



PROMOTING ALTERNATIVE DISPUTE RESOLUTION IN RETIREMENT BENEFITS SCHEMES

- Retirement Benefits Background
- Defining Alternative Dispute Resolution (ADR)
- Legal Framework for ADR in Pensions
- Principles of ADR
- Importance of ADR in pensions complaints management
- Forms of ADR
- ADR and Management of complaints in the Pension schemes



SESSION OBJECTIVES

1. To understand ADR
2. To understand the legal framework for ADR
3. To learn the principles of ADR
4. To appreciate the importance of ADR in complaints management and pensions
5. To know the forms of ADR
6. To understand ADR and management of complaints in the pension schemes



- The Retirement Benefits sector in Kenya is covered under the Retirement Benefits Act No. 3 of 1997 .
- The Act also established the Retirement Benefits Authority (RBA), which is the retirement benefits regulatory body under the National Treasury.
- RBA began its operations in October 2000 with the gazettelement of RBA Regulations & commencement of the Act
- All schemes required to register with RBA



***“Discourage litigation.
Persuade your neighbours to
compromise whenever you can.
Point out to them who the nominal
winner is often the real loser in fees,
and expenses and waste of time”***

Abraham Lincoln

Understanding Alternative Dispute Resolution



- Set of approaches aimed at resolving disputes in a non-confrontational way
- It is the most common way of resolving disputes
- Seeks to maintain relationships and fairness
- The word 'alternative' is in comparison to the judicial (conventional) dispute resolution method
- Should not contravene the Constitution or any other written law





- ❑ The Constitution sanctions the use of ADR to resolve disputes.
- ❑ Article 159(2) (c) identifies ADR as a guiding principle in exercising judicial authority.
- ❑ Article 252 (b) of the Constitution: empowers the Constitutional Commission and Independent Offices to use ADR.



- ❑ Good Governance Guideline 2018: Schemes to promote use of ADR;
- ❑ Treating Customers Fairly Guideline, requires schemes to develop mechanisms to resolve complaints through ADR.
- ❑ Section 31 Inter Governmental Relations Act
- ❑ County Governments Act
- ❑ National Government Coordination Act
- ❑ **The Retirement benefits Act is now being amended to introduce ADR under section 46.**





- ❑ **Consent/ voluntary**
- ❑ **Confidentiality**
- ❑ **Good faith**
- ❑ **Timeliness**



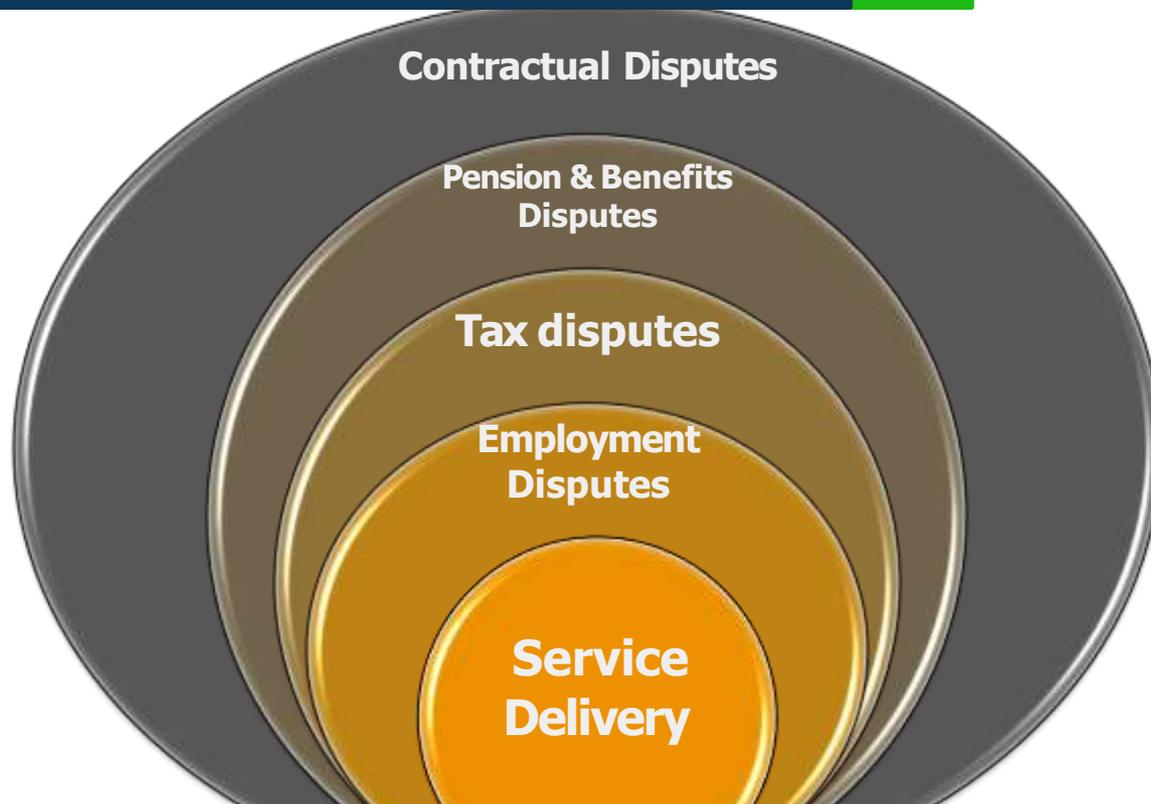
ADR & Complaints Management in the Pension Sector

