



# The legal and regulatory framework

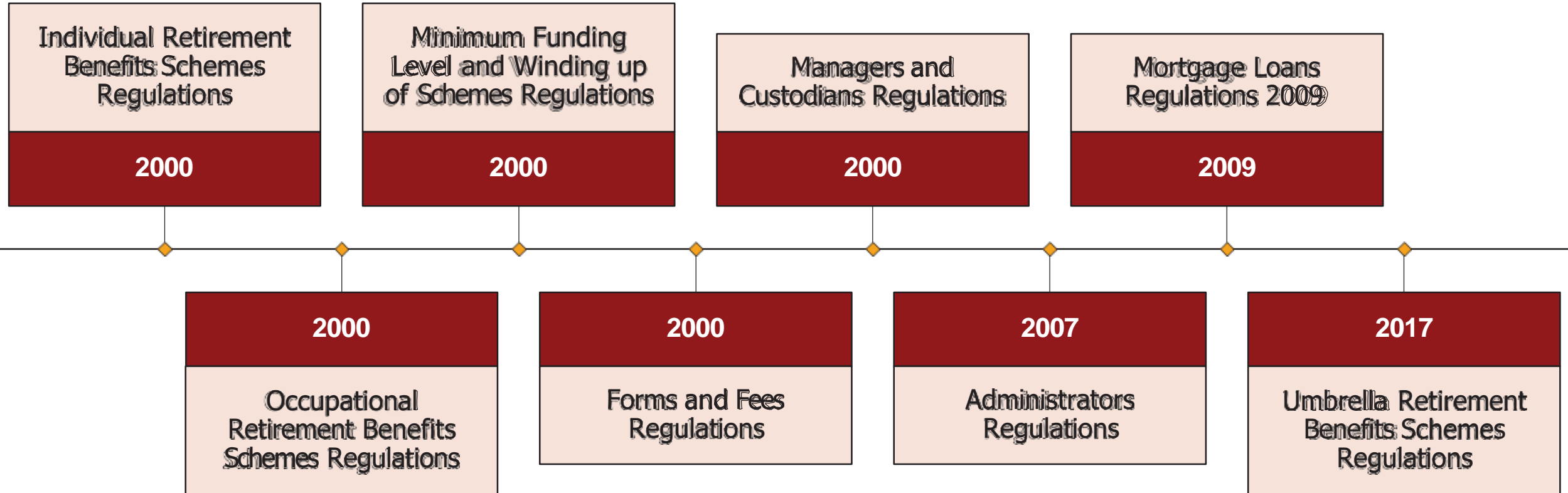
BONIFACE MWANGANGI

GOVERNANCE . TRAINING . EMPLOYEE BENEFITS . TECHNOLOGY

## Sources of law in Retirement Benefits Schemes

- The sources of law are;-
  - ❖ Constitution of Kenya.
  - ❖ Legislation. E.g. (Retirement Benefits Act, Trustee Act, Income Tax Act, Trustee (Perpetual Succession) Act etc.)
  - ❖ Delegated legislation/ subsidiary legislation e.g (Retirement Benefits Regulations and Guidelines)
  - ❖ Trust Deed and Rules.
  - ❖ Common Law.
  - ❖ International law – conventions, treaties

# RETIREMENT BENEFITS REGULATIONS



## TRUST DEED AND RULES

- ❖ This is the document that creates the trust and can be considered to be the constitution of the scheme
- ❖ It is necessary to obtain professional advice on its preparation as it is an extremely important document.
- ❖ The rules are the operational details of the scheme and contain everything that a member needs to know about the scheme. If possible it should be summarized into a small booklet and distributed to members.
- ❖ The Retirement Benefits Act requires that schemes be established under an irrevocable trust.

# RBA'S STATUTORY MANDATE

S5 – Retirement Benefits Act

**REGULATE & SUPERVISE**

Schemes & Service Providers

**DEVELOP & PROMOTE**

Retirement benefits industry

**IMPLEMENT**

Government Policy

**PROTECT**

Interests of Members / Sponsors

**ADVISE**

CS, NT on National Policy

**APPROVE**

Trustee Remuneration



### Governance Risk

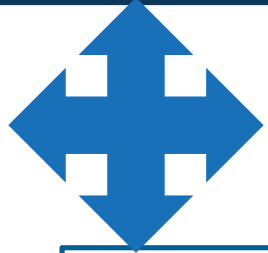
- Trusteeship, Service providers & professionals
- Corporate Governance
- Risk Management & Controls

### Prudential Risk

- Funding e.g actuarial deficit,
- Credit Risk – defaults from non-remittance of contribution
- Investment – Property exposure, Investment limits
- Liquidity – unremitted contributions, actuarial deficits
- Underwriting – Group Life within the scheme

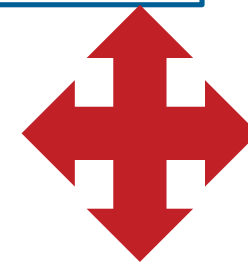
### Market Conduct Risk

- Disclosures and communication
- Complaints management
- Benefits Statements



# NEW ISSUES IN LAW

## NSSF ACT



## NSSF ACT NO. 45 OF 2013

- ❑ Date of Assent- **24<sup>th</sup> December 2013**
- ❑ Commencement, **10<sup>th</sup> January 2014**
- ❑ Deferred to **31<sup>st</sup> May 2014**
  
