THE IMPACT OF REGULATION OF THE RETIREMENT BENEFITS SECTOR ON THE FINANCIAL PERFORMANCE OF OCCUPATIONAL PENSION SCHEMES IN KENYA

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By

KUSEWA L.M. D61/P/7118/03

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School of business,
University of Nairobi
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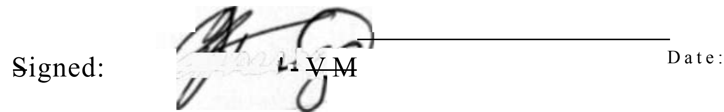
Declaration

This management research project is my original work and has not been presented for any degree award in any other University.

Signed: hd/^e^TSi -____________________Date:_____I "jol

Kusewa Lucy M
D61/P/7118/03 ^

This research project has been submitted with my approval as the University Supervisor

Signed:  Date:

Mr Lisiolo Lishenga
Faculty of Commerce
Department of Accounting and Finance
University of Nairobi

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UUIULiB

Dedication

To my Owing parents who Brought me up to be whom I am today. I witt forever be gratefufi

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Abstract

The Retirement Benefits Act was enacted in 1997 with the aim of regulating the retirement benefits sector, which lacked a harmonized legal framework. The Retirement Benefits Regulations, which were gazetted in the year 2000 put in place further and more precise provisions aimed at achieving the core objectives of protecting the benefits of members' of retirement benefit schemes and developing the retirement benefits industry.

Since the coming into effect of the Retirement Benefits Act and Regulations, the management of pension schemes has become more structured and organized. However, it is questionable whether this has translated into an improvement in the financial performance of the schemes. This is because the regulations have also brought about some limitations on the operations of pension schemes and an increase in administrative costs. It is the financial performance that determines the financial health of a pension scheme and its ability to pay all benefits as and when they fall due.

This study set out to investigate whether the enactment of regulations has had a significant impact on the financial performance of pension schemes. A sample of thirty occupational retirement benefit schemes was selected from data obtained from scheme administrators. The total contributions and the fund values for each scheme in the sample was analysed for each of the five years prior to and the five years after the year 2000. Using the matched or paired t-test. findings indicated that there was a significant positive impact in the financial performance of the population of occupational retirement benefit schemes in the period in which the regulations have been in place.

1. Introduction

1.1. Background

In the Wikipedia encyclopaedia, a retirement plan has been defined as an arrangement to provide people with an income, or pension, during retirement, when they are no longer earning a steady income from employment. Retirement plans may be set up by employers, insurance companies, the government or other institutions such as employer associations or trade unions. Retirement plans are more commonly known as pension schemes. The Kenya Retirements Benefits Act, 1997 under section II on interpretation, describes a retirement benefits scheme as: -

> *'Any scheme or arrangement (other than a contract for life assurance) whether established by a written law for the time being in force or by any other instrument, under which persons are entitled to benefits in the form of payments, determined by age, length of service, amount of earnings or otherwise and payable primarily upon retirement, or upon death, termination of service, or upon the occurrence of such other event as may be specified in such written law or other instrument'.*

Pension Plans are created in order to give employees the security and stability of a guaranteed income stream during retirement. In order to safeguard employees' rights to benefits, registered pension plans must abide, and be administered, according to the appropriate pension legislation. Jetha (2004) noted that in targeting the benefit levels at retirement, the criterion that is widely used is the Replacement Ratio (RR). This is a measure of how the ultimate benefits - i.e. retirement pensions - compare to the member's salary preceding his retirement. The higher this ratio, the closer the pension benefits are to the member's salary. Thus, by being a member of a pension scheme, retirement need not impose a financial hardship on the member.

Occupational pension schemes

The Wikipedia encyclopaedia defines an occupational pension scheme as:-

'A pension scheme created by an employer for the benefit of an employee'.

Hence, occupational pensions are a form of deferred compensation, usually advantageous to both the employee and employer for tax reasons i.e. contributions made up to a certain legally specified limit per annuam are exempt for income tax purposes.

According to the Global Investor glossary, in 'contributory' schemes, both the employer and employee contribute to a fund, which grows free of tax during the savings period. In 'non-contributory' schemes, only the employer contributes. The amount paid out to the employee on retirement will depend on the type of scheme i.e. with a defined contribution plan; the amount paid is calculated by reference to the contributions put in while with a defined benefit plan, the amount paid depends on the number of years of service and the final salary of the employee. At retirement the employee draws a pension income that is subject to tax.

The Kenya Retirement Benefits (Occupational Retirement Benefit Schemes) regulations were enacted in the year 2000 to specifically address occupational pension schemes in Kenya.

Financial performance of pension schemes

Keizi (2006), an economist with RBA, explained that the best single indicator of a retirement benefits scheme's financial health was its funding percentage. A fully funded scheme is one with a funding level of 100%. A scheme is under-funded when the percentage is below 100%. The lower the percentage, the greater the risk that the benefits will not be available when they fall due. In the November 2005 supplement of the Organisation for Economic Co-operation and Development, on ageing and pension system reforms, it was noted that defined contribution plans were by their nature fully funded at all times because their liabilities equaled the market value of assets. However, a

funding shortfall could still occur where it became impossible to provide the targeted level of benefits with the accumulated assets. Jetha (2004) observed that the success of a defined contribution program in meeting its benefit objective depended to a large extent on the total investment return achieved over the long term, thus implying that pension schemes should aim at growing their fund levels through prudent investment of members' contributions.

From a financial perspective, pension schemes' performance can be assessed by evaluating the increase in income streams. The main source of funding for pension schemes is the contributions received. An increase in contributions can arise where there is an increase in scheme membership, increase in individual contributions resulting from increase in members' salaries and/or a change in scheme rules increasing the percentage contributions. The other source of income for pensions is the net returns made from investment of contributions. Net returns will increase where economic factors are favorable and where prudent investment decisions are made that diversify risks. The increase in income, coupled with reduction in administrative costs will lead to an increase in the fund value of a scheme. It is the increase in fund value that is used to determine the overall financial performance of a scheme. Schemes whose financial performance is healthy will generally be able to safeguard and grow members' funds; hence such schemes will be in a position to meet their financial liabilities to members who retire.

Regulation of pension schemes in Kenya

The Government of Kenya in 1997 embarked on an overhaul of the retirement funds industry, previously plagued with the mismanagement and misappropriation of pension scheme assets. This saw the enactment of the Retirement Benefits Act aimed specifically at regulating a market, which lacked a harmonized legal framework. The enactment filled a regulatory vacuum, which had existed in Kenya. Retirement benefit schemes had previously been regulated by fragmented legislation, mostly Trust and Income Tax Laws.

The absence of specific retirement benefits regulations allowed schemes to adopt different styles of operations. In many cases, sponsors (employers) dominated the operations of the industry while members and beneficiaries were marginalized. Sponsors kept poor records of scheme members* funds and assets to the extent that at the time of retirement, members' benefits could not easily be determined. In addition, sponsors treated members' contributions as their money and ploughed it back into their businesses. Majority of the schemes therefore lacked funds to pay their members on retirement. In the 1990's the industry was replete with cases of unpaid, underpaid and delayed benefits to entitled members and outright theft of members' benefits.

Odundo (2005), the CEO of RBA explained that what drove the enactment of the Retirement Benefits Act was the global acceptance that state-provided pension was inadequate and unsustainable in the long-run and the realization that a well-managed retirement benefits industry was imperative for enhanced mobilization of domestic savings and faster economic growth and development. Therefore, according to him, the enactment was geared towards addressing the problems that afflicted the retirement benefits industry at the time. These problems were manifest in an industry that was characterized by lack of harmonized legislative framework and a discordant regulatory environment, the ultimate cost of which was a poor standard of living and high incidence of abject poverty among the poor.

The Retirement Benefits Authority (RBA) was formed under the Act with the main objectives of regulating and supervising the establishment and management of retirement benefits schemes. The RBA also has a role in protecting the interests of members and sponsors of retirement benefits schemes and promoting the development of the retirement benefits sector.

With the Act in place, in 1999 the Association of Retirement Benefit Schemes (ARBS) was formed to bring together the various players in the sector and to provide a forum

through which issues and concerns of the industry and related sectors could be discussed and addressed.

