

# Governance in Kenya's Occupational Retirement Benefit Schemes: The Service Providers' Perspective

Amos Gitau Njuguna

United States International University – Africa, Chandaria School of Business, P.O Box 14634-0800, Nairobi

## Abstract

Despite corporate governance attracting unprecedented attention in the 21<sup>st</sup> Century, not much effort has been devoted to governance in the retirement benefits industry, yet pension assets constitute significant proportions of the global Gross Domestic Product (GDP). This study explores the internal governance stipulations set for occupational retirement benefit schemes in Kenya and interrogates the extent to which the rules are implemented. The study further unearth emerging gaps in the governance of occupational retirement benefit schemes that policy makers should proactively deal with. Focus group discussions are conducted with 42 key informants in the Kenyan retirement benefits industry namely; administrators, custodians, fund managers and actuaries. The results show that the governance of the retirement benefit schemes has improved over the years and led to significant growth in the assets of the schemes but there is need to continuously review the rules to match the dynamic financial and economic environment. Specifically, policy makers are advised to focus on large schemes that have co-fund managers, devise governance regulations for investment in alternative assets, review the governance structures of the service providers, devise a framework for accounting for pension fund reserves, seek more involvement of members in governance of the schemes and devise rules of governance for cross border schemes.

## 1. Introduction

Corporate scandals that have rocked the 21<sup>st</sup> Century have led to reduced confidence amongst investors as the market values of the affected corporates have not only significantly reduced but has also affected other related companies and industries. The reverberation has challenged the neoclassical view advanced by Modigliani and Miller (1958) which postulates that equity holding in a firm does not matter and consequently corporate governance does not contribute to value creation of a firm (Shleifer & Vishny, 1997; Bebchuk & Weisbach, 2010). The scandals have particularly affected individuals who save or invest in retirement benefit schemes that in turn invest the funds collectively. Governance and particularly in retirement benefits industry has hence become an important issue in organizational management (Abdullah & Valentine, 2009; Kowalewski, 2012; Yussof & Alhaji, 2012; Ammann & Ehmann, 2014) as this industry promises to pay benefits in the long term. According to Kowalewski (2012), the market punishes poor governance by providing suboptimal returns in the long term.

In the corporate world, governance is viewed as the set of processes and structures that are used to control and direct the company (Cadbury, 1992) but in the context of occupational retirement benefit schemes, it takes a deeper sense as the schemes invest on behalf of the individual savers (or investors) thus creating a special form of agency problem where principals appoint agents to monitor other agents on their behalf. Occupational retirement benefit schemes are created to benefit current members, future pensioners, beneficiaries of current members (in the event that current members are incapacitated or deceased), the plan sponsor and the investors in the company.

Gregory and Simms (1999) relate corporate governance to the assurances given to providers of finance to corporates (individuals, pension funds, mutual funds, financial institutions and governments) that the investments they make will be guarded and wisely invested and hence generate wealth for them within acceptable risk limits. Further corporate governance revolves around management, shareholders and other stakeholders (Jensen & Meckling, 1976; Fama, 1980; Ching, Tan & Chi Ching, 2006) in accordance with the theory of the firm. Governance of the occupational retirement benefit schemes modifies this model as there are no explicit shareholders.

Occupational retirement benefit schemes are created by employers as vehicles for the workers to save for their retirement needs and are broadly viewed as welfare arrangements. As a result, the entitlement by the workers as an investment is much less compared to corporate investors – who invest with explicit objectives and expectations. Workers are automatically enrolled in to occupational retirement benefit schemes on employment. The occupational retirement benefit schemes can be established using the defined benefit or defined contribution

models depending on whether the employer guarantees the benefits payable on exit or the contributions payable (Bodie, Marcus & Merton, 1988). In a nutshell, the employer bears the investment and longevity risk of a defined benefit scheme while the same risks are borne by the workers in a defined contribution scheme (Bodie *et al.*, 1988; Besley & Prat, 2003; Clark, 2004). It is therefore imperative that the defined benefit model gives the employer greater control and the defined contribution model gives more or equal control to the workers (Forman, 2000; Clark, 2004). For instance in Kenya, the employer nominates two-thirds of the board of trustees of a defined benefit scheme and one-half of the board of a defined contribution scheme (RBA, 2009). Given the choice therefore, most employers prefer the defined contribution model and consequently, most traditional defined benefit schemes are converting to defined contribution (Banks, Richard & Emmerson, 2005) a situation that leaves vulnerable investors with residuary risks of dynamic and complex markets. The dominance of defined contribution schemes is expected to prevail in the future in a context where, employers have a duty to assure their shareholders that the investment the costs they incur on retirement benefits of the workers yield a return on investment to the company.

Governance in the context of retirement benefit schemes is complemented by independent “commercial” trustees who include administrators (responsible for record keeping and ensuring compliance with regulations), custodians (who keep custody of the assets) and fund managers (who invest), actuaries (who evaluate the long-term risk possibilities and asset-liability structure of the scheme), legal advisers and auditors (Clark, 2004).