- ❑ The matter was determined by the ELRC Court on **19<sup>th</sup> September 2022**
- ❑ Court of Appeal decision delivered **on 3<sup>rd</sup> February 2023** implementation of NSSF Act to proceed.
- ❑ County Pensioners Association has filed **an appeal in the Supreme Court.**
- ❑ **Matter referred to court of appeal for fresh determination.**

	OLD NSSF PROVIDENT FUND	NSSF, 2013
<b>Membership</b>	<ul style="list-style-type: none"> <li>▪ <del>Mandatory</del></li> </ul>	<ul style="list-style-type: none"> <li>▪ <del>Mandatory Tier 1 &amp; provision for opt-out at Tier II</del></li> <li>▪ <del>Voluntary for self-employed</del></li> </ul>
<b>Design</b>	<ul style="list-style-type: none"> <li>▪ <del>Provident Fund</del></li> </ul>	<ul style="list-style-type: none"> <li>▪ <del>Pension Fund</del></li> <li>▪ <del>Self employed – Provident Fund</del></li> </ul>
<b>Registration</b>	<ul style="list-style-type: none"> <li>▪ <del>Previously employer with 5 or more employees</del></li> <li>▪ <del>Minister could exempt certain persons e.g. civil servants exempted</del></li> </ul>	<ul style="list-style-type: none"> <li>▪ <del>Every employer who employs 1 employee or more</del></li> <li>▪ <del>Beneficiaries of pension paid out of the consolidated fund are exempted from Tier 2 contributions.</del></li> </ul>

NSSF ACT NO. 45 OF 2013

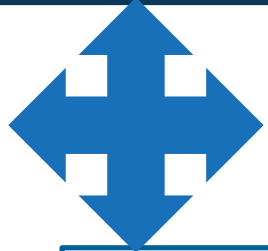
## Illustration on Contributions Rates

Year	Lower Earnings Limit	Upper Earnings Limit Kshs. 36,000	UEL	Maximum Contributions (ER + EE)
1	6,000	50% of National Average Earnings	18,000	2,160
2	7,000	1 times National Average Earnings	36,000	4,320
3	8,000	2 times National Average Earnings	72,000	8,640
4	9,000	3 times National Average Earnings	108,000	12,960
Year 5 onwards	Lower Earnings Limit as gazetted by CS	4 times National Average Earnings	144,000	17,280

# ASSUMPTIONS

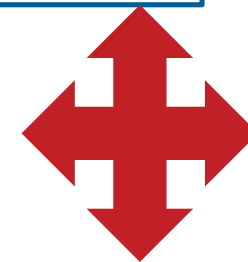
	Monthly Contribution	Length of time for contribution (yrs)	Interest rate (%)	Total contributions	Future Value
current NSSF	400.00	30	6	144,400.00	381,776.69
revised NSSF *	2,160.00	30	6	779,760.00	2,061,594.00
additional 2014 to date	1,760.00	8	6	170,720.00	211,839.69

*\* contribution rates shall keep changing*



# NEW ISSUES IN LAW

## DATA PROTECTION ACT



## LEGAL FRAMEWORK – ORIGIN

- **Constitution** – Article 31 (c) & (d) and 35 (2) – **right to privacy** - need to operationalize that article (Right to correction or deletion of untrue/misleading information)
- **Data Protection Act** – accented into law on 8<sup>th</sup> November, 2019 and commenced on 25<sup>th</sup> November, 2019 – to regulate the processing of personal data

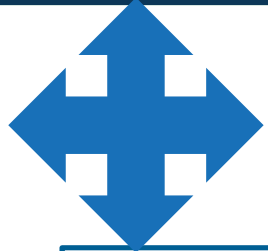
## COMPLIANCE REQUIREMENT FROM SCHEMES

- Register with the ODPC
- Registration both as Data Controller and Data Processor is highly recommended
- Appoint data protection officers (optional) Sec 24.
- *A data controller or data processor shall publish the contact details of the data protection officer on the website and communicate them to the Data Commissioner who shall ensure that the same information is available on the official website.*

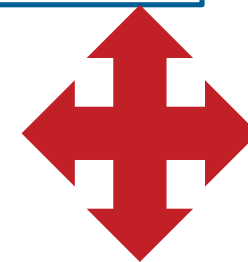
## COMPLIANCE REQUIREMENT FROM SCHEMES

Schemes and employers to come up with data protection policies;

- Data protection policy
- Data privacy and security policy
- Employee privacy policy
- Data retention policy
- Data breach policy



**NEW ISSUES IN LAW**  
**POST RETM MED. FUND (PRMF)**



## POST RETIREMENT MEDICAL FUND (PRMF) -I

1. Members may utilize a **maximum of 10% of benefits**;

Or,

2. **Set up** in the scheme for medical benefits on retm.

