Uganda Retirement Benefits Regulatory Authority (Handbook on Trustees' Duties and Responsibilities) Guideline No. 1 of 2016

URBRA

UGANDA RETIREMENT BENEFITS REGULATORY AUTHORITY

HANDBOOK ON TRUSTEES' DUTIES AND RESPONSIBILITIES

This handbook is not a legal document nor does it substitute the provisions of the Uganda Retirement Benefits Regulatory Authority Act 2011 and the Regulations made thereunder. The handbook should be read together with the URBRA Act 2011 and the Regulations made thereunder.

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1. Introduction

A trustee of a retirement scheme established in Uganda has duties and responsibilities under trust law, under the Uganda Retirement Benefits Regulatory Authority Act 2011 and the Regulations made thereunder ("the Act") and other relevant legislation. This practice note gives concise guidance notes on trustee duties and responsibilities and includes some definitions that may be helpful to trustees.

This practice note is not intended to be comprehensive, neither is it intended to override the provisions of the law. Trustees are under an obligation to refer to the Act and the regulations which make specific provision on all duties and responsibilities required of them.

2. Retirement Benefits Schemes

Section 2 of the URBRA Act defines a retirement benefits scheme as 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.

Under the provisions of the URBRA Act, a Retirement Benefits Scheme (the scheme) is a trust. A trust in its simplest form is an arrangement under which a person or a group of people hold and look after property on behalf of others who are called *beneficiaries.* The person who holds and looks after the property is called a *trustee*.

A retirement benefits scheme is a good example of a trust. The properties held in the trust fund are assets of the scheme. The trustees hold and look after these assets for the benefit of *members* and their beneficiaries. Although the assets are held in the name of the trustees, they do not belong to them unless they are also members of the scheme.

The terms of the trust under which the scheme is set up are detailed in a legal document called the *trust deed* and *rules*. The provisions of the trust deed and rules must at all time comply with the provisions of the law. The trust deed and rules set out procedures of scheme administration and management, the rights and obligations of members such as who can join the scheme, benefits and contributions rates and how they are paid.

There are two basic types of retirement schemes:

Defined Benefit Schemes in which the retirement benefits are defined and known using a set formula in the scheme rules. The benefits formula uses parameters such as years of service; salary which may be final or average and a pension factor. Under this arrangement, the sponsor of the scheme assumes the investment risk of scheme assets.

Defined Contribution Schemes which pre-defines the contributions into the scheme but does not define the amount of benefits to be received. *The* retirement benefits paid to each *member* depends on the amount of contributions paid in and the investment returns earned on those contributions. Members of the scheme assume the investment risk of scheme assets.

Trustees should know which type of scheme they have responsibility for, as there are different requirements under the Act in respect of each type of scheme.

3. Appointing and Removing Trustees

a. Who Can Be A Trustee?

Generally under trust law, anyone aged 18 years and over, and legally capable of holding property, is eligible to be a trustee. But under the section 43 of the Act some people are specifically excluded from being trustees of retirement benefits scheme, including:

- anyone convicted and imprisoned by a court of competent jurisdiction for period of six months;
- an adjudged bankrupt;
- anyone previously involved in scheme mismanagement leading to its deregistration
- Anyone disqualified under law to hold office of trustee or his/her holding office of trustee is deemed by Authority to be detrimental to the scheme.
- Any person not approved by the Authority to be a trustee of a scheme

The Act requires scheme rules to make provision for the manner of appointing or electing scheme trustees. The URBRA(Licensing of Retirement Benefits Schemes) Regulations of 2012 (*As amended*) provide for the number of trustees to be not less than 3 for a voluntary scheme and not less than 5 for a mandatory scheme except when the sponsor appoints a corporate trustee. The scheme rules shall also make provision for the grounds and manner of removing trustees including the procedures for conducting their meetings.

b. ***Before accepting trusteeship***

Trustees are always liable individually and severally for breach of trust. It is thus important that before accepting the office of trustee the trustee considers the following:

i. the **trust deed** and rules to understand the duties, powers and discretions a trustee is taking on.

ii. past administration status and reports of the scheme because as so long as a person accepts to be a trustee, such trustee may become liable for existing breaches of trust even though they may have arisen before the appointment.

