it is important to check that the position of retired trustees is properly protected. The solution is for retired trustees to have independent cover in the event that the scheme ceases to be insured. They can then rest assured that they have cover personal to them, irrespective of what the employer or trustees have done (or not done) about insurance since they retired. The period of cover for retired trustees should be checked for example could be extended for 12 year cover at no additional cost.

Accordingly, the purchase of a properly drafted and comprehensive insurance policy can be a cost-effective means of protecting the assets of the retirement scheme, the sponsoring employer, individual trustees and internal administrators from losses resulting from claims, be they well-founded or not.

The policy may provide a unique combination of risk management and comprehensive protection for its members with advice and representation at personal and corporate level not only for trustees but for the sponsoring employer and fund.
31. Assessing the Sponsor Covenant
Pension schemes are often the largest creditor of a sponsor company. It is understandable then that The Pensions Regulator is directing trustees to “negotiate robustly” with scheme sponsors when making funding and investment decisions. However, for the vast majority of schemes there is little independent public information on the financial strength or credit worthiness of the sponsor. This makes it difficult for trustees to efficiently benchmark the extent to which the sponsor can underwrite the risks in the scheme. It is noted that trustees’ decisions tend to be made over long-term horizons. In financial markets the need to assess long-term financial risk of companies is met by reports by credit rating agencies.

Case study - using an independent covenant assessment

A growing number of trustees have found that an independent assessment of the sponsor is of value as it benchmarks the financial strength of the sponsor necessary for the Funding. Trustee should get information on the long-term risks facing the sponsor. When the sponsor’s commitment is reviewed in the context of the investment risks within a scheme, it can highlight the extent to which the sponsor’s financial strength is itself exposed to risks in the retirement scheme.

Over the last five years a sponsor had undergone a significant restructuring to reduce its non-core businesses. The assessment for the trustees highlighted key issues:

1. The credit strength of the company was currently “very weak” and, benchmarked against other companies, showed a high chance of failure over the next five years. This focused the trustees and their advisors on securing the position of the retirement scheme.
2. There were no explicit support arrangements in place and no unencumbered assets. However, there were no other schemes competing for the resources of the business.
3. The industry was competitive and success was dependent on the company leveraging its strategic position to win contracts. This allowed the trustees and the company to have a discussion on management’s plans for the future and to discuss contracts that had been secured.
4. The financial strength of the core business was above median for the industry.
5. The trustees had already taken steps to reduce the investment risk within the retirement scheme by reducing equity exposure to 30%.
6. However, the financial strength of the company was itself highly exposed to the risks in the retirement scheme. The scheme liabilities were twice the size of the net assets of the company and although the scheme was relatively well-funded at ratio of 95%, the need to fund even a modest increase in the deficit would have placed considerable financial strain on the company. Deficits can be volatile and linked to investment returns and longevity assumptions, for example.

As a result of the sponsor covenant assessment and a review of the outlook for the core business the company and trustees took decisive action to protect the business from further costs and protect member’s benefits.

Overall, both the trustees and the company found sponsor covenant assessment useful and influential to the future management of the retirement scheme. An independent rating assessment offers significant benefits as it allows trustees to benchmark where they stand and then react proportionately to the position.
32. Funding: Surpluses and Deficits
Until very recently trustees could take a relaxed view on the funding of the retirement scheme. In defined contribution (money-purchase) schemes, it may appear like a non-issue. Each side puts in an agreed amount, it is invested the best the trustees know how, and what is available at retirement is used to buy either a pension or pay lump sum. However it is important to note that the scheme members bear the investment risks and would be very keen on prudence of investment decisions made by trustees.

In defined benefit (salary-related) schemes, until 1997 there was no need to have any money in a fund at all. For many years, with the odd failure and mismanagement by many retirement schemes, most retirement schemes worked pretty well without any law requiring them to have a minimum amount of assets. Schemes nowadays have to have a certain minimum amount of assets (funded ratio at 100%), and trustees are responsible for ensuring that the assets are available. Otherwise the RBA will require trustees to provide remedial action plan on how to fund the deficit. This is not always easy to achieve; assets rise and fall in value, tax rules change, actuarial valuation techniques change and makes what might have been enough money into too little money. Deficits are often funded by the scheme sponsor.

