STATUTORY INSTRUMENTS
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STATUTORY INSTRUMENTS SUPPLEMENT

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STATUTORY INSTRUMENTS

2022 No. 17

THE UGANDA RETIREMENT BENEFITS REGULATORY AUTHORITY (ASSIGNMENT OF RETIREMENT BENEFITS FOR MORTGAGES AND LOANS) REGULATIONS, 2022

ARRANGEMENT OF REGULATIONS

Regulation

STATUTORY INSTRUMENTS

2022 No. 17.

The Uganda Retirement Benefits Regulatory Authority (Assignment of Retirement Benefits for Mortgages and Loans) Regulations, 2022

(Under sections 68(2) (a) and 91(1), (2) (j) of the Uganda Retirement Benefits Regulatory Authority Act, 2011)

IN EXERCISE of the powers conferred upon the Minister by sections 68 (2) (a) and 91(1) and (2) (j) of the Uganda Retirement Benefits Regulatory Authority Act, 2011 and in consultation with the Board, these Regulations are made this 3rd day of February, 2022.

Part I—Preliminary

1. Title

These Regulations may be cited as the Uganda Retirement Benefits Regulatory Authority (Assignment of Retirement Benefits for Mortgages and Loans) Regulations, 2022.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“accrued benefits” means the total amount of the beneficial interest of a member in a retirement benefits scheme;

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

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

“assignment” means an arrangement under which an institution acquires from a member a right or interest to a proportion of the accrued benefits of the member at the date of issuance of the assignment, enforceable against the retirement benefits scheme;

"Authority" means the Uganda Retirement Benefits Regulatory Authority established under section 2 of the Act;

"currency point" has the value assigned to it in Schedule 1 to these Regulations;

"facility" means a mortgage or a loan for purchasing a residential house secured using a proportion of the accrued benefits of a member and includes a mortgage or a loan transferred under regulation 6(3);

"institution" means—

(a) a financial institution licensed under the Financial Institutions Act, 2004;

(b) an institution licensed under the Micro Finance Deposit Taking Institutions Act, 2003; or

(c) any other institution providing residential house facilities recognised under written law;

"member" means a person who is admitted to the membership of a retirement benefits scheme, who makes contributions or on whose behalf contributions are made to a retirement benefits scheme;

"mortgage" means any charge or lien over land or any estate or interest in land in Uganda for securing the payment of an existing or future or a contingent debt or other money or money's worth or the performance of an obligation and includes a second or subsequent mortgage, a third party mortgage and a sub mortgage;

"purchasing of a residential house" means—

(a) acquiring a residential house;
(b) construction of a residential house on land in respect of which the member has a legal ownership recognised under the Land Act, the Registration of Titles Act or any other written law;

(c) altering a residential house owned or belonging to a member; or

(d) securing financing or waiver, as the case may be, for deposits, stamp duty, valuation fees and legal fees, excluding arrangement, commitment fees and any other transaction costs required in the course of acquiring of a residential house;

"receiving scheme" means a retirement benefits scheme to which the accrued benefits of a member are transferred;

"residential house" means a dwelling house or structure purchased, constructed or renovated for the provision of residential accommodation of a member;

"retirement benefits scheme" means a legally binding agreement or arrangement other than a contract for life assurance whether established by a written law or by any other instrument, under which members are entitled to benefits in the form of annuity or a lump sum payable upon retirement or upon death, termination of service or upon the occurrence of an event specified in the written law, agreement or arrangement;

"transferring scheme" means a scheme from which the accrued benefits of a member are drawn from;

"trustee" means a person responsible for managing a retirement benefits scheme in accordance with the retirement benefits scheme rules and requirements under the Act.

3. Purpose

The purpose of these Regulations is to provide for procedures that a member shall follow to use a proportion of his or her benefits to secure a mortgage or a loan for purchasing a residential house.

Part II—Assignment of Benefits for Mortgages or Loans for Purchasing a Residential House

4. Scheme rules to provide for assignment of accrued benefits

Every retirement benefits scheme shall issue scheme rules that permit the members to assign their accrued benefits as security for a mortgage or a loan for purchasing a residential house from an institution in accordance with these Regulations.

5. Eligibility criteria

(1) A member is eligible for an assignment under these Regulations where he or she has been a member of a retirement benefits scheme for not less than ten years.

(2) Subregulation (1) shall not apply to—

(a) a member who has left employment; or

(b) a member who has attained the retirement age.

6. Use of accrued benefits as security

(1) A member may enter into an agreement with an institution to use his or her accrued benefits as security for a mortgage or a loan for purchasing a residential house in accordance with these Regulations.

