# A SURVEY OF THE CORPORATE GOVERNANCE STRUCTURES AND PRACTICES IN SELECTED OCCUPATIONAL RETIREMENT BENEFIT SCHEMES IN KENYA

**BY**

**KEITANY, OBADIAH K**
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# DECLARATION

I declare that this project is my original work and has not been submitted for a degree in any other university other than the University of Nairobi for academic purposes.

**OBADIA K. KEITANY**
**D61/8764/2006**

Signed…………………………………….. Date ………………………………

This research project has been submitted for examination with my approval as the supervisor:

**SUPERVISOR: MARTIN K. ODIPO**

Signed …………………………………….. Date ……………………………….

# DEDICATION

I would like to dedicate this project to my wife Julia Keitany and our three children, Billy Kipchirchir, Karen Jepchumba, and Laura Jerop whose encouragement and understanding during the period of study made the task become lighter.

I cannot also forget my parents, Chepkeitany Arap Tanui and Kong'ato Keitany who, although they do not have the benefit of formal education, realized the value of education and spared no effort to ensure that I realized my educational dreams to the fullest extent possible.

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## ABSTRACT

The prominence of corporate governance in public discourse has been inspired largely by corporate failures and globalisation. Corporate governance structures are intended to reduce the agency conflicts by aligning the interests of the many stakeholders interested in the resources of the organizations.

The objective of this study was to investigate the corporate governance structures and practices instituted by occupational retirement benefit schemes in Kenya and the RBA in a bid to surmount the agency challenges inherent in the management of these schemes. This research used descriptive survey to explore the corporate governance structures and practices prevalent in the occupational retirement benefits schemes in Kenya.

A sample of the top 40 largest occupational retirement benefits schemes was selected on the basis of their asset value as at 31st December, 2008 or 30th June, 2008 depending on their financial year- end. The primary qualitative data on scheme corporate governance structures and practices was collected using self-administered questionnaires with closed and open-ended questions.

The data was analyzed using descriptive statistics. Statistical tools such as, the mean, proportions, graphs, tables, percentages, and frequency distributions will be computed with aid of the Statistical Package for Social Sciences (SPSS) software.

The survey shows the existence of best practice corporate governance practices among the occupational retirement benefit schemes in Kenya. The study has shown that the trust method is the dominant form of scheme establishment in Kenya with scheme rules being updated at least every three years. The board size is within the range of 6 to 12 members and meets quarterly. The other criteria such as board composition, representation, responsibility, performance assessment and record of meetings are in tandem with best practice. However in most cases there were no minimum criteria and term limits set in most schemes. Fund managers, actuaries, custodians and auditors had been engaged by all schemes.

The other mechanism of internal control, redress, accountability, disclosure and reporting were found to be within acceptable international practice.

## TABLE OF CONTENT

## LIST OF TABLES

## LIST OF FIGURES

# LIST OF ABBREVIATIONS

| | |
|---|---|
| ACMF | African Capital Markets Forum |
| ARBS | Association of Retirement Benefits Schemes |
| CACG | Commonwealth Association for Corporate Governance |
| CEO | Chief Executive Officer |
| CIPE | Centre for International Private Enterprise |
| CMA | Capital Markets Authority |
| ECGI | European Corporate Governance Institute |
| ERICA | Employee Retirement Income Security Act |
| GCGF | Global Corporate Governance Forum |
| ICGN | International Corporate Governance Network |
| IOPS | International Organization of Pension Supervisors |
| NSSF | National Social Security Fund |
| OECD | Organization for Economic Cooperation and Development |
| PACFCG | Pan African Consultative Forum on Corporate Governance |
| RBA | Retirement Benefits Authority |
| SSNIT | Social Security and National Insurance Trust (Ghana). |
| UK | United Kingdom |
| US | United States |
| WCFCG | World Council for Corporate Governance |

# CHAPTER ONE:

## 1.0 INTRODUCTION

### 1.1 Background of the study

Corporate governance, the manner or function of good governance, is indeed an issue of our times. As organizations and environments in which they operate become more complex, and as legitimate interests in those organizations become more diversified, how those organizations are governed becomes a more critical issue. From the largest multinational corporation to public sector organization and the pensions sector, the pursuit of good corporate governance is of increasing concern.

Corporate governance is considered to be a relatively new concept in strategic and financial management control especially in Kenya, even though its practices are relatively well established. In Kenya, Corporate governance arose in the 1990s, a time when liberalization of the Kenyan economy had started taking shape in responses to the financial crisis of the 1990s, (Mugambi, 2006).

Shleifer and Vishny, (1997), define corporate governance as “the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment”. The OECD, (2004), takes a wider view and defines corporate governance as “a set of relationships between a company’s management, its board, its shareholders and other stakeholders”. This definition by OECD recognizes the presence of many stakeholders to the resources of the firm. The interests of these stakeholders are not always in harmony. Studies, including those of Berle and Means, (1932), have long established that there are problems posed by the separation of ownership and management of the firm. Therefore governance mechanisms should be developed to reduce the agency conflicts among all the stakeholders interested in the well-being of the firm. Corporate governance therefore seeks to promote the harmonious relationship among these stakeholders.

The corporate governance agenda gained global prominence after the publication of the Cadbury Report (1992). This was after spectacular and well publicized corporate failures in the UK such as Maxwell Communications, Bank of Commerce and Credit International (BCCI), and Polly Peck. Further impetus on its growth, as a business concept and public policy issue, has been fuelled by the recent financial scandals and corporate failures such as Enron, WorldCom, Parmalat, Tyco and Arthur Anderson. It dawned on corporate regulators, governments and management practitioners alike that despite the presence of corporate laws and regulations, financial scandals and corporate failures were still rampant .More was therefore required to ensure accountability and transparency in the management of corporations, hence the current global wave of establishment by corporate bodies of corporate governance codes. This has led to the development of such bodies as Global Corporate Governance Forum (GCGF), the Commonwealth Association for Corporate Governance (CACG), International Corporate Governance Network (ICGN), European Corporate Governance Institute (ECGI), World Council for Corporate Governance (WCFCG), Pan African Consultative Forum on Corporate Governance (PACFCG), and African Capital Markets Forum (ACMF) among others, whose objectives are to promote the adoption of good corporate governance practices.

Corporate governance is basically concerned with both the functioning of the organization and the distribution of power between different stakeholders, (Johnson & Scholes, 1998). It is concerned with structures and processes for decision-making and accountability, controls, and behaviour, at the top of organizations. Corporate governance determines whom the organization is trying to serve and how the purpose and priorities of the organization should be decided. The importance of corporate governance include the promotion of efficient use of resources within the company and the larger economy, helping to ensure that the company is in compliance with the laws, regulations ,and expectations of society, providing managers with oversight of their use of corporate assets, supporting efforts to reduce corruption in business dealings ,and assisting companies and economies generally in attracting lower-cost investment capital by improving both domestic and international investor confidence that assets will be used as agreed,(Gregory,2001). Corporate governance system ensures that organizations achieve openness, integrity and accountability.

In Kenya, the corporate governance agenda has been spearheaded by the Centre for Corporate Governance (formerly the Private Sector Corporate Governance Trust), which issued the "Principles for Corporate Governance in Kenya and a sample Code of Best Practices for Corporate Governance" .It advocates for voluntary adoption of best practice corporate governance by organizations. The Capital Markets Authority followed suit and issued the "The Guidelines on Corporate Governance Practices by Public listed Companies in Kenya, 2002". Companies quoted in the Nairobi Stock Exchange were required to abide by these corporate governance guidelines.

To sum it up, corporate governance is much more than compliance issues. The approach to it needs to be strategically aligned with the organization's objectives and both vertically and horizontally integrated throughout the business. While corporate governance cannot be taken to be the panacea to all corporate management ills, it certainly can be seen as a catalyst that spurs on the eternal journey towards corporate management perfection.

### 1.1.1 Overview of Corporate Governance in the Retirement Benefits Industry

Retirement benefit schemes, with assets in excess of US$ 20 trillion, and whose activities touch on every worker worldwide, cannot be immune from the pressures to be well governed and become accountable institutions. As the bar rises on standards of corporate governance within companies, so too should the corporate governance ceiling be raised for pension scheme governance.

The growth in the significance of corporate governance in the occupational retirement benefits sector has been driven by similar factors as in companies. Misappropriation of pension assets of Mirror group of companies by Robert Maxwell in the UK, led to the enactment of the UK Pension Reform Act (PRA) (1995).Similarly, the bankruptcy of the Studebaker Auto company and the subsequent loss of employees retirement benefits prompted the enactment in the US of the Employee Retirement Income Security Act (ERICA) of 1974 (Clark, 2003).These enactments prescribe governance standards geared towards protecting employees retirement benefits. Pension funds are major institutional investors. Therefore the recent corporate failures such as WorldCom, Enron, Parmalat, Tyco etc have led to major revaluations of pension assets leading in some cases to deficits. The Enron Employees retirement scheme had invested in excess of 60% of its assets in Enron stocks. Therefore when Enron failed, its employees lost not only their jobs but also most of their pension assets, (Besley and Prat, 2003). All these have served to highlight the importance of corporate governance in the pensions sector.

Additionally, due to the peculiarities inherent in the Pension fund governance such as the lack of easily identifiable shareholders (owners); the presence of many statutory players; closed nature of occupational retirement schemes; and reported malpractices, more specific corporate governance mechanisms are necessary. The goal of pension fund governance is to minimize potential agency problems that can arise between the fund stakeholders and the governing bodies which can adversely affect the security of pension savings and promised benefits.

It can be said that good corporate governance is even more urgent in the retirement benefits industry because what is at stake in the management of pension funds is the future life of plan members. If governance fails in the corporate world leading to company collapse, the last resort is usually the retirement savings. Therefore it would be a double tragedy for the beneficiaries if both were to fail.

### 1.1.2 The Kenyan Retirement Benefits Industry

Pension schemes, as we know them today in Kenya, can be traced back to the Colonial period. The only pension schemes that existed were provided under Civil Service Scheme Pension Act CAP 189 of 1948 and the establishment in 1929 of a pension to cover the only local authority then, Nairobi. These covered the colonial workers in the civil service and the Municipal Council of Nairobi. The legal framework of the industry is governed by the Retirement Benefits Act No. 3 of 1997 which also established the Retirement Benefits Authority (RBA), the Industry regulator. Prior to this, the retirement benefits sector in Kenya was unregulated and was beset by malpractices and misuse of pension funds was rampant. Currently, the structure of Kenya's Retirement Benefits Industry incorporates four main components. These are the Public Service

Pension Scheme, the National Social Security Fund (NSSF), Occupational Retirement Benefits Schemes, and Individual Retirement Benefits Schemes.

The Public Service Pension scheme covers the civil servants, teachers, members of the disciplined forces, Armed Forces, the judiciary, the National Assembly, and the President. The pensions are paid from the consolidated fund in a pay –as-you system. The National Social Security Fund (NSSF) is a provident fund established in 1965 through an Act of parliament. Its membership is drawn from private sector companies, parastatals and public employees not covered by under the public service pension scheme. The Occupational Retirement Benefit Schemes are created voluntarily by employers to cater for retirement benefits of their workers. Therefore, these schemes are mainly employer specific and pension contributions are treated as a form of deferred compensation for the employees. Employees become the members of these schemes, as contributing members and later as pensioners. On the other hand, Individual Retirement Benefit Schemes are created by financial institutions. Their membership is open to members of the public interested in saving for retirement. They provide savings for those whose employers have not started occupational schemes, those wishing to top up, and for small firms, professionals, the self employed and those who opt to transfer their preserved benefits.