### 32.1 Schedule of contributions

Today, trustees of defined benefit schemes must agree a schedule of contributions with the employer, initially prepared by the actuary, to try and ensure as much as possible - without bankrupting the company - that there is enough money and that the company will continue to back the scheme to pay the benefits promised.

In the case of defined benefits an accrual valuation is required to be done every Three years. Trustees must review the rate of contributions in light of the way the investments have performed, the accrual valuation, and negotiate with the employer the new rate as recommended by the actuary.

As time goes by, it will be seen that the level is too high or too low; no-one can predict with certainty how markets will perform, what interest rates will be or how mortality will affect the pensioners. The actuary will make some educated guesses - but that is what they are. Accordingly, every so often it is seen that the assumptions were wrong. The errors can go either way. In the 1980s, for example, the major concern was that pension funds had too much money in them (surpluses). Nowadays, we seem more concerned with deficits.

The law makes it clear where deficits belong: they are a liability of the employer. How he discharges it is a matter for the law and the outcome of discussions between him and the trustees. The law is less clear about who owns surpluses - whether they belong to the employer, or the employees. Trustees would have to convince employer to retain surplus in the fund for the benefit of members.

1. The employer argues that in a balance-of-cost’ scheme, i.e. a scheme where the employer promises to pay whatever is necessary after the employees has paid a fixed contribution, the surplus should be his. After all, he has to put money in to meet any deficit, and the reason the surplus has arisen is because of over-payment by him in the past.

2. The employees argue (supported by their unions) that the money should be theirs; after all it has resulted from the growth in value of ‘their’ money, on assets held in trust for their benefit.
3. The revenue authority may argue that some of the surplus at least should be theirs, since they gave tax relief on it in the past.

Of course the assets of a retirement scheme are not really owned by anyone; they are really there as a form of limited protection against the possible failure of an employer to meet its benefit promises (if it goes bust for example).

32.2 The trustees’ role on surpluses and deficits

The trustees should not have a view. First, much depends on what the deed says - some deeds absolutely prevent a repayment of money to the employer, and you may need to apply to the Pensions Regulator to have the restriction lifted. Secondly, the law is a little vague on some details as to how the money should be split if you receive a request for repayment from the employer. The trustees and the employer should negotiate hard on a deal - and explore whether there are other options, or a combination of options. For example, you might be able to negotiate a mixture of a partial return of surplus, a contribution holiday, an increase in some benefits, or some other alternatives.

Whatever you agree, receiving independent advice is crucial in all but relatively minor cases. The fact that the RBA and KRA have to agree to any deal, and may in fact do so, does not mean that it is a reasonable one for you as a trustee - it just means that it is reasonable for the RBA and KRA, which is a very different thing. Where deficits arise, i.e. there is not enough money in the fund to pay the benefits; the trustees will take a view on how long it is sensible to allow the employer to take to pay it off (one year, five years, 15 years) depending on his own state of health. The paradox is of course that the sicker he is, the more it is important for the trustees to claim the fund early - and the less likely he is able to pay it.

32.3 The special case of insolvency

Where your employer has gone bust, different rules may apply; in some cases if the company is wound up before the scheme is, any surplus there might be negotiated between the employer and trustees. In other cases, the liquidator may put in a claim either for the surplus, or even for all the contributions paid over the previous few years, arguing they were paid when the company was insolvent.

What to check on an application for return of surplus by an employer

1. Have you got your own independent actuary?
2. Have you got an independent lawyer?
3. What does the deed say should happen?
4. Have you considered contribution holidays?
5. Benefit improvements? Payments of tax?
6. What do the members want or need?
7. Are any benefit improvements fair across the board?
8. Do you need an independent trustee?
9. What can the employer do if you refuse to give him the money?
10. Can you do a deal - i.e. improve benefits in exchange for agreeing to a return of surplus?
11. What happens if the employer goes bust?
12. Will the Regulator agree to the deal?
13. Who pays for the separate advice?

The case where a company has gone bust and is unable to meet the deficiency in the fund poses complex issues; the trustees have a claim against the administrators for any deficiency, but in most cases this will not produce enough to make up the losses. In such cases the regulator will appoint a liquidator to assist with winding up.