- The sponsor or the other existing trustees are under obligation to provide sufficient information to new trustees to enable them consider the state of the scheme. In particular the new trustees need to consider the following records before they assume the office of trustee: minutes of the trustees' meetings and the annual reports prepared by the trustees, and
- Actuarial valuation reports to ascertain the funding level of the scheme
- Audited financial statements of the scheme and take note of any qualifications and cost of administration of the scheme
- Investments reports of the assets of the scheme and in particular evaluate the prudence of investment and compliance with investment regulations as provided in the law.

A new trustee should be in position to ask the following questions

- Who are the current trustees and how were they appointed?
- Why is there a need for a new trustee?
- How often do the trustees meet and what is the voting procedure?
- Who are the scheme service providers?
- Who actually carries out the scheme day to day administration?
- Where are the scheme records kept?
- Are the records up to date?
- Are the accounts up to date and who is the scheme auditor?
- How are the assets of the scheme invested?

- Who is the scheme custodian and scheme fund manager?
- Have there been any complaints from members and have they been sorted out?
- Is the scheme compliant with provisions of the Act, e.g. on licensing, funding requirements, collection of contributions and appointment of service providers?

c. *How is a Trustee Appointed?*

As earlier stated the trust deed and scheme rules make provision for the manner of appointing or electing scheme trustees and the number of trustees subject to the provisions of the Act and regulations made thereunder.

The Regulations provide for a scheme to have both member and sponsor nominated trustees. A Board of trustees should consist of at one third of the trustees nominated by the members and at least one third of the trustees nominated by the sponsor.

Normally, the trust deed gives the sponsor of the scheme the power to appoint trustees. The first trustees to the scheme are named in the trust deed. Later appointments are usually made by an amending deed or deed of appointment. Both of which must be filed with the Authority.

The sponsor nominated trustees as a formality will be appointed by the employer and their names included in the trust deed under a deed of amended signed by the employer and trustees.

The scheme rules must provide for the procedure for nominating member-nominated trustees but without giving the details.

Based on the power in the scheme rules, trustees should develop the detailed nomination procedure which should be presented at the Scheme's Annual General Meeting and discussed by members, trustees and the employer and adopted as an acceptable procedure for nominating member-nominated trustees.

d. *Removing Trustees from Office of Trusteeship*

The scheme rules should make provision for the grounds and manner of removing trustees including the procedures for conducting their meetings.

Some of the grounds that may be a basis for removal of a trustee from office include:

- Imprisonment for a period exceeding six months
- Adjudged bankrupt
- Failure to attend particular number of trustee meetings
- Conflicts of interest which are not disclosed
- Breach of trusteeship
- Inability to discharge duties of the trustee
- Is removed from office by a court of competent jurisdiction.
- Is not capable of carrying out the duties of trustee because of a mental disorder or incompetence
- Is a company which has gone into liquidation

Other reasons for removal from office include:

- Resignation
- Death
- Expiry of term of trusteeship
- Under terms and conditions set out in the scheme rules.

Upon removal from office, trustees must fill and sign formal transfer forms of have all property, such as land, amongst its assets, one may need to sign formal transfer forms to transfer ownership of the property to whoever takes over as trustee.

e. *Licensing of trustees*

The Act requires a trustee of a scheme to be licensed by the Authority.

Requirements for an individual trustee

- Particulars of applicant.
- Nationality.
- Tax Identification Number.
- Physical address of applicant.
- Two passport size photographs and a resume of the applicant.
- Certified copies of academic or professional qualifications of the applicant.
- Evidence of the ability of the applicant to perform the functions of a trustee of a retirement benefits scheme.
- A statutory declaration supporting the application.
- Curriculum Vitae of the applicant
- Two recommendation letters from the referees of the applicant.
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- Application fee of 2.5 currency points(Fifty thousand Uganda shillings)
- Licence fee of 10 currency points (Two Hundred Thousand Uganda Shillings)

Requirements for corporate trustee

- Name of applicant

- Physical address of a place in Uganda for service on the applicant of any notice or document
- Registered office
- Tax Identification Number
- Particulars of Directors
- Certified copy of certificate of incorporation
- Particulars of key officers of trustee
- A copy of the Memorandum and articles of association
- Certified copies of the latest audited report and accounts
- Particulars of Auditors
- Particulars of Bankers
- Certified copies of professional, technical knowledge or experience of key officers
- Evidence of applicant's operational ability to perform functions of a trustee
  - Statutory Declaration
  - Application fee (12.5 currency points (two hundred and fifty thousand Uganda shillings)
  - Licence fee of 50 currency points (One million Uganda Shillings)

