A SURVEY OF THE EXTENT OF COMPLIANCE WITH THE RETIREMENT BENEFITS ACT BY RETIREMENT BENEFITS SCHEMES IN KENYA

BY:

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DECLARATION

This Management Research Project is my original work and has never been presented for a degree in any other University

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ABSTRACT

This survey provides a critical analysis of the extent to which Retirement Benefits Schemes in Kenya comply with the Retirement Benefits Act. The rationale of the study is that not all schemes fully comply with requirements of the Act and to analyze the relationship between the level of compliance and financial performance of the schemes. The population consists of 1,380 established retirement benefits schemes. The secondary data from the Retirement Benefits Authority was analyzed using descriptive statistics. The results show that the compliance rate is about 10% and 90% of the compliant schemes are the defined contribution schemes. At a 95% level of statistical significance, the relationship between the extent of compliance and financial performance of retirement benefits schemes is not significant. Hence, the null hypothesis: "The extent of compliance of retirement benefits schemes in Kenya with the Retirement Benefits Act does not significantly influence the financial performance of the retirement benefits schemes," is accepted. The study shows that the difficulties faced by the schemes in complying with the Retirement Benefits Act include: Unremitted contributions, increased costs, short notice to comply, low literacy levels among the trustees, legislative restrictions, and conflict of financial year end, poor administrative procedures and interference from the sponsors/trustees. On specific compliance issues, the defined contribution schemes perform better than defined benefit schemes except in provision of audited accounts where 90% of the defined benefit schemes are compliant compared to 72% of the defined contribution schemes. The study further shows that the disparity in complying with audited accounts can be attributed to the defined benefits sponsors' direct responsibility as opposed to the defined contributions schemes.

DEFINITION OF TERMS

Compliance	When the requirements of the Retirement Benefits Act and regulations are met by a scheme.
Custodial services	Receiving and keeping in safe custody title documents, securities and cash amounts of the scheme
Defined benefit scheme	Means a scheme in which benefit is defined by reference to a formula usually consisting of the member's salary and length of service. However, The investment risk under a defined benefit arrangement is borne by the employer, as the required contribution rate will vary depending upon the seniority of the membership and individual salary progression.
Defined contribution scheme	Contributions are fixed either as percentage of pensionable earnings or as a shilling amount, and a member's retirement benefit has a value equal to those contributions, net of expenses including premiums paid for insurance of death disability risks, accumulated in an individual account with investment return and any surpluses or deficits as determined by the scheme
Fund management services	Advising the scheme, or pooled fund, on asset classes which are available for investment
Investment policy	A written statement of principles governing decisions about a scheme's investments for the purposes of the scheme or pooled fund

ORS	Occupational rules and regulations of 2000
Private-sector schemes	Schemes that are sponsored by private enterprises
Provident fund	Means a fund established for the payment of lump sums and other similar benefits to the employees when they leave employment or to the dependants of employees on the death of those employees
Public-sector schemes	Schemes that are fully sponsored by the government
Scheme	Means a retirement benefits scheme established by the employers for the benefit of the employees including schemes established under written law.

CHAPTER ONE

1.1 BACKGROUND

It is increasingly clear that as the world's population ages, there is growing urgency for countries to pay attention to the care and financial support of their elderly citizens (Paul 1996). In Kenya, family support and other traditional safety nets have become less certain hence the need for a regulation of retirement benefits sector.

In Kenya, parliament enacted a law on August 3rd 1997, known as the Retirement Benefits Act Number 3 of 1997, whose purpose is to establish the Retirement Benefits Authority for the regulation, supervision and promotion of retirement benefits schemes, the development of the retirement benefits sector and for connected purposes.

Section 2 of the Retirement Benefits Act 1997 defines retirement benefits schemes to mean:

> "Any scheme or arrangement (other than a contract for life assurance) whether established by a written law for the time being in force or by any other instrument, under which persons are entitled to benefits in the form of payments, determined by age, length of service, amount of earnings or otherwise and payable primarily upon death, termination of service, or upon the occurrence of any other event as may be specified in such written law or any other instrument".

Retirement benefits schemes, both public and private, provide financial security to the elderly and those unable to work due to early retirement or disability. In Kenya, retirement benefits schemes are categorised as; Pension schemes, Provident funds, Defined benefit, Defined contribution, Existing schemes (those that existed before October 8 2000), New schemes (those established after October 8 2000), Public sector, and Private sector (Nyakundi et al 2002).

The establishment of the Retirement Benefits Authority (RBA) makes the first retirement benefits regulatory body established in the East African region. Following extensive consultations with various stakeholders in the retirement benefits sector, the rules and regulations were finally published on October 8, 2000. Kenya's retirement benefits industry is larger, but in many ways similar, to that in the other East African countries (Odundo 2003).

Prior to the establishment of the Retirement Benefits Act No. 3 of 1997, several existing laws governed the pension sector. These were Income Tax Act Cap 47, Insurance Act, the Judicature Act Cap 8, Trustees (perpetual succession) Act, Cap 164, Trustees Act Cap 167 Public Trustees Act Cap 168 perpetuities and accumulations Act 1984, There were also specific Acts of Parliament which are all now superseded by the Retirement Benefits Act: - these include the N.S.S.F Act, Pensions Act, Local Government Act and Subsidiary legislation such as, the Kenya Railways Corporation Act, Local Government Superannuation Fund Act, Local Authority Provident fund.

Despite the existence of the above laws, lack of strict regulation and proper supervision within the retirement benefits sector often led to underperformance by schemes. As a result of this, 150 schemes have wound up, 341 written complaints have been received by RBA from members of schemes, and it is noteworthy that five of the largest pension schemes in the public sector are under funded, some with funding levels of below 20% (Nyakundi et al 2002). After the enactment of the Retirement Benefits Act 1997, retirement benefits schemes are now required to comply with the rules and regulations as specified in the Act.

The Retirement Benefits Authority's mandate is specifically to: regulate and supervise the establishment and management of retirement benefits schemes, protect the interest of members and sponsors of retirement benefits schemes, promote the development of retirement benefits industry, advise the minister for finance on the national policy to be followed with regard to the retirement benefits industry, implement all government policies relating thereto.

RBA's social agenda includes working towards reducing old age poverty, eradicate ignorance prevalent in the sector by educating the Kenyan workforce on importance of saving for retirement during working life, safeguard the retirement savings of the Kenyan workforce through effective regulation and supervision of schemes and service providers, and to educate the Kenyan workforce to ensure that they do not squander retirement benefits on attaining retirement age (Nyakundi et al 2002).

The economic aspect in the retirement benefits industry is of paramount importance considering the industry funds are approximately KSh. 140 billion, an equivalent of 20% of Kenya's GDP (Gross domestic product). RBA's economic agenda is to encourage greater saving for retirement thereby increasing the country's savings rate from the current 7.9% to a target of 25 - 30%, increase the asset base of the retirement benefits industry through encouraging adoption of prudent management principles, spur development of the country's capital markets by ensuring professional investment of scheme funds, provoke development of new capital market instruments by requiring schemes to diversify their investment portfolio (Nyakundi et al 2002).

For the authority to be successful in the above-mentioned agendas, the retirement benefits schemes must attain acceptable levels of compliance with the act. Has RBA made any significant steps in that direction? This is the critical question addressed in this study.