The Retirement Benefits Act empowers the Minister for Finance in consultation with the Authority to gazette rules for the operations of the Sector. These were developed and gazetted into law as Kenya Gazette Supplement No.72 dated 9th October 2000. The Retirement Benefits Regulations 2000, put in place further and more precise provisions aimed at achieving the core objectives of protecting members' benefits and developing the retirement benefits industry.

This study sought out to assess whether regulation has had an impact on the financial performance of occupational pension schemes over the period in which both the retirement benefits act and the regulations have been enacted.

1.2. Problem statement

Earlier studies done globally on the pensions sector have looked at the causes and effects of changes on the pension schemes. Kietlinska and Piotrowska-Marczak (2002) established that the impulses to start the pension scheme reforms in Poland were produced by the socio-demographic, economic, financial as well as political factors. Mitchell (2000) with the assistance of Dykes E.L also studied the trends in pension benefit and retirement provisions in the United States of America. Durban (1996) studied the impact of pension reform on the living arrangements of older persons in Latin America while Gillion (2000) studied the development and reform of social security pensions in the world where he found that poor management of schemes had left much of the population exposed to the risk of poverty in old age. The Pensions Regulator in the United Kingdom has carried out two surveys on occupational pension scheme governance. The first survey was in the year 2006 and the second in the year 2007. The objective of the surveys was to assess the understanding of trustees and others, of the Regulator's expectations, including that of governance standards.

In Kenya, the Retirement Benefits Authority has conducted a number of surveys. In 2003 RBA conducted a survey to establish the relative importance and contribution of retirement benefits to the income stream of retirees. The RBA also conducted a survey in 2004 to establish the circumstances of retirees and their experiences as members of retirement benefit schemes and another survey in 2005 to consult members on their views and opinions. The RBA's customer satisfaction survey was conducted in late April 2006. The underlying objective of the survey was to establish the quality of the Authority's service and satisfaction of the customer. The most recent survey of the RBA was a trustees survey conducted in June 2007 to assess the information needs of trustees of individual and occupational retirement benefits schemes and the impact of RBA's educational initiatives on trustees. Mutua (2003) also assessed the relationship between the extent of compliance and the financial performance of pension schemes.

Since the coming into effect of the Retirement Benefits Act and the Retirement Benefits Regulations, the management of pension schemes has become more structured and organized, Keizi (2006). The regulations require the funds from the schemes to be invested by professional investment managers and be held by independent custodians vetted and approved by the Retirement Benefits Authority.

Generally, regulation of the retirement benefits sector is expected to have led to an improvement in the financial performance of retirement benefits schemes. This is because there has been increased confidence in saving for retirement brought about by increased member awareness through board representation, annual general meetings and public education. It is also expected that due to the requirement for retirement benefit schemes to appoint an independent investment manager, there has been improved investment portfolio returns. Assets of such schemes have also been more secure following the separation of the role of asset custody to appointed registered custodians.

In addition, sponsors now remit members' contributions to a scheme account or to the custodian within ten days of deduction. The funds are invested by fund or investment managers across diversified investment instruments to maximise returns at the lowest risk possible. Trustees of pension schemes are also required to appoint registered scheme administrators whose main role is to maintain detailed and updated records of members and scheme assets. These records are independently audited every year. Hence, there has been greater transparency and accountability brought about by the annual audited financial statements and other statutory returns and regulatory oversight.

However, following from the theory of economic regulation, some regulations could have a negative effect on the industry, Stigler (1971). Regulation of the retirement benefits sector in Kenya has brought about some limitations in the operations of pension schemes. For example, entry of new players into the sector is controlled by the requirement for registration with the Retirement Benefits Authority in accordance with section 23 of the Retirement Benefits Act. In order to register, retirement benefit schemes are required to have established scheme niles that adequately protect the interests of sponsors and members. Part III of the occupational retirement schemes regulations on administration, membership and benefits gives the contents of the scheme rules.

Regulation has also led to increase in administrative costs of retirement benefit schemes. Retirement benefit schemes are required to appoint registered custodians, scheme administrators and fund managers. Besides the inefficiencies brought about by the need for consultation among the three parties before making a decision that will affect the scheme, fees has to be paid to these professionals. The requirement to have the books of accounts audited annually has also seen an increase in administrative costs in terms of

audit fees so has the requirement for regular actuarial valuations since valuation fees has to be paid to the valuers. Retirement benefit schemes are also required to pay to the Retirement Benefits Authority, a retirement benefits levy on the contributions made to scheme funds, or on the assets of such funds, or on such other base as may be determined. Non-payment of the levy on or before the prescribed date attracts a penalty of 5% of the amount due for each month or part thereof during which the amount due remains unpaid. The regulations also require that schemes invest their funds only in the asset classes referred to in column 1 and up to the limits specified in column 2 of Table G of the occupational retirement schemes regulations. These limitations on investment of funds hinder retirement benefits schemes from taking advantage of the 'high risk - high return' trade-off.

This study set out to investigate whether the enactment of regulations to govern the pensions sector in Kenya has had an impact on the financial performance of the pension schemes. It sought to answer the questions whether the fund value of pension schemes has significantly increased from improved investment and management of funds and whether pension schemes have become more effective and efficient in the payment of benefits hence, whether they have attracted more membership and increased contributions.

1.3. Objective

To assess the impact of regulation on the financial performance of occupational retirement benefit schemes in Kenya.

1.4. Hypothesis

Ideally, regulation of an industry that was previously characterized by lack of a harmonized legislative framework and a discordant regulatory environment will bring in a number of positive changes.

Therefore, the null hypothesis for the study is: -

The regulation of retirement benefits sector has not had a significant impact on the financial performance of occupational retirement benefit schemes in Kenya

The alternative research hypothesis thus, is: -

The regulation of retirement benefits sector has had a significant impact on the financial performance of occupational retirement benefit schemes in Kenya.

Importance of the study

Regulation of retirement benefits schemes in Kenya was enforced in 1997 with the coming into effect of the Retirement Benefits Act, which was strengthened by the Retirement Benefits Regulations introduced in the year 2000. Regulation was brought about to streamline the retirement benefits sector.

It would be important therefore, to assess thus far, whether indeed the regulations have led to an improvement in the financial performance of pension schemes. The different stakeholders of the pensions sector would benefit from findings of the study in the following ways: -

a) The government - being the body that enforced the regulations, the government of Kenya would be interested to know whether the regulations have thus far achieved the objectives for which they were put into place. Further, pension funds have become one of the largest institutional investors and their performance would impact on the performance of financial markets in general. In the light of this, it has become increasingly important for the government to ensure that regulation, accounting and governance of such funds is adequate so as to safeguard both the provision of adequate retirement incomes for its citizens and to ensure financial stability, thereby also avoiding large-scale contingent fiscal liabilities arising from pressures for public bailouts of failing pension funds.

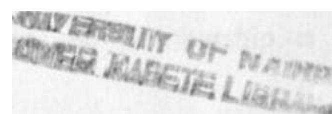
Experience to date from other countries that have undertaken reforms on their pensions sector also suggests that there may be scope to strengthen the transparency and governance of pension funds. The government of Kenya would thus be interested both in justifying the efforts and resources put into the regulation of the sector and finding out whether there is need to improve on the current regulation and supervision.

b) Regulatory bodies - part II of the Retirement Benefits Act sets out the establishment of the Retirement Benefits Authority. The RBA was formed with the objectives of regulating and supervising the establishment and management of retirement benefits schemes, protecting the interests of members and sponsors and promoting the development of the retirement benefits sector. Findings of the study would thus be used to assess the RBA's attainment of the objectives for which it was established. The study will also provide information on opportunities for performance improvement that can be taken up by the RBA.

c) Employers - being the sponsors of occupational pension schemes, employers have an obligation to guarantee their employees income upon retirement. Employers also contribute to occupational retirement benefit schemes and as such would be interested to know that their contributions are prudently invested and well managed for the benefit of their employees.

d) Employees - being the beneficiaries for whom pension schemes are formed, employees would be interested to know whether their future income is well safeguarded to guarantee them a steady and reliable income upon retirement and/or support their chosen dependants in the event of death.

e) Professional organizations - findings of the study would provide useful information to professional organizations, which they could use to provide advisory, or consultancy services to retirement benefit schemes or the regulators. Professional organizations will also get useful information for further research and analysis.