The dominance of investments made by retirement benefit schemes in the global financial markets cannot be ignored, bringing forth to what Drucker called “pension fund capitalism” in the 1950’s. A study done by Willis Towers Watson in 2016 on 19 major pension markets estimated the values of the assets at USD 35316 billion at the close of 2015 representing an average of 80% of the GDP of the countries – with Australia, Netherlands, Switzerland, UK and US recording pension asset values in excess of 100% of their GDP. The study further names the largest pension markets as US, UK and Japan with 61.5%, 9% and 7.7% of the total pension assets. Of the total pension assets, Willis, Towers and Watson show that 44% were held in equities, 29% in bonds and 24% in other assets.

In Africa, South Africa led the pack in 2015 with pension assets amounting to USD 181 billion (Willis Towers Watson, 2016). Ashiagbor and Vidal (2016) estimate the pension assets in other African countries to be worth USD 25.8 billion in Nigeria, USD 8.1 billion in Kenya, USD 7.8 billion in Namibia, and USD 5.6 billion in Botswana. There is need therefore for proper governance of the retirement benefits industry to safeguard the assets and enhance their growth to primarily cater for the retirement needs of the global population.

Adhering to proper governance of retirement benefit schemes should lead to continuous improvement through improvement of risk management processes (Asher & Nandy 2006; Moriarty & Zadorozny 2008; Clark & Urwin 2009); development of structures and processes that meet the required standard of fiduciary care and documentation of the due diligence (Moriarty & Zadorozny, 2008); improve performance and risk management of the scheme and increase administrative efficiency (Tesseire, 2009), reduce potential conflicts of interest (Stewart & Yermo, 2008) and improve operational and financial efficiency (Njuguna & Cecil, 2012).

Effort has been devoted in the study and review of governance in retirement benefits industry. Clark (2004) conducted a theoretical review of internal governance of pension funds focusing on codes of practice, rules and procedures for decision making and trustee competence and expertise. Stewart and Yermo (2008) investigated the challenges of pension governance and proposed solutions to solve the impasse in OECD countries. Kowalewski (2012) reviewed the relationship between corporate governance and pension fund performance and concluded that internal and external pension governance mechanisms in Poland were weak. Njuguna (2011) investigated the determinants of pension governance in Kenya and found that the governance practices were influenced by regulations, leadership and membership age. Ammann and Zingg (2010) and Amman and Ehmann (2014) delved in to the relationship between governance and investment performance of occupational retirement schemes in Switzerland and found a positive relationship between the two variables. This paper contributes to knowledge as it uses key informants in the Kenyan retirement benefits industry to *first* determine the extent to which existing governance guidelines are adhered to in the industry *secondly* to expose emerging governance issues that the industry is experiencing as it navigates through the turbulent financial markets and the population ages (thus affecting the asset-liability structure of the schemes). *Lastly*, the study suggests recommendations that can proactively be used to manage the emerging governance lapses.

## 2. Literature Review

### 2.1 Theoretical Foundation of Governance

The grounding of corporate governance can be credited to the agency, stewardship, stakeholder, resource dependency, political virtue ethics and discourse ethics theories.

*Agency theory* postulates the conflicts of interest stemming from separation of ownership and management in contexts where human beings are self-centered and fail to act in the best of the interests of others (Berle & Means, 1932) granted that the firm is a nexus of contracts (Alchian & Demsetz, 1972; Jensen & Meckling, 1976; Jensen, 2001). In this context, corporate governance is viewed as the framework that addresses how the inherent conflicts arising out of the agency problem are addressed within the firm and the inherent cost of managing such conflict.

*Stewardship theory* contrasts the agency theory by postulating that managers are superb stewards who, given an opportunity will act to the best of the interests of the firm (Donaldson & Davis, 1991) hence no conflicts exist between managers and owners. While the theory fails to advance the motivation that such managers would have to achieve organizational objectives, Smallman (2004) suggest that the benefits will be consequent to the achievement of organizational success as a result of organizational and individual goal convergence. Achievement of the firm's objectives results to satisfaction of the stakeholders (Pfeffer, 1978; Davis, Schoorman & Donaldson, 1997) in a context where there is balance of powers in the leadership of the board. Applied to corporate governance, stewardship theory provides for the separation of powers, internal checks and the concept of CEO duality.

The *stakeholder theory* is based on the notion that a corporate entity exists to serve its broad range of stakeholders who are primarily the shareholders (Abrams, 1951) granted that the firm impacts on parties who are external to it either directly or indirectly (McDonald & Puxty, 1979; Freeman, 1984; Clarkson, 1995; Sundram & Inkpen, 2004). Firms therefore have an obligation to identify the stakeholders (whether contextual or contractual) and their specific needs (Lashgari, 2004; Coleman, Hacking, Stover, Fisher-Yoshida & Nowak, 2008) and develop policies to address these concerns. Corporate governance from this perspective is the framework that ensures that the often conflicting interests of all the stakeholders are addressed in a fair manner by the firm. Corporate governance seeks to have the interests of all stakeholders addressed equitably.