Schemes are required to comply with the law by submitting the requisite documents as required under the act and the regulations. The documents that are mandatory for compliance are: revised and amended trust deed and rules ensures all the illegal and, or, repressive clauses are not included. Duly signed fund management agreement must be forwarded to the RBA. This ensures that scheme trustees, use professional advice when making investment decisions. Duly signed custodial services agreement is a requirement that ensures separation of roles is adhered to by the scheme trustees, hence the safe custody of scheme assets. Actuarial report is a must for any retirement benefits scheme because it determines the scheme's solvency level or financial viability. Annual audited reports show the scheme's financial performance within the immediate past financial year and ensures transparency and accountability by the scheme trustees. Non-compliance exposes schemes to possible deregistration as provided for in section 28(1) (c) of the Retirement Benefits Act.

It is important to note that adherence to compliance is the main reason why pensions reforms worldwide, have been successful. RBA is expected to ensure successful compliance by schemes in Kenya (Odundo, 2003). Chile's reform model was one of the most successful pension reforms. The reform model that was adopted privatised Chile's pension system and created individual accounts for the pensioners (Holzman and Stiglitz 2002).

The employee retirement income security act of 1974 (ERISA) is a federal law in the USA that sets minimum standards for pension plans in private industry. Like the RBA's compliance requirements in the Kenyan scenario, the ERISA does not require any employer to establish a pension plan. It only requires that those who establish plans must meet certain minimum standards (Curry, 1998).

1.2 Retirement Benefits Schemes In Kenya

An underlying factor is the untapped potential, considering that only an estimated 11% of the labor force is covered by the formal retirement benefits sector (Nyakundi et al 2002). The retirement benefits schemes in Kenya that have applied for registration with the RBA, are approximately 1380. On October 8, 2000 when RBA was officially launched, there were approximately 700 active schemes. The largest retirement benefits schemes in Kenya have up to 32,000 members, the smallest have less than 5 members, and most schemes have 100 to 1000 members. Since the introduction of RBA, the numbers of schemes that are applying for registration with RBA are steadily growing. The private sector has more retirement benefits schemes compared with the public sector. The public sector has got fewer, but very large schemes. There is also preference towards defined contribution schemes against defined benefit schemes. Although the largest retirement benefits scheme in Kenya is a provident fund, the sponsors have also shown preference for pension schemes (Nyakundi et al 2002).

In Kenya like most African countries, pension programs were for a long time associated with multinational companies and government ministries. However, the concept of saving for retirement has become phenomenal to the extent that a guaranteed pension program with a prospective employer is a major influence on one's choice of Jobs (Kagagi et al 2001).

1.3 Statement Of Problem

Retirement benefits schemes in Kenya have had difficulties in fully complying with the Retirement Benefits Act two years after the grace period given for full compliance elapsed (Odundo, 2003). Since the enactment of the Retirement Benefits Act, many sponsors and their retirement benefits scheme trustees have made efforts towards compliance with the Act and its regulations. Despite the fact that there were schemes already existing before the enactment of the Retirement Benefits Act, the overall compliance-level of the retirement benefits schemes has been unknown (prior to this research). Some schemes have wound up, others have merged or converted to individual pension plans, and quite a number are in liquidation. The Retirement Benefits Authority, through the research department continuously carries out training seminars, pensioners' surveys, print and media advertisements, public education, all aimed at among others, encouraging retirement benefits schemes to comply with the Act and its regulations. No comprehensive study has been carried out to analyse the level or state of compliance of retirement benefits schemes with the Retirement Benefits Act, 1997. This study will therefore endeavour to fill the gap and help the regulatory authority identify the areas of non-compliance and the underlying reasons.

1.4 Objectives

The objectives of the study will be:

1. To find out the extent of compliance of retirement benefits schemes in Kenya with the requirements of the Retirement Benefits Act.
2. To identify the difficulties faced by the retirement benefits schemes that have not fully complied with the requirements of the Act.
3. To find out the relationship between the extent of compliance and financial performance of retirement benefits schemes.

1.5 Importance Of The Study

The study and the findings of this research will be useful to the stakeholders and other professional organisations associated with the retirement benefits industry. These include:

The Ministry of finance, the parent ministry of RBA, will have an insight into the actual situation as regards the intended pension reform in the retirement benefits sector. Pension friendly policies should be introduced to revamp the retirement benefits sector.

The Retirement Benefits Authority can use the study results to enhance their efforts intended to assist the retirement benefits schemes in Kenya achieve the desired level of compliance.

Scheme trustees will be able to measure their scheme performance against the results illustrated on the levels of compliance.

Service providers like fund managers, custodians, actuaries, auditors, administrators and lawyers will benefit by way of selling their services to the retirement benefits schemes.

The director of pensions in Kenya will find the study useful in his/her day-to-day operations as he/she tries to introduce some compliance guidelines to the government pension schemes such as the civil servants pension scheme, armed forces, parliamentary scheme etc...

CHAPTER TWO

LITERATURE REVIEW

2.1 The Concept Of Compliance

Compliance is the act of complying. Complying is yielding to a desire, demand, or proposal. Therefore, Compliance is acting according to certain accepted standards (Webster's revised dictionary - 1913).

Compliance is part of our daily lives because we all have to conform to some expected standards in our activities, whether social or economic. According to Clarendon (2003), a great man is "A man of few words and of great compliance". Standards worldwide are set and compliance is expected in order to make the world a better place to live. When members of parliament are elected in Kenya, they promise to comply with the wishes of the electorate. At the end of five years they are judged according to the fulfillment of the electorates' wishes.

The International Standards Organization (ISO) is the source of more than 13700 international standards for business, government and society. It is a network of national standards institutes from 145 countries working in partnership with international governments, industry, business and consumer representatives (ISO.com 2003). When an organization conforms to the requirements as set out by the ISO, it has complied and will normally receive a compliance certificate from the country representative of the ISO.

The Kenya Bureau of Standards (KBS) ensures that any product or service offered in Kenya meets the standards of quality as laid out in the KBS guidelines.

A study published by Nielson on the usability guideline compliance by web users found that over the last 2 years, the average compliance with established usability guidelines increased by 4%. His findings suggested that if this rate of guideline compliance improvement is sustained, then the ideal of 90% guideline compliance will be attained in 2017 (Nielson, 2002).

The employee retirement income security act of 1974 (ERISA) is a federal law that sets minimum standards of compliance for pension plans in private industry. For example, if your employer maintains a pension plan, ERISA specifies when you must be allowed to become a participant, how long you can be away from your job before it might affect your benefits, and whether your spouse has a right to part of your pension in the event of your death. Most of the provisions of ERISA are effective for planned years beginning on or after January 1, 1975. ERISA does not require any employer to establish a pension plan. It only requires that those who establish plans must meet certain minimum standards. The law generally does not specify how much money a participant must be paid as a benefit (Tom, 1998).

