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REGULATORY FRAMEWORKS AND TRUSTEE FUNCTIONS IN SMALL PENSION SCHEMES IN NAIROBI CITY COUNTY, KENYA

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ABSTRACT

The empirical evidence relating to the relationship between regulatory frameworks and trustee functions in small pension schemes is scanty. In the interrogation of this topic the paper delves at how regulations have impacted on prudent and consistent management of pension funds in relation to schemes' administrative functions and procedures performed by Trustees. In order to objectively evaluate this relationship, the paper is guided by the following objectives: to explore the impact compliance with regulations has on Trustee functions; assess how decision -making process affects the trustee functions in small schemes and; establish the impact trustee technical capacity has on the trustee functions in small pension schemes. There are 1238 pension schemes in Kenya with 458 classified as small schemes having fund values of less than 100million shillings. The study focused on Nairobi City County with 290 small schemes. A descriptive research design was adopted for the study with 81 schemes, 4 RBA officials, 1 ARBS official and 5 scheme administrators being drawn through purposive, stratified and simple random sampling techniques to participate in the study. Questionnaires and interview schedules were used to collect data as well as available secondary data.

The data collected was analysed by computing both the descriptive (finding mean, variance, and coefficients of variation of the responses) and inferential statistics. The study findings show that regulatory frameworks have a direct correlation with Trustee functions in small schemes and that the schemes exhibit administrative efficiencies and good governance due to their span of control. It thus recommends that there be an exemption of small schemes from certain compliance requirements and a deliberate move towards implementing of the existing laws and continuously assessing their impact rather than the frequent changes in legislation and to further involve trustees in small schemes proactively in formulating these laws when need arises.

Key words; *Regulatory Frameworks Trustee Functions, Small Pension Schemes, Regulatory compliance***,** *decision making process*

BACKGROUND OF THE STUDY

Pension and pensions regulation traces its origins to the 19th Century in Germany where, in 1889 to implement the social legislation, Otto Von Bismarck enacted the Old Age and Disability Insurance Bill. In Canada, pension plans developed over 140 years ago largely as a result of more vibrant workers unions, labour unrest, and agitation by the working population for a national old age pension security (Morton and Copp, 1981; Williamson, 1992; Gianasso, 2015). The modern-day state pension began with the introduction of the Old Age Pensions Act of 1908 by Lloyd George in the UK which paved way to the current social security systems (Hill, 2007). An occupational pension scheme is a pension set up by an employer and this can either be a Defined Benefit scheme or Defined Contribution scheme. The setting up and administration of these schemes must be in accordance with the RB Act, 1997 and accompanying regulations of 2000 (Kusewa, 2007). For many people around the world, Pension is the main source of retirement income at old age. 73% of the total income of retirees in Kenya is from pensions. Pension assets account for 14% of Kenya's GDP. This has made it essential to have these funds managed effectively.

RBA was established to ensure that the pension industry is streamlined to safeguard stakeholders' interests and to further develop the sector through the RB Act 1997 and RB Regulations, 2000. In this regard, there are extensive requirements with regard to the governance and management of these schemes (Raichura, 2008). Before 1997, the Retirement Benefits sector had little in way of effective regulation and supervision which gave room to poor administration and investment of scheme funds, mismanagement and lack of accountability (Odundo, 2004). The Act and Regulations have brought about significant changes on how schemes are managed. In the absence of legislation to govern the pension sector, Trustees would lack direction and clarity on how to steer the schemes and the members would be ignorant of their rights and responsibilities. The result would be poignant inefficiencies in the running of schemes (Steele, 2006). To have prudent investment of pension funds and payment of member benefits on exit, sound regulation of the pension industry is mandatory (Clapman 2007; Yermo, 2007; OECD, 2008).

The pension industry is part and parcel of a constantly shifting macro-economic and social political environment which necessitates the review of the regulatory frameworks guiding it to reflect the realities of the day while ensuring stability and consistency is maintained. The legislative structure in Finland has been described by Niemala & Salminen (2006) as being one of the most stable in the world. The changes are targeted and gradual, always aimed at increasing the flexibility of the system. It takes a cycle of on average five years making planning and execution of trustee functions consistent. The changes to the National Pensions Act of Finland is triggered by systemic events whilst having in it mechanisms to protect the existing structures and scheme operations and thus eliminating any major shocks to the system.