The main tenet of the *resource dependency* theory is the environmental linkages existing between the firm and external resources (Pfeffer & Salancik, 1978) that are important for the firm's survival (Daily, Dalton & Canella, 2003). The theory places the responsibility of raising corporate resources (finance, information, skills and critical networks) on the directors (Hillman, Canella & Paetzold, 2000; Rodriguez, Ricart & Sanchez, 2002) and therefore requires them to be astute and provide their own specialized expertise in the management of corporate affairs with a view of reducing transaction costs associated with hiring these resources from external providers (Abdulla & Valentine, 2009). The resource dependency view informs corporate governance practice by focusing on the need for a board of directors with diversified skills, appointment of independent directors and continuous training of the board.

The *political theory* derives its postulate from exercising influence through voting (Pound, 1993). Corporates have long history of control by ownership through shares hence corporate decisions are influenced by the majority determined by the ownership structure. The political theory determines who will serve in the board, powers and privileges that the board will have and the consequent strategic direction that the firm will take. The political theory therefore contributes directly to corporate governance practices of the firm (Abdulla & Valentine, 2009). Lashgari (2004) suggests that shareholder activism derives its legitimacy from the political theory as the level of activism depends on the decisions taken by the board that is appointed through the political process.

The *virtual ethics* theory is about "moral excellence, goodness, chastity and good character" (Abdulla & Valentine, 2009, pp. 93) that is a matter of individual choices, which according to Aristotle comes from theoretical and practical knowledge. Accordingly, virtue ethics are multi-track personalities that influence emotional reactions, choices, values, desires and perceptions (Hursthouse, 2013). Proponents of the theory argue that positive feelings are a function of doing the right things and are exhibited by individuals. Bowden (2005) however argue against the theory insisting that it is built on a "false base", does not result to fulfillment and is not an answer when making complex moral decisions. In the context of corporate governance, virtual ethics may inform the need for an educated and experienced board and the desire to conduct proper and fit tests (tests of character, competence and capability) before appointment in to the board.

On its part, the *discourse theory* of ethics focuses on establishment of the right, moral and political principles emerging from certain ideal conditions (Jones, 1997). It emphasizes on conflict resolution through communication where parties are deemed to be equals, absence of coercion in dispute resolution, rationality in argument in addition to open ended communication (Habermas, 1990). Discourse theory informs corporate governance in two ways *firstly*; two-way communication with stakeholders is viewed and is widely accepted as a key tenet of corporate governance and *secondly*; corporate governance focuses on resolution of potential conflicts that inherently arise amongst the various stakeholders of the firm.

### 2.2 Governance in the Retirement Benefits Industry

In the retirement benefits industry, governance is rooted in common law that defines trustee behaviour, fair treatment of beneficiaries and stewardship of the assets under trust (Clark, 2004; Stewart & Yermo, 2008) and should therefore focus on internal relationships and mechanisms to safeguard against abuse of the wide discretion allowed to trustees (Brown & Caylor, 2004; Kowalewski, 2012) as the external governance mechanisms are weak.

In their theoretical model Besley and Prat (2003) show that governance in retirement benefits industry cannot be reviewed without carefully considering who bears the longevity, investment and operational risks of the fund. Accordingly, plan participants bear more risk in defined contribution schemes compared to their counterparts in the defined benefit schemes.

To enhance protection of assets and enhance order in the retirement benefits industry, the roles of administration, fund management, custody, actuarial and external audits are separated and performed by different service providers (Clark, 2004; Stewart and Yermo, 2008) who are typically commercial trustees. Given that trustees may “lack knowledge or ability to manage” (Clark, 2004 pp. 237) and interests of the service providers may not be expressly disclosed, the inefficiencies arising due to poor governance are borne by the participants of the retirement benefit schemes. The relationship is further complicated as the participants do not play an active role in governance or in scrutiny of decisions made by the trustees. Conventionally, shareholder activism options through exit, voice and loyalty does not apply to the retirement benefits industry (Clark, 2004).

Given the unique challenges of governance in the retirement benefits industry, regulations become a remedy, which according to Clark (2004) should cover moral imperatives, legislation and market mechanisms. According to Besley and Prat (2003), the optimal governance arrangement for the retirement benefits sector ensures that beneficiaries control and monitor the trustees. The supervising authorities should focus efficiency of the pension system by specifically legislating licensing, monitoring activities, communication between parties and correction (IOPS, 2008). From the classical view, regulations should promote stability, security and good governance for the benefit of the stakeholders.

Governance codes of conduct have gained prominence after the astonishing financial catastrophes experienced in the 21<sup>st</sup> Century (Rudolph, Antolin & Yermo, 2010). The codes may however be difficult to implement as retirement benefit schemes differ in the value of assets, membership numbers, composition and the nature of sponsors (Miller & Funston, 2014). Clark (2004) opines that such codes should ensure consistence with internal governance rules, coherent internal governance and compatibility with the general laws.