According to curry, Internal Revenue Service (IRS) in the USA is currently planning and conducting research on several types of private pension plans to determine the prevalence and types of non-compliance. After implementing initiatives to improve compliance, IRS plans to once again collect and analyse similar compliance data to determine the effectiveness of its initiatives. In its on going research efforts, IRS is adopting lessons from its prior compliance study. IRS conducts audits and other enforcement and research activities to ensure that tax qualified pension plans satisfy applicable requirements in exchange for preferential tax treatment. Not only does it regulate the schemes, but it also gives them incentives to ensure maximum compliance (Curry, 1998).

2.2 Compliance Requirements For Retirement Benefits Schemes In Kenya

According to Nyakundi, Head of compliance department at the Retirement Benefits Authority (RBA), compliance refers to the achievement of the standards set by the Retirement Benefits Act, for retirement benefits schemes in Kenya. The RBA supervises and regulates scheme activities to ensure that qualified retirement benefits schemes meet all the requirements within the Retirement Benefits Act. The RBA compliance guidelines that are used to determine the accepted level of compliance maybe summarized as follows:

Revised trust deed and rules (Section. 17-20) provides that retirement benefits schemes must amend and revise their trust deeds as per the guidelines specified in the quoted sections of the Act. The trust deed and rules is the constitution of the scheme. It sets out the names of the sponsor, trustees and their duties and powers. The rules are operational details of the retirement benefits schemes. They set out eligibility to membership benefits, contributions, persons legible for receiving benefits, conditions of eligibility to benefits, and how disputes can be solved.

Investment management agreement (Section. 37) provides that scheme trustees must appoint a fund manager, who must be registered with RBA. A duly signed contractual fund management agreement should be submitted to RBA. Fund managers are expected to; advise the trustees on available investment vehicles and expected risk and returns for each vehicle, make tactical asset allocation decisions based on the strategic asset allocation contained in the investment policy, undertake research at company, sector and country levels, and to manage the portfolio so as to ensure liquidity is available to meet the retirement benefits scheme needs. The managers are also expected to provide accurate and timely periodic reports to the trustees and the Authority on holdings and transactions, and to provide the Authority with any information that may jeopardize members and sponsor benefits

Custodial agreement (Section. 10) provides that scheme trustees must appoint a custodian, who must be registered with RBA. A duly signed contractual custodial agreement should be submitted to RBA. Custodians are corporate institutions that have capacity and competence to provide safe custody of securities, financial instruments and documents of title of the assets.

The duties to schemes include; holding all the assets of the scheme including cash, securities, title documents and deeds, settling all transactions in accordance with the instructions received from the manager, receive and credit retirement benefits scheme accounts with dividend, interest and other income due to them, and to provide accurate and timely periodic reports to trustees and the Authority on holdings and transactions.

Annual audited accounts (Section. 28 (I)) provides that a scheme must keep proper books of account and records, and prepare annual audited financial statements in the prescribed format (table S). Auditors are expected to inspect the books of accounts of retirement benefits schemes, give an independent opinion on the financial position of the retirement benefits scheme, disclose issues that may jeopardise the benefits of members and sponsors, and ensure that the retirement benefits schemes comply with the retirement benefits rules and regulations.

Actuarial valuation/review/certificate (Section. 31) provides that trustees must submit Actuarial valuation/review/certificate to the RBA. The actuarial report is the guide to determine the solvency of a retirement benefits scheme. Actuaries investigate and evaluate the financial condition of the retirement benefits schemes to determine the retirement benefits schemes' solvency. Actuaries provide necessary advice on the schedule of contributions, pension formula, benefits to be paid out whenever a member leaves, approve the designs (defined benefit or defined contribution) of new schemes. A defined benefit scheme must be evaluated every three years by an actuary, and a defined contribution scheme must be evaluated every five years.

2.3 Retirement Benefits Schemes In Kenya: The Genesis Of Retirement Benefits Authority

More and more often questions are being asked such as, "Can't pension schemes be abolished? Or "Isn't there some alternative to pension programs? Or "Wouldn't I be better off if I quit pension's savings and invested my funds in private investments like in the stock market or real estate? These questions are usually prompted by concern over the seemingly endless rise in pension scheme requirements, dissatisfaction with the benefits a particular individual expects to receive in relation to his tax payments, misunderstanding about how the program actually works, general apathy for any large governmental program, fear that the present government run schemes are going bankrupt and will be unable to make good their promises (Prieto 1997).

The Retirement Benefits Act was enacted in 1997 as part of the on-going reform process in the financial sector in order to bring the retirement benefits industry under a harmonized legislation and to address the many problems that had hitherto faced the industry. The new law has a dual objective: first, to protect the interests of members and sponsors of retirement schemes so as to ensure that members receive a reasonable retirement income and that the sponsor's investment in its human resource is safeguarded; second, to spur Kenya's economic growth through enhancing the mobilization of domestic savings and capital formation as well as deepening the money and capital markets. The Retirement Benefits Authority is mandated to oversee the enforcement of this law (Odundo 2003).

2.4 Problems In The Retirement Benefits Sector: The Need For Compliance

In Kenya like the other poorest countries, pension reform is primarily a public sector pay and employment issue since coverage is so low and the wage economy so small, that pension systems cannot possibly be the answer to old age poverty. The Kenyan government, like other governments was reluctant to address this difficult problem, preferring to give in to public sector workers' demands for generous deferred compensation. Even where employees contribute, those contributions have in effect gone back into paying their current salaries, as the reserves have primarily financed public sector current expenditure. Strong public sector corporations, and powerful but corrupt public sector agencies that "manage" these funds, will make this problem difficult to tackle (Holzman and Stiglitz 2001).

Some problems that the pension sector in Kenya has faced in the past, and which led to the enactment of the Retirement Benefits Act include:

Unfunded schemes: This is particularly prevalent in the public sector where retirement benefits are paid out of normal recurrent cash flows. In the long run this arrangement places extreme pressure on a firm's financial position and eventually it may be unable to meet its obligations to retirees. Examples include the civil service pension scheme in the Kenya (Odundo et al 2002).

Poor investments: This is a situation where schemes collect contributions from workers but place them in such low yielding investments that the schemes cannot even meet their administration expenses. In other cases the market value of the assets is substantially less than what the scheme paid for them such that when they are liquidated member's benefits are eroded; examples include the single largest provident fund in Kenya. The capital markets performance in Kenya has shown declining tendencies in recent years making it unviable to opt for the investments based at the capital markets. Fund managers must be very cautious when trading in this potentially turbulent stock exchange. There have been reports of poor returns on the pension funds due to the poor trading at the local stock exchange (Daily Nation 06/05/2002 P. 15).

Mis-appropriation of scheme funds: Lack of awareness amongst members and the previous absence of a regulatory framework led to undetected cases of outright theft of member's funds by trustees and other parties. In his critique of pension management in Kenya, Thumbi (1996) highlighted the fact that scheme trustees had more power than the Trustee Act allowed. They could thus invest scheme funds the way they deemed fit, an act that definitely put funds at risk. The investment guidelines as provided in the Retirement Benefits Act should address this problem.

Diversion of scheme funds to sponsor's business: Some companies collect contributions from members but, instead of investing them for the benefit of scheme members, plough them back into the company for day-to-day operations thereby denying the members the income. A situation like this one also exposes members to the double jeopardy of losing their jobs plus their retirement benefits in case of collapse of the sponsoring company.