Kakes and Broeders (2006) attribute the high quality of the Dutch pension schemes which offer a high degree of pension security to its members to a stable policy framework. The decision to come up with a new statutory framework or significant changes is always informed by analysis of the pension sector to macro-economic shocks through simulations. Over the past two decades, the changes have been gradual leading to the sustainability of the Dutch pension system. There were many pension reforms in Latin America in the 1990s but as of 2013 there was very little gained by all those regulatory reforms particularly on pensions coverage (Levy, 2014). This is an indication that the political economics of pensions are very perverse and therefore need a well conceptualized and step- by -step regulatory reforms so as not to lose the overall vision. In El Salvador, the main challenge arising from its regulatory framework is the impression created of the cost burden it carries with it without a resultant benefit which can be considered adequate to motivate people to make the contribution sacrifice. The solution was found to lie in having an institutional and legal framework which make it possible for small companies to establish schemes and meet their obligations without unnecessary cost obligations while making it easier to fulfill the regulatory conditions without complicating the Trustees life (Novellino, 2014). According to Lawal (2007), a proper regulatory framework is essential to guide Trustees in the social and economic investments of pension funds particularly in developing countries, something he says lacks in Nigeria but needs to be implemented without prejudice.

STATEMENT OF THE PROBLEM

The existing knowledge on the relationship between regulatory frameworks and Trustee functions in small schemes is limited. While studies have been carried out on the general outcomes of having a strong regulatory regime and oversight of pension schemes, no study has been done to establish their effects specifically on trustee functions in Kenya. There have been a number of studies done in Kenya to establish the effects and impact of regulation but this have been focused on the outcomes of scheme activities. Karisa (2008), examined the impact of the Retirement Benefits Act on Pension Funds' investments portfolio. Another study was done by Kusewa in 2009 to establish what impact the regulation of the retirement benefits sector had on the financial performance of occupational schemes in Kenya. Mwangi in 2012 focused on how financial performance of retirement benefits funds are affected by regulations. These studies, however, do not provide a vivid outlook on how the operations of small schemes are affected by the regulatory frameworks.

According to RBA (2020) there has been a consistent growth in the size of pension funds with a cumulative value of 2.93 trillion Kenya shillings up from 50billion Kshs in 1997 when the Retirement Benefit Act was enacted. Having this kind of success in the industry on a backdrop of a consistently dynamic business environment has led to increasingly complex management practices among Trustees. This has also given rise to opportunities for some negative practices by trustees that may require deterrence as well as innovative products and processes that may require regulation (Mohan, 2010; Sabu, 2013). This continued growth of the pension industry and the resultant governance challenges has led to RBA instituting many regulatory changes each year and more so in the past two years. However, it is in doubt if this has had an effect of actually growing the sector.

Taking into account that Trustees are the legal owners of the scheme, their functions inform the management and administration of funds defining the scheme's operations. Ouko (2009) established that regardless that most efforts by RBA may be legally or administratively sound, they always lack the perceptive credibility which in effect stagnates the trusteeship function. Trustees are primarily responsible for good governance of occupational pension schemes forming the basis of pension legislation leading to the fundamental question asked by Novellino (2014) whether the resultant changes in the legal frameworks is putting unnecessary administrative responsibilities on the Trustees and costs on the scheme and whether they stifle the Trustees operational abilities? There was therefore a need to find out the effects of regulatory frameworks on these functions and specifically to small schemes and transitively the viability of these schemes in the long run, a linkage that this study set out to establish.

OBJECTIVES OF THE STUDY

The objectives guiding the study were as follows;

i. To establish the effect of regulatory compliance on Trustee functions in small pension schemes
ii. To determine the effect of decision- making process on Trustee functions in small pension schemes

EMPIRICAL LITERATURE REVIEW

Trustee Functions

The main functions of a Trustee in a scheme is to insure and protect the rights and the interests of the beneficiaries of the trust by ensuring funding, investment and payment of member benefits (Silberman, 1972). Fundamentally, there is little that can take place in a scheme if the trustees do not discharge their fiduciary role, which includes holding the scheme assets in trust for members; acting impartially; keeping the books of accounts, ensuring the scheme is funded and seeking professional opinion where necessary. Trustees should act in the best interest of members, exercise prudence, be loyal to the beneficiary, avoid conflicts of interest while providing full disclosure (Davis, 2001; Nyakundi, 2009).

