## URBRA (RETIREMENT BENEFITS SCHEMES OUTSOURCING) GUIDELINES

The URBRA (Retirement Benefits Schemes Outsourcing) Guidelines are issued pursuant to sections 93 of the Uganda Retirement Benefits Regulatory Authority Act, 2011 and Regulation 5(1) (b) & 38 of the URBRA (Management and Operation of Retirement Benefits Schemes) Regulations 2020, Statutory Instrument No. 43 of 2020 for observance by all licensed retirement benefits schemes and service providers.

These guidelines seek to set out the considerations that shall be adopted by trustees of retirement benefits schemes in developing outsourcing policies of their respective schemes and management of the outsourcing contracts signed with various service providers.

***Issued on the 8th day of October, 2020***

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## 1. AUTHORIZATION

IN EXERCISE of the powers conferred by sections 5 (2)(b) and 93 of the Uganda Retirement Benefits Regulatory Authority Act 2011, the Uganda Retirement Benefits Regulatory Authority (herein referred to as URBRA) issues these Guidelines, for observance by all retirement benefits schemes and service providers licensed under the URBRA Act, 2011 in respect to the outsourcing of service providers.

## 2. INTRODUCTION

(a) The URBRA (Retirement Benefits Schemes Outsourcing) Guidelines are issued pursuant to sections 93 of the Uganda Retirement Benefits Regulatory Authority Act, 2011 and Regulation 5(1) (b) & 38 of the URBRA (Management and Operation of Retirement Benefits Schemes) Regulations 2020, Statutory Instrument No. 43 of 2020 for observance by all licensed entities and all persons who file complaints with URBRA.

(b) Section 33 of the Uganda Retirement Benefits Regulatory Authority requires every retirement benefits scheme to have a custodian, trustee, administrator and fund manager licensed in accordance with the Act. Fund management, custody and administration functions are delegated to service providers who are appointed by the scheme trustees. These service providers are required to be licensed in accordance with the URBRA Act 2011.

(c) Under regulation 5(1)(b) of the URBRA (Management and Operation of Retirement Benefits Schemes) Regulations 2020, Statutory Instrument No. 43 of 2020, trustees are responsible for the governance of the scheme and development of policies for the schemes including a policy on scheme outsourcing. Accordingly, effective governance and risk management of outsourced services requires that schemes adopt sound out sourcing principles. A list of the outsourced services is prescribed in **Appendix 1**. The out sourcing principles are described in these Guidelines and specific guidance is provided on how each principle should be applied.

(d) Outsourced services are becoming increasingly complex and may increase schemes' exposure to strategic, reputation, compliance, operational, country and transaction risks. Explanations of the outsourcing risks are provided under **Appendix 2** of these Guidelines. Owing to the separation of roles in service delivery, and the regulatory and supervisory requirements in the retirement benefits sector across the globe, the Authority issues these outsourcing guidelines to be followed by Schemes in identifying and procuring the services of service providers and to ensure that regulated entities effectively manage the risks associated with outsourcing activities.

(e) The Regulator, in excising its supervisory mandate, will always evaluate the impact of the outsourced services when conducting the risk assessment of a scheme. The assessment will include inter alia a determination of whether the outsourcing arrangement hinders in any way the scheme's ability to meet its regulatory requirements. The Regulator will also consider the potential systemic risks posed where outsourced activities of multiple regulated entities are concentrated in a single service provider.

## 3. DEFINITIONS

(a) **Act** – mean the Uganda Retirement Benefits Regulatory Authority Act

(b) **Outsourcing**– means the scheme's use of a third party or service provider to perform activities on a continuing basis.

(c) **Regulator** – means the Uganda Retirement Benefits Regulatory Authority

(d) **Scheme** – means a retirement benefits Scheme

(e) **Service provider** – includes Custodians; Fund Managers; Administrators; external Auditor; Actuaries; Lawyers and Financial Advisors.

## 4. PURPOSE, APPLICATION AND SCOPE

(a) These guidelines seek to set out the considerations that shall be adopted by trustees of retirement benefits schemes in developing outsourcing policies of their respective schemes and management of the outsourcing contracts signed with various service providers.

(b) The Guidelines establish the minimum standards for the management of outsourcing risks by a retirement benefits scheme and shall apply to all outsourced service providers.

(c) The Trustees are expected to regularly review the impact of all outsourcing contracts on a retirement benefits scheme.