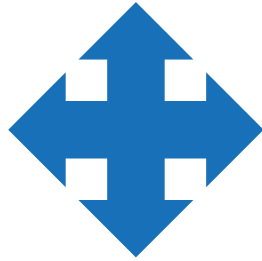
- Members make **additional contributions** for PRMF
- **Employer may** match/contribute

## FINANCE ACT 2023- EXEMPTIONS TO PRMF

- ❖ Income Tax Act Introduces **post-retirement medical funds relief**.
- ❖ A resident individual who proves that **in a year of income the person has contributed to a post-retirement medical fund shall for that year of income be entitled to a personal relief** in this Act referred to as the post-retirement medical fund relief.
- ❖ The amount of PRMF relief shall be **15% of the amount of contribution paid or sixty thousand shillings per annum**, whichever is lower.
- ❖ Investment income from a post-retirement medical fund, whether or not the fund is part of a retirement benefits scheme.

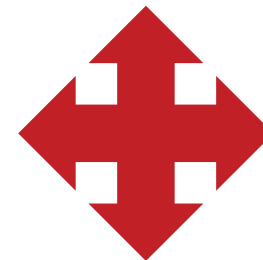
## POST RETIREMENT MEDICAL FUND (PRMF) - II

- ❖ Medical funds are exempt from RB levy
- ❖ Tax exemption per current RB rates;
- ❖ Access on retirement:
  - ✓ NHIF
  - ✓ Insurance Company e.g. UAP/Old Mutual, Britam
  - ✓ Med Provider e.g. AAR, Resolution
  - ✓ Scheme PRMF
- ❖ New – Standalone PRMF (*like IPP*)



# **NEW ISSUES IN LAW**

## **INFORMAL SECTOR**



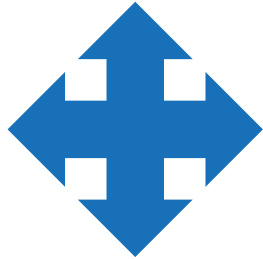
## INFORMAL SECTOR STRUCTURE

- ❖ Informal sector is the biggest employer in Kenya/Africa (About 85%).
- ❖ Creates most new jobs in Kenya. [>90% of jobs]
- ❖ Contributes significantly to GDP, about 18%.
- ❖ Characteristics:
  - ✓ Problem of **low incomes**
  - ✓ **Seasonality/irregularity of incomes**
  - ✓ **high labor mobility** - by using mobile phones to make contributions, they can do it from anywhere any time

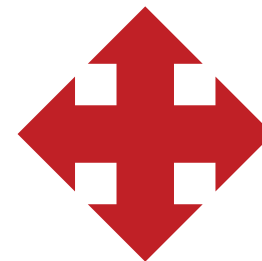
## INFORMAL SECTOR SOME INNOVATIVE PRODUCTS - I

### ❖ **KNEST – Kenya National Entrepreneurs Savings Trust**

- ✓ Will receive the 5% savings from Hustler Fund
- ✓ Contributions and investments are digital to handle numbers;
- ✓ Investment initially in Government paper
- ✓ **Trustees recently appointed**
- ✓ **Scheme structures being put in place**
- ✓ **Interministerial Committee – Treasury & Cooperatives**
- ✓ Funds to move from **Hustler Fund to KNEST**
- ✓ Government exploring **matching**



**NEW ISSUES IN LAW**  
**GOOD GOVERNANCE**  
**GUIDELINE**



## RATIONALE FOR CONDUCT REGULATION

- a) Guidelines are issued in exercise of the powers conferred by **section 5 (b), 5(ba) and 55 (3)** of the RBA Act
- b) The Authority commenced Market Conduct Regulation to ensure that: -
  - ✓ Good governance is maintained among service providers in the industry; **(GGS, Other Guidelines)**
  - ✓ Delivery of services to customers in the retirement benefits industry is enhanced; **(TCF, Dispute Resolution)**
  - ✓ Stakeholder and Consumer education in the sector is emphasized by all sector player. **(TDPK, RP, Other Courses)**

## RETIREMENT BENEFITS (GOOD GOVERNANCE PRACTICES)

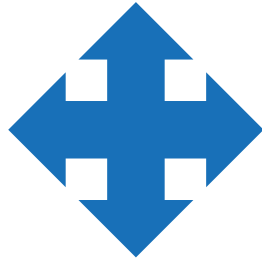
- ❖ The Good Governance Guidelines came into Law on 11th October 2018; but, confirmed by Parliament on 6 December 2018
- ❖ For proportionality the Guidelines use the “**Disclose, Apply or Explain**” principle
- ❖ Guidelines applicable to natural persons – hence individual trustees and directors of Corporate Trustees
- ❖ Purpose of the Guideline (3.1)
  - ❖ enable players implement and promote proper standards of conduct and sound governance practices; and
  - ❖ ensure that all players exercise their fiduciary duties effectively and diligently
- ❖ Trustees are responsible for formulating & documenting the policies and procedures of the scheme