Trustees have to define the stakeholders to a scheme, communicate the pension design and the kind of benefit the scheme is promising to the members. They have to further, ensure that the scheme is cost effective, giving value for the risks in terms of investments as well as value for money on the administrative side. Trustees have to identify and mitigate risks inherent to the scheme by ensuring they have the right people, protocols and technology (Ambachtsheer, 2016). According to Davis and Steil (2001), they are also duty bound to develop an investment policy statement for the scheme to grow member fund values and guarantee a sustainable pension at retirement and evaluate the performance periodically.

Trustees have a duty to ensure that all scheme stakeholders adhere to the Trust Deed and Rules of the scheme, the RB Act and Regulations. On information to members, Trustee must provide all the information as required by law or on request by members or someone with an interest in the scheme (Opra, 1997).

Compliance with Regulations and Trustee Functions

The Retirement Benefits Act and Regulations sets out the principles and rules that are applicable to the administration of registered pension schemes with the ultimate aim of protecting the interests of the sponsors, members and beneficiaries thus creating reasonable expectations (Stewart and Yermo, 2009). According to Paisley (1985), a person who owns, controls, manages, or directs funds /trusts is a fiduciary and subject to the obligations of the law. Trustees as fiduciaries have to operate within these rules and regulations since they act in the interest of another person, they have discretionary power through which they can unilaterally affect the beneficiary's interests (Davies, 2001). Trustees have to ensure that minimum standards of scheme provisions including scheme membership, death benefits, benefits accrual, portability of benefits, vesting period and retirement benefits are met or exceeded (Silberman, 1972).

The complexity and professional knowledge requirement that the regulations place on the schemes forces Trustees to seek outside professional assistance such as actuarial and legal advice (Cocco and Volpin, 2007). This requires scheme resources and an element of risk on the part of Trustees. The goal of pension regulation and supervision is to protect the rights of the members and beneficiaries and thus should not on the other hand require trustees to bear undue costs and risks (OECD, 2010; Davis, 2001). Trustees are expected to establish responsibilities, standards and expectations relating to scheme governance, selection and delegation of responsibilities to employees and agents and monitoring their actions. As Trustees endeavor to ensure that these responsibilities are governed in accordance with the standards and expectations, they also need to be strategic to give the members value for money (Ambachtsheer, 2016).

With regulations establishing minimum administration requirements for schemes including registration, funding and investments, amendments, winding up of schemes, reporting and scheme filings, Trustees must comply with the applicable legislations (Paisley, 1985; Nyakundi, 2009). Non- compliance presents the risk of schemes being de-registered, removal of Trustees from office or payment of penalties (Raichura, 2010; RBA, 2018). Non-observance of regulations and guidelines has potentially huge and damaging consequences for the scheme as it means the governance structures are compromised. Regulations assist Trustees to address any possible conflicts of interests and put in place appropriate governance mechanisms such as risk management frameworks and other policies (OECD, 2010) Compliance further ensures that schemes streamline their operations with greater transparency, accountability and professionalism in scheme management (Kusewa, 2007).

Davis (2000), however, observes that the regulatory structures tend to remain rigid and consequently the frequent changes in pension regulations reduce Trustee consistency in effectively delivering on their mandate. He further argues that regulations in themselves have a cost element and thus excessive regulatory burdens present Trustees with the challenge of balancing between minimizing administrative costs while ensuring compliance and preserving member value. Increasing legislation presents a new challenge to Trustees in Regulatory compliance and an additional burden in carrying out their duties considering they also double up as full-time employees of their sponsoring institutions. According to Ambachtsheer (2016), with these governance imperatives, there is the resultant underlying question of organizational autonomy. This presents a view that unnecessary legal constraints are in themselves value- for – money destroyers in pension organizations and this ultimately leads to regulation fatigue (OECD, 2007).

Decision making process (within the existing policy framework) and Trustee Functions

The Trustees primary focus is to safeguard the rights and interests of the beneficiaries of the trust by ensuring funding, investment and portability. In arriving at any of these decisions, Trustees have to apply the prudent man rule which requires that a trust must be administered with due care under the prevailing circumstances as a prudent person would while discharging the functions of an enterprise with like aims and of identical character. (Carmichael, 2005). According to Cocco and Volpin, 2007, Trustees are responsible for the trust assets and management. They have an obligation to decide how to invest the pension assets and they must have in place a schedule of contributions from the sponsor. Given the powers and the size of pension plans, Trustees actions have a significant implication on the scheme members (or beneficiaries) and for the value and behavior of the sponsors. In making their decisions, the trustees are duty bound to the scheme and not related parties to the employer or group of members (OPRA, 2007)

