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Retirement Benefits Scheme Governance

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Introduction

A retirement benefit scheme in Kenya..

- Must be set up as an irrevocable trust
- Must be registered with the Retirement Benefits Authority
- May be registered with the Kenya Revenue Authority for tax exemption
- Must appoint Trustee(s)

What is a trust?

“An equitable obligation, binding a person (**a trustee**) to deal with and control property (**the trust property**), for the benefit of other persons (**the beneficiaries**).

Any act on the part of a trustee which is not authorised by the terms of the trust instrument, or by law, is called a breach of trust”

(Underhill & Hayton – Law of Trusts 15th edition)

Who is a trustee?

Trustee is a person who holds in trust property for the benefit of others rather than for his own benefit.

A trustee...

- must exercise ownership and control of the trust property for the benefit the beneficiaries
- must exercise ownership and control of the trust property as if it is his own,
- is the legal owner of the trust property and
- exercises fiduciary responsibility over the trust and trust property
- may exercise discretionary powers

Concept of fiduciary

Fiduciary relationship is where a person has power to unilaterally make decisions or take actions which affect the interests of another (beneficiary).

A Fiduciary is a person who:

- ✓ Acts in the interests of another person or a group of other persons
- ✓ Can exercise discretion or power
- ✓ Can unilaterally affect a beneficiary's interests

All trustees are fiduciaries, but not all fiduciaries are trustees

Trustee as a fiduciary is expected..

- to act in the best interests of the beneficiaries
- to act impartially
- to act with care and good faith
- not to profit from the trust
- To be loyal to beneficiaries
- To avoid conflicts of interest
- To treat all beneficiaries equally and fairly
- To maintain confidentiality
- To invest wisely

What is governance?

The manner in which **power is exercised** in the **management** of a country's economic and social resources **for development**

World bank

What is governance?

Establishment of **policies**, and continuous **monitoring** of their proper **implementation**, by the members of the governing body of an organization to **enhance** the **prosperity** and viability of the organization

The Business Dictionary

What is good scheme governance?

*Combination of the **documented decision making structures** and supporting **policies** and **procedures** that enable the Board of Trustees to discharge their fiduciary responsibilities for achieving the **scheme objectives** and discharging the **scheme obligations** to the Members, the Sponsors and others.*

Good Scheme Governance

Scheme governance is the system by which a retirement benefits scheme operates and is controlled and managed by trustees and their delegated agents.

Scheme governance consists of:

- Having motivated, knowledgeable and skilled trustees in place
- Having the right structures and processes to enable effective and timely decisions
- Formulating and documenting the strategy, policies and procedures of the scheme

The law governing retirement benefits

- Constitution of Kenya
- Retirement Benefits Act
- Retirement Benefits Regulations
- Retirement Benefits Prudential Guidelines
- Trustee Act
- Income Tax Act
- Unclaimed Financial Assets Act
- Scheme Trust Documents