### 3.0 Methodology

Qualitative research design was applied as it has ability to provide complex textual descriptions of how people experience a given research issue (Saunders, Lewis & Thornhill, 2013). The study needed to get deeper insights in to the application of stipulated governance practices recommended by the regulator. Four main approaches were used to collect data that inform the consequent findings. *Firstly*, document review was conducted to determine the governance aspects that RBA has prescribed for use in the sector by the service providers, *secondly*, interviews were conducted with a cross section of respondents representing the service providers in the Kenyan retirement benefits industry. *Thirdly*, interview questions (used in focus group discussions) were developed from the results of the document reviews and in-depth personal interviews with three senior managers in firms that perform administration, custody and fund management functions. *Lastly*, focus group discussions were conducted with broader representation of the key informants.

To identify the key informants, a list of fund managers, administrators, actuaries and custodians was obtained from the RBA website. A letter was sent to the Chief Executive Officers of the responding organizations asking them to nominate two individuals who deal with retirement benefit schemes to attend focus group discussions at

certain specified dates. Separate focus group discussions were conducted with each category of service providers.

At the onset, the research team explained the purpose of the study to the respondents. The respondents were also made aware of the ethical issues that the researchers subscribe to namely; confidentiality, right to be treated fairly, right to withdraw from the interview any time if they felt offended, right not to be recorded without their consent and the freedom of expression and thought.

After the introduction, the respondents were split in to manageable groups (minimum 4 and maximum 6) to enhance effective discussions. A standard set of questions that were developed on the basis of the research questions were posed to the respondents. The respondents were allowed to digress in to relevant issues that were not necessarily captured in the interview guide.

In total, 42 respondents who were directly involved in the management of retirement benefit schemes as service providers and therefore had an in-depth understanding of the issues under discussion attended the focus group discussions. A total of 7 FGD were conducted with the average membership in each FGD being 6 members. Each FGD took between 1½ hours to 2 hours and were all recorded. The recorded data was then transcribed in to specific themes that informed the findings in section 4.

#### 4.0 Findings

##### 4.1 Guidelines of governance of retirement benefit schemes in Kenya

A review of relevant documents and consequent discussions with key informants in the industry established that RBA has provided the guidelines included in Table 1 as a guide to the governance of the schemes.

**Table 1: Pension governance guidelines in Kenya**

| Essence of the guideline                                 | Specific implementation rules  |
|--|--|
| Maintain a trust deed                                    | <ul style="list-style-type: none"> <li>- Document the rules relating to entry, existence in the scheme and exit.</li> <li>- Trust deed must be aligned with the Retirement Benefits Act and must be amended when the regulations change.</li> <li>- Must be endorsed by an attorney and copy filed with the regulator.</li> </ul>  |
| Separation of operational and oversight responsibilities | <ul style="list-style-type: none"> <li>- Trustees are appointed by members and sponsors to oversight service providers and act in the interest of members and sponsors.</li> <li>- Trustees appoint service providers who are accredited by the regulator.</li> <li>- Separation of administration, fund management, custody of assets, actuarial services and auditing.</li> <li>- Trustees to review reports from administrators, custodians and fund managers on quarterly basis.</li> <li>- Investment policy statement to be made by consultants, independent of the fund managers.</li> <li>- Specifies the number of members in the board.</li> </ul> |
| Accountability   | <ul style="list-style-type: none"> <li>- Annual reports to members</li> <li>- Elections to be held in open and transparent manner</li> <li>- Organizing for and holding annual general meetings</li> </ul>   |
| Trustee development                                      | <ul style="list-style-type: none"> <li>- Train trustees to effectively undertake their mandate</li> </ul>  |
| Conflict of interest                                     | <ul style="list-style-type: none"> <li>- Schemes to have a policy to address the identification, monitoring and dealing with conflict of interest</li> </ul>   |
| Proper and fit tests for trustees                        | <ul style="list-style-type: none"> <li>- Trustees should be competent and should not have had a criminal record.</li> <li>- Three year term limit for trustees</li> </ul>  |
| Independence of the scheme from the sponsor              | <ul style="list-style-type: none"> <li>- The scheme should be registered and incorporated independent of the sponsor</li> <li>- Sponsor should submit contributions to the scheme on monthly basis</li> <li>- Members benefits should not be attached as collateral or guarantee by the employer</li> </ul>  |
| Financial independence of the scheme                     | <ul style="list-style-type: none"> <li>- Scheme assets should not be used as collateral</li> <li>- Separate financial statements and reports should be prepared</li> </ul>   |
| Continuous risk management                               | <ul style="list-style-type: none"> <li>- Implementation of risk based supervision for schemes</li> </ul>   |
| Transparency   | <ul style="list-style-type: none"> <li>- Communication to the members on important matters and the implications that these matters have</li> <li>- Provide member statements on annual basis</li> </ul>  |



#### *4.2 Compliance with the governance regulations*

Important findings from the focus group discussions with the informants are discussed in this section.