2. Literature review

2.1. Retirement benefits schemes

Retirement benefits schemes are commonly known as pension schemes. Pension schemes have been defined in various ways but with the same general meaning. In the Britannica Concise Encyclopacdia, a pension is series of periodic money payments made to a person who retires from employment because of age, disability, or the completion of an agreed span of service. The payments generally continue for the rest of the recipient's natural life, and they are sometimes extended to a widow or other survivor. In the Columbia Thompson Gale Legal Encyclopaedia, a pension has been defined as a benefit, usually money, paid regularly to retired employees or their survivors by private businesses and federal, state, and local governments. Employers are not required to establish pension benefits but do so to attract qualified employees.

2.2. Classification of retirement schemes

Retirement benefits schemes are classified in different ways. The common classifications are based on who established the scheme, how payments are made and how the scheme is designed.

A retirement benefit scheme can be classified as either occupational or individual based on who established the scheme.

Mutuku (2004) gave the definition of an occupational retirement benefits scheme as a scheme to which access is linked to an employment relationship. These schemes are established by employers or groups of employers and membership is limited to

employees of these employers. Elsewhere, in the Investopaedia. an occupational retirement benefits scheme has been defined as a fund established by an employer to facilitate and organize the investment of employees' retirement funds contributed by the employer and employees. The pension fund is a common asset pool meant to generate stable growth over the long term, and provide pensions for employees when they reach the end of their working years and commence retirement.

An occupational pension is a private pension. Although the employer is responsible for sponsoring the scheme, it is actually run by a board of trustees. It is this board of trustees that is responsible for ensuring payment of benefits.

The flip side of occupational retirement benefits schemes are individual retirement benefit schemes. Access to such schemes is not linked to an employment relationship. According to Mutuku (2004), individual retirement benefit schemes are established by financial institutions and membership is open to all. Employers, however, may also contribute to individual schemes on behalf of their employees. These schemes are often referred to as personal pension plans. In the Retirement Plan Primer, individual retirement benefit schemes have been defined as personal retirement savings plans available to anyone, regardless of age, who receives taxable compensation.

Based on how benefits are paid, a retirement benefits scheme can either be a provident fund or a pension fund.

In the Retirement Benefits Authority (RBA) website, a provident fund has been defined as a retirement benefits arrangement which provides a one-of lump sum payment at retirement. Mutuku (2004) gave the definition of a provident fund as a scheme, which pays benefits to members in the form of a lump sum. On attainment of retirement age. the member is paid the accumulated benefits in a single payment and the member has no further relationship with the scheme.

As opposed to lump sum payments, the RBA defines a pension scheme as a retirement benefits arrangement providing periodic payments (pension) upon retirement. The Columbia Encyclopaedia on the other hand defines a pension as a scheme where periodic payments are made to one who has retired from work because of age or disability.

However, a lump sum payment can be converted into a pension by purchasing an annuity from an insurance company. An annuity is an insurance product, which transfers the risk of longevity that is, living for very long after retirement, from the member to the insurance company. An annuity can either be purchased by a member who has received a lump sum or by a pension scheme, which is unable or unwilling to pay monthly pensions from its own resources.

Based on how the scheme is designed or how benefits are determined, a retirement benefits scheme can be classified as a defined contribution or a defined benefit scheme.

In a defined contribution plan, the payment at retirement is dependent upon the amount of money contributed and the performance of the investment vehicles utilized. In the Wikipedia Encyclopedia, in a defined contribution plan, contributions are paid into an individual account for each member. The contributions are invested, for example in the stock market, and the returns on the investment (which may be positive or negative) are credited to the individual's account. On retirement, the member's account is used to provide retirement benefits. As noted by the RBA in their website, members' and employers' contributions in a defined contribution plan are fixed in the scheme rules and benefits payable are a function of the accumulated contributions.

A defined benefit scheme specifies the amount of benefit, which a member will receive at retirement. According to the RBA, in defined benefit schemes, benefits payable are guaranteed, typically as a percentage of the final salary for each year of pensionable

service. As noted by Mutuku (2004), in these schemes, since benefits are not directly determined by the contributions and income then the financial and longevity risk must be borne by the entity establishing the scheme (normally the employer). Any scheme in which the employer guarantees a rate of return to the members or which has an explicit targeted benefit should be classified as a defined benefit. In Kenya, many schemes that were initially formed as defined benefit schemes have in the recent past converted to defined contribution schemes. The main reason for this has been the under-funding problems experienced with defined benefit schemes. For example, statistics given by RBA in their website indicates that the percentage of defined benefit schemes dropped from 16% in 2001 to 13% in 2005.

The Kenya Retirement Benefits (Occupational Retirement Benefit Schemes) Regulations, 2000 under section III on interpretation, defines a defined contribution scheme as a scheme in which members' and employers' contributions are fixed either as a percentage of pensionable earnings or as a shilling amount. A member's retirement benefits are equal to the contributions made, net of expenses including premiums paid for insurance of death or disability risks, accumulated in an individual account with investment return and any surpluses or deficits as determined by the trustees of the scheme. A defined benefit scheme on the other hand has been defined as a scheme other than a defined contribution scheme. The benefits payable in a defined benefit scheme are therefore guaranteed, typically as a percentage of final salary for each year of pensionable service.

Under the personal finance terms in the Wikipedia Encyclopaedia, defined benefit retirement plans have been grouped as either funded or unfunded. In a funded retirement plan, contributions from the employer, and sometimes also from plan members, are invested in a fund towards meeting the retirement benefits. The future returns on the investments, and the future benefits to be paid, are not known in advance, so there is no guarantee that a given level of contributions will be enough to meet the benefits. Typically, the contributions to be paid are regularly reviewed in a valuation of the plan's

assets and liabilities, carried out by an actuary. In many countries, such as the USA. the UK and Australia, most private defined benefit retirement plans are funded, because governments there provide tax incentives to funded plans.

In an unfunded retirement plan, no funds are set aside. The benefits to be paid are met immediately by contributions to the plan. Most government run retirement plans, such as the social security system in the USA and most European countries, are unfunded retirement plans, with benefits being paid directly out of current taxes and social security contributions.

Occupational retirement benefit schemes may be contributory or non-contributory. In contributory schemes both the employer and employee contribute to a fund, which grows free of tax during the savings period. In non-contributory schemes, only the employer contributes. From statistics given by the Retirement Benefit Authority in their website, assets of such schemes form about 61% of the total assets of the retirement benefits sector in Kenya.

2.3. The theory of economic regulation

Government intervention in the market is what we may call 'economic regulation', Posner (1974). Properly defined, the term refers to taxes and subsidies of all sorts as well as to explicit legislative and administrative controls over rates, entry, and other facets of economic activity. Two main theories of economic regulation have been proposed. One is the "public interest" theory, bequeathed by a previous generation of economists to the present generation of lawyers. It holds that regulation is supplied in response to the demand of the public for the correction of inefficient or inequitable market practices. The second theory is the "capture" theory, backed by an odd mixture of welfare state liberals, Marxists, and free-market economists. This theory holds that regulation is supplied in response to the demands of interest groups struggling among themselves to maximize the incomes of their members. The economists' version is more promising.

According to Posner, two assumptions seem to have typified thought about economic policy. One assumption was that economic markets were extremely fragile and apt to operate very inefficiently if left alone and the other was that government regulation was virtually costless. However, if this theory of regulation were correct, we would find regulation imposed mainly in highly concentrated industries (where the danger of monopoly is greatest) and in industries that generate substantial external costs or benefits, which is not the case.

What is now called the economic theory of regulation was however proposed by George Stigler. Stigler (1971) observed that the state or government with its machinery and power, was a potential resource or threat to every industry in the socicty. With its power to prohibit or compel, to take or give money, the state or government could selectively help or hurt a vast number of industries. The most important element of the theory of economic regulation is its integration of the analysis of political behavior with the larger body of economic analysis, Peltzman (1976). This means that interest groups can influence the outcome of the regulatory process by providing financial or other support to politicians or regulators. According to Stigler, the central tasks of the theory are to explain who will receive the benefits or burdens of regulation, what form regulation will take, and the effects of regulation upon the allocation of resources.

