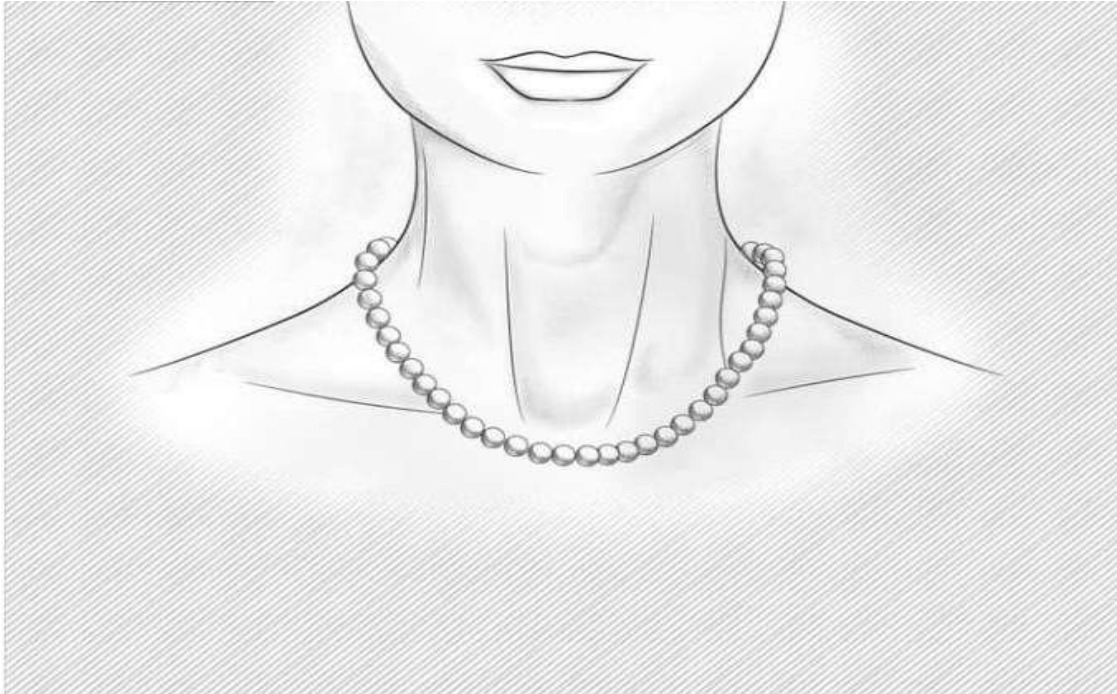




LEGAL ADVICE

RISK BASED SUPERVISORY & LEGAL FRAMEWORK



Take care of the neck, necklaces are not difficult to find- Bemba proverb



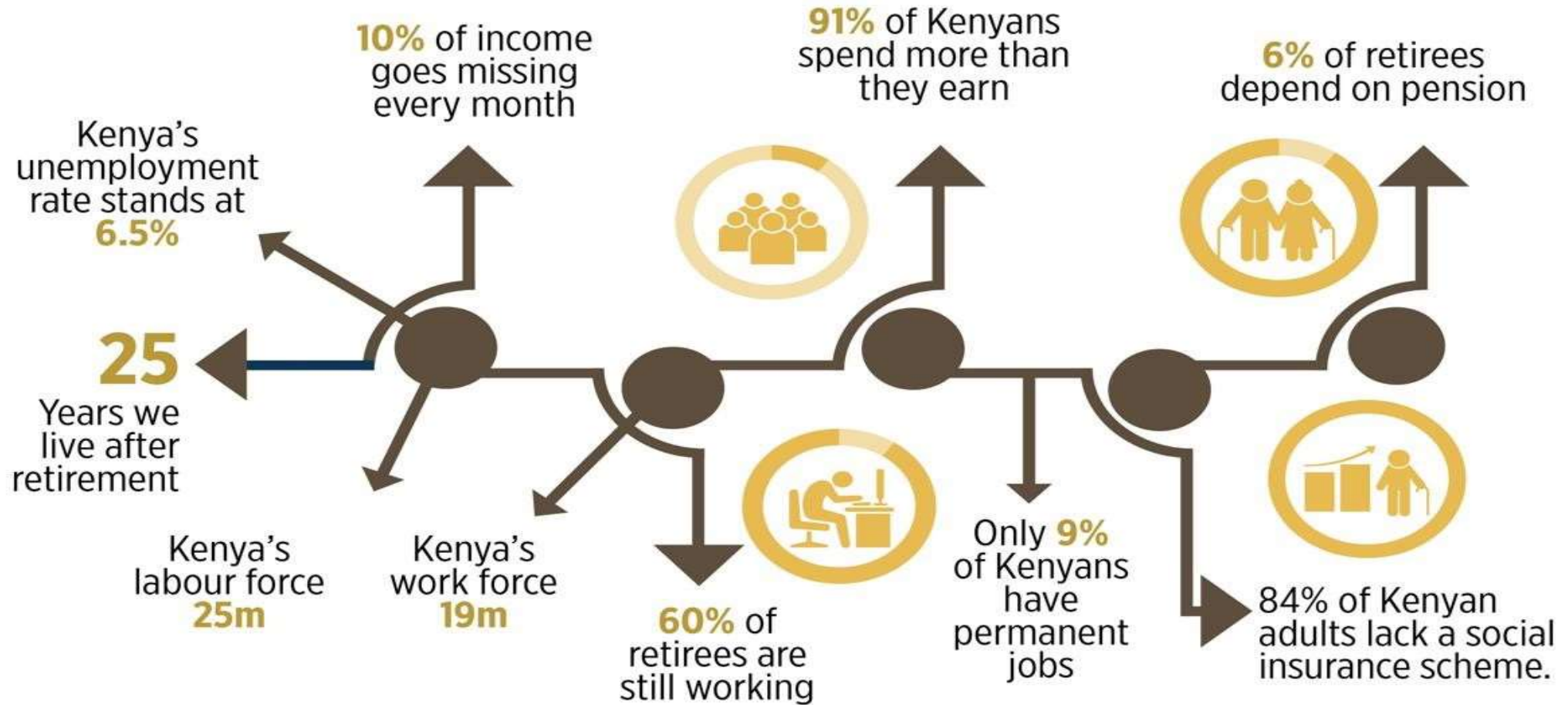
Social security protection is clearly defined in ILO conventions and UN instruments as a basic human right – albeit one that a small proportion of the people on our planet actually enjoy.



Broadly defined as a system of contribution-based health, pension and unemployment protection, along with tax-financed social Benefits.

- ❖ Only one in five people in the world has adequate social security coverage.
- ❖ More than half the world's population lacks any type of social security protection.
- ❖ In sub-Saharan Africa and South Asia, only an estimated 5% to 10% of the working population has some social security coverage. In middle-income countries, social security coverage generally ranges from 20% to 60% of the population.
- ❖ Europe is the region with the highest level of social security expenditure at nearly 25% of GDP, followed by North America at 16.6%. Africa has the lowest level at 4.3% of GDP

- ❖ The Republic of Korea increased health insurance coverage from 20 percent in 1977 to full coverage in 1989.
- ❖ Costa Rica achieved full health coverage through a combination of health insurance and free access to public health services. In Brazil, social assistance pensions lift about 14 million people out of extreme poverty
- ❖ Tunisia is progressing toward universal security coverage. The country increased health and pension coverage from 60 percent in 1989 to 84 percent in 1999.
- ❖ South Africa tax-financed State Old-Age Pension (SOAP) reaches 1.9 million beneficiaries, about 85% of the eligible population. The scheme reduces the poverty gap for pensioners by 94%.



Pension Assets



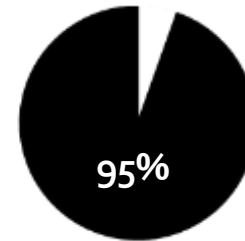
2.81 Trillion (16.05% GDP)

