Frequently asked questions

RBA
Retirement Benefits Authority
Safeguarding your retirement benefits

Kenya
KENYA VISION 2030

CORE MANDATE

(i) Regulate and supervise the establishment and management of retirement benefits schemes;
(ii) Protect the interests of members and sponsors of schemes;
(iii) Develop and promote the retirement benefits sector;
(iv) Advise the Government on matters relating to retirement benefits; and,
(v) Implement all Government policies relating thereto.

VISION

A dynamic and secure retirement benefits sector.

MISSION

To develop, safeguard and deliver value to the retirement benefits sector through excellence in service delivery.

CORE VALUES

(i) Firmness and fairness
(ii) Transparency and accountability
(iii) Innovation and dynamism
(iv) Proficiency in quality service delivery
(v) Integrity

QUALITY POLICY

Developing and Safeguarding the Retirement Benefits Sector through:

1. *Commitment to continued excellence in service delivery;*
2. *Upholding professionalism, integrity and sensitivity to Stakeholder interests;*
3. *Operating a quality management system within the framework of iso 9001:2008 standards;*
4. *Continual improvement of the quality management system.*

INTRODUCTION

This guide provides detailed answers to questions commonly asked with regard to Retirement Benefits Authority. It is a useful handout for employees/members of retirement benefits schemes, employees and other key players in the retirement benefits sector.

What are the objectives of Retirement Benefits Authority?

(i) To regulate and supervise the establishment and management of retirement benefits schemes;
(ii) To protect the interests of members and sponsors of retirement benefits schemes;
(iii) To promote the development of the retirement benefits sector;
(iv) To advise Cabinet Secretary for The National Treasury on national policy to be followed with regard to the retirement benefits sector; and,
(v) To implement all government policies relating to pension.

*NB: *Sponsor is a company or employer that sets up a retirement plan.*

How does RBA ensure safety of pension funds?

The safety of a pension fund is enhanced by its structure. The Trustees of the pension fund play a key role in safeguarding the interests of the fund's members at all times. They are required to appoint an independent professional company, known as the Fund Manager, to invest the scheme funds, and an independent bank known as the Custodian, to look after the pension assets such as cash and other investments. In addition, a Fund Administrator is appointed to maintain accurate records of all contributions made by members and all benefits paid to them.

The Fund Manager operates under specified investment guidelines developed in line with the objectives of the particular scheme, to ensure that the manager acts in the interest of the members.

This separation of roles ensures good governance, transparency an accountability with regard to decisions made on behalf of members.

What are the types of Pension Plans in Kenya?

***Public Pension Fund:** This is a fund regulated by public law, such as the National Social Security Fund (NSSF): Under this fund, both employer and employees make statutory contributions as stipulated by law.*

***Occupational Pension Scheme:** This is a scheme sponsored by an employer, hence it is only open to the employees of the specific organization.*

***Individual Pension Plan:** This scheme is operated by an independent entity, and is therefore open to all individuals.*

NB: These schemes must get RBA licenses annually.

DESIGN OF PENSION PLANS

Defined Contribution Plan: *Under this plan, the amount a member shall receive upon retirement depends on the total amount of money contributed, and the performance of the fund's investments over time.*

Defined Benefits Plan: *Under this plan, the amount a member shall receive upon retirement is determined in advance using a set formula. Members of the scheme contribute a fixed amount, and the sponsor meets the balance of the promised benefit. Defined benefit is treated as a liability by the employer to be paid when an employee retires.*

Does RBA handle terminal benefits normally covered by labour laws?

No. RBA only handles retirement benefits.

What is the relevance of RBA to the country?

(i) *RBA was created as part of the Government's financial reforms to mobilize domestic savings, develop the capital market and enhance economic development.*

(ii) *The primary objective of RBA is to protect the interest of members and sponsors of schemes, to develop the sector and to alleviate old age poverty through enhanced saving for retirement.*

(iii) *Prior to the creation of RBA, there was no harmonized legal framework governing the sector. This resulted in the well-documented cases of misappropriation of scheme funds, dubious investments of members' funds, denial of benefits to members, delay in payments of benefits, and a myriad of other ills within the sector.*

Why was it necessary for Kenya to set up the Retirement Benefits Authority?