Stigler gave two views of regulation that are widely held. First, that regulation is instituted primarily for the protection and benefit of the public at large or some large subclass of the public. Second, that essentially, the political process defies rational explanation and that there are regulations whose net effects upon the regulated industry are onerous i.e. some regulations have a negative effect on the industry.

The theory of regulation notes four benefits that the state or government can provide to an industry. The most obvious contribution that a group may seek of the government is a direct subsidy of money. An industry' with power to obtain governmental favours will

usually not use this power to get a direct subsidy of money. This is because unless the list of beneficiaries can be limited by an acceptable device, whatever amount of subsidies the industry can obtain will be shared among a growing number of rivals. The benefit second benefit the state or government can provide is control over entry by new rivals. There is considerable discussion in economic literature of the rise of peculiar price policies, vertical integration and similar devices to retard the rate of entry of new firms into oligopolistic industries. The general hypothesis given by the economists was that every industry or occupation that has enough political power would seek for control of entry. In addition, the regulatory policy would be fashioned as to retard the rate of growth of new firms. The third general set of powers of the state that will be sought by an industry are those, which affect substitutes and complements. The fourth is directed to price-fixing i.e. even the industry that has achieved entry control will often want price controls administered by a body with coercive powers. If the number of firms in the regulated industry is even moderately large, price discrimination will be difficult to maintain in the absence of public support. Where there are no diseconomies of large scale for the individual firm, price control is essential to achieve more than competitive rates of return.

However, these various political benefits are not obtained by the industry in a pure profit maximizing form. The regulation theory further notes that the political process erects certain limitations upon the exercise of cartel policies by an industry. First, the distribution of control of the industry among the firms in the industry is changed. In an unregulated industry, each firm's influence upon price and output is proportional to its share of industry output. Political decisions take account also of the political strength of the various firms, so small firms have a larger influence than they would possess in an unregulated industry. The second limitation upon political benefits is that procedural safeguards required of public processes are costly. The delays, which are dictated by both law and bureaucratic thoughts of self-survival, can be large. Finally, the political process automatically admits powerful outsiders to the industry's councils. In conclusion. Stigler

emphasizes that these limitations upon political benefits are predictable and they must enter into the calculus of the profitability of regulation of an industry.

Developments following regulation of the retirement benefits sector in Kenya

The scenario in Kenya before the enactment of the Retirement Benefits Act was such that there were many cases where members were denied benefits because they lacked protection, there was scanty, scattered and disharmonized benefits legislation, imprudent investments of scheme funds was rampant, there was poor management of schemes since accountability was not enforced and scheme funds formed part of sponsors capital funds.

The enactment of the Retirement Benefits Act requires all retirement benefit schemes to register with the Retirement Benefits Authority by completing a registration form in a prescribed format and to attach the scheme's trust deed and rules, actuarial report for defined benefit schemes certifying design and financial viability, fund management agreement, custodial agreement and audited accounts for existing schemes.

The Act made it mandatory for schemes to develop appropriate trust deeds and rules that would protect members. The Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations 2000 under part III on administration, membership and benefits, further defines the content of scheme rules. For example, schemes are required to state the requirements for admission of members into the scheme and the circumstances under which membership is to cease; conditions under which a member can be entitled to benefits; the appointment, term of office, powers and remuneration of trustees; vesting formula of benefits on its members; the rate of contribution and the interest charged for late remission of contributions and/or payment of withdrawal benefits. Scheme rules are also required to include rules relating to trustees and their duties, rules relating to administrators and rules relating to custody of scheme funds. As such, retirement benefits schemes are bound by the trust deed and rules and where a scheme fails to comply with

any clause or agreement, members have a right to seek recourse from the Retirement Benefits Authority. Since trustees of retirement benefits schemes are aware of the obligations mandated to them under the scheme trust deed and rules, they will endeavor to comply. The expected outcome of compliance with trust deed and rules by trustees is that members will be assured of income upon their retirement. The Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations 2000 also provides for amendment of scheme rules i.e. a scheme may amend its rules as long as the amendments do not purport to invalidate or reduce accrued rights and interests of the sponsors and members of the scheme, or effect any right of a creditor of the scheme. The amendments must be approved by the Retirement Benefits Authority and be registered. The scheme rules may also provide for the protection of the scheme funds and assets against any insurable risk and financial loss arising out of any negligence, default or willful default of its officers, trustees, administrator, manager or custodian through a guarantee from the sponsor or insurance.

The Retirement Benefits Act also places greater emphasis on protection of members' benefits through the imposition of design and viability checks, minimum funding requirements and restrictions on adverse changes in benefits. Key amongst the measures to safeguard scheme members' benefits is a separation of roles between scheme sponsors, trustees and professional advisors. In particular, in-house management and custody of scheme funds is no longer allowed with the Act requiring trustees to appoint external professional managers for this purpose. Legal Notice No 61 of 2006 effective from 15th June 2006 exempted schemes that are fully invested in a guaranteed fund from the requirement to appoint a custodian. Managers of scheme funds must also be registered under the Act and hold a valid certificate of registration issued pursuant to the provisions of the Act. The Retirement Benefits (Amendment) Bill, 2005 also requires custodians and administrators of schemes to be registered. There is also a right for scheme members to nominate some of the scheme trustees. Legal Notice No 93, which came into effect from 14th June 2007, capped the number of scheme trustees at 9. This was intended to reduce

administrative expenses and follow good principles of corporate governance. Principle officers of sponsoring institutions were also made ineligible for the chairmanship of the board of trustees. Separation of roles and assignment of the same to professionals is bound to ensure better management of scheme funds and better returns on investment for the benefit of members upon their retirement. In addition, the Act protects the contributions or funds of the member or his employer from attachment except in accordance with the scheme rules. The contributions may not form part of the assets of the member or of his employer in the event of bankruptcy. Effective 15th June 2006. custodians are required to submit to the Retirement Benefits Authority a quarterly report detailing the assets of the scheme and the active membership of the scheme during the quarter.

The Act also places requirements for annual audits, periodic actuarial reviews, greater disclosure and penalties for breaches. Within four months of the end of each financial year, the trustees are required to submit a copy of the audited accounts of the scheme to the Chief Executive Officer of the Retirements Benefits Authority (this was increased to six months by the Finance bill, 2007 effective 1st January 2008). Audited annual accounts of a scheme submitted to the RBA should include the trustees' and investments reports and a certificate signed by the chairman of the board of trustees or any other authorized trustee certifying that to the best of their knowledge and belief, the information furnished to the auditor for the purpose of the audit was correct and complete in every respect. The income and expenditure account and the statement of assets and liabilities should be prepared on accrual basis and be accompanied by a report signed by the auditor of the scheme. Where the auditor qualifies the report, reasons for doing so should be disclosed.
Legal Notices Nos. 93 and 96 effective 14th June 2007 also introduced a change in the format of scheme audited accounts. Scheme audited accounts are required be in the format issued by the Retirement Benefits Authority in consultation with the Institute of Certified Public Accountants of Kenya and in accordance with the International Accounting Standards. As such, financial records of retirement benefit schemes are

reviewed by an independent party and a report is issued to members on the financial health and affairs of their scheme funds. Overall, the Act introduced accountability, transparency and professionalism in the management of schemes, with the aim of growing the retirement benefits sector for the benefit of members and the financial markets in general.