## WHATS NEW IN GGS - I

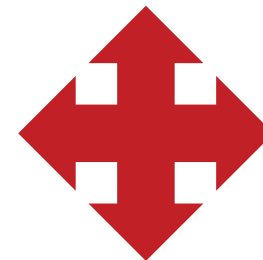
- ❑ Compulsory AGM: Agenda circulated 14 days before AGM, Summary of Audited accounts be attached in the Agenda, Minutes of the AGM- are available at the scheme office, within 3 months , There is an Approved Remuneration policy in place- No discrimination; consultation with the Sponsor
- ❑ Optional but recommended: Member days, Retirement Planning Seminar
- ❑ A Broad mix of skills and competencies- include at least 1 trustee- Finance Qualification (Cl.19.2c)
- ❑ Staggered Terms of appointment for trustees (Cl.19.2 e)
- ❑ Trust Secretary role – lawyer or CPS or adequate experience – (Cl.27.5 & 27.6)
- ❑ Maximum 4 Committees (Cl.29.4)
- ❑ Quorum Shall be half the no. of trustees and should include at least 1 representation from the member elected & sponsor nominated trustee

## WHATS NEW IN GGS - II

- ❑ Establishment of Code of Conduct and Election or nomination Rules to be incorporated in the scheme rules-19(g)
- ❑ Trustees to be remunerated according to Trustee Remuneration Policy- to be updated every 3 years [Guidelines in final stages of development]
- ❑ Schemes shall establish & maintain Audit, Assurance and Risk Management Policies and Procedures and Review of the Auditor after every 5 years.
- ❑ Further, where auditor is replaced, they may not be reappointed for at least 2 years -38 (5)
- ❑ Board to establish and maintain a risk register - 41 (3)
- ❑ Service Providers have Business Continuity Plans (BCP)- 42(h)
- ❑ Scheme booklet - with details of scheme -48 (c)
- ❑ Written policy on Conflict of Interest -49 2 (a) (& declaration of conflict-agenda)
- ❑ May require yearly Scheme's Governance Audits – especially large schemes



**NEW ISSUE- INCOME DRAWDOWN  
REGULATIONS**



# THE JOURNEY .....

2008

- Amendment of Regulation 25(6) to allow members access their retirement benefits through an income drawdown as an alternative to an annuity

2010

- 1<sup>st</sup> guideline on operations of an IDD fund

2012

- Revision of the guideline

2023

- Gazetted Income Drawdown Regulations

# KEY PROVISIONS .....

## Minimum drawdown period

- 10 years from commencement of the drawdown

## Transfer

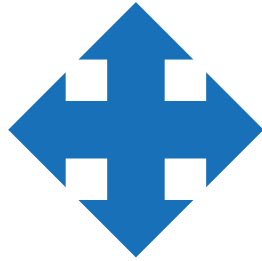
- Member may transfer benefits to another IDD after 5 years of membership

## Maximum withdrawal

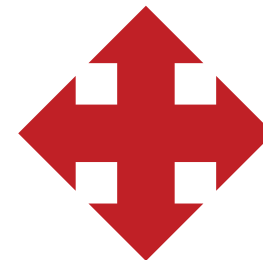
- 12% of members outstanding balance determined at the beginning of the financial year

## Frequency

- Monthly, Three months, Six months or Annual



**NEW ISSUES IN LAW  
CORPORATE TRUSTEE REGULATION**



# REGULATING CTS

1997

RB Act passed. It included a definition of a TC with the 10M cap requirement



2023

CT Regulations gazetted



2021

RB Act amended to define CT, and to provide for their registration and reporting obligations



6

# Tax Reliefs – Pension & PRMF:

Tax deductible contribution limit increased from Kshs 240,000 p.a to Kshs 360,000 p.a

- Advantages
  - Enhanced disposable income
  - Lower PAYE liabilities
- - Protection against being eroded by rising inflation
- Encourages long-term saving culture

Tax deductible on PRMF contributions of Kshs 15,000 p.m

- Advantages
  - Supports healthcare savings
  - Enhanced income replacement ratio
- - Foster sustainable healthcare planning

# Tax Exemption on Pension Benefits

Pension benefits from registered schemes are now **exempt from income tax** for individuals who meet any of the following criteria:

- **Reached the retirement age** as defined by their scheme.
- **Withdraw due to ill health** before reaching retirement age.
- **Withdraw after at least 20 years** of membership to a fund.
- Payment of retirement annuity

## Key Impacts

- **Encourages Long-Term Savings**

Discourages premature withdrawals, reinforcing the importance of preserving pension funds for retirement.

- **Provides Financial Support for Health Challenges**

Acts as a safety net for individuals forced to retire early due to health reasons.

- **Ensures Financial Freedom for Retirees**

Exempting pension benefits from income tax helps retirees maximize their savings and enjoy greater financial independence.

# Streamlined Registration of Retirement Funds

The Act now requires that individual retirement funds, pension funds, and provident funds register exclusively with the **Retirement Benefits Authority (RBA)**, removing the previous dual-registration requirement with the **Kenya Revenue Authority (KRA)**.

