



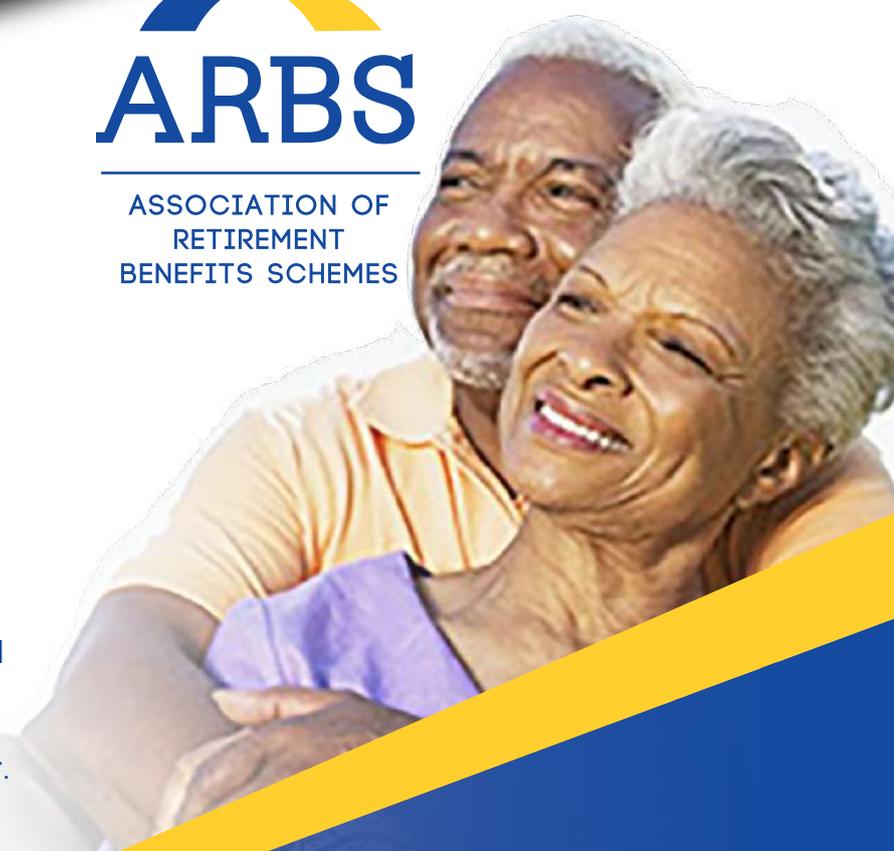
ASSOCIATION OF  
RETIREMENT  
BENEFITS SCHEMES

A warm welcome to this 8th edition of the ARBS newsletter

The Association of Retirement Benefits Schemes is continuously working towards strengthening the retirement industry through its various initiatives.

The Association held its 20th Annual General Meeting themed “Unclaimed Financial Assets” on Friday 27 July 2019 at Silver Springs Hotel in Nairobi. In this meeting, the focus was to shed light on the unclaimed financial assets issues affecting the retirement benefits sector.

But before we delve into matters on the Unclaimed Financial Assets we shall address some news.



## 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





## Review of Trustee Development Programme

- Kenya Curriculum

As previously mentioned, ARBS, RBA and COI initiated a process of revising the current TDPK curriculum to bring it up-to-date with the retirement benefits sector changes. The Association has been at the forefront of this review with our partners. A Tripartite Committee was formed comprising of representatives from the Authority, the College of Insurance and the Association. The acronym for this committee is "TriCom". ARBS was also appointed as the secretariat to the TriCom for the entirety of the TDPK review period.

TriCom resolved to overhaul the existing TDPK manual, following fundamental changes done to the curriculum and has developed a more comprehensive Manual that encompasses the current regulatory environment of the sector and acts as a reference point for trustees and other sector players. A working team of industry practitioners was set up to come up with this more detailed Manual for consideration and teaching slides. The draft Manual was peer reviewed, edited and the secretariat consolidated the six chapters. The consolidated draft Manual was then submitted to the Authority for their comment and approval. Once the Authority approved the Manual, a stakeholder's validation was held where industry

experts gave their view on the Manual and curriculum that had been circulated. The Secretariat in collaboration with the Authority amended the Manual based on the discussions at the stakeholder's validation.

