

## POLICY PROPOSALS FOR FY 2024/2025 TO AMEND RETIREMENT BENEFITS ACT AND REGULATIONS

NO	ISSUE	PROPOSAL	RATIONALE	PUBLIC/STAKEHOLDER COMMENTS
1.	<b>Exemption from Public Procurement and Asset Disposal Act.</b>	The Principal Act is amended by deleting section 2 (o): <i>“Public entity includes: -</i> .... <i>(o) a pension fund for a public entity.</i>	<ul style="list-style-type: none"> <li>• Pension funds worldwide are not regarded as public funds and do not fall within the public procurement laws.</li> <li>• Pension Funds comprise the private property of a member. It comprises of contributions deducted from a member's salary and the same earned by the employee at the point of deduction.</li> <li>• The same is therefore protected as such under Article 40 of the Constitution of Kenya.</li> <li>• Under the Retirement Benefits Act, pension Funds vest in a member immediately the same is received in the Scheme.</li> <li>• 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 the 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 any money that can generate liability for the government".</li> </ul>	

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2.	<b>Individual members to choose investment options</b>	Make provision to allow individual members to choose investment options.	<p>The practice has not given members the option to choose.</p> <p>Amend the regulations to allow for amendment of TDRs for members to be provided with investment choices.</p>	
3.	<b>Amendment of Retirement Benefits Act, CAP 197 to include regulation of Trust Funds</b>	Amendment of the object on clause 5 to include 5(f) to read as follows; “regulate and supervise the establishment and management of Registered Trust Funds for Minors whose parents were principal members of schemes”	<p>Ensure Trust funds established out of pension benefits are also regulated by the Retirement Benefits Authority.</p> <p>Ensure the benefits are managed to the best interest of beneficiaries.</p>	
4.	<i>Tax exemption status of regulatory authorities in the Public Finance Management Act</i>	<p>The Authority proposes to amend section 5 (2) (a) of the Income Tax Act to exempt staff of regulatory authorities from paying tax on benefits arising from the exempt status of their employer.</p> <p>Amend section 5 (2)(a) of the Income Tax Act by inserting a new proviso (iv) as follows:</p> <p><i>where any taxable benefit including leave pay, sick pay, payment in lieu of leave, fees, commission, bonus, pension, gratuity, or subsistence, travelling, entertainment or other allowance received in respect of employment or services rendered paid by the employer who is tax-exempt shall be payable by the employer.</i></p>	<p>To ensure that employees of tax-exempt entities are incentivized to save in pension schemes and that their pension benefits are protected from erosion.</p> <p>Regulation 219 (2) of the Public Finance Management Act (National Government Regulations) requires that a regulatory authority established by an Act of Parliament and categorized as a national government entity in line with regulation 211 (4), as provided for in schedule 3 shall remit into the Consolidated Fund, 90% of its surplus funds reported in the audited financial statements after the end of each financial year.</p> <p>The Public Finance Management Act National Government Regulations further recognizes regulatory authorities as tax-exempt as provided for under regulation 219(3).</p> <p>Through these provisions, government entities that are tax exempt have played a significant role in contributing to the National Treasury's resource envelope both</p>	

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			<p>through remittance of dividend as well as surpluses that accrue from their operations. This has greatly assisted in bridging the budget deficit year on year.</p> <p>Despite this positive contribution, employees of tax-exempt entities are subjected to taxation charges on employer pension contribution above Kshs 360,000 a year. Employer pension contribution above Ksh 360,000 is therefore subject to tax on staff at a rate of 30%.</p> <p>However, an employer not exempt from tax may absorb tax on excess pension contribution to ensure that staff have a better resource basket for retirement, without reverting to taxing the staff on the same in year of contribution. Any tax is deferred to the year of receipt of benefit.</p> <p>The tax of 30% was targeted at employees of tax-exempt entities in the Non-Governmental Organizations (NGO) space who do not generate taxable income for the exchequer. Besides, such employees tend to receive a string of benefits from the employer. This is not the case with regards to employees of Regulatory Authorities in the country regarding earnings.</p> <p>In line with the strategic thinking of the Government that seeks to increase savings and ensure the citizenry benefit from the pension benefits accrued upon retirement.</p> <p>The action of taxing employees of regulatory authorities at a rate of 30% on pension contribution above Kshs 360,000 is a disincentive to contribute to pension schemes.</p>	