(2) A member may assign—

(a) a maximum of 50% of his or her accrued benefits under the retirement benefits scheme at the time of the application for the facility; or

(b) a portion of his or her accrued benefits equivalent to the market value of the residential house,

whichever is less.

(3) A member who, prior to the commencement of these Regulations has a mortgage or a loan for purchasing a residential house, may upon application to the trustees in the manner prescribed in the scheme rules, assign his or her accrued benefits to an institution as security for the mortgage or loan.

(4) For the avoidance of doubt, the trustees shall, prior to granting or rejecting an application made under subregulation (3), review the mortgage or a loan for purchasing a residential house, referred to in the application.

Application for Assignment of Accrued Benefits.

7. Application to use accrued benefits as security

(1) A member shall, upon obtaining a letter of offer for a facility, apply to the trustees to assign a proportion of his or her accrued benefits as security for a mortgage or a loan for purchasing a residential house.

(2) An application made under subregulation (1), shall be in the form prescribed in Schedule 2 to these Regulations and shall be accompanied by a copy of the letter of offer for the proposed facility.

8. Processing of application

(1) In reviewing the application submitted under regulation 7(2), the trustees shall ensure that—

(a) the application submitted is for purposes of enabling a member to use a proportion of his or her accrued benefits as security and shall not result in a reduction of his or her retirement benefits;

(b) the facility applied for does not exceed 50% of the accrued benefits of the member;

(c) the member applying for assignment of his or her accrued benefits has executed a written commitment to pay the facility in accordance with the agreed terms and conditions of the facility;

(d) the member is gainfully employed or has sufficient income which can be used to pay for the facility; and

(e) the purpose of the mortgage or loan applied for by the member, conforms to section 68(2)(a) of the Act and the scheme rules.

(2) The trustees shall review an application made under regulation 7 within thirty days from the date of receipt of the application.

(3) Upon review of the application, the trustees may—

(a) grant the application with or without conditions; or

(b) reject the application.

(4) The trustees shall notify the member in writing of the decision made under subregulation (3)(b) stating the reasons for the decision.

9. Grant of assignment of accrued benefits

(1) Where an application for assignment of the accrued benefits by a member is granted under regulation 8(3)(a), the trustees shall—

(a) notify the member and the institution of the decision; and

(b) witness the deed of assignment executed between the member and the institution.

(2) The deed of assignment referred to in subregulation (1)(b) shall be in the form prescribed in Schedule 3 to these Regulations.

10. Repayment period for mortgage or loan

The repayment period for a mortgage or a loan for purchasing a residential house issued under these Regulations, shall not exceed twenty years.

Duties of Trustees, Institution, Members and Administrators

11. Duties of trustees

The trustees shall—

(a) monitor every member issued with a facility from the time of its commencement until the time of its discharge;

(a) maintain and keep an updated record of the assignments issued by the retirement benefits scheme;

(b) disclose the amount of money assigned and the institutions to which assignment have been issued in the annual financial statements of the retirement benefits scheme, in accordance with the Uganda Retirement Benefits Regulatory Authority (Financial Reporting and Disclosure) Regulations, 2016; and

(c) carry out on-site inspection after granting the assignment for a facility to ensure that the member has, in fact, purchased a residential house, undertaken construction or alterations of a residential house in accordance with the terms and conditions of the facility.

12. Duties of institution

(1) An institution that requires the trustees to issue an assignment shall—

(a) provide a certified copy of a valid licence;

(b) have an adequate operational and internal control system for the purposes of—

(i) structuring and operating a facility;

(ii) keeping and updating an accurate record of the transactions from and to a member's loan account; and

(iii) generating reports as required by the trustees from time to time.

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

13. Duties of member

A member who applies for a facility shall—

(a) provide proof of legal ownership of the land or property where the construction, alteration or addition is to be made;

(b) provide all other necessary statutory approvals;

(c) negotiate his or her own terms of the facility with the institution that he or she has selected, in accordance with these Regulations; and

(d) ensure that his or her financial circumstances are not compromised by taking up the facility.

14. Duties of administrator

Every administrator shall, in addition to the functions prescribed under section 53 of the Act—

(a) verify the accrued benefits that an applicant for a facility holds under the retirement benefits scheme;

(b) keep updated records of all member accounts issued with assignments;

(c) ensure that the outstanding amount on a facility is deducted from the accrued benefits of the member and paid to the institution—

(i) prior to the member being paid his or her benefits; or

(ii) in case the member leaves his or her employment, before the facility is fully repaid; and

(d) give regular updates to the trustees.

