

For discussion purposes only

STATUTORY INSTRUMENTS
2016 No.

**THE UGANDA RETIREMENT BENEFITS REGULATORY AUTHORITY
(ASSIGNMENT OF BENEFITS FOR MORTGAGES, HOUSING LOANS OR
MEDICAL TREATMENT) REGULATIONS, 2016**

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STATUTORY INSTRUMENTS

2016 No.

The Uganda Retirement Benefits Regulatory Authority (Assignment of Benefits for Mortgages, Housing Loans or Medical Treatment) Regulations 2016

(Under sections 68(2) (a), (b) and 91(1), (2) (j) of the Uganda Retirement Benefits Regulatory Authority Act 2011, Act No.15 of 2011.)

IN EXERCISE of the powers conferred on the Minister by section 68 (2) (a), (b) and 91(1), (2) (j) of the Uganda Retirement Benefits Regulatory Authority Act, 2011, these Regulations are made this day of2016.

PART I PRELIMINARY

1. Title

These Regulations may be cited as the Uganda Retirement Benefits Regulatory Authority (Assignment of Benefits for Mortgages, Housing Loans or Medical Treatment) Regulations 2016.

2. Interpretation

In these Regulations, unless the context otherwise requires –

“Act” means the Uganda Retirement Benefits Regulatory Authority Act, 2011;

“assignment” refers to any arrangement whereby a financial institution or a provider of medical treatment acquires from a member of a retirement benefits scheme a right or interest enforceable against the scheme in, or to a portion of a the benefit payment which is, or may become, payable to the member.

“administrator” has the meaning given to it in the Act;

“facility” means a retirement benefits secured mortgage or housing loan arrangement made with an institution obtained for purposes of purchasing a residential house and related matters;

“housing loan” refers to a loan obtained from an institution for purposes of purchasing a residential house and related matters;

“institution” refers to a financial institution licensed under the Financial Institutions Act No.2 of 2004 or an institution licensed under the Micro Finance Deposit taking Institutions Act No.5 of 2003;

“Member” means a member of a retirement benefits scheme, including any person who is entitled to a benefit under a retirement benefits scheme.

“mortgage” has the meaning given to it under the Mortgage Act No. 8 of 2009;

“purchasing of a residential house or related matters” refers to -

- (a) acquiring land on which a residential house has been erected;
- (b) erecting a residential house on land in respect of which, the member has the right to ownership recognized by the laws of Uganda;
- (c) renovating, adding, altering or carrying out repairs to a residential house of which ownership or the right to ownership is recognized under the laws of Uganda; or
- (d) secure financing or waiver, as the case may be, for deposits, stamp duty, valuation fees and legal fees, (but excluding arrangement and commitment fees), and any other transaction costs required in the course of acquisition of the land on which a residential house has been erected or is to be erected.

“residential house” means a dwelling house purchased, constructed or renovated for the provision of residential accommodation;

“retirement benefits scheme” has the meaning given to it under the Act;

“retirement benefits secured mortgages or loans”, refers to mortgages or loans provided by institutions to members of retirement benefits schemes for purposes of purchasing a residential house where the collateral in whole or in part is a percentage of the borrower’s accumulated retirement saving;

“trustee” has the meaning given to it in the Act.

3. Purpose of the regulations

(1) The purpose of these regulations is to enable members to assign their benefits to secure financing for their genuine housing and medical needs.

(2) These regulations are not intended to be used as a method of enabling members to access their retirement benefits prematurely.

4. Scheme rules to permit trustees to provide guarantee

(1) The scheme rules shall contain provisions which permit the trustees of the scheme -

(a) to provide a guarantee for mortgages or housing loans taken from an institution by the members of the scheme for purposes of purchasing or acquiring a residential house in accordance with Part II of these Regulations ; or

(b) to provide a guarantee for covering the medical expenses of a member who is undergoing medical treatment of terminal ailment categorised as such by a recognised medical practitioner in accordance with Part III of these Regulations.

(2) Where the scheme rules permit the trustees to provide the guarantee provided for under subsection (1), a member may enter into an arrangement-

(a) with an institution for purposes of enabling a member access a mortgage or housing loan to purchase or acquire a residential house; or

(b) with a provider of medical services for purposes of enabling the member access medical treatment.