4. Trust Law

Trustees have duties under trust law which includes the following:

- to carry out the trust in accordance with the law and the terms of the trust deed and rules
- act in the best interests of beneficiaries
- act fairly between beneficiaries
- act prudently and diligently
- act jointly
- exercise care and utmost good faith in carrying out your duties
- seek professional advice as necessary
- supervise those to whom functions have been properly delegated
- not profit from the trust
- be aware of possible conflicts of interest and disclose them

A trustee, who is negligent, does not act in good faith or does something which is contrary to provisions of a valid deed and rules of the scheme can be sued by the members or beneficiaries. In this case the trustee can be held to be personally liable for the whole of the amount of any loss which occurs.

A trustee must be very careful to ensure that the information he or she receives as a trustee is treated in the strictest of confidence and is only used for the purposes for which it has been received.

A trustee has no power to negotiate or to vary the terms of the scheme except in accordance with the provisions of the Act. The Trustee can **ONLY** carry out the terms of the trust deed and rules regardless of who appointed them. Trustees must not act as representatives of the employer or the members.

5. Duties under the URBRA Act 2011

The Act brought together and set down clearly the duties and responsibilities of scheme trustees. There is a high degree of overlap between trustees' duties under the general principles of trust law and their duties as prescribed in the Act. The trustees' duties under the Act are:

a. To manage & oversee the operation of the scheme

The Act specifies that trustees are responsible for managing and overseeing the operation of the scheme in accordance with the Act and regulations made under the Act.

The Act prohibits the operation or establishment of a scheme without a licence issued by the Authority. This imposes a duty on the trustees to ensure that their scheme is licensed by the Authority.

All schemes that were in existence before the URBRA Act was enacted are required to be licensed. In the same spirit, new schemes established after the enactment of the URBRA Act should be licensed in accordance with the Act and Regulations made under the Act.

A scheme administrator or consultant associated with the establishment of the scheme will usually make the necessary arrangements for the licensing of the scheme on the trustee's behalf. However, it is the responsibility of the trustees to ensure that their scheme is licensed by the Authority.

Requirements for Licensing a Retirement Benefit Scheme.

- Name of the retirement benefits scheme including reference to any prior change of name
- Physical address and location of the registered office of the scheme in Uganda
- Tax Identification Number
- Trust deed and scheme rules (Which will be drafted in a format prescribed under the licensing regulations of the URBRA Act)
- Evidence of minimum deposit maintained by the scheme*(Applicable to a scheme which receives mandatory contributions)*
- Funding policy of the scheme
- Particulars of Sponsor
- Particulars of Trustee
- Particulars of Custodian
- Particulars of Administrators

- Particulars of Fund Manager
- Particulars of Auditors
- Particulars of key officers of the scheme
- Organogram of the scheme
- Business plan *(Applicable to a scheme which receives mandatory contributions)*
- Investment Policy Statement
- List of members
- Description of the scheme's investment portfolio
- Benefits that accrue to members
- Status of members i.e. active/inactive
- Certified copies of audited accounts for the previous year
- Management accounts *(Incase the audited accounts are not recent)*
- Certified copy of the Certificate of Incorporation
- Copy of the name reservation form
- Latest actuarial report
- Fund management agreement
- The latest scheme fund investment reports
- Certified copy of the insurance policy document
- Any other information relating to the viability of the proposed retirement benefits
- Application fees;
    - the application fee for a scheme which receives voluntary contributions is 10 currency points (Two hundred thousand Uganda shillings).
    - the application fee for a scheme which receives mandatory contributions is 50 currency points (One million Uganda shillings
- License fees
    - The licence fee for a scheme which receives voluntary contributions is 50 currency points (One million Uganda shillings).
    - The licence fee for a scheme which receives mandatory contributions is 250 currency points (Five million Uganda shillings).

b. *Appointment of service providers*

Trustees must appoint service providers including administrator, custodian, fund manager, auditor or any other professional required for the effective operation of the scheme.

The Act prohibits a trustee from acting as an administrator, custodian, actuary, auditor or fund manager of the same retirement benefits scheme. This is aimed at enhancing clear separation of roles.

c. *Day-to-Day Administration of Schemes*

In most schemes the trustees do not by themselves actually carry out the day-to-day business of the scheme. Trustees may appoint a person within the company to look after the day-to-day running of the scheme on their behalf, or appoint a professional scheme administrator to carry out daily scheme administration on their behalf. The former are referred to as internal administrators and the latter external administrators. Generally both are referred to as scheme administrators.