## 5. OUTSOURCING POLICY

(1) The trustees shall prepare a comprehensive scheme outsourcing policy to guide the scheme in the assessment of how the scheme's activities, functions, processes and services can be appropriately outsourced.

(2) The Trustees must retain responsibility for the outsourcing policy and related overall responsibility for activities undertaken under that policy. In particular, the Scheme's Trustees should: -

(a) Ensure that specific policies and criteria for making decisions about outsourcing are established prior to outsourcing;

(b) Approve the scheme's outsourcing policy (prepared or adopted) that governs the service providers' risk management process and identifies material activities;

(c) Be held accountable for effective due diligence, oversight and management of outsourcing relationships and are responsible for all outsourcing decisions;

(d) Implement an effective process to manage risks related to service provider relationships in a manner consistent with the scheme's strategic goals, scheme's objectives and risk appetite; and

(e) Maintain all ongoing outsourcing arrangements and relationships in accordance with the approved outsourcing policy.

## 6. RISK MANAGEMENT

Trustees of a Retirement Benefits Scheme should establish a comprehensive risk management framework to address the outsourced activities and the relationship with the service providers. The risk management framework should ensure that: -

(a) outsourcing contracts are managed effectively and commensurate with the Scheme's level of risk and complexity;

(b) Systematic risk evaluation is conducted to ensure that the outsourcing arrangement does not result in the internal controls, business conduct or reputation of the Scheme being compromised or weakened. This evaluation should also be performed at least annually on existing contracts as part of the review processes of the RBS and be made available to the Regulator upon request; and

(c) Key risks envisaged from the outsourcing contract and risk mitigation strategies are identified and the impact of potential risks to the Scheme from the service provider are analyzed.

## 7. SUPERVISION OF OUTSOURCED ACTIVITIES

(1) Trustees should ensure that outsourcing neither diminishes their ability to fulfill their obligations to members and the Regulator, nor impedes effective supervision by the Regulator.

(2) The Trustees should ensure that:

(a) There is proper monitoring and control of the outsourced services. The service provider should be required to maintain policies and procedures which address the Scheme's right to monitor and conduct periodic reviews so as to verify the service provider's compliance with the scheme's policies and expectations.

(b) Any transfer of information under the terms of a contract should be with the Scheme's consent. Where the service provider has access to confidential data, the provisions within the contract should prohibit the inappropriate use or disclosure of such information.

(c) The Regulator's examination rights and the rights of both the service provider and the scheme are stipulated in the outsourcing contract. The Trustees should have the right to evaluate the service provider or alternatively, to cause an independent auditor to evaluate, on its behalf, the service provider's internal control environment and risk management practices.

(d) The outsourcing contract permits the Trustees to require remedial or corrective action by the service provider for issues that arise which compromise the integrity of the service being provided or where non-compliance with applicable laws and regulations is detected.

(e) The Regulator is notified of any material changes to the terms and conditions of the contract. The Trustees and the service provider should also acknowledge that the Regulator may require changes to the performance of the services, and work together in good faith to implement such changes.

## 8. EXERCISING DUE DILIGENCE, SKILL and CARE

(a) Trustees should exercise appropriate due diligence in selecting a service provider by developing and approving a criteria that enables the assessment of the service provider's capacity and ability to perform the outsourced services effectively, reliably, and to a high standard.

(b) The assessment refered to in paragraph (a) above should be done prior to selection of the service provider.

(c) The intended service to be provided should be subject to appropriate due diligence and a thorough investigation into the affairs of the service provider should be performed before Trustees considers hiring their services. The Scheme's assessment of the service provider should include a review of:

(i) the experience and the technical competence of its management and relevant staff to implement and support the proposed service;

(ii) the security, technological and internal controls, reporting and monitoring environment;

(iii) its financial soundness and ability to service commitments;

(iv) its business reputation and culture, complaints, pending litigation;

(v) its business goals, objectives, continuity management and strategies;

(vi) The internal risk management procedures of the service provider; and

(vii) whether the Regulator has issued a license to the service provider for the services they are being outsourced for.

(d) Trustees should be able to monitor the service provider's performance and assess compliance with its contractual obligations. To achieve this, the Trustees should:

(i) Identify and establish clearly defined metrics to monitor the service provider, measure the service level, and specify what service levels are required; and

(ii) Establish measures to identify instances of non-compliance or unsatisfactory performance to the Scheme, as well as, the ability to assess the quality of services performed by the service provider on a regular basis.