PART II- MEMBER'S RIGHT TO ASSIGN BENEFITS FOR MORTGAGES OR HOUSING LOANS

5. Using retirement savings as collateral for mortgages or housing loans

(1) A member may assign up to a maximum of 50% of his or her accrued retirement benefits as collateral for securing a mortgage or housing loan for purposes of purchasing a residential house or related matters in accordance with these Regulations.

(2) The trustees may issue a guarantee to cover the initial transaction fees, including purchase deposit, applicable duties and taxes, valuation and legal fees for the acquisition of the house.

(3) The Scheme shall not issue more than one guarantee at a time in respect of an eligible member.

(4) A member of a scheme who has a mortgage or a housing loan for a residential house existing prior to or after commencement of these Regulation, may upon formal application in the manner prescribed in the rules of the scheme, request the trustees to guarantee the mortgage by way of assignment as prescribed in these regulations.

Duties & responsibilities of trustees

6. Duties and responsibilities of trustees

(1) The trustee shall make a legal assignment to enable members to use their accumulated retirement benefits as collateral for securing housing loan or mortgage.

(2) The trustees shall ensure that –

- (a) using retirement benefits as collateral is not intended to reduce a member's retirement benefits by allowing a set-off to take place except in accordance with these regulations.
- (b) The member signs a written commitment to pay the housing loan or mortgages according to the agreed terms and conditions.
- (c) the intended mortgage or loan is for purposes provided for under section 68(2)(a) of the Act.
- (d) the scheme rules provide measures which the scheme can take for purposes of honouring the undertakings to repay the Institutions in the event that members default.
- (e) monitor the repayment by each member to whom a facility has been issued and ensure that the assignment is discharged once the facility has been paid in full;
- (f) keep a record of the assignments and indemnities granted; and
- (g) ensure the disclosure, in the scheme's financial statements of the amounts assigned under these regulations and the institutions to which guarantees have been furnished.

7. Role of Trustee in case of members opt for group mortgages or housing loans

(1) Where the members of the scheme opt to take retirement benefits secured mortgages or housing loans as a group, the trustee may –

- (a) evaluate and select institutions which lend to the members,
- (b) negotiate favourable interest rates for group housing loans on behalf of the members;

(b) negotiate attractive associated financial services packages including-

- (i) lower premiums for credit life insurance;
- (ii) preferential transactional banking rates;
- (iii) loyalty benefits for members; and
- (iv) reduced loan administration fees.

(c) communicate the details of the group retirement benefits secured mortgages or housing loans scheme to members.

(2) The trustee shall ensure that the scheme has service level agreements in place to operate the group housing loan or mortgage.

Duties of members

8. Duty of member to provide proof of legal ownership or any required consents

(1) Any member who applies for a retirement benefits secured mortgage or housing loan shall be responsible for -

- (a) providing proof of legal ownership (or right of tenure) of the land or of the property if home improvements are to be made and all required consents;
- (b) providing proof of purchase and cost of construction or improvement, in the event that the member has undertaken home improvements;
- (c) providing proof of legal ownership and other required consents in any, for the residential house on which additions, alterations or repairs are to be carried out.

(2) Where the application is for a mortgage is for acquiring land on which a residential house is to be erected; the member shall present evidence of steps so far taken to ensure that he or she acquires legal ownership of the land.

9. Duty of member to comply with terms and conditions of the facility

Any member who applies for a retirement benefits secured mortgage or housing loan from an institution either as an individual or as a group shall comply with complying with all facility terms and conditions.

10. Duty to submit required documents or information

A member shall submit to the scheme the documents or information required to meet the criteria set down in these regulations.

11. Duties of member in case of individual borrowing

A member who opts for individual borrowing shall in addition to the duties specified in regulations 8,9 and 10, be responsible for-

- (d) selecting & negotiating favourable facility terms with Institutions for his or her individual borrowing; and
- (e) ensuring that his or her financial circumstances are not compromised by taking up the retirement benefits secured mortgage or housing loan.