Poor administration of schemes: This includes lack of up to date membership records and accounts, resulting in long delays in payment of benefits to retirees. In many cases, trustees have abdicated their role as the ultimate guardians of the scheme to other agents and as a result have failed to safeguard the rights of the scheme members (Odundo et al 2002).

2.5 Penalties And Sanctions For Non-Compliance

The Retirement Benefits Authority (RBA) is empowered to carry out inspections (Act S41-45) on any scheme. These maybe routine, periodic inspections or problem-related inspections. After inspection, a report and recommendation on the scheme must be submitted. The penalties that may be invoked by the RBA include: 2 years imprisonment and/or Kenya shillings 500,000.00, for failure to comply, hindering, obstructing or giving false information to the RBA Inspector. 3 years and/or 500000.00, for refusal when summoned. 2 years imprisonment or Kshs 500,000.00 for non-registration. Two-year imprisonment and/or Kshs 500,000.00, for trustees failing to remit scheme accounts within four months after financial year-end.

The Chief Executive Officer (CEO) of RBA may appoint an interim scheme administrator for 3 reasons: Non submission of accounts or submitting false accounts, false or misleading information, if the CEO of RBA is aware of any special facts or interest of members or sponsor. After a maximum of 12 months the interim administrator should subsequently recommend revival or deregistration of the scheme. A scheme may be deregistered for 3 reasons: Giving false information, being wound up, or non-compliance with the law (Retirement Benefits Act, Amendment bill, 2002 P.2).

2.6 Retirement Benefits Act Compliance Vs Financial Performance

Pension systems in most low-income countries (countries with a per capita income less than US$700 per year) Kenya included, are in infant stage. As can be expected, owing to the high percentage of labor force in agriculture, (on average, nearly 70%), most systems in sub-Saharan Africa are marginal in economic terms, often covering less than 1.5% of GDP on pensions. These countries are demographically young, with an old age dependency ratio of 4.4% in Sub-Saharan Africa (Holzman 2001).

The economic aspect in the retirement benefits industry is of paramount importance considering the industry funds are approximately KSh. 140 billion, an equivalent of 20% of Kenya's GDP. (Gross domestic product). RBA's economic agenda is to encourage greater savings for retirement, thereby increasing the country's savings rate from the current 7.9% to the target 25 -30%, increase the asset base of the retirement benefits industry through encouraging adoption of prudent management principles, Spur development of the country's capital markets by ensuring professional investment of scheme funds, provoke development of new capital market instruments by requiring schemes to diversify their investment portfolio (Nyakundi et al 2002).

Structural reforms such as adopting the individual pension plan option instead of complying with the RBA requirements may be appropriate, since, the option of unfunded "pay as you go" schemes such as the civil service pension scheme, have failed to meet the pensioners' demands when need arises. This would provide a retirement benefits saving vehicle for those not in occupational schemes and the possibility of encouraging the Kenyan workforce in the informal sector to join individual pension schemes may be a good option (Daily Nation 06/05/2002 P. 15).

For the Authority to be successful in the above-mentioned agenda, the retirement benefits schemes must attain acceptable levels of compliance with the Retirement Benefits Act. Has RBA made any significant steps in that direction? This is the critical question addressed in this study.

CHAPTER THREE

3.0 RESEARCH METHODOLOGY

3.1 Research Design

The survey design was used in this study.

3.2 Population Of The Study

The population of the study comprised of the 1380 retirement benefits schemes regulated by the Retirement Benefits Authority as per the RBA records for the period 31/12/2000 to 31/12/2002

3.3 Sampling Technique

The population of 1380 schemes regulated by Retirement Benefits Authority was used in this study. This is the most effective and representative method for this research survey.

3.4 Data Collection

Secondary data derived from the RBA `records for the period 31/12/2000 to 31/12/2002 were used. The researcher analysed data collected from the records of retirement benefits schemes presented to RBA as per appendices 1 to 5.

3.5 Data Analysis

Secondary data collected from the Retirement Benefits Authority file records was coded and tabulated. For purposes of determining the extent of compliance of the schemes, all retirement benefits schemes were categorised as follows: defined benefit or defined contribution. Each scheme in the above categories was analysed and categorised on the basis of: submission of the following documents: Amended trust deed and rules, investment management agreement, custodial services agreement, annual audited accounts, actuarial report/review.

All the correspondence between the RBA and the schemes that were not complying was scrutinised and the difficulties faced by the schemes in their efforts to comply. Percentages of the various categories of difficulties faced with retirement benefits schemes were used to indicate the magnitude of each difficulty. These difficulties were classified as: Unremitted contributions, increased costs, short notice to comply, low literacy levels among trustees, legislative restrictions, conflict of financial year end, poor administrative procedures, interference by sponsor and trustees.

The retirement benefits' scheme fund values for the years ending 2000 and 2001 accounts were used to measure the financial performance of the retirement benefits schemes. This was then analyzed against the compliance levels as per the submissions of the amended trust deed and rules, investment management agreement, custodial services agreement, annual audited accounts, actuarial report/review. Regression analysis was used to find the significance of the relationship between the extent of compliance and financial performance of retirement benefits schemes, that is, defined benefit and defined contribution schemes. The null hypothesis used for this test was "The extent of compliance of retirement benefits schemes in Kenya with the Retirement Benefits Act does not significantly influence the financial performance of the retirement benefits schemes." While the alternative hypothesis for this test was "The extent of compliance of retirement benefits schemes in Kenya with the Retirement Benefits Act does significantly influence the financial performance of the retirement benefits schemes."

The above investigations were to assist the researcher answer the following questions: What is the overall level of compliance of retirement benefits schemes in Kenya as per the requirements of the Retirement Benefits Act? Does the scheme design have any effect on the schemes ability to comply? If so, how do the different designs of schemes compare in compliance levels? What are the difficulties faced by the retirement benefits schemes in their efforts to comply with the requirements of the Act? How does the extent of compliance affect the schemes' financial performance?

CHAPTER FOUR

4.0 DATA ANALYSIS AND FINDINGS

Retirement benefits schemes provide financial security to the elderly and those unable to work due to early retirement or disability.

The Retirement Benefits Act was enacted in 1997 as part of the on going reform process in the financial sector in order to bring the retirement benefits industry under harmonized legislation and to address the many problems that had hitherto failed the industry (Odundo 2003).

The study set to find out the following objectives for the period 31/12/2000 to 31/12/2002;

1. The extent of compliance of retirement benefits schemes in Kenya with the requirements of the Retirement Benefits Act.

2. The difficulties faced by the retirement benefits schemes that have not fully complied with the requirements of the Act.

3. To find out the relationship between the extent of compliance and financial performance of retirement benefits schemes.

There are two broad structures of retirement benefits schemes, namely defined contribution and defined benefit schemes.

A defined contribution scheme is a scheme in which the benefits are directly determined by the value of contributions, net of expenses including premiums paid for insurance of death, disability risks, accumulated in an individual account with investment return and any surpluses or deficits as determined by the scheme.

Defined benefit scheme is one in which the benefit is defined by reference to a formula usually consisting of such factors as the members salary and length of service. However, the investment risk under a defined benefit arrangement is borne by the employer, as the required contribution rate will vary depending upon the seniority of the membership and individual salary progression (Retirement Benefits Act 1997).