A stakeholder's sensitization was held on 24 September 2019 followed by the launch that was held on 22 October 2019. The launch was well attended and the Association would like to thank all its members and industry players at large for availing themselves.

TriCom aims to complete the development of the assessment tools before the revised course is implemented.

RBA informed the delegates at the launch that it has received funding to develop an e-learning platform and develop CPDs for trustees as a further additional value on the program that is now popular beyond East and Central Africa.



Chairman- Simon Nyakundi



Vice Chair: Jane Nzau



Wilson Ngugi

## Association of Retirement Benefits Schemes Council Election

The Council conducted elections in June 2019 to fill vacant positions left in the Council by members retiring by rotation.

The Executive Secretariat confirms that the following were elected as the new Council members for the first term of 3 years and will be eligible for further second term of three years:

1. Dr. Grace Ndegi Kiringa - University of Nairobi Pension Scheme
2. Waeni E Ngea – BAT Kenya Provident – Trust
3. Bartholomew N. Omullo – US Government Pension Fund
4. Elijah Kipruto Koskey – Postal Corporation of Kenya Staff Pension Scheme

On behalf of the membership, the chairman of ARBS would like to congratulate the new Council members and warmly welcome them to the Council.



Anthony Kilavi



Jane Gitau



Benard Murunga

## Annual Retirement Benefits Conference 2019

The Association is organizing an Annual Retirement Benefits Conference that will be a forum for examination of a range of issues of importance to the

retirement benefits sector. Council will develop an agenda for the conference and welcomes suggestions from members for content. The conference is slated for the first half of the year 2020. The dates and details will be advised well in advance of the conference and all members are encouraged to contact the Executive Secretariat to make reservations for the conference.



## Corridors of Justice Update PPAD Act Appeal

After a long wait on the hearing date at the Court of Appeal, the hearing went on as scheduled on 18 September 2019. Our lawyers Simba & Simba Advocates attended the Court of Appeal on 18th September 2019 for hearing, at which all the parties made their submissions.

ARBS has been following up on the PPAD Act appeal for some time with members anxious as well as concerned on lack of progress. The Court of Appeal is expected to come up with a judgment on the 22nd of November 2019.

## Umbrella Schemes Regulations

We can report that there is a judgment in place from the Constitutional Court.

Below is a mention of the regulations declared unconstitutional null and void

- Reg 3(1)(a) An application for registration of an umbrella scheme shall be in case of an existing scheme, in Form I set out in the Schedule
- Reg. 5 (1) A sponsor of a scheme shall at all times have in its board of directors and top management at least four persons who are academically and professionally qualified
- Reg 6 on professional suitability of a sponsor the Authority shall have regard to its qualities
- Reg 9 (1)(g) Every umbrella scheme shall have scheme rules written in an official language and shall make provision for the following-conditions under which an employer may cease making contributions to the scheme;
- Reg 9(1)(h) conditions under which an employer may terminate its participation in the scheme
- Reg 9(1)(m) the vesting of contributions immediately
- Reg 9(1)(o) provision for a member to defer benefits in the scheme or another scheme including an occupational or individual retirement bene-

fits scheme

- Reg 9(1)(s) partial liquidation of the scheme where a participating employer ceases to remit member contributions or commits an act contrary to the provisions of the Act and the trust deed and rules
- Reg 9(1)(z) manner of receiving and accounting for the contributions made by or on behalf of each member in the scheme
- Reg 9(1)(aa) the manner in which participating employers are kept informed on a quarterly and annual basis
- Reg 9(2) A participating employer may have special scheme rules
- Reg 12(2) Where the sponsor elects not to appoint a trust corporation under regulation 16 as a sole trustee, the sponsor shall appoint nine trustees of a scheme of whom—  
five shall be nominated by the sponsor of whom are employees and four shall be nominated by the sponsor, of whom they have no relation.
- Reg 13(1)(f) The duties of the trustees shall include— ensuring that the agreed contributions have been remitted to the custodian or approved issuer as required by the law and the scheme rules;
- k) notifying the sponsor and the employer of the particulars of the manager and custodian of the scheme as may be sought by any or both;
- l) submitting to the sponsor and the participating employers at least quarterly from the date of commencement of the financial year of the scheme valuation of the scheme fund, report reviewing the investment activity and performance of the investment portfolios, and a record of all investment transactions.
- Reg 17(1)(a),(b) of the draft Regulations provide some guidance on what qualifies to be an umbrella fund including minimum paid-up share capital of an administrator. But the same is not in the new Regulations
- Reg 23(10) New Regulations provides for contribution rates to be specified in Deed of Adherence
- Reg 26(a) No scheme rules shall restrict eligibility to membership of a scheme by reason of grade, cadre, age, differences in the employees' salary, wages, rank, seniority at the workplace, association, religion or in any manner which is discriminatory
- Reg 27 (c) member not to withdraw from membership or benefits unless he demonstrates need related aptitude
- Reg 28 (2) that a portion of the reserve fund is to be paid proportionately to a member retiring and choosing to exit the scheme.
- Reg 30 (5) provision of annuity option but no