Although the occupational and individual schemes are set up voluntarily, once set up registration with RBA is mandatory. There are 1364 registered schemes; 259 schemes still unregistered and 353 schemes which have wound up.   Out of the 1364 registered schemes 1350 are occupational retirement benefits schemes and 14 are individual retirement benefit schemes. Occupational retirement benefit schemes command 69% (Kshs181 billion) of the pension portfolio net assets. In terms of membership, they have 10.4% of all members in the retirement benefit schemes in Kenya, (Odundo, 2008).

The other statutorily imposed players in the Industry include trustees, fund managers, custodians, administrators, actuaries, auditors and investment advisors.

## 1.2 Statement of the Problem

Although the importance of corporate governance structures and practices in boosting firm performance is well documented, little, if any, research has been undertaken in Kenya on corporate governance structures and practices prevalent in occupational retirement benefit schemes. The importance of retirement benefit schemes in alleviating old-age poverty for retirees and in stimulating economic growth generally cannot also be downplayed. The need for effective corporate governance structures and practices is even more urgent in the occupational retirement benefits schemes in Kenya for various reasons.

Prior to the establishment of the industry regulator, the Retirement Benefit Authority (RBA) in 1997, the industry was beset by management malpractices. These included lack of transparency and information, poor record keeping, dominance by sponsors, misappropriation of scheme funds, poor investment decisions, and lack of professional input, funding problems, and delay in benefits payments. The presence of the regulator has not eliminated these governance issues. The same issues are still key concerns of RBA even today, (www.rba.go.ke). This point to the presence of a governance lacuna even with the presence of regulations. This riddle may perhaps be unravelled by establishing whether these schemes have adequate corporate governance structures and practices.

Another aspect that gives rise for the need for good corporate governance in the sector is that conflict of interest is engendered by the many players involved in the management of the funds of occupational retirement benefit schemes .The regulatory framework requires the engagement of board of trustees, administrators, fund managers, custodians,  actuaries and auditors in fund management. Most of these players are commercial -profit oriented entities. Therefore they may not necessarily always work for the best interests of the members and beneficiaries of these schemes. To ensure that all these parties are operating in the best interest of members and beneficiaries is a corporate governance challenge which needs to be addressed. Research in this area will therefore shed more light on the necessary governance mechanisms required to align the interest of these players and ensure that the members and beneficiaries interests are always served.

Additionally, unlike Individual Retirement Benefit Schemes, which are open pension funds and therefore subject to market disciplinary mechanisms, Occupational Retirement Benefit Schemes are closed pension funds thus membership is restricted to an employer or a group of employers.

There is also limited portability of benefits (only when an employee changes jobs).The inability of the market forces to impose any discipline on the pension fund governing authority when members cannot exit is therefore a governance challenge facing occupational retirement benefit schemes.

The retirement benefits industry in Kenya also does not have a self regulating mechanism. The Association of Retirement Benefit Schemes (ARBS) is still at its infancy stage. Therefore, there is limited or no industrially developed governance norms to guide the operations of the retirement benefits industry and thus leading to varied practices among schemes.

The study therefore is focused on investigating how these schemes and the regulator, RBA, are developing governance mechanisms to surmount the above noted challenges. The study will shed light on the existing corporate governance structures in the occupational benefit schemes and the factors that influence the effective operation of these corporate mechanisms in occupational retirement benefit schemes.

## 1.3 Objectives of the Study

The objective of this study is to carry out a survey on the corporate governance structures and practices among Occupational Retirement Benefits Schemes in Kenya.

## 1.4 Significance of the Study

The findings of the study will be significant to the following groups of people's:

**Researchers;** For Researchers, the findings of this study will serve as a basis for further research.  The study findings will contribute to the body of the existing knowledge on the corporate governance structures and practices in Kenya.

**Government and other Regulatory Agencies ;**The study findings will provide the relevant information necessary in formulating corporate governance policies and creating conducive regulatory framework for better governance of occupational benefits schemes.

**Trustees and Administrators;** the study findings will highlight corporate governance structures and practices required to enhance performance and create higher value for the schemes they manage.

### 1.5 Scope of the Study

The study will cover the corporate governance structures and practices among registered Occupational Retirement Benefits Schemes in Kenya. It will target the top 40 schemes as measured by the Total Assets as at 30th June or 31st December 2008 depending on schemes financial period.

# CHAPTER TWO:

# 2.0 LITERATURE REVIEW

## 2.1 Overview of Corporate Governance

### 2.1.1 The Concept of Corporate Governance

According to Johnson and Scholes, (1998), the concept of corporate governance is concerned with both the functioning of the organisation and distribution of power between different stakeholders. It is concerned with structures and procedures for decision making and accountability, controls and behaviour, at the top of the organisation. It advocates for openness, integrity and accountability in the management of organisations.

The Cadbury Committee defined corporate governance as the system by which organisations are directed and controlled .It involves a network of relationships between corporate managers, directors, and providers of equity. Effective corporate governance enables a corporation attract capital, perform efficiently in achieving the corporate objectives, and meet both legal obligations and general societal expectations. All corporate governance systems revolve around the four key principles of fairness, accountability, responsibility and transparency, (CIPE, 2002).The OECD, (1999),has elaborated on these to include protection of shareholder rights, equitable treatment of shareholders ,recognizing the role of stakeholders in corporate governance ,the importance of disclosure and transparency, and the responsibility of the board in the protecting the organization. The foregoing underlines the growing interest in the concept of corporate governance globally both by scholars and management practitioners.

An overview of the history of corporate governance shows that corporate governance is not new. Corporate bodies have for decades been concerned with governance. Its development can be traced back to the scandals of the Dutch East India Company in the 1620s, the collapse of the

British South Sea bubble of 1720s to the recent spectacular corporate failures in the US including Enron, (Vermeeren, 2006).

However, as a business and public policy issue, it is a fairly recent phenomenon. The concept of corporate governance began to take centre stage of public policy as a result of spectacular, well publicised corporate failures in the 1980s and 1990s.Its development as a modern issue of concern is dated by many to the establishment in 1991 of the Committee on Financial Aspect of Corporate Governance (Cadbury 1992) following a wave of corporate scandals in the U.K. These included Maxwell Communications, BCCI and Policy Peck. The publication of the Cadbury Report in 1992 represents a land mark in modern corporate governance, not only in the UK but internationally. The recent wave of high profile scandals of World Com, Enron, Brex, Royal Trust, Tyco, and Parmalat among others have served to cement its place at the centre of increasing research and public discourse. Therefore there is now increasing recognition of the fact that corporate governance is a critical element for sustainable economic growth.

The table below shows the milestones in corporate governance development.

**Table 2.1 : The milestones in corporate governance development**

| **YEAR** | **NAME OF BODY/COMMITTEE** | **ASPECT COVERED** |
|---|---|---|
| 1992 | Cadbury Committee, UK | Financial Aspect |
| 1994 | King’s Committee, South Africa. | Corporate Governance |
| 1995 | Greenbury Committee, UK | Directors’ Remuneration. |
| 1998 | Hampel Committee, UK | Combine Code of Best Practices. |
| 1999 | Blue Ribbon Committee, US | Effectiveness of Audit Committee. |
| 1999 | OECD | Principles of Corporate Governance. |
| 1999 | CACG | Principles of Corporate Governance in Commonwealth. |
| 1999 | Turnbull Committee,UK | Internal Control guidance for directors |
| 2002 | Sarbanes-Oxley Act,USA | Internal Control certification by directors. |
| 2003 | Derek Higgs Committee, UK | Role of Non-executive Directors |

**Sources: Centre for Corporate Governance Implementation, Faizer, (2008), Turnbull, (1997).**

### 2.1.2Definitions of Corporate Governance

Most of the definitions of corporate governance are oriented towards limited liability companies whose import is shareholder protection. Scholars have coined the term pension fund governance in a bid to differentiate it from the general corporate governance. However, Yermo and Marossy, (2001), indicate that pension governance is a “mirror image of corporate governance of a public limited company, which consists of the set of relationships between the company’s management, the board, shareholders and other stakeholders. Therefore for the purpose of this discussion, we shall use the term corporate governance to include pension fund governance. The definitions offered in respect to pension fund corporate governance therefore follow.

Yermo and Marossy, (2001), define pension fund governance as “consisting of all the relationships between the different entities and persons involved in the functioning of the plan. It also provides the structure through which the objectives of a pension plan are set and the means of attaining those objectives and monitoring performance”. Zanglein, (2003), indicate pension fund corporate governance as “a set of arrangements, including a well-defined legal and regulatory framework for the protection of plan members’ interests”. IOPS, (2008), refers to pension fund governance “as the framework by which the governing body, whether individuals or a body corporate (through its board of directors and senior management), makes decisions about the pension fund’s business”.

The import of the above definitions is that the goal of pension fund corporate governance is to minimize the potential agency problems that arise between the fund stakeholders and the governing body which can adversely affect the security of pension savings and promises. This is applicable to occupational schemes as well.

## 2.2 Theories of Corporate Governance

In order to explain, mainstream and conceptualise the concept of corporate governance, researchers have developed several theories. These can be stated as follows:

### 2.2.1Agency Theory

This is grounded on agency conflict as espoused by Jensen and Meckling, (1976), and Fama and Jensen, (1983) .In this approach, the owners/directors set the central objectives of the company. Managers in turn are responsible for executing these objectives. Corporate governance consists of designing structures and procedures to control management i.e. to keep their actions in line with director-established objectives. However managers cannot be trusted to remain faithful agents in fulfilling the interests and goals of the owner .Agency theory assumes that managers will divert corporate resources to satisfy their selfish ends unless checked by a system of controls established by owners to monitor them. Therefore the key element of corporate governance under this system is to find the most efficient system of controls to keep manager egoism in check.

The agency conflict is even more acute in the occupation retirement benefit schemes where there are many players whose interests may not necessarily be aligned. They include governing bodies, sponsors, service providers, administrators and plan members. Governing bodies are usually given the legal ownership of the pension assets and not the plan members and beneficiaries, who should be the real owners, only have beneficial ownership. The governing bodies may not have a lot of incentive to protect the interests of the workers.

### 2.2.2 Shareholder Theory

This is similar to the agency theory. The difference is that it views the corporation as the property of its owners (shareholders) who may dispose of it as they may wish. The shareholders invest in the organisation to get maximum returns and the role of the managers is to ensure that investors get maximum return on their investments, (Frey and Cruz 2008).

Vermeeren, (2006), contends that under this theory, the creation of shareholders' wealth is the force. Under the free market system, the markets are the main disciplining mechanisms for managers. If managers do not perform well, share prices go down and the company becomes a takeover candidate. This theory may not be applicable to occupational retirement benefit schemes because there are no shares in the schemes but beneficial ownership which cannot be freely traded. Therefore the market for corporate control does not apply.

### 2.2.3 Stakeholder Theory

Freeman, (1984), defines stakeholders as "any group or individual who can affect or is affected by the achievement of the organisation's objectives"**.** Under this theory, owners drop out of the centre to become one of several equal stakeholders. Stakeholders include employees, customers, suppliers, local community, owners, competitors and government. Therefore, the focus of management decisions considers the interests of all stakeholders. The stakeholder theory applies to the pensions sector because it is a stakeholder industry. This is because there is no 'owner' of the schemes but only stakeholders. Members and beneficiaries only claim beneficial ownership.

### 2.2.4 Stewardship Theory

Under this perspective, managers and employees can be trusted to act as stewards or guardians of the corporation. Therefore they will safeguard the resources of the corporation on behalf of the owners. A steward protects and maximises shareholders wealth through firm performance, because, by so doing, the steward's utility functions are maximised, (Davis, Schoorman and Donaldson, 1997).Thus managers act as stewards; they act as if they were owners in terms of the care and concern expressed for work rather than merely executors of the interests of others. In other words, the alienation implied in agency theory, disappears as the managers and employees of the corporation reabsorb the agent function. Stewardship approaches are relevant to the governance of retirement benefit schemes. The governing bodies, mostly the board of trustees, act as stewards of the pension assets entrusted to them. This is for the benefit of the ultimate plan beneficiaries.