The study found that out of the total population of 1380 retirement benefits schemes as at 31/12/2002, 87% were defined contribution and 13% were defined benefit. The preference for most schemes' sponsors for defined contribution scheme over defined benefit schemes is due to the fact that defined contribution schemes do not promise a specific amount of future benefits; thus reducing the level of risk exposure unlike the sponsors of defined benefit schemes. The employees in the defined contribution arrangement bear the risk of investment performance: benefits will be high if the member's contributions are invested well, or low if the contributions are invested poorly (Nyakundi et al 2002).

4.1 The Extent Of Compliance With The Retirement Benefits Act By The Retirement Benefits Schemes In Kenya.

Compliance generally entails the act of conforming to certain accepted standards. When the Retirement Benefits Act was enacted in 1997 and the Retirement Benefits rules and regulations published in October 2000, a new era dawned on the retirement benefits sector. All the retirement benefits schemes in Kenya are required to conform to the standards set within the Retirement Benefits Act, and Rules and Regulations 2000. Compliance by the retirement benefits schemes in Kenya with the Retirement Benefits Act, is supervised by the Retirement Benefits Authority. The Retirement Benefits Authority supervises and enforces compliance by setting out the compliance guidelines that must be met by all schemes. Once a scheme complies with the key compliance requirements, Retirement Benefits Authority issues a registration certificate to the scheme. This certificate signifies conformity with the Retirement Benefits Act, by a retirement benefits scheme. The requirements that constitute compliance according to the Retirement Benefits Act are submission of accounts (from year end 2000), investment management agreement, custodial agreement, actuarial review for defined contribution schemes, and actuarial report for defined benefit schemes. Compliance with schemes is expected to introduce efficiency and better financial performance by retirement benefits schemes in the long run.

4.2 Overall Compliance With The Retirement Benefits Act.

The Retirement Benefits Act (1997) requires that retirement benefits schemes submit all the requisite documents for certification by Retirement Benefits Authority (RBA). A survey on the records held by the Retirement Benefits Authority showed varying levels of compliance for each requirement. According to the research survey, only 10% of the retirement benefits schemes had complied with all the requirements as specified in the Retirement Benefits Act (1997) as at 31/12/2002. Defined contribution schemes constitute 90% of the fully compliant schemes. Defined contribution schemes by design are fully (100%) funded and cheaper to manage, because the sponsor is not obliged to meet the schemes' liabilities. The trustees find it much easier to comply since they only deal with what is in the fund account. Defined benefit schemes by design provide a lot of technical and financial challenges to the sponsors, who are fully liable for any shortfall of any nature that may befall the scheme.

4.2.1 Investment Management Agreement

The research survey found out that compliance with the requirement that all retirement benefits schemes appoint a fund manager and submit an investment management agreement is 51.8%. Schemes are still trying to come to terms with this requirement, with some finding it unnecessary and costly, while some are still bound by contracts that they had signed prior to the advent of Retirement Benefits Act. Defined contribution schemes had a higher compliance of 53.4% compared to the Defined benefit schemes that had compliance of 45%. The defined contribution schemes are usually 100% funded unlike the defined benefit schemes (usually 80% and below). This makes the defined contributions schemes fund performance easier to monitor by the fund managers.

4.2.2 Custodial Agreement

The overall compliance of submission of custodial agreements by the retirement benefits schemes is 55.3%. The custodial services charges are very high according to the findings, hence, slowing down the rate of compliance. Some schemes just have a single policy document for their guaranteed fund and are not keen to engage the services of a custodian. Defined contribution schemes had a relatively higher compliance of 67.5% over the defined benefit schemes at 45.5%. Defined benefit scheme sponsors prefer to remit contributions annually or bi-annually. The defined contribution schemes remit the funds more regularly, hence, facilitating faster contractual commitments. The cost of custodial services is prohibitive for most sponsors; hence the lower compliance levels by the defined benefit schemes

4.2.3 Amended Trust Deed & Rules

Submission of amended trust deed and rules is the least complied with requirement, at a paltry 15.3%. Defined contribution schemes had submitted 90% of these amended trust deed & rules. The submission of amended trust deed & rules has the lowest level of compliance despite this requirement having existed before the advent of RBA. This position is due to scheme trustees' lack of understanding about what the Retirement Benefits Act 1997, and rules & regulations 2000 entails. It requires legal expertise.

4.2.4 2000 Audited Accounts

The 2000 financial year audited accounts are accepted as the benchmark for compliance as per the Retirement Benefits Act 1997 requirement for submission of scheme accounts. Submission of scheme audited accounts is the most complied with requirement with overall compliance of 75%. Defined contribution schemes had compliance of 72.6% while defined benefit schemes had a higher compliance of 90.9%. This is due to the fact that employers arrange for the scheme accounts for the defined benefit schemes to be processed together with the sponsors' annual audit reports.

4.2.5 Actuarial Report And Reviews

The overall compliance in this area is 26%, which is quite low. Cost seems to be the prohibitive factor since actuaries charge relatively higher than auditors and other service providers. Most defined contribution schemes trustees do not see the value of an actuarial review, not only due to the simple design of the schemes, but they are not under any obligation to pay out what they do not have in the fund accounts. The defined contribution actuarial reviews submitted were higher at 47.1%. The percentage of defined benefit schemes that have submitted actuarial reports as required is 4.7%. The technical nature of the defined benefit scheme design requires not only more time to process the report, but it must be replaced every 3 years according to the Retirement Benefits Act (1997).

4.3 The Difficulties Faced By The Retirement Benefits Schemes That Have Not Fully Complied With The Retirement Benefits Act.

Summary of difficulties faced by retirement benefits schemes in complying with the Retirement Benefits Act.

	DIFFICULTIES	PERCENTAGE
1	Unremitted contributions	15%
2.	Increased costs	20%
3.	Short notice to comply	16%
4	Low literacy levels among trustees	10%
5.	Legislative restrictions	6%
6.	Conflict of financial year end	12%
7	Poor administrative procedures	14%
8	Interference by sponsor/trustees	7%

Source: RBA Research Data (31/12/2000 - 31/12/2002).

4.3.1 Unremitted Contributions

The sponsor is supposed to remit the member's monthly contribution to the custodian on or by the 10th day of every month. Where it is non-contributory the sponsor periodically sets aside a certain sum of money, which is then forwarded to the custodian. However, some sponsors fail to remit contributions to the custodians or sometimes accumulate large amounts in arrears. This problem was cited by 15% of the respondents. It interferes with the fund manager's decisions since they cannot allocate the funds to the assets as required. Scheme audit reports get affected due to these delays. Actuarial valuations are also delayed because of inadequate funding levels.

4.3.2 Increased Costs

20% of the schemes complained about increased costs resulting from the Retirement Benefits Act compliance requirements. They reported exorbitant fees charged by Auditors, Fund Managers, Actuaries, Custodians and Administrators. These increased costs may interfere with the retirement benefits schemes' funding level, especially when the schemes fund values are below three million Kenya shillings.

4.3.3 Short Notice To Comply

16% of the schemes complained about the short period given by Retirement Benefits Authority for compliance. These are schemes which needed to offset certain offshore assets, real estate & property, so as to comply with the investment guidelines. Some schemes have requested the Retirement Benefits Authority for an extention of the compliance deadline.