All schemes have trust deeds that were developed on formation of the schemes. It is however not clear whether the trust deeds are amended to be in compliance with the changes in regulations, industry dynamics and changing worker demographics.

All schemes have appointed trustees, however most of the trustees are lay and may not be playing their roles effectively due to lack of the requisite knowledge. The areas that trustees lack expertise include; review of investment environment, evaluation of risk return relationships as trustees tend to focus on short term returns as opposed to long term returns that are more useful in a retirement benefit scheme arrangement.

All the schemes have engaged external consultants and advisors as recommended by the industry regulator but conflicts of interest cannot be overruled in some of the appointments.

Trustees receive reports from the service providers on quarterly basis. The competence with which most trustees provide oversight on the service providers and ask “the right questions” is however doubtful.

Large schemes tend to have better structures and consequently higher levels of governance compared to the smaller schemes. However some of the schemes are already “over size” as a result of which diseconomies of scale are being realized. Similarly there are also small inefficient schemes that have very high administrative and investment management costs per participant.

Schemes that are sponsored by the public sector face special challenges in the appointment of trustees, timely submission of contributions and active participation of the trustees in the board meetings.

Trustee training and development program implemented jointly by the industry regulator and association has achieved benefit in making trustees more aware of their roles. It is however a one off training. Respondents felt that continuous education of the trustees was needed.

Annual financial reports and statements are submitted to the members of the schemes; however the attendance to the annual general meetings and member training sessions is dismal. It is not clear whether the members of the schemes really understand the importance of the savings they make in retirement benefit schemes.

Trustee elections and appointments are conducted in accordance with the regulations. It is however not apparent how the proper and fit test is enforced by the industry regulator, the sponsor or the schemes before the appointment.

The rules on the operation of schemes as independent entities are enforced and both the sponsor’s and member’s rights are represented in the board of trustees.

#### *4.3 Emerging Issues in the governance of retirement benefit schemes*

Focus group discussions with the service providers disclosed the following issues that require proactive attention of the policy makers.

##### *4.3.1 Coordination of the investment management function where a large scheme has co-fund managers*

A section of the respondents argued that the use of co-fund managers in large schemes enables competition amongst the fund managers, which in turn generate better returns for the scheme. Opponents of the move argue that the competition motivates fund managers to take excessive risk in an attempt to outdo the co-fund manager – this becomes counterproductive to the overall results of the scheme. Additionally, cooperation amongst the co-fund managers is essential as they seek to achieve the milestones set in the investment policy statement of the scheme.

##### *4.3.2 Investment in alternative assets*

Alternative assets include; private equity, real estate investment trusts, derivatives and other innovative financial products. Although some of these assets have been introduced in the Kenyan market and allowed to be part of the assets of a retirement benefits scheme, there are no explicit stipulations to what constitutes the title to these assets. Granted that the assets have higher risk and possibly higher returns, retirement benefit schemes should prioritize security of these investments in a context where such products are complex and not easy to understand.

##### *4.3.3 Governance practices of the service providers*

The growth of the financial services industry in Kenya has resulted to diversification of functions of the players. It is typical to find a firm offering all or a combination of some of the functions of custody of assets, investment management and administration services. Though not offering the service to the same scheme, the risk lies in that collusive practices may prevail amongst the service providers thus compromising the governance aspects of

the schemes. This risk is real in a market with very few service providers. Similarly, a scheme could have a team of investment manager, custodian and administrators who are themselves competitors and hence fail to optimize the overall results of the scheme.

#### 4.3.4 Examination of solvency risk of the service providers

As the solvency risk of the retirement benefit schemes is examined, the solvency risk of the service providers should also be scrutinized. Six months before the conduct of the study, one of the licensed custodians sank with the deposits of the investors including the proceeds of a bond that it had just issued. An investigation of the incidence revealed that there were governance gaps in the management of the affairs of the custodian.

#### 4.3.5 Reserves maintained by the retirement benefit schemes

Schemes maintain reserves at the end of the financial year, which are then used to smooth earnings when the scheme returns fall in future years. After years of accumulation, questions emerge on who actually owns the reserves especially because a scheme will always have entrants, leavers and deferred contributors at any given time.

#### 4.3.6 Participation of members in the governance of retirement benefit schemes

Respondents were in agreement that members are not actively engaged in the governance of retirement benefit schemes. As the schemes grow in size and asset values, it will be important to ensure that the membership acquires the requisite knowledge and interest in the activities of the scheme to enhance governance.

#### 4.3.7 Conflict of interest

Service providers, specifically the fund managers are continuously developing new innovative financial products. There is temptation for fund managers to invest assets of the retirement benefit schemes under their management to their own products. This may pose a governance challenge as the fund manager cannot advise against their own products. As such it will be important for fund managers to make full disclosure and seek consent of the trustees before investing the scheme's assets in their own products.