Duties of administrators

12 . Duties of the scheme administrator

The Administrator of the scheme shall be responsible for-

- (a) verifying that the member has sufficient funds to guarantee the mortgage or loan requested for;
- (b) flagging the member's retirement savings account and records to indicate that the retirement savings have been earmarked to secure the retirement benefits secured Mortgages or Housing loan;
- (c) ensure that the outstanding loan amount is deducted from the member's retirement savings and paid to the Institution, prior to the accrued benefit being paid out in case the member leave his/her employment before the retirement benefits supported loan is repaid; and
- (d) assisting and advising the trustees in selection of an Institution

Criteria for Approval of Member's request of Assignment for mortgages or housing loans

13 . Application to use retirement benefits as security

- (1) A member shall, upon obtaining an advice letter from the institution regarding the offer of mortgage or housing loan facility, submit a written request to the trustees requesting for a portion of his or her accrued benefits to be assigned as collateral or security for a mortgage or a loan for purchasing a residential house.
- (2) The advice letter referred to under sub regulation (1) shall be attested with the official stamp or seal of the financial institution.

14. Review of application

(1) Upon receipt of a member's application, the trustees shall review the application to ascertain whether it meets the requirements as outlined in these regulation; and

(2) The Trustees shall prior to considering the assignability of the members benefit, ensure that the agreements made between its members and institutions, in respect of any facility contemplated under these Regulations, comply with the Act, these Regulations and the Scheme Rules;

(3) The Trustees shall, upon verification of the requirements under subregulation (1) and (2), forward the application and the supporting documents to the Institution for further verification in case of group facilities.

15. Trustees to issue a written guarantee within a reasonable time.

(1) The trustees shall upon receipt of the member's request accompanied with an advice letter issued by the institution, consider the request and issue a written guarantee within a reasonable time.

(2) The trustee shall not issue a legal assignment or guarantee to a member unless the trustee is satisfied that -

(a) the member is gainfully employed or has sufficient income which can be used to pay the mortgage or housing; and

(b) the mortgage or housing loan requested for does not exceed 50% of the members' accrued retirement savings.

16. Restrictions on issuance of guarantee or security.

(1) The scheme shall not issue more than one guarantee at a time in respect of a member.

(2) A guarantee under these Regulations shall not exceed, at the time it is furnished-

(a) 50% per cent of the accrued benefit which the member would be entitled to under the scheme at the time of the application for the facility; or

(b) the market value of the immovable property or residential house, whichever is lesser.

(3) Where a transaction is for the purpose of providing a refinancing opportunity on the guaranteed amount in respect of a mortgage or housing loan advanced, the accrued benefit shall be re-evaluated at intervals of not less than three years until the time of redemption of the guarantee.

17 . Repayment period for the mortgage or loan

The repayment period of the mortgage or loan shall not exceed a maximum of 20years.

18. Duties of the institution

(1) The institution shall ensure that the title to the immovable property or residential house which the member seeks to purchase under these regulations is a fully perfected title and free from any encumbrance;

(2) Prior to the disbursement of funds in respect of a facility, an institution shall satisfy the trustees of a scheme that adequate insurance arrangements have been made in respect of the loan and the property for which the loan is advanced.

19. Valuation of residential house or immovable property

(1) The valuation of the residential house or immovable property to be purchased, constructed or renovated with the mortgage or housing loan shall be carried out by a valuer appointed by the institution.

(2) The cost of the valuation shall be paid by the applicant.

20. Value of land or residential house

For the purposes of these regulations, the market value of any residential house or land shall be the value assigned by a professional valuer.

21. Institution to carry out onsite inspection

(1) The institution shall within a reasonable time after issuing the housing loan or mortgage, carry out on-site inspection to ensure that the borrower has, in fact, purchased a residential house or undertaken construction or renovation work to an existing residential house.

(2) A copy of the onsite inspection report prepared under sub regulation (1) will be submitted to the trustees.

General Provisions on Assignments for Mortgages or Housing Loans

22. Report to the Authority on guarantees issued by the scheme

(1) The trustee shall on an annual basis submit to the Authority a report of any guarantees issued by the scheme in the form prescribed in Schedule 2.