### 2.2.5 The Political Model

According to Turnbull, (1997), the political model recognises that the allocation of corporate power, privileges and profits between owners, managers and other stakeholders is determined by how governments favour their various constituencies. The theory recognises the role played by governments in shaping the development of corporate governance through laws and regulatory framework. Black and Coffee (1993), contend that financial institutions in the US have not always willingly adopted good corporate governance practices but have been regulated into submission by legal rules.

Government intervention in the occupational retirement schemes is well documented. The intention is usually to protect the scheme assets from misappropriation as in the cases of the US ERISA Act of 1974, UK Pensions Act of 1995, RBA Act (1997) in Kenya. Governments also wish to tap the funds controlled by these schemes thus they have developed economically targeted investment (ETI) guidelines to direct the investment of pension funds into specific sectors of the economy for political reasons. In Korea and Japan, government workers' funds have been oriented to finance hospitals, housing and infrastructure and welfare projects. In India, 80% of the Employees' Provident Fund Assets must be invested in public bonds. The Swedish government in the 1960s and 1970s used pension fund reserves to expand housing opportunities. The Social Security and National Insurance Trust(SSNIT) in Ghana is required to be invested in housing finance, student loans and industrial estates,( Impavido,2002).In Kenya, the RBA has issued investment guidelines which specify the limits within which pension funds are to invested in each category of assets specified.

### 2.2.6 Resource Dependency Theory

This theory provides for directors' resource role. The proponents of this theory argue that outside directors provide access to resources needed by the firm. Therefore the corporate governance practices like the compositions of the board will reflect the current requirements and circumstances of the firm ,(Johnson et al., 1996).Outside directors who are lawyers, for example, provide legal advice in board meetings which otherwise would be more costly to the firm.

Provision of these resources enhances organizational functioning, firm performance and survival. Pearce and Zahra, (1992), found that larger boards and higher representation of outsiders appear to be viable ways of co-opting the environment and reducing uncertainty surrounding strategy development and execution. Most jurisdictions require that experts be incorporated in the governing body to enhance decision in the occupational retirement benefit schemes. In the UK, the pension regulator requires that there should be an investment expert in the governing body. The OECD, (2002), requires that the governing body should hire an investment expert if they do not have one amongst themselves.

### 2.3 Overview of Retirement Benefit Schemes

Generally, retirement benefit schemes also known as pension plans, systems, schemes, or funds are arrangement created by governments or employers geared towards management of pension funds on behalf of members and beneficiaries. The main objective of pension schemes is the provision of cash benefits for members upon retirement and relief for the dependants of the deceased members. The core functions of retirement benefit schemes have been identified as reliable collection of contribution; payment of benefits for each of the scheme members in a correct way without any side-payments; secure financial management and productive investment of provident and pension fund assets, maintaining an effective communication network; including development of accurate data and record keeping mechanisms to support collection, payment and financial activities; and production of timely and policy relevant financial statements and reports,( Asher and Nandy,2005).

Pension schemes may take several legal forms which affect the governance structures, (Yermo and Marossy, 2002, and Stewart, 2009). The corporate form is where the pension fund is a separate corporate entity with legal personality and where the plan members have legal title to the pension assets. The governing body is internal, usually the board of directors. This form is prevalent in Germany, Hungary, Belgium, Italy, Switzerland, Mexico, Austria, and the Czech Republic.

In the foundation form, the pension fund is also a separate entity with legal personality but plan members do not have legal title to pension assets. They only have beneficial ownership. The legal ownership is vested in the governing body(board of directors).This form is applicable in Belgium, Italy, Switzerland, and closed funds in Demark, Finland, Netherlands, Norway and Sweden.

Under the trust form, pension fund assets are owned by the trust, but administered in interests of beneficiaries. Trustees are the governing body of the fund but can have corporate trustees. Plan members and beneficiaries only have beneficial ownership of the scheme assets. All Anglo-American countries, Kenya included, recognize the trust as the main or only legal form for pension funds. Lastly, the contractual form is where the pension fund is a segregated pool of assets without legal personality but plan members have legal title to assets. The pension assets are managed by a separate entity, typically financial institution such as a bank, insurance company or pension fund management company. This form is applicable in Poland, Portugal, Spain, Mexico and Turkey.

The other arrangement that influence governance is whether a scheme is Individual pension scheme or occupational retirement benefit scheme. Individual schemes are set up by private sector service providers. Occupational Retirement Benefits Schemes are set up voluntarily by employers for the benefit of their employees. Contributions are usually made by both the employer and the employee and are run by governing board (board of trustees) under a trust deed. Occupational retirement benefits schemes fall into two main arrangements. The defined benefits (DB) schemes are where the retirement benefits are determined in advance. On the other hand, defined contribution (DC) schemes are arrangements where the benefits are determined by the level of contribution and returns on investments, (Fabozzi and Modigliani, 2005). The hybrid schemes fall in between these two.

**2.4. Systems of Corporate Governance**

Scholars have identified three broad models of corporate governance. Their development and application have been influenced by the corporate laws, political environment and the cultures of the societies in which they have evolved. These models are the Anglo-American model, Japanese model and the German model. The Anglo-American model is prevalent in the US and the Commonwealth countries. It advocates for one tier-board of directors. The shareholders, directors and the management of the firm complete the corporate governance triangle. The three interact during the annual general meeting of the firm. This model follows the stockholder and agency theories of corporate governance.

The German model is characterised by a two-tier board comprising of a management board and a supervisory board, (Fohlin, 2005).The management board is composed of only insiders (executives of the company), while the supervisory board is composed of employees and shareholder representatives. The main players in the corporate governance system are the banks and corporate shareholders. This model applies mainly in continental Europe.

The Japanese model of corporate governance is multi-faceted centring around a main bank and a 'Keiretsu'. A Keiretsu is a group of closely related Japanese companies that own each others' shares, bonds, and give each other preferential treatment. There are therefore four main players in this system: A main bank (a major inside shareholder), affiliated company or Keiretsu (a major inside shareholder), management and the government.

These models also apply to the occupational retirement benefit schemes in their respective jurisdictions except for the Japanese model which has not been replicated by schemes in Japan. For example, the Japanese central and local government civil servants pension funds have adopted the two-tier board system, (Pinheiro, 2006).

### 2.5 The Agency Conflicts in the Occupational Retirement Benefit Schemes

The purpose of the occupational retirement benefit schemes is to secure retirement income of plan members and beneficiaries through prudent investment of pension assets. The achievement of this objective is usually threatened by a myriad of agency problems inherent in the operation of such schemes. The presence of the agency conflict as a result of separation of control and ownership has long been established by scholars. (Ross, 1973; Jensen and Meckling, 1976; Fama, 1980; and Eisenhardt, 1989). Ambachtsheer et al, (2007), conclude that agency issues are a major concern in the governance of pension schemes. The agency problems in the occupational retirement benefit schemes arise in several ways.

Like in companies, ownership and management are separated. A governing body is usually entrusted with the ultimate responsibility of directing the scheme. In the countries following the

Anglo-American model such as Kenya, this is the board of trustees. In the Netherlands and Switzerland, schemes are run by independent foundations. In both cases the governing body is composed of representatives drawn from both employer and employees. The day to day operations of the schemes are entrusted to administrators. Therefore there is need for the governing body to monitor the administrators to ensure that they are acting within the bounds of the delegate authority, (De Deken, 2008).

Ownership of the assets of the pension schemes is usually entrusted legally to the governing bodies and not the sponsor nor the ultimate beneficiaries, the plan members, who have a lot of stake in the continued well being of the scheme. Therefore to ensure that the governing body is acting to the best interest of the beneficiaries constitutes an agency problem. (De Deken, 2008, Hess and Impavido, 2003, and Yermo, 2002).

Cocco and Volpin, (2006), conclude that there is an agency conflict between the trustees who are directors (employees) of the sponsoring company and members of the pension plan. They found that in case of conflict, these insider trustees favour the company over the plan members such as allowing the company to make lower contributions to the schemes when the firm is facing financial difficulties.

Outright fraud and misappropriation of pension assets by governing body or sponsor is a common risk facing all pension funds, (Yermo and Marossy,2001).It could occur where the governing body or sponsor abuses its power to borrow money from the pension scheme or appropriates some of its assets. In the Maxwell case in the U.K, pension funds were used to prop up the share price of insolvent companies that were part of the holding company.

In the DB plans, sponsors (employers) have been identified as residual claimants in the plans because they guarantee the level of benefits to employees (beneficiaries) even when there is a deficit. When there is a deficit they are required to increase their contributions to the schemes. Therefore the relationship between the sponsor and the fund needs to reach a balanced compromise, (Yermo, 2002).

There are also many agents (service providers) involved in the management of the pension funds. These include fund managers, custodians, actuaries, investment advisors, auditors. These agents have divergent expectations of the funds but are primarily motivated by profit. Therefore their concerns may not necessarily be for the best interests of the fund.

Government intervention in pension funds such as the use of prescribed investment guidelines or economically targeted investments (ETI) has also been identified as another source of agency conflict. These lead to poor asset allocation which in turn may lead to low investment returns. Research has shown that asset allocation can explain up to 90% in the variability in return on assets over the time, (Brinson et al, 1991). Mitchell and Hsin, (1994), show that public pension funds that had been required to make a certain portion of in-state investments generated lower investment returns compared with otherwise funds in the US.

## 2.6 Corporate Governance Structures and Practices

Corporate governance mechanisms are structures that are used to promote the alignment of interest of managers and stakeholders and hence help reduce the agency problem. Most of the prevailing literature on corporate governance structures and practices relate to general purpose corporations, mostly limited liability companies.  These include market for corporate control, product and factor markets, managerial labour market, block holding (ownership) concentration, insider shareholding, and the role of debt among others. These do not apply to occupational retirement benefit schemes. This is because plan participants do not have an ownership interest in form of shares which can be traded in the secondary market, thus negating the disciplining effect of market for corporate control. There is limited portability of scheme benefits .Therefore members are not free to move from non-performing to well performing schemes. The fact that ownership interests in these schemes are essentially equal and dispersed means that there is no possibility of a single shareholder or group of shareholders emerging with an incentive to monitor the organization’s performance. Therefore the free-rider problem associated with ownership dispersion cannot be circumvented, (Hess and Impavido, 2003, and Yermo, 2002).

According to Hess and Impavido, (2003), in situations where the external controls are weak, as in pension fund governance, there will be greater emphasis on the governing board as a monitor. The OECD, (2002), has identified twelve governance structures and mechanisms applicable to pension fund governance. They include identification of responsibilities, governing body, expert advice, auditor, actuary, custodian, accountability, suitability, internal controls, reporting, disclosure and redress. These are addresses here below alongside other best practise structures on corporate governance.

### 2.6.1 Identification of Responsibilities

The OECD, 2002, requires that there should be “clear identification of operational and oversight responsibilities in the governance of a pension fund”. The legal form, internal governance structure and the main objectives of the governing body should be stated in the entity’s statutes, by-laws, contracts or trust instruments. In countries following the Anglo-American model, governance rules are contained the trust deed. In Kenya the RBA regulations, (2000), require that where an occupational pension scheme is not established by a specific law, then it should be established through an irrevocable trust deed.

### 2.6.2 Governing Body

The OECD guidelines provide that “Every pension fund should have a governing body or administrator vested with the power to administer the pension fund and who is ultimately responsible for ensuring adherence to the terms of the arrangement and the protection of the best interest of plan members and beneficiaries.” The governing body is usually the board of trustees who are responsible for the operation and oversight of the pension fund. The board delegates the daily running of the fund to an administrator, who is either in-house or outsourced. Thus the main roles of board would be to monitor the administration of the pension fund to ensure that the objects are met as set out, selecting, compensating, monitoring, and replacing staff and other service providers, and ensuring compliance of pension laws and regulations.