#### 4.3.8 Governance of schemes where the employer has operations in other countries

Cross border schemes where the scheme is domiciled in Kenya but workers are in other countries, make it difficult for workers to participate in scheme activities. Creative ways should be sought to address how such workers participate in annual general meetings, vote for their desired trustees, should a worker who is in another country desire to be a trustee, how such would be addressed – or even a situation where trustees are separated by geographical distance.

#### 4.3.9 Focus on lay trustees

Policy makers should rethink the role and effectiveness of lay trustees who for instance may not have the requisite skills and knowledge. Some of the lay trustees may not even have the minimum education required to clearly internalize matters of management of retirement benefit schemes when offered as a short course.

#### 4.3.10 Governance of schemes that have converted from defined contribution to defined benefit design

The findings indicate that most defined benefit schemes have converted to defined contribution thus transferring risk to the scheme participants. It is imperative that the converted schemes are monitored to ensure that the transition is smooth and that members do not lose out in the process of conversion. Moreover, the governance practices adopted after conversion are consistent with the rules relating to defined contribution schemes.

## 5.0 Discussion of Results

From the results, it is apparent that implementation of governance guidelines and regulations for the retirement benefit schemes have contributed to the immense growth of the industry. IOPS (2008) opine that the purpose of regulations is to provide consistency on resolution of issues and contribute to stability of the markets. The schemes have trust deeds that manage the relationships between the stakeholders consistent with Clark (2004) view on establishment of pension plans on trust basis and contractual relationships with service providers. The findings further show that trustees are more concerned with internal governance and pay less attention to external governance as hypothesized by Brown & Caylor (2004) and Kowalewski (2012). Presence of lay trustees is also documented in Clark (2004) indicating that this is not a problem for Kenya alone. Similarly the findings are consistent with Clark (2004) on the not “so apparent” disclosures of interest by the service providers pointing to the need to focus governance on the service providers as well. The finding that the schemes in the public sector have concerns that also need to be addressed has also been documented in other studies and contexts such as Useem and Mitchell (2000), Impavido, O'Connor and Vittas (2008), Yermo (2008) and Dobra (2013). The

authors seem to agree that performance of public pension systems in most jurisdictions is below average despite the schemes having an opportunity to exploit economies of scale.

## 7.0 Conclusion

The retirement benefits industry in Kenya has significantly improved from where it was two decades ago resulting to significant growth in assets under management. The governance practices and recommendations issued by the regulator are complied with to a greater extent. With growth of the industry however, policy makers will have to be proactive to manage emerging governance issues such as rules for investment in non-conventional assets, focus on risk management, scale and cost efficiency, solvency of the schemes, cross border schemes, distribution of reserves, governance of the service providers, participation of members in governance and management of relationships between the service providers of the same scheme.

## 8.0 Recommendations

Following the findings, it is essential that trustees implement the schemes' trust deeds in a flexible manner and amended them to suit changing conditions such as increased working life and changes in regulations. Additionally, policy makers should continuously review governance regulations to ensure that they are strong, adaptive to different situations and inventive. Since members of the schemes seem dis engaged with the scheme's governance, trustees should find creative ways of engrossing them. Such communication can include correspondence using both formal and informal means. Policy makers should also consider encouraging the development of corporate trusteeship as it will be more cost effective to smaller schemes and will give better results in place of a board of trustees with lay members.

Lastly, policy makers are advised to proactively scrutinize the identified emerging issues in the governance of retirement benefit schemes for the posterity of the industry.

## 9.0 Limitations of the Study and Suggestions for further Research

This study has documented the current state of governance of retirement benefit schemes in Kenya from the perspective of the service providers and unearthed the critical factors that policy makers should be paying attention to moving forward. The study did not therefore focus on the members and trustees of the retirement benefit schemes who are also critical in governance. It will be important to triangulate the findings with the trustees and members of the retirement benefit schemes.

The study adopted a qualitative approach, chosen because of its flexibility in allowing researchers to delve in to issues that they could not foresee from the literature review due to the uniqueness of the topic, dearth of studies on pension governance in Kenya and the need to delve deeper in to the issues affecting the retirement benefits sector. This was done to enhance discovery of governance gaps and develop hypotheses for future research. Future researchers can rely on the findings to develop hypotheses to guide their work.

## References

- Abdullah, H., & Valentine, B. (2009). Fundamental and Ethics Theories of Corporate Governance. *Middle Eastern Finance and Economics*, 4, 88-96.
- Abrams, F.W. (1951). Management's Responsibilities in a Complex World. *Harvard Business Review*, 29, 54-64.
- Alchian, A. & Demsetz, H. (1972). Production, Information Costs and Economic Organization. *American Economic Review*, 62 (5) 777-795.
- Ammann, M. & Ehmann, C. (2014). Is Governance Related to Investment Performance and Asset Allocation? Empirical Evidence from Swiss Pension Funds. Online. Available; <http://www.asip.ch/assets/Corporate-Governance/Pension-Fund-Governance-Paper-2014-03-31.pdf>
- Ammann, M., Zingg, A. (2010). Performance and Governance of Swiss Pension Funds, *Journal of Pension Economics and Finance*, 9(01), 95-128
- Asher, M.G, & Nandy, A. (2006). Governance and Regulation of Provident and Pension Schemes in Asia. United Kingdom: Edward Elgar
- Ashiagbor, D., & Vidal, O. (2016). Pension Funds in Botswana, Kenya, Namibia and Nigeria: New Avenues for Funding Private Equity. Available; [www.savca.co.za/wp-content/uploads/2016/03](http://www.savca.co.za/wp-content/uploads/2016/03)
- Banks, J., Richard, B & Emmerson, C. (2005). The Balance between Defined Benefit, Defined Contribution and State provision. *Journal of the European Economic Association*, 3 (2-3) 466-476.