Scheme administration includes a wide variety of activities:

i. Carrying out daily administration of scheme affairs in accordance with provisions of the Act, scheme rules, relevant laws and legal documents in force relating to the scheme.
ii. Liaising with external authorities such as the Uganda Retirement Benefits Regulatory Authority, Uganda Revenue Authority and service providers
iii. Submitting to the Authority amendments to the trust deed and scheme rules for approval within the stipulated statutory periods.
iv. Computing and paying to the Authority the statutory levy within the period set out in the Act
v. Offering advisory and training services to trustees, members and scheme sponsors on their respective rights, duties and obligations
vi. Providing required data of the scheme to service providers to enable preparation of statutory returns
vii. Submitting required statutory returns to the Authority
viii. Keeping accurate record and data of members together with their interests in the scheme
ix. Drawing agenda items of the Annual General Meetings which include: scheme audited accounts, changes in scheme design, trustees' remunerations and investment of scheme assets.
x. Offering secretarial services to the board trustees, organizing trustee meetings, Annual General meetings, issuing notices and taking and keeping minutes of the meetings

xi. Ensuring that trustees hold meetings at least four times during the financial year

xii. Ensuring that managers are investing scheme assets in accordance with the provisions of the Act

xiii. Ensuring contributions are remitted by the employer before the fifteenth day of the following month

xiv. Contacting *members* and providing them with required information

xv. Advising trustees in good time of those members who are about to retire to enable early approvals by trustees for payment of benefits

xvi. Computing and paying benefits to members within the time limit set out in the law

xvii. Ensuring that a member's benefits are transferred to another licensed scheme within the prescribed time if requested by the member

xviii. Record keeping of all issues relating to the scheme

xix. Preparing and managing the financial budget of the scheme so as to ensure prudent financial management

xx. Initiating the preparation and submission scheme audited accounts, actuarial valuation reports and investment policies, records of contributions, quarterly investment and custody reports to the Authority within the stipulated period in the Act

xxi. Prepare and avail to the sponsor on quarterly basis reports on all affairs of the scheme

xxii. Furnishing members with annual membership statements and summarized audited scheme accounts

When the day-to-day administration is delegated to others, the trustees are still responsible for the scheme. They must, therefore, ensure all the duties listed above and those set out in the Act and regulations are carried out.

d. *To Ensure that Contributions are Received*

T*rustees* shall ensure that the contributions payable by the employer and *members* of the scheme are received custodian on the 15th day of the following month. One way of successfully going about the above would be to agree with the employer on a set of procedures and a schedule of dates on which contributions would be paid so long as it is not later than the date stipulated in the law.

An employer who fails to remit the contributions within the prescribed time, commits an offence and is liable to make the remittance already due, and in addition pay a fine of not less than ten percent of the total contribution that remains unpaid for each month or part of each month the default continues.

e. *Investments and Safe keeping of scheme assets*

Trustees must prepare a prudent investment policy statement (IPS) to govern investment decisions of scheme funds. In preparing the IPS, trustees may engage the services of an investment advisor. The IPS must be submitted to the Authority and must be revised after every three years.

Once the IPS has been prepared, trustees must appoint under duly signed agreement a licensed fund manager to implement the investment policy.

The fund manager is charged with the day-to-day investment of scheme funds. Nevertheless, the trustees are fully responsible for monitoring the conduct of the investment manager and the overall performance of the scheme funds.

Duties of the Fund Manager

The fund manager is required under the Act to tactfully and professionally invest the funds within the permissible assets and limits prescribed under the Act; conduct research to make informed investments decisions submit to the trustees on a quarterly basis a report showing the investment performance of the scheme assets.
The trustees must submit the quarterly investment report to the Authority.

Trustees must appoint a licensed custodian under an agreement duly executed to hold all the assets of the scheme which include cash, securities and title documents.

Duties of the Custodian

It is the duty of the custodian to ensure that the scheme funds are credited to the scheme account within one working day once received.