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			<p>The foregoing issue may be addressed by treating the 90% surpluses remitted to the National Treasury as being equivalent to income tax; in any case, it is a much higher charge. That will allow the regulatory authorities to absorb the tax obligation on behalf of the employees but as is the case, the staff will be visited with tax at the time of withdrawing the benefits in future.</p>	
5.	<p><b>Annual licensing (Registration and Licensing)</b></p>	<p>Introduce a penalty on failure by service providers to submit annual licensing requirements by 30th September every year.</p> <p>Insert the following new paragraph after Section 29 (4) of the RB Act  4(A) A manager, corporate trustee, custodian or administrator who fails to meet the requirements under parts (3) and (4) above by 30th September every year shall pay a penalty of one hundred thousand shillings and where any requirement remains due, the entity, in addition to the prescribed penalty, shall pay a further fine of one thousand shillings for each day or part thereof during which the requirement remains due.</p>	<p>Section 29 (2) of the RB Act provides for perpetual licensing of service providers. However, the Authority may suspend or revoke the license if the provider is unable to provide services or is in breach of the conditions attached to the license.</p> <p>To support investigations on whether the service providers meet the conditions of their licenses, the entities are required under Section 29 (3) &amp; (4) to pay an annual fee and submit audited financial statements, changes in key staff/directorship and changes in clientele to the Authority by 30 September of every year.</p> <p>Regrettably, majority of the service providers fail to meet these requirements within the stipulated timeline which compromises the efficiency and timeliness of interventions by the Authority where there is a breach.</p> <p>Introduction of penalties for failure to meet the requirements within the set timelines shall act as a deterrent for non-compliance thereby:</p> <ol style="list-style-type: none"> <li>i. Increasing the ability by the Authority to undertake timely interventions.</li> <li>ii. Reducing regulatory resources employed in tracking compliance.</li> </ol>	

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6.	<b>Umbrella schemes and Individual personal plans</b>	The regulations for Umbrella Schemes and Individual Retirement benefits Schemes be amended to only allow investments in tradable assets. Where a scheme has invested in immovable assets, the schemes will be given a time limit to exit the asset class	The Umbrella and Individual Personal Plans regulations should be amended to reflect new investment guidelines.  This will ease the accessibility of the members of umbrella schemes and Individual Personal plans.	
7.	<b>Income Draw Down</b>	Amend Regulation 4 of the IDD regulations to introduce an application form as a schedule.  Amend Regulation 4 of IDD regulations to introduce a certificate of registration as a schedule he Schedule.	This proposal aims to provide a specific form for registration of an IDD. Currently IPP Form 3A is in use. IDD to also have a certificate of registration in a schedule.	
8.	<b>Investment Guidelines</b>	The Income Drawdown Regulations should explicitly include provisions governing related party investments, specifying the limits and conditions under which schemes can invest in related or affiliated parties. This would involve setting clear guidelines to prevent conflicts of interest, ensure investment prudence, and safeguard members' funds.	Including regulated party investment provisions in the Income Drawdown Regulations is essential to protect the integrity of the retirement funds and maintain the trust of members. Without clear guidelines, there is a risk that schemes could engage in imprudent or biased investment decisions, favouring related parties over more suitable investment options. By regulating these investments, the Retirement Benefits Authority (RBA) can ensure that any investments involving affiliated parties are made transparently, with due diligence, and in the best interests of the members	
9.	<b>Amendment of the Forms and Fees Regulations</b>	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 a need to prescribe the fees for the registration of corporate trustees in the regulation following the gazettment of the Corporate Trustee Regulations. There is a need to harmonize the prescription of fees in the Forms and Fees Regulations like any other service provider at Kshs. 50,000.00.	

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10.	<b>Amendment of the Retirement Benefits (Individual Retirement Benefits Schemes) Regulations, 2010</b>	Amend the <i>Retirement Benefits (Individual Retirement Benefits Schemes) Regulations, 2010</i> to introduce requirements for founders as follows: - Reg 2 – Define a founder  Reg 4 – Set out the requirements for a founder	There is need for statutory provisions for who may found an individual scheme, to protect the public from fraudulent or incompetent actors.	
11.	<b>Trustee Term Limit</b>	Replace the trustee term limit of 3 years, renewable once, with a single 4-year term.	A 4-year term provides longer-term stability and continuity, allowing trustees to better execute strategic plans, manage investments, and oversee scheme operations without the disruption of frequent reappointments. This extended term fosters deeper expertise and more effective governance, ultimately benefiting the scheme and its members.	
12.	<b>Amend section 53B of the Retirement Benefits Act by deleting subsection (7) to provide a procedure on how agency notices by the commissioner will be issued and the procedure to be used for collection of the unremitted contribution.</b>	(i) Amend the Tax Procedures Act to empower KRA to collect unremitted contributions on behalf of trustees. (ii) Amend section 53B (7) of the Retirement Benefits Act to provide a procedure on how unremitted contributions can be collected and submitted to the accounts of the scheme. The Authority recommends an amendment to Section 53B of the Retirement Benefits Act by deleting subsection (7) and substituting it with the following provision. <i>53B (7) Where an employer fails to comply with the notice, the Commissioner shall</i> (j) <i>by an agency notice in writing, require a person (referred to as "an agent") –</i>	The proposal seeks to provide a procedure for KRA to collect on behalf of the schemes where there are cases of unremitted contributions.	