The Retirement Benefits Act (1997) empowers Trustees to invest the scheme assets and puts on them the responsibility to diversify the investments and to determine the suitability of the investments while taking proper advice from fund managers. In doing this, they have to make reference to the scheme's Investment Policy Statement (IPS) as well as the guidelines on investment as provided for in the regulations (Nyakundi, 2009). To arrive at these decisions, Trustees must hold a number of meetings to deliberate. These may take time resulting in delays in implementing the investment decisions and hence loss of opportunities. In almost all cases, during the Board of Trustees meetings, the trustees need to consult with the fund managers. Davis (2001) aptly put it that taking advice but not having the capacity or evaluation ability is contrary to trustees making effective decisions. Trustees thus are duty bound to ensure that the decisions they make guarantee that the promised pension benefits are secured and the pension income assured.

It is a Trustees duty to ensure that sponsor contributions are remitted and in a timely manner and that the member benefits are preserved by keeping scheme expenses, which reduce returns, at a minimum (Davis, 1995). Where contribution remittance from the sponsor is either consistently delayed or not done, the trustee dilemma is on compelling the sponsor, who is also their employer at the organizational level, to pay up or report to the Authority as stipulated in the Retirement Benefits Act and Regulations, 1997. In small schemes, the sponsor nominated Trustees are likely to be the owners of the company while the member nominated Trustees, due to the size of the enterprise, normally have a close relationship and allegiance to the sponsor presenting a challenge in taking decisions particularly those not favourable to the sponsor (Mercer, 2008).

According to Clark and Urwin (1997), Trustee actions are influenced, inherently, by decisions arrived at through cognitive biases. The Board of Trustees are expected to be collegial, representative and make a collective commitment to understand and fairly balance sponsor and member interests. In reality, trustees in most instances, are affected by unacknowledged differences in individual decision making styles, are unfocussed and usually overwhelmed by the myriad of issues that confront them (Ambachtsheer, 2016). The number of Board of Trustee meetings that can be held in a calendar year as well as the structure and voting requirements are prescribed in the Regulations (RBA, 2018). The changes to these Regulations and guidelines on scheme governance have been on the increase thus imposing more decision- making protocols on trustees and their actions (Raichura, 2008). Trustees in the process also end up neglecting other aspects of scheme administration such as member information needs, payment of benefits and supervision of service providers. The emphasis on a prescribed decision-making process through heavily prescribed rules tend to shift trustee focus to having things done right rather than doing what is right. They strive at technical compliance with the existing rules. Doing the right thing should be the basis to judge trustee performance in both the court of law and the courts of public opinion and thus the true test for the proper fulfillment of fiduciary duty according to Ambachtsheer (2016).

The Pension Regulator, UK, (2007) affirms that, when trustees have to make a decision of invoking a power, they must take into account the circumstances with impartiality, consider the relevant facts and ensure they keep records of the facts informing the decision. Good practice dictates that Trustees should communicate decisions to affected members promptly. They are also required to seek professional guidance on unclear and technical aspects that may affect the scheme. A balanced representation of stakeholders in the Board of Trustees is a solution to any serious governance failures that may arise and the implementation of codes of conduct to address conflicts of interest (Stewart and Yermo, 2008). Ambatscheer (2016) contends that the quality and nature of the process of decision making has a bearing on investment beliefs and policies by Trustees, their influence on service provider activities, scheme governance and stakeholder communications. Trustees have to align the interests between principles and agents and have an informed oversight and strong executive function.

THEORETICAL FRAMEWORK

Public Interest Theory of Regulation

Advanced by Arthur Cecil Pigou in the 1960's, the theory of Public Interest expounds on how regulations are geared to protect and serve the greater good of the publics (Pigou, 1932). The government intervention taken is assumed to be for the benefit of the society and the regulating body to be acting on the society's behalf (Michael, 2003). Public interest in this case refers to how scarce resources for individuals as well as collective goods can be optimally allocated. Regulation is generally defined as the use of legal instruments to implement socio-economic policy objectives with the ultimate aim of protecting consumers and maintaining ethical standards such as those of professionals (OECD, 2002). The major characteristic of legal instruments is that the government, under penalty of sanctions, induces individuals and organizations to abide by recommended behavior (Posner, 1974).