The other duties of the custodian include settling all investment transactions received from the investment manager, receive all dividends, interest and income due to the scheme and also report to the trustees about the scheme transactions on quarterly basis.

f. To Make Arrangements for Paying the Benefits

The fundamental objective of a scheme is to ensure that vested benefits are paid out as and when required. Payments of retirement benefits are made upon attainment of retirement age, death, termination of service, ill health, disability or emigration.

A scheme may provide benefits in some or all of the following circumstances:

- At normal retirement age
- At early retirement age
- Leaving service on the basis of ill-health
- Upon the disability of a member
- Upon death of a member before retirement age
- Upon death in retirement
- On leaving service upon attaining the retirement age.

It is the statutory duty of trustees to make arrangements for the payment of benefits as provided for under the Act, Trust deed and rules of the scheme as and when the benefits become due.

The trust deed of the scheme prescribes the vesting period, when benefits fully vest in member fully. A member is however not encouraged to withdraw benefits while still in employment.

In practice, schemes appoint a scheme administrator to carry out this function or arrange for pensions or *annuities* to be bought from an Insurance company.

The trustee's duty would be to ensure that beneficiaries are paid regularly, and do not have to go through unreasonable steps in order to get their benefits. Benefits must be paid as soon as practicable days.

In some schemes, there are areas of discretion, where the trustees may have to decide the distribution and/or the method of payment of benefits in the event of death of a member. For example, the scheme may allow death benefits to be paid to the dependant named in the nomination form or to be split between several dependants if it is an equitable thing to do. In these circumstances the trustees must make full enquiries of the circumstances of the case before making a decision, and if in doubt, should seek advice. Trustees must record and keep the reasons justifying their reasons for declining to pay benefits in accordance with a member's written nomination.

g. *Keeping of Scheme Record*

It is the duty of trustees to ensure up to date and proper keeping of membership and financial records of the scheme. Typically, membership records will include the members' names; gender; dates of birth, dates of joining service, and dates of joining the scheme; marital status; details of dependants and other beneficiaries; current and historic annual salary details; transfer values received and benefits granted; members' contributions and additional voluntary contributions.

It should be borne in mind that members may be active, deferred or pensioners and accurate records should be held in every case.

The precise nature and amount of information which must be kept will depend on the nature of the scheme and the types of benefit provided. Trustees frequently delegate the administration of the scheme (including collection of contributions) to scheme administrators. However, the overall responsibility of stewardship of the scheme's assets, transactions and record keeping rests with the trustees.

The financial records of the scheme include such matters as the trustee bank account for administration expenses, all financial transactions of the scheme and financial reports received from investment manager and custodian. The financial records of the scheme are also frequently kept on behalf of the trustees by a scheme administrator, who may also prepare the accounts for audit.

h. *Opening bank accounts*

The Act specifies that the trustees shall open and maintain bank accounts necessary for the exercise of the functions of the scheme.

i. *To Preserve or Transfer Benefits*

Where the trust deed & scheme rules provide for transfers in or out of the scheme, trustees must ensure that the necessary arrangements are made in the case of early leavers for the preservation or transfer of their benefits remaining in the scheme. Trustees have a duty to ensure that arrangements are made to preserve and (where appropriate) revalue the benefits of members who have left or to have a transfer payment of the benefits made. Trustees also have to accept transfers into their scheme on request.

j. *To Ensure that the Funding Standard is Complied With*

Trustees have a duty to ensure that contributions to the scheme as set out in the scheme rules are remitted to the scheme fund by the employer within the specified time. Trustees of a defined benefit scheme must ensure that their scheme complies with the minimum funding requirements specified in the trust deed. In defined benefit scheme at least the assets of the scheme should be 80% of the liabilities on an ongoing basis.

In order to ensure this funding requirement is sustained, trustees of a defined benefits scheme shall at least every 3 years ensure that an actuarial valuation of the scheme is carried out and actuarial report showing the funding level, among other things is filed with the Authority. The report should be submitted to the Authority within three months after the actuarial valuation.

The URBRA (Licensing of Schemes) Regulations 2012 make some provisions relating to the preparation of scheme actuarial valuation reports. It is important that trustees have a good understanding of these provisions and this is an area that should be discussed in detail with the scheme actuary and/or the scheme advisers.

If the scheme does not satisfy the funding standard, a funding proposal (remedial plan) must be prepared and submitted to the Authority. This is a plan to restore the funding of the plan to the standard within an agreed period of time. This plan must be agreed with the employer, trustees and the actuary of the scheme. It will however be implemented upon approval by the Authority.