### 2.6.3 Suitability

It is required that the governing body should be subject to minimum suitability standards in order to ensure a high level of integrity and professionalism in the administration of the pension fund. These standards could include qualifications and experience required of members, causes for automatic disqualification, procedures for removal of trustees, and the tenure of trusteeship. This assists the board to have qualified members and is also safeguarded against arbitrary removal thus becoming more independent. In the New Zealand Superannuation Fund, four members of the nominating committee must have working experience qualifying them as investment professionals. Licensing of trustees is mandatory in Australia, while in Belgium at least two trustees must be professionally qualified persons.

### 2.6.4 Legal and Regulatory Environment:

Government regulations through legislation also affect corporate structures and practices. The aims of the regulatory framework are (i) contain conflict of interest among stakeholders by specifying certain requirements on the legal structure of the pension fund and (ii) empower individuals with monitoring, oversight and disciplinary powers over those responsible plan sponsors and the governing body**.** The retirement sector in Kenya is regulated by the Retirement Benefits Authority (RBA).  These regulations affect the way organisations are run in terms of prescribing board composition, winding-up rules, protection of minority stakeholders , frequency of annual general meetings and board size. Naibo, (2006), contends that corporate governance and enforcement mechanisms are intimately linked as they affect firm’s ability to commit towards their stakeholders, in particular external investors.

### 2.6.5 Expert Advice

The OECD provides that “where it lacks sufficient expertise to make fully informed decisions and fulfil its responsibilities, the governing body could be required to seek expert advice or appoint professionals to carry out certain functions”. Some of the functions that require expert input include investment advice especially when drafting an investment policy statement. Where experts are retained, the governing body must make sure the experts have the proper qualifications and experience to fulfil their responsibilities.

The RBA in Kenya requires the appointment of a fund manager, custodian, auditors, actuaries and investment advisors to assist in the management of scheme funds. In Canada, a separate investment body (Canadian Investment Board (CPPIB) that serves to only invest funds for the Canadian Pension Scheme (CPP) has been created.

It is expected that these experts will add value by safeguard the pension assets, enhancing better returns and also acting as whistle blowers to supervisory authorities. It should be noted that even where expert advice is sought, the board of trustees (governing body) is held responsible for the actions of the external experts.

**2.6.6 Auditor**

The governing body must appoint an independent auditor to periodically audit the plan. If material discrepancies raised by the auditor are not addressed, the auditor has the obligation to report to the regulatory authority.

**2.6.7 Actuary**

All defined benefit plans must engage an actuary. Even defined contribution plans may benefit from the guidelines of an actuary to determine whether the plan is meeting its objective of providing an adequate income at retirement. The actuary is responsible for identifying the plan’s funding needs, estimating the level of contributions required to fund future benefits, and evaluate the fund’s financial solvency. The actuary should report to regulatory authorities any funding deficiencies where the governing body has refused to remedy the situation.

**2.6.8 Custodian**

The role of the custodian is to “safeguard the physical and legal integrity of the assets of a pension fund”. Where the governing body has hired an independent custodian, “the pension assets should be legally segregated from those of the custodian”. The custodian should be to absolve itself from liability by delegating this function to a third party. The custodian is also required to whistle blow on the governing body.

### 2.6.9 Internal Control Mechanisms

Appropriate internal controls should be put in place to ensure that management and the board act in accordance with the objectives of the pension fund and that they comply with the law. It should cover such organisational and administrative procedures as regular assessment of performance of the board , management and service provides, regular review of compensation mechanism to provide incentives to those in charge, regular review of information processing systems, dealing with conflict of interest, addressing improper use of privileged information, implementation of risk management system including effective internal audit and regular assessment of regulatory compliance systems. The quality of the internal control systems of pension fund service providers may pose a threat to the funds and the interest of plan members and beneficiaries.

### 2.6.10 Redress Mechanisms

Pension plan members and also beneficiaries should have access to statutory redress mechanisms through the regulator or the courts to ensure that the board of trustees manage the fund in their best interest. However informal and independent arbitration redress mechanisms are also encouraged because they are cheaper. The Pensions Ombudsman in UK arbitrates on pension complaints by members and beneficiaries. In Australia, the Superannuation Complaints Tribunal (SCT) has been set up to resolve complaints between members and the superannuation fund by negotiation or conciliation. It only deals with complaints when no satisfactory resolution has been reached.

### 2.6.11 Reporting

The OECD guidelines require that processes need to be put in place to ensure that the board of trustees receive timely, accurate, complete, consistent, and easily comprehensible information so that they may discharge their responsibilities effectively, in accordance with the code of conduct, and ensure that delegated responsibilities are fulfilled. The same should apply to information to plan members, regulatory authorities, actuaries, asset managers, consultants, custodians, and other professional service providers. According IOPS, (2008), the supervisory authorities in Argentina and Chile require daily reporting of the financial status of funds with assets valued on a mark-to-market basis. In Germany, pension funds must annually provide detailed and substantial information to members and beneficiaries on the level of retirement benefits; available types of investment; potential risks; costs borne by members; benefit statements; and information on ethical, social or ecological criteria taken into account in investment decisions.

### 2.6.12 Disclosure

The board of trustees of a pension fund should also disclose to plan members and beneficiaries decisions that could have a material impact on future pension benefits, such as a change in investment policy. Disclosure requirements to members include contribution rates, benefit promises and promised guarantees, member's fees, and investment policy. Other disclosures include material plan modifications, plan documents, statements of participants' rights, level of funding, pension fund asset allocation, and member's statement of account, investment summary and changes to investment policy.

### 2.6.13 Accountability

The trustees are accountable to the pension plan members and beneficiaries and the regulators. They also owe a duty of care to scheme sponsors since they are exposed to risks from trustee actions. Accountability is also guaranteed where the trustees are liable for their actions. Insurance of trustee liability is can further ensure the ability of the fund to recover losses in case of mismanagement. According to Maher, (2003), accountability is an essential part of corporate governance. The system of corporate governance cannot be monitored or improved without accountability procedures. Public awareness and interest serves as a disciplining mechanism on the trustees and management. A link has been established between accountability and pension fund governance. Ambachtseer, (2001), found that in private pension schemes, organisational performance is strongly correlated with good mechanisms to understand and communicate with plan stakeholders.

For the board of trustees to enhance their accountability, they should ensure regular meetings; make decisions on a majority basis, disclose major decisions to plan members and beneficiaries, regular reporting to supervisor/regulator, transparent selection of trustees, appropriate succession planning, adopt procedures for removal of trustees, and set terms of board members.

### 2.6.14 Other best practice structures

Other evidence from general literature on corporate governance structure on governing boards (board of directors/board of trustees) is also reviewed. These are basically elaborations on the foregoing structures.

**Board Size**

There are arguments in favour of small board size. Yermack, (1996), argues that large boards tend to be slow in making decisions, and hence can be an obstacle to change. A small board is also supported in that directors rarely criticise the policies of top managers and that this problem tends to increase with the number of directors. Yermack, (1996), further concludes that the smaller the board size the better the performance, and thus proposing an optimal board size of ten or fewer.

Using a sample of 26 pension schemes in developing countries, Hess and Impavido, (2003), found that the number of trustees on the board averaged 12, with an average of 3 to 29. In Kenya, the Retirement Benefits Authority (RBA) requires that occupational retirement benefits schemes should have a maximum of nine boards of trustees.

**Composition of Board members**

The composition of board members is also proposed to help reduce the agency problem. Scholars have argued that for board effectiveness in their oversight role, it should be composed of a majority of outside directors, (Fama, 1980). It is expected that outside directors will be independent from management influence. Evidence also shows positive role for outside directors on firm performance, (Weisback, 1988).

Coco and Volpin, (2006), conclude that the presence of insider trustees (those nominated by sponsors) in defined benefit pension schemes, increase the agency problem because they act in the interests of the sponsoring company and not in the interest of the members of the pension plan. RBA regulations, 2000, stipulate that one-third of the trustees of defined benefit schemes and one-half of defined contribution schemes be employee representatives. In South Africa, Belgium and Australia equal representation between employer and employee is required at the board.

**Frequency of the Board Meetings**

The evidence on the role of board meeting frequency in reducing agency problem is inconclusive. Some researchers indicate that increased frequency of board meetings leads to increased costs such as travelling allowances, fees to directors and time consumed by managers in preparing and attending the board meetings .It is however noted that board meetings afford the company benefits of directors setting strategic direction of the firm and serve as a mechanism for monitoring management. Scholars have also found that frequency of board meetings improve firm performance, (Vafeas, 1999, Mululu, 2005, and Kerich, 2006).The RBA prescribes a maximum of four ordinary board meetings per year and two special meetings.

**Separation of Roles: Chairman and CEO**

Many shareholder activists and corporate governance scholars consider that separating the titles of chairman and chief executive officer will reduce agency costs and improve firm performance, ( Belkhir, 2005).This separation avoids concentration of power and control of information in one centre and thus enhancing the monitoring role of the board. Jensen, (1993), recommends that companies separate the titles of CEO and Chairman.

Markman et al, (2001), and Zahra (1996), contend that the separation of the roles of CEO and chairman leads to more fluid authority, decentralisation of power and leaner organisation structure. It is also a source of increased diversity in experience and backgrounds of the firm’s two top people. Clark, (2000), notes that it is now common practice for pension schemes within the Anglo-American countries to separate the position of the chairman and CEO of the governing body.

**Board Committees**

The boards of corporations often divide their work and assign primary responsibility to separate committees, according to different roles of each. Due to agency problems, it is recommended that key oversight committees, such as compensation committee and audit committee be staffed by independent directors. In their international study of schemes Hess and Impavido, (2003), found that boards of pension funds use committees with 45% having audit committee, 64% with investment committee and 21% governance committee. Board committees become a strong monitoring mechanism as they provide detailed attention to management actions.

**Compensation Packages**

Due to information asymmetry between executives and the board, executives usually have residual control over firms thus giving them the greatest opportunity to pursue self-interested behaviour. One way of aligning the executives' interests to those of shareholders is to offer compensation based on firm performance. A Strong relation between managerial compensation and firm performance has been noted, (Jensen and Murphy, 1990).

**Annual General Meeting**

The AGM affords the members/beneficiaries/ shareholders the forum to exercise their role as the supreme authority of the firm. They will get the opportunity to approve major decisions. The Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000, requires that Trustees convene an annual meeting of members whose minimum agenda items includes a report on any changes to the benefits and contributions; a report on audited accounts; a report on investments; a report on remuneration of trustees; and questions from members.

## 2.7 Empirical Studies

The main objective of pension fund governance is to align the interests of the stakeholders in order to safeguard the promised benefits to plan members. It is expected that good corporate governance will lead to administrative efficiency, higher investment performance and general increase in the performance of the pension fund.

Unlike in corporations, there has generally been little empirical studies done to link good corporate governance and pension fund performance. However those that have been undertaken show a positive correlation been good corporate governance and pension fund performance.
Ammann and Zingg, (2008), using the Swiss Pension Fund Governance Index (SPGI), found a strong positive correlation between quality governance and pension fund performance in Switzerland. They found that on average, the impact of governance on performance is as much as 9 basis points per index per year. Schneider and Damanpour, (2002), found that politically affiliated trustees had a negative impact on the funding status of the pension fund. On the other hand, Ambachtsheer et all, (2007), found a positive correlation between governance quality and pension fund performance. The impact of governance from good to bad may be as much as 100 to 300 basis points per year based on the perception of the CEOs interviewed.

In a cross sectional study to link funding level and investment performance and outcomes to governance variables, Mitchell and Hsin, (1997), show that funding level was enhanced by having in-house actuaries and when pension board members were required to carry liability insurance. Funding was also lower when employees were represented at the board. These findings were contrary to those of Murphy and Van Nuys, (1994), who found a positive correlation between funding levels and trustees who were active plan members. They also concluded that those trustees elected by retired members have negative impact on fund performance.