4.3.4 Low Literacy/Awareness Level Among Trustees

Some trustees are ignorant of the contents of the Retirement Benefits Act (1997) and the rules & regulations 2000. This accounts for 10% of the difficulties faced by retirement benefits schemes. Most scheme trustees are resistant towards accepting the separation of roles brought by the Retirement Benefits Act such as, appointment of fund managers, custodians, auditors, actuaries and other service providers. They argue that they have always managed the schemes and do not need professional advice. The amended trust deed and rules requirement's compliance level is 15.3% partly because most trustees do not understand legal implications of this requirement.

4.3.5 Legislative Restrictions

6% of schemes cited legislative restrictions as the reason for non compliance. Prior to the advent of Retirement Benefits Authority, some schemes had executed binding contracts with previous service providers like Insurance companies. Withdrawing as part of their efforts to comply attracts stiff penalties that would have a negative impact on the scheme funds. Some public schemes and superannuation funds are governed by separate acts of parliament and are unable to comply due to conflicts with the Retirement Benefits Act.

4.3.6 Conflict Of Financial Year End

12% of schemes reported conflicting financial year ends with fund managers, insurance companies and scheme sponsors. This leads to delays in submission of annual audits since the investment returns, contributions due, and expenses, must be reflected in the scheme accounts as specified in the Retirement Benefits Act.

4.3.7 Poor Administrative Procedures

14% of the trustees complain about taking over management of retirement benefits schemes from previous trustees, who had made imprudent decisions, especially regarding scheme investments. Others took over schemes from trustees who had no proper record keeping systems, and sorting out the mess in such retirement benefits schemes will take time. Some schemes have been in existence for more than 10 years but have never had any fund audit or inspection carried out.

4.3.8 Interference By Sponsor/Trustees

7% of the schemes are unable to comply because some sponsor trustees are too keen to protect their personal interests that may conflict with the schemes' interests. These trustees choose service providers who are friendly and personally known to them, because it is easier to manipulate them in decision making

4.4 The Relationship Between The Extent Of Compliance And Financial Performance Of Retirement Benefits Schemes

Using the null hypothesis "The extent of compliance of retirement benefits schemes in Kenya with the Retirement Benefits Act does not significantly influence financial performance of retirement benefits schemes in Kenya". The R, the Pearson correlation coefficient of determination (R^2) and the significant levels were used for acceptance or rejection of the null hypothesis.

(H_o) = Compliance Vs Financial Performance for defined benefit schemes.

Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.220[a]	.048	-.012	5149544

a. Predictors: (Constant), ACTRPT DB, TDEED EXECUTED, 2000ACCOUNTS, CUSTAGREEMNT, FMAGEMENT

ANOVA[b]

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	1.1E+14	5	2.1E+13	.805	.550[a]
	Residual	2.1E+15	79	2.7E+13		
	Total	2.2E+15	84			

a. Predictors: (Constant), ACTRPT DB, TDEED EXECUTED, 2000ACCOUNTS, CUSTAGREEMNT, FMAGEMENT

b. Dependent Variable: Fundvalue 2001-2000

(H_o) = Compliance Vs Financial Performance for defined contribution schemes.

Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.229[a]	.053	-.007	5138204

a. Predictors: (Constant), ACTRVDC, TDEED EXECUTED, 2000ACCOUNTS, FMAGEMENT, CUSTAGREEMNT

ANOVA[b]

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	1.2E+14	5	2.3E+13	.878	.500[a]
	Residual	2.1E+15	79	2.6E+13		
	Total	2.2E+15	84			

a. Predictors: (Constant), ACTRVDC, TDEED EXECUTED, 2000ACCOUNTS, FMAGEMENT, CUSTAGREEMNT

b. Dependent Variable: Fundvalue 2001-2000

The relationship between the extent of compliance and financial performance of retirement benefits scheme is positive but weak. The correlation coefficient is .220 for defined benefit schemes (DB), and .229 for defined contribution schemes (DC).

The coefficient of determination shows that the percentage change in financial performance explained by compliance was 4.8% for defined benefit schemes and 5.3% for defined contribution schemes. Hence 95.2% (DB) and 94.7% (DC) financial performance is affected by other factors but not compliance, these could possibly be: the economic environment of the country, redundancies, retrenchments, and this affects the funding levels negatively, hence reflecting poor performance at the retirement benefits schemes' year end. The fund managers and the kind of investment decisions made may have a higher impact on the financial performance than the overall compliance level of the retirement benefits schemes.

At a 95% level of statistical significance, the relationship between the extent of compliance and financial performance of retirement benefits schemes is not significant at 0.550[a](DB) and 0.500[a](DC). Hence the null hypothesis is accepted.

Compliance with the Retirement Benefits Act is a government policy meant to regulate and streamline the operations of the retirement benefits schemes in Kenya. The relationship between the extent of compliance and financial performance of retirement benefits schemes in Kenya is expected to be highly significant once higher compliance levels have been achieved in the sector. After the schemes have fully complied with the requirements of the Retirement Benefits Act, they will be expected to shift their focus from legislative compliance, to the more business oriented objectives of high financial performance in the long run.

CHAPTER 5

5.0 SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

As argued out by Curry (1998), the idea of reforming retirement benefits sector to deliver intended service effectively has become a major concern to all nations around the world. Kenya has not been left behind in these reforms as witnessed by the enactment of the Retirement Benefits Act (1997) and rules & regulations. Retirement benefits schemes hold substantial sums of money and play a major role in financial systems and economic development of most developed and developing countries. In Chile, retirement benefits schemes were the largest investors, managing a total of U.S. $ 32 billion or 44% of the GDP by the end of 1997. This was achieved after the country introduced pension reforms that started in 1981. Compliance by the Retirement benefit Schemes (90%) played a pivotal role in this success story (Holzman & Stiglitz 2002).

RBA estimates the retirement benefits sector holds assets of approximately KSh. 140 billion or 23% of the country's GDP (Nyakundi et al 2002). With proper management and supervision by Retirement Benefits Authority, this sector can grow to reach the level of Chile. It is expected that the relationship between compliance and financial performance will be more significant when the extent of compliance by schemes with the Retirement Benefits Act is much higher than illustrated in this research survey.

Prior to the enactment of the Retirement Benefits Act (1997) and the creation of Retirement Benefits Authority as a regulator, the retirement benefits sector did not operate under any specific standards and guidelines. Lack of regulatory supervision led to; Misappropriation of scheme funds by trustees, diversion of scheme funds to sponsors business, poor investments decision resulting to losses, poor administration of schemes, failure to remit contributions leading to low funding levels. Indeed, effective supervision of retirement benefits schemes leads to improved compliance by schemes with the Retirement Benefits Act, resulting to efficient schemes that are able to meet obligations to their members on retirement. Considering the relatively short period that the Retirement Benefits Authority has been in existence, it is noteworthy that the retirement benefits sector has improved from 1.5% compliance as at 31/12/2000 (RBA news 2002), to 10% compliance level as at 31/12/2002.

5.1 Recommendations

To improve the extent of compliance with the act by retirement benefits schemes in Kenya, the key stakeholders, namely scheme trustees and the Retirement Benefits Authority, can contribute to a better working environment for the benefit of the retirement benefits sector.

