

Kustaafu

FROM THE COUNCIL



ASSOCIATION OF
RETIREMENT
BENEFITS SCHEMES



ISSUE No. 11

WELCOME

We are delighted to have the opportunity to provide problem-solving solutions at this opportune time when retirement funds are extremely vulnerable to taxation, and market fluctuations. The Association has taken the time to enlighten you on real matters that will affect you upon retirement.

ARBS COUNCIL ELECTIONS

The Council will conduct elections in June 2022 to fill the vacant positions in the council. We sincerely thank the current and previous council for their distinguished service to the Association. All members who wish to join the council can contact the Executive Secretariat to find out how to go about being a member.

1ST ANNUAL RETIREMENT BENEFITS CONFERENCE

The Association is putting together an Annual Retirement Benefits Conference that will be geared toward discussing 'The levels of schemes compliance' .it is tentatively scheduled for month of September 2022 and we shall keep you informed of developments dates.



OUR VISION

"To be the first point of reference for all retirement benefits matters and a key facilitator of rapid development of a vibrant retirement benefits industry for all Kenyans".

OUR MISSION

"To be a strong, effective and recognized forum to represent and promote the interests of member schemes and other stakeholders through innovative advocacy and education"

OUR GOALS

Central to the services to members are:

1. Member Education Programme
2. Lobbying for changes
3. Communication on industry changes
4. Problem solving assistance

Taxation for persons aged 65 years and above

ARBS through its Council lobbied for the continued exemption from taxation of all retirement benefits for persons aged 65 years and above, including monthly pensions and lump sum retirement benefits. We were glad to note that the Members of Parliament through the Finance and National Planning Committee of the House, having received various submissions including that of ARBS, concurred that taxing these amounts benefits would reduce the pension amounts payable to retirees.

However, on careful reading, we observed that the exemption did not include lump-sum benefits which became liable for taxation. Our lobbying resumed in high gear gears and, although we were initially assured that this was an error that would be corrected, it has since been confirmed that the exemption does not apply to lump sums. So we are continuing to take appropriate lobbying measures and are considering investigating legal action option should our lobby not bear fruits.

This removal of exemptions on lump sums was effected in 2020 and when we and others protested we were informed that it was an error that would be rectified. through the Finance Bill 2021. We have since been informed by the Kenya Revenue Authority (KRA) that the removal of the exemption for lump sum benefits paid on retirement from age 65 will remain in force.

In addition, the tax exemption on lump sums benefits paid after age 65 has been removed so that only monthly pensions are tax exempt. It seems that the removal of this exemption applies not only to provident fund lump sums but also to commutations of pensions.

We have been given no reason for this change which we find unjustified, unreasonable, discriminatory, and punitive. To us, it hinges on elderly abuse economically. It will most certainly cause hardship since all retirees rely on the totality of their retirement savings to sustain them. themselves.

After further deliberations between stakeholders and agreed to use the same channels the matter was brought through, that is the finance bill. We included the taxation in the budget proposals. We however noted in this year's budget cycle that the issue was not taken up, and are working on alternatives on whether to proceed to court.

PPAD Act Appeal

ARBS has been following up on the PPAD act appeal for some time with members anxious as well as concerned about the lack of progress.

Earlier on in, the court had directed that parties proceed by way of written submissions and the Respondents to further file their submissions within 30 days. The parties appeared before the Court of Appeal judges on the 18th of January 2018 for highlighting of submissions and take a judgment date. Our lawyers Simba & Simba Advocates together with the Attorney General appeared before the Court of Appeal on 18th September 2019 for a hearing, at which all the parties made their submissions. The Court of Appeal was expected to come up with a judgment on the 22nd of November 2019. The court directed that the matter proceeds afresh before a new bench of the Court of Appeal. The court, therefore, directed that the matter be fixed for hearing on a priority basis as the Appeal had been heard in 2018. The hearing date was fixed for the same. We do note that though the Appeal was scheduled to come up for judgment on the 4th of February 2022, the same was not delivered as anticipated however we were it would be delivered on Notice by the court. The Courtcourt of Appeal dismissed our Appeal citing that regulation by the state connotes that Retirement Benefits Schemes are public entities. In essence, the Court of Appeal upheld the decision of the High Court. We are discussing and reviewing the judgment in consultation with our lawyers and various stakeholders. with a view of reopening the matter for judicial review.

BUDGET CHANGES 2022

We note that this year's budget was read out earlier than expected and here are some of the highlights that touched on the retirement benefits industry.

- Unclaimed Financial Assets Act

The amendments to the UFA Act will introduce capping penalties and interests to the value of assets found to be reportable and deliverables. This is meant to address the cases where the assets provide for waiver of penalties fines and audit fees in justifiable circumstances .as well as cap accumulation of penalties and interest to the value of the asset.

It also proposed that under the powers of the Authority and or the cs treasury a 12-month voluntary disclosure program to grant relief of penalties on the unclaimed financial assets declared and delivered in the next 12 months from 1st July 2022 and shall apply for assets held up to 30th June 2022. This move will address cases where the penalty and interest of the assets, may increase beyond the value of the assets thus discouraging compliance.

Reference is made to the UFA act on the failure to pay or deliver assets penalties as listed below as:

- 1) A person who fails to pay or deliver assets within the time prescribed shall pay to the Authority interest at the current monthly rate of 1% per month above the adjusted prime rate on the Assets or value of the Assets from the date the Assets should have been paid or delivered. The adjusted prime rate shall be based on the Central Bank of Kenya's average rate during the twelve months ending on 30 September.
- 2) A person who willfully fails to submit any report or perform other duties required under the Act shall be liable to pay a penalty of between Sh7,000 and Sh50,000 for each day the report is withheld or the duty is not performed.
- 3) A person who willfully fails to pay or deliver assets to UFAA shall be liable to pay a penalty equal to 25% of the value of the assets that should have been paid or delivered.
- 4) The penalties listed above shall be recoverable as a civil debt summarily

The amendment now asserts that the above penalties would not exceed the value of the assets found to be reportable and deliverable.

- The Capital Market Authority Act

Currently, there is a restriction on a bonafide officer director trustee member of an advisory board and an employee of a company. This amendment to the Finance bill 2022 will allow more investment advisors advisor to offer investment advisory services and hence spur economic growth

In the capital markets act section 2 cap 485 an "investment adviser" means any person (other than a bona fide officer, director, trustee, member of an advisory board or employee of a company as such) who, for remuneration

The amendment seeks to address expand the pool of investment advisory services being qualified across the country, due to the restrictive nature of the act by expanding the spectrum of persons who may act as investment advisors in offering much-needed investment advisor services.

It will allow single-director companies and partnerships to be licensed as investment advisers.

- **The Retirement Benefits Act**

The Bill proposed the proposed investment to RB guidelines to include the unlisted REIT incorporated in Kenya that are approved by the capital markets authority. in the category where pension schemes can invest their funds, thus, widening the scope of investments. The CS Treasury is expected to amend the RB investments guidelines to accommodate this change as stated in his budget statement.

- **Secondary Trading for Government Bonds**

The government is installing a new central depository system at the central bank of Kenya to support planned reforms in the secondary trading of government bonds. The new system is expected to speed up transactions and settlements in the secondary markets, reduce rediscounting requests and generally, bolster and improve, the treasury bonds markets

Conclusion

The Council of the Association of Retirement Benefits Schemes (“ARBS”) is, as always, grateful for the opportunity to make submissions for consideration in the annual budgeting process. We appreciate the input from members to assist us in enhancing the scope and quality of our submissions.

Regrettably, not all our submissions are received and accepted.