

Uganda Retirement Benefits Regulatory Authority (Fit and Proper Criteria for Trustees, Fund managers, Custodians and Administrators of Retirement Benefits Schemes) Guideline No. 1 of 2018



GUIDELINES ON THE FIT AND PROPER CRITERIA FOR TRUSTEES, FUND MANAGERS, CUSTODIANS AND ADMINISTRATORS OF RETIREMENT BENEFITS SCHEMES

These guidelines on the fit and proper criteria for trustees, fund managers, custodians and administrator of retirement benefits schemes are issued pursuant to sections 5(1) (d), 41(1)(a), 42(1)(b) and 93 of the Uganda Retirement Benefits Regulatory Authority Act, 2011 for observance by retirement benefits schemes.

These Guidelines set out the fit and proper criteria applicable to all relevant persons in relation to carrying out the function of being a Trustee, Administrator, Fund manager or establishment of a retirement benefits scheme as regulated by the Uganda Retirement Benefits Regulatory Authority (URBRA) under any written Law [“relevant legislation”].

Issued on the 26th day of March 2018

These Guidelines are not a legal document nor do they substitute the provisions of the Uganda Retirement Benefits Regulatory Authority Act 2011 and the Regulations made thereunder. The Guidelines should be read together with the URBRA Act 2011 and the Regulations made thereunder.

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1.0 Authorization

IN EXERCISE of the powers conferred by sections 93, 5(1) (d) and 41(1)(a) and 42(1)(b) of the Uganda Retirement Benefits Regulatory Authority Act, 2011(URBRA Act) the Uganda Retirement Benefits Regulatory Authority (herein referred to as URBRA) issues these Guidelines, for observance by all retirement benefits schemes licensed under the URBRA Act, 2011 in respect to the fit and proper criteria for trustees, fund managers, custodian and administrators.

2.0 Objectives

The objective of these guidelines is to ensure that:

- (1) Only fit and proper persons are appointed on to the Board of trustees of a retirement benefits schemes.
- (2) All the service providers including fund managers, custodians and administrators are fit and proper persons.

3.0 Application of Guidelines.

- (1) These guidelines are applied upon submission of an application for a licence to the Authority or as may be otherwise required for purposes for conducting a fit and proper assessment on a in accordance with the URBRA Act 2011.
- (2) The Authority is mandated in Schedule 3 (II) of the URBRA Act, 2011, to determine the fitness and propriety of persons for purposes of establishing a retirement benefits scheme, acting as a Trustee, Administrator or Fund manager of a Retirement Benefits Scheme.
- (3) In determining the professional suitability of a person proposing to establish or operate a retirement benefits scheme, a person applying for a license to act as a trustee, administrator or fund manager of a

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retirement benefits scheme, the Authority shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned;

- a) His or her general probity;
- b) His or her competence and soundness of judgement for the fulfilment of the responsibilities of the office in question;
- c) The diligence with which he or she is likely to fulfil those responsibilities; and
- d) His or her qualifications and experience.

(4) These Guidelines set out the fit and proper criteria applicable to all relevant persons in relation to carrying out the function of being a Trustee, Administrator, Fund manager or establishment of a retirement benefits scheme as regulated by the Uganda Retirement Benefits Regulatory Authority (URBRA) or under any written Law.

(5) These Guidelines provide URBRA with the assurance that the relevant person is willing and able to fulfil its or his/her obligations under any written law. This also underpins our requirements that the relevant person performs the activities regulated under the relevant legislation efficiently, honestly, fairly and acts in the best interests of its or his/her members and stakeholders.

(6) These Guidelines provide general guidance, and are not intended to be comprehensive nor replace or override any legislative provisions. They should be read in conjunction with the provisions of the relevant legislation, the subsidiary legislation made under the relevant legislation, as well as written directions, notices and other guidelines

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that URBRA may issue from time to time pursuant to the relevant legislation and subsidiary legislation.

4.0 Documents to be submitted

The following documents should be submitted to URBRA in order to assess the fitness and propriety of Trustees in case of:

- a) **Corporate trustee-** An application form prescribed in Part A of Schedule 2 of The Uganda Retirement Benefits Regulatory Authority (Licensing Of Trustees) (Amendment) Regulations, 2014.
- b) **Individual trustee-** An application form prescribed in Part B of Schedule 2 of The Uganda Retirement Benefits Regulatory Authority (Licensing Of Trustees) (Amendment) Regulations, 2014.
- c) URBRA Fit and Proper Assessment form accompanied by the attachments specified in the Appendix below.
- d) Any other information as the Authority shall request.