5.1.1 Retirement Benefits Schemes Boards Of Trustees

Where trustees interfere with the running of the scheme or make bad decisions, professional and external administrators should be hired.

Where cost is prohibitive, schemes should carry out "Beauty parades" or even advertise on the print and electronic media for service providers in order to compare and pick the best.

The smaller schemes can transfer their members' benefits to individual pension schemes, to avoid the difficulties faced by these schemes in complying with the Retirement Benefits Act.

The scheme boards of trustees should be more flexible in composition, by including younger and preferably, highly qualified individuals to provide the schemes with the much needed professionalism and informed outlook.

Schemes should consult actuaries on a continuous basis to avoid crisis management when retrenchments or redundancies occur.

5.1.2 The Retirement Benefits Authority

Should regulate more of the service providers e.g. scheme administrators, so as to ensure that only reputable administrators manage the schemes

RBA should provide a guide to professional fees charged by all service providers. This is to protect the smaller schemes with scheme funds that are below three million shillings.

More aggressive marketing of the individual pension plans in order to give prospective members the much needed alternative to the restricted occupational schemes.

The period given to schemes for submitting annual audits should be increased to six months in order to accommodate the conflict of year ends with sponsors and service providers.

More actuarial service providers should be registered.

Legal consultants can be hired on adhoc basis by Retirement Benefits Authority to provide expert advice on scheme trust deed & rules to improve legal compliance.

Retirement Benefits Authority as a regulator should prosecute scheme trustees who do not make any efforts to comply, so that the other players in the industry can take compliance with the Retirement Benefits Act seriously.

The actuarial valuation for defined contribution schemes should be more relaxed and if possible, this requirement should be withdrawn.

Retirement Benefits Authority's public campaign should emphasize the importance of financial performances v/s compliance in the long run.

5.2 Limitations Of The Study

Too many records had to be scrutinized in order to filter the information required for this survey research.

Some guidelines were not followed to the book by retirement benefits schemes, such as the format of reporting scheme's audited accounts. This made the research more time consuming than planned.

The researcher had to carry out the survey research during official working days and hours, due to the fact that the records are kept under the custody of a member of staff who works from 8.15 - 17.00 hrs, Monday to Friday.

5.3 Conclusion

Compliance is the state of conforming to standards set by the regulatory body or authority. Compliance guidelines and requirements set by the Retirement Benefits Authority are standards that retirement benefit schemes are expected to adhere to, before they can be regarded as compliant and issued with a certificate confirming compliance. It is against the law for a scheme to exist without complying with the Retirement Benefits Act.

The objectives of the research survey were accomplished as follows:

The research study revealed that only 10% of the 1380 retirement benefits schemes in Kenya have fully complied and issued with the Retirement Benefits Authority certificates.

Retirement benefits schemes have a various difficulties in their efforts to comply with the Retirement Benefits Act the most prevalent being increased costs.

The extent of compliance by retirement benefits schemes with the Retirement Benefits Act does not affect the financial performance of retirement benefits schemes.

5.4 Suggestions For Further Research

Compliance with the Retirement Benefits Act is part of the greater reforms required in the pension sector. Future research in the retirement benefits sector could cover the following;

A survey on the factors that affect the financial performance of retirement benefits schemes in Kenya.

A survey on the relationship between the choice of service provided and retirement benefits schemes' financial performance.

The significant difference between compliance by schemes where the scheme's funds are either in segragated or in guaranteed fund management.

The impact of investment guidelines table on the financial performance of retirement benefits schemes.

APPENDIX 1

A: Scheme Details

Name of Scheme			
Type of Scheme by design	Defined benefit	1	
	Defined contribution	2	
Commencement Date of Scheme			
Date of Scheme 'year-end' (or specified accounting date)			
Has the Scheme been registered with the RBA?	Yes	1	
	No	2	
When was the scheme registered with the RBA			
Which form was completed during registration?	Pink Form A4		
	Yellow Form A5		

B: Trustees

Is the trustee…?	Individual		
	Corporate		
What is the status of the trustee	Member		
	Independent		
	Other (specify)		
Do any of the Trustees act as a trustee for any other Scheme that is registered by the RBA?			
Has the scheme been setup under and irrevocable trust?	Yes	1	
	No	2	
Is the Trust run by a Board of Trustees?	Yes	1	
	No	2	
When was the Board established?			
How many members does the Board have?			
How regularly does the Board meet?			
What issues does the Board discuss?			
Are all its proceedings known to the entire scheme management?	Yes		
	No		

C: Amended and Revised Trust Deed and Rules

Does the Scheme have a Trust Deed and Rules?	Yes		
When was it last amended?			

Please check the trust deed to confirm compliance with any of the following requirements		
	Yes	**No**
Full name of Scheme	1	2
Physical address of the registered office	1	2
Commencement date of the scheme	1	2
List of definitions in alphabetical order	1	2
Requirement of admission to membership	1	2
Circumstances under which membership may cease	1	2
Conditions for entitlement of benefits	1	2
Mode of payments	1	2
Terms of appointment and removal of trustees	1	2
Power to invest scheme funds and pensionable emoluments	1	2
Rates of contributions of both member and sponsor	1	2

Mode of recovery and interest chargeable on un-remitted contributions	1	2
Vesting period and formulas	1	2

D: Investments Management Agreement

Does the scheme have an investment management agreement	1	2
Does the Scheme have a written "Statement of Investment Principles"	1	2
Looking at the scheme's investments, please distribute each class in percentage terms of total assets of the scheme funds		
Investment	RBA%	%
Does the Scheme prepare accurate and timely periodic reports to RBA on its holdings and transactions?		
How often are these reports filed?		
When was the last report filed?		

E: Custodian Agreement

Does the Scheme have a Custodial Services Agreement?	Yes – Duly Signed	1	
	NONE	2	
Who is the Custodian?			
Does the Custodian submit accurate and timely periodic reports the RBA on holdings and transactions?	Yes	1	
	No	2	

1. F: Annual Audited Accounts Report

When the scheme's books of accounts and records were last audited and submitted to RBA?			
IF not, what is the reason?			
Seek to look at the Audited Report and confirm compliance with prescribed format of Table S of the Retirement Benefits Act. Also, look for the following:			
Is the Scheme fund year-end indicated?			
Did the auditors and Trustees duly sign the report?			

G: Actuarial Report

Has the Scheme ever had an Actuarial evaluation/review?	Yes		
	No		
When was the last review/evaluation done?			
Was the report ever submitted to the RBA?			
Has the Scheme been issued with an exemption certificate?			

APPENDIX 2

1. FORM A4

2. FORM A5

FORM A4 (r.7)

RETIREMENT BENEFITS AUTHORITY

REGISTRATION OF EXISTING SCHEMES

APPLICATION FOR THE PURPOSE OF REGISTRATION UNDER S.23 (2) OF THE RETIREMENT BENEFITS ACT, 1997

(Read attached notes before completing the form)

PART I - DETAILS OF THE SCHEME

A. (i) Name of scheme..

(ii) Income Tax P.I.N. Number ....

B. Any other names under which the scheme has been known previously:

....

....

....

....

C. Any other names under which the scheme has been known together with the names of schemes which have in whole or part been merged with, or replaced by the scheme in the past five years:

....