## Key Advantage

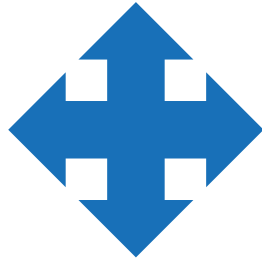
- **Simplified Registration Process**

This reduces administrative complexity and streamlines oversight, making the process more efficient and less bureaucratic.

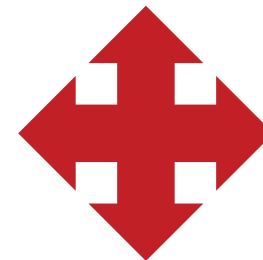
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## Gratuity amounts transferability

Employees **on fixed term contract** can voluntarily **join and contribute** to a retirement scheme. Also employers can remit accrued **gratuities**.

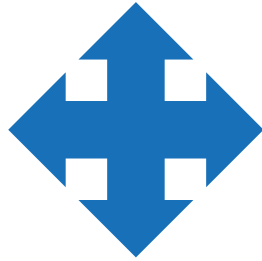


**CHALLENGES FACED BY TRUSTEES-  
PERSPECTIVE**

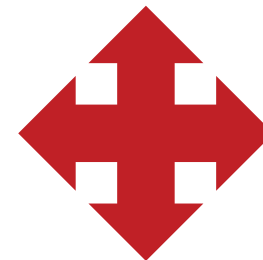


## CHALLENGES FACED BY TRUSTEES.....

- ❑ Recovering unremitted contributions;
- ❑ Calculation of benefits- mostly DB schemes;
- ❑ Payment of death benefits esp. where there are no nominated beneficiaries;
- ❑ Independence of the BOT/ interference by sponsor;
- ❑ Regulatory fatigue and costs
- ❑ Litigation
- ❑ Keeping up with emerging trends;



# EMERGING ISSUES IN THE PENSION INDUSTRY



## Emerging issues pension industry....

- ❑ Tax amendments;
- ❑ Post Retirement Funds
- ❑ Income Drawdown Regulations;
- ❑ Governance guidelines; AML
- ❑ Movement to Umbrella schemes;
- ❑ Change of employment terms- P&P to contract;
- ❑ Recent proposals and Retirement benefits policy



# CURRENT PROPOSAL OUTLINE

- 1 **PROCUREMENT OF GOODS, WORKS AND SERVICES**  
*Exemption from PPADA*
- 2 **INVESTMENT GUIDELINES**  
*Provide for greater member options in the investment of scheme funds*
- 3 **TRUST FUNDS FOR MINORS, etc**  
*Amend mandate of the Authority to regulate TFs*
- 4 **TAXATION OF EXCESS PENSION CONTRIBUTIONS**  
*Tax exempt bodies to bear the tax*
- 5 **ADMINISTRATIVE PENALTIES**  
**for breach of Annual Licensing Requirements**



# CURRENT PROPOSAL OUTLINE

6

REGISTRATION / ANNUAL LICENSING FEE  
*Increase to Kshs. 100,000 for all service providers // corporate trustees*

7

PROHIBITION OF INVESTMENT IN IMMOVABLE ASSETS  
*For umbrella schemes and IPPs*

8

INCOME DRAWDOWN SCHEMES REGULATIONS  
*Inclusion of an application form in the schedule*

