



# FIDUCIARY RESPONSIBILITIES AND OBLIGATIONS

Role Of  
Trustees

Fiduciary  
Duties

Statutory  
Requirements

Good  
Governance  
Guidelines

Challenges  
Faced by  
Trustees

Emerging  
Issues

Legal owners of the scheme and responsible for exclusive management and administration of the scheme.

hold the assets of the scheme in trust for the benefit of the beneficiaries.

Fiduciary responsibility – Expected to act in the best interests of the beneficiaries.

Act	Act prudently and in the best interests of beneficiary
Be	Be loyal to beneficiary
Avoid	Avoid conflict of interest
Treat	Treat all beneficiaries with an even hand
Provide	Provide disclosure /information to beneficiaries <ul style="list-style-type: none"><li>• To exercise a reasonable degree of skill and care when managing the trust assets</li></ul>



Be aware of relevant legislation and comply with it;



To obtain expert advice in areas where they are not themselves expert;



Maintain confidence;



To supervise the service providers/Agents;

# STATUTORY REQUIREMENTS

Trustee meetings (minimum 2 times a year)

Appoint Service providers;

Payment of Levy (paid based on net assets of scheme);

Submit Audited accounts – filed once a year (audit fees);

Convene Annual General Meeting; (once a year);

Issuance of annual benefits statements

Submit Investment policy Statement – every 3 years;

Periodic filing of returns – contribution, investment returns (by respective service providers);

Compliance with RBA practice notes and guidelines- develop policies

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**Duty of Loyalty-** trustees must act in the best interests of the beneficiaries (pension scheme members) and ensure their decisions are not influenced by personal interests

**Duty of Care-** trustees are required to exercise reasonable care, skill, and diligence in managing the pension fund i.e. understanding investment strategy, performance monitoring and decision making.

**Investment Duties-** trustees have a duty to prudently invest pension assets i.e diversification, risk management and identification of long-term scheme financial needs

**Compliance with Regulations-** trustees must comply with all legal and regulatory requirements governing pension schemes i.e. reporting obligations & adherence of governance standards are met, and collection and investing of funds properly

**Communication and Transparency-** trustees have a duty to communicate effectively with scheme members, providing them with information about their benefits, investment options, and any changes to the scheme.



**Monitoring Service Providers-** trustees are responsible for monitoring service providers to ensure they fulfil their obligations and act in the best interests of the scheme



**Risk Management-** trustees must identify and manage risks that could affect the pension scheme's ability to meet its obligations to members



**Decision Making Process-** trustees must have a clear decision-making process in place, documented in a scheme's governing documents



**Review and Evaluation of Performance-** Trustees should regularly review the performance of the pension scheme to ensure they meet the scheme's objectives



**Continuing Education and Training of Trustees-** Trustees should stay informed about developments in pensions law, investment strategies, and governance practices through ongoing education and training

# Chairperson

Elected at the first board meeting after its appointment or at the expiry of the chairperson.

Must not be the CEO of the employer, the chairman of the board or the Admin.

Shall not be a member of any Committee of the Scheme

Shall not simultaneously serve on more than two BOTs

Preside at each meeting of the board of trustees & Provide overall leadership

Ensure the efficient and timely conduct of the board's business

Act as the spokesperson of the scheme in respect of the scheme's policies

Shall have the deciding vote where the decisions of the board of trustees are made by way of a vote and there is a tie in the vote.

provide guidance to the board of trustees on the trustees' duties and responsibilities

ensure timely preparation and circulation of papers and minutes of the BOT and committees

maintain and update the register of conflicts of interest

ensure that the trustees are aware of the relevant laws relating to the scheme;

facilitate effective communication between the board of trustees and other stakeholders;

co-ordinate the evaluations of the performance of the board

participate in the meetings of the board of trustees as an ex officio member without the right to vote on any of the decision of the board?

provide feedback on the overall scheme governance and management;

