

***Uganda Retirement Benefits Regulatory Authority (Whistle Blowing)
Guidelines, Guideline No. 2 of 2018***



WHISTLEBLOWING GUIDELINES

These Whistle blowing guidelines are issued pursuant to sections 5(1) (d) and 93 of the Uganda Retirement Benefits Regulatory Authority Act, 2011 for observance by retirement benefits schemes.

These Guidelines provide practical guidance for reporting of breaches of the law and governance practices.

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. Basis of Issuance

Uganda Retirement Benefits Regulatory Authority (URBRA) is mandated in section 5(2)(b) of the URBRA Act, as part of exercise of its functions to issue guidelines and other prudential norms for the proper management and operation of retirement benefits schemes. Section 93 of the URBRA Act empowers the Authority to issue guidelines for the better carrying out of its objects and functions under the Act.

These Guidelines provide practical guidance for reporting of breaches of the law and governance practices.

2.0. Purpose

The requirement to report is a vital part of the regulatory framework as whistleblowing reports will be a key source of information used by the Authority to fulfill its supervisory responsibilities.

It is a statutory requirement that parties to a Retirement Benefits Scheme report to the Authority in some specific circumstances; for example, changes in submitted information, failure to remit contributions due, certain failures in relation to funding of Defined Benefit schemes and other events or breaches concerning governance and administration of schemes.

The term “*Whistleblower*” is used to describe any person who may have a statutory duty to report or to whom the duty to report may not essentially apply but has an interest in a Retirement Benefits Scheme.

3.0. Scope

The duty to report applies to Retirement Benefits Schemes, parties thereto and service providers. There is a wide range of persons that the requirement to report applies to, these include;

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3.1. Trustees

The duty to report applies to each individual trustee or corporate trustee. In the case of a corporate trustee, the persons responsible for the execution of the trust function, the Directors of the body corporate and the body corporate itself shall be under a duty to report whether jointly or severally.

3.2. Members/beneficiaries

Reports could be made by a member(s) or an actual or potential beneficiary(ies) of a scheme who alleges that he or she has suffered financial loss or is aware of mismanagement by those responsible for the management and administration of the scheme.

3.3. Persons offering services to a scheme

- a) This covers those persons who provide services to Retirement Benefits Schemes. If a firm is appointed to provide relevant services to the Scheme; the duty to report falls on the persons responsible for the management of the firm. Where an individual is appointed to provide the service, the duty to report falls on the individual.

This category comprises of;

- i. Administrators, Fund Managers and Custodians;
- ii. A participating employer who assigns staff to carry out scheme administration tasks in-house (including performing payroll and similar functions as well as carrying out or helping with direct administration of the scheme);
- iii. Other professional advisers such as Pensions and Investment consultants, Actuaries and Auditors, Accountants, Legal advisers and independent financial advisers etc.

3.4. An employer participating in a scheme

In the case of an Umbrella Scheme, the duty to report applies to any participating

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employer or its agents who becomes aware of a breach regardless of whether the breach relates to or affects members who are its employees or those of other employers.

3.5. Persons with more than one role

There are other requirements for firms and organizations to report to other supervisory bodies. Where the duty to report to another body arises and a whistleblower concludes that there is a separate duty to report to the Authority, it would assist if the report to the Authority referred to the other report.

4.0. Reporting of breaches

While taking a decision to report a breach, two key considerations are to be made;

- a) Whether the whistleblower has reasonable cause to believe there has been a breach of the law, governance procedures or scheme rules;
- b) Whether the whistleblower believes the breach is likely to be of material significance.

4.1. Reasonable cause to believe

Having a reasonable cause to believe that a breach has occurred means more than merely having a suspicion that cannot be substantiated.

- a) Where the whistleblower does not know the facts or events around the suspected breach, he/she can check with the trustees or others who are in a position to confirm what has happened. However, it is not appropriate to check with the trustees/managers or others in cases of theft, fraud or any other serious offence if discussion with those persons might alert those implicated or impede actions of the Authority.
- b) If the whistleblower is unclear about the relevant legal provisions, they should satisfy their understanding of the law to the extent necessary to form a view.

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4.2. Material significance.

This depends on;

- a) Cause of the breach
- b) Effect of the breach
- c) Reaction to the breach
- d) Wider implications of the breach

4.2.1. Cause of the breach

- a) The breach is likely to be of material significance to the Authority where it was caused by;
 - i. Dishonesty including fraud, bribery and other corrupt practices;
 - ii. Misuse/misappropriation of assets or contributions;
 - iii. Poor governance;
 - iv. Inadequate controls resulting in deficient administration;
 - v. Failure to pay contributions and benefits correctly or promptly;
 - vi. Inappropriate decision making practices; or
 - vii. Acting or failing to act in deliberate contravention of the law, regulations, scheme rules, guidelines and rules issued or approved by the Authority.

- b) In forming a view on whether the breach is of material significance, whistleblowers should consider;
 - i. Other reported and unreported breaches they are aware of;
 - ii. The use of historical information with care, particularly if changes have been made to address previously identified problems.

4.2.2. Effect of the breach

A breach shall be of material significance if;

- a) It poses a risk to the scheme which may lead to loss of assets or contributions

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and or a likelihood that the scheme will not be able to deliver benefits promised in the long run.

- b) It adversely impacts on the functions of the Authority.

