Retirement Benefits Authority

POLICY PROPOSALS TO AMMEND RETIREMENT BENEFITS ACT AND REGULATIONS

	ISSUE	POLICY PROPOSAL	RATIONALE	PROPOSED AMENDMENT (S)
1.	**Review of Valuation Method for bonds**	Amend the Managers Regulation to allow valuation of financial assets to use Hold to Maturity valuation method for bond portfolio.	Holding the securities to maturity will reduce the valuation losses recorded by the fund, enhance the financial security of members and ensure that they receive a steady stream of income through out. the Fund will be able to recover from market fluctuations and realize the expected returns when the securities mature. The paper losses realized from making bonds to market has left the retiring members with lower account balance at retirement.	Delete the proviso on paragraph 5 (2) (e) (i) of the Managers Regulations and substitute therefor the following new proviso *"provided that valuation of scheme assets shall be in accordance with IFRS"*
2	**Definition of the term "agency notice"**	Amend section 2 of the Retirement Benefits Act by inserting the following definitions:	The amendment aims to distinguish agency notices from other notices issued under the Retirement	Amend section 2 of the Retirement Benefits Act by inserting the following definitions:

Retirement Benefits Authority

POLICY PROPOSALS TO AMMEND RETIREMENT BENEFITS ACT AND REGULATIONS

	ISSUE	POLICY PROPOSAL	RATIONALE	PROPOSED AMENDMENT (S)
		"***Agency notice***" *refers to the notice issued under this Act to a person to remit contributions on behalf of an employer"* "***Commissioner***", *means the Commissioner appointed under the Kenya Revenue Authority Act".*	Benefits Act. The word has been used under section 53B (7) of the Act. The amendment will operationalise section 53B of the Retirement Benefits Act	*a)* "***Agency notice***" *refers to the notice issued under this Act to a person to remit contributions on behalf of an employer".* b) "***Commissioner***", *means the Commissioner appointed under the Kenya Revenue Authority Act".*
3	**Amendment of Section 53B (7)** **and** **the Tax Procedure Act**	Amend section 53B of Retirement Benefits Act by deleting sub-section (7) and substituting it with the following provision. 53B (7) Where an employer fails to comply with the notice, the Commissioner shall (a) by an agency notice in writing, require a person (referred to as "an agent") —	The agency notice to be issued under section 53B (7) by KRA is not defined and does not spell out the obligations of the person to whom it is issued or consequences for failure to honour the agency notice.	1. The amend section 53B (7) the Retirement Benefits Act as proposed. 2. Amend Tax Procedure Act to empower KRA to collect unremitted contributions on behalf of trustees.

POLICY PROPOSALS TO AMMEND RETIREMENT BENEFITS ACT AND REGULATIONS

	ISSUE	POLICY PROPOSAL	RATIONALE	PROPOSED AMENDMENT (S)
		(b) who owes or may subsequently owe money to the employer. (i) who holds or may subsequently hold money, for or on account of, the employer. (ii) who holds or may subsequently hold money on account of some other person for payment to the employer; or (iii) who has authority from some other person to pay money to the employer, to pay the amount specified in the notice to Commissioner, being an amount that shall not exceed the amount of the unremitted contributions , interests, and penalties. (c) An agent shall pay the amount specified in the agency notice by the date specified in the notice, being a date that does not occur before the date that the amount owed by an agent to the employer becomes due to the employer or is held on the employer's behalf.	The proposed amendment will operationalise the provisions to enforce agency notices and make the process effective and easy to administer.	

Retirement Benefits Authority

POLICY PROPOSALS TO AMMEND RETIREMENT BENEFITS ACT AND REGULATIONS

	ISSUE	POLICY PROPOSAL	RATIONALE	PROPOSED AMENDMENT (S)
		(d) This section shall apply to a joint account when— (i) all the holders of the joint account have unremitted contributions; or (ii) the employer can withdraw funds from the account without the signature or authorisation of the other account holders. (e) When an agent who has been served with an agency notice fails to comply with the notice by reason of a lack of monies held by an agent on behalf of, or due by an agent to an employer, an agent shall notify the Commissioner in writing within fourteen days of receiving the notice, setting out the reasons for an agent's inability to comply. (f) When the Commissioner is notified by an agent under subsection (d) that an agent is unable to pay the amount due, the Commissioner shall within a period of thirty days, in writing to an		