Further, section 37 of the Retirement Benefits Act requires all schemes to have a prudent investment policy. Regulation 37 of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations 2000 stipulates the requirements for preparation of the investment policy, which must be prepared under the advice of a professional investment advisor and submitted to the Authority. The statement of the scheme's investment policy should be revised and updated every three years. Legal Notice No 61 of 2006 made it mandatory for scheme trustees to submit their written investment policy to the Retirement Benefits Authority every three years. Regulation 38 and Table G of the Retirement Benefits Regulations further stipulate limits on the proportion of a scheme's assets that can be invested in a particular asset class. These Investment Guidelines provide maximum limits only and do not require schemes to invest in a given asset class. In the spirit of the East African Community, the Investment Guidelines were amended as per Legal Notice No 96 of 2007 to allow investment in Ugandan and Tanzanian equities as domestic investments. Schemes were also allowed to invest in non-listed bonds and other instruments issued by private companies so long as the bond/instrument had been rated investment grade by a credit rating agency registered by the Capital Markets Authority

Pension schemes are also required to maintain a schedule showing the rates of contribution payable by or on behalf of the sponsor and members. Legal Notice No 57 of 2005, which became effective on 8th June 2005, exempted defined contribution schemes from the requirement to have their contribution schedules certified by an actuary when applying for registration or amendment of scheme rules. However, the requirement still remains for defined benefit schemes. Retirement benefit schemes are required to submit contribution returns within 10 days of the end of each quarter. The format of the quarterly

return on contributions was amended by Legal Notice No 60 of 2006 effective 15th June 2006 to require schemes to also provide information on names, gender and age of all active members. The Legal Notice also introduced an interest on delayed benefit payment. Effective 8th June 2005, members whose benefits are not paid within 90 days after they fall due continue to earn interest on their benefits equivalent to not less than the interest earnings declared by the scheme in the year the payment was due. Legal Notices Nos. 93 and 95 of 2007 effective from 14th June 2007 introduced a reduction in the maximum vesting period from three years to one year. This means that employer contributions to a scheme on behalf of a member must vest (legally belong) to the member within a maximum of one year. The maximum period in which a member must be paid due benefits on retirement or withdrawal was also reduced from 90 days to 60 days. The Finance Bill 2007 granted a tax exemption on the monthly pensions payable to a member aged 65 years or over. These changes were anticipated to ensure members contributions were received and invested promptly and that members were paid withdrawal benefits they were entitled to in the shortest time possible.

Additional changes affecting the retirement benefits industry became effective on 1st January 2006. These are included in the Retirement Benefits (Amendment) Bill 2005 and include the restrictions on access to benefits prior to the retirement age of 55 years. With the exception of those in ill health or those who have been part of an occupational plan for less than 3 years (reduced to one year by Legal Notice Nos 93 and 95 of 2007), workers who leave their jobs before the normal retirement age of 55 are no longer allowed to withdraw all of their retirement savings at that time. Legal Notice Nos. 61 and 62 of 2006 entitled members leaving service after three years service but before retirement age who are emigrating to another country without the intention of returning to access benefits arising from employer's contributions with the approval of trustees. Such approvals however have to be copied to the Retirement Benefits Authority. The legal notice also allowed members leaving service after three years service but before retirement age to transfer benefits arising from employer's contribution to an Individual Retirement Benefits Scheme of their choice. This was in addition to the existing options

of transferring to another Occupational Retirement Benefits Scheme or deferring the benefits. Workers however may withdraw their own contributions before reaching the age of 55. They are also allowed to use their retirement savings, including their employer's contributions, as collateral when buying a home. Legal Notice Nos. 93 and 95 further introduced an additional exemption for members who are subsequently incapacitated by ill health after having left service before retirement. It also clarified that preserved benefits transferred into another individual or defined contribution scheme remained preserved in the new scheme until the retirement age of the scheme. For defined benefit schemes, the regulations were amended to limit the benefits that can be accessed by a scheme member on leaving service before retirement age to be equivalent to one third of the accrued benefits. The driving force behind this legislation was to ensure a higher replacement ratio for members at retirement i.e. members get paid better retirement benefits that were closer to their working period income.

Empirical studies

2.5.1 Retirement Benefits Authority Pensioners surveys

The Retirement Benefits Authority has carried out a number of surveys in Kenya. Its most recent survey, the Trustees survey was conducted in June 2007. The survey was found necessary since trustees play a pivotal role in the development of the retirement benefits industry. Further, although appointed voluntarily, trustees become liable for failing to act in accordance with retirement benefits statutes. Ensuring that trustees were empowered to carry out their duties effectively and with integrity was therefore found to be of primary importance. The survey sought to assess the information needs of trustees of individual and occupational retirement benefits schemes and the impact of RBA's educational initiatives on trustees. The specific objectives of the survey included determining whether scheme trustees knew what was required of them under the Retirement

Benefits Act and Regulations, assessing trustees' appreciation of information provided through RBA News, website, seminars and exhibitions, identifying the proportion of scheme trustees who had been represented at Trustee Training Seminars and assessing the impact of education on scheme management and compliance. The survey found that some respondents did not have sufficient information regarding the design or type of their retirement benefits scheme. Other findings were that trustee education seemed to have had little impact on scheme management and compliance. Recommendations made were that Trustees should be educated on the Retirement Benefits Act and Regulations and how the legislative requirements affected them as trustees and also on their roles and responsibilities.

The Retirement Benefits Authority customer satisfaction survey was conducted in late April 2006. The underlying objective of the survey was to establish the quality of the Authority's service and satisfaction of the customer. The survey targeted members of retirement benefit schemes, scheme trustees, service providers and complainants. The survey found a high level of satisfaction amongst the Authority's customers indicating that the Authority had to a large extent been successful in fulfilling the mandate for which it was established under the RBA Act.

The RBA also conducted a members' survey in late 2005/early 2006 with the aim of gathering information on the interests of members of retirement benefits schemes and formally extending the RBA open door practices to the members. The objectives of the 2005 survey included gathering information on the membership profile of scheme members such as age, job changing, contributions vis a vis salary and membership spread in the country. The survey also undertook to find out the level of knowledge and information of retirement benefits schemes by members including members' knowledge on their rights, rules governing their schemes and member participation in their schemes and to obtain members' views

on provisions with regard to access to benefits before retirement age. Members' suggestions, opinions and views on matters relating to retirement benefits were to be sought and areas of weaknesses in the Retirement Benefits Act and Regulations identified. The results of the survey were used to make policy recommendations to develop the retirement benefits industry in furtherance with interest of members. With regard to regulation, the survey found that even though a good number of members expressed satisfaction with the law, many wanted the law changed to allow access to benefits before retirement and to ensure prompt payments of benefits. Members also wanted the Retirement Benefits Authority to educate them on the Act and regulations.

The RBA's third pensioners and retirees survey was conducted in late 2004 with the underlying objective of establishing the circumstances of retirees and their experiences as members of retirement benefit schemes. The survey found that the average pension income replacement ratio in Kenya was only 20%, which was well below the recommended target of 66% for one to maintain their standards of living. According to the survey, a primary cause of the low pension income was the predominance of withdrawals of benefits at the time of changing jobs as opposed to transfers or deferrals. The government alluded to these findings by introduction of new legislation included in the Retirement Benefits (Amendment) Bill 2005. Key among these was the controversial restrictions on access to benefits prior to the retirement age of 55 years.

Other findings of the RBA survey were that annuitization and other financial market investments of lump sum benefits remained insignificant hence there was need for creation of awareness and development of new capital market products through which retirees could invest lump sums; and administration of schemes remained a problem since members still faced long delays in obtaining their benefits. The survey also found that there was a much greater level of member awareness on scheme matters since the enactment of the Retirement Benefits Act.

Hence, there was need to bring any remaining non-compliant schemes into full compliance so that all members could benefit.

In an earlier study conducted by RBA, i.e. the pensioners' survey of 2003. key objectives were to establish the relative importance and contribution of retirement benefits to the income stream of retirees, how retirees applied their lump-sum benefits and the difficulties and challenges faced by retirees and pensioners in securing their retirement benefits. Policy implications derived from findings of the study include the need for greater preparation of scheme members for retirement to create awareness of the benefits due to them and avenues for investing lump-sum payments.

2.5.2 Related studies in other countries

The Pensions Regulator in the UK conducted its first survey on the standards of governance of occupational schemes in the year 2006. The Regulator had carried out extensive work aimed at improving governance. At the time of the survey, it had issued six codes of practice, which were designed to help ensure that trustees and others were aware of the Regulator's expectations, including that of governance standards. Building on the work done, the Regulator found it necessary to conduct a full survey on governance practices by occupational schemes in the UK.