Critiques of aspects of public interest theory argue that it is ambiguous, and that it is not a determinant of when and if public interest progresses. When the regulatory agency is set up in the period of regulatory reform, it is normally under pressure to shield consumers from market malpractices and it is subject to close scrutiny by the government and the public it serves. Over time, however, the government and the public focus and attention shifts to other issues, taking the spotlight from the regulator's activities. As a result, the regulator ends up being gullible to regulatory capture (Magnus, 2010). By definition, regulatory capture is the process whereby the regulator set up to act in public interest ends up serving or advancing the special concerns or commercial interests of the dominant industry players the agency is mandated to regulate. Regulatory capture is an inherent risk by its very nature to the agency in question (Adams et al, 2007).

Due to the deep relevance of the public interest theory in this field, I propose to use it in the study to establish the extent to which and how regulations set standards on trustees of pension schemes in order to safeguard sponsor and member interests. Secondly, RBA's presence as a regulator is expected to enforce compliance to the law and exercise fair treatment of all the stakeholders in the retirement benefits industry to the benefit of the public.

Conceptual Framework

Independent variables **Dependent variable**

Compliance with Regulations
- Awareness
- Professional advice
- Adequacy of the laws
- Compliance levels
- Frequency of Legislative changes
- Disclosure
- Tenure rights

Decision Making Process
- Fiduciary duty
- Leadership
- Board structure/composition
- Access to information
- Openness/ transparency
- Stakeholders
- Statutory requirements
- Scheme structure

Trustee Functions
- Contribution collection
- Investment
- Payment of member benefits
- Submissions of Statutory Returns
- Custody of scheme documents
- Effective communication
- Risk management
- Service providers engagement
- Member education
- Good governance

Figure 1: Conceptual framework

RESEARCH METHODOLOGY

Descriptive research design was adopted because of its relevance when it comes to describing the state of the occurrences thus making comparisons easier. The study focused on 87 schemes out of the 290 small schemes which had fund values of kshs.100million or less in Nairobi County based on RBA (2020) scheme statistics. the unit of observation to the study were the Trustees of the schemes (either the Trust Secretary or Chairman) a sample of 4 RBA officials, a representative of ARBS and 5 scheme administrators. There are a total number of 1, 238 of pension schemes in the country, 1007(81%) of these are in Nairobi. Of the total population, 458 are classified as small schemes Out of this, 290 schemes are based in Nairobi City County.

Purposive and simple random sampling techniques were used to determine the respondents from the target population. The general target population was arrived at through purposive sampling then the target respondents were drawn randomly to obtain the sample population. The sample size was determined using Yamane (1967) formula for population sampling was used to determine the sample size of 87 schemes selected from a sample population of 290 schemes based in Nairobi. Questionnaires were administered to the 87 scheme officials and interviews conducted for Administrators, RBA and ARBS officials. The interviews on the other hand, brought out a deeper upstanding about the regulatory effects on trustee functions effectively complementing the questionnaires. Descriptive and inferential statistics were used to analyze data. The responses received were generally described through descriptive analysis by calculating means, variances, and coefficients of variation of the responses without giving detailed explanation of the values computed.

RESEARCH FINDINGS AND DISCUSSION

Trustee and Member training

According to the study findings, 16% of the schemes did not undertake member education. The rest indicated that they normally carry out periodic training to their members. 96% of the respondents indicated that they had attended a training on scheme administration. However, of this, a number expressed their dissatisfaction with the compulsory TDPK program saying it was too rushed while other trustees interviewed cited the costs of the training. The few schemes that do not offer member training cited lack of training opportunities and members being trustees at the same time as some of the reasons for lack of member training.

It was established that 72% of respondents indicated that member training by the scheme has a cost implication. It is a mandatory requirement for Trustees to attend the Trustee Development Program of Kenya within six months of appointment and this is a reason for the high score in attendance. The findings are consistent with RBA (2015) on the impact of the trustee training established that the awareness and skills imparted led to more prudent management and administration of schemes. However, results from the administrators interviewed indicate that they have a high challenge in their dealing with trustees when it comes to their knowledge and aptitude in scheme operations.