5.0 Fit and Proper Test

The criteria for considering whether a relevant person or a key officer is fit and proper to carry out any function as a trustee, fund manager, custodian or administrator include but are not limited to the following key considerations in the assessment of the relevant person or key officer's :-

- a) Fitness and Propriety i.e. honesty, integrity, fairness, reputation and good conduct;

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- b) Proficiency i.e. Competence, diligence, capability, soundness of judgment
- c) Financial soundness i.e details of financial records

(3) In these Guidelines relevant person means;

- a) An appointed trustee of a retirement Benefits scheme.
- b) A person nominated to act as a trustee of a retirement benefits scheme.

(4) In these Guidelines key officer means;

- a) A Director, Chief Executive Officer or an equivalent person of a legal entity or an equivalent person which applies for a licence under the URBRA Act; or
- b) A substantial shareholder or key officer of any legal entity which applies for a licence under the URBRA Act.
- c) Any other person, by whatever name described, who has responsibilities to carry on the business of the scheme or service providers and may have decision making power.

5.1 Assessing Fitness and Propriety

Propriety/Integrity is demonstrated generally through character, personal behavior and business conduct. The relevant person should have no record of criminal activities or adverse regulatory judgements that make a person unfit to uphold the Trustee office in the scheme.

(1) At a minimum, the objective of the fit and proper test is to prevent individuals without a sufficiently high level of honesty and integrity from being appointed to the Board of Trustees of retirement benefits schemes or being part of the key officers of a service provider to the retirement benefits sector.

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(2) The Authority expects schemes or service providers to assess the propriety, integrity and character, and knowledge, skills and experience, of individuals in key functions prior to their appointment. The Authority can then monitor how effectively a scheme or firm undertake such assessments and, where applicable, undertake our own supervisory assessments of key individuals and relevant persons.

(3) An assessment of a person on anything known against his/her honesty, integrity, fairness and reputation are qualities that are demonstrated over time. An individual can be considered of good repute if there is no evidence or reason to suggest otherwise. In principle, this should be an absolute test - either the relevant person is of good repute or is not. A relevant person should not be considered to be of good repute if his or her personal or business conduct gives rise to any material doubt about his or her ability to ensure that a scheme or service provider will be managed soundly and prudently, and that its members, stakeholders and clients will be treated fairly.

(4) In determining a person's good repute, consideration of the following appropriate factors, including, but not limited to: -

- a) Whether the person has been convicted of a criminal offence, particularly an offence relating to dishonesty, fraud or financial crime;
- b) Whether the person has been convicted or found guilty in any proceedings of a disciplinary or criminal nature;
- c) Whether the person has been the subject of any adverse findings or any settlement in civil proceedings, particularly in connection with banking or other financial business misconduct, or fraud;
- d) Whether the person, or any business in which the person is a controlling shareholder or has controlling interest or exercises

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significant influence, has been investigated and disciplined or suspended by a regulatory or professional body, a court or tribunal, whether publicly or privately;

- e) Whether the person has been the owner, manager or director of a company, partnership or other organization that has been refused registration, authorization, membership or a license to conduct trade, business or profession, or has had that registration, authorization, membership or license revoked, withdrawn or terminated;
- f) Whether, as a result of the removal of the license, registration or other authority, the person has been refused the right to carry on a trade, business or profession requiring a license, registration or other authorization;
- g) Whether the person has been a director, partner, or otherwise involved in the management of a business that has gone into receivership, insolvency, or compulsory liquidation while the person was connected with that organization or within a reasonably short period (e.g. one year) after the person's departure from the institution;
- h) Whether the person has been dismissed, asked to resign or resigned from employment or from a position of trust, fiduciary appointment or similar position because of questions about honesty and integrity;
- i) Whether the person has ever been disqualified from acting as a director or serving in a managerial capacity because of wrongdoing;
- j) Whether the person has not been fair, truthful and forthcoming in dealings with customers, superiors, auditors and regulatory authorities within the past ten years and has been the subject of any justified complaint relating to regulated activities; and

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- k) Whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and other legal, regulatory or professional requirements and standards.
- l) No person may be appointed as trustee if there is material conflict of interest between the person's role as a trustee and his/her role in any other capacity, for example, conflict of interest may arise where a trustee is an officer or employee, or a shareholder of a company providing service to the retirement benefits scheme.