If the defined benefit scheme is being wound up or converted to a defined contribution scheme, then the funding requirement must be 100% of all the liabilities. The Authority shall not approve conversion or completion of winding up until all the liabilities are paid in full.

For defined contribution schemes without benefit guarantees, assets should be equal to liabilities at all times.

k. *To Give Information*

Trustees are responsible for how the scheme is run by ensuring that specified documents and information on the scheme and its operations are made available to scheme members and other interested persons. Trustees must ensure that necessary arrangements are put in place for the *members* to freely access information on:

- Details about the trust deed and *rules* of the scheme
- Certain basic information about the scheme and details of an individual's benefit entitlements under the scheme.
- Membership statements
- Scheme audited accounts
- Investment and custody reports
- Actuarial valuation reports
- Changes in scheme structure or the law relating to the scheme.
- Any other information relating to the scheme which may be requested for by a member.

The trustees may make an information booklet about the scheme and its rules and avail it to the members.

Trustees must also ensure that the information to be disclosed is provided within the period set out in the Act, Regulations and scheme rules.

l. *To ensure equal treatment in the scheme (Treatment of Scheme Members)*

The Act requires that trustees, as a fiduciary shall act with impartiality in respect of all members and beneficiaries of the scheme. There should not be discriminatory treatment of scheme members especially in eligibility to membership and application of pension factors. Pension factors can only be discriminatory on the basis of actuarial considerations or engagement of some members in hazardous occupations of the employer.

Trustees have an obligation to apply the principle of equal treatment. The tenet of equal treatment is that there should be no discrimination on any of the discriminatory grounds in respect of any *rule* of a scheme. This applies in relation to the *rules* governing such matters as-

a). Access to membership in the scheme
b). Contribution arrangements in respect of members
c). Entitlement to and calculation of benefits
d). Death benefits etc.

However, it does not constitute a breach of equal treatment on the grounds of age. Schemes can fix different ages for entitlement to benefits under the scheme, fix different ages for employees or groups or categories of employees, provided that these do not result in discrimination on the gender ground or employees in the same group or category.

A member who claims not to be receiving equal treatment may seek redress by filing a complaint with the Authority. Trustees should have their scheme *rules* examined with a view to identifying *rules* which may result in differences in treatment for *members* and which are contrary to the principle of equal treatment.

m. *To apply the Resources of the Scheme in case of Winding-Up*

Trustees may resolve to wind up the scheme on a voluntary basis. The resolution to wind up a scheme must comply with the Act, regulations and powers of trustees in the trust deed and shall not be effective unless approved by the Authority.

The resolution to wind up the scheme shall include the appointment of a liquidator. Upon approval of the resolution and the liquidator, The Authority shall direct the liquidator on the process of liquidation in accordance with the provisions of the Act and regulations made under the Act. The liquidator shall be expected to apply the resources of the scheme in discharging its liabilities without undue delay. During liquidation, the liquidator shall act as a trustee of the scheme and shall be accountable to members and the Authority.

The decision to wind up the scheme must be notified to members within a reasonable time. The liquidator will have a duty to ensure that *members'* pension rights are secured and the wind-up is completed without undue delay. *Members* must also be informed as soon as practicable, of their benefit rights and options under the winding-up Regulations; how benefits will be paid or transferred; the contact address for enquiries; and how any surplus or deficit in the scheme fund has been dealt with.

After the liquidator has prepared a preliminary report of the scheme status and member balances, members will be given up to 30 days to examine the report. Any dispute regarding the report must be filed with the Authority within the same time otherwise it becomes invalid. Those members who shall not have attained retirement age will be required to select in writing a scheme to which their accrued benefits will be transferred to.

n. *Prepare Financial statements and levy payment*

Trustees have a duty to manage scheme assets and prepare scheme financial statements which must be audited by an independent auditor approved by the Authority. The scheme fund auditors are appointed by trustees and approved by the Authority.

Trustees must ensure that all books and records of account of income, expenditure and scheme assets are properly kept. While this responsibility may be delegated, trustees are ultimately accountable.