## 9. OUTSOURCING AGREEMENT

Outsourcing relationships should be governed by written contracts that clearly describe all material aspects of the outsourcing relationship, such as; the nature and scope of the service being provided, the rights, responsibilities and expectations of all parties.

(a) The contract should be sufficiently flexible to allow for renegotiation and renewal to enable the RBS to retain an appropriate level of control over outsourcing and the right to intervene with appropriate measures to meet legal and regulatory obligations. Therefore, key provisions of the outsourcing contract should include inter alia:

(i) Limitations or conditions, if any, on the service provider's ability to subcontract. However, where subcontracting is permitted by law, it should require the prior consent of the Scheme, and any obligations pertaining to the subcontract should be clearly stipulated;

(ii) Requirements that the service provider comply with the same (or higher) standards relating to IT, security and confidentiality which the RBS is required to comply, especially as it relates to members information;

(iii) Guarantees and indemnities;

(iv) Obligation of the service provider to provide, upon request, records, information and/or assistance concerning outsourced activities to the Scheme's auditors and/or its regulators;

(v) Mechanisms to resolve disputes that might arise under the outsourcing arrangement;

(vi) Business continuity provisions;

(vii) Provisions for the termination of the contract, transfer of information and exit strategies;

(viii) Responsibility of the service provider for compliance with local laws and regulations as required; and

(ix) For the services rendered, the clause on fees must clearly state the fees payable in respect of each service and disclose the method for deriving the fees

(b) The minimum elements to be included in an outsourcing contract or agreement are detailed in **Appendix 4** of this Guideline.

## 10. BUSINESS CONTINUITY PLAN

Trustees and service providers should establish and maintain contingency plans, including a plan for disaster recovery and periodic testing of backup facilities.

(a) Business continuity and contingency plans, should be included in the outsourcing contract, and should specify the service provider's measures for ensuring the continuation of the outsourced service in the event of problems such as a system breakdown or natural disaster that may affect the service provider's operation.

(b) Provisions should also be included in the contract for transfer of the Scheme's activities to another service provider without penalty, in the event of the service provider's bankruptcy, business failure or loss of license, or in the event of termination of the outsourcing contract.

(c) Specific contingency plans should be developed separately for each outsourcing arrangement.

(d) Back-up arrangements should be tested regularly and the results provided to the Trustees at least annually, together with any significant changes in the business resumption plan. The service provider should inform the trustees of material changes to their business continuity plans.

(e) There are also risks where multiple service providers depend on the same provider of business continuity services with a common disaster recovery site. Any disruption that affects a large number of Schemes may result in a lack of capacity for the business continuity services.

## 11. CONFIDENTIALITY

Trustees should take appropriate steps to require that service providers protect confidential information of both the scheme and its members from intentional or inadvertent disclosure to unauthorized persons.

(a) The Scheme must take steps to prevent the disclosure of confidential information to unauthorized persons by service providers.

(b) The trustees should ensure that the service provider implements appropriate security measures to safeguard customers' confidential information, considering any regulatory or statutory provisions that may be applicable.

(c) The trustees should be proactive in identifying and specifying requirements for confidentiality and security in the outsourcing arrangements.

(d) Appropriate data confidentiality, security and separation of property provisions should form part of the outsourcing contract. The rights of members should not be affected because of the outsourcing between the service provider and the Scheme.

## 12. OUTSOURCING ARRANGEMENTS WITH AN EXTERNAL AUDITOR

The detailed guidelines for outsourcing an external auditor are provided in the *"Engagement of External Auditors"* Guideline No. 1 of 2017.

## 13. TRANSITION PERIOD

(a) Trustees of schemes which have existing outsourcing contracts prior to the commencement of these guidelines, that do not meet the requirements stipulated in these Guidelines are required to:

(i) Review those contracts and ensure compliance with these Guideline within three (3) months after the issuance; and

(ii) Notify the Regulator within three (3) months of the issuance of these Guidelines of the following:

1) All running outsourcing contracts using **Appendix 4**; and

*2)* Material contracts identified in (1) above which do not comply with this Guideline and the areas of non-compliance. *This should be submitted on a separate schedule.*

## APPENDIX 1 – OUTSOURCED ACTIVITIES & SERVICES

(i) Fund Management Services
(ii) Custodial Services
(iii) Administration services
(iv) Actuarial services
(v) Audit Services
(vi) Legal Services
(vii) Financial Advisory Services