(5) All relevant information available for the assessment should be taken into account, regardless of the jurisdiction where any relevant events occurred.

Consideration should also be given to;

- a) The seriousness of any offence or action – minor misdemeanors should not necessarily result in a relevant person being considered as not reputable, although a series of otherwise minor incidents might be regarded as being cumulatively serious;
- b) The circumstances of breaches of regulatory requirements by schemes or service providers, or the failure of entities (schemes or companies), in which the individual has worked, and the role of the specific individual in these breaches or failures;
- c) Rehabilitation periods and measures – some offences might be regarded as being “spent” after a period of time has elapsed, or if an individual has undertaken remedial training and demonstrated good conduct since the offence. But in other cases, a relevant person might be considered to be barred from key roles in schemes or service

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providers for the rest of their working life, for instance, where a relevant person has stolen client funds or having been judged to have aided or directly been involved in gross misconduct.

- (6) The Authority may therefore have to exercise considerable judgement in assessing the propriety of relevant persons.

5.2 Proficiency and Capability

Proficiency is generally demonstrated through the level of the relevant person's professional or formal qualifications, knowledge, skills and experience in the relevant financial and retirement benefits sector commensurate with the intended activities of the scheme such as investment, accounting, risk management, applicable laws and benefits. Competence also includes having the appropriate level of commitment to perform the role.

Proficiency is assessed based on the knowledge, skills and experience of the relevant person, gained through both education, training and practical "on the job" experience gained in current and previous occupations. A person must demonstrate the competence and ability to understand the technical requirements of the retirement Benefits scheme, the inherent risks therein and the management processes required to conduct its operations effectively, with due regard to the interests of all members and beneficiaries.

In assessing the proficiency and competence of a person, all relevant factors should be considered, including, but not limited to: -

- 1) Education and Formal qualifications;

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- (a) the minimum qualification of a trustee for a mandatory retirement benefits scheme, will be a master's degree or its equivalent from a recognized University or institution.
 - (b) the minimum qualification of a trustee of a retirement benefits scheme which is not a mandatory scheme, will be an Advanced Level Certificate of Education or its equivalent from a recognized institution.
- 2) Experience of working in the retirement benefits sector, financial services and other previous occupations (taking into account the functions performed in previous employment and the nature, scale and complexity of the businesses in which the relevant person was employed);
- 3) Knowledge and experience in :
- Financial markets
 - Strategic and business planning
 - Risk management (identifying, assessing, monitoring, controlling and mitigating the main types of risk of a scheme or company)
 - Governance, oversight and controls
 - Financial information, controls, accounting and reporting
 - Regulatory framework and requirements
- 4) For applicants to key management positions of a service provider
- Previous experience in managerial positions
 - Scope of responsibilities and decision making powers
 - Managing conflicts of interest

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- 5) For independent Trustees, their assessment will take into account, but are not be limited to;
- Experience in governance, oversight and challenges of senior management;
 - Ability to commit sufficient time to the role, given other commitments;
 - The independence of the individual from the scheme, its Board of Trustees and from political interference;
 - The overall composition of the Board of Trustees – the collective knowledge and expertise required for the Board of Trustees to exercise effective oversight of scheme management.

5.3 Financial Soundness

There should be no record of declaration of personal bankruptcy or record of having been part of management of any scheme or company that was declared insolvent at any one time during his service time to that company or scheme.

In assessing a relevant person’s financial soundness, the factors considered shall include but are not limited to, whether the relevant person;

- 1) Is or has been unable to fulfil any of its or his financial obligations, whether in Uganda or elsewhere;
- 2) Has made any arrangements with his creditors, filed for bankruptcy, been adjudged bankrupt, had assets confiscated, or has been involved in proceedings relating to any of the aforementioned.
- 3) Is subject to a judgement debt which is unsatisfied, either in whole or in part, whether in Uganda or elsewhere;

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- 4) Is or has been the subject of bankruptcy petition, whether in Uganda or elsewhere;
- 5) Has been adjudicated a bankrupt and the bankruptcy is undischarged, whether in Uganda or elsewhere;
- 6) In addition to (1) to (5), in the case where the relevant person is a corporation;
 - a) Is or has been the subject of a winding up petition, whether in Uganda or elsewhere;
 - b) Is in the course of being wound-up or otherwise dissolved, whether in Uganda or elsewhere;
 - c) Has been placed under receivership of another entity;
 - d) Is or has been subject to any other process outside Uganda that is similar to those referred to in sub-paragraphs (a) to (c).