32.4 Trustees and contributions

Trustees are theoretically and actually most vulnerable if they do not collect employers’ and employees’ contributions on time. In the present framework of regulation, trustees are required to report late payment of contributions if they are remitted after the 10 day of subsequent month or the month following the month in which they were deducted. Even so you need to make sure that your administrators are on the ball. Late payments of contributions have a regulatory importance beyond all common sense, but we live in sensitive times.
32.5 Funding - A Case Study

An actuarial valuation at 6th April 2005 shows liabilities of Kshs 100m against assets of Kshs 85m. The Kshs 15m deficit reflects lower expectations for future investment returns and the fact that people are now expected to live longer than previously assumed. Ideally, the trustees would like an immediate cash payment of Kshs 15m to remove the deficit, in addition to regular contributions to fund future benefit accrual.

Under the scheme rules, the Company determines the contribution rate after consultation with the trustees. However, if a satisfactory contribution level cannot be reached now, the new Scheme Specific Funding standard may mean the trustees feel obliged to have another valuation as at 6th April 2006. The Company has some cash reserves and sees benefits from using these reserves to reduce the scheme deficit now. It agrees to pay Kshs 10m now and increased regular contributions to remove the remaining Kshs 5m deficit over a 5-year period. In this example, the Company has some immediate funds available to meet the deficit, but not all companies will be in this position. Trustees will increasingly need to understand the employer’s financial position and may need to commission an independent assessment of the employer’s financial circumstances in order to be clear whether it is a case of “can’t pay” or “won’t pay”.

From the company’s view, an immediate cash injection can greatly reduce the management time and expense of negotiations with the trustees and can be good for employee relations by showing a real commitment to the retirement scheme. The trustees find themselves with responsibility to ensure their retirement scheme is properly funded. They will need to fully understand their obligations and responsibilities to the members of the scheme and seek professional advice as required.
33. Benefit Changes
A man who lied about his age 36 years ago while courting an older woman yesterday found himself in court after love turned sour and the woman disclosed the truth.

For years Brian Sale kept the secret that he was six years his wife's junior and not three years older as he had told her to win her heart. On his wedding day in 1955 his age was recorded as 29 and that of his wife Gwen as 26, and, aided by his mature physique and by falsifying documents, he was able to carry on the deception throughout his life.

He did so even when he took early retirement because of an injury and received over Kshs 110,000 in pension payments to which he was not legally entitled, Elwyn Evans, for the prosecution told the court. The law catches the pretender.

Having invested the assets to the best of your ability, a major obligation of a trustee is to pay the benefits, as set down in the rules and announcements.

In practice you will not do this yourself - the insurance company, pension's consultant or administrator will do this for you. But there may be cases where the wrong amount has been paid - or the wrong person has been paid - or the records do not match the claim. It is not your job to change the benefits or improve them - unless the deed says so. And even so, you usually have to do it with the consent of the employer. Some of the more common problems that arise include:

1. Should you count time on strike as part of pensionable service?
2. Should you count maternity leave as part of pensionable service?
3. Should the benefits be paid monthly, quarterly or for some other period?
4. How do you check that the beneficiary is still alive?
5. How do you check that person claiming to be a widow was married to the dead?

These kind of benefit checks, including who is eligible to join and how are normally agreed by the employer rather than the trustee.

### 33.1 Benefit improvements

Benefit improvements can arise:

1. From a decision of the employer, perhaps negotiated with the trade union;
2. As a way of dealing with part of a surplus or responding to a deficit;
3. Where increased contributions are agreed; or
4. Where required by law.

In almost all cases they arise from employees' negotiations with the employer - not with the trustees. Unless a deal has to be done about some surplus, you will not be called upon to decide who gets what - but if you are, you need to remember to treat all groups on an equal footing (members, retired members, deferred pensioners and the rest). They do not have to get equal benefits - you can treat different groups differently, but you need to be satisfied that the split is fair in the circumstances.
33.2 Benefit reductions

Sometimes perhaps as part of a company reconstruction, the employer decides to reduce benefits. The law normally restricts this to benefits built up for future service only, and most benefit rights already acquired are considered sacrosanct. In other cases, perhaps when the employer has gone out of business, and there are insufficient funds in the scheme it may be your duty to reduce benefits across the board. The advisers will set out what has to happen.