mention of Income Drawdown. Income drawdown option is provided for in the Draft Regulations whilst it is missing in the New Regulations

- Reg 32(1),(2) liquidation to be undertaken for employers who do not remit member's contributions or commit illegality under the RBA Act
- Reg 35(3) where an Auditor vacates office, the trustees shall appoint a new one with the of the Authority
- Reg 36(3),(b) provides for the sponsor, employer to receive copy of audited accounts and each member to receive summary of accounts as well as members benefits statement by electronic means within 3 mos of the end of each financial year
- Reg 36(5) auditor to certify control systems on receipt of contributions and reporting of late payments and render an opinion on the adequacy of unremitted contributions.
- Reg 37(2) Authority to exempt scheme from an actuarial review as may be required by the Authority.
- Reg 38(a),(b),(c) surplus shall be used as contribution holiday limited to 10% of accrued scheme's liability., 50:50 apportionment of surplus during transfers to another scheme and treatment of surplus.

## Part VII on Transfers and Amalgamations of Schemes Part IX on Transition Provisions of the Umbrella Regulations

In addition to the above, ARBS has a number of concerns which have been communicated to RBA for consideration. These include:

- Treatment of “group schemes”, i.e. single schemes established to provide retirement benefits to employees of a group of related companies, as umbrella schemes for the regulation
- “Management Committees” – this is a misnomer and the structure proposed in the regulations is cumbersome and unworkable. Moreover many employers adhere to umbrella schemes because they do not wish to be involved in the management of their retirement savings arrangements.
- Composition of trustee boards is not appropriate to umbrella schemes which are established and operated by financial services companies

## Occupational Retirement Benefits Schemes Regulations 2000

In addition, the Court annulled the following

- Reg 8 A Corporate Trustee shall not appoint an administrator who is related to the Trust Corporation by way of ownership, directorship or employment.

In all the above cases the core of the constitutional irregularity is the absence of public participation. The Retirement Benefits Authority is taking steps to cure this fault and ARBS will keep you updated on the developments.



## TOPICAL ISSUE: UNCLAIMED FINANCIAL ASSETS

One of the thorny issues that have regularly been raised by trustees and schemes is the impact of the application of the Unclaimed Financial Assets Act on the retirement benefits sector. In this year's AGM we had invited the Unclaimed Financial Assets Authority and we were pleased to have their representatives attend our meeting.

The Unclaimed Financial Assets Authority (UFAA) is a statutory authority established under the National Treasury pursuant to the Unclaimed Financial Assets (UFA) Act No. 40 of 2011 and whose primary mandate is to recover unclaimed financial assets from holders of such assets on behalf of the Government, safeguard and re-unite the assets with their rightful owners.

## What is an unclaimed financial asset (an Asset)?

This is an asset that:

- Has been presumed abandoned and has become an unclaimed asset under the provisions of the Unclaimed Financial Assets Act;
- Has been transferred to UFAA as an unclaimed financial asset;
- Has been deemed under any other law to be an unclaimed asset and payable to UFAA, and includes all income, dividend or interest thereon but excludes any lawful charges thereon.

## Who is a Holder?

A Holder is any entity that:

- Holds an Asset as defined above;
- Is in possession of an unclaimed asset belonging to another;
- Is indebted to another on an obligation;
- Is a trustee that holds assets, to which the Act applies as above, on behalf of a beneficiary?