Key findings of the survey were that firstly, better governance was associated with more training, having risk management processes in place and other factors. The survey found large differences in reviewing and updating scheme rules, taking steps to follow good practice in governance, and ensuring a high standard of member communications, between schemes whose trustees had had advanced training and those who had not. A similar association was found on issues particularly relevant to defined contribution schemes: reviewing the appropriateness of investment choices, investment fund performance, fund

charges and administrative services for individual members. Other inputs that were associated with better governance included having risk management processes in place. Schemes that had risk management processes were considerably more confident that they had internal controls in place to monitor and mitigate a wide range of specific risks. Other inputs associated with better governance were the presence of a professional trustee and the frequency of board meetings. The second key finding of the survey was that big schemes were better governed compared with small schemes. There was a clear association between scheme size and a range of governance measures, including trustee knowledge and commitment to training. The survey did not, however, suggest that only big schemes were well governed or that they are well governed in every respect. The third key finding was that trustees were confident in their self-assessment of governance. When asked to self-assess board performance on a range of issues such as conducting effective negotiations with the employer, managing the scheme's administration, and identifying potential risks to the scheme, trustees considered that on the whole they were performing well. Lastly, the survey found that a significant minority of schemes had shortcomings in important areas or gaps in good practice on governance.

The Pensions Regulator conducted its second governance survey on occupational pension schemes in the UK in July 2007. Findings of the second survey showed that there was an improvement in most aspects compared to the previous year. Other findings were that the majority of defined benefit (DB) schemes had investigated the financial standing of the employer over the past year. The Regulator had given emphasis to this activity alongside the implementation of the scheme specific funding requirements introduced by the Pensions Act 2004. However, the survey found that two-fifths of schemes did not have a process in place to identify risks although the Pensions Act 2004 required that trustee boards establish and operate adequate internal controls. The conclusion from the survey was that the protection of members' benefits ultimately depended on sound

governance and to address any gaps, trustees needed to consider the guidance given by the Regulator.

2.5.3 Related studies in Kenya

Mutua (2003) studied the extent of compliance with the Retirement Benefits Act by retirement benefit schemes in Kenya. The objectives of her study included finding out the extent of compliance, identifying difficulties faced by schemes that had not fully complied and finding out the relationship between the extent of compliance and the financial performance of pension schemes. Mutua used fund values for the years ending 2000 and 2001 to measure the financial performance of schemes. She analysed these against compliance parameters including extent of submission of amended trust deed and rules, submission of investment management agreement, custodial services agreement, annual audited accounts and actuarial report. Findings from her study indicated that the relationship between the extent of compliance and financial performance of retirement benefit schemes was positive but weak.

This research sought to establish if the findings by Mutua (2003) w ith regard to financial performance of retirement benefit schemes still holds. The study covered a longer period i.e. five years before and five years after the enactment of the regulations in the year 2000. The study assumed that since the enactment of the Retirement Benefits Act in 1997 and the coming into effect of the regulations in the year 2000, five years later, most schemes had to a large extent complied with the Act.

Therefore, the study endeavoured to fill one of the major gaps left by the earlier studies by comparing the financial perfonnance of occupational retirement benefit schemes prior to and after the year 2000 and establishing whether there has been a significant increase resulting from the regulations.

Research Methodology

Research design

The study was based on a comparative research design. The study sought to compare the performance of occupational retirement benefit schemes in the period prior to the enactment of regulations i.e. year 2000 and the period thereafter. Based on this, an assessment of the impact of the regulations on performance was determined.

Population

Registration of pensions schemes with the Retirement Benefits Authority began following introduction of legislation. An implementation period was allowed for schemes to comply with the new legislation and the first schemes to fully comply were registered in the year 2001 following the enactment of the regulations in October 2000. About 400 schemes had been registered by December 2001 and by the end of the year 2005 the number of registered schemes had grown to 997.

Sampling technique

The data collection process required a preliminary survey in order to construct the sampling frame and draw a sample. A random sample of thirty (30) occupational retirement benefit schemes (about 3% of the population by the end of 2005) was then selected. Preference was given to schemes that were at least five years old by the end of year 2000. This was important so as to get sufficient data for the financial performance prior to enactment, for comparison with the financial performance after enactment of the regulations. The different economic sectors of operation of the sponsors of the schemes were also taken into consideration to ensure representation of all sectors.

Data collection

The data studied was secondary data from the financial records of schemes. The data was obtained from scheme administrators, who are charged under the Retirement Benefits Act, with the responsibility of maintaining records of the schemes on behalf of the trustees.

Specification of variables and data analysis

3.5.1. Variables

The indicators of performance that will be used are the total contributions from members for the year and the funding value at year-end.

The total contributions in the year for an occupational pension scheme are the total of the employees'[1] contributions and the contributions made by the employer on behalf of the employees. The total contributions will be influenced by the number of members in the scheme, the members' pay (where the pension is a proportion of the salary) and the additional voluntary contributions made by members. Increase in total contributions therefore can be used as to indicate how attractive members find the need to save in a pension scheme.

The fund value at the end of the year is the balance of total contributions and investment income net of the withdrawal benefits and other expenses. This is what is reinvested into the scheme to give a return to the members. The fund value therefore gives an indication of the size of the scheme in terms of its assets value.

3.5.2. Data analysis

The total contributions and fund values for the sample selected, for each year from 1996 (or the year when the scheme was incorporated, if after 1996) up to and including the year 2005 were analysed. The average annual percentage increase for each variable was calculated for each scheme in the sample, both for the period prior to and the period after regulation i.e. for the five years preceding the year 2000 and the five years after the year 2000. A test of significance i.e. the matched or paired t-test in this case, was used to find out whether there was a significant difference in the average annual percentage increase in the two variables for the sample over the two periods. Based on this, a conclusion was made for the population of all occupational retirement benefit schemes.

The null hypothesis previously given is restated as Ho p = 0; there is no difference between the average percentage annual increase in either of the data variables in the period prior to regulations and the period after regulations.
The alternative hypothesis or H_A ^ 0; there is a difference in the average percentage annual increase in the data variables in the two periods.

The matched or paired samples t-test was used because these are repeated measures of each scheme, the data are not independent and the measurement is ratio.
A significance level of 5% for a 95% confidence interval was used i.e. a = 0.05. The critical value for a sample size of thirty, n = 30 and twenty nine degrees of freedom, d.f= n-1 was calculated to interpret the results.

4. Data analysis and findings

4.1 Introduction

A request was put forward to the Retirement Benefits Authority and several scheme administrators, through telephone and email contact, and visits to physical locations, for provision of the data required. The respondents were asked to give preference to schemes that were at least five years old by the end of the year 2000 in selecting the sample of schemes for which they were to provide data. They were also asked to consider the economic sectors of the schemes and provide data for schemes whose sponsors were in different sectors.

Responses were received from the following scheme administrators: - The Heritage All Insurance Company, CFC Life and Old Mutual Asset Managers. The three scheme administrators experienced difficulties getting data for the years 1996 and 1997. This finding serves to reinforce the statement that prior to regulation of pension schemes, records were not properly maintained. However, with the data available, the average annual percentage increase for the period prior to end of the year 2000 was still computed. For confidentiality purposes, the scheme administrators were also unwilling to disclose the names of the various schemes for which they provided data. Instead the various schemes were assigned numbers. The data was received via email on excel spreadsheets and was organized in terms of contributions and fund values per scheme.

The data was first analysed into tables for each variable i.e. a table was created showing for all schemes in the sample, the fund values for each of the years, five years before and five years after the year 2000 and another table was created to show the contributions for all schemes in the sample over the same period.

Below is a summary of the totals for each variable for the sample selected. The details for each scheme in the sample are presented in appendix 7.1 and 7.2 of this paper.

Figures in Millions of Kenya Shillings

	1996	1997	1998	1999	2000[	2001	2002	2003	2004	2005
Total fund value	0	246	714	993	1,086	1.444	1,701	1,894	2,248	2,803
Total contributions	0	13	19	110	119	149	159	211	235	230

Using Microsoft excel, the average annual percentage increase for the five years prior to and five years after the year 2000 was computed for both fund values and contributions for each scheme in the sample. This was done by first calculating the percentage increase from one year to the next year for the period under investigation. The average of percentage increase between the years for which data was available was then computed for the period prior to the year 2000 and for the period after the year 2000 for each of the variables. Another variable 'D' was then computed for each variable, being the difference between the average annual percentage increase for the five years after the year 2000 and the average annual percentage increase for the five years prior to the year 2000. The variable 'D' being the parameter of interest is what was analysed.

