



Finnnet

Building a Better Tomorrow, Today



ADVANCED TRUSTEE LEADERSHIP & FIDUCIARY EXCELLENCE PROGRAMME



ENHANCING TRUSTEE LEADERSHIP COMPETENCIES FOR A COMPLEX REGULATORY LANDSCAPE

GOVERNANCE . TRAINING . EMPLOYEE BENEFITS . TECHNOLOGY

WHAT IS A LEGAL DOCUMENT?

- A written instrument that defines **rights, duties, obligations**, or **agreements** and is **enforceable by law**. These documents can be used in various legal contexts including trusts.
- A document that outlines an **agreement between 2 or more parties** that has been signed by mutual assent and in all other respects can be relied upon in court. It must be lawful, legitimate, and licit in accordance with law especially as it is written or administered by the court

VALIDITY

Must include the **valid signatures of all parties** entering into an agreement and outline all the duties and responsibilities each has to the other(s)

IMPORTANCE

Drafting **definitions clauses** mitigates the chance of misunderstanding interpretations among the parties. The defined terms section should be unambiguous and written in plain language.

BASIS OF LEGAL DOCUMENTS

1. **Constitution** – People’s declaration of governance structure.
2. **Statute** – written law passed by Parliament.
3. **Common Law** – Law of the country developed through judgments made by the courts and liability is set out in case law
4. **Statutory obligations** – Set out in the applicable pension benefits statutes.

Litigation has increased as people become aware of their legal rights.

Liability may mainly be traced into legal framework and information thereon.

ESTABLISHMENT OF A SCHEME

- **Constitution** – Trust Deed and Rules.
- **Obligations** begin from the commencement date.
- Pension schemes are established under Irrevocable Trusts – meaning:-
 - a) There shall be a **Sponsor**;
 - b) There shall be a Trust Asset (**Contributions**);
 - c) There shall be a **Beneficiary** (Member);
 - d) There shall be a **Trustees** who shall be the legal owner of the Trust Asset;
 - e) The Trustee shall always **remain in possession** of the Trust Asset; and
 - f) The Trustee shall **give true account of the Trust Asset** to the Beneficiary.

RETIREMENT BENEFITS AUTHORITY MANDATE



Regulate & Supervise

Establishment and management of retirement benefits schemes



Protect

Interests of scheme members and sponsors



Develop & Promote

The retirement benefits industry



Advise

The **Cabinet Secretary** to the National Treasury on national policy relating to the industry



Implement

All **Government policies** relating to the industry

RETIREMENT BENEFITS LEGAL FRAMEWORK



The Retirement Benefits Act, Cap 197

Regulations

1. Occupational Regulations, 2000
2. Individual Retirement Benefits Schemes Regulations, 2000
3. Administration Regulations, 2007
4. Managers & Custodian Regulations, 2000
5. Forms & Fees Regulations, 2000
6. Minimum Funding Level & Winding up Regulations, 2000
7. Tribunal Rules, 2000
8. Mortgage Loans, 2009
9. Guidelines (Investment/Prudential) & Practice Notes

TRUST DEED AND RULES



- This is the document that **creates the trust**. The constitution of the scheme
- It is necessary to obtain **professional advice** on its preparation as it is an extremely important document.
- The **rules are the operational details** of the scheme and contain everything that a member needs to know about the scheme. If possible, it should be summarized into a small **booklet** and distributed to members.



INTRODUCTION

- Statements that reflect the **philosophies, attitudes, or values** of an organization related to a specific issue.
- A set of ideas or plans that is used as a basis for **decision making**
- Main objective is to ensure **compliance** with laws and regulations, promote **consistency** and **fairness**, and **manage risks**



Adherence to rules, regulations, standards, or guidelines that are set by authorities, organizations, or specific frameworks



An established or official way of doing something

POLICIES – RESPONSIBILITY OF TRUSTEES

As a policy owner, Trustees should:

1. **Review** policies that may need updating.
2. Determine who will be affected by the policy and ensure that their opinions are well represented in the policy – **stakeholder management**
3. **Delegate** authority to the Secretariat who then ensure that there is the effective management of the policy.
4. Create a **training plan** that will help educate and train the trustees (and Secretariat) on the workings of the policy.
5. Ensure that the policy is in sync with the **scheme's objectives**
6. Ensure that the policy helps the scheme achieve its **mission**.