To liaise with the board and administrator in setting up quarterly meetings;

To liaise with the administrator to prepare agenda for Trustees deliberation;

- To maintain and update membership records
- To maintain and reconcile contribution
- To process benefit payments to members and beneficiaries
- To maintain records of transfer of assets in or out of the scheme
- To maintain records of exits and deferred benefits
- To remit statutory levies and tax payable by the Scheme to the Authority
- To prepare a report for the Trustees to be presented to members at the annual general meeting
- To update and provide information on the scheme to members, and other stakeholders





# GOOD GOVERNANCE GUIDELINES

## WHAT IS GOOD GOVERNANCE ?

(Short Clip)



Structure- Reporting lines, Committees



People- Experience, skill and background



Communication- Transparency & Accountability, Engagement with Stakeholder



Standards and Conduct- Integrity, Ethical & Inclusive Culture, Evaluation



Policies and Procedures- Compliance of Laws & Regulation, ESG, Strategic Planning

- ❑ LN.193/2018 TITLED: RETIREMENT BENEFITS (GOOD GOVERNANCE PRACTICES) GUIDELINES, 2018
- ❑ The Guidelines came into Law on 11<sup>th</sup> October 2018;
- ❑ Responsibility for implementation- Trustees
- ❑ For the purpose of proportionality, the guideline will use a “Disclose, Apply or Explain” approach to ensure compliance with these guidelines.

## PART II – CODE OF CONDUCT

- Have code of conduct policy (template appendix 4)- set values, ethical standards and standards of integrity;

### Key highlights include;

- Each trustee shall sign the code of conduct- affirm their commitment (11.2)
- Embrace their fiduciary duty- interest of members first
- Not engaging in any improper or illegal activity- money laundering or corruption (11.1 (h))
- Avoid conflict of interest
- Fair treatment to all

Have election policy (rules and procedures) in place;

Key Highlights:-

Participation- one member-one vote rule.

qualification and procedures for electing/removing trustees.

Succession process in the BOT;

Timely issuance of Notice to the AGM with- Agenda & summary of Audited accounts- at least 14 days (14.3)

Minutes of the AGM- to be available within 3months

Organise Members day and Retirement Planning Seminars (financial, psychological and health issues)

### Key Highlights

- Broad mix of skills and competencies- at least 1 trustee- with a Finance Qualification;
- Consider- gender, age, experience;
- Staggered Terms of appointment for trustees;
- Qualifications- leadership& integrity, commitment and devotion to duty, prudence & good character –good conduct certification
- Letter of appointment to be issued by sponsor (for new scheme) or trust secretary (existing scheme);
- Trustee vacancy to be filled with twelve (12) months;
- Re-appointment to be based on trustee performance

- Trustee shall NOT serve in more than 3 boards
- Chairman shall NOT chair more than 2 boards
- Trustee shall NOT receive salary or honorarium
- A trustee may be paid a sitting allowance and reimbursed for reasonable expenses incurred-in approved trustee remuneration policy.
- Remuneration policy-requires
  - Consultation with sponsor
  - Not to be discriminatory
  - Disclosure of any remuneration paid by sponsor
  - Approval by members
  - Statement of –nil payment
- Disclosure of remuneration drawn in annual audited accounts

- Trustee to undergo well structured induction
- Training of trustees - TDPK within 6months
- Continuous training- RBA will specify minimum training hours for trustees;
- Annual Evaluation – Trustees, chairperson, trust sec and internal administrator –self assessment or 3rd party evaluation

#### Other key areas

- BOT may appoint Trust sec from staff of administrator
- Trust secretary –preferably lawyer, possess or a certified public secretary or experience
- T. Sec- has no voting rights save where Trustee

Minimum Quorum???