(i) *Even though some pension schemes have been well managed, there were many cases of inefficient management of schemes. It was therefore necessary to create an institution that would instill discipline and confidence in the industry*

(ii) *Socio-economic changes have led to the breakdown of the traditional systems of old age support, therefore enhancing the need for well-managed retirement benefits schemes.*

(iii) *Newspapers were replete with reports of denied or delayed benefits, misappropriation of scheme funds, diversion of scheme funds into sponsors' (employers') businesses, underfunded schemes that could not meet their obligations, questionable investments, lending of scheme funds to trustees or senior managers at uneconomical rates, and many other problems that were detrimental to members.*

(iv) *The objectives of Retirement Benefits Act are to encourage long-term savings for retirement, and to protect members and sponsors from abuses that have occurred in the past.*

Why is it advisable to wait until retirement before accessing benefits?

(i) *Surveys carried out by Retirement Benefits Authority show that many workers who are paid their benefits when they change jobs use them on consumption expenditures, such as household goods, weddings and buying cars. Statistics also show that because of accessing benefits every time they change jobs, these individuals end up with very low benefits at retirement despite having saved for 30 to 40 years.*

(ii) *Most Kenyans are not knowledgeable about investments, and therefore lack the right skills to make sound investment choices. The reality is that up to 90% of start-up small businesses wind up within two years. Even if one is an investment professional, he or she is unlikely to earn as much return investing individually as they would have earned from the scheme for three reasons:*

- *Individual investments earn periodic simple interest, dividends, rent, interest, which are too small to reinvest, while the scheme earns compound interest by immediately reinvesting all income;*
- *Through pooling, many small investors enjoy economies of scale in investment which results in lower costs and higher returns. Additionally, a scheme can invest in instruments which are not available to small investors due to the prohibitive minimum requirements. These include treasury bills, commercial papers, real estate and high price share;*
- *Benefits paid out before retirement ages are subject to punitive taxation rates compared to benefits paid at retirement.*

Also, retirement benefit schemes do not pay tax on the investment income they earn. An individual investor will pay hefty withholding tax on all the dividends, interest, rent or profits that you may earn.

What are some of legislative changes made on retirement benefits over the years?

(i) *In a defined benefit scheme, pensioners enjoy annual pension increases to be determined by an actuary, unlike before where pensions could remain static for ears and be eroded by inflation.*

(ii) *If the trustees fail to pay the beneficiary within 30 days of benefits getting due he/she is now entitled to continue earning interest in the benefits during the period of delay.*

(iii) *If the scheme requires purchase of an annuity at retirement age, the member gets to choose the annuity company, unlike in the past when trustees would do so on his/her behalf.*

(iv) *In a Defined Contribution Scheme, members get to nominate 50% of the trustees, up from the one-third previously. Also, a Defined Contribution Scheme cannot deny one membership even if they are close to retirement age.*

Are schemes that have invested 100% in guaranteed funds required to appoint managers?

Schemes fully invested in guaranteed funds are exempted from having fund managers. Schemes that invest all their assets in guaranteed funds of approved issuers (insurance *companies) do not need to appoint fund managers. The approved issuer will be required to submit half-yearly investment reports to the Authority.*

Can a scheme withhold a member's benefits on behalf of a sponsor due to, for example, unpaid loans or fraud?

No. The scheme is a separate entity from the sponsor, and the sponsor does not have any right to interfere with the benefits. This also applies to any other person whom the worker may owe money.

Retirement benefits are supposed to provide for the worker in retirement and once these are vested in a member, they belong wholly to that member. Employers can recover owed amounts from other terminal benefits, or through the courts, as is the case with other creditors.

Why does RBA find it necessary to set investment guidelines while schemes are already required by the Act to use the services of professional managers?

Investment guidelines in the Retirement Benefits Regulations only provide maximum exposures for the broad asset classes that a scheme can invest in. The guidelines are only meant to ensure adequate diversification among various asset classes.

Indeed, schemes are free to choose which particular broad classes to invest in or which to exclude altogether, depending on their specific liability profile. Further, the schemes retain full discretion as to which investment to make within any particular asset class. With regard to the maximum percentages that have been set for the particular asset classes, the views of stakeholders were incorporated in determination of the limits.

How is RBA handling schemes that are holding property in excess of required level?