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		<p><i>(iv) who owes or may subsequently owe money to the employer.</i></p> <p><i>(iv) who holds or may subsequently hold money, for or on account of, the employer.</i></p> <p><i>(iv) who holds or may subsequently hold money on account of some other person for payment to the employer; or</i></p> <p><i>(iv) 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.</i></p> <p><i>(j) 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.</i></p> <p><i>(j) This section shall apply to a joint account when –</i></p> <p><i>(ii) all the holders of the joint account have unremitted contributions; or</i></p> <p><i>(ii) the employer can withdraw funds from the account without the signature or authorisation of the other account holders.</i></p> <p><i>(j) 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</i></p>		

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		<p><i>receiving the notice, setting out the reasons for an agent's inability to comply.</i></p> <p>(j) <i>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 agent – accept the notification and cancel or amend the agency notice; or (ii) reject the notification.</i></p> <p>(j) <i>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.</i></p> <p>(j) <i>The Commissioner shall serve the employer with a copy of an agency notice, when serving the agent.</i></p> <p>(j) <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.</i></p> <p>(j) <i>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).</i></p>		

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		<p>(j) <i>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.</i></p> <p><i>The Commissioner shall remit the funds paid by an agent to the Scheme, within thirty days.</i></p>		
13.	<b>Lack of definition of the term "agency notice"</b>	<p>Amend section 2 by inserting the following definition.</p> <p><i>"Agency notice" refers to the notice issued under this Act to a person to remit contributions on behalf of an employer"</i></p> <p><i>"Commissioner", means the Commissioner appointed under the Kenya Revenue Authority Act".</i></p>	To distinguish agency notices from other notices issued under the Act. The word has been used under section 53B (7) of the Act.	
14.	<b>The Retirement Benefits Authority Act is not listed as one of the laws administered by the Kenya Revenue Authority.</b>	<p>Amend part II of the First Schedule of the Kenya Revenue Authority by inserting the following;</p> <p>15. The Retirement Benefits Authority Act (No. 3 of 1997)</p>	This will anchor the collection of the unremitted contributions as part of the functions of KRA under the Kenya Revenue Authority Act	
15.	<b>Distinguish agency notices from other notices issued under the Retirement Benefits Act.</b>	<p>Amend section 2 of the Retirement Benefits Act by inserting the following definitions agency notice and Commissioner,</p> <p>The authority therefore recommends amending section 2 of the Retirement Benefits Act by inserting the following definitions:</p> <p><i>b) "Agency notice" refers to the notice issued under this Act to a person to remit contributions on behalf of an employer".</i></p>		

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		"Commissioner", means the Commissioner appointed under the Kenya Revenue Authority Act".		
16.	<b>Amendment of Part II of the First Schedule of the Kenya Revenue Authority Act</b>	The Authority recommends that The Retirement Benefits Authority Act (No. 3 of 1997) be listed as one of the acts under KRA for the purpose of collection of unremitted contributions.	The amendment aims to anchor the collection of unremitted contributions as part of the functions of KRA under the Kenya Revenue Authority Act. The amendment aims to operationalize Section 53B (7) of the Retirement Benefits Act.	
17.	<b>Benefit Preservation</b>	<p>Amend provisions on preservation of benefits to prevent access of benefits before retirement age, except AVCs.</p> <p>Amend Occupational Regulations 19(5) which reads "where a member leaves employment before attaining the specified early retirement age, that member may opt for payment of not more than fifty per cent of his total accrued benefits and the investment income that has accrued in respect of those contributions" to read "where a member leaves employment before attaining the specified early retirement age, that member may opt for payment of up to 100% of his Additional Voluntary Contributions and the investment income that has accrued in respect of those contributions".</p> <p>(iii) Similar amendment to Umbrella Regulations 28(1) and Individual Regulations 26 (2).</p>	<p>This proposal aims to promote adequacy of retirement savings for members.</p> <p>Given increasing life expectancy and low savings rate, early access of benefits further reduces the income replacement ratio for members.</p> <p>Accessing 50% of all benefits including the AVC can be a deterrent from saving in a scheme.</p>	
18.	<b>Introduction of a new Section 46A titled "Alternative Dispute Resolution"</b>	The RB Act be amended by the introduction of a new Section 46A titled "Alternative Dispute Resolution" The	ADR is recognised in the constitution and is the best way to resolve conflicts. Once this is	

