



Dear Members,

The Council of ARBS is pleased to present to you this Annual Report. This report will highlight the activities of the Association for the financial year ended 31 December 2020 and any other significant developments touching on the Association to date.

The Council

The Association is governed by a Council elected by the members in accordance with the ARBS Constitution.

The council comprises of:

Office Bearers:

Simon Nyakundi	– Chairperson
Jane Nzau	– Vice-Chairperson
Bartholomew Omullo	– Treasurer
Florence Nduba	– Secretary

Members:

Paul Okwemba	Daniel Mainga	Anthony Kilavi	Bernard Murunga
Jane Gitau	Waeni Ngea	Grace Kiringa	Elijah Koskey

The Council meets formally every quarter to review the activities of the Association, market conditions and developments affecting the retirement benefits sector as well as achievement of the Association's objectives.

The Council is supported by three Committees details of which are given below:

Membership and Visibility Committee (“MemVisCom”)

Mandate: To manage member relations, communications and services and related activities

Membership: Florence Nduba (Chair), Anthony Kilavi, Daniel Mainga, Grace Kiringa

Governance and Finance Committee (“GovFinCom”)

Mandate: To manage the Association's finance and related activities as well as governance matters

Membership: Bartholomew Omullo (Chair), Florence Nduba, Jane Nzau, Benard Murunga, Elijah Koskey

External Relations Committee ("ExtRelCom")

Mandate: To manage relationships with various statutory and other bodies and manage lobbying activities

Membership: Paul Okwemba (Chair), Jane Gitau, Grace Kiringa, Waeni Ngea

ARBS Services to Members

The Association's core services to and on behalf of members are:

1. Member Education Programme (TDPK)
2. Lobbying to promote the sector's best interests
3. Communication and comment on industry changes
4. Problem solving assistance
5. Budget proposals
6. Negotiating on compliance challenges for the industry
7. Input to the National Retirement Benefits policy
8. Lobbying for more tax incentives to the Retirement Benefit Sector
9. Proposal on collection of unremitted contributions
10. Lobbying for more investment options and expansion of Table G
11. Presentation to the parliamentary Finance and Planning Committee on unfavorable budget proposals
12. Enjoinment in litigation touching on the Retirement Benefit sector
13. Recommending for MOU with other financial sector players like CMA, UFAA

The list above is not exhaustive as we do much more than the 13 listed above.

Sector Statistics

We are glad to report that the industry continues to make strides in terms of growth with a value of Kshs 1.4 trillion as at 31 December 2020, up from Kshs 1.3 trillion at the close of the previous year even after the effects of the Covid-19 pandemic. Notwithstanding the challenging economic and social conditions experienced, the sector closed the year with a total of 1,208 registered and just over 3.5 million active members.

Sector Developments

We have captured a few that we believe are pertinent to the members and elaborated on them below.

a) Mortgage Loans amendment Regulation

The amended regulations allow a member to utilize up to 40% of the accrued benefits to purchase a residential house while remaining members of the scheme. This is subject to a maximum of Kshs 7 million. This limit excludes any accumulated additional voluntary contributions (AVCs) by a member which may also be used for the same purpose.

National Budget

Each year the Council of ARBS takes 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.

However it is a matter of regret that many of our proposals do not make it into the National Budget. Nevertheless we persevere.

The retirement benefits sector received very little attention in the 2020 National Budget. The few notable points were:

➤ *Retirement Benefits Act: Penalty for not submitting actuarial evaluation report*

The Retirement Benefits Act, 1997 was amended to introduce penalties where trustees fail to submit a copy of the actuarial report to the Chief Executive Officer of the Retirement Benefits Authority. A penalty of KES 100,000 will immediately be imposed in case of delay and a further penalty of KES 1,000 shall be charged for each day or part thereof during which the report remains unsubmitted. This is a move to enhance compliance by retirement benefits schemes and enable RBA to regularly monitor schemes and safeguard member's funds

The introduction of penalties by the regulator on the submission of Actuarial valuations for Defined Benefit Schemes is to enforce compliance in same manner the regulator is enforcing on submission of Audited Financial Statements. ARBS believes that if a Scheme fails to submit actuarial valuations once every three years according to the law, the expenses incurred on penalties will be met by individual trustees or the person who is responsible for the failure, not by the Scheme.