The Retirement Benefits Regulations allow for a maximum of 30% of the scheme fund to be invested in property. This is in line with the principle of diversification of investments to minimize risk and safeguard members' benefits. Schemes that are above this maximum do not have to sell their properties, but can submit a proposed action plan to the Authority, showing how they will come into compliance within a specified time through, for example, diverting new contributions and income to alternative investments.

How does RBA charge schemes levy?

The Retirement Benefits Act makes provision for a levy on schemes.

In the regulations, the Authority has come up with a graduated levy that declines with scheme size. The levy should be viewed as a small fee for services provided by the Authority to the schemes, their members and sponsors.

These services in the form of trustee training, member education, research on investments and other issues of benefit to the sector, negotiating for tax incentives and providing appeals mechanism for aggrieved scheme members. The Authority will also provide service to schemes indirectly through its regulation of the sector, in order to protect the interests of scheme members and sponsors.

Why is the levy based on assets and not income?

Use of scheme assets is the most equitable base since those schemes with large membership or higher wages will automatically have higher assets and will therefore pay a higher nominal levy. The highest levy rate is only 0.2% of assets, and it is extremely unlikely that a scheme with a properly diversified portfolio would have such a low rate of return on its investments. The effective levy rate reduces as schemes grow larger, thus acting as an incentive to the development of schemes.

It is claimed that compliance with RBA Act, particularly the separation of service providers' roles, will lead to increased costs to schemes. Is this true?

The Authority is aware that some initial expenses will be incurred, for example, in amending scheme rules, conducting an actuarial review, and transferring assets to a custodian. However, this should be seen as one-off cost of streamlining the management of schemes.

Service providers such as managers, custodians and actuaries have already entered the market in large numbers to provide the required services to schemes, and this enhanced competition should continue driving prices down.

The resultant benefits such as higher investment returns, enhanced transparency, accountability in scheme affairs and protection of benefits have by far outweigh any perceived increase in costs.

Is RBA's involvement in the running of schemes excessive?

RBA is only a regulatory body for the industry and is not involved in the day to day running of the affairs of the schemes.

The Authority's approval is not required for matters governing the scheme rules, except where payment is made to the sponsor as a result of winding up of a scheme. Each scheme is however required to file its Trust Deed and Rules with the Authority upon registration.

Is it true that if I change my job I cannot access my benefits until I attain retirement age?

(i) *If you have been a member of a scheme for less than one year, you are entitled to benefits vested in you. To encourage saving for your retirement, if you have been a member of a scheme for more than one year and leave employment before attaining retirement age, you will access your own contributions, plus 50% of employer's contribution. In a defined benefits scheme you will access 50% of accrued benefits.*

(ii) *The balance of employer's portion remains in the scheme and will continue to earn interest payable to you on attaining the retirement age. However, should you retire on grounds of ill health, or permanently emigrate out of the country, you will be allowed to access your full benefits.*

NB: You also have the option of transferring your benefits to another registered retirement benefits scheme of your choice.

How safe are benefits left in a scheme?

(i) The retained benefits are kept in the retirement benefits scheme that a worker is a member of just like when he/she was still working for the company;

(ii) Retirement benefits schemes are run by trustees, of whom 50% are nominated by the members, and 50% nominated by the employer. The Government does not appoint trustees or get involved in running schemes;

(iii) The trustees are required to appoint an independent professional company, known as the manager, to invest the scheme funds, and an independent bank, known as the custodian, to hold the assets;

(iv) The individual who has left his/her benefits in a scheme will still remain a member of the scheme and will have rights to nominate or serve as a trustee, receive the summarized annual audited accounts, receive an annual benefits statement and attend the mandatory scheme Annual General Meeting;

(v) No one can access funds left by an individual in a scheme. The funds remain safe and the individual continues having rights to nominate or serve as a trustee, receive the summarized annual audited accounts and receive an annual benefits statement.

So, where does the Retirement Benefits Authority fit into in all this?

(i) The Authority is the regulatory body charged with protecting the retirement benefits of scheme members. The Authority oversees the pensions industry, to ensure individual members' rights are protected;

(ii) The Authority does not hold members' funds, neither does it instruct schemes on where to invest;

(iii) If a member has a problem with his/her benefits, he/she should engage the trustees and if not satisfied, lodge a complaint with the Authority, which will take up the issue; and,

(iv) The Authority has powers to sanction and prosecute any trustee, or any person who fails to follow the law with regard to retirement benefits.