POLICIES REQUIRED

1. **Code of Conduct:** Sets the values & **ethical standards** of the scheme
2. **Election Rules Embedded in the TDR:** Rules for **election** or nomination of trustees
3. **Trustee Remuneration Policy:** Sets out approved **sitting allowances** and rates of **reimbursement** for expenses
4. **Board Evaluation Procedures:** States how board **performance evaluation** are undertaken (Self or 3rd party)
5. **Risk Management Policy:** States how to identify and **manage risk**.
6. **Risk Register** for the Board of Trustees
7. **Procurement and Asset Disposal Procedures**
8. **Procurement Procedures:** Outlines the scheme's procurement



POLICIES REQUIRED

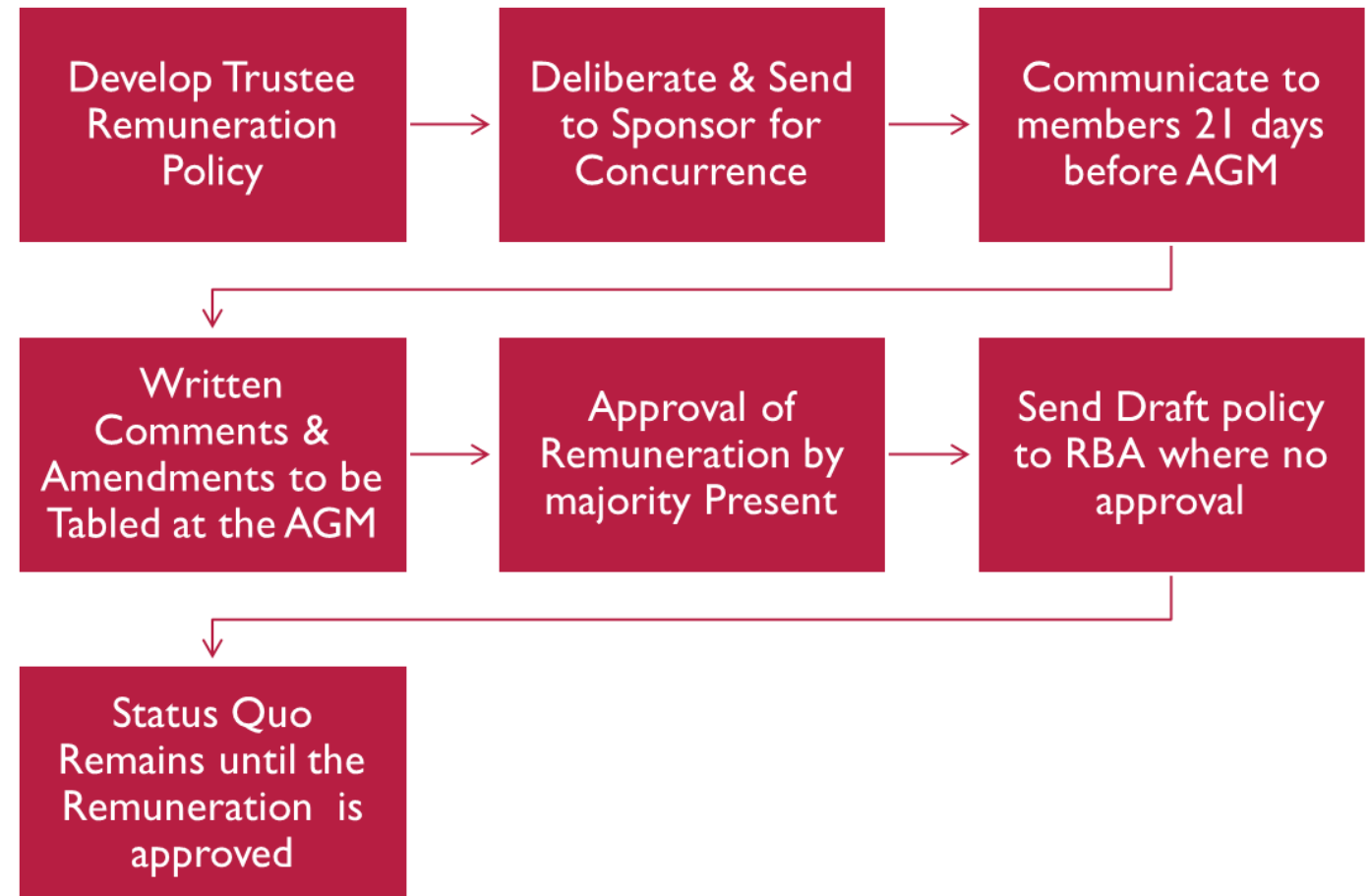
8. **Information and Communication Technology Policy:** Ensure that the administrator of the scheme has established a comprehensive IT policy and has adequate IT systems for the administration of the scheme
9. **Member Communication Policy:** Spells out the member communication system that allows members to engage with the scheme and make decisions for their benefit
10. **Members Scheme Booklet:** Discloses the **details of the scheme** to new members and includes the **options** to members at the point of **exit** from the scheme
11. **Conflict of Interest Policy:** How to deal with conflict of interest (with trustees, service providers & members) with an updated conflict of interest register
12. Updated **Conflict of Interest** register for trustees