Notice for BOT meetings??? documents at least 7days

Prepare a board charter, annual work plan and calendar of meetings;

Committees -

- **Max of 4 Committees- recommended: Investment, Audit & Risk Mgt, & Admin & Communication;**
- **BOT should provide TORs for each committee that sets out min. objectives, delegated authority, operations & reporting procedures (template TORs provided)**

## Key highlights;

- BOT to provide quarterly reports to the sponsor;
- BOT to appoint key persons of an internal administrator
- at least once in each year, document and review the functions of the key persons of the internal administrator;
- Ratify appointment of seconded internal administrator;
- Competitive selection of service providers
- Terms & Conditions-to be set out in the SLA's and are in line with the Law

- BOT should ensure it has a written Risk Management Policy and maintain a risk register;

### Key highlights;-

- Comprehensive internal audits- check the full range of schemes' activities, provide independent assurance;
- Oversight mechanisms are in place while outsourcing- smaller schemes encouraged to use sponsor auditor
- Appoint External auditor-to examine accounting records and review services every 5years; reappointment –is after lapse of 2years
- Authority may require a Governance audit done –(professional)

## PART VI – USE OF ICT IN GOVERNANCE

Scheme to have to ICT Policy and competent ICT officer;

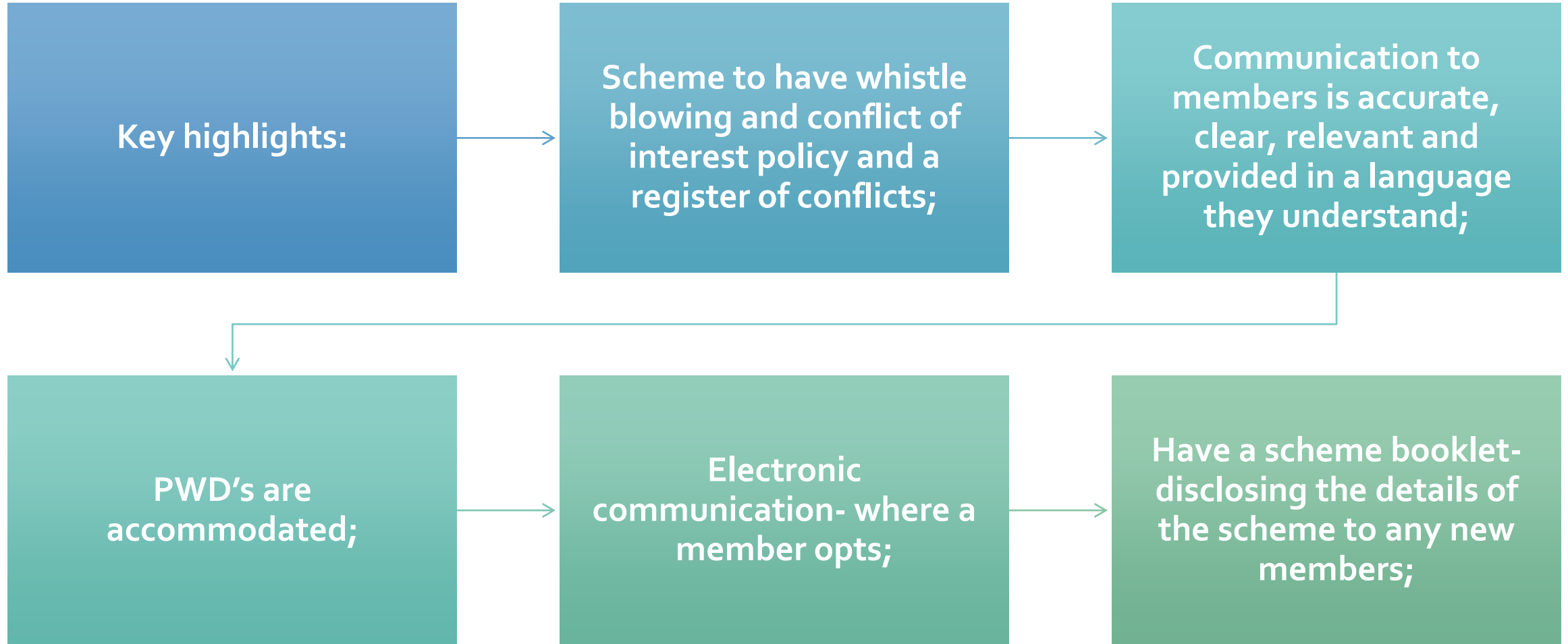
Key highlights;