Coronado et al,(2003),in a study on conflict of interest and pension fund performance, found some evidence that economically targeted investments (ETI) and country/industry specific restrictions were associated with lower investment returns ,and that public plans earned significantly lower rate of return than did private pension plans. In the same vein, Yang and Mitchell, (2005), find evidence that the composition of the board of trustees as well as the reporting practices influence the investment performance of public pension funds. In a survey of institutional investors, Mckinsey, (2002), found that 80% of the investors are prepared to pay a premium for companies exhibiting high governance standards. The premiums average 12-14% in North America and Western Europe, 20-25% in Asia and Latin America, and over 30% in Eastern Europe and Africa.

All the above empirical evidence indicate that good corporate matters for pension fund performance and hence this survey to establish the prevailing corporate governance practices in occupational retirement schemes in Kenya.

## CHAPTER THREE:

## 3.0 RESEARCH METHODOLOGY

### 3.1 Research Design

This research used a descriptive survey to explore the corporate governance structures and practices prevalent in the occupational retirement benefits schemes in Kenya. This enabled the benchmarking of these structures and practices with local and international standards and best practice. According to Orodho, (2003), descriptive survey is a method of collecting information by interviewing or administering a questionnaire to a sample of individuals. It can be used when collecting information about people’s attitudes, opinions, habits, and other general conditions being sought.

### 3.2 Population

Although the formation of an occupational retirement benefit scheme is voluntary, registration with the Retirement Benefit Authority (RBA) is mandatory. There are currently 1350 registered occupational retirement benefits schemes in Kenya. The population therefore consisted of the 1350 registered occupational retirement benefit schemes in Kenya.

### 3.3Sample

Since the population was large, the study of the entire population was not feasible due to cost and time constraints. Therefore, for the purpose of this study, purposive sampling technique was applied. This is the sampling method where a researcher purposely targets a group of respondents believed to be reliable for the study, (Kombo and Tromp, 2006).

A sample of the top 40 largest occupational retirement benefits schemes was selected on the basis of their asset value as at 31$^{st}$ December, 2008 or 30$^{th}$ June, 2008 depending on their financial year- end. Large schemes as measured by asset value were chosen because their elaborate management structures make them more susceptible to the agency problems than the smaller ones. The same procedure was applied by Osambo, (2003).

### 3.4 Data Collection Methods

The primary qualitative data on scheme corporate governance structures and practices was collected using self-administered questionnaires with closed and open-ended questions. Closed-ended questions was mostly ‘yes or no’ type requiring the respondents to choose, while others will be put on a Likert scale where the respondents was required to rate the objective to be investigated. The open-ended questions were used to get an explanation from the respondents about some of the closed ended questions. Secondary data was gleaned from the returns made to the Retirement Benefits Authority (RBA), scheme trust deeds, and Acts of parliament where relevant. The questionnaires were dropped at registered offices of the schemes and follow-ups were made later.

### 3.5Data Analysis and Presentation

The data was analyzed using descriptive statistics. Statistical tools such as, the mean, proportions, graphs, tables, percentages, and frequency distribution was computed with aid of the Statistical Package for Social Sciences (SPSS) software. The measures were computed from the responses obtained. A graduated scale was used with 1(lowest response) and graduated upwards as may be necessary from type of enquiry or the choices are scored as a percentage of the total responses. Wang’ombe, (2003), notes that descriptive statistics are used to describe the basic features of the data in a study. They provide simple summaries about the sample and measures.

## CHAPTER FOUR:

## 4.0 DATA ANALYSIS AND INTERPRETATION

### 4.1 Introduction

This chapter presents analysis and findings of the research on the corporate governance structures and practises in occupational retirement benefit schemes in Kenya. From the study population target of 40 respondents, 28 responded and returned the questionnaire, constituting 70.0 % response rate.

### 4.2 Profile of the respondent schemes

#### 4.2.1. Scheme size

In terms of net assets the largest scheme among the respondents had net assets in excess of Kshs 10 billion while the smallest had net assets valued at over Kshs 700 million. As measured on the basis of active membership, the largest scheme caters for over 23,000 members. The smallest had 800 members. The retirees served ranged between 60 to 4,200.

#### 4.2.2 Years in operation

Among the respondent schemes the oldest came into operation in 1929, while the most recent was formed in 1992. The number of years an organisation has been in operation has significant bearing on the corporate governance practices because the organisation has established certain norms and traditions.

### 4.2.3 Type of the scheme

**Table 4.2: Type of the scheme**

| | Frequency | Percent |
|---|---|---|
| Defined Benefit | 24 | 85.7 |
| Defined Contribution | 4 | 14.3 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

As shown on the table 4.2 above, 86% of the respondents were defined benefits and 14% were defined contribution schemes.

## 4.3 Corporate Governance structures and practices

### 4.3.1 Scheme Establishment

**Table 4.3: Scheme Establishment**

| | Frequency | Percent |
|---|---|---|
| by irrevocable trust deed | 27 | 96.4 |
| by written law or act of parliament | 1 | 3.6 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

From the finding in the table 4.2, the study revealed that majority of the schemes were established by irrevocable trust deed as indicated by 96% of the respondents, while 4% of the respondents indicated that they were established by written law or act of parliament.

**Table 4.4: Update of scheme rules**

| | Frequency | Percent |
|---|---|---|
| last one year | 24 | 85.7 |
| within the last two years | 2 | 7.1 |
| within the last three years | 2 | 7.1 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

From the above findings it clear that majority (86%) of the respondent schemes updated their schemes in last one year, 7% of the within the last two years and another 7% within the last three years.

### 4.3.2 Board Control

**Board Size**

As indicated in the table below 68% of the respondent schemes have a board size of between 7 to 12 trustees.29% of them ranged between 2 to 6 while only one respondent had over 13.

**Table 4.5: Board Size**

| Number on the board | Frequency | Percent |
|---|---|---|
| 2-6 | 8 | 28.6 |
| 7-12 | 19 | 67.8 |
| Over 13 | 1 | 3.6 |
| Total | 28 | 100.0 |

**Appointment of the chairman of the board**

**Table 4.6: Appointment of the chairman of the board**

| | Frequency | Percent |
|---|---|---|
| trust amongst themselves | 11 | 39.3 |
| sponsor | 15 | 53.6 |
| nomination committee of the board | 2 | 7.1 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

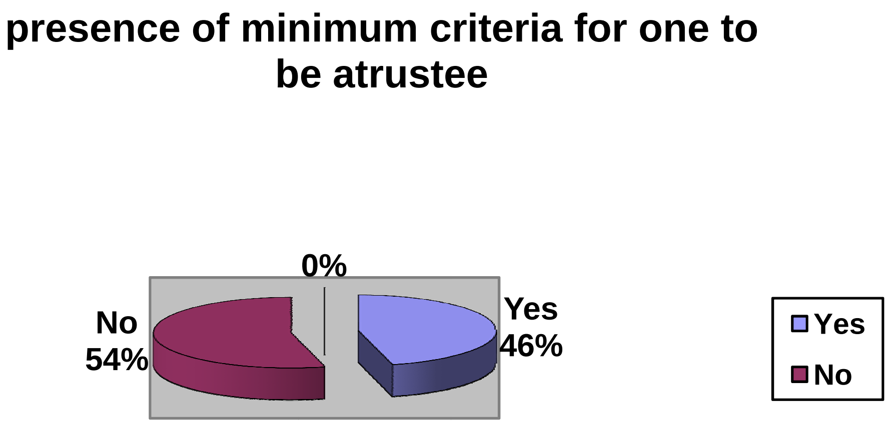
On appointment of the chairman of the board of trustee, table 4.4 above indicates that majority of the respondents (54%) the chairman of the board of trustee was appointed by sponsor, 39% of the respondents indicated trust amongst themselves, while 7% of the respondents indicated that the chairman of the board of trustee was appointed by the nomination committee of the board. The study also established that there was induction programme in place for new board of trustee in all responding schemes. The trustees also meet quarterly in all the responding schemes.

**Composition of the board of trustee**

On the composition of the board of trustee in terms of employer or sponsor representatives the study established that they ranged from 4 to 6 members, it was also established by the study that the composition of the board in terms of employee representatives also ranged from 6 to 10 members, it was further established by the study that the composition of the board of trustee in terms of retiree representatives was one member, further the study revealed that the composition of the board of trustee in terms of male ranged from 3 to 5 members, while the composition of the board of trustee in term of female ranged from 1 to 3member.On the composition of the board in terms of professions qualification, the study revealed that the composition of the board of trustee in terms of CPA were two members, HR specialist ranged from 1 to 2 members, while lawyer were represented by  one member.

**Minimum criteria to serve as trustee**

**Figure 4.1: Minimum criteria for one to be trustee**

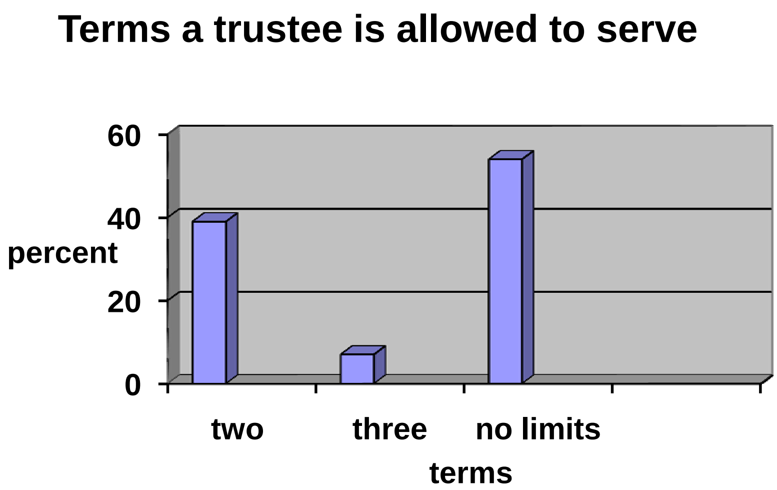



**Source, Author (2009)**

54 % of the respondents indicated that they not set the minimum criteria for one to qualify to serve as a trustee. The remaining 46% of the respondents indicated that there had set minimum criteria for one to become a trustee. The study further established the grounds for one to become a trustee as knowledge of retirement benefits, any professional, relevant skills and experience, integrity, availability and commitment to serve, a representative of the worker union, managerial capacity, not to be bankrupt and not to have been a member of any dissolved pension scheme. For all the respondents the tenure of office was indicated as three years.

**Term Limit for trustees**

**Figure 4.2: Terms a trustee is allowed to serve**




**Source, Author (2009)**

As indicated by figure 4.3 above in 54% of the respondents, there was no term limit set for a trustee to serve. 39% of the respondents indicated that the members were allowed to serve for two terms, while 7% of the respondents indicated that trustee were allowed to serve for three terms. The study revealed that the circumstances under which a trustee can be removed from office other than bankruptcy were, resignation, if they fail to attend three consecutive meetings, if they leave employment of the sponsor, if they fail to attend three consecutive board meeting without explanation, fraud, incompetency, misconduct, removal by nominating body, corruption and retirement from the board of trustee.