....

....

(vii) State whether the scheme is a defined contribution or a defined benefit scheme.

....

(viii) If other, specify..

E (i) Give the following information as at the end of the last financial year

from .... 19......... to ....19.........

(1) State the number of members of the scheme.

....

(2) State the number of members of the scheme who were active members in service.

....

(3) State the number of members in whom the scheme benefits have been fully vested ....

(4) State the scheme's vesting formula

....

....

Deferred benefits........ .. ..

Other specify..

(iv) (1) State the total value of the scheme fund Kshs ... .

(2) State basis of valuation eg. market value, historical cost, etc

....

G i) Provide the following particulars of the establishment of the scheme as follows:

Country..

Date of establishment ....

Registered office of the scheme:

Building.. ....

Road..... ....

Postal Address ....

Telephone ... .

Telex.............................. ....

Fax/Email........... ....

ii) Is the scheme established under an irrevocable trust? YES/NO.

If no, state the basis of establishment.

....

....

iii) Is the scheme approved under the Income Tax (Retirement Benefits Scheme) Rules? YES/NO.

If yes, state the Income Tax Reference Number.

....

H. Provide details for the following:

i) Members of the Board of Trustees (Appendix A)
ii) Fund manager , if any (Appendix B)
ii) Auditors, Legal Advisors, Actuary, Managers, Custodian and Administrators (Appendix C)

(Please complete the tables in the above mentioned appendices)

I If the scheme does not engage the services of trustees, a scheme administrator or fund manager, then provide the following particulars:

(i) Who administers the scheme?

....

....

....

1. In case the assets of the scheme are managed by an Insurance Company/Bank/Asset Manager on a pooled basis, such manager to complete Appendix D2.
2. The said Manager in completing Appendix D2, to provide the total investments of the pool and submit on a separate list all the schemes which form the pool together with their respective shares of the pooled investments.

(ii) Where applicable, state the ratio of fund assets in relation of actuarial liabilities

as per the latest actuarial report dated...

K List all Bankers of scheme funds showing the branches and address for such branches:

....

....

....

....

L (i) Is the custodian of the scheme assets registered under the Capital Markets Authority Act? YES/NO

If the custodian is registered by any other authority provide the folowing:

Full Name..

Physical Address..

Town..

Postal Address...

Telephone ....Fax...................

PART III - ATTACHMENTS

Please attach copies of the following:

(i) Trust deed and Rules

(ii) Latest actuarial report

(iii) Latest audited or management accounts

(iv) An actuarial certificate certifying the design and financial viability of the scheme (if applicable)

(v) For insured schemes, a copy of the insurance policy document and a copy of the latest fund value statement and revenue account.

(vi) For schemes with funds invested by an asset manager firm, a copy of the latest scheme fund investment report and revenue account.

(vii) Fund management agreement(s) *(where applicable).*

FORM A5 **(r.8)**

RETIREMENT BENEFITS AUTHORITY

APPLICATION FOR REGISTRATION OF A NEW OCCUPATIONAL RETIREMENT BENEFITS SCHEME

PART I - DETAILS OF PROPOSED SCHEME

A. (i) Name of scheme...

(ii) Income Tax P.I.N. Number ....

B. Provide the following particulars regarding the proposed scheme:

(i) Is it a provident or pension fund?

....

....

(ii) State whether the scheme is a defined contribution or a defined benefit scheme.

....

If other, specify...

D Where applicable state the contribution formula for the employee and the employer:

Employee...

Employer...

E Provide the following particulars on the proposed scheme:

i) Registered office:

Building...

Road..

Postal Address ....

Telephone ....

Telex..

Fax/Email...

ii) Is the scheme established under an irrevocable trust? YES/NO.

If no, state the basis of establishment.

....

....

C (i) Income Tax P.I.N. Number ....

(ii) Income Tax Reference Number ....

D Number of members in service of the sponsor.

....

PART III - ATTACHMENTS

Please attach copies of the following:

(i) Trust deed and Rules

(ii) An actuarial report certifying the design and financial viability of such proposed scheme.
(iii) Schedule of the rates of contributions to be payable to the scheme.

I hereby declare that section 26 of the Act has been complied with and the statements contained herein and the documents submitted herewith are true and accurate to the best of my knowledge and belief. Any alterations in particulars stated herein or in the said documents will be promptly communicated to the Authority within a period not later than thirty days from the date of the alteration.

Signed on this .... day of...............................

....

Signature of Applicant.

APPENDIX 3

TABLE G (r. 18)

INVESTMENT GUIDELINES

Item	Column 1	Column 2
	Categories of Assets	**Maximum percentage of aggregate market value of total assets of scheme or pooled fund**
1.	Cash and Demand Deposits in institutions licensed under the Banking Act of the Republic of Kenya	5%
2.	Fixed Deposits, Time Deposits and Certificates of Deposits in institutions licensed under the Banking Act of the Republic of Kenya	30%
3.	Commercial Paper, Corporate Bonds, Mortgage Bonds and loan stocks approved by the Capital Markets Authority and collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category	30%
4.	Kenya Government Securities and collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category	70%
5.	Preference shares and ordinary shares of companies quoted in a stock exchange in Kenya, Uganda or Tanzania and collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category	70%
6.	Unquoted shares of companies incorporated in Kenya and collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category	5%
7.	Offshore investments in bank deposits, government securities, quoted equities and rated Corporate Bonds and offshore collective investment schemes reflecting these assets	15%
8.	Immovable property in Kenya and units in property Unit Trust Schemes incorporated in Kenya and collective investment schemes incorporated in Kenya and approved by the Capital Markets Authority reflecting this category	30%
9.	Guaranteed Funds	100%
10.	Any other assets	5%

APPENDIX 4

FORM R2

OCCUPATIONAL SCHEMES
RETURN ON QUARTERLY RECORD OF CONTRIBUTIONS

1. Name of scheme:

2. Registration Number

3. Contribution remittance during the quarter ending

(a) Remitted Contributions

(i) Members' contributions Kshs

(ii) Sponsor's contributions received Kshs

(iii) Total contributions received Kshs

(b) Unremitted contributions Kshs

(i) by the members Kshs

(ii) by the sponsors Kshs.

(iii) total unremmited contributions Kshs

(c) Total contributions which have not been remitted for a period of more than twelve months from the date they became due Kshs

4. Total number of active members in service

5.Trustee/Administrator

6. Your email address

Submit

APPENDIX 5

TABLE S **(r.20)**

Fund Account of the XYZ Retirement Benefits Scheme for the year ended 01

	Note	01 *KShs '000s*	00 *KShs '000s*
Contributions and benefits			
Contributions receivable in the year	3	-	-
Transfers in from other funds	4	-	-
Other income	5	-	-
		-	-
Benefits payable	6	-	-
Leavers	7	-	-
Other payments	8	-	-
Administrative expenses	9	-	-
		-	-
Net additions (withdrawals) from dealings with members		-	-
Returns on investments			
Investment income	10	-	-
Change in market value of investments (%)	11	-	-
Investment management expenses	12	-	-
		-	-
Net returns on investments		-	-
Net increase in the fund during the year		-	-
Net assets of the scheme			
Year 00	15	-	-
Year 01	15	-	-

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