9

INCOME DRAWDOWN SCHEMES REGULATIONS  
*Prohibition of Related Party Investments*

10

REQUIREMENTS FOR FOUNDERS OF IPPS  
*Define who may establish an IPP*



# PRESENTATION OUTLINE

11

## TRUSTEE TERM LIMITS

*Increase the term to two 4-year terms*

12

## RECOVERY OF CONTRIBUTION ARREARS

*Amend the provisions on criminal prosecution*

13

## PROSECUTION FOR UNSAFE AND UNSOUND PRACTICES

*Include employers / sponsors in the regulatory ambit*

14

## RECOVERY OF CONTRIBUTION ARREARS

*Amend the provisions for recovery by KRA*

15

## PRESERVATION OF BENEFITS

*Progressively limit early access to AVCs only*



# CURRENT PROPOSAL OUTLINE

16

DISPUTE RESOLUTION

*Entrench ADR in the RB Act*

17

PUBLISHING AUDITED ACCOUNTS TO MEMBERS

*Increase the allowed period from 1 to 4 months from end of FY*

18

TRANSFER OF SCHEME FUNDS TO DEPOSIT ADMINISTRATION

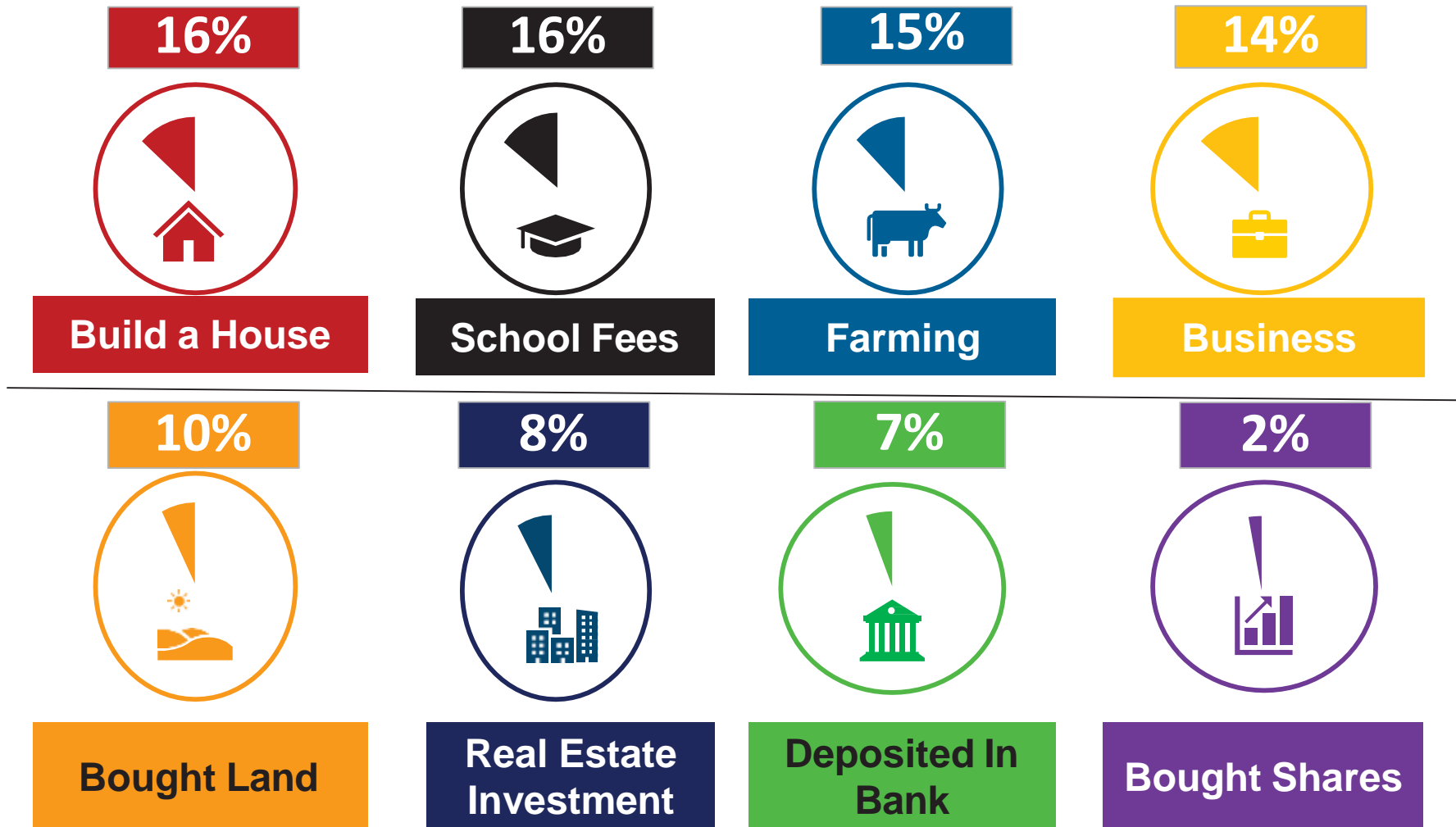
*Amend the Insurance Act to remove commission for brokers*

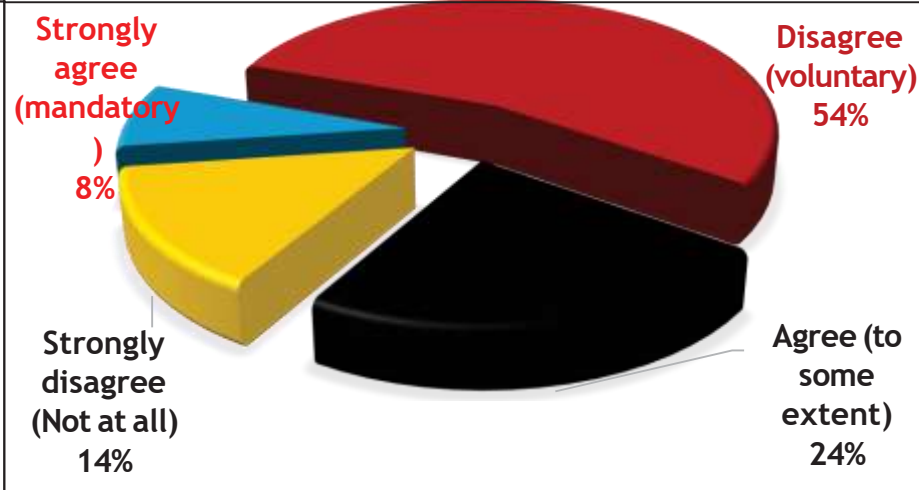
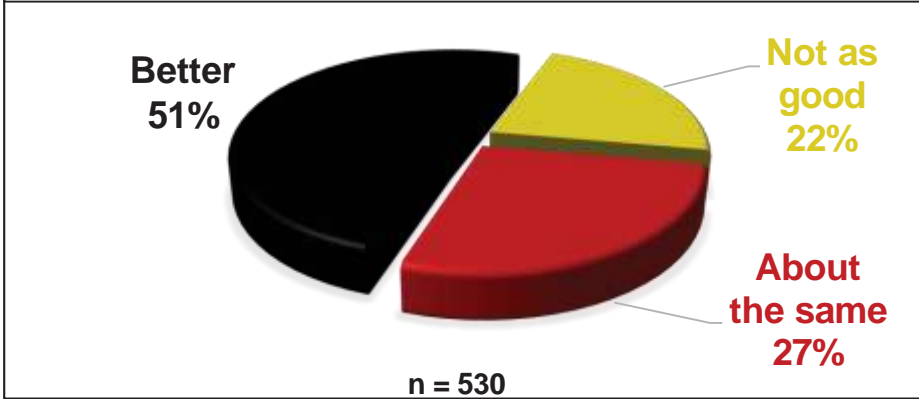
# WHAT INFORMED SOME OF THE PROPOSALS