BoT responsible for the scheme's management of ICT;

Personal information is identified and managed appropriately;

Protect Intellectual property held in IT system;

Ensure Service providers have an adequate business continuity plan (BCP) that is reviewed annually and tested as appropriate. (i.e. loss of key personnel, business disaster etc)



## PART VII- 2

Ensure Service providers have conflict of interest policies



Declare any conflicts of interest to the BOT



BOT shall report in their schemes audited accounts- on their adherence to the Guideline-

declaration form set out Appendix 5 to be submitted to RBA

A report to members at an AGM



BoT is encouraged to embrace socially responsible investing- consider both financial returns and social/environmental benefits



**Authority to enforce the guideline by regular evaluations on scheme's governance policies and strategies;**



**Authority may require submission of a remedial action plan by a scheme where there any material deficiencies in a scheme**



## Code of conduct

Sets the values & ethical standards of the scheme



## Board Evaluation Procedures

States how board performance evaluation are undertaken (Self or 3<sup>rd</sup> party)



## Members' communication policy

Spells out the member communication system that allows members to engage with the scheme and make decisions for their benefit



## Election Rules

Rules for election or nomination of trustees



## Risk Management Policy

States how to identify and manage risk.



## Members Scheme Booklet

Discloses the details of the scheme **to new members** and includes the options to members at the point of exit from the scheme



## Procurement Procedures

Outlines the scheme's procurement and asset disposal procedures.



## Trustee Remuneration Policy

Sets out approved sitting allowances and rates of reimbursement for expenses



## ICT Policy

Ensure that the administrator of the scheme has established a comprehensive IT policy and has adequate IT systems for the administration of the scheme



## Conflict of interest Policy

How to deal with conflict of interest (with trustees, service providers & members) with an updated conflict of interest register

# EMERGING AREAS/ ISSUES.....



### Members have become more interested in scheme affairs

- Are curious and suspicious about scheme matters
- Are thoroughly scrutinizing scheme reports
- Are seeking more information on their schemes – procurement, investment
- Have become litigious - lodging complaints, “*ambulance chasing*”

### 2. INVESTMENT CHOICE

#### Should a member have a say in how their benefits are invested?

- Shift from DB to DC- Members bear investment risk
- Different risk tolerance /appetite
- One size fits all scheme portfolios
- International best practice-investment choice- moderate, conservative, aggressive

- More members seeking to be elected as Trustees- realized 'benefits' that come with office of Trustee
- Trustee elections have become hotly contested like national elections
- Complaints in this area increasing – claims of rigging, interference in process, selective criteria of suitability
- RBA and the Appeals Tribunal have been involved in election disputes



## 4. THE PROPERTY DILEMMA

- Increased appetite in property by Trustees (sentimental value for both Trustees & members)
- Land banking especially in satellite towns (Kitengela, Isinya) and now in counties
- Complaints from members on procedures adopted in the acquisition of property, failure to ensure arm's length dealings and due diligence in acquisition

### Issues

- Challenges in disposal
- Low rental yields

**Note:** The Authority issued a guideline on procedures to be adopted in purchase of property which requires involvement of the fund Manager



**Increase in scheme expenses.**



**On average total scheme expenses vs net assets should be less than 1%**



**To address trustees' expenses, Authority developed a Trustee remuneration guideline**

6. Movement to umbrella schemes

7. Change of employment terms-P & P to contractual

8. Externalization of pensions

9. Investment decisions based on Environmental, Social, Governance (ESG) factors

10. Call for bundled financial products