General Provisions on Assignment of Accrued Benefits

15. Withdrawal of assignment by trustees

(1) The trustees shall withdraw the assignment where an onsite inspection report submitted under regulation 11(c) reveals that the member used the facility for other purposes other than those prescribed in these Regulations.

(2) Where the trustees withdraw an assignment under subregulation (1), the trustees shall notify the member, the institution, the administrator and the Authority about the withdrawal of the facility.

(3) Where the assignment is withdrawn under subregulation (1) the member shall find appropriate financing for the facility.

16. Deductions of accrued benefits of member in default

(1) Upon default of a member the trustees shall, pay the outstanding portion of the facility to the institution using the proportion of the accrued benefits of the member in accordance with these Regulations.

(2) The balance of the accrued benefits of a member, after settling the outstanding balance of the facility under subregulation (1) shall represent the benefits due to the member under the retirement benefits scheme.

17. Trustees to carry out independent investigation

(1) Where an institution notifies the trustees about a default in payment, the trustees shall give the affected member an opportunity to confirm whether or not he or she has defaulted.

(2) The trustees shall carryout an independent investigation in respect of the alleged default.

(3) Where the trustees establish the default by the member referred to in subregulation (1), the trustees shall redeem the facility in accordance with regulation 21.

18. Withdrawal of member from scheme

(1) A member with an on-going facility may, with the approval of the trustees, withdraw from a retirement benefits scheme.

(2) A member with an on-going facility wishing to withdraw from a retirement benefits scheme or to transfer to another retirement benefits scheme—

(a) may transfer the facility to another retirement benefits scheme where the receiving scheme has arrangements in place similar to those of the transferring scheme; and

(b) the retirement benefits scheme rules of the transferring scheme and the receiving scheme permit the transfer of the facility.

(3) Where the member withdrawing from the scheme is unable to settle the facility in accordance with these Regulations, the trustees shall apply the proportion of the accrued benefits of the member to settle the outstanding balance of the facility before the member withdraws from the scheme.

19. Transfer of facility to another institution

(1) A member may transfer a facility from one institution to another.

(2) Where a member transfers a facility under subregulation (1), the trustees shall, upon the request by the member—

(a) grant an assignment for the accrued benefits to the institution that the member has transferred to; and

(b) issue a letter withdrawing the assignment from the institution that the member transferred from.

20. Transfer of member

(1) A transfer by a member from one retirement benefits scheme to another shall not prejudice an assignment of the proportion of the accrued benefits of the member made under these Regulations.

(2) A member transferring from one retirement benefits scheme to another may apply for another assignment to be issued by the receiving retirement benefits scheme.

(3) The receiving scheme referred to under subregulation (2) shall, upon receipt of the accrued benefits of the member, consider the application and where satisfied issue another assignment.

(4) Upon transfer of the accrued benefits and confirmation of receipt by the receiving scheme, the transferring scheme shall redeem the assignment issued by the transferring scheme and notify the institution accordingly.

(5) Where a member who has an on-going facility transfers to a retirement benefits scheme that has no provision for the issuance of assignments in accordance with these Regulations, the member shall make arrangements for an appropriate security for the facility, and shall inform the transferring scheme of these arrangements within fourteen days from the date of giving notice of withdrawal from the transferring scheme.

(6) The trustees of the transferring scheme referred to in subregulation (5) shall inform the institution of the transfer of a member and the arrangements made by the member to maintain the facility.

21. Redemption of assignment

(1) An assignment issued under these Regulations shall remain valid until the member expressly applies to the trustees to issue a redemption of the assignment.

(2) An assignment issued under these Regulations may be redeemed where—

(a) a member has fully paid up his or her facility in accordance with the terms and conditions of the facility;

(b) an institution presents to the trustees evidence that a member has defaulted on the terms of the facility; or

(c) a retirement benefits scheme that issued an assignment under these Regulations is being wound up.

(3) Where the trustees redeem a facility under subregulation 2(a) or (b), the institution shall submit the certificate of title of the residential house belonging to the member to the trustees to hold in trust for the member until he or she attains the retirement age.

(4) Where a retirement benefits scheme that issued an assignment under these Regulations is being wound up, a member transferring to another retirement benefits scheme—

(a) may apply to the trustees of the receiving scheme to issue an assignment; and

(b) request the transferring scheme which is being wound up to issue a letter withdrawing the assignment from the institution.

22. Report

(1) The trustees shall submit to the Authority a report of all the assignments issued by the retirement benefits scheme at the end of every financial year of the scheme in accordance with the Uganda

Retirement Benefits Regulatory Authority (Financial Reporting and Disclosure) Regulations, 2016.