Registered Schemes



1,027

Defined Contribution

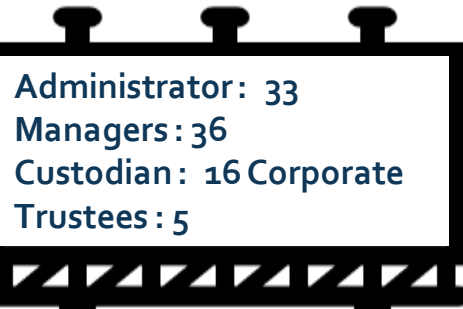


95%

Trustees



Over
6,000



Administrator: 33
Managers: 36
Custodian: 16 Corporate
Trustees: 5

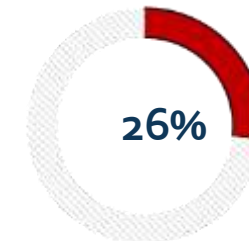
Service Providers



Active Members:
4.38 million



Informal Sector

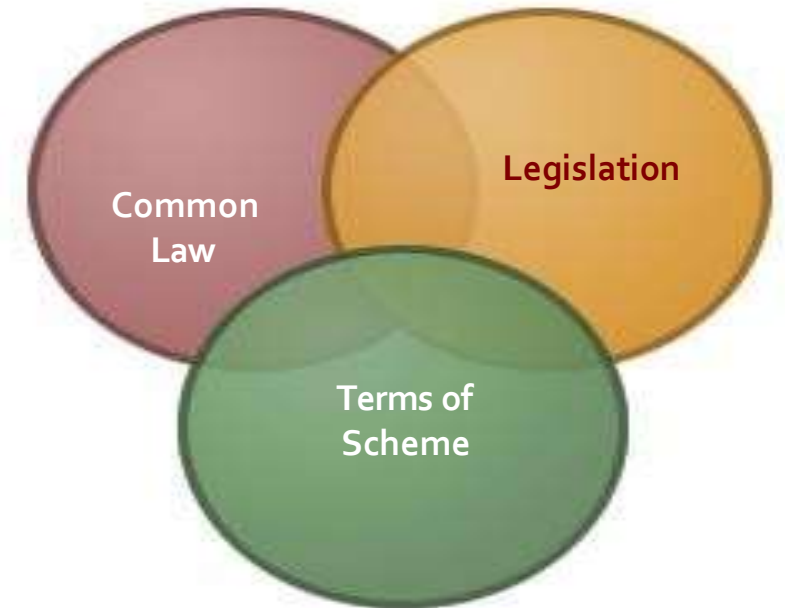


Pension
Coverage

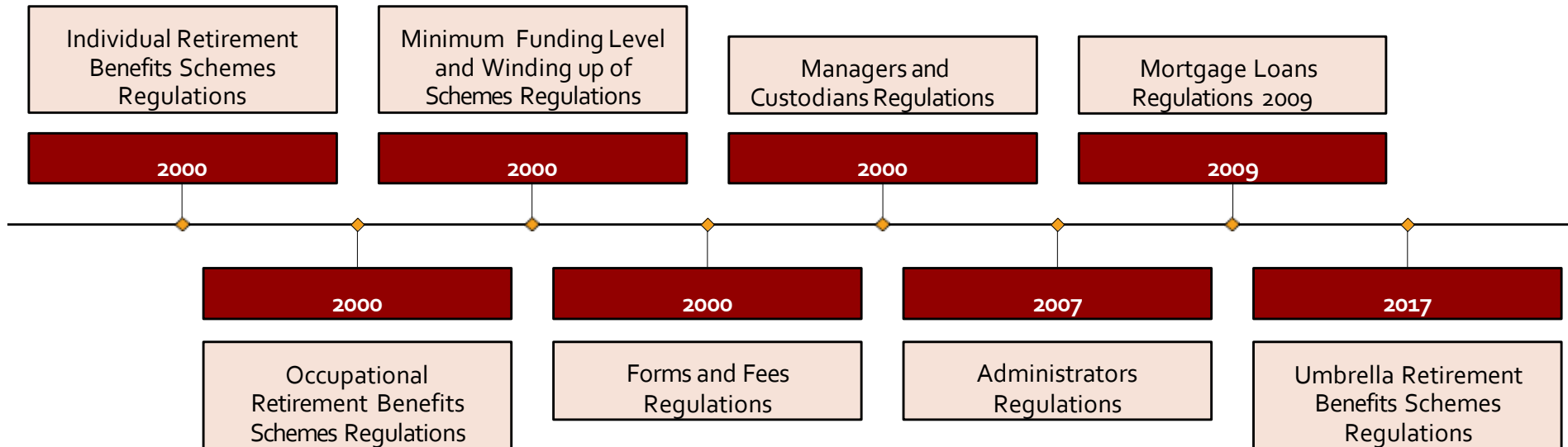
□ The sources of law are:

- ❖ Constitution of Kenya.
- ❖ Legislation. E.g. (Retirement Benefits Act, Trustee Act, Income Tax Act, Trustee (Perpetual Succession) Act etc.)
- ❖ Delegated legislation/ subsidiary legislation e.g (Retirement Benefits Regulations and Guidelines)
- ❖ Trust Deed and Rules.
- ❖ Common Law.
- ❖ International law – conventions, treaties