(7) Notwithstanding the fact that a person may be of limited financial means will not, in itself, affect the person's ability to satisfy the financial soundness criteria.

6.0 Request for additional information

The Authority has the power to request for any other additional information and may interview some individuals when facts or circumstances raise doubts about the propriety, integrity or character of a relevant person (for example a person's decisiveness, strategic vision, judgement on risks, leadership, independence of mind, persuasive power, and the ability and willingness to engage in continuous learning and development), or in order to undertake a more thorough assessment of a person's knowledge, experience and skills and whether they relate to the role that person will be undertaking.

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The Authority will communicate the outcome of every assessment to the concerned party clearly and in a timely manner.

7.0 . Enforcement

When URBRA determines non-compliance with the provisions of these guidelines, it may take any intervention measures or steps prescribed in URBRA Act and regulations made thereunder.

8.0 . Effective Date

The effective date of these Guidelines is the date on which they are signed.

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APPENDIX - FIT AND PROPER ASSESSMENT FORM



FIT AND PROPER FORM FOR APPLICANTS FOR A LICENSE AS TRUSTEES, ADMINISTRATORS, CUSTODIANS AND FUND MANAGERS OF RETIREMENT BENEFITS SCHEMES

SPECIAL NOTES

1. Each proposed Trustee or key officer must satisfy the Authority's requirements that he or she is a fit and proper person to act as a trustee, Administrator or Fund Manager of a retirement benefits scheme. Accordingly, each individual applicant for a license and all directors and key officers of a service provider must complete this fit and proper form.
2. All information shall be provided in this form together with the attachments thereto.
3. All information will be treated with strict confidentiality and will not be disclosed or used for any other purpose than to assess the suitability of a proposed trustee, key officer or director of a scheme or service provider except in so far as it may be required and permitted by law.
4. This information will only be taken into account if it directly relates to the requirements of the position.
5. All the fit and proper forms must be accompanied with the following: -
 - i. Curriculum vitae
 - ii. Copies of certified certificates of college and university education
 - iii. Evidence of current membership in a professional body
 - iv. Current Tax clearance certificate from Uganda Revenue Authority
 - v. Certificate of Good Conduct from the Uganda Police Force
 - vi. A certified report from the Credit Reference Bureau Services indicating your debt profile and repayment history.

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FIT AND PROPER ASSESSMENT

To be completed by all individuals appointed to responsible person positions.

1. Entity, Position Title and Description

Name of Entity

Brief description of the duties and functions of the position

2. Personal Details of Appointee

Family Name

Given Name(s)

Date of Birth (dd/mm/yyyy)

Country and Town of Birth

Nationality

Country of Residence

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Gender (Male/Female)

Marital Status (Single/Married/Divorced)

Nationality

Country of Residence

Identification Number

Include a certified copy of identification

Passport Number (if applicable)

Include a certified copy of passport

Work Permit (if applicable)

Include a certified copy of Work Permit

Direct Business Telephone Number/Mobile Number

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Email Address

Postal Address

Residential Address/Town/Area District

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3. Change of Name and address

Have you ever changed your name or used an alias?

YES	NO
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If "YES", please provide details below

Previous Family Name/ Alias

--

Previous Given Name(s)/ Alias

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Date of Change (dd/mm/yyyy)

--

Have you changed your permanent address in the last 5 years?

YES	NO
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If "YES", please provide details below

Previous Residential Address/Town/Area District

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4. Qualifications

Educational qualifications

Qualification	Year	Institution

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Professional qualifications

Professional Body	Year	Status

5. Other Directorship(s) or Trusteeships(s) held over the last 10 years

Organization	Date of appointment	Date of resignation

6. Significant shareholding(s) in financial institutions over the past 10 years (where significant shareholding is 10% or more of a class of shares or direct or indirect control of 10% or more of the voting stock - if interest has been relinquished note the date under "status", otherwise state "active")

Financial Institution	Nature of financial interest	Status

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7. Employment history for the last 10 years (start with the most recent)

Employer's Name	
Type of Business	
Address	
Contact Number	
Contact Email	
Position held and brief description	
Start date	
End date	

Employer's Name	
Type of Business	
Address	
Contact Number	
Contact Email	
Position held and brief description	
Start date	