**Separation of roles the CEO and chairman of the board**

**Table 4.7: Separation of roles the CEO and chairman of the board**

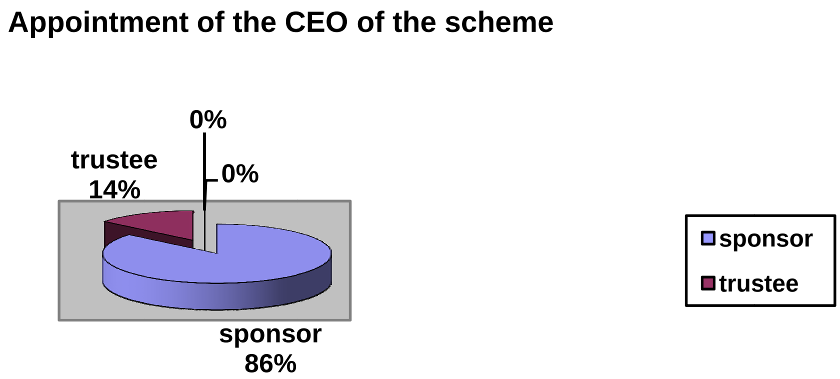
| | Frequency | Percent |
|---|---|---|
| yes | 26 | 92.9 |
| no | 2 | 7.1 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

The table 4.5 above shows that the majority (93%) of the respondents indicated that there roles of chairman and CEO were clearly separated. 7% of the respondents indicated that there was no separation of the roles.

**Appointment of the CEO of the scheme**

**Figure 4.3: Appointment of the CEO of the scheme**




**Source, Author (2009)**

From the findings in the figure4.4, majority of the respondent as shown by 86% of the respondent indicated that the appointment of the CEO was done by the sponsor, while 14% of the respondents were of the opinion that the CEO appointment was done by the trustees. The study also established that the committee of the board the scheme had were finance and investment committee, administration committee, tender committee, audit committee, nominating committee and staff committee.

**Table 4.8: Incorporation of employee representatives in the board of trustee**

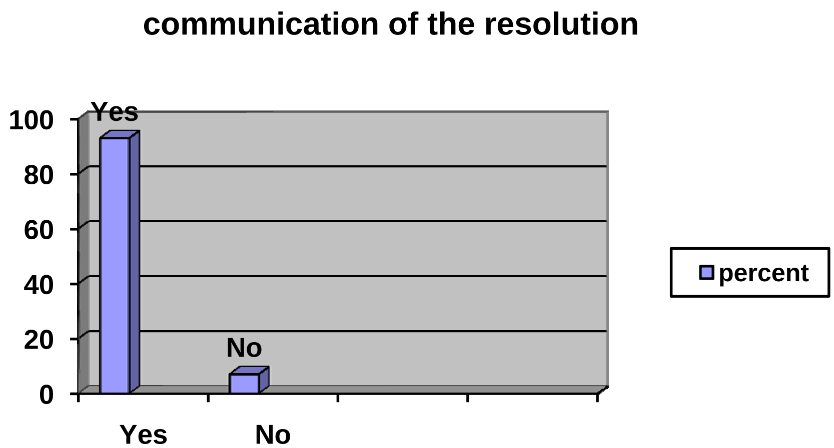
| | Frequency | Percent |
|---|---|---|
| nominated by employee representatives organ | 2 | 7.1 |
| by the sponsor | 6 | 21.4 |
| elected by employees directly | 20 | 71.4 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

From the findings in the table 4.6, it was established that incorporation of employee representatives in the board of trustee was done by direct election by employees in 71% of the respondents. 21% of the respondents were of the opinion that the incorporation of employee representatives to the board was done by the sponsor, while 7% were of the indicated that it was done through nomination by employee representative organ.

**Communication of the resolution of the board to members**

**Figure 4.4: Communication of the resolution of the board to members**




**Source, Author (2009)**

On communication of board resolutions to members, 93% of the respondents showed that the resolutions were communicated to members, while 7% were of the opinion that there the resolutions are not communicated to members.

**Board performance assessment**

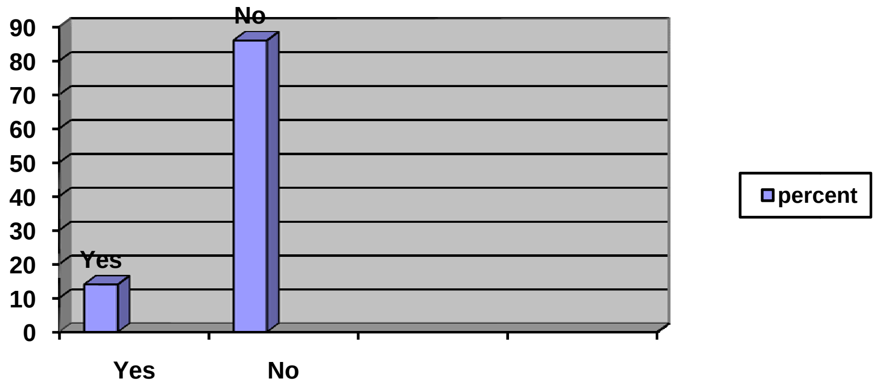
**Table 4.9: Board performance assessment of itself**

| | Frequency | Percent |
|---|---|---|
| yes | 17 | 60.7 |
| no | 11 | 39.3 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

From the finding in the table 4.7, the study revealed that majority of the respondent (61%) indicated that the board assessed itself annually; while 39% of the respondents did no do board assessment.

**Figure 4.5: Individual performance assessment**




**Source, Author (2009)**

Individual board assessment was not in 86% of responding schemes as depicted in figure 4.6. AS shown, 14% of the respondents assessed the performance of individual board members.

**Table 4.10: Board performance assessment of the CEO**

| | Frequency | Percent |
|---|---|---|
| yes | 19 | 67.9 |
| no | 9 | 32.1 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

On assessment of the CEO performance, the study found that 68% of the respondents indicated that the board asses the performance of CEO annually, while in 32% of them, the CEO performance was not assessed.

**Table 4.11: Assessment reports**

| | Frequency | Percent |
|---|---|---|
| yes | 19 | 67.9 |
| no | 9 | 32.1 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

The majority of the respondents (68%) agreed that assessment reports were made from the performance evaluations done while 34% did not produce any assessment reports.

### 4.3.3 Expert Advice and Investment Practice

**Engagement of expert advisors**

The study established that all (100%) of the responding scheme engaged the services of, custodian, fund manager, actuary, and external auditors

**Presence of written investment policy in the scheme**

**Table 4.12: Presence of written investment policy**

| | Frequency | Percent |
|---|---|---|
| yes | 26 | 92.9 |
| no | 2 | 7.1 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

The study also sought to know whether there existed any investment policy for the scheme, from the findings in the table 4.10; majority of the respondents (93%) indicated that there existed a written policy for the scheme, which was being reviewed once every three years, while 7% were of the scheme did not have a written policy.

**Compliance with RBA investment guidelines**

**Table 4.13: compliance with RBA investment guidelines**

| | Frequency | Percent |
|---|---|---|
| yes | 26 | 92.9 |
| no | 2 | 7.1 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

From the table above compliance with RBA investment guidelines was high at 93% of all respondents. A paltry 7% thus did not comply.

**Effectiveness of RBA investment guidelines**

**Table 4.14: Effectiveness of RBA investment guidelines**

| | | Frequency | Percent |
|---|---|---|---|
| Valid | strongly agree | 11 | 39.3 |
| | agree | 17 | 60.7 |
| | Total | 28 | 100.0 |

**Source, Author (2009)**

On the level of agreement that RBA investment guidelines are helpful and improve investment performance, table 4.12, shows that the majority of the respondents (61%) agreed that RBA investment guidelines are helpful and improve investment performance as shown by.39% of them strongly agreed. Thus there is 100% concurrence on the effectiveness of RBA investment guidelines in boosting investment performance.

**Independent investment performance evaluation**

**Table 4.15: Use of independent investment performance evaluation services**

| | Frequency | Percent |
|---|---|---|
| independent | 15 | 53.6 |
| Fund manager | 13 | 46.4 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

On whether the scheme used an external independent performance monitoring service to asses the performance of invested assets or whether they relied on the information produced by fund managers, majority of the respondents (54%) indicated that this was done by independent performance monitoring service, while 46% of them indicated that this was done by the fund mangers.

### 4.3.4 Internal Control and Redress

**Scheme Administration**

**Table 4.16: Scheme administration method**

| | Frequency | Percent |
|---|---|---|
| in-house employees | 11 | 39.3 |
| employee of the sponsor | 2 | 7.1 |
| special administrator appointed by the sponsor | 9 | 32.1 |
| special administrator independent of the scheme and sponsor | 6 | 21.4 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

From table 4.14 above, the study has shown that scheme administration is done by in-house employees (separate secretariat) in 39% of the responding schemes, 32% by a special administrator appointed by the sponsor, 21% by a special administrator appointed by the sponsor and 7% by a special administrator independent of the sponsor. The study also established that the administrator was responsible for, issuing membership statement, preparing and making benefit payable to retiring members, organizing AGM meeting for the members, recording and keeping proceeding of the members AGM, organizing trustee meetings ,taking ,keeping minutes of the board of trustee meeting and ensuring statutory and compliance issues with RBA are met.

**Organization structure by scheme administrator**

**Table 4.17: Presence of organization structure by scheme administrator**

| | Frequency | Percent |
|---|---|---|
| yes | 24 | 85.7 |
| no | 4 | 14.3 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

From the finding in the table 4.15, the majority of the respondent as shown by 86% of the respondent indicated that the scheme administrator had organization structure and job description for all the staff, while 14% of the respondent felt that there was no organization structure and job description for all staff by the scheme administrator. The study also established that the scheme had a written policies, procedure, code or manual for operation. The study also established that there was ethical code of conduct for trustee and there was a formal system for identifying and recording conflict of interest. On whether the boards of trustee evaluate the performance of the scheme administrator and all service providers, it was established by the study that the board of trustee evaluated the performance of scheme administrator and all service providers.

**Linking compensation to performance**

**Table 4.18: Linking compensation of the CEO and all senior staff to performance**

| | Frequency | Percent |
|---|---|---|
| yes | 17 | 60.7 |
| no | 11 | 39.3 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

As shown above, 61% of the schemes indicated that they link compensation to CEO and other senior staff to performance, while 39% of them felt that there was no such linkage.

**Settlement of benefit claims**

The table below depicts the benefit claim settlement record of the schemes. The majority of the respondent schemes (57.2%) claim to settle benefit claims within two months which is within the period stipulated by RBA.

**Table 4.19: Settlement of benefit claims**

| Time period | Frequency | percent |
|---|---|---|
| Within one(1) month | 5 | 17.9% |
| Within one(1) and two(2) months | 11 | 39.3% |
| Between two(2) and six(6) months | 9 | 32.1% |
| More than six(6) months | 3 | 11.7% |

**Source, Author (2009)**

**Other internal control mechanisms and redress:**

The study findings of the other control procedures are as shown in the table below

**Table 4.20: Other internal control procedures.**

| Presence of: | Yes | No |
|---|---|---|
| Ethical code of conduct | 23(82.1%) | 5(17.9%) |
| Conflict of interest identification system | 19(67.8%) | 9(32.2%) |
| Internal Audit | 15(53.6%) | 13(46.4%) |
| Risk assessment procedures | 16(57.1%) | 12(42.9%) |
| Complaint resolution procedures | 28(100%) | |
| Complaint letter from RBA | 9(32.1%) | 19(67.9) |
| Scheme sued | 3(10.7%) | 25(89.3%) |

**Source, Author (2009)**

The study further revealed that the most commonly used compliant capture procedure included verbal communication to the CEO, compliant letter to the CEO or the board of trustee, report of complaint filed by member representatives and suggestion boxes On whether in the last one year, RBA had written to the scheme in respect to compliant lodged by members, the study revealed that 32% of the respondents acknowledged that complaints had been made by its members to RBA. 11% of them also indicated that they been sued by members in respect their benefits.

### 4.3.5 Accountability and Disclosure

The study further revealed that the scheme rules states the internal governance and the main objective of the board of trustee in all the cases. The study established that trustee are aware that they are personally and severally liable for their action while acting as trustee (89.3%). It was also established that the trustee liability insurance has been taken to cover the scheme from the loss incurred as a result of trustee action or inaction (82.1%). In all cases also, the study indicated that the AGM is held regularly and annually and the minimum agenda included annual reports, acturial reports, investment performance assessment report, independent safe and audit report and question from members formed part of the agenda of the AGM. Members were also allowed to propose agenda for the AGM meetings.