- ❖ All these sources of law overlap/inter-relate
- ❖ In terms of compliance, a trustee is expected to comply with all the laws
- ❖ In case of any conflict, the hierarchy aspect comes in and the superior law takes precedence



RETIREMENT BENEFITS REGULATIONS



Protection
of the
interest of
members &
Sponsors

Enforcements, Sanctions & Complaints management

Stakeholders Engagement and Education

Interim Administration and Winding Up

- ❖ Trustees are required to amend the scheme rules to reflect changes in law
- ❖ Section 55(3) Without prejudice to subsection(1), the Authority may from time to time, issue guidelines, practice notes or codes of conduct for better administration of the retirement benefits schemes.
- ❖ Section 26(2e) No person shall be a trustee of any scheme if such a person does not comply with the guidelines or practice notes issued by the Authority.

A structured approach which focuses on the identification of potential risks faced by pension plans or funds and the assessment of the financial and operational factors in place to minimise and mitigate those risks. (International Organization of Pension Supervisors, 2010)]

Concepts embedded in RBS:

- Structured approach.
- Identification of potential risks.
- Assessment of mitigating factors.
- Prioritisation of supervisory resources.

RISK-BASED APPROACH	COMPLIANCE-BASED APPROACH
<ul style="list-style-type: none">● Identifies potential risks and mitigations	<ul style="list-style-type: none">● Focus on compliance with laws
<ul style="list-style-type: none">● Forward looking and principles-based legislation.	<ul style="list-style-type: none">● Rigid, rules-based.
<ul style="list-style-type: none">● Incentives for institutions to strengthen risk management practices internally	<ul style="list-style-type: none">● Institution's focus is on compliance with rules.

SUPERVISION FRAMEWORK : OBJECTIVE

Statutory Objectives
[Government]

[5(a)]
Regulate and supervise the establishment and management of retirement benefits schemes.

[5(b)]
Protect the interests of members and sponsors of retirement benefits sector.

[5(e)]
Perform such other functions as are conferred on it by this Act or by any other written law.

Supervisory Objective [RBA - Kenya]

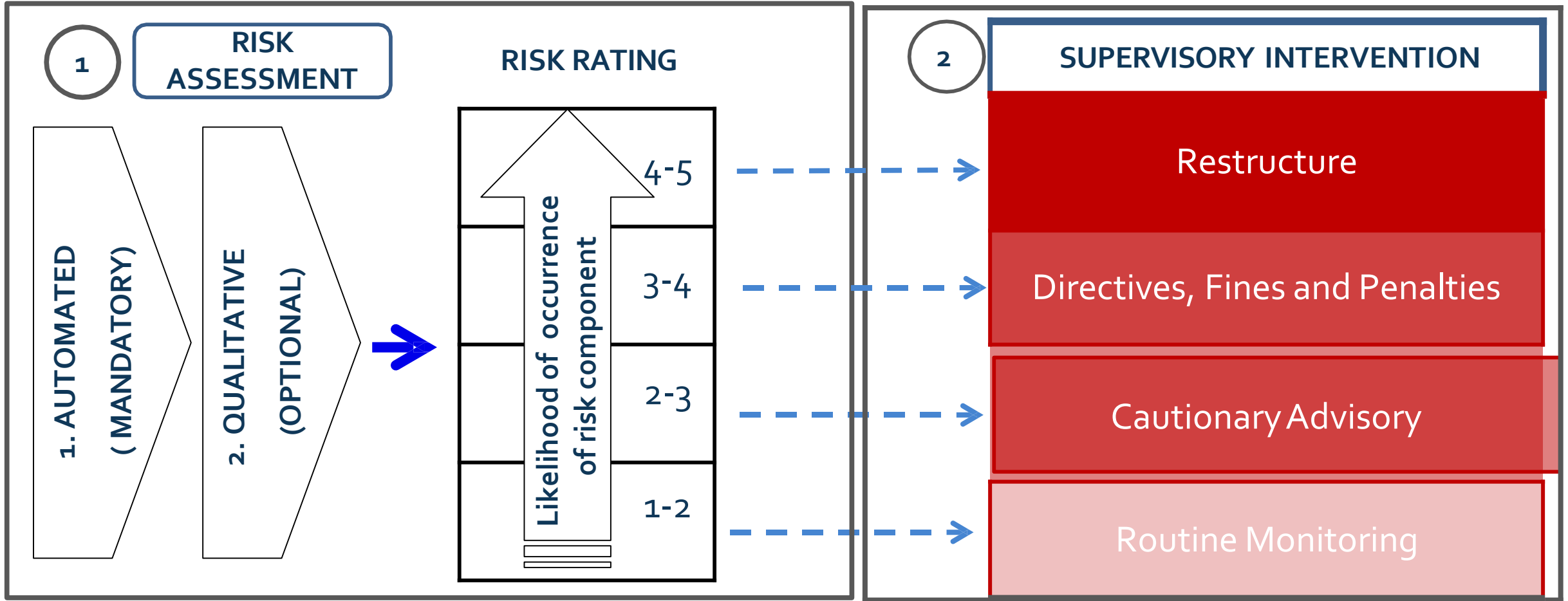
To ensure that the management of retirement benefit schemes is such that it will best protect the interests of members and sponsors of the retirement benefits sector.