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End date	
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Employer's Name	
Type of Business	
Address	
Contact Number	
Contact Email	
Position held and brief description	
Start date	
End date	

8. Fitness and Propriety Questionnaire (If the answer to a question is "YES", please provide additional explanations on a separate page with a reference provided)

a. Have you been disqualified under any legislation administered by Bank of Uganda, CMA, IRA or any other laws of Uganda or financial, corporate or similar laws in another jurisdiction?	YES	NO	REF
b. Have you been, or are likely to be, removed or suspended, by order of a regulatory authority in Uganda or elsewhere, as a director, trustee, officer or significant owner of a regulated institution or related entity?	YES	NO	REF
c. Have you contravened any provision of the Financial Institutions Act (2016) or any rule or order issued thereunder, or been guilty of gross negligence or willful or intentional misconduct as those terms contextually apply in the Financial Institutions Act or elsewhere under similar regulations?	YES	NO	REF
d. Have you been a director, executive officer, manager or significant owner of a financial institution in Uganda or elsewhere, which has become insolvent, been under receivership, been wound up or liquidated?	YES	NO	REF

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e. Have you, or any business in which you have had a controlling interest, been censured, prosecuted, and warned as to conduct, disciplined, or publicly criticized by, or made subject to a court order by any governmental department or agency, professional association, or regulatory body in Uganda or elsewhere?	YES	NO	REF
f. Have you ever been found guilty or convicted for any offense or had any administrative order served or been disqualified from serving as a director, trustee or holder of financial related licenses in Uganda or elsewhere, within the last 10 years?	YES	NO	REF
g. Are you now or do you expect to be engaged in litigation, in Uganda or elsewhere, which may have a material adverse effect on your resources?	YES	NO	REF
h. Have you within the last 10 years, failed to satisfy within one year a judgment of debt under a court order in Uganda or elsewhere?	YES	NO	REF
i. Have you ever been judged by a court, in Uganda or elsewhere, to be civilly liable for fraud, malfeasance, or any other misconduct?	YES	NO	REF
j. Have you ever been judged bankrupt by a court, in Uganda or elsewhere, or made any compromise or otherwise failed to satisfy your creditors in full within the last 20 years?	YES	NO	REF
k. Do you have any disputed obligations for taxes due and payable to the Uganda Revenue Authority or any other taxation authority in Uganda or elsewhere?	YES	NO	REF
l. Do you hold a government appointed or elected position in Parliament, or a regional or local authority in Uganda or in a foreign country, or are you an officer of a registered political party in Uganda or elsewhere?	YES	NO	REF
m. Have you ever been diagnosed as being mentally ill or unstable?	YES	NO	REF
n. Are you in default regarding any liability owed to any financial institution? (Please provide a report from a licensed credit reference bureau)	YES	NO	REF
o. Do you usually reside in Uganda? (If "NO, please describe how you intend to fulfill your obligations)	YES	NO	REF
p. Do you expect to have access to the financial, managerial, technological, intellectual and other relevant resources to be able to discharge satisfactorily the duties of the responsible person?	YES	NO	REF
q. If you are appointed as a trustee, have you read the Trustees' Code of Conduct and reasonably expect to be able to discharge your responsibilities in accordance with the Code?	YES	NO	REF
r. If you are appointed as a trustee, will you be able to undertake initial training and continued professional development or otherwise expect to receive an exemption from the Authority?	YES	NO	REF

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s. Do you have a real or potential conflict of interest in relation to the role of the responsible person? (This may include by you directly or close family members and if so, provide explanation).

YES	NO	REF
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DECLARATION

I, the undersigned, hereby declare that:

(a) to the best of my knowledge and belief the statements made and the information supplied in this questionnaire and the attachments are correct and that there are no other facts that are relevant to the assessment of my fitness and propriety;

(b) I understand that (insert entity name as in 1 above) or the Authority may seek additional information from any third parties it deems necessary in view of assessing my fitness and propriety and I consent to their undertaking police checks and corporate searches as part of their due diligence; and

(c) I undertake to bring to the attention of (insert name of entity as in 1 above) any matter which may potentially affect my status as being someone fit and proper as and when they occur.

APPLICANT

Print Name:	
Signature:	
Date:	-- / -- / ----

Issued on the 26th day of March 2018.

Signed



**MARTIN A. NSUBUGA
AG. CHIEF EXECUTIVE OFFICER**