(2) The report referred to in subregulation (1) shall contain a return of the number and value of assignments issued or redeemed and the details of the facilities that were repaid in the course of the financial year.

(3) Where there are any concerns in respect of the facility that may render the assignment unenforceable, the trustees shall immediately notify the Authority in writing and provide detailed information on those concerns.

(4) The report referred to in subregulation (1) shall be in the form specified in Schedule 4 to these Regulations.

Part III—Miscelleaneous

23. Applicable law

The Mortgage Act, 2009, the Financial Institutions Act, 2004, Micro Finance Deposit Taking Institutions Act, 2003, the Land Act, the Registration of Titles Act and the Contracts Act, 2010 shall apply to mortgages or loans issued under these Regulations.

24. Remedial measures and administrative sanctions

(1) Where the Authority determines that a trustee or an administrator has contravened these Regulations, the Authority may impose any or all of the following remedial measures and administrative actions—

(a) summon the trustee or the administrator to explain the reasons for the contravention of the regulatory requirements; and

(b) direct the trustee or the administrator to ensure immediate compliance with these Regulations and to submit reports to the Authority on the remedial actions taken.

(2) In addition to the remedial measures referred to in subregulation (1), the Authority may impose administrative sanctions on the trustee or an administrator who contravenes these Regulations.

(3) The administrative sanctions referred to in subregulation (2) include—

(a) caution;

(b) cash penalties;

(c) suspension of the licence;

(d) revocation of the licence; or

(e) declaration that the trustee or administrator is not a fit and proper person for purposes of the Act.

(4) The cash penalties referred to in subregulation (3)(b) shall include—

(a) a fine not exceeding seventy five currency points;

(b) in the case of a continuing contravention, an additional penalty not exceeding fifty currency points in respect of each day that the contravention continues; or

(c) a penalty not exceeding one hundred and fifty currency points in respect of a second or subsequent contravention.

25. Penalty for non-compliance

A person who contravenes any provision of these Regulations commits an offence and is liable, on conviction, to a fine not exceeding seventy-five currency points or imprisonment not exceeding one year and in the case of a continuing contravention, an additional penalty of fifty currency points in respect of each day on which the offence continues.

26. Appeal against decisions of trustees

(1) A member dissatisfied with a decision of the trustees under these Regulations may appeal to the Authority for review, within fourteen days from the date of receipt of the decision.

(2) A member referred to under subregulation (1) shall notify the trustees of the decision to appeal in accordance with section 82 of the Act.

SCHEDULES

SCHEDULE 1

Regulation 2

CURRENCY POINT

A currency point is equivalent to twenty thousand shillings.

SCHEDULE 2

Regulation 7(2)

APPLICATION TO USE A PROPORTION OF ACCRUED BENEFITS AS SECURITY

I……………………………………………………………………… member No…..of …………retirement benefits scheme with benefits amounting to………………………as of this date, apply to assign ………% of my benefits to………………………………(name of institution) for the purpose of securing a mortgage or a loan for purchasing a residential house.

I guarantee that the proposed mortgage or loan is for purchasing a residential house located at……………………………..and I undertake to repay the facility in accordance with the terms and conditions that will be agreed upon with the Institution.

I understand that in case of default on repayment of the facility, the trustees will be at liberty to use a portion of my accrued benefits under the scheme to settle my obligation.

Dated this…………………..day of…………………………20…….

Signed Applicant …………………………….

*Attach a copy of the letter of offer of the proposed facility

SCHEDULE 3

Regulation 9(2)

ASSIGNMENT OF ACCRUED BENEFITS

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE CONTRACTS ACT, 2010

IN THE MATTER OF THE UGANDA RETIREMENT BENEFITS REGULATORY AUTHORITY ACT, 2011

IN THE MATTER OF THE UGANDA RETIREMENT BENEFITS REGULATORY AUTHORITY (ASSIGNMENT OF BENEFITS FOR MORTGAGES AND LOANS) REGULATIONS, 2022

DEED OF ASSIGNMENT

This deed of Assignment is made this………………day of………..20……

BETWEEN

..……………………………a member of……………………retirement benefits scheme of ……………………………(address) hereinafter referred to as the (the "Assignor" which expression shall where the context so admits include his or her successors in title and assignees) of the one part;

AND

……………………(*name of Institution*) of………………(address) hereinafter referred to as (the "Assignee") which expression shall where the context so admits include the successors in title and assignees) of the other part.