- ❑ ADR is key in the management of complaints in the Pension sector
- ❑ Pension schemes are required to resolve complaints through ADR
- ❑ ADR is appropriate in resolving members complaints due to the need to maintain relationships and the nature of complaints
- ❑ ADR complements other complaints management



- ❑ Is mainly based on the use of Negotiation, Mediation, and Conciliation although other methods can be used.
- ❑ They are appropriate for resolving complaints under the '*Resolution of Public Complaints Indicator*' due to the ease, convenience, cost, and time effectiveness.





- ❑ Recovering unremitted contributions;
- ❑ Calculation of benefits- mostly DB schemes;
- ❑ Payment of death benefits esp. where there are no nominated beneficiaries;
- ❑ Independence of the BOT/ interference by sponsor;
- ❑ Balancing interests-Sponsor, members, meeting expectations and/o demands;
- ❑ Litigation/ cases in court against the scheme
- ❑ Contractual Disputes
- ❑ Employment disputes



- ❑ Amendment of TDR to accommodate mediation and other practical ADR process.
- ❑ Develop internal dispute resolution mechanism specialized in mediation and other practical ADR methods.
- ❑ Training to enhance skill and capacity in ADR.
- ❑ Proper record management and procedures for dispute resolution
- ❑ Court cases be referred to mediation and avoid litigation
- ❑ Timely response to complaints through ADR



Thank you!