- Bebchuk, L.A. & Weisbach, M.S. (2010). The State of Corporate Governance Research. *Review of Financial Studies*. 23 (3) 939-961.
- Berle, A.A. & Means, G.C. (1932). *The modern corporation and private property*. Macmillan: New York.
- Besley, T., & Prat, A. (2003). Pension fund governance and the choice between defined benefit and defined contribution plans. CEPR Discussion Paper No. 3955.
- Bodie, Z., Marcus, A.J., & Merton, R.C., (1988). Defined Benefit versus Defined Contribution Pension Plans: What are the Real Trade Offs? in *Pensions in the US Economy*. University of Chicago Press.
- Brown, L.D., & Caylor, M.L. (2004). Corporate Governance and Firm Performance. Online. Available. [www.papers.ssrn.com/sol3/papers.cfm?abstract\\_id=586423](http://www.papers.ssrn.com/sol3/papers.cfm?abstract_id=586423)
- Bowden, P. (2005). Virtue Ethics, Aristotle and Organisational Behaviour. Australian Association for Professional and Applied Ethics. 12<sup>th</sup> Annual Conference 28-30, September 2005, Adelaide.
- Cadbury, A. (1992). *Report on the Committee on the Financial Aspects of Corporate Governance*. London: Gee.
- Ching, K.W., Tan, J.S. & Chi Ching R. G. (2006). *Corporate Governance in East Asia, The Road Ahead*. Singapore: Pearson Prentice Hall.
- Clark, G. (2004). Pension fund governance: expertise and organization form. *Journal of Pension Economics and Finance*. 3, 233-253 doi:10.1017/S1474747204001556.
- Clark, G. & Urwin, R. (2009). *Leadership, collective decision making and pension fund governance*. United Kingdom: Oxford University Press.
- Clarkson, M.B.E. (1995). A stakeholder framework for analyzing and evaluating corporate social performance. *Academy of Management Review*. 20 (1) 92-117.
- Coleman, P.T., Hacking, A., Stover, M., Fisher-Yoshida, B. & Nowak, A. (2008). Reconstructing ripeness I: A study of constructive engagement in protracted social conflicts. *Conflict Resolution Quarterly*. 26 (1) 3-42.
- Daily, C.M., Dalton, D.R., & Cannella, A. A. (2003). Corporate Governance: Decades of Dialogue and Data. *Academy of Management Review*. 28 (3) 371-382.
- Davis, J. H., Schoorman, F.D., & Donaldson, L. (1997). Towards a Stewardship Theory of Management. *Academy of Management Review*, 22 (1), 20-47.
- Donaldson, L., & Davis, J. (1991). Stewardship Theory or Agency Theory: CEO Governance and Shareholder Returns. *Australian Journal of Management*. 16 (1) 49-65.
- Fama, E.F. (1980). Agency Problems and the Theory of the Firm. *Journal of Political Economy*. 88, 288-307
- Forman, J.B. (2000). Public Pensions: Choosing between Defined benefit and Defined Contribution Pension Plans. *Law Review*. 187-212.
- Freeman, R.E. (1984). *Strategic Management: A Stakeholder Approach*. London: Pitman.
- Gregory, H.J & Simms, M.E. (1999). Corporate Governance: What it is and Why it Matters. 9<sup>th</sup> International Anti-Corruption Conference, 10-15 October 1999, Durban, South Africa. NY1:\818246\01\HJD201!.DOC\99990.0054.
- Harbemas, J. (1990) *Moral Consciousness and Communicative Action*. Cambridge: MIT Press.
- Hillman, A.J., Cannella, A.A., & Paetzold, R. L. (2000). The resource dependence role of corporate directors: strategic adaptation of board composition in response to environmental change. *Journal of Management Studies*. 37 (2) 235-255.
- Hursthouse, R. (2013). *Ethical Theory: An Anthropology*. New York: John Wiley & Sons.
- Impavido, G., O'Connor, R., & Vittas, D. (2008). Improving the Investment Performance of Public Pension Funds: Lessons for the Social Insurance Fund of Cyprus from Four OECD Countries. *Cyprus Economic Policy Review*. 2 (2) 3-35.
- IOPS (2008). Supervisory oversight of pension governance. Working Paper No. 8. Online. Available; <http://www.iopsweb.org/41269776.pdf>
- Jensen, M.C. (2001). Value maximization, stakeholder theory and the corporate objective function. *Journal of applied corporate finance*. 14 (3) 8-21. DOI: 10.1111/j.1745-6622.2001.tb00434.x
- Jensen, M.C., & Meckling, W. (1976). Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure. *Journal of Financial Economics*. 3, 305-360
- Jones, W.T. (1977). *Approaches to Ethics*. New York: McGraw Hill Book Company.
- Kowalewski, O. (2012). Corporate Governance and Pension Fund Performance. *Contemporary Economics*, 6 (1) 14-44. DOI: 10.5709/ce.1897-9254.32
- Lashgari, M. (2004). Corporate Governance: Theory and Practice. *The Journal of American Academy of Business, Cambridge*. 46-51.
- McDonald D & Puxty A G (1979). An inducement - contribution approach to corporate financial reporting. *Accounting, Organizations & Society*. 4 (1/2) 53-65.
- Miller, R. & Funston, R. (2014). Public Pension Governance that Works. Online; Available <http://www.nasra.org/Files/Topical%20Reports/Governance%20and%20Legislation/FunstonGovernance1403.pdf>