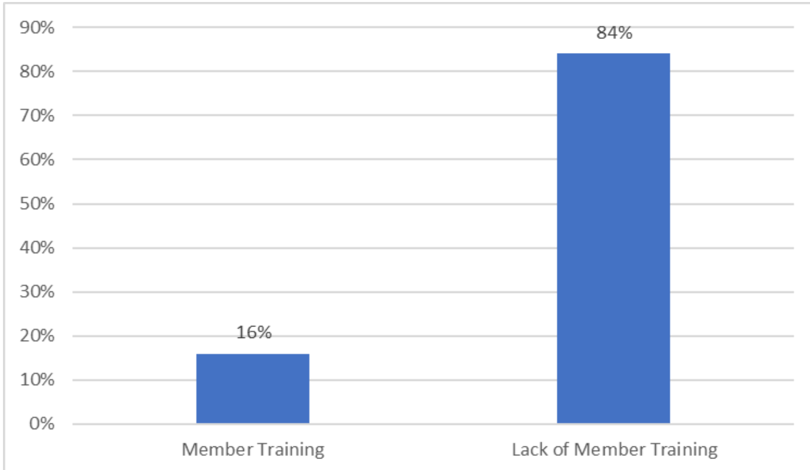

Figure 2: Member training by the scheme

Regression analysis indicates that there is a relationship between scheme compliance to RBA policies, understanding of policies by schemes, challenges faced by schemes in decision making and the scheme trainings as summarized in the table below.

Table 1: Regression analysis

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.610[a]	.372	.283	.31687

Model		Sum of Squares	Df	Mean Square	F	Sig.
1	Regression	1.252	3	.417	4.155	.019[b]
	Residual	2.108	21	.100		
	Total	3.360	24			

Model		Unstandardized Coefficients B	Unstandardized Coefficients Std. Error	Standardized Coefficients Beta	t	Sig.
1	(Constant)	2.693	.567		4.747	.000
	Are You Conversant with RBA act and Regulations	-.203	.208	-.203	-.973	.341
	Do You Require Professional Advice to Understand Laws And regulations	-.472	.155	-.630	-3.045	.006
	Experienced Challenges as Trustees in Making Decisions	-.283	.238	-.209	-1.187	.248

a. Dependent Variable: Do your Scheme Undertake Member Education

The study findings further revealed that 76% of the schemes had reviewed their service level agreements. The remaining 24% cited; no formal process in place to review the SLAs, not thought of it, nothing substantive has changed to warrant the review, being satisfied with current services and schemes being still young as some of the reasons for not reviewing the service level agreements. The findings align with Cocco and Volpin (2007) who noted that the complexity and professional knowledge requirement that the regulations place on the schemes forces Trustees to seek outside professional assistance such as actuarial and legal advice.

Decision Making, contribution collections and benefits payments

As per the study results, only 8% of the trustees admitted to experiencing challenges as trustees in making decisions citing some Trustees as not being very committed as they also serve in other boards which are remunerated unlike the pension one. The two-year term limit was also cited as stifling experience resulting in service providers becoming the decision makers in the schemes. The remaining 92% indicated that they were yet to experience any challenge as far as decision making is concerned. The results of the interviews on administrators indicate that the quality of decisions made by trustees are generally fair with one administrator ranking it as high. One scheme cited contestation by members on trustee decisions as a major challenge in decision making. In addition, only 8% of the approached schemes had received complaints from members pertaining scheme operations. The survey further revealed that the most prevalent complaints lodged by scheme members to the RBA are delays in remittance of monthly contributions from the sponsor. Of the trustees interviewed, 54% said they had experienced challenges in collecting monthly contributions from the sponsor collaborating the complaints received.

The other prevalent complaint is in delays in processing and assignment of benefits. 60% of the trustees interviewed indicated that they take 60- 90 days to process member benefits, 25% said they pay within 30-60 days while 15% indicated that they process benefits within 0-30 days. This reinforces the information on complaints received by RBA as under the RB regulations, benefits should be paid within 30days of leaving the scheme. The revelations conform with The Pension Regulator UK (2007) which affirms that, when trustees have to make a decision of invoking a power, they must take into account the circumstances with impartiality, consider the relevant facts and ensure they record the factors that influenced the decision. Good practice dictates that Trustees should communicate decisions to affected members promptly.

Compliance with RBA Act and Regulations

Majority of trustees approached (84%) indicated that they are conversant with RBA act and regulations. Only 16% of the scheme managers were not conversant with RBA act and regulations citing many changes in the Retirement Benefits Act and regulations and still being in learning process as reasons as to why they are still not conversant with RBA Acts and regulations. The study findings further revealed that not all schemes are fully compliant with RBA act and regulations. Majority of schemes (80%) were however fully compliant as shown in the pie chart below. This is given credence by the interviews with RBA officials which put the schemes' risk rating as moderate.

