



EMERGING ISSUES IN PENSION SCHEME GOVERNANCE & LEGAL AUDITS

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INTRODUCTION

Good governance is crucial to ensure efficient pension scheme management, enhance investment performance and secure retirement benefits.

The traditional models of pension scheme governance have generally worked well, but in today's changing pension environment, new ideas are essential to keep up with the emerging issues.

With the various emerging issues, the burden of pension governance is increasing. It is trite that well-governed schemes are more effective and better at ensuring that governance risks are managed and minimized.

Therefore, there is need for pension scheme Trustees to be aware & aligned with the emerging issues in pension governance for better governance outcomes.

EMERGING ISSUES IN PENSION SCHEME GOVERNANCE IN KENYA

Given the evolving legal landscape in the retirement benefits Sector, it has become imperative to protect the interests of the members and to ensure that trustees govern schemes in line with the set rules.

Owing to this, pension governance in Kenya is dynamically shifting to keep up with the emerging regulatory requirements.

APPLICATION OF MODERN COMPUTING TECHNOLOGIES

The 4th industrial revolution, also known as technological advancement and digitization, has changed the order of things and operations across the globe.

- According to a survey conducted by the Retirement Benefits Authority in June 2024, 85.71% of pension schemes are reported to use modern computing technologies to create awareness of the need to save for retirement.
- 65.71% use modern computing technologies to recruit or on-board pension scheme members.
- Further, the report indicates that for 94.29% of the schemes, the most common application of modern computing technologies involved interacting with the members, including processing and communicating information on member savings.

APPLICATION OF MODERN COMPUTING TECHNOLOGIES Cont...

Due to the emerging technological trends, Guideline 42 of the Retirement Benefits (Good Governance Practices) Guidelines provides for the use of information and communication technology in scheme governance.

It requires trustees to be responsible for information management by:

- Ensuring that the scheme takes advantage of the use of information technology in the management of the scheme's records and ensuring that there is adequate information security, among others.
- Retaining the information held in the information technology system in a secure manner and protecting the intellectual property in the information.

APPLICATION OF MODERN COMPUTING TECHNOLOGIES Cont...

- According to the RBA report, the pension sector has a huge potential to transform its operations by adopting modern technologies specifically in investment of scheme funds with the emergence of virtual assets or crypto currencies.
- Also, interesting aspects such as robo-advisers (software) have emerged in pension governance in other jurisdictions to provide financial advice and investment portfolio management. OECD did publish a report on Robo-Advisers for Pensions in 2017.
- In the Regulatory technology (RegTech) space, there are a number of technologies that have sprung up that mainly support Know-Your-Customer (KYC compliance) in terms of shared information, machine-readable regulations or supervisory guidance, Robohandbooks- These are systems that use visual analytics, process flowcharts, and dashboards to map out the real-world effects of a proposed regulation.
- Innovative technology is thus viewed as integral in pension regulation, supervision, and Scheme management.

ADOPTION OF RISK-BASED SUPERVISION MODEL

The Retirement Benefits Authority at inception, utilized a compliance-based supervisory model to oversee the pension industry investment governance (focuses on adherence to rules and treats all Schemes equally).

The RBA has since moved to a risk-based pension supervision model (focuses on the adequacy of risk management systems, per Scheme).

The main objectives for the risk-based pension supervision model are:

- To promote a better understanding of Retirement Benefits Schemes financial position and the possible development in the short and medium term by both the regulator (more proactive approach) and the regulated entity.
- Varying the scope and intensity of supervision in relation to the level of the risk each Scheme is exposed to.
- Ensuring efficient use of resources and time.
- Promoting confidence in the system as a whole.

DATA PROTECTION REQUIREMENTS

Privacy laws are more relevant in the pension world today than they were before following the increasing need for data protection in this digital era where personal data is regarded as a valuable asset.

Guideline 36 (4) of the Retirement Benefits (Good Governance Practices) Guidelines requires the board of trustees to appoint service providers or advisors by considering:

- The ability to provide relevant data including quality management information;
- The type and capacity of technology used by the service providers or advisors;
- The processes for the protection of members' data.

Further, Guideline 42 (h)(iii) requires the board of Trustees to ensure that the scheme's administrator and service providers have adequate business continuity plans which cover the safeguarding of data.

It is therefore clear that data protection is a vital governance area for pension schemes in Kenya.

REGULATORY TRENDS

Court decisions play a pivotal role in influencing regulatory trends. Most recently the Supreme Court of Kenya found that Pension Funds are not Public Entities to be subjected to the provisions of the PPAD.