- Modigliani, F., & Miller, M.H. (1958). The Cost of Capital, Corporation Finance and the Theory of Investment. *The American Economic Review*. 48 (3) 261-297.
- Moriarty, K., & Zadorozny, L. (2008). Excellence in Pension Governance: Real Life. No Drama. Available: <http://www.mecer.com/summary.htm?siteLanguage=100&idContent=1329495>. Accessed on August 2009.
- Njuguna, G.A. (2011). Determinants of Pension Governance: A Survey of Pension Plans in Kenya. *International Journal of Business and Management*. 6 (11) 101-111. DOI:10.5539/ijbm.v6n11p101
- Njuguna, G. A., & Cecil, A. (2012). Determinants of Pension Fund Efficiency in Kenya: An Exploratory Study. *African and Asian Studies*, 11 (1-2), 182-218. DOI: 10.1163/156921012X629376.
- Pfeffer, J. (1978). Size and Composition of Corporate Board of Directors: The Organization and its Environment. *Administrative Science Quarterly*. 17 (1) 218-228. DOI: 10.2307/2393956.
- Pfeffer, J., & Salancik, G. R (1978). The External Control of Organizations: A Resource Dependence Perspective. University of Illinois at Urbana-Champaign's Academy for Entrepreneurial Leadership Historical Research Reference in Entrepreneurship. Available at SSRN: <http://ssrn.com/abstract=1496213>.
- Pound, J. (1993). "Proxy Contest and the Efficiency of Shareholder Oversight". *Journal of Financial Economics*. 20 237-265.
- RBA (2016). Retirement Benefits Industry Performance Report for the year 2015. Online. Available; [www.rba.go.ke](http://www.rba.go.ke)
- Rodriguez, M. A., Ricart, J. E., & Sanchez, P. (2002). Sustainable development and the sustainability of competitive advantage: A dynamic and sustainable view of the firm. *Creativity & Innovation Management*, 11(3), 135-146. DOI:10.1111/1467-8691.00246.
- Rudolph, H., Hinz, R., Antolin, P., & Yermo, J. (2010). *Evaluating the financial performance of pension funds*. Washington DC: The World Bank.
- Saunders, M., Lewis, & Thornhill, A. (2013). *Research methods for business students*. England: Pearson.
- Shleifer, A., & Vishny, R.W. (1997). A Survey of Corporate Governance. *Journal of Finance*. 52 (2) 737-783.
- Smallman, C. (2004). Exploring Theoretical Paradigm in Corporate Governance. *International Journal of Business Governance and Ethics*, 1 (1), 78-94.
- Stewart, F. and J. Yermo (2008), "Pension Fund Governance: Challenges and Potential Solutions", OECD Working Papers on Insurance and Private Pensions, No. 18, OECD publishing. DOI:10.1787/241402256531
- Undram, A.K., & Inkpen, A. C. (2004). Stakeholder Theory and the "Corporate Objective Revisited": A Reply. *Organization Science*. 15 (3) 370-371.
- Tesseire, D. (2009). *Pension Fund Governance*. OECD Publishing.
- Useem, M., & Mitchell, O. (2000). Holders of the purse strings: Governance and performance of public retirement systems. *Social Science Quarterly*, 81 (2), 489-506.
- Willis Towers Watson (2016). Global Pension Assets Study. Online; <https://willistowerwatson.com/en/insights/2016/02/global-pensions-asset-study-2016>.
- Yermo, J. (2008). Governance and Investment of Public Pension Reserve Funds in Selected OECD Countries. OECD Working Papers on Insurance and Private Pensions No. 15, *OECD Publishing*. DOI: 10.1787/19936397.
- Yussoff, W.F., & Alhaji, I.A. (2012). Insight of Corporate Governance Theories. *Journal of Business and Management*. 1 (1) 52-63.