Institutional Objectives
[Schemes]

Prudential Management

Governance

Market Conduct



- Risk rating is directly linked to proportionate supervisory intervention
- Degree of supervisory interventions vary directly with risk rating

Governance Risk

- Trusteeship, Service providers & professionals
- Corporate Governance
- Risk Management & Controls

Prudential Risk

- Funding e.g actuarial deficit,
- Credit Risk – defaults from non-remittance of contribution
- Investment – Property exposure, Investment limits
- Liquidity – unremitted contributions, actuarial deficits
- Underwriting – Group Life within the scheme

Market Conduct Risk

- Disclosures and communication
- Complaints management
- Benefits Statements

Registration

- Registered
- Certificate – **Proof of ownership**

Documentation

- Trust Deed & Rules - **Periodically**
- Investment policy Statement – **Tri-annually**
- Service providers agreements (Custodian, fund managers & administrator)- **Performance Based Review**
- Deed of Discharge & appointment

Reporting and Disclosures

- Contribution Returns – **Quarterly**
- Investment Returns – **Quarterly**
- Custody Returns – **Quarterly**
- Audited Accounts - **Annually**
- Levy – **Annually**
- AGM – **Annually**

Code of conduct

- Affirm their commitment to the scheme
- Embrace their fiduciary duty by putting members first in their undertaking
- Any impropriety within the scheme to be avoided
- Avoid conflict of interest
- Fair treatment to all scheme members



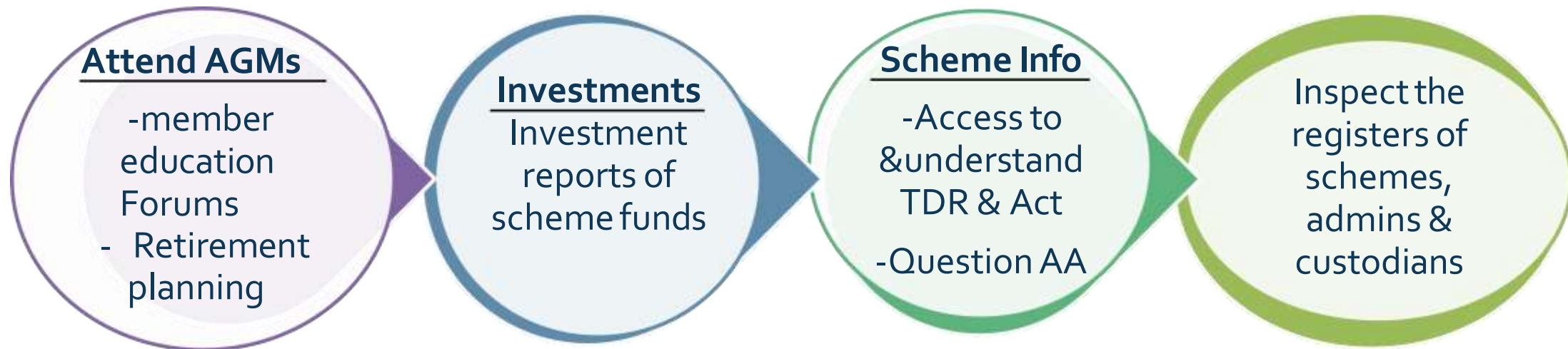
Governance Policies and Procedures

- Proper standards of conduct and sound governance practices
- Accurate, clear and relevant communication to members
- Transparent and accountable Point of contact persons



ICT & Data Protection procedures

- Personal information is identified and managed appropriately





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