33.3 Recovering overpayments

Sometimes, perhaps because of an administrative error, payments have been made to scheme members which are more than they should have been. In strict law these overpayments have to be recovered, because they have been taken out of other people’s money. If it is too hard, and too unfair, you can decide either to write it off, or to arrange to recover it in a humane and sensible way.
34. Scheme Legislation
Retirement Benefit Act, 1997

The law that governs retirement benefits schemes in Kenya. It supersedes all other laws (except the Constitution) on retirement benefit matters. It is supported by 9 pieces of subsidiary legislation:

5. Practice notes issued by RBA. Sent to all pension schemes. Also available in RBA Website.

* Subsidiary legislation is amended from time to time.
35. Retirement Benefits Authority
The Retirement Benefits Authority (RBA) was established by an Act of Parliament referred to as the Retirement Benefits Act for the regulation, supervision, promotion and protection of the retirement benefits schemes, the development of the retirement benefits sector and for connected purposes.

The main functions of the Authority as set out in the Act, 1997 as amended are:

1. To monitor and supervise the operation of the RB Act and retirement schemes developments generally.
2. To issue guidelines or Guidance Notes on the duties and responsibilities of trustees of schemes and retirement annuity contracts.
3. To advise the Minister on all matters relating to the functions assigned to the Authority under this Act and on matters relating to pensions generally.
4. To issue guidelines or Guidance Notes on the duties and responsibilities of Individual Retirement Schemes (IRS providers in relation to IRS products).
5. To encourage the provision of appropriate training for trustees of schemes and retirement annuity contracts and to advise the Minister on standards for trustees and on their implementation.
6. To advise the Minister on all matters in relation to the RB Act and on retirement scheme matters generally.
7. To publish an annual report and such other reports as it may from time to time consider necessary.
8. To perform functions conferred on the Authority by the Act.
9. To perform such tasks as the Minister may from time to time require.

The provision made for the Authority’s functions is a clear recognition of the central role which trustees have in ensuring that occupational retirement schemes, individual retirement schemes and retirement annuity contracts are properly administered, that scheme members’ rights are fully safeguarded and that they and their dependents ultimately receive the benefits which they have earned. It is also recognition that the legislation is mainly designed to provide a statutory framework within which trustees discharge their normal duties and responsibilities in relation to retirement benefits schemes and retirement annuities administration with minimal reference to the Authority.

35.1 Main objectives of the Retirement Benefits Authority.

A key objective of the Authority in promoting the security of occupational and individual retirement schemes as referred to in its mission statement is to provide authoritative guidance on how to achieve voluntary compliance with the RB Act and other relevant legislation and good practice generally in relation to scheme administration.

The Authority has the duty under the RB Act to monitor and supervise the operation of the Act, and also has the power to bring proceedings for summary offences under the Act, or to impose on-the-spot fines. It is essential therefore, that trustees should be aware of their duties under the Act, the Trust Deed & Rules of their respective schemes and of the standards which the Authority would expect from trustees in its role of monitoring and supervising the operation of the Act and retirement schemes developments generally. Accordingly, where in guidance given it is stated that a particular course of action must be taken, trustees in failing to take such action will be in breach of the RB Act and Regulations as amended from time to time, trust law or other relevant legislation.
35.2 Retirement Benefits Levy


“The Minister of Finance may, in consultation with the Board, by order published in the Gazette, impose a levy to be known as the Retirement Benefits Levy on the contributions made to scheme funds, or on the assets of such funds, or on such other base as he may determine [Section 16 (1)]. ‘If a person fails to pay any amount payable by him by way of the levy on or before the date prescribed by the order, a sum equal to 5 per centum of the amount shall be added to the amount due for each month or part thereof during which the amount due remains unpaid [Section 16 95)]” The Levy Remitted to the Authority within 6 months after financial year end.
36. Management of the Retirement Benefits Authority
1. It is run by Board of Directors who have powers to perform functions.
2. Board has powers to delegate its functions.
3. Board appoints Chief Executive Officer.
4. CEO responsible for the day to day management for the affairs of the authority.
5. Issue certificates for establishment of scheme proposed to be established under irrevocable trust and the proposed scheme rules adequately protects the rights and interests of the sponsors and members.
6. Registers Manager, Custodian, Administrator.
7. Issues registration certificates.
37.
The Tribunal
1. Refers to the Appeals Tribunal, consisting of a Chairman and 4 other members who are appointed by the Minister of Finance for a 3 year term.