PENSIONERS  
SURVEY 2024

## Lumpsum Utilization



Most Missed Work Aspect	Children Financial Assistance										
<ul style="list-style-type: none"> <li><span style="display: inline-block; width: 10px; height: 10px; background-color: red; margin-right: 5px;"></span> 2% Office Teas and Meals</li> <li><span style="display: inline-block; width: 10px; height: 10px; background-color: red; margin-right: 5px;"></span> 3% Office Meetings</li> <li><span style="display: inline-block; width: 10px; height: 10px; background-color: red; margin-right: 5px;"></span> 5% Position or Title</li> <li><span style="display: inline-block; width: 10px; height: 10px; background-color: red; margin-right: 5px;"></span> 10% Work Routine</li> <li><span style="display: inline-block; width: 15px; height: 10px; background-color: red; margin-right: 5px;"></span> 18% Financial Privileges e.g. Loans</li> <li><span style="display: inline-block; width: 15px; height: 10px; background-color: red; margin-right: 5px;"></span> 18% Medical Cover</li> <li><span style="display: inline-block; width: 15px; height: 10px; background-color: red; margin-right: 5px;"></span> 18% Other Aspects of Work</li> <li><span style="display: inline-block; width: 25px; height: 10px; background-color: red; margin-right: 5px;"></span> 40% Salary and Benefits</li> <li><span style="display: inline-block; width: 35px; height: 10px; background-color: orange; margin-right: 5px;"></span> 53% Company of Colleagues</li> </ul>	 <p>A 3D pie chart showing responses to 'Children Financial Assistance'. The largest slice is red, representing 'Disagree (voluntary)' at 54%. Other slices include 'Agree (to some extent)' at 24%, 'Strongly disagree (Not at all)' at 14%, and 'Strongly agree (mandatory)' at 8%.</p> <table border="1"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Disagree (voluntary)</td> <td>54%</td> </tr> <tr> <td>Agree (to some extent)</td> <td>24%</td> </tr> <tr> <td>Strongly disagree (Not at all)</td> <td>14%</td> </tr> <tr> <td>Strongly agree (mandatory)</td> <td>8%</td> </tr> </tbody> </table>	Response	Percentage	Disagree (voluntary)	54%	Agree (to some extent)	24%	Strongly disagree (Not at all)	14%	Strongly agree (mandatory)	8%
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<p style="text-align: right;">n = 530</p>	<h3 data-bbox="1302 936 2226 1021">Retirement/ Work-life Comparison</h3>  <p>A 3D pie chart comparing retirement to work-life. The largest slice is black, representing 'Better' at 51%. Other slices include 'About the same' at 27% and 'Not as good' at 22%.</p> <table border="1"> <thead> <tr> <th>Comparison</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Better</td> <td>51%</td> </tr> <tr> <td>About the same</td> <td>27%</td> </tr> <tr> <td>Not as good</td> <td>22%</td> </tr> </tbody> </table> <p style="text-align: center;">n = 530</p>	Comparison	Percentage	Better	51%	About the same	27%	Not as good	22%		
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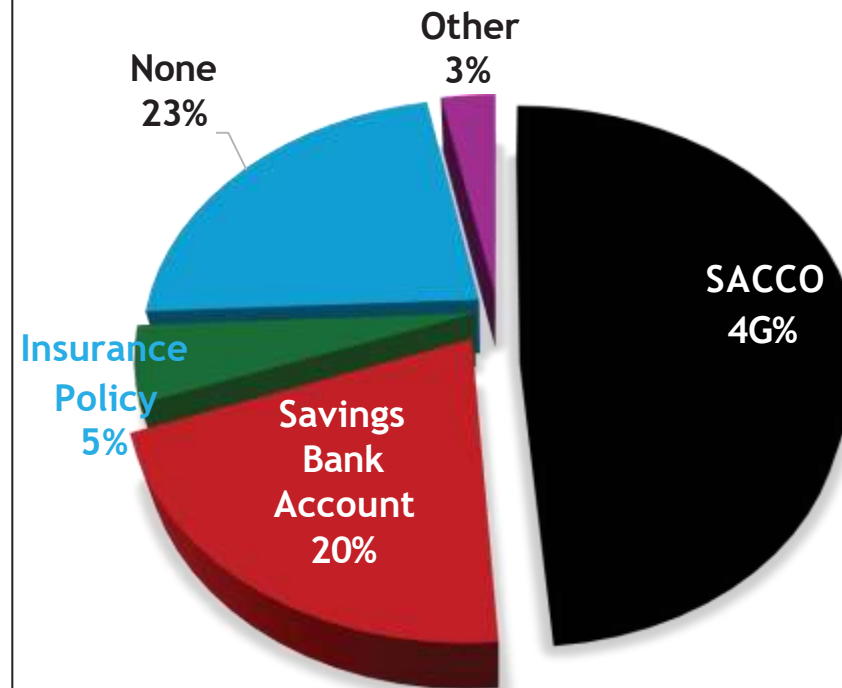
## Results: Additional Contributions & Other Savings