POLICY PROPOSALS TO AMMEND RETIREMENT BENEFITS ACT AND REGULATIONS

	ISSUE	POLICY PROPOSAL	RATIONALE	PROPOSED AMENDMENT (S)
		agent— (i)accept the notification and cancel or amend the agency notice; or (ii) reject the notification. (g) The Commissioner shall notify an agent in writing of a revocation or amendment of an agency notice given under subsection (a) where the employer pays the whole or part of the contributions due or has made an arrangement satisfactory to the Commissioner for the payment of the contributions. (h) The Commissioner shall serve the employer with a copy of an agency notice, when serving the agent. (i) A payment made by an agent to the Commissioner in accordance with a notice issued under this section is treated as having been made on behalf of the employer and shall discharge an agent of any liability to the employer or any other person.		

POLICY PROPOSALS TO AMMEND RETIREMENT BENEFITS ACT AND REGULATIONS

	ISSUE	POLICY PROPOSAL	RATIONALE	PROPOSED AMENDMENT (S)
		(j) The Commissioner may require, in writing, any person, within a period of at least thirty days, to provide a return to the Commissioner showing any monies which may be held by that person for an employer referred to in subsection (7) or monies held by that person which are due to an employer referred to in subsection (7). (k) An agent who without reasonable cause fails to comply with an agency notice or a requirement by the Commissioner under this section shall be personally liable for the amount specified in the agency notice or requirement. (l) The Commissioner shall remit the funds paid by an agent to the Scheme, within thirty days.		
4	**Amendment of part Il of the First Schedule of the Kenya**	KRA Act has listed Acts under their administration of Kenya revenue Authority. Section 53B (2) Lists KRA as an agency to collect unremitted contributions. To empower KRA to collect on behalf of schemes retirement benefits	The amendment aims to anchor the collection of the unremitted contributions as part of the functions of KRA	Amend part Il of the First Schedule of the Kenya Revenue Authority Act

Retirement Benefits Authority

POLICY PROPOSALS TO AMMEND RETIREMENT BENEFITS ACT AND REGULATIONS

	ISSUE	POLICY PROPOSAL	RATIONALE	PROPOSED AMENDMENT (S)
	Revenue Authority Act	schemes unremitted or outstanding contributions, there is need to amend part Il of the First Schedule of the Kenya Revenue Authority Act by inserting the following; 15. The Retirement Benefits Authority Act (No. 3 of 1997)	under the Kenya Revenue Authority Act. The amendment aims to operationalize section 53B (7) of the Retirement Benefits Act	by inserting the following; 15. The Retirement Benefits Authority Act (No. 3 of 1997)
5	**Amendment of the Forms and Fees Regulations**	Amendment to the Form and Fees Regulations second schedule by inserting the phrase "annual registration of a corporate trustee Kshs. 50,000. "Immediately after item 3	There is need to prescribe the fees for registration of corporate trustees in the regulation following the gazettement of the Corporate Trustee Regulations. There is need to harmonize the prescription of fees in the Forms and Fees Regulations like any other service provider at Kshs. 50,000.00	Amend the Form and Fees Regulations second schedule by inserting the phrase "annual registration of a corporate trustee Kshs. 50,000. "Immediately after item 3
6	**Review of Tax exemption limit for lumpsum**	Tax exemptions on pension benefits reduce the tax burden for employees and subsequently increase employees' pension savings. There is also a need to cushion members when the accessing the benefits. This will also enhance the disposable income to retirees.	The capping of 10 years on the tax-exempt limit for lump-sum benefits payment has been in place for the last 15 years which is a long period considering volatility in	Amend the Income Tax Act be amended to extend the capping from 10 years to 20 years to allow retiring members of Retirement Benefits