TRUSTEES REMUNERATION POLICY

- **Sitting allowance** for duly constituted meeting
- Chairman may be paid additional amount not exceeding **Ksh.5,000/=**

Fund Value (Ksh)	Maximum Amount (Ksh)
Up to 0.5M - 1B	15,000
1B - 10B	20,000
Above 10B	40,000



REQUIRED PROCEDURES

01

Service Provider
Evaluation

05

Member Information

02

Annual General
Meeting (AGM)

06

Business
Continuity Plan

03

Board Meetings

07

Whistle Blowing
Mechanism

04

Governance
Audits

REGULATORY CHANGES

1. Provision for the **registration of Corporate Trustees** as scheme service providers;
2. Corporate trustees not to appoint **related parties**;
3. Recovery of unremitted contributions through **appointment of KRA as an agent** by Trustees with approval of the Authority;
4. Access of 50% of accrued benefits;
5. Empower the Authority to extend the time (**not exceeding three months**) to submit annual accounts, where the extension appears justified;



REGULATORY CHANGES

6. Extend period for submission of [actuarial valuation reports to six months](#);
7. Minimum Reporting Requirements – Review the disclosure requirements to include the [net return credited to member accounts](#)
8. Investment Policy – Incorporation of certified investment and financial analysts registered under the Investment & Financial Analyst Act 2015 as an [alternative provider of investment advisory](#) services to schemes in preparation or revision of statements
9. Investment Guidelines – Reviewed to incorporate [Unlisted REIT](#)
10. Implementation of the [NSSF Act](#) (Tier II contributions)
11. [Gazettement of Trustee Remuneration](#) Policy & Scheme expenses guideline.

REGULATORY COMPLIANCE

	Risk Mitigation	Enforcement
1.	Robust Internal Controls	<ul style="list-style-type: none"> • Develop comprehensive policies & procedures • Segregation of duties to prevent conflict of interest – investment, compliance, risk, operations • Limit access to sensitive information through controls
2.	Compliance Monitoring Programmes	<ul style="list-style-type: none"> • Automate compliance matrix and implement dash boards for real time information
3.	Regular Training & Education	<ul style="list-style-type: none"> • Educate staff on regulatory compliance, ethical conduct, AML & COI • Adopt e-learning (e.g. e-flex, linked in, etc) for issuance of completion certificate to enhance learning
4.	Strong Compliance Function	qualified professional

REGULATORY COMPLIANCE

Risk Mitigation

Enforcement

- | | Risk Mitigation | Enforcement |
|----|--------------------------------|---|
| 5. | Pre-Trade & Post-Trade Checks | <ul style="list-style-type: none"> • Ensure trades comply with IPS mandates & regulatory limits • Ensure trades are aligned to agreed strategy |
| 6. | Documentation & Record Keeping | <ul style="list-style-type: none"> • Maintain clear audit trails for investment decisions, resolutions and compliance checks • Ensure policies are reviewed regularly (annual or after 3 years) |
| 7. | External & Internal Audits | <ul style="list-style-type: none"> • Conduct regular audits (financial, legal, governance, systems, ISO, etc) • Develop an implementation matrix from the audits |
| 8. | Regulatory Reporting | <ul style="list-style-type: none"> • Timely submission • Streamline reporting |

REGULATORY COMPLIANCE

Risk Mitigation	Enforcement
5. Whistleblower Mechanisms	<ul style="list-style-type: none"> • Provide reporting channels • Establish framework for investigating and responding to complaints
6. Stress Testing & Scenario Analysis	<ul style="list-style-type: none"> • Evaluate how regulatory changes could impact operations
7. Legal & Regulatory Intelligence	<ul style="list-style-type: none"> • Stay updated on new or changing regulations through legal counsel or compliance consultants • Participate in industry networks forums and briefings (APTAK, ARBS, Pensioners Association, etc)

Thank you!



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