Given such Court pronouncements touching on the retirement benefits industry, the Sector will need to come up with regulations to protect the interests of the members and to ensure that trustees procure and dispose assets in line with the set rules.

EMERGING REGULATORY ISSUES IN PENSION GOVERNANCE

- **Unremitted contributions:** introduction of more stringent laws to deter this menace.
- **Harmonization of retirement benefits:** establish a harmonized legislative framework that standardizes minimum contribution rates, uniform benefit structures and consistent governance principles across both public and private sector schemes.
- **Introduction of sub-accounts:** this will make pension schemes more competitive compared to other savings products.
- **Individual members to choose investment options:** provision to allow individual members to choose investment options- taking into consideration time horizon, risk tolerance and retirement goals (high risk, moderate risk, low risk).

LEGAL AUDITS IN PENSION SCHEMES

- A legal audit is a systematic review of a pension scheme's legal and regulatory compliance framework to identify risks, weaknesses, and potential liabilities. It evaluates whether the scheme is compliant with the prevailing applicable statutes, regulations, and guidelines.
- Legal audits help schemes identify compliance gaps before they escalate into disciplinary or regulatory action.
- The Retirement Benefits Authority is the main pension scheme regulator in Kenya and it is mainly in charge of performing legal audits on pension schemes.
- Section 5 of the Retirement Benefits Act provides that the Authority shall regulate and supervise the establishment and management of retirement benefits schemes. Further, Guideline 6 of Retirement Benefits (Good Governance Practices) Guidelines empowers the to evaluate schemes' governance and assess the implementation of the guidelines by schemes.

LEGAL AUDIT ON ANNUAL ACCOUNT REPORTS

- Section 34(4) of the Retirement Benefits Act requires the Trustees of a Scheme to submit a copy of the audited accounts of the scheme to the C.E.O of the Authority within three months after the end of each financial year. Failure to submit the audited accounts amounts to an offence.
- Regulation 30 of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations requires Trustees of an Occupational scheme to submit audited annual accounts including the investments reports to the Authority.
- These audited accounts are to be accompanied by a certificate signed by the chairperson of the board of trustees or any authorized trustee certifying that the information furnished to the auditor for the purpose of audit is correct and complete in every respect.

AUDIT ON INVESTMENT AND CONTRIBUTION RETURNS

- Section 34(4D) of the Retirement Benefits Act also requires the Fund manager of a scheme to submit to the C.E.O of the Authority an investment return of the Scheme. Section 34(4E) also requires that the Administrator of a scheme ought to submit contribution returns of the scheme to the C.E.O of the Authority.
- Regulation 15 of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations provides that quarterly record of contributions as prescribed should be submitted to the Authority within ten days following the end of every third calendar month.
- Regulations 14(4) further requires the scheme to submit a revised schedule of the rates of contributions to the Authority within thirty days from the date of the revision.

GOVERNANCE POLICIES AND STRATEGIES AUDIT

- Guideline 53 of the Retirement Benefits (Good Governance Practices) Guidelines provides that the Authority shall regularly perform a comprehensive evaluation of a scheme's governance policies or strategies and assess the implementation of these guideline.
- Guideline 50 of the Retirement Benefits (Good Governance Practices) Guidelines further provides that the board of trustees of a scheme shall, in the scheme's audited financial statements, report the extent to which the board has adhered to the principles of good governance through filing a declaration with RBA and a report to Members at the AGM.
- These audits are to ensure proper governance of schemes in line with the provided laws.

OTHER GENERAL AUDITS

- Regulation 9 provides that the Authority may require an Occupational Scheme to avail its annual administration budget to the Authority where it deems appropriate.
- Regulation 10 further requires a custodian of an Occupational Scheme, at the end of each quarter of the financial year, to submit to the Authority a report detailing the assets of the scheme fund and active membership of the scheme during that quarter.
- Regulation 31 provides that a defined benefit scheme shall submit a copy of the actuarial valuation report to the Authority within six months from the end of the financial year, once in every three years.
- Legal audits are essential for risk identification, protection of Trustees, improved governance, and regulatory compliance.

CONCLUSION

Emerging governance and legal audit issues in Kenya's pension sector reflect the growing complexity and importance of retirement benefit management.

Trustees are now expected to exercise higher levels of diligence, independence, accountability, and professionalism.

Legal audits have become a critical governance tool for strengthening compliance and protecting pension schemes from various risks.

Pension schemes that embrace the proactive changes in governance are better positioned to protect members' interests and retirement outcomes and maintain public confidence in the pension sector.



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