Findings

The test statistic t was used for analysis, 't' is defined as: -

$$t = \frac{\bar{D}}{So/Vn}$$

Where ~= ^

n

And

$$S_D = \sqrt{\frac{\Sigma D^2 - (\Sigma D)^2 / n}{n-1}}$$

Hence, the mean of the differences was calculated for each variable by dividing the sum of the differences by the number of schemes in the sample i.e. by 30. The standard deviation of the differences was then calculated by taking the square-root of the sum of the differences squared minus the square of the mean of the differences divided by sample size minus one i.e. by 29.

Findings were as follows for each of the data variables as presented in appendix 7.3 and 7.4:-

Fund value, t = 1.768

Contributions, t = 1.707

The critical test value obtained by entering the table of critical values of t with 29 degrees of freedom and a level of significance of 0.05 is 1.699 (as read from statistical tables). Therefore, since the calculated t values for both fund value and contributions are more than the critical value, the hull hypothesis is rejected. The findings confirm the alternate hypothesis i.e. there is a difference in the average annual percentage increase in the contributions and fund value of pension schemes in the period prior to and the period after the year 2000.

Summary and conclusions

Summary

The findings of this research project indicate that the financial performance of the population of occupational retirement benefit schemes was better in the period under which regulations have been in place. The improvement in the average annual percentage increase in contributions can be used as to indicate that occupational pension schemes have become more attractive members i.e. members have continuously found it useful to save in a pension scheme following the introduction of regulations. The improved average annual percentage increase in fund values implies there has been more growth in the net assets of pension schemes in the period under regulation.

However, the data analysis shows that the calculated t values for both fund values and contributions were just slightly higher than the critical test value for the sample reviewed. This indicates that although there was an improvement the financial performance of pension schemes in the period for which regulations have been in place, there is still a lot of room for improvement.

Regulation of the retirement benefits schemes in Kenya can be explained by the public interest theory of regulation. This is because it was a response to the outcry by the public for assurance of an income at the time of their retirement. Previously, due to lack of regulation, many pension schemes' financial performance was poor hence many schemes denied and/or delayed payment of benefits to members. Further, members did not have recourse to the mismanagement of their funds. The government therefore stepped in to the plight of its citizens by introducing regulation of the industry. With the improved financial performance of occupational pension schemes, it is implied that pension schemes are now capable of meeting their liabilities including the benefits due to members.

Following the Retirement Benefits Authority's Trustees' survey of 2007, which found that trustee education had had little impact on scheme management and compliance, findings of this study agree with the recommendations made that Trustees and other players in the industry should be educated more on the Retirement Benefits Act and Regulations in order to reap maximum benefits including better management of schemes which will translate to even better financial performance. This is reinforced further by the findings of the Retirement Benefits Authority's member's survey of 2005, which found that members of pension schemes also wanted the Retirement Benefits Authority to educate them on the Act and regulations.

Findings of this study also support the earlier findings of Mutua (2003) that the relationship between the extent of compliance and financial performance of retirement benefit schemes was positive but weak. The calculated t values for both fund values and contributions were just slightly higher than the critical test value indicating that although the financial performance of occupational pension schemes was better in the five years after enactment of regulations compared to five years before, the increase in financial performance was not intense.

To sum up, findings of this study also serve to indicate that the objectives for which the regulations were enacted have to a large extent been achieved with respect to the financial performance of occupational retirement benefit schemes. However, using insights from the two surveys done by the Pensions Regulator in the UK. to address any gaps in the performance of pension schemes, industry players need to consider and continuously strive to use the guidance given by the regulators.

Conclusions

The financial performance of occupational retirement benefit schemes has improved over the period in which the regulations have been in force not withstanding the limitations

that have come as a result of the regulations. The average annual percentage increase in contributions and the fund values of schemes was higher in the five years after enactment of the regulations in the year 2000 compared to the five years before the year 2000. Holding other economic factors constant, this improvement in the financial performance of pensions schemes may be attributed to the positive fundamental changes brought about by regulation of the sector.

Limitations of the study

Besides regulations, the growth of a pension scheme can also be influenced by the following factors, which were not adjusted for in the study: -

- The membership of the scheme will be influenced by the performance of the sponsor e.g. growth of business of the sponsor may imply more employees are covered under the scheme, which means an increase in contributions. Data on scheme membership over the ten-year period reviewed was not available. Analysis of this variable would have contributed to the findings of the study.
- Members' contributions will also be influenced by salaries paid by the sponsor i.e. most of the members' and employers' contributions are based on the gross salaries paid. Hence, an increase in salaries will lead to an increase in contributions.
- The funding level will be influenced by the investment income and vesting interest of the sponsor. Hence, growth of the economy in general will result to an increase in investment income and in the period when vesting interest was not stipulated, withdrawal of members will lead to an increase in contributions accruing to the sponsor.

Further, due to confidentiality reasons and the tedious work involved in getting data for the ten-year period covered by the study, the Retirement Benefits Authority and a number of scheme administrators approached for data did not respond. The study was therefore conducted for only thirty schemes or 3% of the population of pension schemes. If data were readily available, analysis of a larger sample would have given a closer representation of the population.

Suggestions for further research

There is scope for further research in the following areas with regard to regulation of the retirement benefits sector in Kenya: -

- The relationship between the macro economic variables and the growth of the fund values of pension schemes for the period prior to and the period in which the regulations have been in place. This will bring out the net impact that can be attributed to be as a result of regulation of the retirement benefits sector.
- The impact of regulation on the investments of retirement benefit schemes. The regulations only stipulate the limits to which schemes can invest in a particular investment class. It would be important to assess the changes in the investments of schemes and the proportions held in each investment class over the period in which the industry has been regulated.
- A case study to assess the impact that regulation has had on the operational efficiency and management practices of retirement benefit schemes in relation to the separation of the roles of management and custody of scheme assets.

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7. Appendices

"J Fund values of schemes for ten years from 1996 to 2005

Figures in Millions of Kenya Shillings

Scheme No	1996	199/	1998	199d	2000	2001	2002	2003		
1	-	60.82	74.45	93.06	103.38	132.60	165.10	183.26	225.27	28'
2	-	-	43.44	53.83	59.52	69.11	83.89	94.84	105.78	119
3	-	182.69	222.84	285.00	335.94	603.50	745.19	832.40	1,023.18	1,344
4	-	1.53	2.07	3.29	4.49	6.11	7.52	9.14	10.28	13
5	0.17	0.91	1.15	1.63	2.18	2.82	3.10	3.62	3.93	4
6	-	-	0.97	1.40	1.19	5.69	4.78	5.16	4.94	4
7	-	-	-	1.23	1.43	1.54	1.44	1.81	1.71	2
8	-	-	-	2.54	3.22	4.86	5.67	7.81	7.62	9
9			-	0.35	0.44	0.70	0.88	1.22	1.55	1
10	_	_	_	1.98	2.32	2.83	3.22	3.90	4.51	5
11	_		_	0.47	0.54	0.90	1.02	1.24	1.68	2
12			_	9.12	11.93	15.48	17.04	18.25	20.44	2:
13	_	_	_	5.38	6.37	8.40	10.13	13.19	15.55	r
14	_	_	_	63.54	64.98	68.64	58.28	53.74	54.05	5'
15	_	_	_	15.15	17.23	19.43	21.70	26.87	30.43	y
16	_	_	_	7.09	8.49	12.28	17.68	17.29	23.88	3
17	_	_	128.17	85.34	59.94	42.34	40.94	41.43	49.24	6<
18		_	78.97	87.09	102.11	104.97	116.65	104.86	108.94	12<
19	_	_	37.77	45.04	55.34	62.20	70.46	67.13	65.92	T:
20	m	_	1.95	2.34	2.70	6.02	8.52	11.04	16.49	2<
21			30.23	38.90	42.99	47.45	51.15	53.79	62.00	Z
22	_	_	9.71	11.32	3.86	4.33	6.28	8.86	9.88	I*
23	_	_	25.96	29.97	32.41	37.03	43.24	56.43	52.53	6:
24	_	_	12.25	16.84	20.95	26.28	25.40	28.05	33.01	31
25	_		16.87	24.33	18.78	19.04	22.82	28.25	34.71	4
26	_	_	22.88	30.71	38.12	47.73	58.11	70.67	83.63	9<
27		_	4.78	6.46	6.56	6.72	8.79	8.28	10.57	1'
28	_		_	1.89	2.33	3.48	6.92	10.65	16.03	2(
29		_	·	0.40	0.40	1.26	2.81	6.37	8.92	i:
30	_		_	67.43	76.19	80.50	91.93	124.87	161.47	is:
Total	**0.17**	**245.95**	**714.46**	**993.12**	**1,086.33**	**1,444.24**	**1,700.66**	**1,894.42**	**2,248.14**	**2,80**