LODGING A COMPLAINT

Who can take a complaint to the RBA for a decision?

(i) Members or ex-members of occupational or personal1pension schemes.

(ii) Spouses or dependants of members or ex-members who have died.

(iii) Anyone claiming to be a member or ex-member, or the spouse or dependant of one, as long as their complaint is about that claim;

(iv) People entitled to pension credits following divorce of a scheme member;

(v) Personal representatives appointed on the death of people in categories (i) to (iv);

(vi) A suitable person representing the interests of a minor or a person unable to act for themselves in one of categories (i) to (iv);

(vii) Trustees or managers of occupational pension schemes; and,

(viii) Employers in relation to occupational pension schemes.

Who can the complaint be against?

(i) All or any of the trustees of the scheme, including past trustees;

(ii) The manager of the scheme, or the body that runs the scheme or, for insured schemes, in limited circumstances, the insurance company;

(iii) An employer (but only about the employer's role in relation to the scheme, not general employment matters);

(iv) An administrator of an occupational pension scheme, which means any person or body concerned with the scheme's administration (disputes with administrators are excluded); and,

(v) Any service provider to the scheme.

Which complaints about retirement benefit schemes does RBA handle?

Complaints may concern most kinds of retirement benefits schemes other than the Civil Service Pension scheme. For the purposes of the Authority's legislation, there are two kinds of benefit schemes:

(i) Occupational retirement benefits schemes, which are established by the employer, whether in the public or private sector, and tied to employment with the employer or a connected group of employers; and,

(ii) Personal (individual) retirement benefits schemes which are not tied to employment with any particular employer.

Scheme members and ex-members (and their spouses or dependants) can complain in relation to either kind of scheme.

NB: Trustees and employers can only complain in relation to occupational pension schemes.

What can't a member, trustee or service provider complain to RBA about?

(i) Complaints on how financial services business (outside fund management and custody) is carried out by organisations and people regulated by Central Bank of Kenya, Insurance Regulatory Authority, Capital Markets Authority, or bodies approved by them. Generally, this means that the Authority will not deal with how financial products are structured, sold and marketed;

(ii) Complaints about Government pensions or other Government benefits. Problems with Government benefits should be taken up with the office of the Director of Pensions; and,

(iii) Complaint or disputes already subject to court proceedings.

What does the Retirement Benefits Act say about seeking redress?

Section 46 (1) of the Retirement Benefits Act No. 3 of 1997 states that any member of a scheme who is dissatisfied with a decision of the manager or trustees of the scheme may request, in writing, that such decision be reviewed by the Chief Executive Officer with a view to ensuring that such decision is made in accordance with the provisions of the relevant scheme rules or the Act under which the scheme is established.

Every retirement benefits scheme should have an in-built dispute resolution mechanism as the first resort for an aggrieved party. The party dissatisfied by the outcome can subsequently lodge a complaint with the Authority. This however does not prevent anyone from lodging a complaint directly with the Authority in the first instance.

What procedure does an aggrieved party follow to lodge a complaint with the Authority?

- *(i) The complaint or dispute should first be taken up in writing.*
- *(ii) Individuals who have a complaint should first seek dialogue with their scheme sponsor or trustees.*

What are the time limits for a dispute to be lodged?

As a general rule, complaints and disputes should be made in writing to the Retirement Benefits Authority as soon as possible, preferably within three years of the act or omission.

What happens after the lodging of a complaint?

The Retirement Benefits Authority's staff will acknowledge the complainant's letter and, where applicable, ask for further information relating to the case. The procedure for investigating and ruling on complaints is partly set down in the scheme statutes, and partly as per the Authority guidelines. The following description fits most cases, although there may be exceptions.

Who decides on the complaint resolution approach?

In a few cases, on looking at the complaint, the Chief Executive of Retirement Benefits Authority may conclude that it cannot be upheld by the Authority. Should this be the case, a written response will be provided.

If the complainant does not accept the explanation, he/she may lodge an appeal with the Appeals Tribunal.

- *(i) The CEO may determine depending on the weight of the case.*
- *(ii) The Retirement Benefits Authority Tribunal.*
- *(iii) The High Court where, the Retirement Benefits Authority refers the matter after or before the tribunal.*

Retirement Benefits Authority

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