**Note:** A natural person may also do scheme Administration in house (Section 47 (2) of the Act).

## APPENDIX 2 - MAIN RISKS ASSOCIATED WITH OUTSOURCING ARRANGEMENTS

**TABLE 1: Main Risks Inherent in Outsourcing**

| Inherent Outsourcing Risk | Description |
|---|---|
| **Strategic Risk** | The risk arising from adverse business decisions, or the failure to implement appropriate business decisions in a manner that is consistent with the Scheme's strategic goals. Where a service provider does not adequately perform services that assist the Scheme in achieving its corporate strategic goals nor provides an adequate return on its investments, it exposes the Scheme to strategic risk. |
| **Reputation Risk** | The risk arising from negative public opinion. Third-party relationships that result in dissatisfied customers; unexpected customer financial loss; inconsistent interactions with the Scheme policies; inappropriate recommendations; security breaches resulting in the disclosure of customer information; and violations of laws and regulations are all examples that could harm the reputation and standing of the RBS. Any negative publicity involving the service provider, whether or not the publicity is related to the Scheme's use of the service provider, could result in reputation risk. |
| **Compliance Risk** | The risk arising from violations of the Act, Trust Deeds, Scheme rules, or regulations, or from noncompliance with the Scheme's internal policies or procedures or business standards. This risk exists when the activities of a service provider are not consistent with governing laws, rules, regulations, policies, or ethical standards. For example; the ability of the service provider to maintain the privacy of customer records and to implement an appropriate information security and disclosure program. |
| **Operational Risk** | The risk of loss resulting from inadequate or failed internal processes, people, systems, or external events. Third-party relationships often integrate the internal processes of other organizations with the Scheme's processes and can increase the overall operational complexity. Schemes should be cautious when outsourcing services from a service provider that supplies services to multiple Schemes as operational risks are correspondingly concentrated and may pose a systemic threat. |
| **Country Risk** | The exposure to the economic, social and political conditions and events in a foreign country that may adversely affect the ability of a cross border subsidiary / parent service provider to meet the level of service required, resulting in harm to the RBS. In extreme cases, this exposure could result in the loss of data or other assets. |

| | |
|---|---|
| **Transaction Risk** | The risk arising from problems associated with service or product delivery. A service provider's failure to perform as expected by the RBS due to inadequate capacity, technological failure, human error, or fraud, exposes the Scheme to transaction risk.<br><br>The lack of effective business contingency plans increases transaction risk. Weak controls over technology used by the service provider may result in threats to security and the integrity of systems and resources. These issues could result in unauthorized transactions or the inability to transact business as expected. |

## APPENDIX 3 – MINIMUM ELEMENTS OF OUTSOURCING CONTRACTS

(i) Nature and scope of the service being outsourced to the service provider. (Section 9)

(ii) Service level and Performance Standards – e.g. timing of delivery; metrics to measure performance; procedures for managing problems. (Section 8(c))

(iii) Ownership and Access – e.g. ownership of information; rights of the access of the service provider to scheme's information etc. (Section 7(b))

(iv) Fees: - The clause on fees must clearly state the fees payable in respect of each service and disclose the method for deriving the fees

(v) Insurance, Guarantees, Indemnities (Section 9(b)(iii))

(vi) Reporting Requirements – e.g. the type and frequency of reporting by the service provider. (Sections 7(a) and 9(a))

(vii) Audit and Examination Rights – e.g. rights of the Regulator to audit/ inspect the service provider; rights of access by the Trustees and the Regulator to any reports on the service provider by its internal or external auditors. (Sections 7(c))

(viii) Business Continuity Plans (Section 10)

(ix) Default and Termination of the Contract (Section 9(a)(vii))

(x) Dispute Settlement (Section 9(a)(v))

(xi) Documentation/ Information Retention (Sections 9(a)(iv))

(xii) Confidentiality, Security of Customer Information (Sections 9(a)(iii) and Section 11)

***This list is not considered exhaustive and the Regulator may amend the list as required***

## APPENDIX 4 – RECORD OF OUTSOURCED CONTRACTS

| Name of Service Provider | Outsourced Service | Short description of arrangement | Country from which service is provided | Expiry/Renewal date of contract or outsourcing agreement | Estimated fees of the outsourcing contract |
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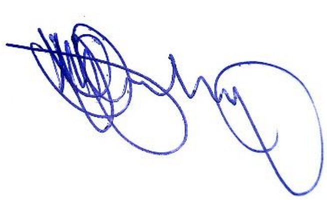
***Issued on the 8th day of October, 2020***



Signed: Martin A. Nsubuga
***CHIEF EXECUTIVE OFFICER***