Within four months after the end of the financial year of the scheme, trustees must prepare scheme accounts which must be audited. By the 4th month the audited accounts must be submitted to the Authority together with the annual retirement benefits levy.

o. *Submission of statutory returns*

Schemes are regulated under statutory provisions. The Act requires returns to made to the Authority as a process of supervision. Those returns which must be filed to the Authority are:

- Quarterly record of contributions and member details
- Quarterly investment returns
- Quarterly custodian reports
- Annual audited accounts
- Annual retirement benefits levy
- Actuarial valuation reports after every three years
- Investment policy after every three years
- Any deed of amendment of scheme rules within thirty days of the date of amendment resolution.

p. *Meaning of a Fiduciary*

The Act defines a fiduciary as any person who is responsible for-

- the control, administration or management of a retirement benefits scheme.

- The application or interpretation of scheme rules in the determination of benefits of members or beneficiaries
- The management of assets or investment of funds of a scheme.

The definition of a fiduciary includes trustees, administrators, fund managers and custodians.

Duties of a fiduciary

A fiduciary shall—

i. act with due care, skill, diligence, good faith and prudence, and shall avoid misleading and deceptive acts or representations.

ii. act in the best interest of the scheme members and beneficiaries

iii. ensure that all decisions regarding the scheme comply with scheme rules made under the Act.

iv. act with impartiality in respect of all members and beneficiaries of the scheme.

q. Reporting to the Authority (Whistle blowing)

As fiduciaries, trustees, fund managers, custodians or administrators

i. have an obligation to ensure that the scheme is managed at all times in accordance with the law and scheme rules;

ii. scheme management is carried out in the best interest of the members;

iii. they report to the Authority any occurrence likely to jeopardize members' interests; and

iv. report any contributions that remain due to the scheme for a period of more than thirty days reason.

Trustees and scheme service providers therefore, who have reason to believe that material misappropriation or fraudulent conversion of a scheme's resources

- has occurred,
- is occurring, or
- is to be attempted,

he or she must report in writing to the Authority of the particulars of the misappropriation or conversion as the case may be. The duty to report is absolute. Anyone who makes a report in good faith in accordance with this duty is protected by law from liability for any breach of confidentiality or other duty which may necessarily occur.

Although not under an obligation to do so, any persons, whether or not they are interested persons, may make a report to the Authority on any matter concerning the state and conduct of a scheme.

6. Complaints desk

The Authority established a complaints desk to address any complaint raise by a member of a retirement benefits scheme against the scheme trustees or any service provider.

It is advisable that before matters are submitted to the Authority alternative dispute resolution mechanisms be explored to avoid simple complaints from being presented to the Authority for a decision. Complaints should be filed with the Authority in prescribed forms which are available at the Authority's website and at the reception.

7. Retirement Benefits Appeals Tribunal

The Act establishes a tribunal to hear and determine appeals against the decisions of the Authority which a party to a scheme may feel aggrieved about. The decision of the tribunal is binding on parties to the appeal and any aggrieved party with the tribunal's decision may appeal to the High Court.

The Act empowers the Minister in consultation with the Judicial Services Commission to make rules for the effective operation and management of the tribunal.

8. Penalties /Sanctions for Non-Compliance

The Act prescribes various penalties /sanctions for failure to comply with the provisions of the Act. ***For the criminal sanctions see list on page 24.***

The other sanctions provided for in the Act include:

- Removal of trustees from office,
- Placing the scheme under interim statutory administration,
- Appointment of an inspector to prepare a report on the status of the scheme,
- Application of interest on unpaid levy, and
- Recovery of unpaid levy through civil proceedings in court.

In order to avoid penalties enforceable under the Act, Trustees are urged to ensure compliance with the URBRA Act and regulations made thereunder.

9. Trustee Training

This handbook has shown that being a trustee entails wide range of duties and responsibilities. A trustee should ensure that-

- ✓ In case of an individual trustee, he or she obtains the relevant trustee training from recognized training institutions; and

- ✓ In case of a corporate trustee, the directors of a corporate trustee or any person acting in any other capacity of performing the roles of a trustee, obtains the relevant trustees training from recognized training institutions.

The Authority shall take into consideration the relevant knowledge and understanding acquired by a trustee in the renewal of the licence of a trustee.

Trustees could probably benefit from the free trustee training programs offered by the Authority. Interested trustees need to contact the Authority so that they can be slotted in the training program.