(2) The report referred to under sub regulation (1) shall contain a return indicating the number and amount of guarantees issued, as well as details of loans repaid and guarantees redeemed;

(3) Where there are any unresolved issues or challenges, which may render the transaction for retirement benefits secured mortgages or housing loan to be un

enforceable, the trustee shall immediately notify the Authority in writing and provide detailed information on the issues.

23. Withdrawal of assignment by trustees

(1) Where an onsite report submitted under regulation 21 reveals that a member used the loan for other purposes other than those envisaged under these regulations, the trustees shall withdraw the assignment.

(2) Where the assignment is withdrawn under subregulation (1) a member will be responsible for finding appropriate security for the loan obtained from any institution in accordance with terms and conditions which may be agreed upon between the member and the institution.

24. Settlements or deductions from member's benefits

(1) Where all the agreed measures contained in the mortgage or housing loan agreement for recovering the mortgage or housing loan have been exploited and a member still defaults on paying back the mortgage or loan, a scheme may deduct the guaranteed portion of the member's savings in the scheme to settle the outstanding balance on the facility.

(2) The repayment of loans or the settlement of guarantees out of the member's withdrawal benefit shall occur only if the trustees are satisfied that all the agreed recovery measures contained in the mortgage or housing loan agreement have been exploited and no other payment option is available.

(3) A scheme may for purposes of subsection (1) deduct from a member's savings any amount due to an institution in respect of any amount for which the scheme is liable under the legal assignment issued by the trustees in respect of a member for the purpose referred to in section 68(2)(a).

(4) The balance of a member's savings, after settle the outstanding balance on the mortgage or housing loan due by the member shall represent the benefit due to that member.

(5) Any settlement made by the trustees for the purposes of subsection (1) be construed as a reduction of the member's benefit.

25. Settlement of outstanding balance upon member withdrawing from the scheme

(1) Where a member with a mortgage or housing loan desires to leave the scheme or to transfer to another scheme -

- (a) the member may choose to settle the facility at the time of withdrawing from the scheme;
- (b) The member may transfer the facility to his or her new scheme provided that this scheme has a similar arrangement in place with the same credit provider and both scheme's rules and agreements allow for the transfer

(2) Where the options provided in sub regulation (1) are not applicable to the member, the trustees shall settle the outstanding balance of the facility from the member's accrued retirement benefits at the time of withdrawing from the scheme.

26. Redemption of a guarantee for mortgage or housing loan.

A guarantee issued under these Regulations shall remain valid until the concerned member expressly authorises its redemption, or return; except that upon the presentation of evidence of default and liability arising to trustees by an institution, the guarantee shall be redeemable on demand in accordance with its terms and in the event of default by a member arising on account of loss of employment, the trustees shall settle the outstanding mortgage with the institution if the outstanding loan is less or equal to the permitted guarantee.

27. Member notification authorising the redemption of a guarantee

Upon the receipt of a notification from a member authorising the redemption of a guarantee, the trustee shall ensure that the proportion of funds assigned to guarantee the facility is sufficient to clear the outstanding balance of the guaranteed loan; except that there shall be no consolidation of debts owed by the member to the institution for the purpose of redemption.

28. Transfer of a facility from one institution to another

A transfer by a member of a facility granted under guarantee from one institution to another institution shall not vitiate the assignment and the trustees of the Scheme shall upon the authorisation of the member, establish mechanisms of the issuance of a new guarantee to the institution that the member has transferred to and a return of the guarantee issued to the institution that the member transferred from.

29. Notice of breach of contractual obligations

(1) Where there are any unresolved issues or challenges, which may render the transaction for retirement benefits secured mortgages or housing loan to be unenforceable, a member or the institution shall immediately notify the trustees in writing.

(2) Where a dispute relating to a default arises, the trustees of a guaranteeing scheme shall give the concerned member an opportunity to prove that a default has or has not arisen.

(3) Upon receipt of any complaint from the member or the institution, the trustee shall immediately forward such complaints to the Authority.

(4) Authority shall subsequently notify the regulator of the institution of the complaints received and follow up on resolution of the breach, in order to safeguard the Retirement Benefits of members.

30. Application of mortgage laws

The Mortgage laws applicable in Uganda shall apply to mortgages or housing loans issued in accordance with these regulations.