All holders of UFAs are expected to locate the owner of those assets in a period not less than 60 days and not more than 1 year before filing a report with UFAA.

Holders of assets presumed abandoned under the UFA Act shall send written notice to the last known owner informing him/her that the holder is in possession of assets

The holder is required to maintain a record of the reports submitted to UFAA for 10 years after the assets become reportable, except to the extent that a shorter time is provided.

## What makes an Asset unclaimed?

An Asset is deemed unclaimed if:

- The records of the holder do not reflect the identity of the person entitled to the assets;
- The Holder has not previously paid or delivered the asset to the apparent owner or other person entitled to the asset;
- The last known address, as shown on the records of the Holder, of the apparent owner is in a country that does not provide by law for the escheat (reversion of property to the state) or custodial taking of the assets or its escheat or unclaimed assets law is not applicable to the assets and the holder is domiciled in Kenya.

Unclaimed Financial Assets Act sets out a schedule of abandonment for different Assets as follows:

Asset	Period
Assets held by a Court or Government department -	1 Year
Unpaid wages -	1 Year
Life or endowment Insurance Policy or Annuity contract -	2 Years
Deposit for utility services -	2 Years
Determination or Order by Court of refund by holder-	2 Years
Assets from dissolved business entity -	2 Years
Assets held in fiduciary capacity -	2 Years
Travelers' cheques/money holders -	2 Years
Cheques, draft or similar instruments-	2 Years
Assets held in safe deposit box -	2 Years
Ownership interest (Shares and Dividends) -	3 Years
Demand, Savings or matured time deposit -	5 Years
Gift certificates or credit memos -	5 Years

## Unclaimed Financial Asset Report Filing

It is the responsibility of the Holder to file Unclaimed Financial Assets reports with UFAA annually on or before 01 November of each year. The reports to be filed should contain the following details:

- Name of the beneficiary, if known,
- Last known address if any, of each beneficiary,
- The name and address of the current Holder and any previous Holder, and
- Asset and value of Asset declared unclaimed.

UFAA may, on request, extend the filing date provided by up to 60 days after the deadline. However, a request for extension of time to file the report shall not be deemed a request for an extension of time to remit the payments.

UFAA can from time to time examine the records of a person to determine whether the person has complied with this Act of 2011 and may exercise powers in the event that a Holder is not complying with regards to due filing procedures.

## Failure to pay and deliver assets and Penalties

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 average rate during the twelve-month period 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.

The penalties, where applicable, shall be recoverable by UFAA as a civil debt.

## Offences and Penalty

A Holder shall be liable to a fine of not less than fifty thousand shillings and not more than one million shillings or to imprisonment for not more than one year, or to both for the following offences:

- 1) Failing to maintain records as required by UFAA,
  - 2) Knowingly submitting a report containing information that is false, misleading or has a material misstatement or omission
  - 3) Willfully refusing, after written demand by the Authority, to pay or deliver assets to UFAA
- Please note that this communication just provides a brief overview of the expectations of the trustees and schemes in relation to Unclaimed Assets given that the provisions of the Unclaimed Financial Assets Act are quite extensive. The Association shall, however, continue to engage UFAA in order to increase awareness of the trustees and schemes in respect of their obligations and responsibilities towards UFAA.

All members are advised to make reference to the UFA Act as the primary source of Unclaimed Financial Assets.

# What happens to pension on closure of company

Throughout our various discussions on occupational pension schemes, we have explored in detail the different types of occupational pension schemes, the type of benefits that are payable therein, the rights of members and, more recently, taxation.

Remember that an employer sets up an occupational pension scheme for the provision of pension benefits for their employees.

Occupational pension schemes can be either defined benefit (a defined benefit is promised at retirement) or defined contribution — determined by the scheme trust deed and rules and the benefit at retirement depends on the member's accumulated contribution balance.

But what happens if the employer ceases to exist for one reason or another? What happens to your pension benefits?

The good news is that the members' pension benefits are protected.

A scheme might be wound up when an employer can no longer support it by paying its contributions. For example, because it has gone out of business. If a company is insolvent, the pension plan will be terminated and the same can happen in the case of reorganization of a company.

However, members' pension benefits will not be forfeited during employer insolvency or winding up. How so?