➤ *Appointment of KRA to collect outstanding Contributions*

The Retirement Benefits Act has now been amended to allow Trustees to appoint the Kenya Revenue Authority (KRA) to recover any unpaid scheme contributions from an employer. This move was necessitated by the increased level of non-compliance by some employers. It is aimed at using KRA's more developed structures, to recover unremitted contributions.

Nevertheless, the Trustees will only apply this option as the last resort and after approval from the Retirement Benefits Authority (RBA).

➤ *Registration of Corporate Trustees*

Corporate trustees are to be registered to provide services to retirement benefits schemes and regulated. The registration of corporate trustees is a new requirement intended to improve governance of schemes while increasing accountability.

AND, most important

➤ *Taxation of monthly pension for persons aged 65 or more*

The Finance Act 2007 had introduced Paragraph 53 of the Income Tax Act which provides that monthly pensions and lumpsum benefits granted to a person who is sixty five years of age or more is exempt from tax.

The Finance Bill 2020 proposed to delete the paragraph exempting from tax retirement benefits paid to persons who are sixty five years of age and above.

ARBS through its Council lobbied to for the continues exemption from taxation of all retirement benefits for persons aged 65 years, 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 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 and, although we were initially assured that this was an error which 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 investigating legal action.

National Budget 2021

We recently compiled and submitted our proposals for inclusion in the 2021/22 National Budget. They can be seen on our website www.arbs.co.ke

Membership Report

ARBS presently have a fairly modest membership of just over 150, comprising a cross-section of schemes, founders and advisers/service providers. While this number of members may seem small, it does cover a large proportion, at least in value terms, of the industry since it includes umbrella and individual schemes as well as the main providers of guaranteed funds.

To enable us to speak with authority when dealing with the industry regulators, it is really important to increase our membership to demonstrate that we are truly representative.

The Association would appreciate member schemes feedback on matters of retirement. We appeal to all members to join us and engage the Association on our social platforms and quarterly events.

The Association will be surveying membership and visibility to assess the growth of the Association and fulfilment of our strategic plan.

TDPK has been ongoing. The Association appreciates all the efforts of Trustees to go through the training.

Annual General Meeting and Council Elections will both be held virtually.

Council Activities

- Council is reviewing the Strategic Plan for the Association as its period has elapsed.
- Council has also reviewed the ARBS Constitution primarily to take account of issues such as virtual meetings and elections, authority for wider fundraising activities etc and will publish the resulting document shortly.
- Council is taking action to formalize the relationship with the Regulator including obliging RBA to consult more widely on matters affecting the sector and take account of the results of those consultations.
- Council is pressing for more strategic treatment of the retirement benefits sector, especially on taxation matters, preservation of benefits, making retirement savings an attractive proposition etc.
- Council has just received a request from RBA for us to collaborate with a consultant on a much belated review of the Retirement Benefits Act and Regulations, which we had been led to understand had been launched some 3 years ago. While this will place considerable strain on our resources we shall respond comprehensively.
- The Council is seeking funding through its members to lobby for a matter in court on the mortgage regulation 2020. ARBS fully supports the principle that accumulated retirement savings may where appropriate be used to work for the saver during the working life provided that the value of the ultimate pot of money at retirement does not significantly reduce the target income replacement ratio of around 70%. The current average income replacement ratio in Kenya is around 35% which is too low compared to the target.
- The council appointed Jane Gitau to represent the Association at the National Retirement Benefits Policy in the task force committee. The Council gave its views, but members are also encouraged to share their views through us so that we can forward them before the completion of the policy.
- The Council was represented by Simon Nyakundi, Jane Gitau, and Paul Okwamba during the Retirement Benefits Authority 20th Anniversary.

Litigation Undertakings

The Association has been following up on some pending and new litigation matters that are currently in court, through its mandate to

- Litigating the PPAD Act 2015 against the Public Procurement Oversight Authority on the provision that public sector schemes should be subject to the procurement laws of the state.
- Litigation matter to challenge the content and/or operationalization of the Retirement Benefits (Mortgage Loans) (Amendment) Regulations, 2020. Council feels that the measure fails to address the underlying weaknesses in the principal Regulation.
- Litigation challenging taxation of 65years old

Signed by

Council Chairman

Contact us at:

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