When compared to large schemes, the compliance levels of the small schemes are rated as comparable to higher than the large schemes. One administrator however cited trustee compliance with regulations as being a major challenge they face.

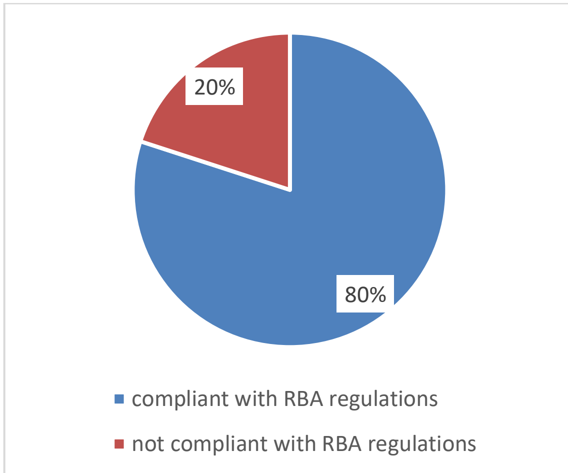

Figure 3: Compliance with RBA Act and Regulations

The study findings reveal that the current RBA policies are effective and sufficient in addressing scheme needs. This is premised on the fact that 96% of the respondents indicated that the current policies (as of 2018) are meeting their respective scheme needs and requirements. Only 4% of the scheme managers were of the view that the current policies are not sufficient enough to address their needs. Majority of schemes however admitted to face challenges in complying with most of the recent RBA policies and guidelines and indicated that compliance was all about ticking boxes.

Governance policies were found to be a major challenge as it accounted for 76% of the responses. Interpretation of policies as well as policy formulation were mentioned as other challenges; accounting to 4% each. The remaining 8% of respondents indicated that they face no challenge in their compliance to the RBA policies as shown in the graph below. The frequency at which RBA carry's out changes to the Act and Regulations is very high according to 62% of the respondents. The remaining 38% however viewed the changes as being moderate.

Participation in RBA decision making

The study findings indicate that only 36% of scheme managers had been involved in RBA policy formulation. The remaining 64% had never been part of RBA policy formulation process as show in the pie chart below. This could be the reason as to why 40% of the schemes approached indicated that they require professional advice from the administrator in understanding RBA laws and regulations. The interview by ARBS also point to this indicating insufficient level of consultation with the scheme Trustees on intended regulatory changes as a major concern by small schemes. Ambatscheer (2016) contends that the quality and nature of the process of decision making has a bearing on investment beliefs and policies by Trustees, their influence on service provider activities, scheme governance and stakeholder communications.

This resonates with the findings.

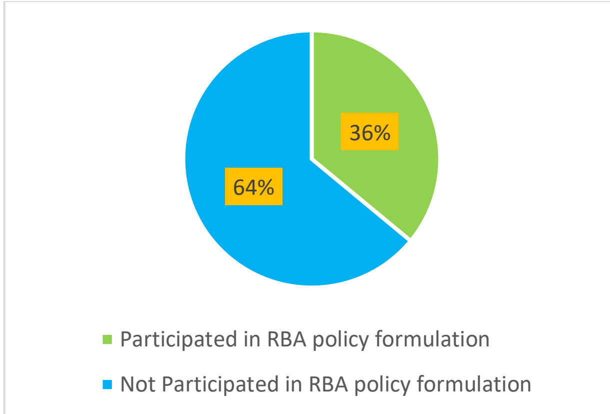

Figure 4: Participation in RBA policy formulation

Further analysis indicates a direct relationship between participation in RBA policy formulation by small schemes or their trustees and the level of their policy understanding and compliance. The analysis shows that the more the small schemes are involved in RBA policy formulation process, the more they understand the regulations, comply with the regulations and more so, they are satisfied by the RBA policies in their line of operation. A summary of the existing relationship is given below.