The Assignor and the Assignee shall be collectively referred to as "Parties"

WHEREAS

A. The Assignor is the owner of the accrued benefits in ……………………………retirement benefits scheme.

B. The Assignor has agreed to assign his or her interest in accrued benefits of ………% (*not more than 50%)* of his or her accrued benefits at the date of signing this deed to the Assignee to secure a mortgage or a loan for purchasing a residential house.

C. The Assignee is ………………………………….(*name of Institution and state whether the Institution is licensed under the Financial Institutions Act, 2004, the Micro Finance Deposit Taking Institutions Act, 2003, or any other written law*) located at……………(*address*) is willing and ready to issue a facility to the Assignor.

NOW THIS DEED WITNESSES AS FOLLOWS—

In consideration of the sum of………………………………..to be advanced by the Assignee as a facility to the Assignor, the Assignor hereby assigns ………% of his or her accrued benefits in…………………retirement benefits scheme to the Assignee as security for the facility on the following covenants and warrants.

COVENANTS, WARRANTIES AND REPRESENTATIONS OF THE ASSIGNOR

The Assignor hereby represents, warrants and covenants as follows:

(1) That he or she is a member of ………………retirement benefits scheme and is entitled to accrued benefits from the scheme.

(2) That Assignor confirms that he or she has obtained the required approval from the trustees of …………………………..retirement benefits scheme to use his or her accrued benefits as security for the mortgage or loan to purchase a residential house.

(3) That the Assignor undertakes to use the facility to purchase a residential house.

(4) That the Assignor commits to repay the facility in accordance with the terms and conditions of the facility executed by the parties in a separate agreement.

(5) That upon failure by the Assignor to repay the facility as stipulated in paragraph (4) above, the Assignee shall be entitled to claim……..% of the accrued benefits of the Assignor in ……………………………. retirement benefits scheme.

(6) That upon proof of default mentioned in paragraph (5) above, the trustees of ……………………….retirement benefits scheme shall approve …..% of the accrued benefits of the Assignor to be transferred to the Assignee and the Assignor shall not hold the trustees liable for the transfer.

COVENANTS, WARRANTIES AND REPRESENTATIONS OF THE ASSIGNEE

The Assignee hereby represents, warrants and covenants as follows:

(1) That the Assignee is duly licenced to undertake……………….. services under…………………………………..(*state the law under which Assignee is licensed*).

(2) That the Assignee has adequate operational and internal control systems for the purposes of structuring and operating a facility, keeping and updating an accurate record of the transactions from and to the Assignor's loan account and submitting reports as may be required by the trustees from time to time.

(3) That the Assignee shall regularly update the trustees of …………………………retirement benefits scheme on the performance of the Assignor regarding the facility.

(4) That upon completing repayment of the facility, the Assignee shall handover the certificate of title of the residential house to the Assignor.

(5) Where the Assignor defaults in payment and the facility is cleared by the trustees of ……………………..retirement benefits scheme, the Assignee shall hand over the certificate of title to the residential house to the trustees for custody.

IN WITNESS HEREOF the parties have set their hands and seal this………… day…………………..20…………

SIGNED by the named Assignor:

……………………………………………

SIGNED by …………………on behalf of the Assignee:……………..……

In the presence of Trustees of ………………….retirement benefits scheme

Name……………………………….	Signature…………………………..

Name……………………………….	Signature………………………….

Name……………………………….	Signature………………………….

Name………………………………..	Signature…………………………..

SCHEDULE 4

Regulation 22(4)

THE UGANDA RETIREMENT BENEFITS REGULATORY AUTHORITY (ASSIGNMENT OF BENEFITS FOR MORTGAGES AND LOANS) REGULATIONS, 2022

REPORT OF ASSIGNMENTS ISSUED BY THE SCHEME

Name of scheme…………………………………………………………….

Reporting period………………………………………………………….

No.	Name of member	No. of Years of contributing	Repayment period	Total value of assignments issued	Name of financial institution

TABLE A Indicate the details of mortgages or loans repaid by members

No.	Name of member	Total Value of mortgages or loans repaid	Name of financial institution

TABLE B Indicate the details of assignments redeemed

No.	details of assignments redeemed	Particulars of member	Name of Institution

Cross Reference

Contracts Act, 2010, Act No. 7 of 2010

Financial Institutions Act, 2004, Act No.2 of 2004

Land Act, Cap.227

Micro Finance Deposit Taking Institutions Act, 2003, Act No. 5 of 2003

Mortgage Act, Act, 2009, Act No.8 of 2009

Registration of Titles Act, Cap. 230

Uganda Retirement Benefits Regulatory Authority (Financial Reporting and Disclosure) Regulations, 2016, S.I No. 1 of 2016

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HON. MATIA KASAIJA

Minister of Finance Planning and Economic Development.