The other study results indicate that the benefit statement reflects the accurate and accrued benefit of the members, financial information is prepared, audited and disclosed in accordance with the international financial reporting standards, Disclosure of information in accordance with IFRS, it was also revealed by the study that there was a written policy in respect to the preparation and dissemination of financial and non financial information which goes beyond what is required to be disseminated by RBA. The study further established that independent audit was conducted by external audit and there are processes in place to report suspicious or unusual transaction. The study also established that all service level agreement with all service provides contain a clause which permit service providers to report to RBA.

**Presence of fraud or other scandal**

**Table 4.21: Presence of fraud or other scandal**

| | Frequency | Percent |
|---|---|---|
| yes | 4 | 14.3 |
| no | 24 | 85.7 |
| Total | 28 | 100.0 |

**Source, Author (2009)**

From the finding in the table 4.17, on whether there has been any serious case of fraud or other scandal that resulted to investigation in the last five years, majority of the respondent as indicated by 86% of the respondents said there was no such fraud, while 14% of the respondent felt that there were such fraud within the last five years.

## CHAPTER FIVE:

## 5.0 SUMMARY AND CONCLUSIONS

### 5.1 Introduction

The objective of the sturdy was to investigate the corporate governance structures and practices among selected occupational retirement benefit schemes in Kenya. It is expected that good corporate governance practices will alleviate the agency conflicts inherent in the management of these schemes. The identified corporate governance practices are benchmarked against the RBA regulations and international best practise.

Review of the available literature shows that although a lot of research has been undertaken on corporate governance in Kenya, little if any, has been done on retirement benefit schemes industry generally and occupational retirement benefit schemes specifically. Thus much of the reviewed literature is research done in the western world.

### 5.2 Summary and Discussions

In establishing the existing corporate governance structures and practices among occupational retirement benefit schemes, the OECD guidelines on pension fund governance, RBA guidelines and other corporate governance best practices were used as benchmarks.

#### 5.2.1Establishment and identification of responsibilities:

The study has shown that the trust model is the most dominant mode of scheme establishment with 93% of the schemes being established this way, with all the schemes reviewing their scheme rules at least every three years. This means that the schemes are proactive and reflect any changed expectations in the schemes rules fairly fast.

There is also no ambiguity in the roles and objectives of the trustees as these are clearly spelt out in the rules as indicated by a response rate of 100% on the issue of internal governance and objectives of the schemes.

### 5.2.2 The governing Body (Board Control and Management):

The average board size of between five to twelve trustees is in line with internal best practice which is pegged at between seven to thirteen members. However it is slightly higher than that recommended by RBA which places the upper limit at nine members.

On appointment of the chairman, the sponsors still exercise control of the schemes given that in 54% of the schemes, the chairman of the board is appointed by the sponsors. The same case applies with the appointment of the chief executive officers, where 86% of the schemes reported the sponsor as the appointing authority. Research elsewhere has concluded that conflict of interest is compounded where the sponsor dominates scheme affairs.

In line with international best practice and RBA regulations, this study has found that there is even distribution of board representation between sponsor and members selected representatives.

In terms of suitability criteria for one to qualify as a trustee, the study shows that 54% of the schemes have not set out any minimum criteria for one to be a trustee. 54% of them have also not set any term limits for trusteeship. This is contrary to most international jurisdictions which are now moving towards certification of persons to qualify to serve as trustees. The qualifications are necessary to ensure that the trustee is fit and effective in playing the role of trustee. RBA guidelines are silent on both minimum qualifications and term limits for trustees although there are proposals to introduce trustee certification in Kenya.

There is clear separation of roles between the chairman and the scheme chief executive officer with 93% of the schemes affirming so. This is in keeping with both RBA guidelines and internal practice. Separation of these functions serves to enhance the monitoring role of the trustees and hence reducing the agency problem.

This study has also found out that in majority of cases, performance assessment of the entire board (61%) and the chief executive officer (68%) is done. However individual trustee assessment is done only by 14% of the schemes. Performance assessment gives feedback on areas of improvement and increases trustee performance. However the fact that a large proportion of the schemes (86%) do not carry out individual assessments means that the quality of performance and contribution of each member cannot be gauged and thus may engender the free-rider problem.

### 5.2.3 Expert Advice and Investment Management:

In line with the OECD and RBA guidelines, the study has shown that all the schemes have engaged the services of a fund manager, custodian, actuary and auditor. Other than injecting professionalism in scheme and investment management, these service providers are expected to act as whistleblowers and inform RBA of any issues of concern they come across. However most of the schemes have not expressly allowed (in the contracts) these service providers to report to RBA any suspicious concerns.
Most of the schemes (93%) have written investment policies which are reviewed at least every three years as per RBA regulations and OECD guidelines. Most schemes also strongly agreed (39%) and agreed (61%) that RBA investment guidelines are helpful and improve performance of investments. This is contrary to available literature which indicate that economically targeted investment guidelines distort investment allocations and result in poor investment return.

Independent assessment of the investment performance helps in monitoring the Fund manager and custodian and thus leads to improvement of investment performance. This study shows that 54% of the schemes engaged an independent investment advisor to assess investment performance and practices by the Fund Manager. This is in tandem with best practise. However those that still rely on the fund manager are still significant at 46%. The fund manager cannot be expected to be objective when appraising his own performance. It constitutes conflict of interest.

### 5.2.4 Internal Control and Redress

The internal control mechanisms were found to be largely in place and adequate in the occupational retirement benefits schemes in Kenya. All the scheme administrators are conversant with their responsibilities which include issuing of membership statements, preparing and

making benefits payable to members, organising AGM meetings, recording and keeping minutes of the annual general meetings, organising trustee meetings and ensuring compliance with statutory regulations. 86% of the schemes administrators have job descriptions and written policies and procedures.
The agency problem is also minimised because the schemes have codes of ethical conduct (82.1%), systems of identifying conflict of interests (67.8%), linkage of compensation to performance (61%), scheme risk assessment and set up of risk management practices (57.1%). Another key corporate governance structure is the presence of the internal audit function whose independence is enhanced by having it report the audit committee of the board. This study revealed that 53.6% of the schemes had this function in place.

Redress mechanisms for aggrieved members were generally not given due attention by the administrators. Although all the schemes (100%) indicated the presence of complaint procedures such as receipt of complaints through registers, suggestion boxes, letters to the chief executive officer or the board, or verbal complaints to the chief executive, these complaints were not recorded and analysed periodically. Most of the schemes indicated that they do not have any formal records or summaries and profiles of the complaints by members and other stakeholders.

Members also seem to be aware of their right to seek redress from the regular when not satisfied with the position taken by the schemes in addressing their grievances. 21% of the schemes acknowledged to have received written notices from RBA about complaints lodged with it by members.

### 5.2.5 Accountability, Disclosure and Reporting

The study has revealed that the trustees and administrators are aware and accountable to the most important stakeholders notably members, sponsors, RBA and other regulatory authorities. The trustees are also aware of their unlimited liability for actions done in their position as trustees (89.3%) and have subsequently taken trustee liability insurance to safeguard loss of pension assets in case their decisions or action occasion loss to the schemes they oversee. They are also accountable members in that all the schemes that responded hold annual general meeting on schedule and the standard items required by RBA and OECD guidelines form the agenda of the meeting. The members' statements are regularly furnished to members and are accurate. The members are also allowed to elect their representatives to the board (71%).

Reporting is also done as per IFRS and RBA guidelines (100%) and audits done by an independent auditor (100%).Most of the schemes go beyond what is required by RBA in making disclosures to the members.

## 5.3 Conclusions

From the above it can be concluded that the occupational retirement benefit schemes in Kenya have embraced sound corporate governance structures and practices to a large extent. The adoption of these mechanisms have been aided in a significant way by the rule based approach adopted by the industry regulator, RBA. Therefore the overall adoption of such practices as trust establishment, board control practices and investment advice and management are inspired by RBA. However the other mechanisms where RBA has not put as a requirement have also been adopted. These include internal control and redress mechanisms, accountability, disclosure and reporting.

## 5.4 Recommendations

From the study findings and analyses above, it is recommended that RBA still need to discourage the domination of scheme affairs by the sponsors. This is because it has been shown that there is increased conflict of interest where sponsors influence the running of the schemes. RBA should also encourage more schemes to use the services of independent investment advisors to evaluate the performance of the fund managers.

RBA should also specify the minimum criteria for one to be a trustee and realise the proposal to certify those to be trustees. The same should apply for setting of term limits

## 5.5 Limitations of the Study

The study was limited to the degree of precision of the data obtained from the respective respondents. The study was also limited by the secrecy of the respondent as majority of them were not ready to disclose information.

## 5.6 Areas for further research:

Further research should be undertaken on the following areas:

1. Effect of good corporate governance on performance of retirement benefits schemes in Kenya.
2. The impact of RBA investment guidelines on investment performance of pension funds in Kenya.
3. Establish any relationship between corporate governance and pension scheme funding level.
4. Study of the agency conflicts in pension funds in Kenya.

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**Appendix i: Survey Questionnaire**

**SECTION A: GENERAL INFORMATRION**

Please answer the following questions.

1. Name of scheme……………………………………………………..............................

2. Your name and position in the scheme (optional)……………………………………….

3. When was the scheme set up? ..........................................................................................

4. Type of scheme (please tick as appropriate).

   ☐ Defined benefit

   ☐ Defined contribution

5. When does your financial year end? (Please tick as appropriate).

   ☐ 31st December

   ☐ 30th June

6. What is the scheme total asset value as per latest audited accounts?

   i) Kshs…………………………………………………………………………...

7. Who is/are the scheme sponsor(s)?

   i) ………………………………………………………………………………

ii) ………………………………………………………………………………………

iii) ………………………………………………………………………………………

iv) ………………………………………………………………………………………

8. How many members are currently served by the scheme as :

i) Contributors……………………………………………………………………

ii) Retirees……………………………………………………………………….

iii) Other beneficiaries (please specify)………………………………………………...

………………………………………………………………………………………

9. Please indicate how the scheme is established (Please tick as appropriate).

☐ By irrevocable trust deed

☐ By a written law or Act of parliament

Others (Please specify)……………………………………………………………….

…………………………………………………………………………………………

10. When did you last review and update scheme rules?

☐ Within the last one (1) year.

☐ Within the last two years (2) years.

☐ Within the last three (3) years.

☐ More than three (3) years ago.

**SECTION B : BOARD STRUCTURE, PRACTICES AND CONTROL:**

1. What is the total number of board of trustees? ...................................................................

2. Who appoints the chairman of the board of trustees? (Please tick as appropriate).

☐ Trustees amongst themselves

☐ Sponsor

☐ Nomination committee of the board

☐ By members representatives

☐ Contributors/beneficiaries

Others (specify)………………………………………………………………………………...

3. Are there any induction programmes in place for new board of trustees?

☐ Yes ☐ No

4. How frequently does the board of trustees meet? ...........................................................................

5. What is the composition of board of trustees in terms of (please indicate number)

☐ Employer/sponsor representatives

☐ Employees' representatives

☐ Retirees' representatives

☐ Independent trustees (outsider) representatives

☐ Male

☐ Female

Any other (specify)…………………………………………………………………………

6. What is the composition of the board of trustees in terms of professional qualifications (please indicate number)?

☐ Investment /banking/ finance specialists

☐ C.P.A.

☐ Engineers

☐ HR specialist

☐ Lawyers

☐ Insurance specialist.

Others ……………………………………………………...............................................