Table 2: Relationship between participation in RBA policy formulation and the level of policy understanding and compliance

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.464[a]	.215	.058	.47552

ANOVAa

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	1.238	4	.309	1.368	.280[b]
	Residual	4.522	20	.226		
	Total	5.760	24			

Coefficients[a]

Model		Unstandardized Coefficients B	Unstandardized Coefficients Std. Error	Standardized Coefficients Beta	t	Sig.
1	(Constant/ Independent variables	1.612	.768		2.099	.049
	Are you Conversant with RBA act and Regulations	.096	.339	.073	.284	.780
	Are The Current Policies Meeting Your Scheme Needs	-.948	.577	-.387	-1.645	.116
	Do You Require Professional Advice to Understand Laws and Regulations	.247	.230	.253	1.076	.295
	Is You Scheme Fully Compliant with RBA Act and Regulations	.423	.264	.352	1.598	.126

a. Dependent Variable: are you Involved in Policy Formulation by RBA

Majority of schemes (48%) revealed that the RB regulations has assisted them to a great extent in meeting their respective trustee duties. The remaining 24%, 24% and 4% rated the assistance of RB regulations as being to some extent, moderate and low respectively as shown in the graph below. Premised on that, 60% of the respondents rated RB regulations as being relevant. The remaining 32% and 4% of the trustees rated the regulations as very relevant and somehow relevant respectively.

CONCLUSIONS

The results suggest that the regulatory frameworks in place have resulted in efficiency and effectiveness in scheme operations. This is through clarity of the roles of the trustees, continuous education, effective internal control systems and clear decision-making protocol, monitoring and feedback mechanisms. The regulatory frameworks thus have a direct correlation with Trustee functions in small schemes. Small schemes exhibit administrative efficiencies and good governance due to their span of control and number of members. Effective internal control systems mitigate the risk of financial losses whereas regular communication to members ensures less conflicts arising from member complaints (Stewart, 2009). The sound financial performance of the schemes can be attributed to trustee education and competency.

From the findings, the regulations in place as of are adequate. These schemes therefore do not need many policies imposed on them. A majority of the trustees in the small schemes have indicated that the changes in regulations and guidelines are very many over a small period of time that in turn increases risk of non-compliance and the overall operational costs to the schemes through expenses to professionals increasing the expense ratio to fund the schemes' fund values. This has led to diseconomies of scale, regulatory fatigue and demotivated trustees. RBA therefore needs to focus on the implementation of the existing regulations to ensure 100% compliance for member interest to be adequately safeguarded.

It can conclusively be said that there is insufficient level of consultations with Trustees of small schemes on intended regulatory changes and further lack of support from the regulator on how to implement those changes in regulations and new guidelines. From the limited interactions, there is fear by these trustees to interact directly with RBA. The TDPK program plays a vital role in equipping trustees with the knowledge and skills to effectively run pension schemes. From the findings, the program is a cost center to the schemes and rushed. There is need to rethink the structure and funding of the program to assist small schemes.

The two-year term limit on trusteeship is a challenge to small schemes due to the numbers of members and is also seen to stifle growth and experience. Not all schemes are keen on getting a corporate trustee or move to umbrella scheme arrangements. As a result, administrators have become the de-facto decision makers in small schemes which is a high risk for schemes. Trustees have further been left to oversight the administrators who are more experienced in the industry leaving gaps.

POLICY RECOMMENDATIONS

Firstly, RBA should actively involve trustees of small schemes when formulating laws, regulations and policies to establish their relevance and impact on their operations and to also make their implementation on trustees' part easier. RBA should also strive to engage with the Trustees of small schemes directly. Secondly, The Authority should also seek to establish why small schemes have a challenge in implementing and complying with the governance policies and further carry out an impact analysis on the effect of good governance policies on small schemes. There is also need to enforce the adoption of code of ethics by the schemes.

Thirdly, RBA should provide opportunities to reduce the expenses on governance through subsidized/ free training programs for Trustees. Also, they should further provide support on certain compliance areas that require expertise through provision of templates and implementation guidelines. Further, RBA should consider exemption of small schemes from certain compliance requirements and move towards implementing of the existing laws and continuously assessing their impact as is the case of Finland and most OECD countries rather than coming up with new regulations and guidelines every year.

Finally, Service providers play a key role in assisting Trustees in small schemes effectively carry out their functions and particularly the administrators. The Authority should therefore seek ways to effectively empower them with comprehensive legal knowledge on pensions, professionalize the area of administration by imposing policies and standards and actively playing its oversight role.

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AUTHOR CONTRIBUTIONS

Bosco Gicheo Tindi wrote the concept paper as well as the research paper. She sought permissions from relevant institutions and collected, cleaned and analyzed the data under the guidance and supervision of Dr. Wilson Muna who also proofread the final work to ensure it was in line with academic standards before sharing for publication.

CONFLICT OF INTEREST DECLARATION

The authors registered no conflict of interest in this study.

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