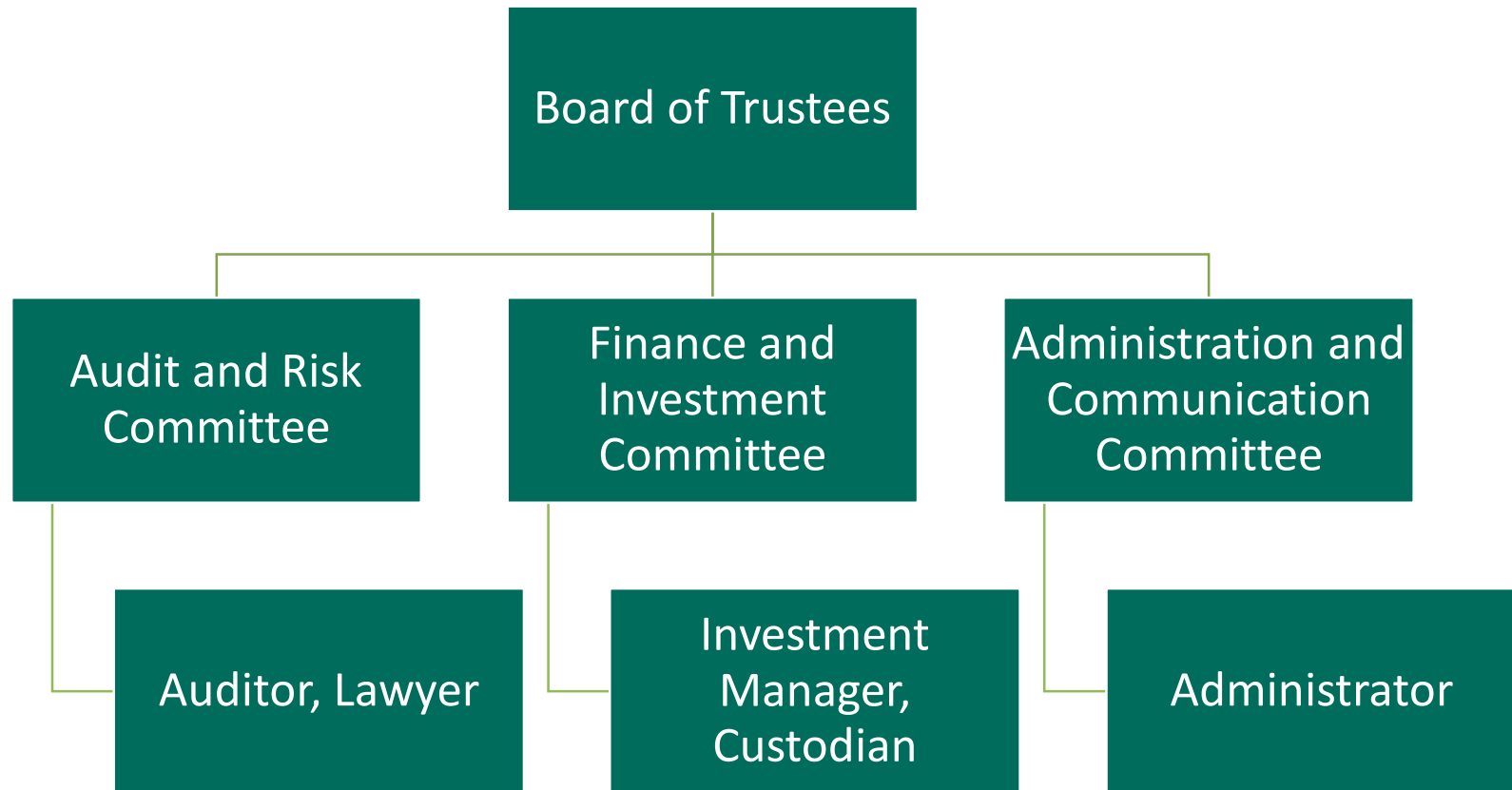
Governance actions include:

- ❖ Investment of scheme assets
- ❖ Ownership and management of scheme assets
- ❖ Appointments of service providers
- ❖ Conduct of meetings
- ❖ Reporting to the regulators
- ❖ Risk management
- ❖ Compliance and general administration of the scheme.

Scheme Governance Model

- **Board of Trustees** - at the heart of the governance and decision-making
- **Trustee Committees** – established by Trustees to oversee various scheme functions and report to BoT
- **Service Providers**- Trustees delegate day-to-day administrative decisions

Scheme Governance Model



Why is good governance important?

- Enables safeguard beneficiaries interests
- Part of fiduciary responsibility of trustees
- Enables scheme to be in compliant
- Safeguards members benefits
- Provides better investment returns
- Provides members with confidence to save for their retirement

Consequences of poor scheme governance

- Potential loss of scheme assets (fraud)
- Potential mismanagement of scheme assets
- Failure to safeguards members benefits
- Punitive damages due to non compliance *e.g. jail term or fines to trustees*
- Poor investment returns
- Lack of confidence to save for retirement

Conclusion

Good scheme governance is a vital element for the efficient functioning of retirement benefit schemes. It:

- Enables a scheme to be compliant with the Legislation in place
- Protects the interests of members and sponsors
- Leads to achieving the scheme objectives.

Any Questions???



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