10. URBRA

The Uganda Retirement Benefits Regulatory Authority was established in 2011 under the Act and became fully operation in December 2012. The functions of the Authority are -

- To regulate and supervise the establishment, management and operation of retirement benefits schemes in Uganda, in both the public and private sectors ;
- To license retirement benefits schemes in Uganda;
- To license custodians, trustees, administrators and fund managers of retirement benefits schemes;
- To approve an actuary or auditor of any retirement benefit scheme;
- To protect the interests of members and beneficiaries of retirement benefits schemes including the promotion of transparency and accountability;
- To improve understanding and promote the development of the retirement benefits sector;
- To promote the stability and integrity of the financial sector through ensuring stability and security of retirement benefits schemes;
- To ensure sustainability of the retirement benefits sector with a view to promoting long term capital development;
- To advise the Minister on all matters relating to the development and operation of the retirement benefits sector;
- To implement Government policy relating to retirement benefits schemes;
- To promote public awareness of the retirement benefits sector; and
- To perform any other function conferred upon it under the Act.

Glossary of Terms

Act

Act means the Uganda Retirement Benefits Regulatory Authority Act 2011 and the Regulations made thereunder.

Active Member

A member of a scheme who is currently in the employment of the scheme sponsor and who is participating in the scheme for purposes of saving for a retirement benefit.

Actuarial Valuation

An investigation by the actuary into the ability of a scheme to meet its benefit promise.

Actuary

A professional expert on the funding and solvency of pension schemes from an institution recognized under the Act.

Additional Voluntary Contributions (AVCs)

Additional contributions paid by a member of an occupational pension scheme in order to secure benefits over and above those set out in the rules of the scheme.

Annuity

A series of payments made at stated intervals until a particular event – usually the death of the person receiving the annuity occurs. It is normally secured by the payment of a single premium to an insurance company.

Beneficiaries

A person entitled to benefits under a pension scheme or who will become entitled on the happening of a specified event (e.g. on the death of a member).

Currency point

One currency point is equivalent to twenty thousand Uganda Shillings.

Deferred Member

A person entitled to a payment of benefits at a future date. Normally this would be an early leaver but the term is sometimes used to describe someone whose retirement is being postponed.

Defined Benefit Schemes

Schemes in which the benefits are calculated according to a set formula. The benefits may be related to service completed and/or earnings prior to retirement.

Defined Contribution Schemes

Schemes in which the retirement benefits paid to each member depend on the amount of contributions which have been paid in for that member and the investment returns earned on those contributions.

Dependant

A person who is financially dependent on a member or pensioner or was so at the time of death or retirement of the member or pensioner. For example, a child of the member or pensioner may always be regarded as dependent until he or she reaches the age of eighteen or ceases to receive full-time education or vocational training, if later. A spouse of a member or pensioner may always be regarded as a dependent.

Key officers in a scheme

Refers to individuals in a scheme or in a company who are in a decision making position in the scheme or company.

Member

A person who has been admitted to membership of a retirement benefits scheme and who is entitled to specified service;

Service Provider

Refers to an individual, a company or a financial institution appointed by benefits under the scheme. This will include active members, pensioners, deferred members and persons entitled to claim under the Act.

Normal retirement age

The age on which a member of a retirement benefits scheme normally becomes entitled to receive his or her retirement benefits.

Occupational Pension Scheme

A scheme established by an employer for the benefit of employees including schemes established under a written law.

Pensioner

A person who is currently receiving payment of a pension from a pension scheme.

Scheme Rules

The detailed provisions of a scheme normally set out in a formal way usually given authority by a trust deed.

Service level agreement

Refers to an agreement entered into between the trustees of scheme and a service provider for provision of a

the trustees to offer services to a scheme. These include administrators, fund managers, custodians, auditors custodians, auditors, lawyers or any other individual or entity providing a service to a scheme.

Trust Deed

The legal document executed in the form of a deed, which establishes, regulates or amends a trust.

Trustee

Refers a person responsible for managing a retirement benefits scheme in accordance with the scheme rules and legal requirements under the Act.

A trustee may be an individual or a company which alone or jointly becomes the legal owner of property to be administered for the benefit of someone else (the beneficiaries), in accordance with the provisions of the document creating the trust and the provisions of trust law generally and the Act.

Trust Law

Trust law has evolved primarily in relation to family and charitable settlements and is not always easy to apply to the different circumstances of pension schemes. Much of it is embodied in the Trustee Act and in law which has arisen over many hundreds of years in cases decided in the courts. This case law is often known as equity, broadly meaning that which is fair and naturally just.

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Signed 

David Nyakundi Bonyi

CHIEF EXECUTIVE OFFICER