POLICY PROPOSALS TO AMMEND RETIREMENT BENEFITS ACT AND REGULATIONS

	ISSUE	POLICY PROPOSAL	RATIONALE	PROPOSED AMENDMENT (S)
		The current tax-exempt limit for pension benefits is Kes600,000 (that is capped at Kes60,000 per year of service for a maximum of 10 years. The capping has been in place for 15 years and requires review to keep in line with economic changes. There is need to increase the capping limit from 10 years to 20 years in calculating the tax-free amount and be inflation adjustable. The review of the capping will increase the disposable income for employees retiring from employment.	Consumer Price Index (CPI). The increase in CPI has eroded the disposable income available to workers.	Schemes take home an enhanced tax free benefit.
7	**Tax exemption status of regulatory authorities in the PFM Act**	Amend the PFM regulations paragraph 219 (3) to insert the word "**not**" after the word "shall" to read 219. Dividends policy and surplus funds (3) A regulatory authority to which this section applies shall **not** be exempt from the income tax.	Employees of tax-exempt regulatory agencies are subjected to taxation charges on employer pension contribution above Kshs 240,000 a year or Kshs 20,000 a month. The tax treatment is different for employees whose employers are not tax exempt.	Amend the PFM regulations paragraph 219 (3) to insert the word "**not**" after the word "shall" to read 219. Dividends policy and surplus funds (3) A regulatory authority to which this section applies shall **not** be

POLICY PROPOSALS TO AMMEND RETIREMENT BENEFITS ACT AND REGULATIONS

	ISSUE	POLICY PROPOSAL	RATIONALE	PROPOSED AMENDMENT (S)
			The tax treatment needs to be harmonized to ensure fairness and equity to all employees regardless of the tax status. The amendment will also bring harmonization of tax treatment of employees/workers to ensure equity and fairness	exempt from the income tax.
8	**Retirement Annuity/Pension Payment**	The Income Tax Act provides for tax-exemption on retirement annuities or pension received by a resident individual from a registered retirement benefits scheme or the National Social Security Fund in a year of income. Specifically, the first KES 25,000 per month or KES 300,000 per annum is tax free and any excess is subject to tax. This provision was last amended in 2009 and has remained the same for last 12 years despite erosion of pension benefits by inflation. Its proposed that section 8(4) of the Income Tax Act be amended to increase the tax-exempt amount from the current Kes300,000 to KES 456,000 annually and be inflation adjustable.	The provision on tax-exemption on retirement annuities/pension was last reviewed in 2009 notwithstanding the changes in cost of living as depicted by increase in consumer price index. This increase has eroded the disposable income available to pensioners. The proposed amendment will also cushion retirees from inflationary pressure and allow more disposable income.	Amend section 8(4) of the Income Tax Act be amended to increase the tax-exempt amount from the current Kes300,000 to KES 456,000 annually and be inflation adjustable

RBA
Retirement Benefits Authority

POLICY PROPOSALS TO AMMEND RETIREMENT BENEFITS ACT AND REGULATIONS

	ISSUE	POLICY PROPOSAL	RATIONALE	PROPOSED AMENDMENT (S)
		This is equivalent to an increase from KES 25,000 to KES 38,000 monthly and inflation adjustable.		
9	**Pension schemes being considered as public entities**	Amend the Principal Act of the (PPDA) by deleting Section 2 (o): "**Public entity includes**: -…. **(o) a pension fund for a public entity**.	Pension funds worldwide are not regarded as public funds and do not fall within the public procurement laws. Pension funds comprise private property of a member. It comprises of contributions deducted from a member's salary and the same earned by employee at the point of deduction. The same is therefore protected as such under Article 40 of the Constitution of Kenya. Under the Retirement Benefits Act, pension funds vest in a member immediately the same is received in the Scheme.	Amend the Principal Act (PPDA) by deleting Section 2 (o): "Public entity includes: -…. (o) a pension fund for a public entity.

POLICY PROPOSALS TO AMMEND RETIREMENT BENEFITS ACT AND REGULATIONS

	ISSUE	POLICY PROPOSAL	RATIONALE	PROPOSED AMENDMENT (S)
			Pension funds do not fall within the definition of public funds under the Public Finance Management Act. Section 2 thereof defines public money as follows: "Public money includes all money that comes into possession of, or is distributed by, a national government entity and money raised by a private body where it is doing so under statutory duty; and money held by national government entities in Trust for third parties and money that can generate liability for government. Removing the PPDA from Pension Funds will reduce the regulatory burden on schemes	

POLICY PROPOSALS TO AMMEND RETIREMENT BENEFITS ACT AND REGULATIONS

	ISSUE	POLICY PROPOSAL	RATIONALE	PROPOSED AMENDMENT (S)
			and allow them to invest efficiently. Further, the definition of Accounting officer in pension scheme is not clear since all the trustees have the equal powers under the Retirement Benefits Act. It becomes practically impossible to certify the requirements under the PPRA that requires Accounting Officer, evaluation committees etc.	