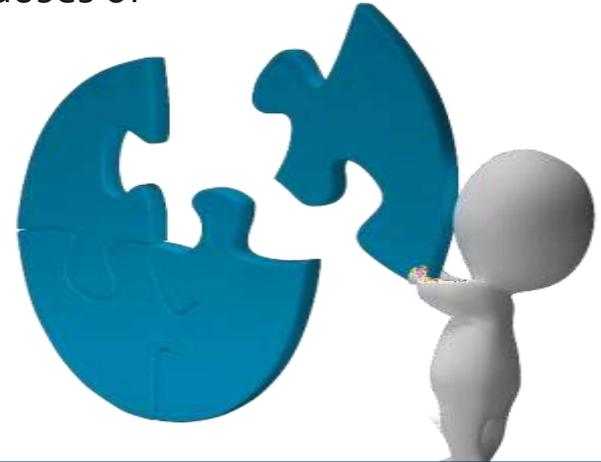
Alternative Dispute Resolution



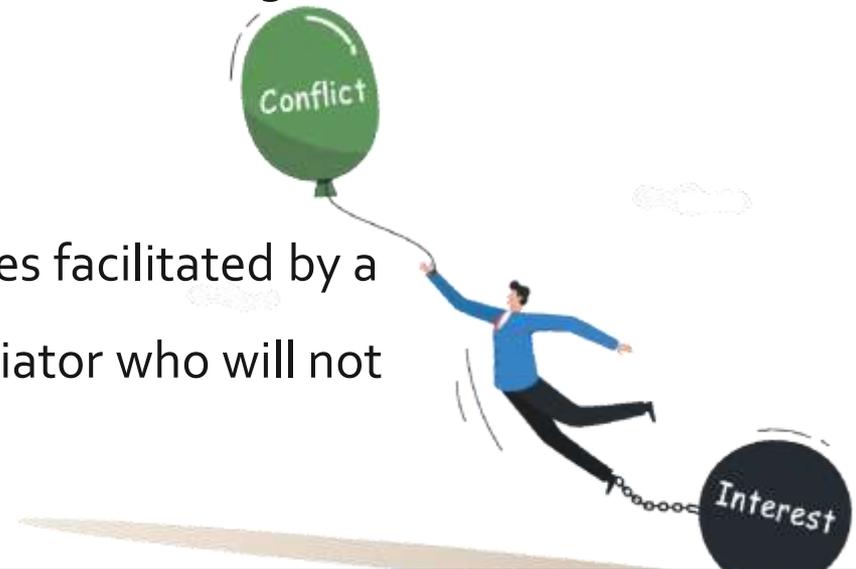
Judicial Process

Advantages of ADR in Complaints Management

- ❑ Cost and time-effective
- ❑ Non-confrontational and flexible
- ❑ Focuses on maintaining relationships (Restorative justice)
- ❑ Appreciates the cultural situations and addresses the root causes of disputes
- ❑ Suitable for handling bulk complaints
- ❑ Confidentiality
- ❑ High settlement levels
- ❑ High user satisfaction



- ❑ **Negotiation:** Dialogue between 2 parties. Can be either through written correspondence or meeting between all concerned.
- ❑ **Mediation:** Dialogue between 2 parties facilitated by a neutral 3rd Party referred to as a mediator who will not offer his opinion or assessment.



❑ **Conciliation:** Dialogue between 2 parties facilitated by a neutral 3rd party referred to as a conciliator who will provide their own opinion after assessing the situation/ arguments

❑ **Arbitration:** parties appoint a neutral 3rd party referred to as an arbitrator who is a specialist in the field of the dispute. His decision is binding. (Refer to Arbitration Act).



- ❑ What are some of the traditional dispute resolution mechanisms and how do you use them in complaints management
- ❑ Refer to Article 159(2) (c) and Article 159(3) of the Kenyan Constitution



"Ready for your first lesson in conflict resolution?"

- ❓ **CASE 1-** The member nominated a lady as the sole beneficiary of his IDD benefits and left out three of his children and the mother of the children who he had divorced a year earlier. – RBA decision was to support the members nomination as placed since dependency was by the lady was established while the children were all not dependent on the father and were distant for 12 years. The matter currently before RBAT.
- ❓ **CASE 2-** the Deceased allocated only 5% to the Husband in the nomination form. The Husband raised an objection to the trustees for a higher consideration. The trustees changed the allocation to 30% which the children opposed vehemently. RBA reduced the allocation to 20% which the children again refused and have since appealed to RBAT.

- ❓ CASE 3- the Deceased had a Nomination Form filed in 2002 with only had 4 children. It later emerged that the deceased had 15 children with 9 different ladies. The trustees conducted due diligence and awarded the 15 children the benefits equally as beneficiaries. Matter appealed to RBA by one of the child disputing the others. RBA supported the decision of the Trustees.

- ❓ CASE 4- the Deceased had 6 children with 5 different ladies. Three of the ladies claimed dependency while two refused to claim but insisted for their children to be included. The trustees recognised the 6 children and three ladies as beneficiaries. The current spouse objected to the allocation stating that the two other ladies were strangers. RBA upheld the decision of Trustees.

- ❑ Integration of ADR in Complaints Management
- ❑ Capacity Building
- ❑ Publication of Complaints Management
- ❑ Encouragement to the Parties to embrace ADR in resolving their disputes
- ❑ Technical Assistance from the HAKI CENTER



Any member of a scheme who is dissatisfied with a decision of the manager, administrator, custodian or trustees of any scheme may request, in writing, that such decision be reviewed by the Chief Executive Officer with a view to ensuring that such decision is made in accordance with the provisions of the relevant scheme rules or the Act under which the scheme is established.