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		<p>Chief Executive Officer may refer any matter/dispute for alternative dispute resolution by way of mediation or arbitration. If the parties opt for mediation the decision of the certified mediator may be referred to the CEO for adoption as a decision of the CEO, if a party is dissatisfied with the decision of the Mediator then the party can appeal such decision to the Tribunal. Where parties submit themselves to arbitration before an arbitrator certified by the Chartered Institute of Arbitrators, Kenya Branch the decision of the Arbitrator shall be final and may be adopted by the Tribunal as an award of the Tribunal.</p>	<p>adopted, Trustees and members will resolve their issues within a short time.</p>	
19.	<p><b>Amendment of Regulation 30 of the Retirement Benefits (Occupational Retirement Benefit Schemes) Regulations and Regulation 23 of the Retirement Benefits (Individual Retirement Benefit Schemes) Regulations and Regulation 36 of the Retirement Benefits (Umbrella Retirement Benefit Schemes) Regulations</b></p>	<p>Regulation 30 of the Retirement Benefits (Occupational Retirement Benefit Schemes) Regulations and Regulation 23 of the Retirement Benefits (Individual Retirement Benefit Schemes) Regulations and Regulation 36 of the Retirement Benefits (Umbrella Retirement Benefit Schemes) Regulations <i>be amended at paragraph (3) by deleting the words "thirty days" and substituting with the words "four months"</i>.</p>	<p>Section 34(2) of the RB Act requires Scheme trustees to prepare annual reports and accounts of their schemes within a period of <u>three months</u> after the end of each financial year and submit a copy of the audited accounts to the CEO RBA. It is therefore unreasonable and impractical to require that the scheme trustees conspicuously display and circulate the audited accounts to members within 30 days after the end of each financial year. As it is Regulation 30(3) of the occupational regulations contradicts section 34 (2) of the Act, it is in light of this glaring contradiction that we propose a reasonable timeline of four (4) months from the end of each financial year as opposed to thirty (30) days, to enable Scheme Trustees effectively comply with the three months' timeline set out in the RB Act.</p> <p>The same rationale applies mutatis mutandis to the Individual and Umbrella regulations.</p>	

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20.	<p><b>Amendment of Regulation 19 of the Retirement Benefits (Occupational Retirement Benefit Schemes) Regulations</b></p>	<p>Regulation 19 of the Retirement Benefits (Occupational Retirement Benefit Schemes) Regulations be amended by inserting a new paragraph 4A immediately after paragraph 4 –</p> <p><i>4A. The scheme rules shall provide for the transfer of a member's accrued benefits and contribution remittance to a pooled fund set up exclusively for the purpose of investing sharia compliant funds, within 30 days of application by a member and a provision that the benefits &amp; contributions arising from the employer's contribution shall be treated as vested benefits arising from employer's contribution at the point of receipt by the sharia complaint fund.</i></p> <p><i>4B. Where trustees have created a sub-fund within the scheme for purposes of sharia compliant investments, a member may give instructions to the trustees and sponsor to transfer his accrued benefits and contribution remittance to the sub-fund.</i></p>	<p>whereas Section 38(1A) (which should be 38(1B)) of the RB Act provides for sharia compliant funds, there is no corresponding provision in the occupational regulations to operationalize the provisions of this section in an occupational scheme.</p>	
21.	<p><b>Transfer of retirement schemes from segregated arrangements to guaranteed funds.</b></p> <p>The Authority has experienced increased frequency of transfers of scheme funds between segregated arrangements and guaranteed funds. One of the key factors attributable to these transfers is commissions</p>	<p>Amend the Insurance Act to exempt retirement benefit funds in Deposit Administration policies from paying commissions to brokers/agents by inserting a new paragraph under Section 73 as follows:</p> <p>73(5) No insurer shall, in respect of Kenya business, pay to a broker or agent a commission in respect of funds acquired by the insurer from a registered retirement benefit scheme under a Deposit Administration contract.</p>	<p>1. Commissions are paid to an agent/broker as a compensation for executing a transaction or providing specialized services to the investor. In the case of a retirement benefits scheme, an agent/broker is not needed because Trustees are required to appoint an adviser to offer professional investment advice through an Investment Policy Statement (IPS). Therefore, appointing a broker/agent for advise would be a double cost on the scheme.</p>	

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	<p>payable by insurance companies to agents/brokers. The commissions are passed to schemes through investment returns declared by the companies.</p>		<p>2. Further, the selection process of the provider should be based on a <b>procurement process</b> supported by either PPAD Act or a procurement policy developed by Trustees.</p> <p>3. The exemption will realize higher benefits to members in form of higher investment returns.</p> <p>Transfers between providers will be informed by other fundamental factors e.g. the financial soundness of the provider, as opposed to commissions.</p>	