### Additional Voluntary Contribution



**81%** of respondents did not make additional voluntary contributions

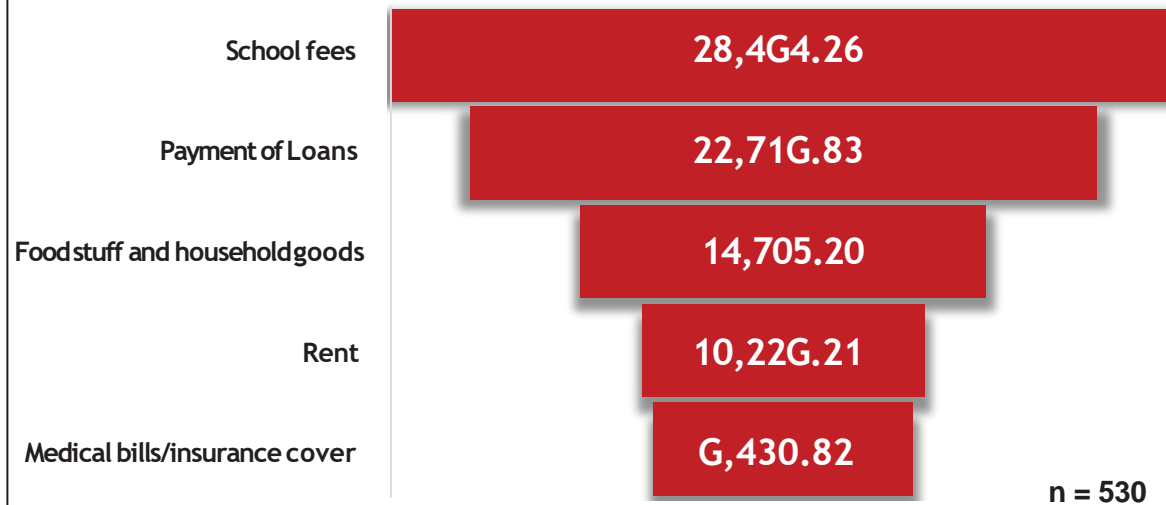
### Other Types of Savings



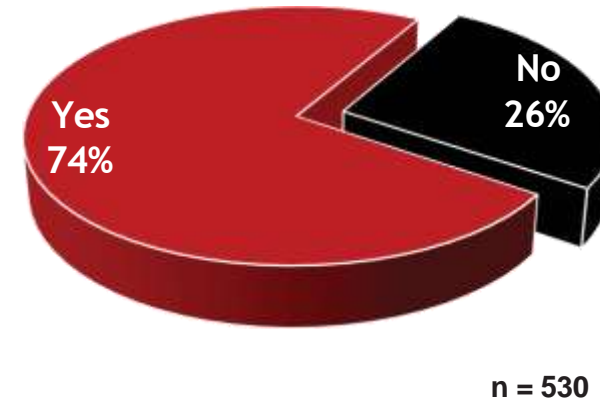
**49%** of Retirees had Savings in Saccos, highlighting key role they play

# Expenditure/ Other Income & Savings Sufficiency

## Average Amount Spent by Retirees



## Other Sources of Income in Retirement



## Savings Sufficiency

57% -  
No



Felt that their savings were not Sufficient

41% -  
Yes



Felt that their retirement Savings were Sufficient

# Income Replacement Rate

## Formulae

$$\frac{\text{Retirement Income}}{\text{Pre-retirement income}} * 100$$

61,060



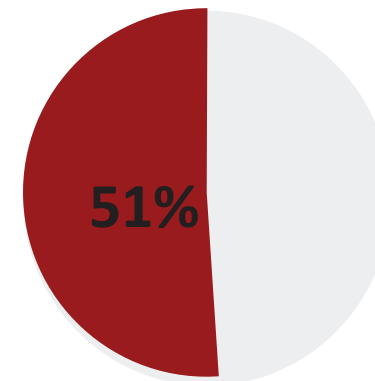
Pre-Retirement  
Income

31,478



Retirement Income

**51%** On average, respondents are earning about half of the income they were earning during their working years





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