Contributions for ten years from 1996 to 2005

Figures in Millions of Kenya Shillings

Scheme No	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
		9.80	9.55	9.54	15.25	34.69	39.04	40.76	45.86	56.68
2				9.96	11.14	11.89	13.65	13.87	13.90	13.94
		0.15	0.14	0.18	0.11	0.27	0.27	0.36	0.38	0.39
i		0.58	0.69	0.84	0.77	1.92	1.36	1.64	1.67	2.13
5	0.15	0.37	0.40	0.26	0.45	0.42	0.58	0.52	0.51	0.57
6		0.64	0.78	1.02	1.37	2.55	1.02	1.16	0.97	0.91
7		-	0.44	0.55	0.54	0.74	0.65	0.58	0.55	0.51
8	-	-	.	1.47	1.60	1.59	1.60	1.71	**1.66**	1.69
9	-	_	0.17	0.17	0.20	0.23	0.22	0.26	0.34	0.16
10	-	-	0.47	0.59	0.70	0.76	0.49	0.59	0.66	0.82
11	-	0.07	0.14	0.19	0.18	0.29	0.20	0.37	0.44	0.51
12			4.52	5.71	6.33	7.38	7.71	7.57	8.21	8.52
13	-	1.61	2.14	1.76	1.83	2.31	2.65	2.97	3.11	3.00
14	-	_	_	6.53	5.88	7.12	6.36	5.72	6.51	6.02
15	_	_	_	2.00	2.45	2.93	3.60	4.39	5.81	7.72
16	_	_		2.82	2.96	4.05	4.42	5.48	6.02	7.49
17		_	_	7.81	9.77	4.22	4.36	4.44	8.26	11.06
18	_	_	_	9.78	10.89	12.35	11.42	10.31	10.85	13.52
19	_	_	_	5.40	5.31	6.77	5.64	5.34	4.93	4.20
20	_	_	_	2.95	3.79	3.71	4.04	4.66	7.31	12.25
21	_	_	_	8.39	7.28	6.51	6.30	6.24	6.00	6.70
22	_	,,	_	4.17	1.46	1.22	1.60	2.61	2.69	4.35
23	_	_	_	5.56	5.84	8.17	6.88	12.06	10.12	11.60
24	_	_	_	2.93	3.40	3.62	4.15	3.88	4.44	5.26
25	_	_	_	5.16	4.32	2.86	3.57	3.71	4.56	5.75
26	_			6.48	7.14	9.99	9.89	10.52	12.04	12.48
27	_		_	1.07	0.95	1.13	1.63	1.77	2.29	3.37
28	_		_	0.91	1.45	1.88	3.17	4.42	4.58	4.17
29	_	_		0.43	0.43	0.83	1.64	3.52	3.69	6.52
30	_	_		5.60	5.60	6.87	10.55	49.70	56.32	17.91
[Total	**0.15**	**13.22**	**19.44**	**110.23**	**119.39**	**149.27**	**158.66**	**211.13**	**'234.68**	**230.2**

Analysis of average annual increase in fund value

Scheme no.	Average annual increase five years prior to year 2000	Average annual increase five years after year 2000	Differences 1)	1 Souare of differences
1	0195012949	0.228279622	0.033266673	0.001106672
2	0.172373686	0.149929871	-0.022443815	0.000503725
3	0.225825831	0.338289576	0.112463744	0.012648094
4	0.435491422	0.240122223	-0.1953692	0.038169124
5	0.340372373	0.155002254	-0.185370119	0.034362081
6	0.148147786	0.70394034	0.555792554	0.308905363
7	0.158119859	0.091974739	-0.06614512	0.004375177
8	0.267616642	0.264781494	-0.002835149	8.03807E-06
9	0.253394938	0.318463667	0.065068729	000423394
10	0.169975516	0.188054356	0.01807884	0.000326844
11	0.151073462	0.369040512	0.21796705	0.047509635
12	0.308550611	0.145929638	-0.162620972	0.026445581
13	0.183035743	0.229307079	0.046271335	0.002141036
14	0.022529273	-0.033053781	-0.055583053	0.003089476
15	0.137060854	0.180133314	0.04307246	O.OOI855237
16	0.197915441	0.31330695	0.115391508	0.0133152
17	-0.31588867	0.021812596	0.337701266	0.114042145
18	0.137613192	0.043087524	-0.094525668	0.008935102
19	0.210603481	0.061659777	-0.148943704	0.022184227
20	0.177558966	0.580070737	0.40251177	0.162015725
21	0.195979499	0.110037554	-0.085941944	0.007386018
22	-0.246248324	0.310410339	0.556658663	0.309868867
23	0.118023932	0.15071343	0.032689498	0.001068603
24	0.309546055	0.13405285	-0.175493205	0.030797865
25	0.107104497	0.173679917	0.066575421	0.004432287
26	0.291688659	0.211073588	-0.080615071	0.00649879
27	0.184545875	0.190570772	0.006024897	3.62994E-05
28	0.232646865	0.565412769	0.332765904	0.110733147
29	0.001237507	1.095214146	1.093976639	1.196784887
30	0.129907409	0.196045217	0.066137808	0.00437421
		Total	2.826527742	2.478153394
		Mean		0.094217591
		Std deviation		0.291800383
		t		1.768506937

Analysis of average annual increase in contributions

Scheme no.	[Average annual increase five years prior to vcar 2000	Average annual increase five years after year 2000	Differences	Square of differences
1	0.190641749	0.361112603	0.170470853	0.029060312
2	0.117922323	0.047307755	-0.070614568	0.004986417
3	-0.047906309	0.371062539	0.418968848	0.175534895
4	0.109766475	0.338579538	0.228813063	0.052355418
5	0.151456617	0.061002059	-0.090454558	0.008182027
6	0.290431985	0.033631321	-0.256800664	0.065946581
7	0.110709263	0.006739088	-0.103970174	0.010809797
8	0.088108732	0.012101857	-0.076006875	0.005777045
9	0.081593811	0.014743031	-0.06685078	0.004469027
10	0.214988591	0.059216787	-0.155771804	0.024264855
11	0.418710806	0.307290952	-0.111419855	0.012414384
12	0.186221258	0.062800596	-0.123420662	0.01523266
13	0.064399834	0.108685698	0.044285863	0.001961238
14	-0.098736325	0.013154558	0.111890883	0.01251957
15	0.225010445	0.258969813	0.033959368	0.001153239
16	0.049722361	0.208514016	0.158791655	0.02521479
17	0.25101059	0.13660919	-0.1144014	0.01308768
18	0.114561353	0.051855144	-0.062706208	0.003932069
19	-0.016796876	-0.034314546	-0.01751767	0.000306869
20	0.283853223	0.293028735	0.009175511	8.4I9E-05
21	-0.131624176	-0.014027451	0.117596725	0.01382899
22	-0.649928378	0.28497754	0.934905917	0.874049074
23	0.050643742	0.195845061	0.145201319	0.021083423
24	0.163540019	0.094494025	-0.069045994	0.004767349
25	-0.161827756	0.087794791	0.249622547	0.062311416
26	0.101371312	0.126992167	0.025620855	0.000656428
27	-0.113458687	0.296577383	0.41003607	0.168129578
28	0.593932607	0.265044823	-0.328887784	0.108167175
29	0.000462564	0.771323748	0.770683928	0.593953717
30	8.93108E-05	0.785245446	0.78513421	0.616435727
		Total	2.967288621	2.93067594
		Mean		0.98909621
		Std deviation		0.317364841
		t		1.707026848