31. Payment of benefits assigned for purposes of mortgages or housing loan

Any portion of a member's retirement benefits which, by virtue of section 68(2)(a), is assigned to a financial institution, shall be paid by the scheme to that financial institution when any benefits accrue in respect of that member.

PART III- MEMBER'S RIGHT TO ASSIGN BENEFITS FOR MEDICAL TREATMENT

32. Using retirement savings to pay for medical treatment

(1) A member may assign up to a maximum of 50% of his or her accrued retirement benefits to pay for medical treatment in respect of the member, on the recommendation of the Uganda Medical Board.

2) The trustees may issue a guarantee to cover the medical expenses of a member who is undergoing medical treatment of a terminal ailment categorised as such by a recognised medical practitioner.

33. Duties and responsibilities of trustees in case of a guarantee for medical treatment

(1) The trustee shall make a legal assignment to enable a members to use his or her accumulated retirement benefits to pay for the medical expenses of the member.

(2)The trustees shall ensure that -

- a) using retirement benefits to pay for medical treatment is not intended to reduce a member's retirement benefits by allowing a set-off to take place except in accordance with these regulations.
- b) The member has a diagnosis signed by a recognised medical practitioner indicating that the member suffers from a terminal ailment.
- c) the intended assignment is for purposes provided for under section 68(2)(b) of the Act.
- d) the member's request is accompanied by a recommendation of the Uganda Medical Board.
- e) the assignments issued is to cover medical costs for treatment in respect of the member; and
- f) there is full disclosure in the scheme's financial statements of the amounts assigned under these regulations for medical treatment and the medical providers to which payments are made.

34. Report to the Authority on assignments issued for medical treatment

The trustee shall on an annual basis submit to the Authority a report of any on assignments for medical treatment issued by the scheme in the form prescribed in Schedule 3.

35. Payment of benefits assigned for purposes of medical treatment

Any portion of a member's retirement benefits which, by virtue of section 68(2)(b), is assigned for purposes of paying for medical treatment in respect of a member, shall be paid by the scheme to the provider of the medical treatment when any benefits accrue in respect of that member.

PART IV- MISCELLENEOUS PROVISIONS

36. Transfer of a member from the scheme not to vitiate assignment

(1) A transfer by a member from one scheme to another shall not vitiate the assignment made under these Regulations.

(2) A member transferring from one scheme to another may apply for the issuance of a new guarantee from the scheme which he or she has transferred to and a return of the guarantee issued by the scheme from which he or she transferred from.

(3) The trustees of the scheme to which the transfer has been made may, with the approval of all the parties, indemnify the trustees of the Scheme from which the transfer is being made to the extent of the assignment.

(3) Where the scheme to which a member has transferred to does not provide in its scheme rules for the issuance of guarantees under the Act and these Regulations, the member shall make appropriate arrangements for the maintenance or redemption of the guarantee, and shall inform the Scheme he or she has transferred from of these arrangements within a period not exceeding sixty (60) days from the date of retirement or of giving notice of withdrawal from the scheme.

37. Return of guarantee in case of scheme winding up

In the event of winding up of a scheme which has issued a guarantee under these Regulations on behalf of a member, the member may apply for the issuance of a new guarantee from a scheme that he or she has transferred to and the return the guarantee issued by the scheme which is being wound up.

38. Penalty for non-compliance

(1) Any person who contravenes a provision of these Regulations for which no express penalty is provided commits an offence and is on conviction liable to a fine not exceeding seventy five currency points or to imprisonment for one year and in case of a continuing contravention, an additional penalty of fifty currency points in respect of each day on which the offence continues.

(2) Where the contravention of these regulations is committed by a body corporate, the body corporate, an officers of the body corporate or any person who was purporting to act in such capacity of the body corporate, who had knowledge or believed to have had knowledge of the commission of the offence and who did not exercise due diligence to ensure compliance with these Regulations shall be deemed to have committed an offence and shall be liable on conviction to a fine not exceeding seventy five currency points or to imprisonment for one year and in case of a continuing contravention, an additional penalty of fifty currency points in respect of each day on which the offence continues.

SCHEDULE 1

CURRENCY POINT

One currency point is equivalent to twenty thousand Uganda shillings

DRAFT