“46. (1) Any member of a scheme who is dissatisfied with a decision of the manager, administrator, custodian, or trustees of the scheme may request, in writing, that such decision be reviewed by the Chief Executive Officer with a view to ensuring that such decision is made in accordance with the provisions of the relevant scheme rules or the Act under which the scheme is established.

4 (2) copy of every request under this section shall be served on the manager, administrator, custodian or trustees of the scheme".
38. Regulators in the Financial Services Sector
The following bodies regulate the financial services sector:

1. **Retirement Benefits Authority**
   Regulates retirement benefits schemes, pooled funds, investment managers, Custodians and Administrators.

2. **Central Bank of Kenya**
   Regulates banks, building societies, non-bank financial institutions and micro finance institutions.

3. **Insurance Regulatory Authority**
   Regulates insurance companies, brokers, agents, the health management companies, assessors and adjusters.

4. **Capital Markets Authority**
   Regulates the securities exchanges, the Custodians, the investment banks, stockbrokers, listed companies, etc.

5. **The SACCO Societies Regulatory Authority**
   Regulates SACCO Societies.
WE ENGAGE YOU WHEREVER YOU ARE

HEAD OFFICE
ICEA LION Centre,
Riverside Park, Chiromo Road, Westlands
P.O. Box 46143 - 00100 or 30190 - 00100 Nairobi
Tel: +254 (0) 20 2750000
Mobile: +254 719 071000 | +254 730 151000
Email: info@icealion.com

BRANCH OFFICES

Kenyatta Avenue Branch
ICEA Building, 15th Floor
Tel: +254 (0) 20 2750000
Mobile: +254 719 071167
+254 730 151302

University Way Branch
Ambank House, 9th Floor
Tel: +254 (0) 20 2750000
Mobile: +254 719 071814
+254 730 151814

Westlands Branch
Unga House, 3rd Floor
Tel: +254 (0) 20 2750000
Mobile: +254 719 071880
+254 730 151880

Karen Branch
Karen Office Park, 1st Floor
Tel: +254 (0) 20 2750000
Mobile: +254 719 071101
+254 730 151101

Tulip House Branch
Mombasa Road, 1st Floor
Tel: +254 (0) 20 2750000
Mobile: +254 719 071850
+254 730 151850

Upper Hill Branch
Williamson House, 7th Floor
Tel: +254 (0) 20 2750000
Mobile: +254 719 071771
+254 730 151771

Mombasa Town Office Branch
Standard Chartered Building, 2nd Floor
P.O. Box 90101 - 80100 Mombasa
Mobile: +254 719 071712
+254 730 151712

Mombasa Nyali Office Branch
K.K. Security Building, 1st Floor
Links Road, Nyali
P.O. Box 90101 - 80100 Mombasa
Mobile: +254 719 071894
+254 730 151894

Kisumu Branch
Al Imran Plaza
Oginga Odinga Street
P.O. Box 3122 - 40100 Kisumu
Mobile: +254 719 071812
+254 730 151812

Eldoret Branch
Sakong House
Kenyatta Street
P.O. Box 4807 - 00100 Eldoret
Mobile: +254 719 071551
+254 730 151551

Nakuru Branch
Segaton Building, 1st Floor
Kenyatta Avenue
P.O. Box 3066 - 20100 Nakuru
Mobile: +254 719 071500
+254 730 151500

Nyeri Branch
Konahauhi Building
Kimathi Way
P.O. Box 1805 - 10100 Nyeri
Mobile: +254 719 071661
+254 730 151661

Thika Branch
Zuri Centre, 4th Floor
Kenyatta Highway
P.O. Box 46143 - 00100 Nairobi
Mobile: +254 719 071824
+254 730 151824

Meru Branch
Tusky’s Building
Mwendanto Road
Mobile: +254 719 071901
+254 730 151901