……………………………………………………………………………………………

7. Are there any minimum criteria for one to be a trustee?

☐ Yes ☐ No

If yes, please specify the grounds:

i)…………………………………………………………………………………………

ii)…………………………………………………………………………………………

iii)……………………………………………………………………………………...

iv)……………………………………………………………………………………...

8. Is the tenure of office of a trustee specified?

☐ Yes ☐ No

If yes how many years? ……………………………………………………………………….

9. How many terms is a trustee allowed to serve ?(please tick)

☐ One term

☐ Two terms

☐ Three terms

☐ Four terms

☐ No limit

10. Under what circumstances can a trustee be removed from office other than bankruptcy, death, imprisonment and ill health?

i)…………………………………………………………………………………………

ii)…………………………………………………………………………………………

iii)………………………………………………………………………………………...

iv)………………………………………………………………………………………...

11. Is the chairman of the board different from the CEO/ principal officer of the scheme?

☐ Yes ☐ No

12. Who appoints the CEO of the scheme ?(tick as appropriate)

☐ Recruitment agency

☐ Special nominating committee of the board

☐ Sponsor

☐ Trustees

Others (specify)……………………………………………………………………………..

…………………………………………………………………………………………

13. Which committees of the board does the scheme have? (Please tick as appropriate)

☐ Nominating committee

☐ Audit committee

☐ Staff committee

☐ Finance and investment committee

Others (specify)…………………………………………………………………………..

………………………………………………………………………………………

14. How is the employee representative incorporated in to the board of trustee?

☐ Nominated by employee representative organ

☐ Nominated by a committee of the board

☐ By the sponsor

☐ Elected by employees directly

15. Are the resolutions of the board communicated to members?

☐ Yes ☐ No

16. Does the board assess the performance of :

i) Itself? Yes ☐ No ☐

ii) Individuals? Yes ☐ No ☐

iii) The CEO? Yes ☐ No ☐

17. If yes, how frequently is it done?

i) For itself……………………………………………………………………….

ii) For the individual member…………………………………………………….

iii) For the CEO…………………………………………………………………...

18. Are reports made from these assessments?

☐ Yes ☐ No

**SECTION C: EXPERT ADVICE AND INVESTMENT PRACTISES:**

1. Has the scheme engaged the services of the following ?(please tick as appropriate)

   ☐ Custodian

   ☐ Fund manager

   ☐ Investment advisor

   ☐ Actuary

   ☐ Auditor (external)

   ☐ Legal advisor (s)

2. Does the scheme have a written investment policy?

   ☐ Yes ☐ No

3. If yes, how often is it reviewed? ..........................................................................................

4. Has the scheme complied with the RBA investment guidelines?

   ☐ Yes ☐ No

5. To what extent do you agree that the RBA investment guidelines are helpful and improve investment performance?

   ☐ Strongly agree

☐ Agree

☐ Disagree

☐ Strongly disagree

6. Do you use an external independent performance monitoring service to assess performance of invested assets or do you rely on the information produced by your fund manager?

☐ Independent

☐ Fund manager

Others (specify)…………………………………………………………………………..

……………………………………………………………………………………………

**SECTION D: INTERNAL CONTROL AND REDRESS:**

1. Who performs the administration of the scheme?

☐ In house employees (separate secretarial)

☐ Employees of the sponsor (paid by sponsor)

☐ Specialist administrator appointed by the sponsor

☐ Special administrator independent of the scheme and sponsor

Others (please specify)……………………………………………………………………......

2. Is the administrator responsible for the following? (Please tick as appropriate).

- [ ] Issuing membership statements
- [ ] Preparing and making benefits payable to retiring members
- [ ] Organizing for AGM meeting for members
- [ ] Recordings and keeping proceedings of the members AGM
- [ ] Organizing trustee meetings and taking keeping minutes of the board of trustees meetings
- [ ] Ensuring statutory and compliance issues with RBA are met

3. Does the scheme administrator have an organization structure and job descriptions for all the staff?

☐ Yes ☐ No

4. Does the scheme have written policies, procedures, codes or manuals for all operational areas?

☐ Yes ☐ No

5. Does the scheme have a code of ethical conduct for trustees and Staff?

☐ Yes ☐ No

6. Does the scheme have a formal system of identifying and recording conflict of interest for trustees?

☐ Yes ☐ No

7. Does the board of trustees evaluate the performance of the following at least once a year

i) Scheme administrator?

☐ Yes ☐ No

ii) All service providers?

☐ Yes ☐ No

8. Is the compensation of the CEO and senior officers of the scheme /administrator linked to performance

☐ Yes ☐ No

9. Does the scheme have an internal audit function?

☐ Yes ☐ No

If yes, who does the head of internal audit report to? (Please tick as appropriate).

☐ CEO

☐ Finance Director

☐ Chairman of the Board

☐ Audit committee

Others (specify)……………………………………………………………………….......

………………………………………………………………………………………………...

10. Has risk assessment exercise been undertaken for the scheme?

☐ Yes ☐ No

If yes, has a risk management programme been established?

☐ Yes ☐ No

11. Does the scheme have members' complaint resolution procedures?

☐ Yes ☐ No

If yes, which of the following methods do you use to get (receive) members' complaints?

☐ A register

☐ A report of complaints filled by member representative

☐ Suggestion /complaints box

☐ Compliant letter to the CEO or the Board of trustees

☐ Verbally to the CEO

12. On average, how many complaints have been received by the scheme from its members in the last one year in respect to? (please indicate the number)

(a) Delayed benefit payments…………………………………………………………...

(b) Underpaid benefits…………………………………………………………………..

(c) Withheld /denied benefits……………………………………………………………

(d) Uncooperative staff of the scheme…………………………………………………..

(e) Undelivered members benefit statements……………………………………………...

(f) Denied access to documents…………………………………………………………...

13. In the last one year, has RBA written to the scheme in respect to complaints lodged with it by members?

☐ Yes ☐ No

14. Have members sued the scheme in respect to their benefits payments?

☐ Yes ☐ No

15. After lodging or being notified of a benefit claim does the scheme administrator settle claims:

☐ Within one (1) month?

☐ Between one (1) month two (2) months?

☐ Between two (2) months and six (6) months?

☐ More than six (6) months?

## SECTION E : ACCOUNTABILITY, REPORTING AND DISCLOSURE:

1. Do the scheme rules state the internal governance and the main objectives of the board of trustees?

   ☐ Yes ☐ No

2. Please list any **three (3)** groups to which the board of trustees are most accountable to? (List in order of priority starting with the most important).

   (i)…………………………………………………………………………………………

   (ii)………………………………………………………………………………………...

   (iii)……………………………………………………………………………………..

3. Are the trustees aware that they are personally and severally liable for their actions while acting as trustees?

   ☐ Yes   No ☐   ☐ Not sure

4. Has trustee liability insurance been taken to cover the scheme from loss incurred as a result of trustee actions/inactions?

   ☐ Yes   No ☐

5. Does the scheme hold Annual General Meeting?

   ☐ Yes   ☐ No

If yes, how often are they held……………………………………………………………………

6. Indicate whether the following form part of the agenda of the AGM

   ☐ Quarterly reports

   ☐ Annual reports

   ☐ Actuarial reports

   ☐ Investment performance assessments report

   ☐ Independent safe and audit report

   ☐ Questions from members

7. Are members allowed to propose agenda for AGM meeting

   Yes ☐   No ☐

8. Which of the following documents have you expressly allowed to member to access?(please tick as appropriate)

☐ Minutes of the board and committee meetings

☐ Investment schedules with returns

☐ Annual reports and annual accounts

☐ Remuneration of trustee

☐ List of complaints and how they were settled

9. How often does the scheme furnish members with membership benefit statements?

   ……………………………………………………………………………………………

   ……………………………………………………………………………………………

10. Do the benefits statements reflect the accurate accrued benefits of members?

    ☐ Yes ☐ No

11. Is information prepared, audited and disclosed in accordance with International financial Standards (IFRS)?

    ☐ Yes ☐ No

12. Does the scheme have a written policy in respect to the preparation and dissemination of financial and non financial information which goes beyond what is required to be disseminated by RBA?

    ☐ Yes ☐ No

13. Is an annual external audit conducted by an independent auditor?

    ☐ Yes ☐ No

14. Are there processes in place to report suspicious or unusual transactions?

    ☐

Yes ☐ No

15. Do all service level agreements with all service providers contain a clause which permits service providers to report to RBA any unusual occurrence which could jeopardize the interests of members or sponsors of the scheme?

☐ Yes ☐ No

16. Has there been any serious case of fraud or other scandal that resulted in investigation in the last five years?

☐ Yes ☐ No

**Appendix ii: List of Registered Occupational Retirement Schemes**

**TOP 40 REGISTERED OCCUPATIONAL RETIREMENT BENEFIT SCHEMES**

| | **Name of Scheme** |
|---|---|
| 1 | Central Bank of Kenya Staff Pension Scheme |
| 2 | Kenya Shell Pension Fund |
| 3 | Barclays Bank of Kenya ltd Staff Pension Fund |
| 4 | Kenya Commercial Bank Staff Pension Fund |
| 5 | Local Authorities Pension Trust |
| 6 | Kenya Power and lighting Company Staff Retirement Benefits Scheme |
| 7 | Telposta Pension Scheme. |
| 8 | Kenya Ports Authority Pension Scheme |
| 9 | Kenya Pipeline Ltd Staff Retirement Benefits Scheme |
| 10 | Kenya Commercial Bank Staff Retirement(Defined Contribution) scheme |
| 11 | Union East African Pension Fund |
| 12 | National Social Security Fund Staff Retirement Benefits Scheme |
| 13 | Kenya Revenue Authority Staff Pension Scheme |
| 14 | University of Nairobi Pension Scheme |
| 15 | Kenya Airways Limited Staff Provident Fund |
| 16 | National Bank of Kenya Staff Retirement Benefits Scheme |
| 17 | Kenyatta University Staff Retirement Benefits Scheme |
| 18 | Kengen Staff Retirement Benefits Scheme |
| 19 | Teachers Service Commission Staff Superannuation Sheme |
| 20 | Telposta Provident Fund. |
| 21 | Local Authorities Provident Fund |
| 22 | Kenyatta National Hospital Staff Superannuation Scheme |
| 23 | Postal Corporation of Kenya Staff Pension Scheme |
| 24 | Moi University Pension Scheme |

| | |
|---|---|
| 25 | Egerton University Retirement Benefit Scheme |
| 26 | The U.S Government Staff Pension Scheme |
| 27<br>28 | National Security Intelligence Service (NSIS) Staff Superannuation Scheme<br>Co-operative Bank of Kenya Staff Retirement Benefits Scheme |
| 29 | Kenya Airports Authority Staff Retirement Benefits Scheme |
| 30 | The Anglican Church of Kenya Staff Provident Fund |
| 31 | Kenya Agricultural Institute (KARI) Staff Retirement Benefits Scheme |
| 32 | Kenya Post Office Savings Bank Staff Retirement Benefits Scheme |
| 33 | BAT Kenya Provident -Trust A/C (1991) Fund |
| 34 | Mumias Sugar Company Limited Staff Retirement Benefits Scheme |
| 35 | Kenya Wildlife Service Staff Pension Scheme |
| 36 | East Africa Breweries Limited Staff Provident Fund 2003 |
| 37 | Unilever Tea Kenya limited Staff Retirement Savings Plan |
| 38 | Nation Media Group Staff Retirement Benefit Scheme |
| 39 | Kenya Tea Development Authority Staff Provident Fund |
| 40 | Communications Commission of Kenya (CCK) Staff Retirement Benefit Scheme |
| 41 | Bumburi Cement Limited Staff Retirement Benefits Scheme |
| 42 | Magadi Soda Company Provident Fund |
| 43 | Jomo Kenyatta University of Agriculture and Technology Staff Retirement Benefit Scheme |
| 44 | Mobil Oil Kenya Pension Fund |