For starters, all registered schemes are set up under irrevocable Trust. This means that the scheme is a separate legal entity from the employer that establishes the scheme and its assets do not belong to the employer. The assets are, therefore, protected and cannot revert to the employer in instances of insolvency. In other words, the employer's creditors cannot make a claim on the scheme assets.

Furthermore, registered retirement schemes are regulated by the Retirement Benefits Authority (RBA) under the Retirement Benefits Act and Regulations.

So, there are set regulations that drive the process of the liquidation of a pension scheme and ensure transparency and equity for the members of the affected schemes. The regulations provide that, in the winding up of a plan, the value of interests and pension benefits of the members are ascertained through a pre-determined procedure.



The only not-so-good news, however, is that the process of winding up a pension scheme is difficult and time-consuming.

As per the set regulations, a liquidator needs to be appointed to wind up the affairs of the scheme and to submit to the RBA preliminary accounts and reports, which can also be included into members. Any fees payable to the liquidator are borne by the scheme.

At the end of the liquidation, members' benefit entitlements are the net proceeds after all necessary expenses have been deducted. The expenses are pro-rated among all the members of the scheme.

The impact of winding a scheme is significantly different depending on whether the scheme is a defined benefit or a defined contribution.

A defined benefit scheme represents a fixed promise by the employer to pay the member a stated amount at retirement.

An employer's insolvency or closure translates into one being unable to meet that promise in full.

The Board of Trustees, who are ultimately responsible for the safe operation of the scheme and enforcing the rules of the Trust, would obtain a detailed valuation of the scheme and deal with the winding up of the scheme and the way that the members are to be compensated — which is particularly complex due to the need to ensure fair treatment of members.

The scheme trust deed and rules usually spell out how this is to be done.

Whether the direct benefit is funded or unfunded also determines the procedures to be followed.

Members' benefits will be secured to the extent of the assets in the direct benefit scheme, which might mean a reduction in the benefits payable if the scheme is underfunded.

A DC scheme has no future obligation to the members once it is wound up save to secure the benefit already built up in the members' individual pension pot. Recall that for a defined contribution, it is the contribution that is defined, not the final benefit.

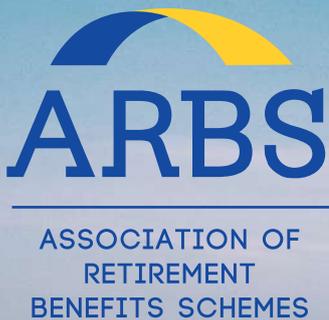
Members would have the option of transferring their pension benefits to another registered retirement benefits scheme or receive their benefit entitlements as per the scheme rules.

Such benefits shall also include those assigned for purposes of providing for pension-backed mortgages.

All in all, each scheme is governed by the trust deed and rules that usually clearly indicate the procedure to be followed in the event of the wind up of the scheme.

During the process of the winding up of a scheme, the trustees have a duty to keep members informed of the progress made on the liquidation.

ADIL SULEMAN & HARRIET OKUMU,  
Actuarial consultants at Zamara.



*Clarity & Education  
to our members*



## Membership

The Association's membership is open to Schemes, Trustees, Corporates, and Associations and Individuals operating in the retirement industry or affiliated sectors.

## WHY JOIN ARBS

- As a member you gain support and guidance on new rules and regulations, industry standards, best practices and retirement industry benchmarks.
- ARBS members mutual interests are promoted and protected through engagement with policymakers, the regulators and the government bodies.
- The Association provides its members with the opportunity to participate in outreach programs that educate and sensitize industry stakeholders on retirement and related matters.
- Increased visibility and exposure through a collective voice in the industry.
- An opportunity to be equipped with the knowledge and understanding necessary to address varied and complex issues which face them
- Members are able to participate and contribute to valuable knowledge-sharing networking events and opportunities by ARBS or in partnership with other industry players both local and international.
- All members enjoy discounted rates on events and advertising opportunities of its services and events on our different platforms.
- Members have access to the ARBS Council which is constantly informed of the sentiments among retirement benefits schemes trustees and other stakeholders enabling it to direct its energies appropriately.

## How to Join

Fill in the ARBS membership application form, available on the website

- . Pay the applicable membership fee