4.2.3. Reaction to the breach

The breach is likely to be of material significance where, after a breach is identified;

- a) No prompt and effective action is taken to remedy the breach;
- b) No attempt is made to identify and tackle its causes in order to minimize risk of recurrence;
- c) No corrective action is pursued to a proper conclusion; or
- d) No notification to members and beneficiaries who have been affected by the breach where it would have been appropriate to do so;

4.2.4. Wider implications of the breach

- a) The fact that the breach has occurred makes it appear more likely that other breaches might emerge in the future; or
- b) Other schemes may be affected if they are administered or managed by the same service provider/organization which may be responsible for the breach which has occurred; or
- c) The retirement benefits sector may get affected as a result of breaches in other closely correlated sector(s).

4.2.5. Types of reporting concerns

Trustees, members/beneficiaries, service providers and other Professionals should report about the following substantial failures considered to be elements of material significance;

- a) Possible fraud or misappropriation of scheme funds such as;

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- i. Authorization of loans from the scheme;
 - ii. Transferring part of the fund, documents of title or proceeds by the custodian respectively to a destination that does not appear to be another custodian and is not an authorized sale;
 - iii. Persistent or significant discrepancy in the investments carried out by a Fund Manager including divergence from the provisions of the Investment Regulations and guidelines issued by the Authority.
- b) Breaches carrying criminal penalty such as trading the assets of the fund in the individual names of Trustees, Fund Manager, or Directors etc.
- c) Persistent failure by the employer to remit contributions in accordance with the schedule of contributions and where they remain unpaid up to the 15th day of the following month or where the employer appears to be using the contributions instead of remitting them to the scheme.
- d) Breaches involving widespread and/or persistent administrative failures stemming from poor record keeping or inadequate controls, for example;
- i Misallocation of contributions to members' accounts;
 - ii Accounting and auditing concerns;
 - iii Failure to carry out reconciliation of contributions received resulting in persistent discrepancies;
 - iv Failure to maintain and update records of members and beneficiaries, particularly those whose personal details have changed;
 - v Failure to pay benefits correctly or in a timely manner;
 - vi Failure to provide members and beneficiaries with accurate, clear and timely information.
- e) Inappropriate actions that manipulate or overstate the scheme's fund value

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and other breaches of the investment guidelines through dealing or implementation errors, for example;

- i Failure to invest contributions promptly in accordance with laid down procedures;
 - ii Failure by the trustees to take appropriate measures to recover all debts and monies due to the fund within a reasonable period of time;
 - iii Failure by the scheme to monitor and control fees and/or other expenses.
- f) Failure to comply with the URBRA Act and regulations or Trust Deed and Scheme Rules;
 - i. Trustees not acting in good faith and within the terms of the Trust Deed and Scheme Rules for the benefit of members and beneficiaries;
 - ii. Trustees acting in a way which is unfair or wrong to a reasonable and objective person, in breach of trust law.
- g) Breaches which stem from a systems or processes failure.
- h) Continuous provision of poor services by the scheme's service provider resulting in persistent or widespread non-compliance; despite the scheme's best efforts to comply with regulatory requirements.

Note: Examples of breaches listed above are not exhaustive.

5.0. Means of reporting

A whistleblower can report a breach by means of;

- a) Anonymous letter
- b) Email

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- c) Website (www.urbra.go.ug)
- d) Telephone
- e) Verbal communication
- f) Official statutory returns

6.0. URBRA investigation of the report

- a) The Authority will acknowledge receipt of reports within 5 working days.
- b) When the Authority receives a report of a breach, it has discretion to take action and, if so, what action to take. The decision will depend on;
 - i. The breach;
 - ii. Its circumstances;
 - iii. Material significance and;
 - iv. Any other information the Authority may be aware of.
- c) In exercising its discretion, the Authority shall take into account the following considerations;
 - i. The seriousness of the issues raised;
 - ii. The credibility of the concern; and
 - iii. The likelihood of confirming the allegation from relevant sources.
- d) The matters raised may;
 - i. be investigated internally;
 - ii. be referred to the police;
 - iii. be referred to the courts of law; or
 - iv. Form the subject of an independent inquiry.
- e) A range of measures by the Authority include;
 - i. Assisting or instructing trustees or service providers to achieve compliance;

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- ii. Providing guidance or training;
 - iii. Appointing interim administrator to help run the scheme;
 - iv. Removing trustees from office;
 - v. Freezing the scheme;
 - vi. Imposing special measures where the scheme funding requirements are not complied with;
 - vii. Ordering that the scheme's funding position be restored to the level before a breach or other detrimental event occurred; and
 - viii. Imposing fines where appropriate.
- f) The Authority will not generally keep a whistleblower informed of the steps it takes in response to a report of a breach. There are restrictions on the information the Authority can disclose. Additional information should be provided by the whistleblower if it may assist the Authority in exercising its functions.

7.0. Reporting

All reports on breaches shall be directed to any of the following offices as appropriate;

- a) CEO, URBRA
- b) Director Supervision and Compliance (DSC)
- c) Internal Audit Office
- d) Chairman, URBRA

8.0. Whistleblowing protection

- a) The Authority understands the potential impact of a report on the relationship between a whistleblower and their client or in the case of an employee and their employer.
- b) Uganda Whistleblowers Protection Act, 2010 provides for protection of a whistleblower making a disclosure to the Authority. A whistleblower shall not be liable to civil or criminal proceedings in respect

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of a disclosure that contravenes any duty of confidentiality or official secrecy law where the whistleblower acts in good faith.

- c) The Authority will seek to protect the identity of whistleblowers. Even if the Authority does not explicitly reveal the name of the whistleblower, their identity may become apparent in the course of an investigation.
- d) Whistleblowers should act carefully/conscientiously and honestly, and to take account of expert or professional advice where appropriate.

Issued on the 26th day of March 2018

Signed

A handwritten signature in blue ink, appearing to be 'M. A. Nsubuga', written in a cursive style.

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